Privileges Committee

The Crown Casino VIP Gaming Management Agreement

Ordered to be printed 11 November 2014

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. Privileges Committee.

Crown Casino VIP Gaming Management Agreement/ Legislative Council, Privileges Committee. [Sydney, N.S.W.] : the Committee, 2014. 125 pages ; 30 cm. (Report 72 / Privileges Committee)

Chair: The Hon Trevor Khan MLC.

"Ordered to be printed November 2014"

ISBN 9781920788940

1. New South Wales. Parliament—Privileges and immunities.
2. Legislative bodies—New South Wales—Privileges and immunities.
3. Gambling—New South Wales.
4. Casinos—New South Wales.

I. Title
II. Khan, Trevor.
III. Series: New South Wales. Parliament. Legislative Council. Privileges Committee. Report ; 72.

328.944 (DDC22)

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Terms of reference

1. That the House notes the report of the Independent Legal Arbiter, the Hon Keith Mason AC QC, dated 21 October 2014, on the disputed claim of privilege on the VIP Gaming Management Agreement.

2. That, in view of the particular circumstances of this matter, the Privileges Committee inquire into and report on the implementation of the report of the Independent Legal Arbiter.

3. That for the purpose of this inquiry:

   (a) the Clerk be authorised to release to the committee a copy of the VIP Gaming Management Agreement, together with the claim of privilege over the Agreement made by the Government and the written dispute as to the validity of the claim of privilege over the Agreement lodged with the Clerk by Dr Kaye on 13 October 2014,

   (b) the committee clerk be authorised to make copies of the VIP Gaming Management Agreement, and the associated documents referred to in paragraph 3(a), for use by members, and

   (c) the committee adopt, at its first meeting to consider this reference, measures to ensure the strict confidentiality of the Agreement and associated documents.

4. That, in accordance with standing order 224, the documents released to the committee may not, unless authorised by the House, be disclosed to any person other than a member or officer of the committee, or a witness appearing before the committee at an in camera hearing.

5. That notwithstanding anything to the contrary in the resolution establishing the committee, for the purposes of this inquiry:

   (a) the committee consist of eight members, and

   (b) the additional member be Dr Kaye.

6. That the committee report by Tuesday 11 November 2014.

These terms of reference were referred to the Committee by the House on Thursday, 23 October 2014.

Committee membership

The Hon Trevor Khan MLC	The Nationals	Chair
The Hon Amanda Fazio MLC	Australian Labor Party	Deputy Chair
The Hon David Clarke MLC	Liberal Party	
The Hon Jenny Gardiner MLC	The Nationals	
Dr John Kaye[1]	The Greens	
The Hon Natasha Maclaren-Jones MLC	Liberal Party	
Revd the Hon Fred Nile MLC	Christian Democratic Party (Fred Nile Group)	
The Hon Peter Primrose MLC	Australian Labor Party	

[1] Dr Kaye was appointed as a member of the committee for the purpose of the inquiry into the Crown Casino VIP Gaming Management Agreement on 23 October 2014.

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Chair's foreword

The Crown Casino VIP Gaming Management Agreement was executed in July 2014 between the Independent Liquor and Gaming Authority and four 'Crown' corporations. It concerns the operating conditions under which Crown may operate a restricted gaming facility at Barangaroo in Sydney. The Agreement is largely but not entirely in the public domain.

In September 2014, the House ordered the production of the unredacted version of the Agreement to the House. It was produced by the Department of Premier and Cabinet in October, but privilege was claimed over the Agreement. Dr John Kaye MLC subsequently contested the claim of privilege over certain sections of the Agreement, whereupon in accordance with the procedures under standing order 52, the Agreement was released to an Independent Legal Arbiter, the Honourable Keith Mason AC QC, for evaluation and report as to the validity of the claim of privilege over the contested sections. In his report to the Council, Mr Mason did not uphold the validity of the claim of privilege over the contested sections.

Given the importance of this matter, on the motion of Dr Kaye, the House referred terms of reference to this committee requiring the committee to inquire into and report on the implementation of the report of the Independent Legal Arbiter. The committee has done so, receiving three further confidential submissions as part of its inquiry.

Having reviewed the matter in light of the further submissions, the committee supports the findings of Mr Mason in his report on the disputed claim of privilege over the Crown Casino VIP Gaming Management Agreement. The decision whether or not to implement the advice of Mr Mason rests with the House.

I thank the other members of the committee for their contribution to this inquiry and also thank the committee secretariat for its support.

The Hon Trevor Khan MLC
Chair

Summary of finding and recommendation

The committee supports the findings of the Independent Legal Arbiter, the Honourable Keith Mason AC QC, in his report on the disputed claim of privilege over the Crown Casino VIP Gaming Management Agreement.

That the House adopt the findings of the Independent Legal Arbiter and order that a copy of the Crown Casino VIP Gaming Management Agreement be laid upon the table by the Clerk with only the following portions of the Agreement redacted and available to members of the Legislative Council only:

- the particular date in the third definition at issue in clause 1.1
- clause 8 in its entirety and the accompanying definition in clause 1.1
- clause 12 in its entirety
- the contents of schedule 2.

That, before being laid on the table by the Clerk, the copy of the Agreement be released to the Department of Premier and Cabinet for redaction of the information identified above and returned to the Clerk within 24 hours for tabling in the House.

Chapter 1 Introduction

This chapter discusses the establishment and conduct of this inquiry.

The Crown Casino VIP Gaming Management Agreement

1.1 The Crown Casino VIP Gaming Management Agreement (the 'Agreement') was executed on 8 July 2014 between the Independent Liquor and Gaming Authority and four 'Crown' corporations: Crown Resorts Limited, Crown Sydney Property Pty Limited, Crown Sydney Holdings Pty Limited and Crown Sydney Gaming Pty Limited. It is a document of 77 pages addressing the operating conditions under which Crown may operate a restricted gaming facility at Barangaroo in Sydney.

1.2 The vast majority of the Agreement was made public by the Independent Liquor and Gaming Authority on its website in September 2014. However, certain sections of the document, notably Schedule 1 and all references to its contents as well as some other matters were redacted and remained confidential. A copy of the redacted Agreement is at Appendix 1.

The Crown Casino VIP Gaming Management Agreement order for papers

1.3 The House ordered the production of the unredacted final and signed version of the Crown Casino VIP Gaming Management Agreement on Thursday 18 September 2014 through an order for papers moved under standing order 52.[2] A return to order incorporating the Agreement and an index, together with a claim of privilege over the Agreement entitled 'Submission in support of claim for privilege by the Department of Premier and Cabinet', was received out of session by the Clerk on Thursday 2 October 2014.[3] In the index, the Department of Premier and Cabinet (DPC) claimed privilege over the full Agreement, notwithstanding the majority of it was in the public domain, citing:

> Commercially sensitive and confidential information in relation to the redacted clauses 5.3, 8, 12, 16.1(a) and Schedules 1 and 2, and the related references to these clauses in the Contents table and Defined Terms (in clause 1.1).

1.4 The grounds of the claim of privilege were developed by DPC in its 'Submission in support of claim for privilege by the Department of Premier and Cabinet', which was accompanied by letters from the Chief Executive of the Independent Liquor and Gaming Authority dated 29 September 2014 and the General Counsel of Crown Resorts Limited dated 2 October 2014. Privilege was also asserted over the information set out in the claim of privilege and the two accompanying letters.

1.5 On Monday 13 October 2014, the Clerk received from Dr Kaye a written dispute as to the validity of the claim of privilege over certain parts of the Agreement. The dispute identified 15 sections of the Agreement, but sought the 'lifting of privilege' on only some of those sections.

2 *Minutes*, Legislative Council, 18 September 2014, p 99.

3 *Minutes*, Legislative Council, 14 October 2014, p 124.

1.6 On Tuesday 14 October 2014, the Honourable Keith Mason AC QC, being a retired Supreme Court judge, was appointed as the independent legal arbiter to evaluate and report as to the validity of the claim of privilege.

1.7 The House was notified of the receipt of the return to order, and the dispute lodged by Dr Kaye, when it sat on Tuesday 14 October 2014.[4]

1.8 On Tuesday 21 October 2014, in response to a resolution of the House of Wednesday 15 October 2014, a redacted version of the DPC claim of privilege was received from DPC and tabled in the House.[5] A copy of the redacted claim of privilege is at Appendix 2.

The report of the Independent Legal Arbiter

1.9 The report of the Independent Legal Arbiter, Mr Mason, was received by the Clerk and tabled in the House on Tuesday 21 October 2014.[6] The following day, the House ordered that the report be made public.[7] A copy of the report of Mr Mason is at Appendix 3.

1.10 In his conclusion to his report, Mr Mason indicated:

> In my evaluation, a valid claim of privilege is not established with respect to the matters presently contested by Dr Kaye. On this basis, the following portions of the Agreement should not be redacted:
>
> - the Contents table in its entirety
> - the first of the disputed definitions in clause 1.1 (being the term defined for the purpose of Schedule 1)
> - the third of the disputed definitions, save for the date it contains
> - clause 5.3
> - clause 16.1(b)
> - Schedule 1.[8]

1.11 Mr Mason also indicated:

> ... Dr Kaye does not presently dispute the claim of privilege touching:
>
> - the particular date in the third definition at issue in clause 1.1
> - clause 8 in its entirety and the accompanying definition in clause 1.1
> - clause 12 in its entirety
> - the contents of Schedule 2.[9]

4 *Minutes*, Legislative Council, 14 October 2014, p 124.

5 *Minutes*, Legislative Council, 21 October 2014, p 174.

6 *Minutes*, Legislative Council, 21 October 2014, p 173.

7 *Minutes*, Legislative Council, 22 October 2014, pp 185, 189.

8 Independent Legal Arbiter, 'Report under standing order 52 on disputed claim of privilege: Crown Casino VIP Gaming Management Agreement', 21 October 2014, p 7.

1.12 Mr Mason also observed that in preparing the report, one of the difficulties he experienced was that the claim of privilege by DPC was made over all the redacted sections in the Agreement *in globo*. As indicated, Dr Kaye contested privilege over only some of the sections.[10]

Establishment of this inquiry

1.13 Following the tabling of Mr Mason's report, Dr Kaye gave notice for the privileged copy of the Agreement to be tabled in the House and made public, with certain parts remaining redacted.[11] Subsequently, however, on 23 October 2013, on the matter coming on as formal business, Dr Kaye moved by leave that the matter be referred to this committee for inquiry and report by Tuesday 11 November 2014 on the implementation of the report of the Independent Legal Arbiter. A copy of the terms of reference is at page iv.

1.14 The terms of reference added Dr Kaye as a member of the committee for the purposes of this inquiry.

Conduct of this inquiry

1.15 On receipt of the inquiry, the committee invited further submissions on the matter from Dr Kaye and DPC, and through DPC from Crown Resorts Limited and the Independent Liquor and Gaming Authority. Parties were invited to address specifically the claim of privilege over those sections of the Agreement on which Dr Kaye had disputed privilege. In doing so, the committee had an opportunity to address the concern raised by Mr Mason that the initial claim of privilege by DPC made at the time the Agreement was returned to the House covered all the redacted sections in the Agreement *in globo*, rather than the specific sections contested by Dr Kaye.

1.16 In response, the committee received three submissions from the Independent Liquor and Gaming Authority, Crown Resorts Limited and Dr Kaye, which the committee resolved at the request of the authors should remain confidential. The committee did not hold any public or in camera hearings, as it had sufficient information to report back to the House on this matter.

9 *Ibid.*

10 *Ibid.*

11 *Notice Paper*, Legislative Council, 23 October 2014, Item 2077, pp 1039-1040.

Chapter 2 The claims of privilege over the Agreement

In his report, the Independent Legal Arbiter, the Honourable Keith Mason AC QC, discussed three separate claims of privilege over the Crown Casino VIP Gaming Management Agreement: commercial confidentiality, statutory secrecy and public interest immunity. The committee examines these three claims of privilege in this chapter, before offering its own comment on this matter.

The claim of commercial confidentiality

2.1 In his correspondence dated 2 October 2014 accompanying the Department of Premier and Cabinet's (DPC's) claim of privilege over the VIP Gaming Agreement, General Counsel of Crown Resorts Limited argued that the redacted parts of the Agreement contain 'commercially sensitive' information that is 'commercial in confidence'. The correspondence further stated:

> Crown Resorts will suffer significant commercial detriment in the event that the redacted provisions are publicly disclosed. Crown Resorts agreed in good faith to provide the covenants and warranties contained in the redacted provisions on the basis that these provisions would be kept confidential. If such redacted provisions were to be now made publicly available, there is a genuine risk that Crown Resorts' competitors would be able to misuse such information in order to gain an unfair commercial advantage.
>
> …
>
> By disclosing these provisions publicly, Crown Resorts' competitors would become aware of the significant commercial restrictions imposed on Crown Resorts and would be able to misuse this information to their advantage.

2.2 DPC appeared to adopt a similar position in its 'Submission in support of claim for privilege by the Department of Premier and Cabinet', stating:

> The public disclosure of information that is commercially sensitive to a third party (i.e. Crown) and that is held by the Department of Premier and Cabinet may cause the third party to suffer significant commercial detriment in that its competitors and commercial partners may use the information to gain an unfair commercial advantage and/or an advantaged bargaining position.

2.3 In his report, Mr Mason did not accept commercial confidentiality as a valid basis for a claim of privilege, at least in this instance. Mr Mason also more generally indicated that '[b]y itself, "commercial-in-confidence" does not establish a relevant privilege'.[12]

2.4 The claim that a document is privileged based on commercial sensitivity was not examined in the decision of the Court of Appeal in *Egan v Chadwick*.[13] However, the committee notes that the matter has been examined by Arbiters on a number of occasions since.

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12 Independent Legal Arbiter, 'Report under standing order 52 on disputed claim of privilege: Crown Casino VIP Gaming Management Agreement', 21 October 2014, p 3.

2.5 In his previous report as Arbiter on the disputed claim of privilege relating to the WestConnex Business Case, Mr Mason indicated:

> "Commercial-in-confidence" and "privacy" are loose and often conclusive expressions. They are not in themselves recognised heads of privilege (even for courts). And it would be wrong to conclude that a stipulation to safeguard them in a government contract could or should erect an automatic bar to parliamentary scrutiny. The observations of Sir Anthony Mason in *Commonwealth v John Fairfax & Sons Ltd* (1980) 147 CLR 39 at 52 explain:
>
> > "It may be a sufficient detriment to the citizen that disclosure of information relating to his affairs will expose his actions to public discussion and criticism. But it can scarcely be a relevant detriment to the government that publication of material concerning its actions will merely expose it to public discussion and criticism. It is unacceptable in our democratic society that there should be a restraint on the publication of information relating to government when the only vice of that information is that it enables the public to discuss, review and criticize government action.
> >
> > Accordingly, the court will determine the government's claim to confidentiality by reference to the public interest. Unless disclosure is likely to injure the public interest, it will not be protected.
> >
> > The court will not prevent the publication of information which merely throws light on the past workings of government, even if it be not public property, so long as it does not prejudice the community in other respects."

2.6 Mr Mason continued that '[t]he House's right of access to State papers and its legitimate power to publish them ancillary to its constitutional functions could be no less constrained.'[14]

2.7 Mr Mason also largely rejected claims of commercial confidentiality in his report on the WestConnex Business Case, although he did endorse a claim of commercial confidentiality over two documents which were said to impact on the ongoing commercial negotiations with contractors for the WestConnex Project.[15]

2.8 Previous arbiter reports by Sir Laurence Street adopted a similar position. In 2002, Sir Laurence Street, in his report on the Mogo Charcoal Plant, observed:

> Principles of transparency and accountability plainly outweigh the commercial in confidence considerations and the admittedly prospectively serious implications put forward by State Forests and ASO[16] when considering a contract for a sale by the State of this magnitude. The administration of the timber resources of the State involves political, ecological and economic considerations of significant public interest and, I repeat, the magnitude of this transaction is such as to expose it to a clearly recognisable obligation of disclosure.[17]

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13 (1999) 46 NSWLR 563.

14 Independent Legal Arbiter, 'Report under standing order 52 on disputed claim of privilege: WestConnex Business Case', 8 August 2014, pp 10-11.

15 *Ibid*, p 12.

16 Australian Silicon Operations Pty Ltd.

17 Independent Legal Arbiter, 'Disputed claims of privilege: Mogo Charcoal Plant', 28 May 2002, p 10.

2.9 In 2006, Sir Laurence Street observed in his report on Luna Park Leases and Agreements:

> It is not open to an administrative public authority to shield documents from Parliamentary disclosure merely by inserting a commercial in confidence clause in them. In every such case the House will assess for itself … whether it is in the public interest that the documents be disclosed.[18]

2.10 However, in 1999 and 2002, Sir Laurence Street did accept claims of commercial confidentiality in relation to the specific costs of power generation by an individual power generator, Delta Electricity, and the tender process for the M5 East Motorway.

2.11 In the matter of Delta Electricity, Sir Laurence Street recognised the commercial sensitivity of the information provided by Delta Electricity, but in that instance, was not able to perceive any adequate countervailing public interest in the material being made available for public scrutiny and consideration.[19] In the case of the M5 East Motorway, and the two documents over which Mr Mason did endorse privilege in the recent WestConnex Business Case report, both involved ongoing contractual negotiations with the Government.

The claim of statutory secrecy

2.12 In its 'Submission in support of claim for privilege by the Department of Premier and Cabinet', DPC summarised the accompanying correspondence of the Chief Executive of the Independent Liquor and Gaming Authority as follows:

> The Authority asserts that the redacted clauses contain information that has been assessed to be not suitable for public release in accordance with its secrecy obligations under the *Gaming and Liquor Administration Act 2007* … and that the redacted information should not be publicly disclosed.

2.13 In his report, Mr Mason rejected statutory secrecy, and specifically section 17 of the *Gaming and Liquor Administration Act 2007*, as a basis for claiming privilege over the Agreement, noting in passing that the Agreement has already been produced to the Council anyway. He observed:

> … Crown Resorts', the Authority's and DPC's reliance on section 17 is misplaced, in my opinion.
>
> … In light of the Council's constitutional role, which includes the oversight of the Minister who is expressly mentioned in section 17(2)(d), I cannot conceive that the Council is disadvantaged in comparison to the bodies mentioned in section 17(7) [ICAC, police etc]. Nor is Parliament a "court" within the scope of section 17(4). And Parliament has certainly not delegated to the Authority the function of certifying conclusively as to the public interest in the present context.
>
> In my opinion, statutory non-disclosure provisions will only affect the powers of the Council if they do so by express reference or necessary implication.[20]

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18 Independent Legal Arbiter, 'Disputed Claim of Privilege: Luna Park leases and agreements', 19 June 2006, p 2.

19 Independent Legal Arbiter, 'Disputed Claim of Privilege: Delta Electricity', 14 October 1999, p 6.

20 Independent Legal Arbiter, 'Report under standing order 52 on disputed claim of privilege: Crown Casino VIP Gaming Management Agreement', 21 October 2014, p 5.

2.14 The committee notes that as a general principle, the powers and immunities of the parliament, including the power to order the production of papers, are not affected by a statutory provision unless the provision alters the law of privilege by express words, although it is potentially possible that privilege may be altered by necessary implication. The original and principal authority for this position is the 1870 decision of the House of Lords in *The Duke of Newcastle v Morris*,[21] in which the Lord Chancellor, Lord Hatherley, observed:

> It seems to me that a more sound and reasonable interpretation of such an Act of Parliament would be, that the privilege which had been established by Common Law and recognised on many occasions by Act of Parliament, should be held to be a continuous privilege not abrogated or struck at unless by express words in the statute … [22]

2.15 *Odgers' Australian Senate Practice* expresses the same position: 'It is … a fundamental principle that the law of parliamentary privilege is not affected by a statutory provision unless the provision alters that law by express words'.[23]

2.16 Similarly, *New South Wales Legislative Council Practice* cites authority for the fact that statutory secrecy provisions have no application to the conduct of committee inquiries, despite assertions from time to time by Governments to the contrary.[24]

2.17 The Council has also received a number of legal opinions from Mr Bret Walker SC repeatedly confirming the same position. In his most recent opinion in 2012 considering statutory secrecy provisions such as those in the *Crime Commission Act 2012* and the *Police Integrity Commission Act 1996*, Mr Walker observed:

> For the following reasons, in my opinion the statutory provisions to this effect should not and will not be construed by a court of law to deny Parliament (and one of its Houses' delegates, GPSC No 4) the power to compel such answers.
>
> It is noted that these provisions explicitly permit certain senior officers to lift the obligation of secrecy if in their opinion the public interest so requires. To put it mildly, it would be surprising if that overarching judgement had been reposed by legislation in those officers by provisions which denied the legislators themselves the responsibility to judge the public interest in requiring answers to questions deemed proper to be asked. The more so, given that the parliamentary role of securing accountability of government activity has been described as "the very essence of responsible government" according to a view cited approvingly in the High Court of Australia: *Egan v Willis* (1998) 195 CLR 424 at 451.
>
> A further important feature of the Crime Commission Act and the Police Integrity Commission Act is that both agencies are, as would be expected given their functions, required to report (directly or indirectly) to the Houses of Parliament. It would be odd, bordering on perverse, if these provisions were to be read as somehow informing

21 (1870) LR 4 HL 661.

22 (1870) LR 4 HL 661 at 668.

23 Harry Evans and Rosemary Laing (eds), *Odgers' Australian Senate Practice*, 13th ed, 2012, p 66.

24 Lynn Lovelock and John Evans, *New South Wales Legislative Council Practice*, Federation Press, 2008, pp 512-516.

> Members of matters they could not pursue further through means such as questioning in GPSC No 4.[25]

2.18 Most recently, a legal opinion provided directly to the Government by the Solicitor General and Ms Mitchelmore of Counsel dated 9 April 2014, concerning a number of matters relating to the order for papers process, indicated that:

> It is reasonably clear that the following authorities, although referring specifically to the role of parliamentary committees, would take the view that a statutory non-disclosure provision could only affect the powers of the Council if it did so by express reference or necessary implication:
>
> - Lovelock and Evans, *New South Wales Legislative Council Practice* (Federation Press, 2008) at 512-516;
> - Odgers, *Australian Senate Practice* (Commonwealth of Australia, 2008) at 66;
> - 1985 joint opinion by the then Commonwealth Attorney General, Mr Bowen and the then Commonwealth Solicitor General, Dr Griffith QC (cited in Odgers); and
> - Opinion of Mr Walker SC of 2 November 2000 cited in Lovelock and Evans at 514.
>
> We are inclined to agree that this view accords with the role of the Parliament in a system of responsible and representative government, although the matter can hardly be free from doubt and it is not possible to predict with confidence what view a court might take on this issue.[26]

The claim of public interest immunity

2.19 In its 'Submission in support of claim for privilege by the Department of Premier and Cabinet', DPC stated that:

> … the redacted clauses from the Agreement are privileged and should not be made public on the grounds of public interest immunity because the public interest in their disclosure is outweighed by a competing public interest in their suppression.

2.20 DPC further elucidated this claim of public interest immunity by citing concerns that the release of information obtained confidentially by a New South Wales regulatory agency may prejudice the regime for sharing of intelligence amongst regulators, may prejudice third parties from cooperating with such regulators in the future, could inappropriately and unfairly lead to adverse public imputation against particular third parties, and could 'prejudice current or future contractual or other relationships between Government and the private sector'.

2.21 In his report, Mr Mason did not accept these propositions, at least in the general form in which they were put. He observed:

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25 Brett Walker SC, 'Legislative Council Committee – Secrecy provisions', 12 November 2012, p 2.

26 M.G.Sexton SC and A.M.Mitchelmore, 'Question of powers of Legislative Council to compel production of documents from Executive', 9 April 2014, pp 7-8.

> In any public interest calculus one needs to address and weigh the reasons said to indicate a risk of harm to the public interest, before addressing and weighing the factors supporting openness. I fail to detect any legitimate basis for suppressing the existence and broad subject-matter of these clauses and of the two Schedules. Nor do I understand how it could be in the interest of good government in New South Wales for there to be suppression of the fact that these matters have been addressed in the Agreement at the behest of the Authority and with the approval of the Minister.[27]

2.22 The committee notes that at its essence, a claim of public interest immunity is a claim that it is not in the public interest for certain information to be made public. The common law formulation of public interest immunity stated in *Sankey v Whitlam*, and cited by DPC in its claim of privilege, is as follows:

> [T]he court will not order the production of a document, although relevant and otherwise admissible, if it would be injurious to the public interest to disclose it.[28]

2.23 In *Egan v Chadwick*, all three members of the Court of Appeal agreed that the Council's power to order the production of documents extended to state papers subject to a claim of public interest immunity, on the basis that such a power is reasonably necessary for the exercise of its legislative function and its role in scrutinising the executive.

2.24 In his judgement in *Egan v Chadwick*, Spigelman CJ noted that where public interest immunity arises in court proceedings, the trial judge is required to balance conflicting public interests – the significance of the information to the issues in the trial, against the public harm from disclosure. Similarly, where public interest immunity arises in parliamentary proceedings, a balance must be struck between the significance of the information to the proceedings in Parliament, against the public harm from disclosure.[29]

2.25 In his judgement in *Egan v Chadwick*, Priestley JA noted that where claims of public interest immunity arise in judicial proceedings, the courts have the power to compel the production of documents by the executive government in respect of which immunity is claimed, for the purpose of balancing the public interests for and against disclosure. He continued that the function and status of the Council in the system of government in New South Wales requires and justifies the same degree of trust being reposed in the Council when dealing with documents in respect of which the executive claims public interest immunity. Accordingly, in exercising its powers in respect of such documents, the Council has a duty analogous to that of a court of balancing the public interest considerations, and a duty to prevent publication beyond itself of documents the disclosure of which will be inimical to the public interest.[30]

2.26 The committee notes that in his report, Mr Mason entered into a process of weighing up and balancing the competing public interests. In doing so, he followed the practice of past arbiters. Of note, in October 2005, in the report on the Cross City Tunnel—Second Report, Sir Laurence Street made the following observations on Parliament's role in evaluating the public interest:

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27 Independent Legal Arbiter, 'Report under standing order 52 on disputed claim of privilege: Crown Casino VIP Gaming Management Agreement', 21 October 2014, p 7.

28 *Sankey v Whitlam* (1978) 142 CLR 1 at 38.

29 *Egan v Chadwick* (1999) 46 NSWLR 568, per Spigelman CJ at 573-574.

30 *Egan v Chadwick* (1999) 46 NSWLR 568, per Priestley JA at 594.

> Claims for privilege commonly fall into two categories – Legal Professional Privilege (LPP) and Public lnterest Privilege (PIP). These claims are not uncommon in judicial proceedings. LPP is recognized and enforced by Courts in protecting the confidentiality of the lawyer/client relationship. PIP is a more wide-ranging and less readily defined privilege based, broadly speaking, on the justification for protecting the confidentiality of documents containing sensitive or confidential information which it would be unreasonably prejudicial to disclose to the public.
>
> …
>
> While Courts apply developed principles in ruling on claims for privilege, Parliament will evaluate the claim (usually by its Arbiter) to consider whether it is in the public interest to uphold it. This process involves balancing against each other two heads of public interest that are in tension. On the one hand, there is a public interest in not invading lawyer/client relationships and a public interest in protecting what might be called commercially sensitive material. And, on the other hand, there is a contrary public interest in recognizing the public's right to know and the need for transparency and accountability on the part of the Executive.[31]

2.27 This position was further elucidated by Sir Laurence Street in June 2006 in a report on the sale of PowerCoal Assets:

> … [i]t must be accepted that the making and testing of such claims are part of the democratic process. In the constitutional fabric of the state of New South Wales there is no absolute doctrine of separation of powers as there is for example in the Commonwealth and the United States. The NSW Parliament is supreme in its authority over the Executive but, in deference to the public expectation that the three branches of Government will co-exist in a conventionally ordered relationship, the underlying philosophy of the separation of powers doctrine is a relevant consideration, albeit that it is not constitutionally mandated or enforceable. Hence the existence of Parliament's authority to over-ride the Executive in the matter of the production of documents. It is a power that exists but is exercised only where it is, in the judgement of Parliament, in the public interest to do so.[32]

2.28 Claims of public interest immunity have been validly made in the past in relation to such issues as protecting the identity of an informant where it concerned the enforcement or administration of the law[33] and sensitive policy considerations relating to the application of the Government's policy of attracting investment to the State.[34]

2.29 However, examples where claims of public interest immunity have not been upheld include in relation to the conditional lease of a former quarantine station on the foreshores of Sydney Harbour, when it was held that the public interest in the foreshores of the harbour and the stewardship of the site outweighed the confidentiality of government policy in relation to the

31 Independent Legal Arbiter, 'Disputed Claim of Privilege – Papers on Cross City Motorway Consortium, Second report', 20 October 2005, pp 1-2.

32 Independent Legal Arbiter, 'Disputed Claim of Privilege – Sale of PowerCoal Assets', 27 June 2006, p 6.

33 Independent Legal Arbiter, 'Disputed Claim of Privilege – Papers on M5 East Motorway, 25 October 2002, p 6.

34 Independent Legal Arbiter, 'Disputed Claim of Privilege – Mogo Charcoal Plant', 28 May 2002, p 3.

site,[35] and in relation to the appointment of Mr Peter Scolari as the Administrator of the Wellington Local Aboriginal Land Council, where it was held that the public interest in transparency and accountability concerning the appointment of Mr Scolari outweighed any matters of Government policy.[36]

Committee comment

2.30 At the outset, the committee notes that it is constrained in its comments on this matter by the fact that parts of the Crown Casino VIP Gaming Management Agreement, parts of the 'Submission in support of claim for privilege by the Department of Premier and Cabinet' and accompanying correspondence, and all three submissions to this inquiry in their entirety remain confidential. As such, the committee cannot refer to certain specific issues raised in those documents. However, the committee can offer some general observations on this matter.

2.31 As a general principle, the committee's starting point in this matter is that the Parliament is an independent arm of the government, separate from the executive. As such, confidentiality arrangements entered into by the executive as part of the workings of government are not binding on the House. One of the primary roles of the Legislative Council is to review the operation of the executive as the House of Review.

2.32 The committee's other point of departure is that the arrangements of the House under standing order 52 for ordering the production of State papers from the executive government and dealing with claims of privilege over those papers are very well established and understood. Since the last of the *Egan* decisions in 1999, the House has made over 300 orders for papers. In almost 50 instances, the services of an independent legal arbiter have been employed. In the committee's view, the process is robust and effective.

2.33 From that basis, the committee has reviewed the report of the Independent Legal Arbiter, the Honourable Keith Mason AC QC, in this matter, and is satisfied that the approach of Mr Mason to the three claims of privilege addressed in his report is entirely consistent with case law, the law of privilege, and the practice and findings of past Independent Legal Arbiters. The committee finds no fault with Mr Mason's reasoning.

2.34 In this particular instance, however, this inquiry has afforded the committee an opportunity to seek further submissions from interested parties on those specific sections of the Agreement over which Dr Kaye has disputed privilege. The committee has received three further submissions which were not available to Mr Mason at the time he compiled his report.

2.35 As indicated, the matters raised in those three submissions are confidential. However, having reviewed the three submissions, the committee does not believe that it has before it in those submissions any new or significant information that was not available to Mr Mason at the time he prepared his report that would cause the committee to alter its views as to Mr Mason's recommendations.

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35 Independent Legal Arbiter, 'Disputed Claim of Privilege – Conditional Agreement to Lease the Quarantine Station', 31 July 2001, pp 2-3.

36 Independent Legal Arbiter, 'Disputed Claim of Privilege – Appointment of Mr Peter Scolari as Administrator of the Wellington Local Aboriginal Land Council', 17 October 2001, pp 2-3.

2.36 While the committee cannot comment directly on the matters raised in the submissions, it does provide some general observations, drawing in part on the matters that are publicly available in the original claim of privilege made by DPC.

Commercial confidentiality

2.37 In relation to the issue of commercial confidentiality, the committee does not believe that commercial confidentiality supports non-disclosure of potentially sensitive but nevertheless settled matters. While not ruling out other successful claims of commercial confidentiality, the committee notes that in the past, claims of commercial sensitivity have been more likely to succeed where the information would directly affect current contractual negotiations being undertaken by the government.

2.38 In the particular instance of the Crown Casino VIP Gaming Management Agreement, the committee believes that the arrangements entered into in the Agreement for regulating the operation of a restricted gaming facility at Barangaroo do not fall into the above category of ongoing contractual negotiations. Nor are there any other obviously significant commercial considerations. Rather, the Agreement is a complex but relatively predictable and settled legal framework entered into by the parties under express statutory authority. Competitors to Crown would expect such an arrangement to be in place. The committee also notes that the information in Schedule 2 to the Agreement has not been sought to be made public at this time, based in part on commercial considerations.

2.39 The committee doubts that there would be any substantial long term commercial damage to Crown Resorts Limited by the lifting of privilege over the disputed sections of the Agreement.

2.40 The committee also believes that private companies entering into commercial arrangements with the Government should be aware of the potential for outside scrutiny by the Parliament. This was explicitly acknowledged by Mr Mason when he stated in his report:

> The parties to the Agreement and any other regulators … should be taken to know that a statutory agreement of this type would attract parliamentary oversight and that the interests of good government in New South Wales would be the primary focus of attention.

Statutory secrecy

2.41 On the issue of statutory secrecy, it is reasonably settled law that claims of statutory secrecy, in this case over the Agreement, do not override the powers of the Parliament. The committee believes that claims to the contrary, and citation of section 17 of the *Gaming and Liquor Administration Act 2007*, are in the words of Mr Mason 'misplaced'.

Public interest immunity

2.42 On the matter of public interest immunity, as noted, the committee is not in a position to cite in detail arguments raised in submissions to this inquiry. However, as a general observation, the committee notes that issues of corruption and crime prevention are ongoing issues for all jurisdictions worldwide that host casinos. Protecting the integrity of casino operations is the

role of casino regulators, in both Australia and elsewhere. As such, there is a public interest in knowing that casinos are regulated effectively, and that in this particular instance, the Independent Liquor and Gaming Authority is essentially doing its job.

2.43 The committee accepts that meaningful parliamentary debate on this matter would be enhanced if the terms of Schedule 1 in particular were in the public domain. The release of such information may reassure the Parliament and the public that the Independent Liquor and Gaming Authority is discharging its responsibilities as it is required to do.

2.44 Arguments speculating that in the future third parties will be unwilling to share information with regulators and the government are not persuasive, as parties unwilling to provide such information to regulators and the government in the future will necessarily exclude themselves from such future contractual arrangements.

Conclusion

2.45 In the absence of any persuasive new material in the submissions, the committee supports the findings of the Independent Legal Arbiter, the Honourable Keith Mason AC QC, in his report on the disputed claim of privilege over the Crown Casino VIP Gaming Management Agreement.

Finding 1

The committee supports the findings of the Independent Legal Arbiter, the Honourable Keith Mason AC QC, in his report on the disputed claim of privilege over the Crown Casino VIP Gaming Management Agreement.

Recommendation 1

That the House adopt the findings of the Independent Legal Arbiter and order that a copy of the Crown Casino VIP Gaming Management Agreement be laid upon the table by the Clerk with only the following portions of the Agreement redacted and available to members of the Legislative Council only:

- the particular date in the third definition at issue in clause 1.1
- clause 8 in its entirety and the accompanying definition in clause 1.1
- clause 12 in its entirety
- the contents of schedule 2.

That, before being laid on the table by the Clerk, the copy of the Agreement be released to the Department of Premier and Cabinet for redaction of the information identified above and returned to the Clerk within 24 hours for tabling in the House.

2.46 In reaching the above finding and recommendation, the committee makes it clear that it makes no criticism of the Government in claiming privilege over the Crown Casino VIP Gaming Management Agreement as it has done. In the committee's opinion, having entered into a confidential agreement, it is entirely appropriate that the Government claimed privilege over the document. Equally, however, the Legislative Council is entitled to investigate such matters independently and come to its own conclusion.

2.47 The committee also wishes to comment on the reference of this inquiry to the committee. The committee has in the past been called upon to inquire into matters concerning the order for papers process, notably in 2013, when it conducted two inquiries into the Mt Penny order for papers, and matters related to the order for papers process. However, this is the first time that the committee has received a reference of this nature, where the independent legal arbiter has already reported on a disputed claim of privilege.

2.48 While the committee has the appropriate authority to investigate the matter, it should be emphasised that there are already a number of steps and safeguards built into the standing order 52 process to ensure that the House considers fully any decision to make public a document or documents received over which privilege is claimed as part of return to order. While the committee believes that the reference of this matter to the committee was understandable, given the importance of the matter, and the opportunity it afforded parties to make further submissions on the specific sections of the Agreement over which Dr Kaye disputed privilege, the committee cautions that such references should not become the norm. In particular, the role of the committee should not become one of scrutinising the work of the independent legal arbiter.

2.49 Finally, the committee notes that the submissions made to this committee currently remain confidential to the committee. They are not available even to other members of the Legislative Council. The House may, however, resolve that the submissions to the inquiry be made available to all members of the House on a confidential basis in the Office of the Clerk. This may assist the House in its further consideration of the Crown Casino VIP Gaming Management Agreement.

Appendix 1 Redacted public VIP Gaming Management Agreement

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VIP Gaming Management Agreement

Independent Liquor and Gaming Authority

Crown Resorts Limited

Crown Sydney Property Pty Limited

Crown Sydney Holdings Pty Limited

Crown Sydney Gaming Pty Limited

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Lawyers

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VIP Gaming Management Agreement

Parties

1. The Independent Liquor and Gaming Authority (on behalf of the State) (**Authority**)

2. Crown Resorts Limited ACN 125 709 953 of Level 3, Crown Towers, 8 Whiteman Street, Southbank VIC 3006 (**Crown Resorts**)

3. Crown Sydney Property Pty Limited ACN 166 326 861 Level 3, Crown Towers, 8 Whiteman Street, Southbank VIC 3006 (**PropCo**),

4. Crown Sydney Gaming Pty Limited ACN 166 326 843 Level 3, Crown Towers, 8 Whiteman Street, Southbank VIC 3006 (**GamingCo**)

5. Crown Sydney Holdings Pty Limited ACN 166 326 781 Level 3, Crown Towers, 8 Whiteman Street, Southbank VIC 3006 (**HoldCo**)

Introduction

A On 17 December 2013 GamingCo applied to the Authority seeking the Authority's approval to be issued a Restricted Gaming Licence.

B The Authority has conducted investigations in order to determine under section 13A of the Gaming Legislation, if GamingCo and each Close Associate of GamingCo is a suitable person to be concerned in or associated with the management and operation of the Restricted Gaming Facility.

C On the date of this Agreement, the Authority has determined to grant GamingCo the Restricted Gaming Licence subject to the execution of the Section 142 Agreements.

D The purpose of this Agreement is to regulate certain matters relating to the operation of the Restricted Gaming Facility and relevant rights and obligations of, respectively, the Authority (for itself and on behalf of the State) and Gaming Co.

E Pursuant to section 142 of the Gaming Legislation, the Minister for Gaming has approved of both the Authority entering into this Agreement, and the terms of this Agreement.

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Operative clauses

1. Definitions and Interpretation

1.1 Defined Terms

Ancillary Service Areas means the areas within the Hotel Resort specified in a plan annexed to the Sublease that are essential to operate the Restricted Gaming Facility and services ordinarily provided within it but are not part of the Restricted Gaming Facility.

Barangaroo Site has the meaning given to "Barangaroo" under the *Barangaroo Delivery Authority Act 2009* (NSW).

Barangaroo South means that part of the Barangaroo Site that is the subject of the PDA, being the "Site" under the PDA.

BDA means the Barangaroo Delivery Authority.

BDA Crown Tripartite Deed means a tripartite deed to be entered into between BDA, PropCo, Crown Resorts, LLC and Lend Lease, as contemplated by clause 3.8 of the Framework Agreement.

Business Day means:

(a) for determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and

(b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

Claim means any claim, cost (including legal costs on a solicitor client basis), damages, debt expense, Liability, loss, obligation, allegation, suit, action, demand, cause of action, proceeding or judgment of any kind however calculated or caused, and whether direct or indirect, consequential, incidental or economic.

Close Associate has the meaning given to it in the Gaming Legislation;

Common Terms Deed means the document entitled "Common Terms Deed" between the State, the Authority, Crown Resorts, GamingCo and others.

Confidential Information means information that:

(a) relates to the business, assets or affairs of the disclosing party or any of its Related Bodies Corporate; and

(b) is made available by or on behalf of the disclosing party to the receiving party, or is otherwise obtained by or on behalf of the receiving party; and

(c) is by its nature confidential or the receiving party knows, or ought to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

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Confidential Information includes:

(d) information concerning the existence and terms of this document;

(e) any information provided by a party to the other party after the date of this document; and

(f) information that is personal information as defined by the *Privacy Act 1988* (Cth).

Confidential Information does not include information that:

(g) was publicly disclosed by the State prior to 18 July 2013;

(h) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;

(i) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or

is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Controller means:

(a) a controller as defined in section 9 of the Corporations Act; and/or

(b) Statutory Manager.

Corporations Act means the *Corporations Act 2001 (Cth)*.

CPH means Consolidated Press Holdings Limited, ACN 008 394 509.

Crown Resorts Group means Crown Resorts and its subsidiaries.

Crown Resorts Limited Guarantee means the document entitled 'Guarantee and Indemnity' between Crown Resorts, the Minister for Gaming for and on behalf of the State and Authority, for itself and on behalf of the State.

Crown Parties means Crown Resorts, HoldCo, PropCo and GamingCo.

Crown Sydney Group means HoldCo, PropCo and GamingCo.

Duty and Responsible Gambling Levy Agreement means the document entitled 'Duty and Responsible Gambling Levy Agreement' between the Treasurer of the State of New South Wales (on behalf of the State of New South Wales) and GamingCo.

Encumbrance means:

(a) a mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance, hypothecation or other security interest (including a "security interest" as defined in section 12 of the *Personal Property Securities Act 2009* (Cth));

(b) any other arrangement having the effect of conferring security (including any right, interest, power or arrangement in relation to any property which provides security for, or protects against default by a person in, the payment or satisfaction of a debt,

obligation or liability and includes any conditional sale, hire purchase or lease agreement, or arrangement for the retention of title); or

(c) any contractual arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts,

and "**Encumber**" has a corresponding meaning.

Event of Default means, in relation to GamingCo, any of the following (whether or not caused by any reason whatsoever outside the control of GamingCo):

(a) the party does not pay any money payable under this Agreement which is not otherwise the subject of a dispute in the manner specified:

(1) if the time for payment is specified or provided for in this Agreement, on the date so specified or provided for; or

(2) in any other case within 10 Business Days after being advised in writing by the Authority of the same being due and payable;

(b) the party defaults in performing, observing and fulfilling any provision of this Agreement in any material respect (other than a provision requiring the payment of money as contemplated in sub-clause (a) or complying or observing the obligations under clause 6.3);

(c) any representation, warranty or statement made or deemed to be made by the party in this Agreement proves to be untrue or incorrect in any material respect;

(d) any Insolvency Event occurs in relation to the party;

(e) the party purports to make an assignment or novation of this Agreement or any of its rights or obligations under this Agreement without the written consent of the Authority;

(f) the party ceases, or threatens to cease, to carry on any part of its business which the Authority reasonably considers to be material to the party's capacity to perform its obligations under this Agreement;

(g) this Agreement becomes or is claimed by the party to be void, voidable or unenforceable in whole or in part otherwise than arising by the operation of Law arising after the date of this Agreement, or

(h) at any time it is unlawful for the party to perform any of its obligations under this Agreement.

Financial Arrangements Agreement means the section 142 agreement entitled 'Financial Arrangements Agreement' between GamingCo, the Minister for Gaming on behalf of the State and the Authority (for itself and on behalf of the State).

Framework Agreement means the document entitled "Framework Agreement" between the State, Crown Resorts, GamingCo, PropCo and HoldCo as amended and restated.

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Gaming Legislation means *Casino Control Act 1992* (NSW).

GamingCo Approved Persons means:

(a) GamingCo Close Associate Individuals;

(b) Thomas Gallagher;

(c) William Todd Nisbet; and

(d) Barry John Felstead;

GamingCo Close Associates means the GamingCo Close Associate Entities and the GamingCo Close Associate Individuals.

GamingCo Close Associate Entities means Crown Resorts and any direct or indirect, current or future Australian incorporated Subsidiary of Crown Resorts which is owned at least as to 90% and whose directors wholly comprise:

(a) directors of CPH as at the date of this Agreement; or

(b) GamingCo Approved Persons;

GamingCo Close Associate Individuals means:

(a) James Douglas Packer;

(b) John Henry Alexander;

(c) Rowen Bruce Craigie;

(d) Michael James Neilson;

(e) Kenneth McRae Barton;

(f) Benjamin Alexander Brazil;

(g) Helen Anne Coonan;

(h) Rowena Danziger;

(i) Geoffrey James Dixon;

(j) John Stephen Horvath;

(k) Ashok Peter Jacob;

(l) Michael Roy Johnston;

(m) Harold Charles Mitchell;

(n) Mary Manos; and

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(o) Gretel Lees Packer.

Government Agency means:

(a) a government or government department or other body;

(b) a governmental, semi-governmental or judicial person including a statutory corporation; or

(c) a person (whether autonomous or not) who is charged with the administration of a law.

Head Lease means a 99 year lease of the Site granted by BDA to PropCo, to be entered into by BDA and PropCo in the form annexed to the BDA Crown Tripartite Deed.

HoldCo means Crown Sydney Holdings Pty Limited ACN 166 326 781.

HoldCo Guarantee means the document entitled 'Guarantee and Indemnity' between Crown Resorts, the Minister for Gaming for and on behalf of the State and Authority, for itself and on behalf of the State.

Hotel Resort means the proposed hotel resort to be developed on the Site, to be known as the "Crown Sydney Hotel Resort".

Insolvency Event means, for any person that is a body corporate, the happening of one or more of the following events:

(a) an order is made that it be wound up or that a Controller be appointed to it or any of its assets;

(b) a resolution that it be wound up is passed;

(c) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking;

(d) an administrator is appointed to it or a resolution that an administrator be appointed to it is passed;

(e) a moratorium, deed of company arrangement or other compromise involving all or a class of its creditors is effected;

(f) it is insolvent within the meaning of section 95A of the Corporations Act, as disclosed in its accounts or otherwise, it states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;

(g) it suspends payment of all or a class of its debts or ceases to conduct all or a substantial part of its business; or

(h) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (g) inclusive happens to it under the law of any jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by either the State or the Authority.

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[redacted]

Law includes:

(a) statutes, regulations or by-laws of a foreign, state, territorial or local jurisdiction or a Government Agency; and

(b) rules, proclamations, ordinances, orders, decrees, requirements or approvals (including conditions) of foreign, state, territorial or local jurisdiction or a Government Agency that have the force of law;

Lend Lease means Lend Lease (Millers Point) Pty Limited ACN 127 727 502.

Liability means any liability, whether actual or contingent, present or future, quantified or unquantified.

LLC means Lend Lease Corporation Limited ACN 000 226 228.

Loss includes any loss, damage, Liability, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Melbourne Crown Casino means the Crown Entertainment Complex at Southbank in the State of Victoria.

Minister for Gaming means the New South Wales Minister responsible for Tourism, Major Events, Hospitality and Racing, or successor ministerial title that has responsibilities for administering and supporting gaming in New South Wales.

Minister's Approval and Consent Acknowledgement means the Minister's Approval and Consent Acknowledgement in respect of the matters referred to in this Agreement in the form set out in Schedule 6.

Mortgage of Sublease means the document entitled 'Mortgage of Sublease' to be entered into between GamingCo, the Minister for Gaming for and on behalf of the State and the Authority, for itself and on behalf of the State.

Notice of Concern means a notice from the Authority to the holder of the Restricted Gaming Licence pursuant to clause 14.

O&M Material Effect means an effect which is, or could be:

(a) material to the integrity of the overall operations at the Restricted Gaming Facility; or

(b) significant, material and fundamental to the overall viability, operation and management of the Restricted Gaming Facility.

Obligation Default means a breach of an Obligation Licence Condition.

Obligation Licence Condition means for the purposes of clause 16 of this Agreement, an obligation of GamingCo under the clauses specified in clause 16 (including without limitation an obligation under clause 14(a)).

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PDA means the Project Development Agreement between BDA and Lend Lease and LLC in relation to the development of the Barangaroo Site.

Period of the Statutory Manager's Appointment means the period commencing on the appointment of the Statutory Manager to the VIP Gaming operation and terminating on the first to occur of:

(a) termination of the appointment by the Authority; and

(b) the expiration of the period of 90 days after the appointment or the expiration or such longer period as may be provided for by the *Casino Control Regulations 2009* (NSW).

Permitted Encumbrance means:

(a) any Encumbrance created by a Security Document to which GamingCo is a party;

(b) the interest of a lessor or hirer under any lease or hire purchase of goods entered into in the ordinary course of business;

(c) liens arising solely by operation of law (or by an agreement to the same effect) in the ordinary course of the business of GamingCo where the amount secured:

(1) has been due for less than 30 days; or

(2) is being contested in good faith and by appropriate means;

(d) without limiting paragraph (c), any Encumbrance arising under any retention of title, conditional sale, consignment or similar arrangements, where the transaction has been entered into in the ordinary course of business and where the amount payable:

(3) has been due for less than 30 days; or

(4) is being contested in good faith and by appropriate means;

(e) any Encumbrance over and affecting any asset acquired by GamingCo in the ordinary course of business after the date of this Agreement if the Encumbrance was not created in contemplation of the acquisition of the asset;

(f) rights of banks or other financial institutions to set off deposits and other credit balances, or to consolidate accounts, against financial indebtedness owed to such banks or financial institutions including in connection with the operation of cash management programs established for the benefit of GamingCo (which are not intended to operate in conjunction with a flawed asset arrangement) or in connection with the issue of bankers' acceptances or letters of credit for the benefit of GamingCo;

(g) any Encumbrance which ranks behind the Security Documents securing any judgment, order, decree or award unless:

(5) the judgment, order, decree or award it secures shall not, within 90 days after the entry thereof, have been discharged or stayed pending appeal, or shall not have been discharged within 90 days after the expiration of such stay; or

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(6) the amount of such judgment, order, decree or award not covered by indemnity or insurance exceeds 10% of the total assets of GamingCo; and

(h) any Encumbrance provided for by one of the following transactions if the transaction arises in the ordinary course of GamingCo's business and does not secure payment or performance of an obligation:

(7) a transfer of an account or chattel paper; or

(8) a commercial consignment; or

(9) a PPS Lease,

where the terms "account", "chattel paper", "commercial consignment" and "PPS Lease" have the meanings given to them in the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulations enacted pursuant to that Act.

[redacted]

PropCo means Crown Sydney Property Pty Limited ACN 166 326 861.

PropCo Guarantee means the document entitled 'Guarantee and Indemnity' between Crown Resorts, the Minister for Gaming for and on behalf of the State and the Authority, for itself and on behalf of the State.

PropCo Suitability Certificate means a notice from the Authority pursuant to clause 13.2 certifying that the Authority is of the opinion that the proposed purchaser therein described is a suitable person to purchase the relevant property referred to in clause 13.3(b).

Restricted Gaming Facility means the area or areas determined in accordance with section 19A of the Gaming Legislation from time to time and, for the avoidance of doubt, is referred to in the Gaming Legislation as the Barangaroo restricted gaming facility.

Restricted Gaming Licence means the restricted gaming licence granted under the Gaming Legislation for the carrying out of VIP Gaming the terms of which are set out in an attachment to the Framework Agreement.

Restricted Gaming Licence Application means GamingCo's application for a Restricted Gaming Licence made to the Authority under Part 2 of the Gaming Legislation on 17 December 2013.

Restricted Gaming Licensee means the holder of the Restricted Gaming Licence from time to time.

Section 142 Agreements means the agreements negotiated under section 142 of the Gaming Legislation, with the approval of the Minister for Gaming, in respect of the Restricted Gaming Licence Application and, for the avoidance of doubt, are:

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(a) the State Crown Financial Deed;

(b) the Financial Arrangements Agreement;

(c) the Crown Resorts Limited Guarantee;

(d) the PropCo Guarantee;

(e) the HoldCo Guarantee;

(f) the State Crown Security Deed;

(g) the Share Security Deed;

(h) the Mortgage of Sublease; and

(i) the Common Terms Deed.

Security Document means:

(a) the Crown Resorts Limited Guarantee;

(b) the PropCo Guarantee;

(c) the HoldCo Guarantee;

(d) the State Crown Security Deed;

(e) the Share Security Deed; and

(f) the Mortgage of Sublease.

Share Security Deed means the document entitled 'Share Security Deed' between HoldCo, the Minister for Gaming for and on behalf of the State and the Authority, for itself and on behalf of the State.

Site means the site of at least 6,000m² on the North West corner of Barangaroo South, for the development of the Hotel Resort, the precise location of which is to be agreed between PropCo and Lend Lease and approved by BDA.

State means the State of New South Wales.

State Crown Security Deed means the document entitled 'State Crown Security Deed' between GamingCo and the Authority.

State Crown Financial Deed means the document entitled 'State Crown Financial Deed' between the State, the Authority, PropCo, GamingCo, HoldCo and Crown Resorts as contemplated by clause 3.5 of the Framework Agreement.

Statutory Manager means a person appointed by the Authority under section 28 of the Gaming Legislation to be the manager of the Restricted Gaming Facility.

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Sublease means the sublease or subleases (as the case may be) under the Head Lease from PropCo to GamingCo in respect of the Restricted Gaming Facility and the Ancillary Service Areas the agreed form of which will be annexed to the State Crown Financial Deed, and includes any additional or replacement subleases as contemplated by the State Crown Financial Deed, and **Subleases** means all of them.

Subsidiary means any body corporate which would be a subsidiary within the meaning of Division 6 of Part 1.2 of the *Corporations Act* or any entity which would be a subsidiary under *Australian Accounting Standard AAS24*.

Suitability Certificate means a notice from the Authority pursuant to clause 13.1 certifying that the Authority is of the opinion that the proposed purchaser therein described is a suitable person to purchase the relevant property referred to in clause 13.3(a)

[redacted]

Tax means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge, but does not include any casino supervisory levy payable to the Authority or any other person under the Gaming Legislation.

VIP Gaming means the conduct of gaming in accordance with the Restricted Gaming Licence.

VIP Gaming O&M Agreements means any contract:

(a) to which GamingCo, or HoldCo in conjunction with GamingCo, is or may become a party; or

(b) which has or will be assigned to GamingCo, or both GamingCo and HoldCo ; and

(c) which has an O&M Material Effect,

but excludes for the avoidance of doubt:

(i) Junket arrangements; and

(ii) any contract which is subject to Part 3, Division 2 of the Gaming Legislation.

VIP Gaming O&M Novation Agreement means an agreement to novate a VIP Gaming O&M Agreement containing the provisions set out at Schedule 5 and any other provisions agreed between the parties to the VIP Gaming O&M Novation Agreement.

VIP Gaming O&M Provider means a party to a VIP Gaming O&M Agreement other than GamingCo.

1.2 Interpretation

(a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

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(b) A reference to:

(1) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

(2) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

(3) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;

(4) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;

(5) time is to Sydney time; and

(6) anything (including a right, obligation or concept) includes each part of it.

(c) A singular word includes the plural, and vice versa.

(d) A word which suggests one gender includes the other genders.

(e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

(f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

(g) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

(h) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.

(i) The expression **this document**, **this Agreement** or **this Deed** includes the agreement, arrangement, understanding or transaction recorded in this document.

(j) The expressions **Holding Company**, **Related Body Corporate** and **Relevant Interest** have the same meanings as in the Corporations Act.

(k) A reference to **dollars** or **$** is to an amount in Australian currency.

(l) This document may not be interpreted adversely to a party only because that party was responsible for preparing it.

1.3 Inconsistency or conflict

To the extent of any inconsistency or conflict between the terms of this Agreement and the Gaming Legislation, the Gaming Legislation shall prevail over this Agreement.

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1.4 Without prejudice to rights and obligations under Gaming Legislation

The rights and obligations of the parties under this Agreement are in addition and without prejudice to their respective rights and obligations under the Gaming Legislation.

2. Consents and Approvals

2.1 Consents

With effect on and from the date on which this Agreement is executed, the Authority hereby:

(a) approves the Restricted Gaming Licence Application and grants the Restricted Gaming Licence;

(b) confirms that it is satisfied, based on the documents and other information provided to the Authority and the Authority's investigations and inquiries to date that:

(1) each of GamingCo and the GamingCo Close Associates are suitable persons to be concerned or associated with the operation or management of the Restricted Gaming Facility; and

(2) each of the GamingCo Approved Persons is considered by the Authority to be a suitable person to be associated or connected with the ownership, operation or management of one or more of the GamingCo Close Associate Entities in any of the capacities of director, executive officer, secretary or other officer for the purposes of the Gaming Legislation.

3. Surrender of Licence if Security Documents not duly executed and delivered

(a) As and from the Sunset Date, GamingCo irrevocably surrenders the Restricted Gaming Licence, and the Authority consents to the surrender in accordance with section 27 of the Gaming Legislation, unless, on or prior to the Sunset Date, Gaming Co has delivered to the State and the Authority the following duly executed agreements, subject to the Authority and the State's execution of those agreements:

(1) State Crown Security Deed; and

(2) Share Security Deed.

(b) GamingCo undertakes and agrees that, if so requested by the Authority, it will provide any document or take any action required in order for the agreement referred to at clause 3(a)(1) to be registered by the Authority on the Personal Property Securities Register.

(c) HoldCo undertakes and agrees that, if so requested by the Authority, it will provide any document or take any action required in order for the agreement referred to at clause 3(a)(2) to be registered by the Authority on the Personal Property Securities Register.

(d) GamingCo undertakes and agrees that it will:

(1) provide to the Authority the Mortgage of Sublease immediately following the execution of the Sublease; and

(2) if so requested by the Authority, provide any document or take any action required in order for the Mortgage of Sublease to be registered by the Authority with New South Wales Land and Property Information.

4. Ministerial Acknowledgement and Consent

4.1 Minister's approval

The Authority warrants that it has full power and authority to enter into, execute and comply with this Agreement on behalf of the State and that, pursuant to section 142 of the Gaming Legislation, the Minister for Gaming has approved of both the Authority entering into this Agreement and the terms of this Agreement as evidenced by the Minister's Approval and Consent Acknowledgement.

4.2 Authority/State not liable

(a) Subject to clause 4.2(b), neither the Authority nor the State nor its members, employees, delegates, agents consultants or advisors shall have any liability arising solely out of this Agreement to any party in respect of any matter, which but for this clause 4.2(a) may be implied in this Agreement.

(b) The exclusion in clause 4.2(a) does not apply in relation to any failure to perform or satisfy, or breach by the Authority or the State of, any obligation arising under clauses 22 and 24.

5. Covenants and Warranties

5.1 Warranties by GamingCo

GamingCo gives the warranties listed in Schedule 3.

5.2 Warranties by HoldCo and PropCo

HoldCo and PropCo each give the warranties listed in Schedule 4.

[redacted]

6. General Covenants, Warranties and Indemnities

6.1 Continuing covenants and warranties

Unless otherwise expressly stated, the covenants, warranties and representations given in Schedule 3 and Schedule 4 are made as at the date of this Agreement.

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6.2 Covenants and Warranties true and accurate and separate

It is a term of this Agreement that each of the representations, warranties and covenants given in Schedule 3 and Schedule 4 of this Agreement are true and correct in every respect at the time they are given and shall be construed separately, and the meaning of each shall in no way be limited by reference to any other clause or paragraph contained herein.

6.3 Notice of any breach of covenants and warranties

GamingCo (in relation to the representations, warranties or covenants given in Schedule 3) and each of PropCo and HoldCo (in respect of the representations, warranties or covenants given in Schedule 4) shall give notice in writing to the Authority of any material breach of any of the relevant representations, warranties or covenants as soon as is reasonably practicable after becoming aware of such breach. No such notification shall affect or in any way limit the liability of GamingCo, PropCo or HoldCo.

6.4 Indemnity in respect of breach

GamingCo hereby indemnifies and shall at all times keep indemnified the Authority against any and all loss, damage, claims, penalties, liabilities and expenses (including special, indirect and consequential damages and legal costs on the higher of a full indemnity basis or a solicitor and own client basis and without the need for taxation) whatsoever caused or contributed to by breach of this Agreement by GamingCo, including without limitation as a result of:

(a) the payment, omission to make payment or delay in making payment of any amount referred to in or contemplated by this Agreement;

(b) a breach of any of its obligations, warranties, covenants, undertakings or representations under this Agreement;

(c) any damage to property or death of or injury to any person of any nature or kind,

except to the extent caused or contributed to by the Authority's own acts or omissions.

6.5 Indemnity against third party claims

Subject to the indemnities given by the Authority or the State under:

(a) clause 17 of the State Crown Financial Deed; and

(b) clause 3.3(c) of Schedule 5 of this Agreement.

GamingCo hereby indemnifies and shall at all times keep indemnified each of the Authority and the State against any and all claims, actions, demands, loss, damages, liabilities and expenses (including special, indirect and consequential damages and legal costs on the higher of a full indemnity basis or a solicitor and own client basis and without the need for taxation) brought or claimed by any third party, in connection with the performance by GamingCo of its obligations under this Agreement, except to the extent caused or contributed to by the Authority's own acts or omissions.

6.6 Indemnity payable on demand

Any monies payable under any of the indemnities in this clause 6 shall be payable within 5 Business Days of demand.

7. Restricted Gaming Facility Operations and Management

7.1 Best Practice Covenant

GamingCo covenants with and undertakes to the Authority that it shall use reasonable endeavours to conduct and manage the operations of the Restricted Gaming Facility and Ancillary Service Areas so that they are operated and maintained consistent with the best operating practices in gaming complexes of similar size and nature (but having regard to the applicable legislative regime and regulatory practices and requirements).

7.2 Gaming Equipment

(a) GamingCo will procure gaming equipment for use in the Restricted Gaming Facility which will be suitable for the purpose of lawful gaming in the Restricted Gaming Facility and which will be sufficient to enable GamingCo to conduct gaming operations in the Restricted Gaming Facility in accordance with the Restricted Gaming Licence Application. The gaming equipment shall comply with the requirements of the Gaming Legislation.

(b) GamingCo hereby acknowledges and declares that:

(i) it will at all relevant times own (as beneficial owner), or be lessee or bailee of, the gaming equipment which will be used in the Restricted Gaming Facility; and

(ii) to the extent that it is the lessee or bailee of gaming equipment used in the Restricted Gaming Facility, a lease or bailment of each gaming equipment is a "controlled contract" (as that term is defined in section 36 of the Act) which has been approved by the Authority in accordance with the Gaming Legislation;

unless the Authority gives its prior written consent to GamingCo permitting it to do otherwise, such permission not be unreasonably withheld.

(c) GamingCo agrees to replace any gaming equipment which proves defective or which becomes no longer operational so as to maintain at all times a sufficient quantity of gaming equipment which will be suitable for the purpose of lawful gaming in the Restricted Gaming Facility and complies with the requirements of this clause 7.2 and which will enable GamingCo to conduct gaming operations in the Restricted Gaming Facility.

(d) To assist the Authority in the performance of its obligations and duties under sections 68 and 69 of the Act, GamingCo shall procure an independent expert approved by the Authority to certify to the Authority that, in its opinion, the gaming equipment provided by GamingCo from time to time complies with the requirements of the Gaming Legislation and regulations passed thereunder and this Deed whenever the Authority requests such a certificate to be provided.

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7.3 VIP Gaming Membership and Guest Policies

For the purposes of clauses 6.2(a)(1), 6.2(b) and 6.2(c) of the Restricted Gaming Licence, the principles set out in Schedule 7 are the principles that have been agreed between GamingCo and the Authority as at the date of this Agreement.

[redacted]

9. Inspection of records and access to premises

GamingCo will permit the Authority or authorised representatives to:

(a) enter the Restricted Gaming Facility and Ancillary Service Areas;

(b) examine or inspect the Restricted Gaming Facility and Ancillary Service Areas, their contents and all equipment necessary for their operation and determine whether such equipment is in proper operating order;

(c) examine and/or inspect all books of account and other records relating to the Restricted Gaming Facility and Ancillary Service Areas, or GamingCo and to take copies or extracts from them;

(d) determine whether the obligations of GamingCo under this Agreement have been complied with;

(e) observe the cash count system or any actual counting; and

(f) inspect or test security monitoring systems.

10. Production of Documents or Other Information and Meetings

(a) Without limitation to the Authority's powers under the Gaming Legislation, each Crown Party shall upon the provision of reasonable notice by the Authority and so far as reasonable practicable, produce to the Authority (or grant a right of inspection to the Authority) documents or other information as may be required by the Authority, acting reasonably, which may be relevant to GamingCo's ability to perform its obligations under this Agreement or any other matter relevant to the terms of this Agreement, or which may be relevant to the ongoing suitability of GamingCo to be concerned in or associated with the operation or management of the Restricted Gaming Facility provided that the relevant Crown Party is not required to disclose any facts, matters or circumstances which may result in:

(1) a breach of any obligation owed by it, including any obligations of confidentiality owed by it to any third party or obligations under any Law; or

(2) damage or compromise the protection of privilege (including legal professional privilege).

(b) Where the Authority is granted a right to inspect documents pursuant to clause 10(a) the Authority may copy or take extracts from any such documents.

(c) For the purposes of this clause 10, representatives of a Crown Party may be required by the Authority to attend meetings with the Authority on reasonable written notice (which shall depend on the circumstances) at such times and places as specified in such notice.

11. VIP Gaming O&M Agreements

11.1 Existing VIP Gaming O&M Agreements

GamingCo warrants and represents to the Authority that as at the time of execution of this Agreement:

(a) there are no existing VIP Gaming O&M Agreements (other than as specifically referred to in this Agreement or as previously disclosed to the Authority in writing); and

(b) GamingCo has agreed to enter into the Sublease, which the parties acknowledge is a VIP Gaming O&M Agreement.

11.2 Pre-Conditions to Future VIP Gaming O&M Agreements

Other than those agreements described in clause 11.1 (which the parties acknowledge that the Authority has approved in accordance with this clause 11.2) GamingCo shall procure that no VIP Gaming O&M Agreement to which it is a party, or to which it will be assigned the benefit of and/or the right, title and interest under, will be entered into unless:

(a) GamingCo has notified the Authority of the details of the proposed VIP Gaming O&M Agreement at least 14 days (or such shorter period as the Authority may approve in a particular case) before entering into it; and

(b) the Authority has not within that 14 days (or the shorter approved period) notified GamingCo that it objects to the proposed VIP Gaming O&M Agreement on the basis that:

(1) it is not in the public interest or does not comply with the provisions of this clause 11;

(2) the objection is necessary or desirable to protect the integrity of gaming.

(c) the parties to the VIP Gaming O&M Agreement at or about the time they execute the VIP Gaming O&M Agreement enter into a VIP Gaming O&M Novation Agreement with the Authority.

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11.3 Undertakings about VIP Gaming O&M Agreements

Each of GamingCo and HoldCo undertakes, represents and warrants to the Authority that (in respect of the VIP Gaming O&M Agreements to which it becomes a party, or to which it will be assigned the benefit of and/or the right title and interest thereunder):

(a) it will comply with all of its material obligations under the VIP Gaming O&M Agreements and will use its best endeavours to procure compliance by each VIP Gaming O&M Provider with all of its material obligations under the VIP Gaming O&M Agreements;

(b) it will give written notice to the Authority as soon as it becomes aware of any material breach of any VIP Gaming O&M Agreement by any party thereto including itself;

(c) it will simultaneously with the giving or receipt by it or by any VIP Gaming O&M Provider of any material notice under any VIP Gaming O&M Agreement give a copy of the notice to the Authority;

(d) it will promptly give to the Authority details of any material disputes under or in relation to the VIP Gaming O&M Agreements;

(e) it will procure that without the prior written consent of the Authority no rights or obligations under any VIP Gaming O&M Agreement are assigned, novated or otherwise transferred other than under a Permitted Encumbrance; and

(f) it will not without the prior written consent of the Authority give or permit to be created, or agree to give or permit to be created, any Encumbrance, other than a Permitted Encumbrance, over its rights under any VIP Gaming O&M Agreements.

11.4 HoldCo and GamingCo to procure Certain Compliance

Each of GamingCo and HoldCo shall, in respect of any VIP Gaming O&M Agreements to which it becomes a party, or to which it is assigned the benefit and/or the right title and interest thereunder, use its reasonable endeavours to procure performance of and compliance by each VIP Gaming O&M Provider with all of its obligations under the VIP Gaming O&M Agreements

11.5 Restrictions on Termination by GamingCo or HoldCo

(a) Each of GamingCo and HoldCo shall in respect of the VIP Gaming O&M Agreements to which it becomes a party, or to which it will be assigned the benefit of and/or the right title and interest thereunder, procure that no notice to terminate a VIP Gaming O&M Agreement is given by it unless a copy of the proposed notice has first been provided to the Authority and the Authority has not within 14 days after receipt of that proposed notice directed in writing that the VIP Gaming O&M Agreement concerned is not to be terminated.

(b) Subject to clause 11.5(c), if the Authority gives such a direction (as referred to in clause 11.5(a)) GamingCo shall in respect of the VIP Gaming O&M Agreements to which it becomes a party, or to which it will be assigned the benefit of and/or the right, title and interest thereunder, procure that it is complied with.

(c) The Authority may only give a direction under this clause 11.5 where the termination of the relevant VIP Gaming O&M Agreement will or could, in the reasonable opinion of the Authority, have an adverse O&M Material Effect, provided that the Authority will not consider it to be an adverse O&M Material Effect where GamingCo (or HoldCo, to the extent that it is a party to a VIP Gaming O&M Agreement) has entered or proposes to enter into alternative arrangements acceptable to the Authority, acting reasonably, which address the O&M Material Effect which would otherwise arise as a result of the termination of the VIP Gaming O&M Agreement.

11.6 Termination if Authority Directs

If a material breach on the part of a party (not being GamingCo) occurs under a VIP Gaming O&M Agreement, the provisions of sections 39 and 40 of the Gaming Legislation will apply to that VIP Gaming O&M Agreement as if that VIP Gaming O&M Agreement was a "controlled contract" for the purposes of sections 39 and 40 of the Gaming Legislation.

11.7 General Responsibility to Inform

(a) Each Crown Party shall at all times keep the Authority fully and promptly informed of all facts, matters or circumstances of the operation or management of the Hotel Resort and/or Restricted Gaming Facility of which it is aware which would materially adversely affect the Restricted Gaming Facility. However, the Crown Parties are not required to disclose any facts, matters or circumstances which may:

(1) result in a breach of any obligation owed by any member of the Crown Resorts Group, including any obligations of confidentiality owed by a member of the Crown Resorts Group to any third party or obligations under any Law; or

(2) damage or compromise the protection of privilege (including legal professional privilege).

(b) Without limiting clause 11.7(a), each Crown Party shall immediately notify the Authority of any litigation, arbitration or other dispute subject to a resolution process to which it is a party or with which it is involved which could materially affect its ability to perform its obligations under this Agreement.

11.8 Regular meetings with the Authority

(a) GamingCo agrees to provide the Authority with such information in its possession from time to time as the Authority may reasonably request to ensure the Authority is, in its opinion, adequately informed in relation to:

(1) the management and operation of the Restricted Gaming Facility; and

(2) the performance by GamingCo of its obligations under this Agreement.

(b) Subject to clause 11.8(c) the Authority may, for the purposes of clause 11.8(a), request that the representatives of GamingCo attend meetings with the Authority on reasonable written notice (which shall depend on the circumstances) at such times and places as specified in such notice. The Authority shall not request more than one such meeting in any three month period.

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(c) The Authority may request that the representatives of GamingCo attend meetings with the Authority on reasonable written notice (which shall depend on the circumstances) where the Authority suspects or forms the view that any of the following events have occurred, or that any act, matter or thing has arisen which could lead to any of the following events occurring:

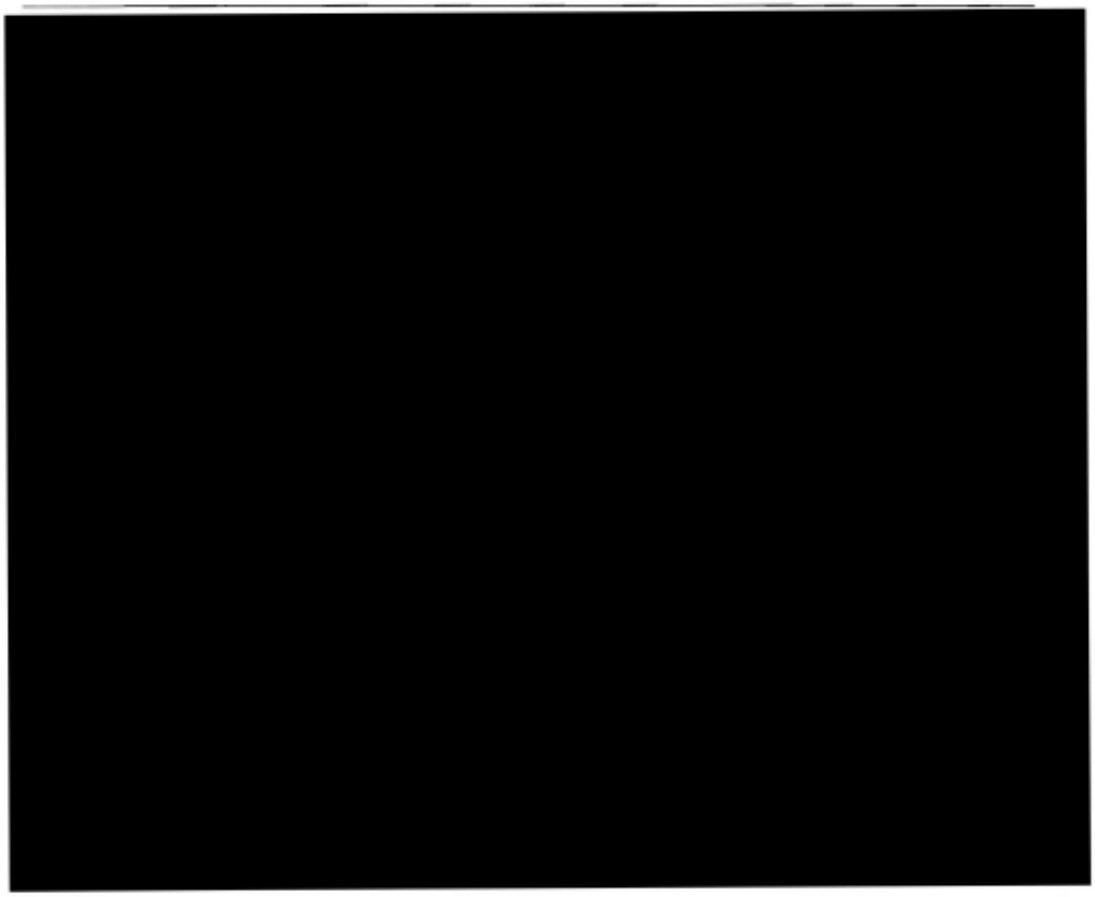
(1) the breach of any condition of the Restricted Gaming Licence; or

(2) the breach of any clause of this Agreement.

(d) The Authority will include in the notice of a meeting under this clause 11.8 an agenda of the matters proposed to be discussed at the meeting.

(e) For the purposes of this clause 11.8, the representatives required to attend meetings shall be those persons as determined by the Authority from time to time in consultation with GamingCo.

(f) GamingCo shall prepare accurate minutes of each meeting referred to in this clause 11.8 and shall deliver copies of the minutes to the Authority within 5 Business Days after each meeting.



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13. Authority to approve purchaser

13.1 Authority to determine suitability of purchaser of GamingCo, HoldCo or intermediate holding company

(a) HoldCo acknowledges and agrees that if any shares in GamingCo are to be sold to any person (or persons), each of those persons must apply to the Authority for a Suitability Certificate in respect of the proposed purchase.

(b) Crown Resorts will not, and will procure that its Subsidiaries will not, dispose of any interest in shares in the capital of:

(1) GamingCo; or

(2) HoldCo; or

(3) an intermediate holding company of either;

unless the Authority provides a Suitability Certificate to any proposed purchasers under any transaction referred to in clause 13.1(b)(1) to 13.1(b)(3).

13.2 Authority to determine suitability of purchaser of PropCo

(a) HoldCo acknowledges and agrees that if any shares in PropCo are to be sold to any person (or persons), each of those persons must apply to the Authority for a PropCo Suitability Certificate in respect of the proposed purchase.

(b) Crown Resorts will not, and will procure that its Subsidiaries will not, dispose of any interest in shares in the capital of PropCo unless the Authority provides a PropCo Suitability Certificate to any proposed purchaser under any transaction referred to in clause 13.2(a).

13.3 Authority to be satisfied proposed purchaser is suitable

(a) The Authority may only issue a Suitability Certificate in respect of the purchase of shares in GamingCo or an intermediate holding company of GamingCo if it is satisfied that the proposed purchaser:

(1) is of good repute, having regard to character, honesty and integrity;

(2) is of sound and stable financial background;

(3) has or has arranged a satisfactory ownership, trust or corporate structure;

(4) has or is able to obtain financial resources that are both suitable and adequate for ensuring the financial viability of the Restricted Gaming Facility;

(5) has or is able to obtain the services of persons who have sufficient experience in the management and operation of a Restricted Gaming Facility or is able to procure that the holder of the Restricted Gaming Licence has the services of such persons;

(6) has sufficient business ability to successfully maintain the Restricted Gaming Facility;

(7) has no business association with any person, body or association who, in the opinion of the Authority, is not of good repute having regard to character, honesty and integrity and does not have undesirable or unsatisfactory financial sources; and

(8) each director, partner, trustee, executive officer and secretary and any other officer or person determined by the Authority to be associated or connected with the ownership, administration or management of the operations or business of the proposed purchaser is a suitable person to act in that capacity.

(b) The Authority may only issue a PropCo Suitability Certificate in respect of the purchase of any shares in the capital of PropCo if it is satisfied that the proposed purchaser:

(1) is of good repute having regard to character, honesty and integrity; and

(2) does not have undesirable or unsatisfactory financial sources.

13.4 The Authority may carry out investigations

(a) Prior to issuing a Suitability Certificate or PropCo Suitability Certificate in accordance with clause 13.1 or 13.2, the Authority may carry out such investigations and inquiries as it considers necessary to enable it to satisfy itself of the relevant matters set out in clause 13.3.

(b) Without limiting the generality of the foregoing, prior to issuing a Suitability Certificate the Authority:

(1) may require any person it is investigating in relation to the person' s suitability to be concerned in or associated with the management or operation of a casino to consent to having his or her photograph, finger prints and palm prints taken; and

(2) may refer to the New South Wales Commissioner of Police details of the persons the Authority is investigating, copies of any photographs, finger prints

and palm prints taken and any supporting information that the Authority considers appropriate for referral to the New South Wales Commissioner.

(c) The Authority may decline to issue a Suitability Certificate while any person from whom it requires a photograph, finger prints or palm prints under this clause refuses to allow his or her photograph, finger prints or palm prints to be taken.

13.5 The Authority may require further information etc.

(a) The Authority may, by notice in writing, require the proposed purchaser or a person who, in the opinion of the Authority has some association or connection with the proposed purchaser that is relevant to the proposed purchase to do any one or more of the following things:

(1) to provide, in accordance with directions in the notice, such information, verified by statutory declaration, as is relevant to the investigation of the proposed purchase and is specified in the notice;

(2) to produce, in accordance with directions in the notice, such records relevant to investigations of the proposed purchase as are specified in the notice and to permit examination of the records, the taking of extracts from them and the making of copies of them;

(3) to authorise a person described in the notice to comply with a specified requirement of the Authority referred to in sub-paragraph 13.5(a)(1) and 13.5(a)(2); or

(4) to furnish to the Authority such authorities and consents as the Authority directs for the purpose of enabling the Authority to obtain information (including financial and other Confidential Information) from other persons concerning the person and his or her associates or relations.

(b) If a requirement made by the Authority under clause 13.5(a) is not complied with, the Authority may decline to issue the Suitability Certificate or PropCo Suitability Certificate.

14. Notification by the Authority of unsuitability of GamingCo

(a) GamingCo agrees to ensure that at all times during the term of the Restricted Gaming Licence it remains a suitable person to give effect to the Restricted Gaming Licence and the Gaming Legislation.

(b) If the Authority considers that the GamingCo is no longer a suitable person to give effect to the Restricted Gaming Licence and the Gaming Legislation, then the Authority will first consult with GamingCo and if, following that consultation, the Authority remains of the view that GamingCo is no longer a suitable person to give effect to the Restricted Gaming Licence, then the Authority will give GamingCo a Notice of Concern which shall:

(1) include details of the circumstances, events or matters leading the Authority to consider that GamingCo is no longer a suitable person to give effect to the

Restricted Gaming Licence and the Gaming Legislation (**Rectification Matter**);

(2) identifying what actions the Authority considers can be taken to rectify the Rectification Matter (having regard to the matters discussed during the prior consultation with GamingCo referred to in clause 14(b) above) (**Rectification Steps**); and

(3) provide a time frame within which the Rectification Steps must be taken (**Rectification Period**).

(c) If a Notice of Concern and/or the Rectification Steps identified therein expressly requires or expressly contemplates that GamingCo will take any action or do any other thing, then GamingCo shall fully and punctually take that action or do that thing in accordance with the Rectification Step and within the Rectification Period.

(d) To the extent that a Rectification Step expressly requires or contemplates that the Authority will take any action or do any other thing the Authority may (but without being under any obligation to do so) take that action or do that other thing and then only if GamingCo has fully and punctually taken all such action and done all such things (in each case to the satisfaction of the Authority) as may be expressly required by the Notice of Concern and the Rectification Step.

(e) If in the Authority's reasonable opinion the Rectification Step has for any reason not been fully and punctually complied with within the Rectification Period then the Authority may at any time thereafter serve a notice on GamingCo pursuant to section 23(2) of the Gaming Legislation.

(f) If in the Authority's reasonable opinion the Rectification Step has been fully and punctually complied with within the Rectification Period, the Authority shall by notice to GamingCo withdraw the Notice of Concern.

15. Appointment of Statutory Manager

(a) GamingCo acknowledges that:

(1) where clause 14(e) is satisfied, the Authority may have the right under the Gaming Legislation to appoint a Statutory Manager, in accordance with the Gaming Legislation; and

(2) if the Authority has appointed a Statutory Manager in accordance with the Gaming Legislation, then during the Period of the Statutory Manager's Appointment, the Statutory Manager shall be entitled to possession of the assets of the Restricted Gaming Licensee.

(b) All parties to this Agreement acknowledge that a Statutory Manager appointed in accordance with the Gaming Legislation may be the same person appointed as a Controller under the Security Documents.

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16. Obligation Licence Conditions

16.1 Obligation Licence Conditions

The obligations of GamingCo under the clauses listed below are Obligation Licence Conditions for the purposes of this Agreement:

(a) (**suitable person**) clause 14(a) of this Agreement; and

[redacted]

16.2 Obligation Defaults

(a) GamingCo acknowledges and agrees that the breach of an Obligation Licence Condition constitutes an **Obligation Default** for the purposes of this Agreement.

(b) If an Obligation Default occurs under this Agreement the Authority shall give a notice ("**Obligation Default Notice**") to GamingCo as soon as reasonably practicable after it becomes aware of the Obligation Default, which notice shall require the Obligation Default to be remedied:

(1) in the case of a breach of clause 14(a) but subject to the Authority having issued a Notice of Concern, by complying with the Rectification Step before the expiry of the Rectification Period; and

(2) in the case of any other Obligation Default:

(A) if the Obligation Default is a failure to pay any moneys, by paying such moneys within 20 Business Days;

(B) if the Obligation Default is capable of remedy and is not an Obligation Default referred to in clause16.2(b)(2)(A):

(i) within 20 Business Days to the reasonable satisfaction of the Authority; or

(ii) by GamingCo diligently pursuing (and making satisfactory progress with) a course of action which could reasonably be expected to remedy the breach in a period of time reasonably acceptable to the Authority;

(1) if the Obligation Default is not capable of remedy, by GamingCo complying to the reasonable satisfaction of the Authority with any reasonable requirements of the Authority in relation to the breach or attending to the reasonable redress of the prejudice arising from the breach in the manner specified in the Obligation Default Notice; and/or

(2) if in the reasonable opinion of the Authority the payment of damages constitutes proper redress, paying the required amount of damages within 20 Business Days of the date for payment as specified in the Obligation Default Notice.

(c) If for any reason an Obligation Default is not remedied as provided for in clause 16.2(b), then the obligation the breach of which has given rise to the Obligation Default shall thereupon and without more be considered to be a condition of the Restricted Gaming Licence which is deemed to have been contravened by GamingCo and the Authority in its absolute discretion may serve a notice on Gaming Co pursuant to section 23(2) of the Gaming Legislation.

17. The Authority's Statutory Obligations and Discretions under Section 142 Agreements

17.1 No fetter of powers, rights, obligations and discretions

Nothing in this Agreement shall be taken as, nor is capable of:

(a) fettering or prejudicing the powers, rights, obligations and discretions imposed or conferred on the Authority; or

(b) imposing on the Authority any obligation or restriction which conflicts with those powers, rights, obligations and discretions, including in relation to future consents or approvals that may be sought,

under:

(c) the Gaming Legislation; or

(d) any other agreement entered into by the Authority and GamingCo under section 142 of the Gaming Legislation.

17.2 Authority to consider Gaming Legislation

In giving any approvals or exercising any powers, rights or discretions under this Agreement, the Authority will have regard to the provisions of the Gaming Legislation, including its objects specified in section 140.

17.3 Directions by the Authority

Unless otherwise expressly provided, no provision in this Agreement shall be taken to be a direction by the Authority under the Gaming Legislation, including under sections 30, 32 and 38.

18. Variation of agreement

18.1 Variation Proposal

If any party (the **Proposing Party**) proposes a variation to the terms of this Agreement (including without limitation the Schedules), the Proposing Party shall submit to each of the other parties (**Other Parties**) a notice in writing (**Variation Proposal**) specifying all details of the proposed variation.

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18.2 Response

Each of the Other Parties shall within 20 Business Days after receipt of a Variation Proposal or such longer period as may be agreed between the parties advise in writing of its approval or rejection of the Variation Proposal.

18.3 Failure to respond

Failure to respond within the time period referred to in clause 18.2 shall be deemed to be a rejection.

18.4 Approved Variation Proposal

(a) Where approval under clause 18.2 has been given to a Variation Proposal then each party shall duly execute a formal amending agreement or agreements (as the case may be) to effect the Variation Proposal (**Variation Agreement**) whereupon (and not before) the parties shall be bound thereby provided that the Variation Agreement shall have no force or effect unless and until the Authority has received the approvals of the Minister for Gaming thereto required pursuant to section 142 of the Gaming Legislation (and each Variation Agreement shall contain an express provision to this effect unless such approvals have previously been obtained).

(b) If the Variation Agreement is not duly executed by any party or the Ministerial approvals referred to above are not received within 30 Business Days after the date of approval of the last of each of the Other Parties under clause 18.2 then the Variation Proposal shall be deemed rejected and any Variation Agreement shall have and shall be deemed for all purposes, never to have had, any force or effect.

19. Expenses and Stamp Duty

19.1 Expenses

GamingCo must on demand reimburse the Authority for and keep the Authority indemnified against all expenses, including all legal fees, costs and disbursements on a solicitor/own client basis and without the need for taxation, incurred by the Authority and the State in connection with:

(a) the negotiation, preparation and execution of this Agreement and any other documents entered into for the purposes of the Restricted Gaming Licence Application;

(b) any subsequent consent, agreement, approval or waiver under this Agreement and any other documents entered into for the purposes of the Restricted Gaming Licence Application; and

(c) the exercise, enforcement, preservation, attempted enforcement or preservation of any rights under this Agreement against GamingCo.

19.2 Stamp duty

GamingCo will be liable to:

(a) pay all stamp duty, including fines and penalties, in connection with the execution and delivery of this Agreement or any payment or other transaction under or contemplated in this Agreement; and

(b) indemnify and keep indemnified the Authority against any Loss or Liability incurred or suffered by it as a result of the delay or failure by GamingCo to pay any such stamp duty.

20. Governing Law

20.1 Governing Law

This Agreement is governed by the Laws of the State of New South Wales.

20.2 Jurisdiction

(a) Each party irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts and mediation and arbitration processes of the State of New South Wales with respect to any action or proceedings which may be brought at any time relating in any way to this Agreement.

(b) Each party irrevocably waives any objection it may now or in the future have to the venue of any action or proceeding, and any Claim it may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

(c) Each party irrevocably waives any immunity in respect of obligations under this Agreement that it may acquire from the jurisdiction of any court or any legal or arbitration process for any reason including, the service of notice, attachment prior to judgment, attachment in aid of execution or execution.

21. No Representation by or Reliance on the Authority

GamingCo acknowledges and confirms that it has not entered into this Agreement in reliance on or as a result of any representation, warranty, promise, statement, conduct or inducement by or on behalf of the Authority otherwise than as notified in writing by that party to it before the date of this Agreement or as expressly set out in this Agreement.

22. Dispute Resolution

22.1 Not to commence proceedings

A party to this Agreement must not commence or maintain any action or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute or difference as to any matter relating to or arising under this Agreement (**Dispute**) unless it has complied with this clause **22**.

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22.2 Notification

A party claiming that a Dispute has arisen must notify the other parties giving details of the Dispute.

22.3 Nomination of representative

Within three Business Days after the notice is given under clause 22.2, each party must nominate in writing a representative authorised to settle the Dispute on its behalf (**Representative**).

22.4 Representative to use best endeavours

During the period of 10 Business Days after a notice is given under clause 22.2, each party must ensure that its Representative uses his or her best endeavours, with the other Representatives to:

(a) resolve the dispute; or

(b) agree on a process to resolve the Dispute without court proceedings (for example, mediation, conciliation, executive appraisal or independent expert determination), including:

(1) the involvement of any dispute resolution organisation;

(2) the selection and payment of a third party to be engaged by the parties to assist in negotiating a resolution of the Dispute without making a decision that is binding on a party unless that party's Representative has so agreed in writing;

(3) any procedural rules;

(4) the timetable, including the dispute resolution period and any exchange of relevant information and documents; and

(5) the place where meetings will be held.

22.5 Legal Proceedings

If, within the period specified in clause 22.4:

(a) the Representatives have not resolved the Dispute; or

(b) the Representatives have agreed upon a process to resolve the Dispute, however the dispute resolution period as agreed under clause 22.4(b)(4) has expired without the parties reaching a resolution of the Dispute;

a party that has complied with clauses 22.2 to 22.4 may terminate the dispute resolution process by giving notice to the other parties, whereupon clause 22 shall no longer operate in relation to the Dispute and the party may commence legal proceedings in relation to the Dispute.

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22.6 Confidentiality

(a) Each party:

(1) must keep confidential all Confidential Information and confidential communications made by a Representative under this clause; and

(2) must not use or disclose that Confidential Information or those confidential communications except to attempt to resolve the Dispute;

but nothing in this sub-clause shall affect the admissibility into evidence in any court or arbitral proceedings of extrinsic evidence of facts which, but for this subclause, would be admissible in evidence.

(b) Confidential Information and confidential communications made in relation to a Dispute may be disclosed if required by Law.

22.7 Each party to bear its costs

Each party must bear its own costs of resolving a Dispute under this clause 22.

22.8 Non compliance

If a party does not comply with any provision of clauses 22.2 to 22.4, or, if applicable, clause 22.5 and any procedural requirements established under clause 22.4(b) then the other parties will not be bound by those sub-clauses in relation to the Dispute.

23. Notices

23.1 Requirements for notices

Every notice or other communication to be given or made under or arising from this Agreement:

(a) must be in writing;

(b) must be signed by the sender or a person duly authorised by the sender;

(c) will be deemed to be duly given or made to a person if delivered or posted by prepaid post to the address, or sent by fax to the fax number of that person set out in clause 23.2 (or to any other address or fax number as is notified in writing by that person to the other parties to this Agreement from time to time); and

(d) will be deemed to be given or made (unless a later time is specified in the notice or communication):

(1) (in the case of prepaid post being sent and received within Australia) on the third day after the date of posting as indicated by the postmark on the notice or communication;

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(2) (in the case of prepaid post being sent or received outside Australia) on the fifth day after the date of posting as indicated by the postmark on the notice or communication;

(3) (in the case of delivery by hand) on delivery, provided that where delivery is made:

(A) after 5:00 pm on any Business Day in the city of the recipient of the notice or communication, then in such case at 9:00 am on the next following Business Day;

(B) on a day which is not a Business Day in the city of the recipient of the notice or communication, then in such case at 9:00 am on the next following Business Day;

(4) (in the case of fax) on receipt of a transmission report which indicates that the facsimile was sent in its entirety to the facsimile number of the addressee.

23.2 Addresses of parties

For the purposes of this clause 23, the addresses and fax numbers of the parties to this Agreement are:

(a) **Authority**

Address: Level 6
323 Castlereagh Street
Haymarket NSW 2000

Facsimile: 02 9211 0062

Attention: Chief Executive

(b) **Crown Parties: GamingCo, Crown Resorts, HoldCo and PropCo**

Address: Level 3, Crown Towers
8 Whiteman Street
Southbank VIC 3006

Facsimile: 03 9292 8808

Attention: Company Secretary

24. Confidentiality

(a) A party to this Agreement may only use Confidential Information:

(1) if necessary to perform that party's obligations under this Agreement; or

(2) if the other parties to this Agreement consent to the use.

(b) A party to this Agreement may only disclose Confidential Information:

(1) to that party's professional advisers;

(2) if required by Law;

(3) if necessary to perform that party's obligations under this Agreement; or

(4) if all other parties consent to the disclosure.

25. Further Assurance

Each party will at the entire cost and expense of such party perform all such acts and execute all such agreements, assurances and other documents and instruments as the Authority reasonably requires to perfect or improve the rights and powers afforded or created, or intended to be afforded or created, by this Agreement.

26. Severability

Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

27. Waiver

A failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of any right, remedy, power or privilege under this Agreement by the Authority will not in any way preclude or operate as a waiver of the exercise or enforcement of that right, remedy, power or privilege, or any further exercise or enforcement of it, or the exercise or enforcement of any other right, remedy, power or privilege under this Agreement or provided by Law.

28. Consents and Approvals

Where under this Agreement the consent or approval of the Authority is required to do any act or thing, then unless expressly provided otherwise in this Agreement, that consent or approval may be given or withheld in the absolute and unfettered discretion of the Authority and may be given subject to such conditions as the Authority thinks fit in its absolute and unfettered discretion.

29. Written Waiver, Consent and Approval

Any waiver, consent or approval given by the Authority under this Agreement will only be effective and will only bind the Authority if it is given in writing by the Authority or a person duly authorised by the Authority, or given verbally and subsequently confirmed by the Authority, in writing by the Authority or a person duly authorised by the Authority.

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30. Non-Merger

None of the terms or conditions of this Agreement nor any act matter or thing done under or by virtue of or in connection with this Agreement or any other agreement between the parties hereto shall operate as a merger of any of the rights and remedies of the parties in or under this Agreement or in or under any such other agreement all of which shall continue in full force and effect.

31. Remedies Cumulative

Except to the extent that this Agreement provides otherwise, the rights and remedies conferred by this Agreement on the Authority are cumulative and in addition to all other rights or remedies available to the Authority by Law.

32. Opinion by the Authority

Except to the extent that this Agreement provides otherwise, any opinion to be formed by the Authority for the purposes of this Agreement may be formed by the Authority on such grounds and material as it in its absolute discretion determines to be sufficient. In forming any such opinion the Authority will be deemed to be exercising merely administrative functions.

33. No Deduction

All payments by GamingCo under this Agreement will be free of any set-off or counterclaim and without deduction or withholding for any present or future Taxes unless the GamingCo is compelled by Law to make any deduction or withholding and if this is the case, GamingCo must pay to the Authority any additional amounts as are necessary to enable the Authority to receive, after all those deductions and withholdings, a net amount equal to the full amount which would otherwise have been payable had no deduction or withholding been required to be made.

34. Counterparts

This Agreement may be executed in any number of counterparts and by the different parties on different counterparts, each of which constitutes an original of this Agreement, and all of which together constitute one and the same instrument.

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Execution

Executed as an Agreement on 8th July 2014

The Common Seal of
The New South Wales Independent Liquor and Gaming Authority
was duly affixed hereto in accordance with section 41 of the
Gaming and Liquor Administration Act 2007 (NSW) by and in the presence of
the Chief Executive:

Micheil Brodie
Chief Executive
Independent Liquor and Gaming Authority

INDEPENDENT LIQUOR AND GAMING AUTHORITY

Executed by
Crown Sydney Gaming Pty Limited

Director
ROWEN BRUCE CRAIGIE
Name (please print)

Director/Company Secretary
Michael James Neilson
Name (please print)

Executed by
Crown Resorts Limited

Director
ROWEN BRUCE CRAIGIE
Name (please print)

Director/Company Secretary
Michael James Neilson
Name (please print)

Executed by
Crown Sydney Property Pty Limited

Director
ROWEN BRUCE CRAIGIE
Name (please print)

Director/Company Secretary
Name (please print)

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Executed by
Crown Sydney Holdings Pty Limited

Director ROWEN BRUCE CRAIGIE

Name (please print)

Director/Company Secretary

Michael James Neilson

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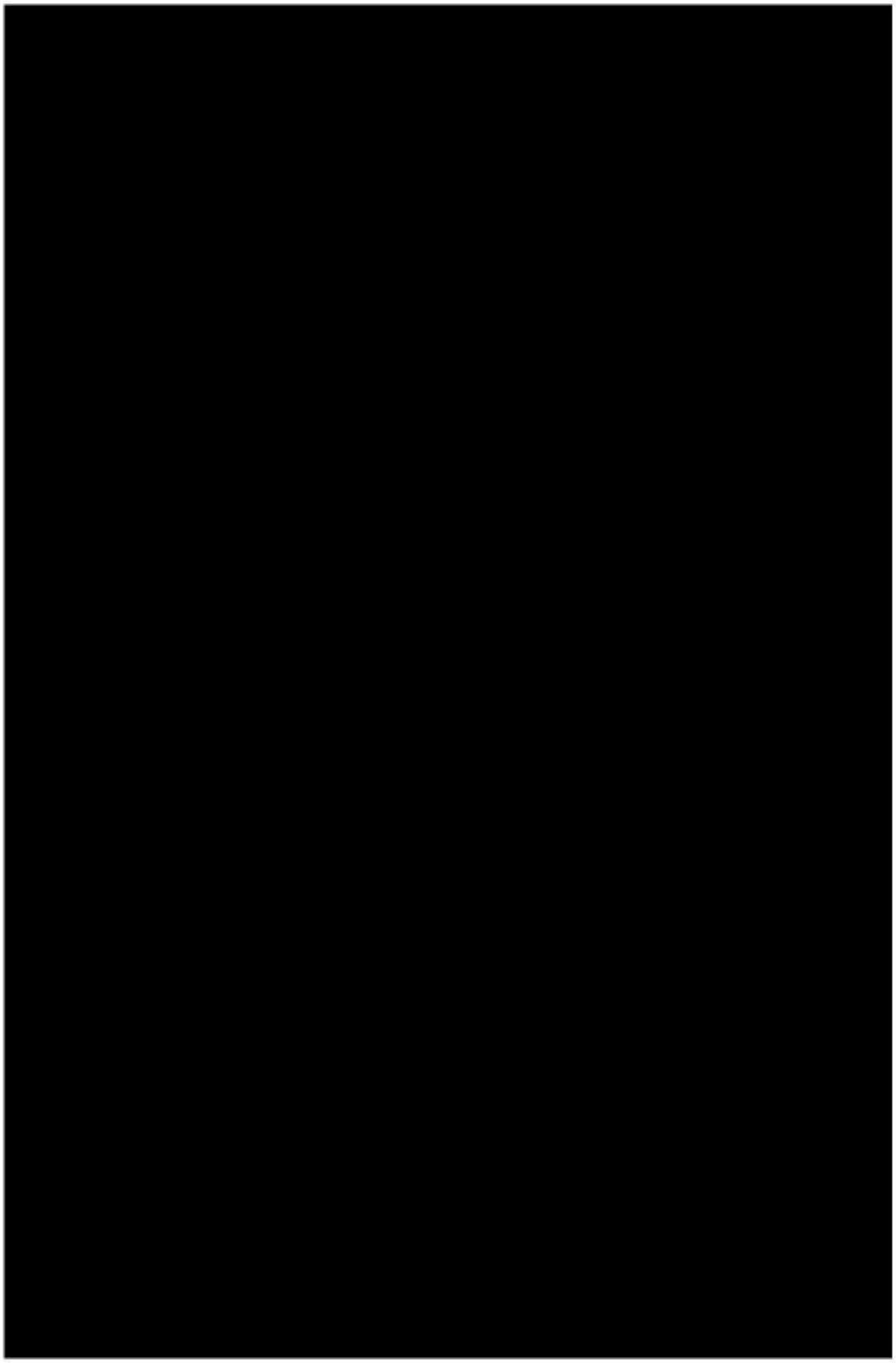

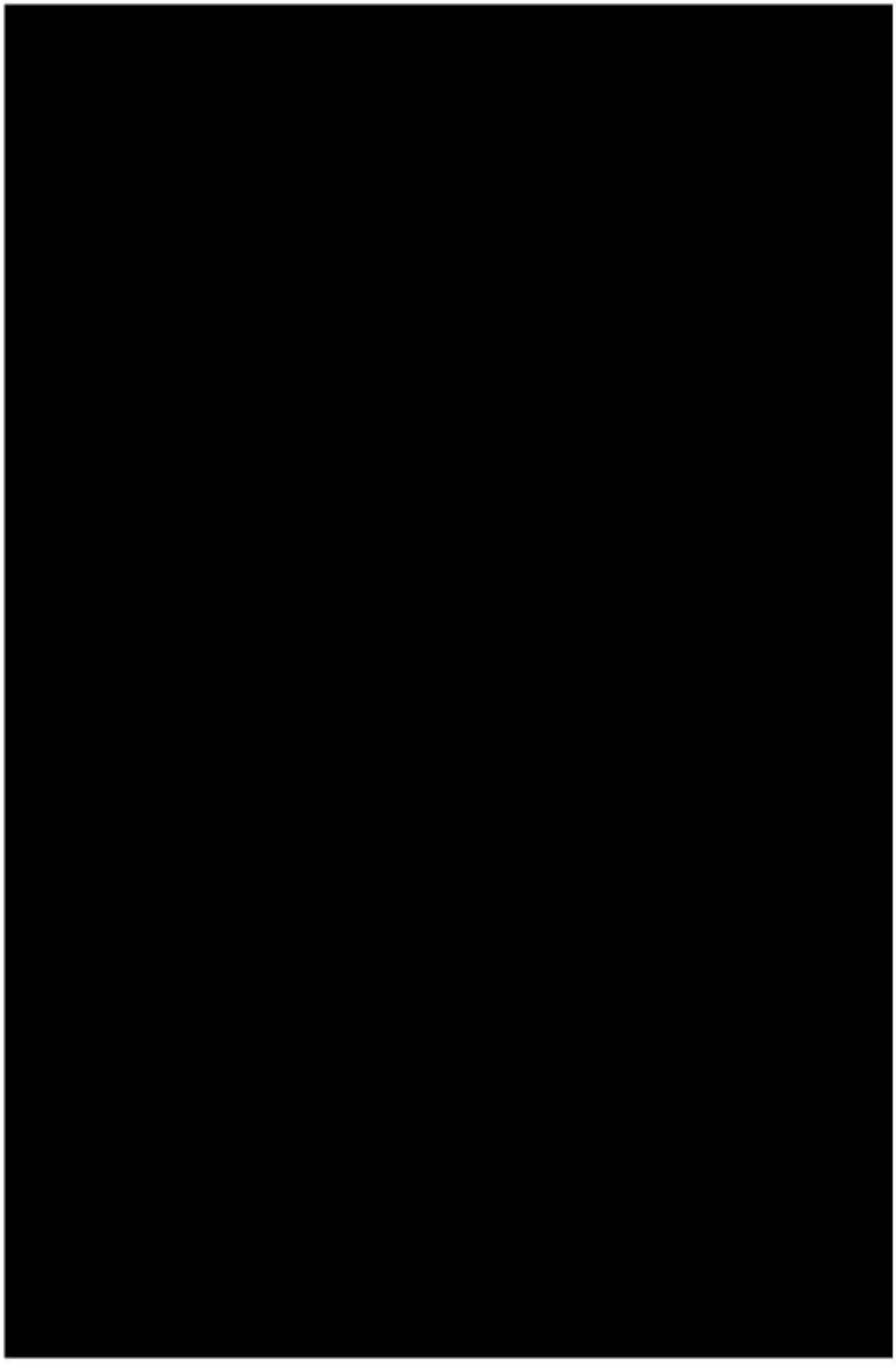

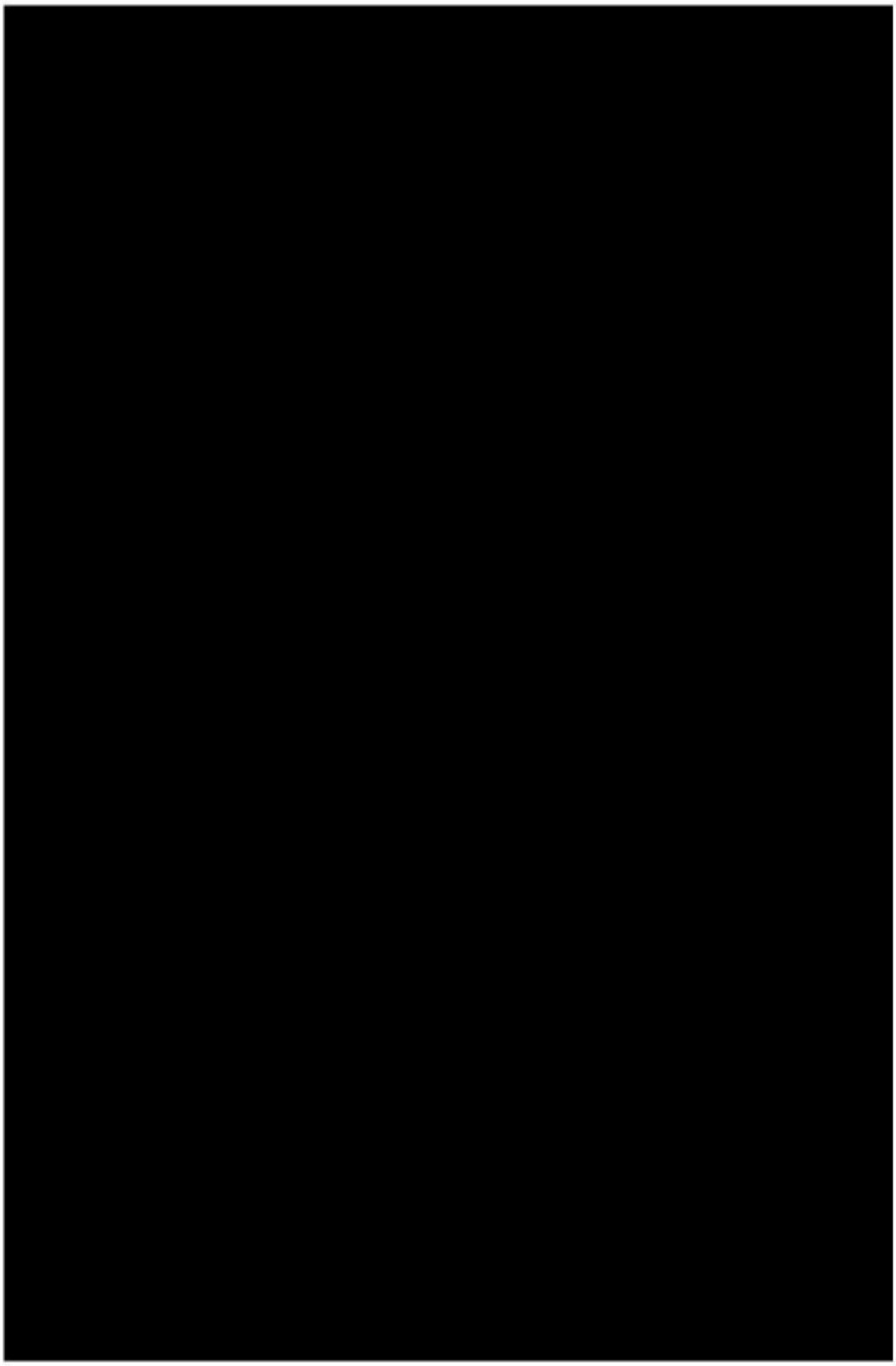

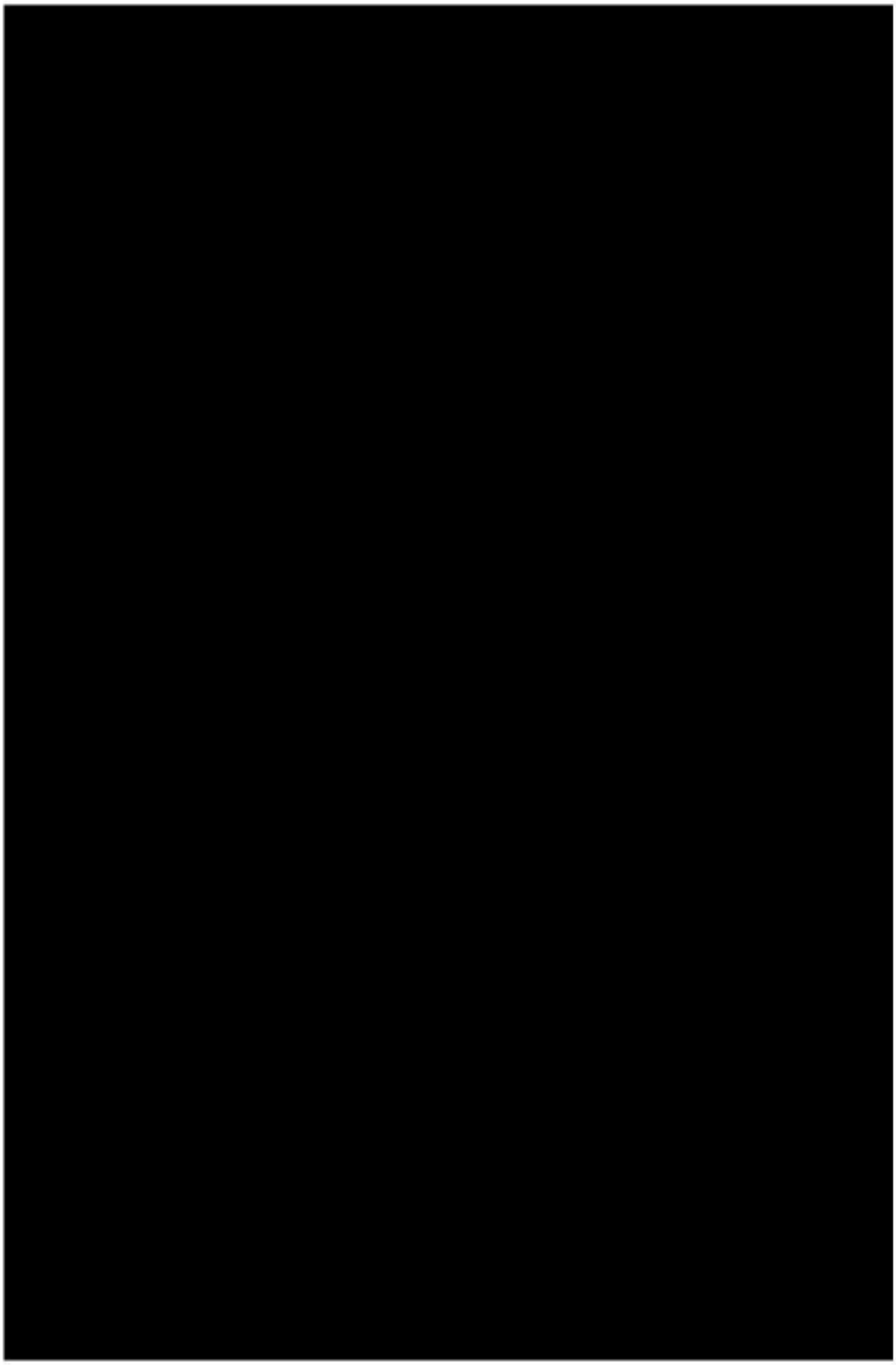

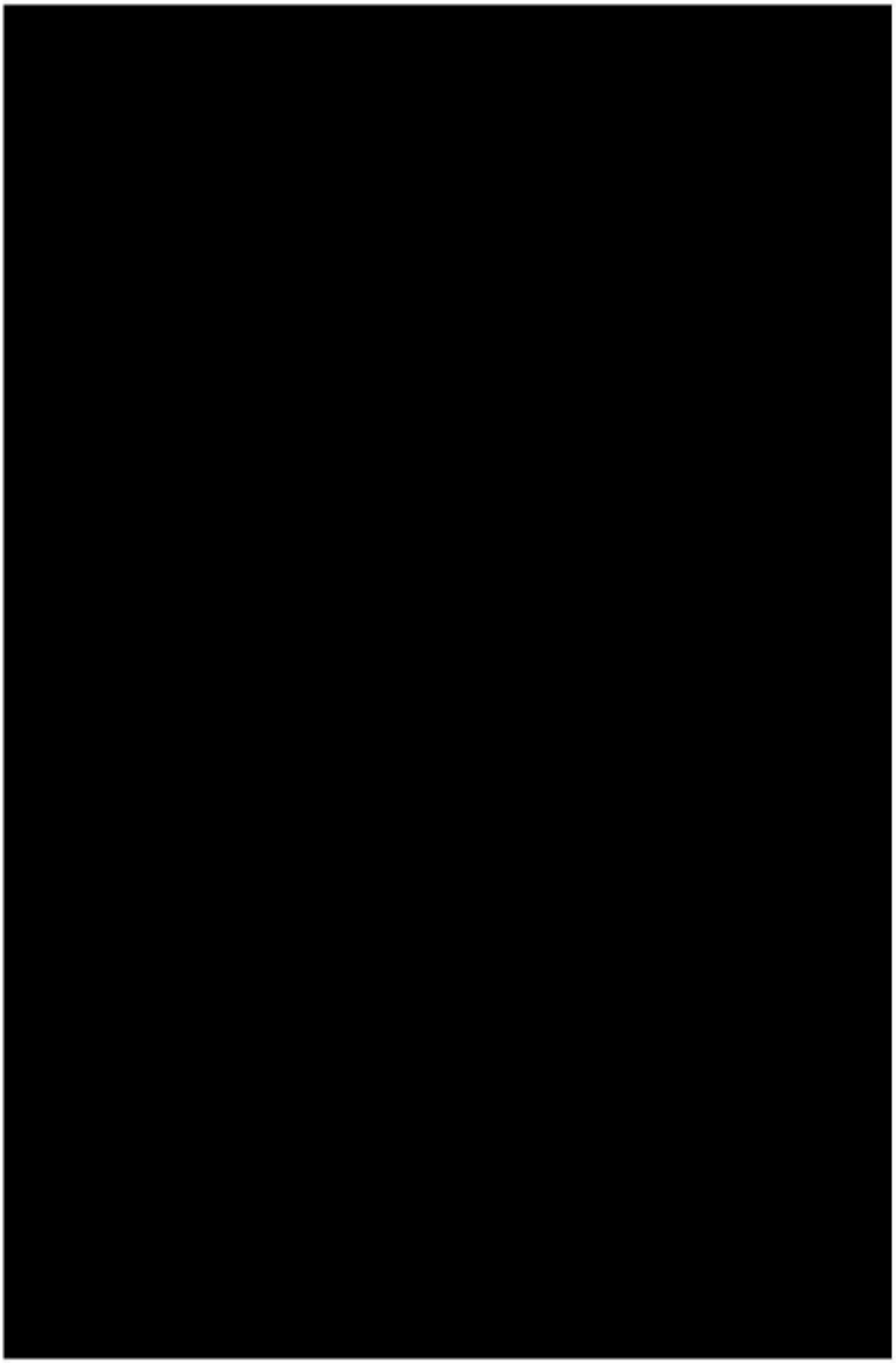

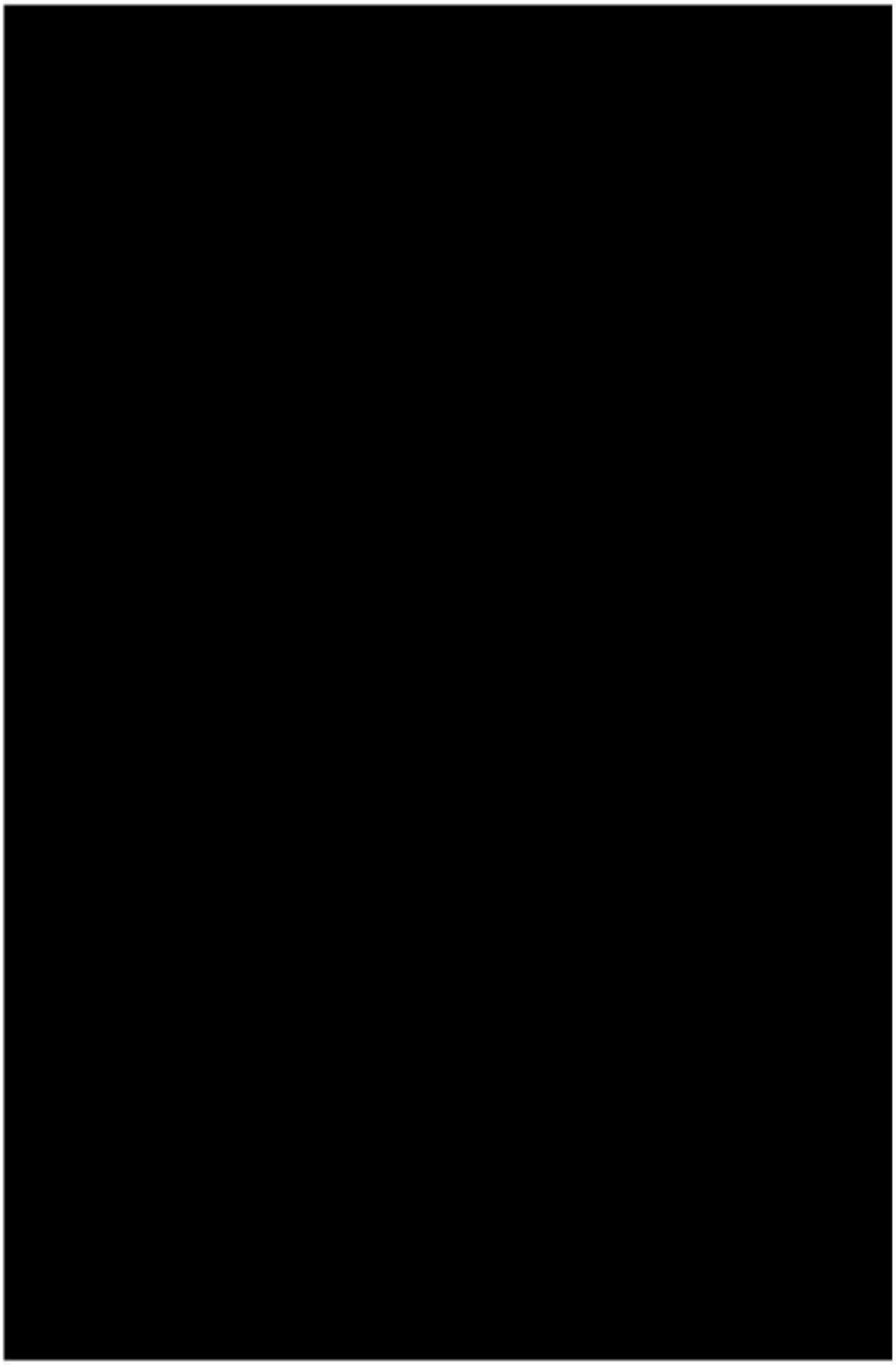

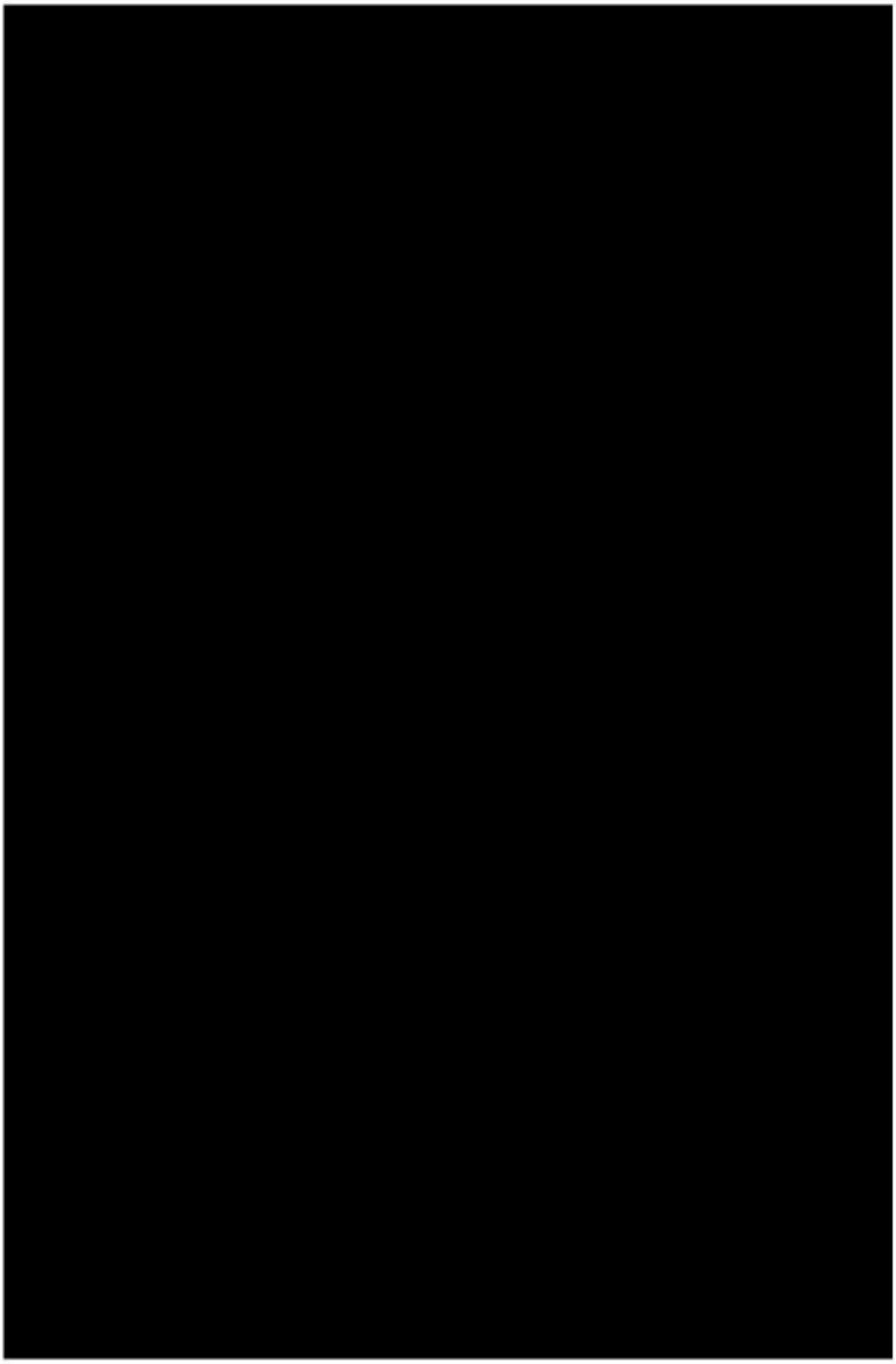

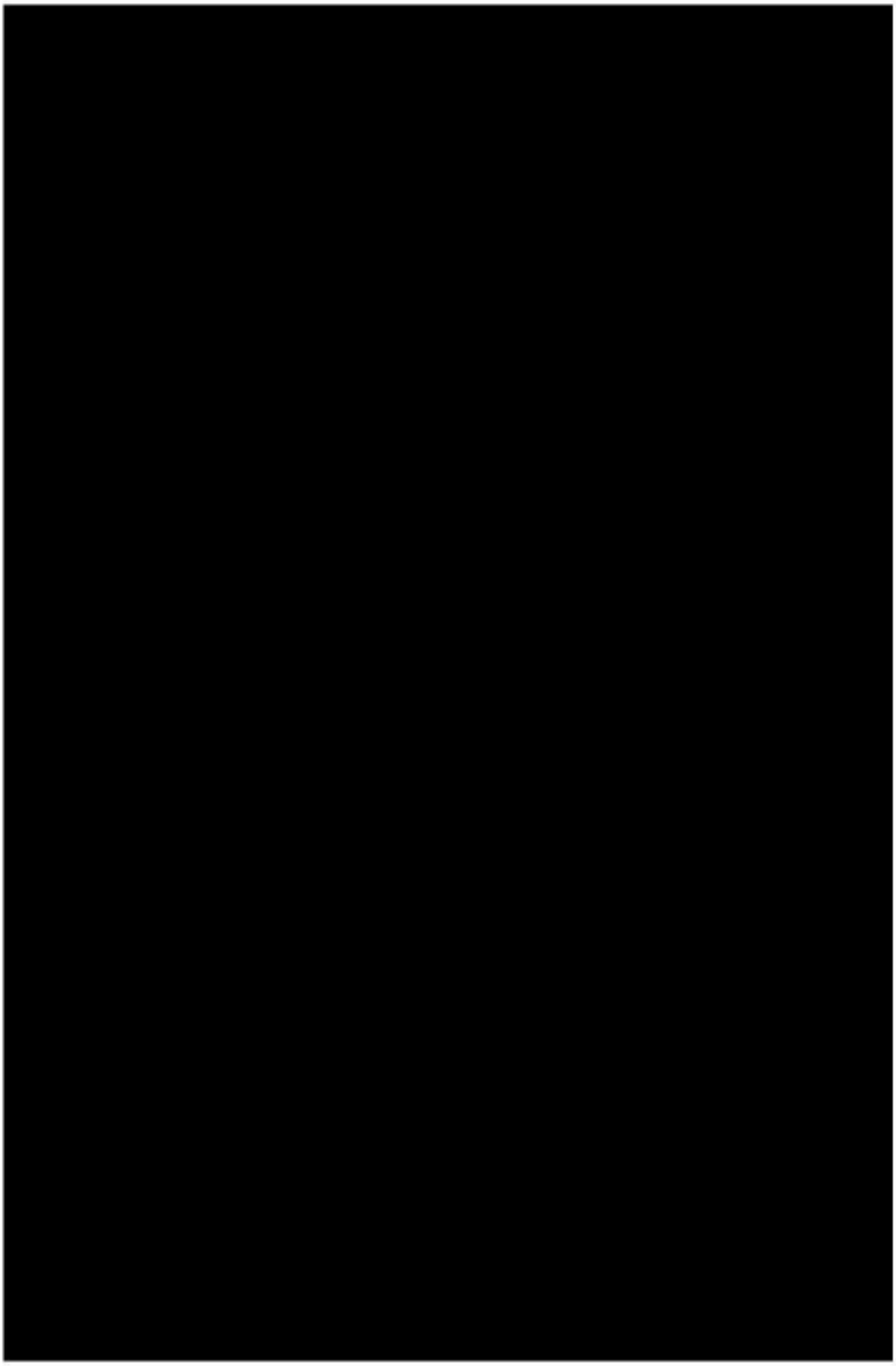

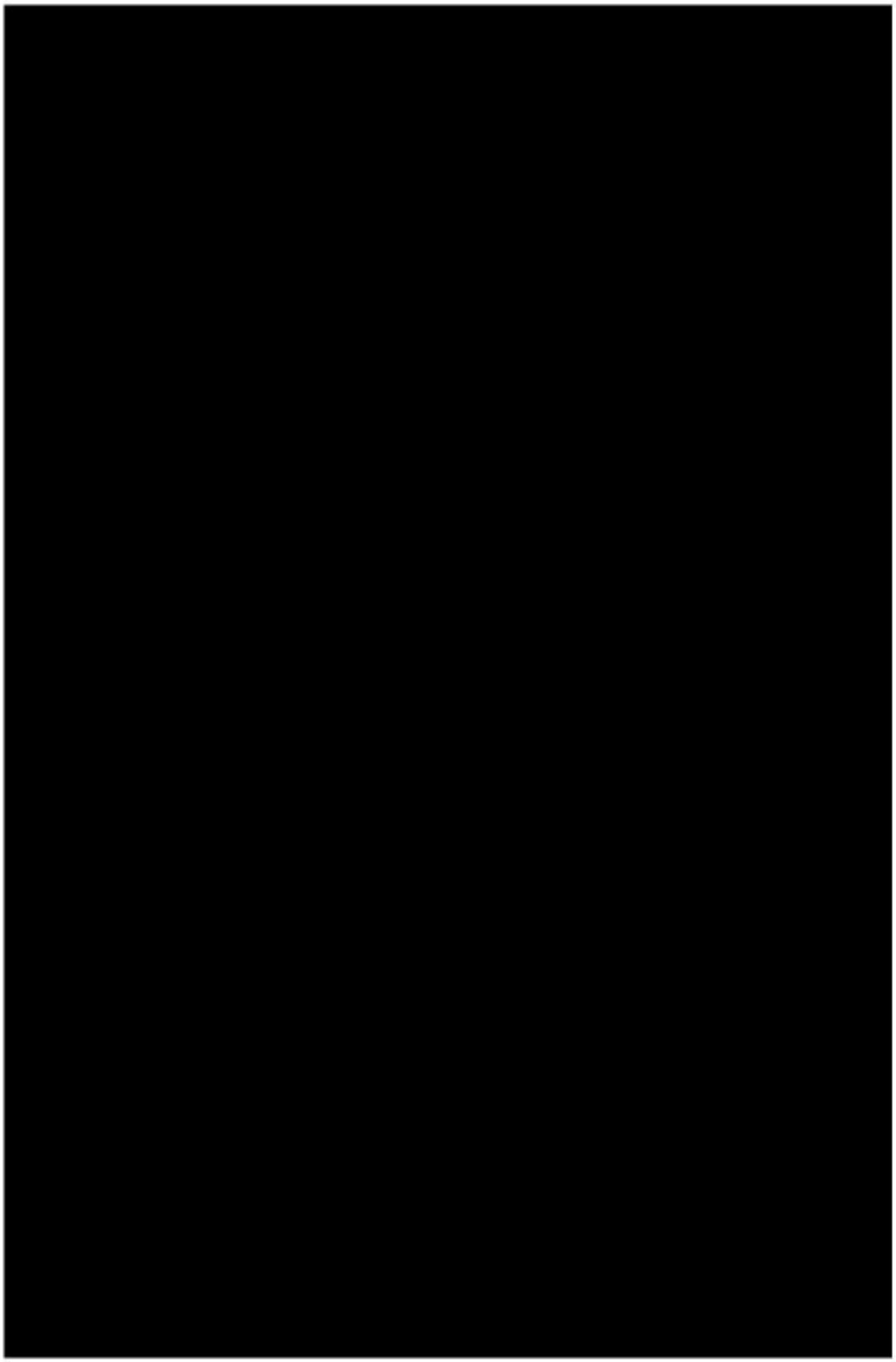

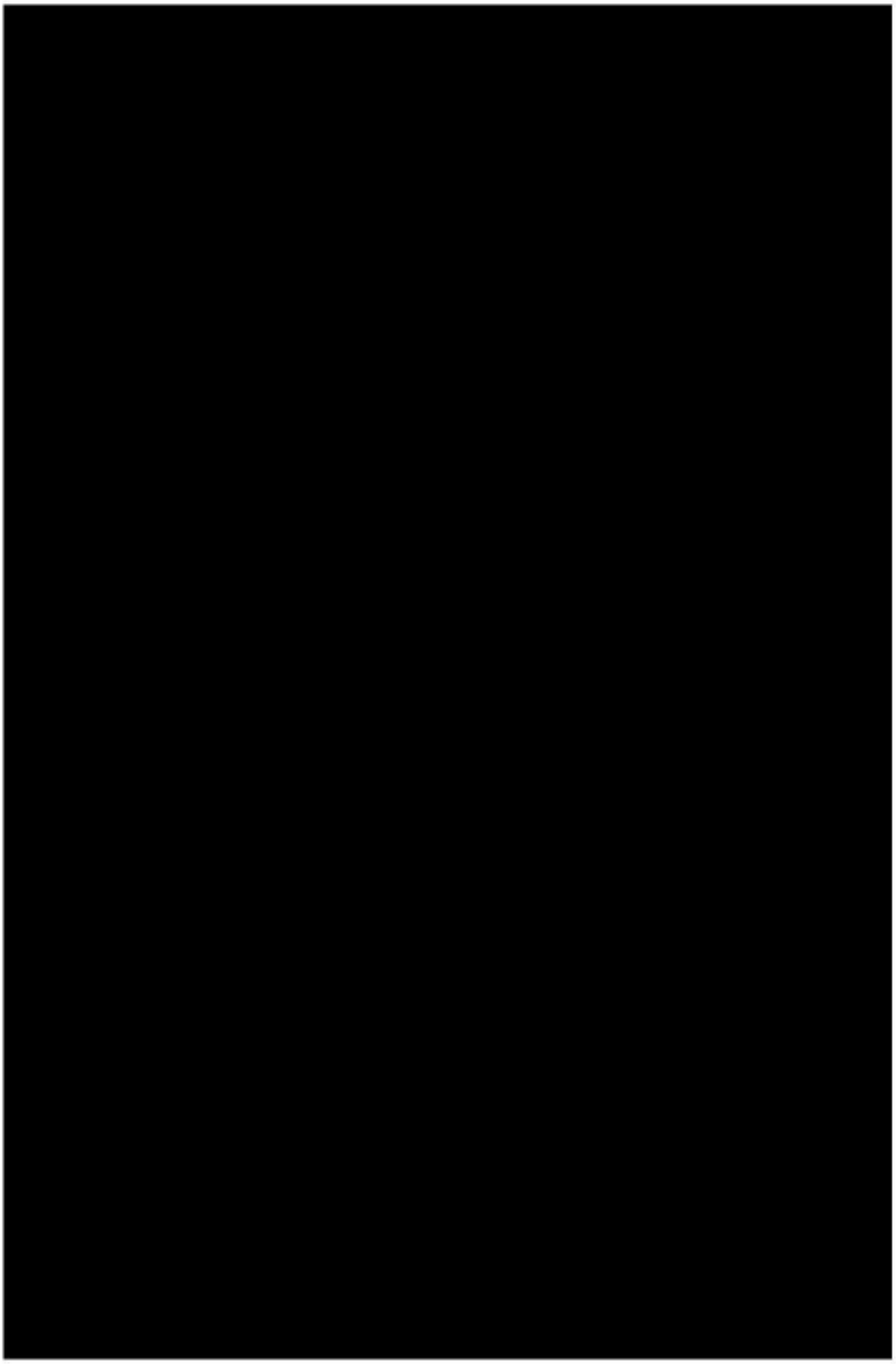

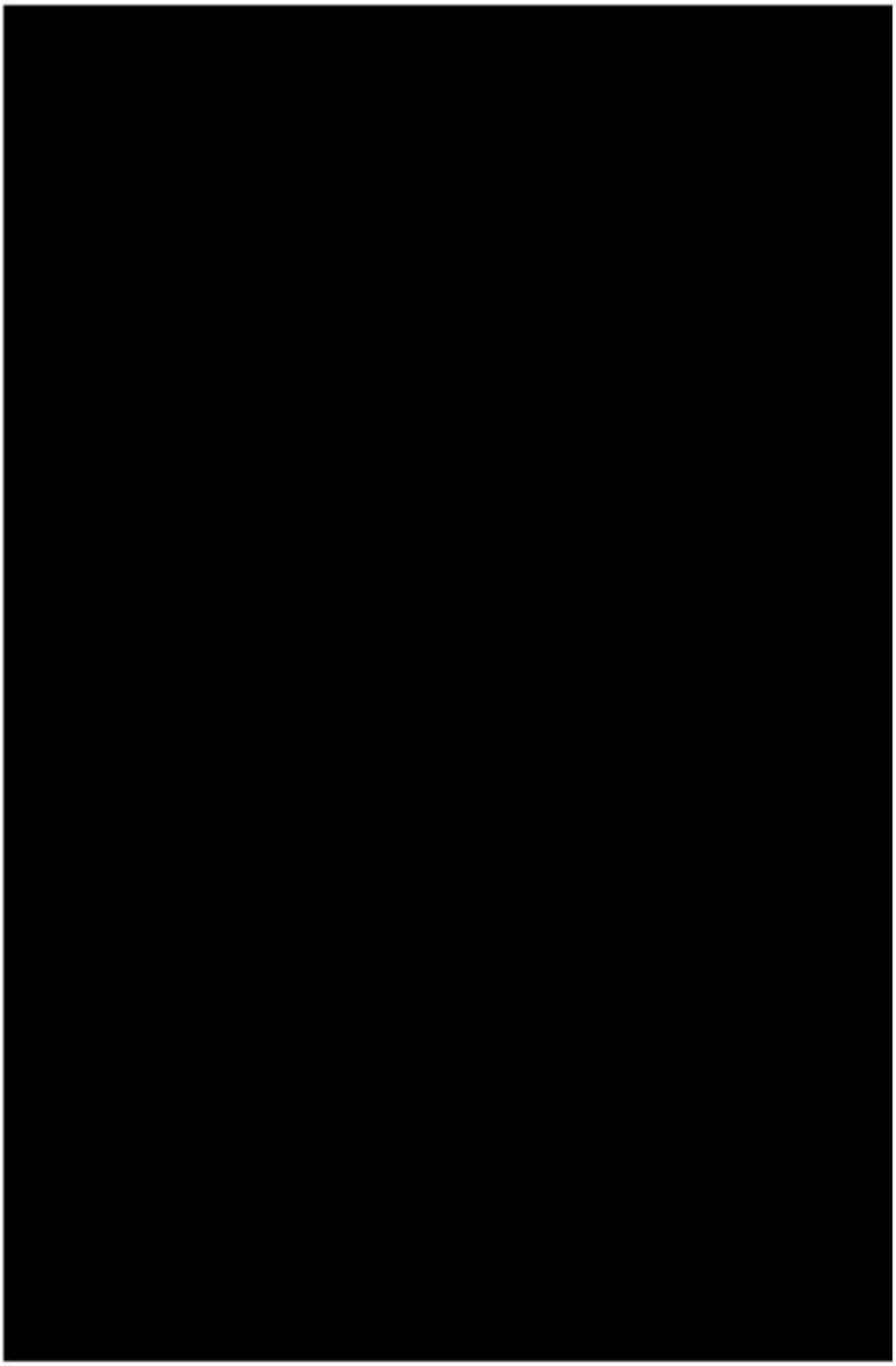

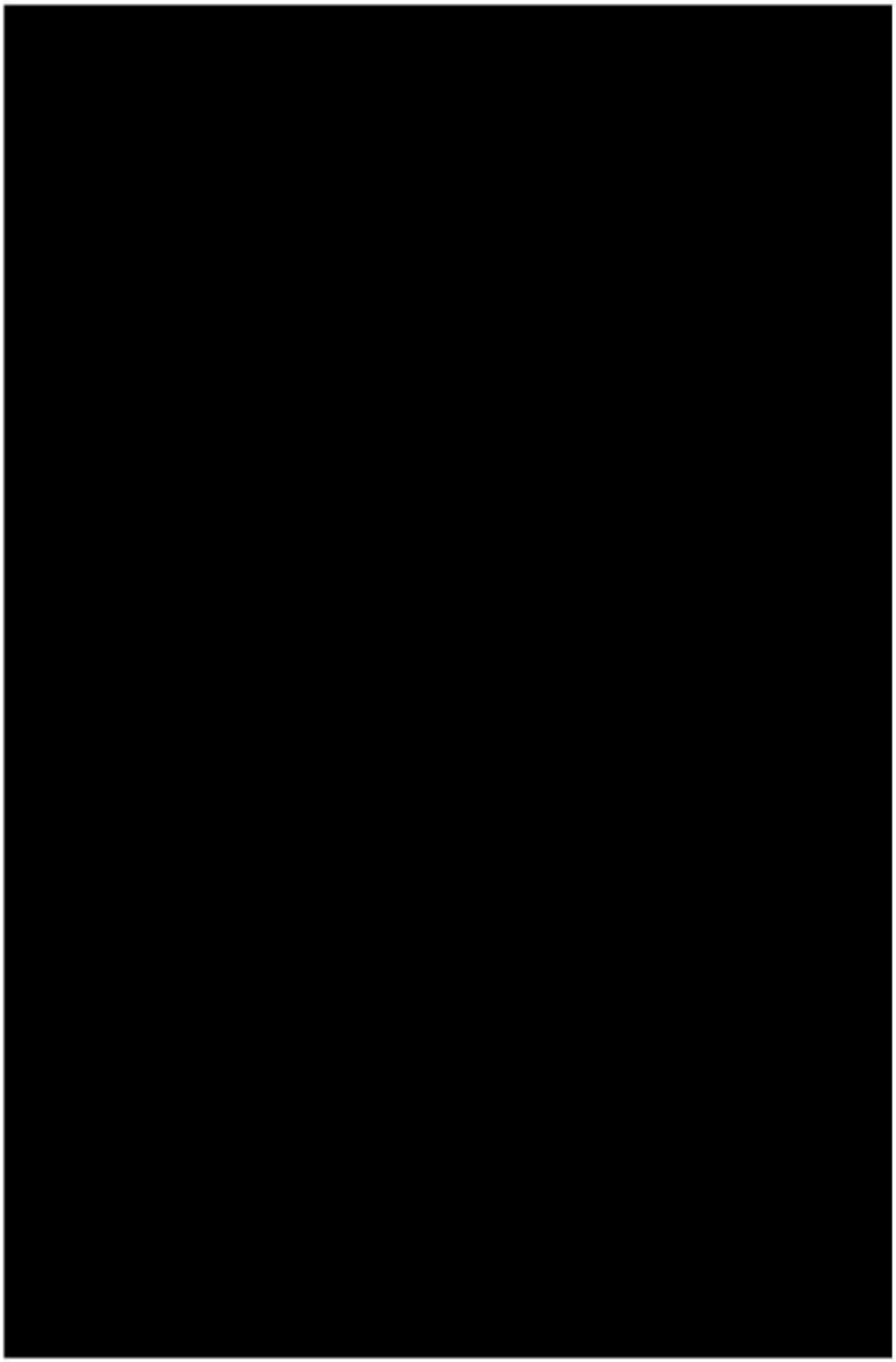

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Schedule 3 – Covenants and warranties

1. Capacity

(a) **Legal Binding obligation:** This Agreement constitutes a valid and legally binding obligation of, and is enforceable against GamingCo in accordance with its terms subject to:

(1) any statute of limitations;

(2) any laws of bankruptcy, insolvency, liquidation, reorganisation or other laws affecting creditors' rights generally; and

(3) any defences of set-off or counter claim other than those referred to in clause 33.

(b) **Execution, Delivery and Performance:** the execution and delivery of this Agreement, and the performance or compliance with its obligations under this Agreement, by GamingCo does not violate any law or regulation or official directive or any document or agreement to whichGamingCo is a party or which is binding upon it or any of its assets.

(c) **Power:** GamingCo has the power, and has taken all corporate and other action required, to enter into this Agreement and to authorise the execution and delivery of this Agreement and all instruments, documents, and agreements to be executed and delivered in connection herewith, and to perform its obligations hereunder.

(d) **No Consent Required:** Other than as stated to the contrary in this Agreement, no authorisation, approval or consent is required in order for GamingCo to enter into and perform its obligations under and pursuant to this Agreement.

(e) **Constituent Documents:** The execution, delivery and performance of this Agreement does not violate the constitution of GamingCo (or its certificate of registration, by-laws or other constituent documents in its jurisdiction of registration) or cause a limitation on its powers or cause the powers of its directors or officers to be exceeded and, if GamingCo is listed on the Australian Stock Exchange Limited or its Subsidiaries or on any other stock exchange, does not violate the listing (or equivalent) requirements thereof.

2. Corporate Structure

(a) **Due incorporation:** GamingCo is duly registered, validly existing under the laws of the jurisdiction of its registration and has the corporate power to own its property and to carry on its business as it is now being conducted.

(b) **Filings:** GamingCo has filed all corporate notices and effected all registrations with the Australian Securities Commission and, if applicable, the Australian Stock Exchange Limited or with similar offices in its jurisdiction of incorporation and in any other jurisdiction as required by law and all such filings and registrations are current, complete and accurate.

(c) **No Insolvency Event:** No Insolvency Event has occurred, or to the knowledge of GamingCo could reasonably be expected to occur, in relation to GamingCo

(d) **No trusts:** GamingCo is not the trustee of any trust nor does it hold any property subject to or impressed by any Trust.

(e) **Commercial benefit:** The execution of this Agreement is in the best commercial interests of GamingCo.

3. Information

All information true: To the best of GamingCo's knowledge, information and belief, as at the date of this Agreement, all information given by GamingCo and every statement made by GamingCo to the Authority in connection with this Agreement was at the date the information was given, the information dated or the statement made, true in all material respects and was, as at such date not by omission or otherwise, misleading in any material respect.

4. Litigation

(a) **No litigation:** Other than as disclosed to the Authority prior to the date of this Agreement, as at the date of this Agreement no litigation, arbitration, criminal or administrative proceedings are current, pending or, to the knowledge of GamingCo, threatened, which, if adversely determined, would or could have a material adverse effect on the business assets or financial condition of GamingCo.

(b) **Future litigation:** GamingCo will as soon as reasonably practicable advise the Authority in writing of any litigation, arbitration, criminal (including any summons or other process in respect of an offence) or administrative (including any statutory notices) proceedings which, from the date of this Agreement, are commenced by or against GamingCo and, if adversely determined, would or could have a material adverse effect on the business assets or financial condition of GamingCo.

5. Immunity from jurisdiction

GamingCo is not and will not be immune from the jurisdiction of a court or from any legal or arbitration process, whether through service of notice, judgement, attachment in aid or execution or otherwise

6. No Event of Default

(a) **No event of default:** To the best of GamingCo's knowledge, information and belief, there is no existing event which could constitute an Event of Default and Gaming Co is not aware of an event which with the giving of notice, lapse of time, satisfaction of a condition or determination could, constitute an Event of Default.

(b) **Notification:** From the date of this Agreement, GamingCo will as soon as reasonably practicable notify the Authority in writing upon becoming aware of any event which does, or which with the giving of notice, lapse of time, satisfaction of a condition or determination, constitutes an Event of Default.

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7. Authorities

(a) **All necessary authorities:** GamingCo has obtained or effected all authorisations, approvals (including any necessary approvals under the *Foreign Acquisitions and Takeovers Act* 1975), consents, finances, permits, exemptions, filings, registrations, notifications and other requirements of any governmental, judicial or public authority or body which must be obtained in Australia and in the jurisdiction of its registration before the entry of GamingCo into, or performance of its obligations under, this Agreement (**Authorities**) and all such Authorities are in full force and effect and any conditions upon which the Authorities were given have been complied with.

(b) **Future authorities:** GamingCo will obtain and maintain in full force and effect and comply with the conditions of all Authorities which are required after the date of this Agreement in connection with the performance by GamingCo of its obligations under this Agreement.

8. Disciplinary or investigatory action

(a) **No Disciplinary or investigatory action:** Other than as disclosed prior to the date of this Agreement, GamingCo is not aware, of any Insolvency Event or criminal, disciplinary or investigatory action being conducted or likely to be conducted anywhere in the world which would have a material adverse effect on its gaming activities or casino operations.

(b) **Notice to be given:** From the date of this Agreement, GamingCo will as soon as practicable advise the Authority in writing if it becomes aware of, or becomes aware of any fact, matter or circumstance which gives rise to, any Insolvency Event or criminal, disciplinary or investigatory action in relation to itself or which would have a material adverse effect on its gaming activities or casino operations.

9. Other covenants and warranties

(a) **Authority to approve Directors:** GamingCo will obtain the prior written approval of any appointment of a director or alternate director of GamingCo.

(b) **Authority can remove Directors:** GamingCo will procure the vacation from office of any of their directors or alternate directors in accordance with any direction to that effect by the Authority.

(c) **Authority to approve of Auditor:** No person will be appointed as auditor of GamingCo unless that person's appointment as auditor has first been approved in writing by the Authority.

(d) **Amendment of constituent documents:** GamingCo will not amend its constitution without the prior written approval of the Authority.

(e) **Issue and transfer of shares:** If requested by the Authority in writing, GamingCo will, within 14 days of such written request, provide the Authority details of all shares issued by GamingCo or transfers of shares registered by GamingCo since the last time such details have been disclosed to the Authority.

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(f) **Subsidiaries:** GamingCo will not, without the prior written approval of the Authority, establish or acquire a subsidiary (as that term is defined in the Corporations Act) unless it relates to a business incidental to or complementary with the businesses contemplated by or authorised under this Agreement and the Restricted Gaming Licence.

(g) **Business:** GamingCo will not, without the prior written approval of the Authority, carry on or conduct any business other than the businesses contemplated by or authorised under this Agreement and the Restricted Gaming Licence or any business incidental to or complementary with those businesses.

(h) **Change of Name:** GamingCo will not change its corporate or business name without the prior written approval of the Authority.

(i) **Change of financial year**: GamingCo will not change the date of commencement of its financial year without the prior written approval of the Authority.

(j) **(Interpretation):** For the purposes of clauses(a) to (i) above:

(1) "share" or "shares" includes, as the context requires, any other class of voting security (as defined in section 92 of the Corporations Act) issued by a Crown Sydney Group company;

(2) a person has a relevant interest in a share if, and only if, the person would be taken to have a relevant interest in the share under sections 608 and 609 of the Corporations Act;

(3) a reference to a person being entitled to shares means a person that holds voting shares in a company, and includes a person with a relevant interest in voting shares in a company under sections 608 and 609 of the Corporations Act;

(4) "dispose of' includes sell, transfer, assign, alienate, surrender, dispose of, deposit, part with possession of and enter into any agreement or arrangement to do or allow any of these things.

(k) **Information required by the Authority:** GamingCo will give to the Authority all such information as is necessary to ensure that the Authority is able to make an informed assessment of their assets and liabilities, profits and losses and prospects and otherwise all such information in connection with this Agreement, the Restricted Gaming Licence and the Restricted Gaming Facility as the Authority reasonably requires from time to time.

(l) **Records:** All records of the businesses of GamingCo have been fully, properly and accurately kept and completed in accordance with all legal requirements and proper business practices and will continue to be so kept and completed and there arc, and will in the future, be no material inaccuracies or discrepancies of any kind contained or reflected in any of them.

(m) **Most Recent Accounts:** Subject to clause 9(p), the most recent accounts of the GamingCo delivered to the Authority:

(1) have been prepared in accordance with accounting principles and practices generally accepted in Australia; and

(2) give a true and fair view of the financial condition of the GamingCo as at the date to which they relate and the results of the GamingCo's operations for the accounting period ended on that date and since that date there has been no material adverse change in the financial condition of the GamingCo as shown in such accounts.

(n) **Proper Books of Account**: GamingCo will keep or cause to be kept proper books of account and will therein make true and perfect entries of all dealings and transactions now or in the future conducted by them including in respect of the businesses contemplated by or authorised under this Agreement and the Restricted Gaming Licence, and shall keep the books of account, vouchers and other documents relating to their affairs and businesses at the Restricted Gaming Facility and shall procure that the same shall at all reasonable times be available for inspection and copying by the Authority or any employee, agent or professional adviser of the Authority as the Authority may from time to time appoint.

(o) **Compliance with Accounting Standards:** Subject to clause 9(p), GamingCo will ensure that all balance sheets and profit and loss statements and other accounts prepared on their behalf are prepared in accordance with its constitution, the Corporations Act, any applicable statute and all accounting principles and practices generally accepted in Australia consistently applied (or, if not consistently applied, accompanied by details of the inconsistencies) and give a true and fair view of their financial condition and the results of their operations as at the date and for the period ending on the date to which such accounts are prepared.

(p) **Consolidated and Unconsolidated Accounts**: Where GamingCo, or a corporate group of which GamingCo is a member, is permitted (in accordance with its constitution, the Corporations Act, any applicable statute and all accounting principles and practices generally accepted in Australia) to prepare its balance sheets or profit and loss statements or other accounts so that it discloses the consolidated financial condtion and results of operations of more than one corporation (**Consolidated Accounts**), GamingCo is required to furnishto the Authority only those Consolidated Accounts.

(q) **Change of Control:** GamingCo will immediately advise the Authority of any material changes in its shareholding, including without limitation one or more persons acquiring or materially altering a substantial holding (as that term is defined in the Corporations Act).

(r) **File All Returns**: GamingCo will file with the appropriate authorities within the time limited by law all income Tax, group Tax, sales Tax, land Tax and other returns for Taxes which the law requires them to furnish.

(s) **Pay All Taxes**: GamingCo will duly and punctually pay all Taxes now or in the future charged, chargeable or payable by them.

(t) **Returns and Receipts**: GamingCo will immediately on being required to do so by the Authority, provide the Authority with a copy of all the returns, assessments for Taxes

and receipts for the payment of **Taxes** which it lodges with and receives from any government authority.

(u) **Employees:**

(1) GamingCo will ensure that the Restricted Gaming Facility is at all times adequately staffed by sufficient numbers of employees licensed under the Gaming Legislation, and insofar as an employer is able to control and discipline staff, will ensure that such employees comply with the Gaming Legislation, the regulations made thereunder and any conditions upon which any employee's licence is granted.

(2) GamingCo covenants and undertakes that it will not execute any employment contract or any contract for services which is inconsistent with the Gaming Legislation, and in particular, either of section 47(6) or section 61(3) of the Legislation.

(3) GamingCo shall provide certified copies of any employment contract or any contract for services which is requested by the Authority.

(v) **Intellectual Property:** GamingCo will maintain and renew all its present and future trademarks and other intellectual property.

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Schedule 4 – Covenants and Warranties by Hold Co & PropCo

Each of HoldCo and PropCo agree that it will:

(a) obtain the Authority's prior written approval in relation to the appointment of a director or alternate director of PropCo;

(b) procure the vacation from office of any of its directors or alternate directors in accordance with any direction to that effect by the Authority; and

(c) not amend its constitution without the prior written approval of the Authority.

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Schedule 5 – VIP Gaming O&M Novation Agreements

Each of:

(a) the Authority;

(b) GamingCo; and

(c) where it is a party to a VIP Gaming O&M Agreement, HoldCo;

agree that a VIP Gaming O&M Novation Agreement will include the provisions set out at clauses 1 to 3 of this Schedule 5.

1. Agreement Valid and Enforceable

1.1 The parties covenant with and warrant to the Authority that:

(a) the Agreement is valid, in full force and effect and enforceable in accordance with its terms subject to:

(1) any statute of limitations;

(2) any laws of bankruptcy, insolvency, liquidation, reorganisation or other laws affecting creditors' rights generally; and

(3) any defences of set-off or counter claim.

2. Undertakings about Agreement

2.1 Each party undertakes, represents and warrants to the Authority that:

(a) It will comply with all of its material obligations under the Agreement;

(b) it will give written notice to the Authority as soon as it becomes aware of any material breach of the Agreement;

(c) it will simultaneously with the giving by it of any material notice under the Agreement give a copy of the material notice to the Authority;

(d) it will promptly give to the Authority details of any material disputes under or in relation to the Agreement;

(e) without limiting the circumstances where a variation must not occur, it will not without the Authority's prior written consent vary the Agreement;

(f) it will not without the prior written consent of the Authority assign, novate or otherwise transfer its rights or obligations or any of them under the Agreement otherwise than under a Permitted Encumbrance;

(g) it will not without the prior written consent of the Authority give or permit to be created any Encumbrance over its rights under the Agreement other than any Permitted Encumbrance;

3. Termination Notices

3.1 Terminating party to provide notice

(a) A Terminating Party must provide to the Authority a copy of each notice of that party's intention to terminate the Agreement pursuant to the termination clause (if any) of the Agreement at least 10 Business Days prior to the proposed termination date.

(b) Each notice given under clause 3.1 must specify:

(1) the nature of the default under the Agreement;

(2) the party under the Agreement responsible for the default;

(3) particulars of the events and circumstances relied on; and

(4) the particular provision of the Agreement in respect of which the default has occurred and, if the default is capable of remedy, an outline of what acts, matters or things would be required to remedy the default.

3.2 Termination if the Authority Directs

If a material breach on the part of a party (**Default Party**) occurs under the Agreement, the other party or parties must, if directed in writing by the Authority to do so, terminate the Agreement in accordance with its terms.

3.3 No Termination if Authority Directs

(a) The Terminating Party must not terminate the Agreement if, prior to the proposed termination date contained in the notice referred to in clause 3.1, the Authority gives notice in writing to the Terminating Party not to terminate the Agreement.

(b) The Authority may only give a direction under this clause 3.3 where the termination of the relevant VIP Gaming O&M Agreement will or could, in the reasonable opinion of the Authority, have an O&M Material Effect.

(c) If the Terminating Party who is required to comply with a direction given by the Authority under 3.3(a) is not a Crown Party, the Authority must indemnify the Terminating Party against, and must pay to the Terminating Party on demand, the amount of all losses, liabilities, costs and expenses arising out of the Terminating Party's compliance with such direction.

3.4 Not to Terminate if Default Remedied

The Terminating Party agrees with the Authority that the Terminating Party will not exercise its rights of termination under the Agreement if, prior to the expiration of the period specified in the notice referred to in clause 3, the Authority:

(a) in the case of a default by the Default Party under an obligation to pay money, pays or procures the payment of that money;

(b) in the case of a default by the Default Party under any other obligation which is capable of remedy, either remedies that default or takes steps for another person to remedy that default; and

(c) in the case of a default by the Default Party under any other obligation which is not capable of remedy, pays or procures the payment to the Terminating Party of an amount by way of compensation in respect of the default which is agreed between the Authority and the Terminating Party or, in default of such agreement, determined pursuant to clause 3.8 of this agreement.

3.5 Notice to Novate the Agreement

Where the Terminating Party has given a notice pursuant to clause 3.1 of its intention to terminate the Agreement then, without prejudice to the rights of the Authority under clause 3.4, the Authority may prior to the expiration of the period specified in that notice give to the Terminating Party a Novation Notice requiring the novation of the Agreement to the Authority or a Novation Nominee, provided that the Authority has remedied or addressed any defaults in accordance with clauses 3.4(a), 3.4(b) or 3.4(c).

3.6 Contents of Novation Notice

A Novation Notice must:

(a) be given by the Authority or a Novation Nominee; and

(b) state :

(1) that the Authority or the Novation Nominee wishes to novate the Agreement;

(2) the date and time on which the Agreement is novated to the Authority or the Novation Nominee, as relevant (**Novation Time**);

(3) that the Authority or the Novation Nominee requires the Terminating Party to continue to perform its obligations under the Agreement; and

(4) that the Authority or the Novation Nominee agrees to comply with all obligations of the Default Party failing to be performed as from the date of the notice as if the Authority or the Novation Nominee, as the case may be, were as from that time a party to the Agreement in place of the Default Party.

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3.7 Novation of the Agreement

On and from the Novation Time:

(a) the Agreement if the subject of a Novation Notice will continue in full force and effect;

(b) the Terminating Party will perform and observe all the obligations on its part contained in the Agreement as if the Authority or the Novation Nominee, as the case may be, was at all times a party to the Agreement in place of the Default Party;

(c) the Authority or the Novation Nominee, as the case may be, will from the Novation Time assume all obligations on the part of the Default Party failing to be performed as from the Novation Time under the Agreement and will observe and perform all those obligations as if it were from that time a party to the Agreement in place of the Default Party; and

(d) the Default Party will not be released, relieved or discharged from liability for and the Authority will not assume any liability for any fees or other amounts accrued due under the Agreement before the Novation Time, or liability for any breach or liability to remedy any breach which the Default Party may have committed before the Novation Time of any provision of the Agreement.

3.8 Dispute Resolution

(a) A party must not commence or maintain any action or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute or difference as to any matter relating to or arising under this agreement (**Dispute**) unless it has complied with this clause 3.8.

(b) A party claiming that a Dispute has arisen must notify the other parties giving details of the Dispute.

(c) Within 3 Business Days after a notice is given under clause 3.8(b), each party must nominate and notify in writing to the other party a representative authorised to settle the Dispute on its behalf (**Representative**).

(d) During the period of 10 Business Days after a notice is given under clause 3.8(b) (or any longer period agreed between the parties), each party must ensure that its Representative uses his or her best endeavours with the other Representatives to:

(1) resolve the Dispute; or

(2) agree on a process to resolve the Dispute without court proceedings (eg. mediation, conciliation, executive appraisal or independent expert determination) including:

(A) the involvement of any dispute resolution organisation;

(B) the selection and payment of a third party to be engaged by the parties to assist in negotiating a resolution of the Dispute without making a decision that is binding on a party unless each party's Representative has so agreed in writing;

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(C) any procedural rules;

(D) the timetable, including any exchange of relevant information and documents; and

(E) the place where meetings will be held.

(e) If, within the period specified in clause 3.8(d), the Representatives have not resolved the Dispute or agreed upon a process to resolve the Dispute, the parties may, within 5 Business Days after expiry of that period, agree to appoint a person, who is of good repute and is an expert in the area relevant to the Dispute, to perform the following functions, which the parties authorise the person to do:

(1) act as an independent consultant for the purpose of resolving the Dispute, as an expert and not as an arbitrator;

(2) establish the procedures for identifying the issues relating to the Dispute and the contentions of the parties, in accordance with considerations of procedural fairness;

(3) make a written, reasoned decision to resolve the Dispute; and

(4) decide how the independent consultant's fees should be paid by the parties.

If the parties cannot agree, within the 5 Business Day period referred in this clause 3.8(e), on the appointment of an independent consultant, the parties must request the Secretary General of the Australian Commercial Disputes Centre Limited to appoint that person.

(f) A decision by the independent consultant under clause 3.8(e) shall be final and binding on the parties. However, a party is entitled to take court proceedings to appeal that decision on a question of law.

(g) If, by the expiry of the period of 5 Business Days specified in clause 3.8(e):

(1) the Dispute has not been resolved;

(2) no process has been agreed under clause 3.8(d); and

(3) no request has been made under clause 3.8(e),

then a party that has complied with clauses 3.8(b) to 3.8(d) may terminate the dispute resolution process by giving notice to the other parties, whereupon clause 3.8(a) shall no longer operate in relation to the Dispute.

(h) Each party:

(1) must keep confidential all confidential information and confidential communications made by a Representative under this clause; and

(2) must not use or disclose that confidential information or those confidential communications except to attempt to resolve the Dispute, but nothing in this

sub-clause shall affect the admissibility into evidence in any court or arbitral proceedings of extrinsic evidence of facts which, but for this sub- clause, would be admissible in evidence.

(i) Each party must bear its own costs of resolving a Dispute under this clause 3.8.

(j) If a party does not comply with any provision of clauses 3.8(b) to 3.8(d), or, if applicable, clause 3.8(e) and any procedural requirements established under clause 3.8(e)(2) then the other parties will not be bound by those sub-clauses in relation to the Dispute.

3.9 Definitions

For the purposes of this Schedule:

Act means the *Casino Control Act 1992* (New South Wales) (as amended from time to time).

Agreement means the [insert VIP Gaming O&M Agreement].

Crown Party means either (or both) of GamingCo and HoldCo.

Default Party has the meaning given in clause 3.2.

Encumbrance means:

(a) a mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance, hypothecation or other security interest (including a "security interest" as defined in section 12 of the *Personal Property Securities Act 2009* (Cth));

(b) any other arrangement having the effect of conferring security (including any right, interest, power or arrangement in relation to any property which provides security for, or protects against default by a person in, the payment or satisfaction of a debt, obligation or liability and includes any conditional sale, hire purchase or lease agreement, or arrangement for the retention of title); or

(c) any contractual arrangement under which money or claims to, or the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts,

and **"Encumber"** has a corresponding meaning.

Novation Nominee means any person nominated by the Authority as such for the purposes of clause 3.6.

Novation Notice means a notice given by the Authority in accordance with clause 3.5.

Novation Time has the meaning given in clause 3.6(b)(2).

O&M Material Effect means an effect which is, or could be:

(i) material to the integrity of overall operations at the Restricted Gaming Facility; or

(ii) significant, material and fundamental to the overall viability, operation and management of the Restricted Gaming Facility.

Permitted Encumbrance means:

(a) any Encumbrance created by a Security Document to which GamingCo is a party;

(b) the interest of a lessor or hirer under any lease or hire purchase of goods entered into in the ordinary course of business;

(c) liens arising solely by operation of law (or by an agreement to the same effect) in the ordinary course of the business of GamingCo where the amount secured:

(1) has been due for less than 30 days; or

(2) is being contested in good faith and by appropriate means;

(d) without limiting paragraph (c), any Encumbrance arising under any retention of title, conditional sale, consignment or similar arrangements, where the transaction has been entered into in the ordinary course of business and where the amount payable:

(3) has been due for less than 30 days; or

(4) is being contested in good faith and by appropriate means;

(e) any Encumbrance over and affecting any asset acquired by GamingCo in the ordinary course of business after the date of this Agreement if the Encumbrance was not created in contemplation of the acquisition of the asset;

(f) rights of banks or other financial institutions to set off deposits and other credit balances, or to consolidate accounts, against financial indebtedness owed to such banks or financial institutions including in connection with the operation of cash management programs established for the benefit of GamingCo (which are not intended to operate in conjunction with a flawed asset arrangement) or in connection with the issue of bankers' acceptances or letters of credit for the benefit of GamingCo;

(g) any Encumbrance which ranks behind the Security Documents securing any judgment, order, decree or award unless:

(5) the judgment, order, decree or award it secures shall not, within 90 days after the entry thereof, have been discharged or stayed pending appeal, or shall not have been discharged within 90 days after the expiration of such stay; or

(6) the amount of such judgment, order, decree or award not covered by indemnity or insurance exceeds 10% of the total assets of GamingCo; and

(h) any Encumbrance provided for by one of the following transactions if the transaction arises in the ordinary course of GamingCo's business and does not secure payment or performance of an obligation:

(7) a transfer of an account or chattel paper; or

(8) a commercial consignment; or

(9) a PPS Lease,

where the terms "account", "chattel paper", "commercial consignment" and "PPS Lease" have the meanings given to them in the PPSA.

Terminating Party means a party who intends to terminate the Agreement.

Schedule 6 – Minister's Approval and Consent Acknowledgement

Minister's Approval and Consent Acknowledgement

The Honourable Troy Grant MP

Minister

Minister's Approval and Consent Acknowledgement

BY THE HONOURABLE TROY GRANT MP, Minister for Hospitality, Gaming and Racing and Minister for the Arts of the Crown for the time being administering the Casino Control Act 1992 (NSW) ("Act").

PURSUANT TO SECTION 142 OF THE ACT I HEREBY:

1. acknowledge having granted approval to the Authority for and on behalf of the State, to conduct negotiations and to enter into the agreements referred to in Schedule 1;

2. acknowledge that the agreements referred to in Schedule 1 are for or in connection with the establishment and operation of a restricted gaming facility and any development of which a restricted gaming facility or proposed restricted gaming facility forms part;

3. approve of the terms of the agreements referred to in Schedule 1;

4. approve of the entry into the agreements referred to in Item 1 of Schedule 1 contemporaneously with any issue of a restricted gaming licence to Crown Sydney Gaming Pty Limited ACN 166 326 843;

5. approve of the entry into the agreements referred to in Item 2 of Schedule 1 at any time on or before the Sunset Date as that term is defined in the VIP Gaming Management Agreement referred to in Item 1 of Schedule 1; and

6. approve of the entry into the agreement referred to in Item 3 of Schedule 1 immediately following execution of the Sublease as that term is defined in the VIP Gaming Management Agreement referred to in Item 1 of Schedule 1.

This Acknowledgement shall not be taken as, nor is it capable of, being an approval, consent or acknowledgement in respect of any agreement to which the Authority is not a party whether or not such agreement forms an annexure, exhibit or schedule to any agreement referred to in Schedule 1.

This Acknowledgement is given solely for the purposes of section 142 of the Act and, accordingly, any person entering into or relying upon the agreement referred to in Schedule 1 does so based solely upon the person's own commercial judgment of, and professional advices in respect of, the terms of such agreements and the matters, express or implied, contemplated by such agreement.

Terms used but not defined in this Acknowledgement have the same meaning as in the Act.

SIGNED by THE HONOURABLE TROY GRANT MP on day of 2014

.....

The Honourable Troy Grant MP

.....

Witnessed by:

Minister's Approval and Consent Acknowledgement – Schedule 1

Parties and Agreement

For the purposes of this Schedule 1:

(a) "Crown Resorts" means Crown Resorts Limited ACN 125 709 953;

(b) "HoldCo" means Crown Sydney Holdings Pty Limited ACN 166 326 843;

(c) "PropCo" means Crown Sydney Property Pty Limited ACN 166 326 861;

(d) "GamingCo" means Crown Sydney Gaming Pty Limited ACN 166 326 843; and

(e) "CPH" means Consolidated Press Holdings Limited ACN 008 394 509.

Item 1 – Documents to be executed contemporaneously with issue of restricted gaming licence to GamingCo

Agreement	Parties
VIP Gaming Management Agreement	Crown Resorts HoldCo PropCo GamingCo Authority for itself and on behalf of the State
State Crown Financial Deed	Crown Resorts HoldCo PropCo GamingCo Authority for itself and on behalf of the State. The State of New South Wales (by an authorised officer)
Financial Arrangements Agreement	GamingCo Authority for itself and on behalf of the State. Minister for Hospitality, Gaming and Racing for and on behalf of the State of New South Wales

4.

Agreement	Parties
Crown Resorts Guarantee	Crown Resorts Authority for itself and on behalf of the State The Honourable Troy Grant MP for and on behalf of the State of New South Wales
HoldCo Guarantee	HoldCo Authority for itself and on behalf of the State The Honourable Troy Grant MP for and on behalf of the State of New South Wales
PropCo Guarantee	PropCo Authority for itself and on behalf of the State The Honourable Troy Grant MP for and on behalf of the State of New South Wales
CPH Deed	CPH Authority for itself and on behalf of the State
Common Terms Deed	Authority for itself and behalf of the State The State of New South Wales (by an authorised officer) Crown Resorts HoldCo GamingCo PropCo

5.

Item 2 – Documents to be executed on or before the Sunset Date as defined under the VIP Gaming Management Agreement referred to in Item 1 above

Agreement	Parties
State Crown Security Deed	GamingCo The Authority for itself and on behalf of the State
Share Security Deed	GamingCo The Authority for itself and on behalf of the State

Item 3 – Documents to be executed immediately following execution of the Sublease as defined under the VIP Gaming Management Agreement referred to in Item 1 above

Agreement	Parties
Mortgage of Sublease	GamingCo Authority for itself and on behalf of the State The Honourable Troy Grant MP for and on behalf of the State of New South Wales

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Schedule 7– GamingCo policy principles for membership, review of membership and guests

Membership Policy Principles

Existing members of International or Australian VIP gaming facilities

- Subject to the applicable procedures set out below, these persons will be granted GamingCo Sydney VIP membership

International and Interstate Visitors (rebate play)

- Membership will be granted as part of the documentation associated with rebate play arrangements

International and Interstate Visitors (non rebate play)

- International and Interstate visitors may apply for membership utilising a GamingCo VIP membership application form which will require details to be provided no less than required for equivalent VIP membership for Melbourne Crown Casino
- The application form will require the applicant to acknowledge in writing that GamingCo only offers higher limit gaming, does not offer poker machines and is not open to the general public of NSW
- The applicant must also consent to GamingCo undertaking appropriate background security checks. Such security checks would be no less than the 2019 equivalent of the 2013 World Check database
- Visitors from overseas and interstate will not be subject to any "cooling off" period (see below for applicable "cooling off" period for NSW residents)
- Members will be issued with a membership card to be presented to allow access to the Restricted Gaming Facility. Membership cards must contain some provision to identify the holder of the card
- Self-excluded, excluded or banned persons will have membership application refused or their membership cancelled (whichever is applicable)
- GamingCo will maintain a database of members and those whose membership has been cancelled and those persons who have been self-excluded, excluded or banned.
- A dress standard will apply, appropriate for a VIP gaming facility
- Members must abide by the rules of the Restricted Gaming Facility
- GamingCo reserves the right to refuse entry to the Restricted Gaming Facility at any time for any reason

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NSW Residents

- NSW residents must apply for membership utilising a GamingCo VIP membership application form
- The application form will require the applicant to acknowledge in writing that GamingCo only offers higher limit gaming, does not offer poker machines and is not open to the general public of NSW
- The applicant must also consent to GamingCo undertaking appropriate background security checks
- NSW residents will not be granted membership within 24 hours of submitting their application form for membership (i.e. a 24 hour "cooling off" period)
- Where a NSW resident is a current member of an Australian or international VIP gaming facility and produces evidence to that effect, the 24 hour "cooling off" period does not apply
- NSW residents may be granted membership, following the "cooling off" period, provided the security checks have been satisfactorily completed and the applicant's name and details have been entered into the GamingCo database
- Members will be issued with a membership card to be presented to allow access to the Restricted Gaming Facility. Membership cards must contain some provision to identify the holder of the card
- Self-excluded, excluded or banned persons will have their membership application refused or their membership cancelled (whichever is applicable)
- GamingCo will maintain a database of members and those whose membership has been cancelled and those persons who have been self-excluded, excluded or banned.
- A dress standard will apply, appropriate for a VIP gaming facility
- Members must abide by the rules of the Restricted Gaming Facility
- GamingCo reserves the right to refuse entry to the Restricted Gaming Facility at any time for any reason

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Membership Renewal Policy Principles

VIP membership of GamingCo will be reviewed at least on an annual basis other than in the first 12 months of operation where it will be reviewed at least within the first six months of operation.

The following factors will be among those considered in order to determine whether a member is eligible to retain their membership for a further period prior to the next review:

- Frequency of visitation
- Average gaming spend per visit
- Average non-gaming spend per visit
- Annual gaming spend
- Annual non-gaming spend
- Place of residence
- Other relevant circumstances (e.g. ill health, overseas postings, etc)

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Guest Policy Principles

Guests of Members

- Members are only permitted to bring a maximum of three guests per visit
- Members' guests will be required to provide their personal details which will be recorded in the GamingCo database
- Members' guests must comply with the rules of the VIP Gaming Facility and dress and behave in a manner expected in a VIP gaming facility
- Management may allow Members to bring additional guests only on special occasions
- There will be a limit on the number of times within a 12 month period a person may be admitted as a guest of a Member before they are required to seek their own membership, except guests of a Member who are spouses. partners or equivalent accompanying persons of that Member.

Guests of Management

Guests of Management are:

- Persons staying at the GamingCo Hotel Resort for the duration of their stay, subject to satisfying security checks, such security checks not required for guests staying 2 nights or less
- Guests accompanied by a director of a company within the Crown Group
- In the case of international and interstate visitors only, Management may grant temporary access at its discretion

Guests of Management will be required to provide their personal details which will be recorded in the GamingCo database

Appendix 2 Redacted Claim of Privilege over the VIP Gaming Management Agreement

NSW GOVERNMENT | Premier & Cabinet

Reference: A1005038

Mr David Blunt
Clerk of the Parliaments
Legislative Council
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Blunt

Order for Papers – VIP Gaming Management Agreement – redacted submissions

I refer to the resolution of the Legislative Council under Standing Order 52 made on Thursday 18 September 2014 concerning the VIP Gaming Management Agreement and the subsequent resolution of the Legislative Council made on Wednesday 15 October 2014 concerning the Department's submission claiming privilege over the unredacted version of that Agreement.

Enclosed is a redacted version of the privilege claim submission and annexures.

The Department considers that the enclosed submission and annexures, as partially redacted, do not contain material that is itself subject to a claim of privilege and therefore the Department does not object to their public release.

In reaching this view, the Department consulted with both Crown Resorts Limited and the Independent Liquor and Gaming Authority who consented to the public release of the documents in the form enclosed.

The Department maintains the claim of privilege over the previously produced unredacted submission and annexures. Should you require any clarification or further assistance, please contact Mr Paul Miller General Counsel on telephone (02) 9228 4514.

Yours sincerely

Blair Comley
Secretary

21 October 2014

Received at 3.55 pm
Tuesday 21 October 2014

Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 ■ GPO Box 5341 Sydney NSW 2001
Tel: (02) 9228 5555 ■ www.dpc.nsw.gov.au

SUBMISSION IN SUPPORT OF CLAIM FOR PRIVILEGE BY THE DEPARTMENT OF PREMIER AND CABINET

STANDING ORDER 52

VIP GAMING MANAGEMENT AGREEMENT

Claim of privilege over redacted information

The Legislative Council has agreed by resolution to seek, in accordance with Standing Order 52, production of the "un-redacted final and signed version of the VIP Gaming and Management Agreement in respect of the Barangaroo Restricted Gaming Facility" and any "legal or other advice regarding the scope or validity of [the] order..."

The VIP Gaming Management Agreement ('the Agreement') was publicly released by the Independent Liquor and Gaming Authority ('the Authority'), in September 2014, with certain clauses redacted.

In relation to the 'the Agreement', a claim of privilege is made in relation to the clauses that have been redacted from public release. The clauses over which a claim of privilege is made ('the redacted clauses') are set out in the index of privileged documents for the Department of Premier and Cabinet.

In asserting privilege over the redacted clauses of the Agreement, the Department of Premier and Cabinet has considered the submissions of the Chief Executive of the Authority, Mr Micheil Brodie (Annexure A) and the General Counsel and Company Secretary of Crown Resorts Limited ('Crown'), Mr Michael Neilson (Annexure B). The submissions are summarised as follows:

1. The Authority asserts that the redacted clauses contain information that has been assessed to be not suitable for public release in accordance with its secrecy obligations under the *Gaming and Liquor Administration Act 2007* (the 'GLA Act') and that the redacted information should not be publicly disclosed.

2. Crown asserts that the redacted clauses contain, and its submission in relation to the privilege claim reveals, commercial in confidence information and submits that both the redacted clauses and its submission should be subject to a privilege claim and not publicly disclosed.

The reasons for the claim for privilege are as follows.

1. **Secrecy provisions of a Regulatory Authority**

Section 17 of the *Gaming and Liquor Administration Act 2007* (the 'GLA Act') prevents the disclosure of information obtained by a person in the conduct of functions under the GLA Act. Section 17 of the GLA Act also contains limited power for the Authority to release certain information if in the public interest (for which section 17(8) of the GLA Act provides guidance).

The Authority has conducted an assessment of the public interest considerations set out in section 17 of the GLA Act and concluded that the release of the redacted clauses: *"...would not promote the objects of the Act and be commercially damaging to the licensee or related entities if released. Therefore, the Authority formed the view that the public interest provisions in its disclosure did not outweigh that potential harm."*

The GLA Act explicitly recognises the public interest in Regulators being able to perform probity functions. The Authority has conducted a public interest assessment of the release of the information in accordance with the requirements of the GLA Act and concluded that the redacted clauses should not be made publicly available.

Attached is a letter from the Authority which sets out its submission in respect of its concerns.

2. **Claim for public interest immunity**

It is submitted that the redacted clauses from the Agreement are privileged and should not be made public on the grounds of public interest immunity because the public interest in their disclosure is outweighed by a competing public interest in their suppression.

In *Sankey v Whitlam* (1978) 142 CLR 1 at 38, Gibbs ACJ observed that "the general rule is that the court will not order production of a document, although relevant and otherwise admissible, if it would be injurious to the public to disclose it". The Department of Premier and Cabinet notes that Members of the Legislative Council will be privy to the information contained in the redacted clauses and that the public interest in broader public disclosure of the redacted information, in this case, is outweighed by the harm that will be caused by broader public release. The Department's reasons are as follows:

- The redacted clauses contain confidential information obtained by the Authority in the course of conducting probity investigations. Such information has been derived from, or would otherwise reveal, intelligence that has been gathered by the Authority and/or provided to the Authority by other regulators. The disclosure of such information

could prejudice the regime for the sharing of intelligence information amongst regulators. As the Chief Executive states: "*... if this information was to be divulged in the public domain it may also discourage other regulatory bodies from providing information to the Authority on a confidential basis and they may be reluctant to deal with the Authority in the future. Regrettably if this was to occur it would negatively impact the Authority's ability to effectively conduct probity investigations into future casino and gaming-related matters.*"

- The release of information obtained confidentially by a NSW regulatory agency may prejudice third parties from cooperating fully and frankly with such regulators in the future. "*..if ILGA was to make public details of commercial agreements between private enterprise and the Authority it will potentially impact its ability to effectively conduct future probity investigations. Once again, the Authority is bound by section 17 of the Act and does not comment on specific elements of these investigations including who is interviewed and what other inquiries are made.*"

- The release of information referring to particular named third parties could inappropriately and unfairly lead to an adverse public imputation being drawn about those third parties. For example, that a person has been named in the Agreement may lead to some suggestion that the Authority must have formed a definitive view about the propriety of that person, when in fact it may not have been necessary for ILGA to form such a view and no such view may have been formed.

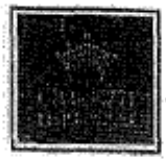
- The redacted clauses contain information which was provided to the Government on a confidential basis to facilitate the finalisation of a commercial and licencing agreement, as approved by the NSW Government, with the Authority. The public release of such information, which was provided upon request and with an expectation of confidence undermines public confidence in the capacity of the Government and independent regulators to maintain confidentiality which may:
  i. prejudice current or future contractual or other relationships between Government and the private sector;
  ii. discourage future dealings with Government; and
  iii. prejudice the free flow of commercial information to Government;

  which will be detrimental to the ordinary business of Government, including in engaging in contractual relationships with commercial parties.

- The public disclosure of information that is commercially sensitive to a third party (i.e. Crown) and that is held by the Department of Premier and Cabinet may cause the third party to suffer significant commercial detriment in that its competitors and commercial partners may use the information to gain an unfair commercial advantage and/or an advantaged bargaining position. In particular, Crown assert that, by disclosing the redacted clauses: "*Crown Resorts' competitors would be become aware of the significant commercial restrictions imposed on Crown Resorts and would be able to misuse this information to their advantage.*"

Annexed to this submission are letters from the Authority (Annexure A) and Crown (Annexure B) which set out further submission in respect of their respective concerns about the public disclosure of the redacted clauses.

The Department of Premier and Cabinet submits that for these reasons that the information in the redacted clauses is privileged on the grounds of public interest immunity and should not be disclosed to the public. Additionally, the Department of Premier and Cabinet submits that the information set out in this claim of privilege and the two letters is, itself, privileged because it reveals information that may be detrimental to the commercial interests of a third party who provided information to the Government with the expectation of confidence.



2 October 2014

Mr Simon Smith
Acting Secretary
Department of Premier and Cabinet
Level 39, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Sir,

Standing Order 52 requesting the production of un-redacted VIP Gaming Management Agreement

Reference is made to the motion by Dr John Kaye under Standing Order 52 that an un-redacted final and signed version of the VIP Gaming Management Agreement in respect of the Barangaroo Restricted Gaming Facility dated 8 July 2014 (the **VIP Gaming Management Agreement**) be produced to the Legislative Council.

We have set out a copy of the redacted version of the VIP Gaming Management Agreement at **Annexure A** to this letter for convenience.

Crown Resorts Limited (**Crown Resorts**) requests that the Department of Premier and Cabinet makes a claim for privilege over the un-redacted version of the VIP Gaming Management Agreement on the grounds of public interest immunity because the document contains commercially sensitive information and is commercial in confidence.

We further note that the detailed reasons for the claim for privilege are also commercial in confidence. As such, we have set out our reasons for the claim for privilege at **Annexure B** to this letter. Crown Resorts requests that the Department of Premier and Cabinet also makes a claim for privilege over the contents of Annexure B.

Yours faithfully

Michael Neilson
General Counsel and Company Secretary
Crown Resorts Limited

Cc Minister for Hospitality, Gaming & Racing
Office of Liquor, Gaming & Racing
General Counsel, Department of Premier and Cabinet

Crown Resorts Limited
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Annexure B

Crown Resorts' reasons for the claim for privilege

Commercial in Confidence

The contents of this Annexure B are commercial in confidence.

We refer to the motion by Dr John Kaye under Standing Order 52 that there is to be produced to the Legislative Council an un-redacted final and signed version of the VIP Gaming Management Agreement in respect of the Barangaroo Restricted Gaming Facility dated 8 July 2014 (the **'Un-redacted VIP Gaming Management Agreement'**).

Crown Resorts objects to the Order and the production of such document and requests that the Department of Premier and Cabinet makes a claim for privilege on the grounds of public interest immunity because the document contains commercially sensitive information and is commercial in confidence.

Crown Resorts will suffer significant commercial detriment in the event that the redacted provisions are publicly disclosed. Crown Resorts agreed in good faith to provide the covenants and warranties contained in the redacted provisions on the basis that these provisions would be kept confidential. If such redacted provisions were to be now made publicly available, there is a genuine risk that Crown Resorts' competitors would be able to misuse such information in order to gain an unfair commercial advantage.

The redacted provisions contain restrictions that were requested by the Independent Liquor and Gaming Authority (**"ILGA"**) and agreed to by Crown Resorts (on the basis that such provisions remain confidential) in relation to its ability to:

[redacted]

By disclosing these provisions publicly, Crown Resorts' competitors would become aware of the significant commercial restrictions imposed on Crown Resorts and would be able to misuse this information to their advantage.

Further Crown Resorts believes that disclosures of these matters will likely cause Crown Resorts material commercial prejudice.

[redacted]

For these reasons we ask that the Department of Premier and Cabinet makes a claim for privilege on the grounds of public interest immunity because the Un-redacted VIP Gaming Management Agreement contains commercially sensitive information and is commercial in confidence

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Independent Liquor & Gaming Authority
NSW GOVERNMENT

Your Ref: 2014-973980

Mr Simon Smith
Acting Secretary
Department of Premier and Cabinet
Level 37, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Mr Smith

Order for Papers – VIP Gaming Management Agreement

I refer to the resolution of the Legislative Council under Standing Order 52 made on Thursday, 18 September 2014, concerning the un-redacted final and signed version of the *VIP Gaming Management Agreement* in respect of the Barangaroo Restricted Gaming Facility. It is noted that the Authority appreciates the opportunity to provide comment in relation to claims for privilege for the document, in accordance with item 5(a) of Standing Order 52.

It is my view that public disclosure of this document would adversely impact the ability of the Authority to meet its obligations under section 17 of the *Gaming and Liquor Administration Act 2007* (**Act**) which prevents the disclosure of information obtained by a person in the conduct of functions under the gaming and liquor Act.

By way of background, section 17 of the Act provides limited power for the Authority to produce a certificate to release certain information if in the public interest. In addition, section 8 of the Act includes a relevant set of matters for consideration in making a public interest determination which includes information concerning the business, commercial, professional or financial affairs of an applicant for a casino licence.

When the Authority was determining which information would be redacted in the VIP Gaming Management Agreement it received submissions from Crown Resorts Limited in relation to the commercially sensitive nature of the information. After considering those submissions it was the view of the Authority that the redacted information in the document would, in the view of the Authority, not promote the objects of the Act and be commercially damaging to the licensee or related entities if released. Therefore, the Authority formed the view that the public interest provisions in its disclosure did not outweigh that potential harm.

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Notably, the Authority satisfied itself that the material it did release in the VIP Gaming Management Agreement would not do commercial harm to the licensee and that the publication of the material was in the public interest.
Moreover, if the Authority was to make public the details of commercial agreements between private enterprise and the Authority it will potentially impact its ability to effectively conduct future probity investigations. Once again, the Authority is bound by section 17 of the Act and does not comment on specific elements of these investigations including who is interviewed and what other inquiries are made.

Furthermore, if this information was to be divulged in the public domain it may also discourage other regulatory bodies from providing information to the Authority on a confidential basis and they may be reluctant to deal with the Authority in the future. Regrettably if this was to occur it would negatively impact the Authority's ability to effectively conduct probity investigations into future casino and gaming-related matters.

Nonetheless, the Authority has no objection to the document being provided to parliament, however an appropriate claim for privilege in respect of the document is warranted as full disclosure of the document would impinge on the Authority's ability to conduct future investigations for the reasons that I have outlined above.

Yours sincerely

Micheil Brodie
Chief Executive

29 September 2014

Appendix 3 Report of Independent Legal Arbiter – Disputed Claim of Privilege – VIP Gaming Management Agreement

REPORT UNDER STANDING ORDER 52 ON DISPUTED CLAIM OF PRIVILEGE

Crown Casino VIP Gaming Management Agreement

The Hon Keith Mason AC QC

21 October 2014 (3)

On 14 October 2014 I was appointed independent legal arbiter to report as to a privilege dispute touching portion of the VIP Gaming Management Agreement ("the Agreement"). My Report on the WestConnex Business Case dated 8 August 2014 explains the general principles touching a claim of privilege in this context and the role of the independent legal arbiter. No party affected by the present matter has disputed those principles.

I have examined and evaluated the Agreement in light of the submissions identified below.

Background to the claim of privilege

Various entities in the "Crown" group are constructing and establishing the Crown Sydney Hotel Resort at Barangaroo. A network of contracts has been entered into, some of them being with the Independent Liquor and Gaming Authority ("the Authority").

The Agreement was executed on 8 July 2014 between the Authority on the one part and four "Crown" corporations, namely Crown Resorts Ltd ("Crown Resorts"), Crown Sydney Property Pty Ltd ("PropCo"), Crown Sydney Gaming Pty Ltd ("GamingCo") and Crown Sydney Holdings Pty Ltd ("HoldCo"). It is a lengthy document addressing the operating conditions under which Crown entities may operate a restricted gaming facility at Barangaroo. Legislation specifically enacted for this facility (the *Casino Control Amendment (Barangoo Restricted Gaming Facility) Act 2013*) stipulates that only one restricted gaming licence may be issued by the Authority.

Most of the Agreement was published by uploading to the Authority's website in September 2014. Portions were, however, redacted and the current dispute relates to ***some*** of the redacted provisions.

The purport of the Agreement may be gleaned from its **Introduction:**

> *"A On 17 December 2013 GamingCo applied to the Authority seeking the Authority's approval to be issued a Restricted Gaming Licence.*
>
> *B The Authority has conducted investigations in order to determine under section 13A of the Gaming Legislation, if GamingCo and each Close Associate of GamingCo is a suitable person to be concerned in or associated with the management and operation of the Restricted Gaming Facility.*
>
> *C On the date of this Agreement, the Authority has determined to grant GamingCo the Restricted Gaming Licence subject to the execution of the Section 142 Agreements.*

1

D The purpose of this Agreement is to regulate certain matters relating to the operation of the Restricted Gaming Facility and relevant rights and obligations of, respectively, the Authority (for itself and on behalf of the State) and GamingCo.

E Pursuant to section 142 of the Gaming Legislation, the Minister for Gaming has approved of both the Authority entering into this Agreement, and the terms of this Agreement."

The claim of privilege

On 18 September 2014 the Legislative Council made an Order for Papers calling for the (unredacted) Agreement to be tabelled. It was delivered to the Clerk of the Parliaments on 2 October together with an Index identifying a claim of privilege over the redacted provisions. On 14 October the Clerk formally notified members, reminding them that the documents were available for inspection by members of the Council only (see *S O* 52 (5)).

The Index claimed privilege in relation to clauses 5.3, 8, 12, 16.1(a), Schedules 1 and 2 and the related references to these clauses in the Contents table and Defined Terms (in clause 1.1). The basis of privilege was summarised as "commercially sensitive and confidential information" with the grounds developed in a submission from the Department of Premier and Cabinet ("DPC") and accompanying letters from the Chief Executive of the Authority dated 29 September 2014 and the General Counsel and Company Secretary of Crown Resorts Ltd dated 2 October 2014. Privilege was also asserted over the information set out in the claim of privilege and the two letters.

On 13 October 2014 Dr John Kaye MLC wrote to the Clerk disputing (in part) the claim of privilege and (in part) the claim that the submissions were themselves privileged. The letter helpfully identified 15 sections of the Agreement (designated as items A to P) indicating that, at this stage, Dr Kaye only seeks "the lifting of privilege" on items A, B, C, D, E, F, J, M and N. As regards item H, Dr Kaye does not press for the lifting of privilege over the particular date it contains although he disputes the claim otherwise. I confine this report to the presently live issues.

On 15 October 2014 the Council directed DPC to produce a redacted version of the submission in which only the particular information that is subject to the claim of privilege is redacted. The redacted version of the claim will be tabled and made public and the unredacted version will be treated in accordance with the procedure set out in *S O* 52 for dealing with documents over which a claim of privilege has been made.

Claim evaluated

The claim as formulated is roughly in three parts, although there is a degree of overlap.

In addressing them, I repeat that my attention is confined to the particular redactions to which Dr Kaye presently objects. One consequence of this is that I have not had the benefit of submissions focussing on the presently disputed provisions. It is clear that some of the submissions relate to portions of the Agreement that Dr Kaye presently accepts to be privileged.

(i) Commercial sensitivity

Crown Resorts argues that the redacted parts contain commercially sensitive information that is "commercial-in-confidence" which attracts public interest immunity in the particular context. It submits that Crown Resorts will suffer commercial detriment in the event that the redacted provisions are publicly disclosed. If the covenants and warranties were to be made publicly available, there is said to be a genuine risk that Crown Resorts' competitors would be able to misuse such information in order to gain an unfair commercial advantage. Some details are supplied, but I do not repeat them here, lest unintended harm flow from my report itself.

It would appear that DPC adopts these arguments, at least in part.

I have taken the details into consideration. So too has Dr Kaye, because some at least of the privilege issues not currently pressed respond to Crown Resorts' contentions.

In my evaluation, the matters raised by Crown Resorts under this rubric do not attract privilege.

I incorporate the general discussion about "commercial-in-confidence" in the WestConnex Report (esp pp 10-11). I have not overlooked the possibility that the House might be able to perform its scrutiny role while precluding disclosure beyond disclosure to members. But it should not be forced to do so unless privilege is established. By itself, "commercial-in-confidence" does not establish a relevant privilege.

Crown Resorts states that it agreed in good faith to provide the covenants and warranties in the redacted provisions on the basis that they would be kept confidential. I note, however, that while the Agreement contemplates that information concerning its terms is "Confidential Information" (cl 1.1), the parties reserved liberty to disclose such information "if required by law" (cl 24 (b) (2)).

Crown Resorts has disclosed that the restrictions in the redacted provisions were requested by the Authority. These, along with all other terms, were approved by the Minister under express statutory authority (*Casino Control Act 1992*, s 142). They form part of a contract negotiated and executed by the Authority, doubtless the product of the statutory oversight role of the Authority. These factors (and the terms themselves) demonstrate that the whole Agreement furthers statutory functions designed to protect the interests of the public of New South Wales. This does not in itself exclude public interest immunity attaching to part of the agreement, but it is not a propitious start for an argument favouring secrecy over disclosure.

The Authority's submissions could not possibly relate to the entirety of the redacted material. Indeed, they would appear mainly to address portions of the redacted material which Dr Kaye has recently indicated he presently accepts as privileged.

Unlike the situation addressed in the WestConnex Report, the confidentiality advanced in this portion of the privilege claim is said to further the commercial interests of a private entity embarking on a commercial venture for profit, and not that of the government itself. The redacted portions go beyond matters of detail, such as a private phone numbers, and they are all capable of attracting legitimate public scrutiny because they are clearly part of a total package of regulatory oversight.

In my evaluation, the claim based on commercial-in-confidence does not attract privilege.

(ii) Privilege said to derive from the secrecy provisions of the Gaming and Liquor Administration Act 2007

DPC and the Authority also rely on section 17 of the *Gaming and Liquor Administration Act* 2007 ("the GLA Act"). The Act constitutes the Authority and arms it with broad investigatory and enforcement powers touching the probity of officials, licensees and "close associates" of licensees. Relevantly, s 17 provides:

Secrecy

(1) A person who acquires information in the exercise of functions under the gaming and liquor legislation must not, directly or indirectly:

(a) ...

(b) divulge the information to another person,

except in the exercise of functions under the gaming and liquor legislation.

(2) Despite subsection (1), information may be divulged:

(a)...

(d) to the Minister....

(4) A person cannot be required:

(a) to produce in any court any document....

(5) Despite subsection (4), a person may be required to produce a document...in a court...if

(a) the Authority certifies it is necessary in the public interest to do so...

(7) This section does not apply to [disclosures to the Crime Commission, ICAC, police etc]...

(8) This section does not prevent a person being given access to a document in accordance with the Government Information (Public Access) Act 2009, unless the document:

(a)...

(b) is a document the disclosure of which would disclose...

(i) information concerning the business, commercial, professional or financial affairs of an applicant for a casino licence....

(9) In this section:

***court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions. "*

4

Crown Resorts apparently invited the Authority to invoke section 17 in the present context, providing it with submissions why the public interest does not favour disclosure of the redacted provisions beyond disclosure to members. This led the Authority to conclude that the release of the redacted clauses "*would not promote the objects of the Act and be commercially damaging to the licensee and related entities if released. Therefore, the Authority formed the view that the public interest provisions* [sic] *in its disclosure did not outweigh that potential harm.*"

The Authority elaborated on this position in its letter of 29 September 2014. I shall not repeat it in full although I observe that at one point it implies that the redacted clauses contain, among other things, "details of commercial agreements between private enterprise and the Authority" (an unintended misdescription, I would infer). Furthermore, when it is recalled that the matter at issue is the privileged status of the Agreement itself, the Authority's concerns about revealing aspects of its *preliminary* investigation are not easy to understand.

In any event, Crown Resorts', the Authority's and DPC's reliance on section 17 is misplaced, in my opinion.

The Agreement has already been produced to the Council and the matter at issue is its "privileged" status according to the principles discussed in the WestConnex Report. In light of the Council's constitutional role, which includes the oversight of the Minister who is expressly mentioned in section 17 (2) (d), I cannot conceive that the Council is disadvantaged in comparison to the bodies mentioned in section 17 (7) [ICAC, police etc]. Nor is Parliament a "court" within the scope of section 17 (4). And Parliament has certainly not delegated to the Authority the function of certifying conclusively as to the public interest in the present context.

In my opinion, statutory non-disclosure provisions will only affect the powers of the Council if they do so by express reference or necessary implication. This view has the support of Opinions from Mr Bret Walker SC and Mr Sexton SC SG: see p 7 of the Opinion of the Solicitor-General and Ms Mitchelmore dated 9 April 2014 that was tabled in the Council earlier this year.

As I pointed out in the WestConnex Report, the *Government Information (Public Access) Act 2009* (which is mentioned in section 17 (8)) deals with freedom of information applications made by members of the public against the Executive, not the responsibility of the Government to Parliament.

Accordingly, this asserted basis of privilege should be rejected in my evaluation.

(iii) ***Public interest immunity related to information sharing***

The Authority and DPC further submit that putting the redacted material into the public domain may discourage other regulators from providing information to the Authority on a confidential basis. If this were to occur it would negatively impact on the Authority's ability effectively to conduct probity investigations into future casino and gaming-related matters.

I recognise that such considerations may be capable of generating a public immunity basis of privilege even where the issue is addressed in the context of parliamentary oversight of the

Executive (see the WestConnex Report, esp pp 5-9). Here, the particular context is described by Dr Kaye as "public interest in transparency of the anti-corruption measures that are proposed, particularly in Schedule 1" of the Agreement. Dr Kaye contends that "a meaningful parliamentary debate on the adequacy of the anti-corruption and organised crime penetration measures proposed in Schedule 1 would be impossible as long as the material was the subject of privilege, as would be engagement with independent experts and members of the public". According to Dr Kaye, there has already been public debate focussed on Crown's international engagements.

The Authority's arguments about the public interest favouring disclosure restricted to members are developed in greater detail in the DPC submission which I have carefully examined in its unredacted form. They include concerns about the sharing of information in the future by regulators and third parties. DPC also voices concern about "the capacity of the Government and independent regulators to maintain confidentiality which may prejudice current or future contractual or other relationships between Government and the private sector; discourage future dealings with Government: and prejudice the free flow of commercial information to Government".

I confess to difficulty in accepting these propositions at the generality they are put. We are dealing with the contractual outcome of a probity assessment by the Authority which is dealing with the applicant for a licence that legislation prevents being offered to more than one applicant. Parliament has stipulated that the terms of the contract should be approved by the Minister. Given the role of the Minister and of the Authority, the probity focus of the whole exercise, and the content of the presently disputed material, I do not accept that the balance of public interest favours non-disclosure. I note in particular that Dr Kaye is not presently disputing privilege as regards the contents of Schedule 2.

As regards the contents of Schedule 1, its purpose is evident. So too it the complexity of the regulatory framework it embarks upon. Confining access to members alone and restricting references in debate would be most burdensome. I am not persuaded that the balance of public interest favours non-disclosure. The first disputed definition in clause 1.1 ("Defined Terms") needs to be treated in the same way because it defines a term used in Schedule 1.

The historical source of each and every item of the information embodied in the presently disputed redacted material is not revealed in the materials placed before me. This is not intended as a criticism. What strikes me as important is that the Authority and the Minister decided (for obviously good governmental reasons) to frame the Agreement as it is; and the Crown companies (for obviously good business reasons) decided to accept the Agreement on those terms. The Council has called for the whole Agreement to be tabled and it has been tabled. It is apparent that some members of the House wish to have freer access to the disputed provisions than would apply if they were kept confidential on the basis of privilege under the Standing Order.

The parties to the Agreement and any other regulators (from home or abroad) who may have supplied information taken into account in the framing of the Agreement should be taken to know that a statutory agreement of this type would attract parliamentary oversight and that the interests of good government in New South Wales would be the primary focus of attention. I am not saying that a claim of public interest immunity would necessarily fail in these circumstances. But a compelling case of prospective harm would need to be demonstrated before it succeeded.

As presently framed, the claim of privilege would prevent the disclosure of the very existence of the subject matter of Schedule 1 as indicated in the side heading to clause 5.3 (presently redacted). Likewise the very subject matter of the other disputed clauses given that the claim of privilege extends to the Contents table references to these clauses. In any public interest calculus one needs to address and weigh the reasons said to indicate a risk of harm to the public interest, before addressing and weighing the factors supporting openness. I fail to detect any legitimate basis for suppressing the existence and broad subject-matter of these clauses and of the two Schedules. Nor do I understand how it could be in the interest of good government in New South Wales for there to be suppression of the fact that these matters have been addressed in the Agreement at the behest of the Authority and with the approval of the Minister.

If one assumes (as I certainly do) that the Crown entities will abide by all of their commitments under the Agreement, I also have difficulty understanding the arguments based upon competitive disadvantage. I bear in mind that Dr Kaye does not presently seek to challenge the privilege asserted with regard to the content of clauses 8 and 12. Crown has the protection of its statutory monopoly as the operator of Sydney's sole restricted gaming facility.

One difficulty I have experienced is that the Authority's and DPC's submissions addressed the redacted clauses *en globo*. I am not being critical, because DPC and the Authority were not to know that Dr Kaye would, after examining their submissions, modify his stance by accepting (at least for the time being) that some of the redacted material may continue to be accepted as privileged. In particular, Dr Kaye does not presently dispute the claim of privilege touching:

- the particular date in the third definition at issue in clause 1.1
- clause 8 in its entirety and the accompanying definition in clause 1.1
- clause 12 in its entirety
- the contents of Schedule 2.

Conclusion

In my evaluation, a valid claim of privilege is not established with respect to the matters presently contested by Dr Kaye. On this basis, the following portions of the Agreement should not be redacted:

- the Contents table in its entirety
- the first of the disputed definitions in clause 1.1 (being the term defined for the purpose of Schedule 1)
- the third of the disputed definitions, save for the date it contains
- clause 5.3
- clause 16.1 (b)
- Schedule 1.

I record my gratitude to those who have assisted me by their submissions, also the Clerk and Mrs Kate Cadell.

Appendix 4 Minutes

Minutes No. 40
Thursday 23 October 2014
Members' Lounge, Parliament House, Sydney, at 4.41 pm

1. Members present
Mr Khan, *Chair*
Mr Clarke
Miss Gardiner
Dr Kaye
Mr Primrose
Revd Mr Nile

In attendance: Steven Reynolds, Stephen Frappell, Rebecca Main, Velia Mignacca.

2. Apologies
Ms Fazio, Deputy Chair
Mrs Maclaren-Jones

3. Correspondence
****

4. Inquiry into the Crown Casino VIP Gaming Management Agreement
The Chair tabled the terms of reference of the inquiry, as referred to the Committee by the House earlier this day.

The Chair tabled:

- The public redacted version of the VIP Gaming Management Agreement
- The public redacted version of the Government claim of privilege over the VIP Gaming Management Agreement
- The report of the Independent Legal Arbiter, the Hon Keith Mason AC QC, dated 21 October 2014.

The committee deliberated.

Resolved, on the motion of Miss Gardiner: That the Committee secretariat prepare a briefing paper on the issues raised by this inquiry and in particular claims of commercial confidentiality and evaluation of the public interest.

Resolved, on the motion of Revd Mr Nile:

1. That the Committee Chair write to the Department of Premier and Cabinet, Crown and Dr Kaye inviting them to provide a submission by Thursday, 30 October 2014 on the question as to whether the following specific portions of the VIP Gaming Management Agreement should remain confidential:

(a) the Contents table in its entirety,
(b) the first of the disputed definitions in clause 1.1, being the term defined for the purposes of Schedule 1,
(c) the third of the disputed definitions, save for the date it contains,
(d) clause 5.3,
(e) clause 16.1(b), and
(f) Schedule 1.

2. That in writing to the Department of Premier and Cabinet, Crown and Dr Kaye, the Chair request that any parties making submissions provided a copy of their submission which can be made public by the Committee, if necessary with content redacted.

5. Next meeting
Friday 31 October 2014 at 9.00 am.

6. Adjournment
The Committee adjourned at 5.02 pm until Friday 31 October 2014 at 9.00 am.

Stephen Frappell
Clerk to the Committee

Minutes No. 41
Friday 31 October 2014
Rm 1153, Parliament House, Sydney, at 9.18 am

1. Members present
Mr Khan, *Chair*
Miss Gardiner
Dr Kaye
Mrs Maclaren-Jones
Revd Mr Nile
Mr Primrose

In attendance: Steven Reynolds, Stephen Frappell, Velia Mignacca, Sam Griffith.

2. Apologies
Ms Fazio, Deputy Chair
Mr Clarke

3. Confirmation of minutes of previous meetings
Resolved, on the motion of Revd Mr Nile: That minutes nos 39 and 40 be confirmed.

4. **Correspondence**
The committee noted the following item of correspondence:

Sent:

- Letter dated 24 October 2014 from the Chair to Mr Blair Comley, Secretary, Department of Premier and Cabinet, inviting the Department to make a submission in relation to its inquiry into the VIP Gaming Management Agreement.
- Letter dated 24 October 2014 from the Chair to Dr John Kaye inviting him to make a submission in relation to its inquiry into the VIP Gaming Management Agreement.

Received:

- Letter dated 30 October 2014 from Mr Blair Comley, Secretary, Department of Premier and Cabinet, declining the invitation to make a submission in relation to the inquiry into the VIP Gaming Management Agreement.

5. Inquiry into the Crown Casino VIP Gaming Management Agreement

The Chair noted that a discussion paper, prepared by the secretariat, had been distributed to members.

The Chair noted the receipt of confidential submission nos 1 – 3, together with a redacted version of submission 3.

The committee deliberated.

Resolved, on the motion of Mrs Maclaren Jones: That submissions nos 1 – 3, and the redacted version of submission 3, be kept confidential, at the request of the submission authors.

Resolved, on the motion of Miss Gardiner: That the committee secretariat prepare a draft report for the committee.

6. Adjournment

The committee adjourned at 10.15 am, sine die.

Stephen Frappell
Clerk to the Committee

Minutes No. 42
Wednesday 5 November 2014
Members' Lounge, Parliament House, Sydney, at 7.17 pm.

1. Members present

Mr Khan, *Chair*
Ms Fazio, *Deputy Chair*
Mr Clarke
Miss Gardiner
Dr Kaye (for items 1 to 5)
Mrs Maclaren-Jones
Mr Primrose

In attendance: Steven Reynolds, Stephen Frappell, Rebecca Main.

2. Apologies
Revd Mr Nile

3. Confirmation of minutes of previous meetings
Resolved, on the motion of Mr Primrose: That minutes no. 41 be confirmed.

4. Inquiry into the Crown Casino VIP Gaming Management Agreement
The chair tabled his draft report entitled 'The Crown Casino VIP Gaming Management Agreement'.

5. Next meeting
Resolved, on the motion of Dr Kaye: That the committee meet again at noon on Tuesday, 11 November 2014.

6. Correspondence
****

7. ***

8. ***

9. Adjournment
The committee adjourned at 7.38 pm until noon on Tuesday, 11 November 2014.

Stephen Frappell
Clerk to the Committee

Minutes No. 43

Tuesday 11 November 2014
Rm 1136, Parliament House, Sydney, at 12.05 pm.

1. Members present
Mr Khan, *Chair*
Ms Fazio, *Deputy Chair*
Mr Clarke
Miss Gardiner
Dr Kaye (for items 1 to 3)
Mrs Maclaren-Jones
Revd Mr Nile
Mr Primrose

In attendance: Steven Reynolds, Stephen Frappell, Velia Mignacca.

2. Inquiry into the Crown Casino VIP Gaming Management Agreement

The Chair's draft report entitled 'The Crown Casino VIP Gaming Management Agreement', having been previously circulated, was taken as being read.

Chapter 1 read.

Debate ensued.

Resolved, on the motion of Dr Kaye: That paragraph 1.2 be amended by inserting 'and all references to its contents as well as some other matters' after 'Schedule 1'.

Resolved, on the motion of Mrs Maclaren-Jones: That Chapter 1, as amended, be adopted.

Chapter 2 read.

Debate ensued.

Resolved, on the motion of Revd Mr Nile: That the following recommendation be inserted after Finding 1:

Recommendation

That the House adopt the findings of the Independent Legal Arbiter and order that a copy of the Crown Casino VIP Gaming Management Agreement be laid upon the table by the Clerk with only the following portions of the Agreement redacted and available to members of the Legislative Council only:

- the particular date in the third definition at issue in clause 1.1
- clause 8 in its entirety and the accompanying definition in clause 1.1
- clause 12 in its entirety
- the contents of schedule 2.

That, before being laid on the table by the Clerk, the copy of the Agreement be released to the Department of Premier and Cabinet for redaction of the information identified above and returned to the Clerk within 24 hours for tabling in the House.

The committee deliberated.

Resolved, on the motion of Ms Fazio: That Chapter 2, as amended, be adopted.

Resolved, on the motion of Ms Fazio:

1. That the draft report, as amended, be the report of the committee and that the committee present the report to the House;
2. That the submissions, minutes of proceedings and correspondence relating to the inquiry be tabled in the House with the report; and
3. That upon tabling, all correspondence and minutes of proceedings be made public, but that all submissions to the inquiry remain confidential, in accordance with the resolution of the committee.

Dr Kaye left the meeting.

3. Confirmation of minutes of previous meetings

Resolved, on the motion of Ms Fazio: That minutes no. 42 be confirmed.

4. Correspondence

***

5. ***

6. Adjournment

The committee adjourned at 12.40 pm, *sine die*.

Stephen Frappell
Clerk to the Committee