

Decision and reasons for decision

Application made by Malvern Gateway Pty Ltd for:

- Variation of approval of premises pursuant to section 3.3.11
- Modification of gaming machine area pursuant to section 3.3.16

In relation to the premises known as the Angel Tavern, located at 641 Dandenong Road, Malvern 3144

Commission	Chris O'Neill APM, Commissioner Claire Miller, Commissioner
Date of decision	25 October 2024
Date of reasons	25 October 2024
Decision	The variation application is approved pursuant to section 3.3.11 The modification application is approved pursuant to section 3.3.16 Pursuant to section 3.4.17(4)(b) and section 3.4.20, the Commission exercises its discretion to impose amendments to the venue operator's licence in accordance with the conditions at Appendix A
Signed	
	Chris O'Neill APM, Commissioner
	Type chair

1. Background

- 1.1 The Angel Tavern, a two-storey hotel located at 641 Dandenong Road, Malvern 3144, is approved as a premises suitable for gaming under Chapter 3, Part 3 of the *Gambling Regulation Act 2003* (**the Act**).
- 1.2 The premises has been operating since 1856, with gaming on 22 electronic gaming machines (**EGMs**) commencing in September 1994 pursuant to the then 25% rule. The 25% rule meant that a venue did not require a permit for the installation of EGMs, where the gaming machine area was less than 25% of the venue's overall floor space.
- 1.3 In April 1995, approval was obtained by the former venue operator to allow for modifications to the premises and the installation and use of 45 EGMs.
- 1.4 There is no written decision for the grant of the initial premises approval with 25 EGMs, nor for the increase to 45 EGMs. This was not uncommon for the grant of approvals at that time.
- 1.5 The current venue operator, Malvern Gateway Pty Ltd (**Malvern Gateway**) (**the applicant**), took possession of the Angel Tavern and the 45 EGM entitlements in October 2018, after obtaining approval from the then Victorian Commission for Gambling and Liquor Regulation (**VCGLR**).
- 1.6 The land at 641-659 Dandenong Road (which includes the premises) is being redeveloped in accordance with planning permit 0643/18, issued by the City of Stonnington on 24 June 2019.
- 1.7 This permit allows for the development of two multi-storey buildings on 645 and 659 Dandenong Road, Malvern 3144 (**adjacent site**), as well as the continued use of a refurbished hotel with gaming.
- 1.8 Malvern Gateway is a separate entity to the freehold owner of the Angel Tavern site who also owns the adjacent site. The premises and the adjacent site is being redeveloped by Kokoda Property. The Managing Director of Kokoda Property is also the nominee of Malvern Gateway.
- 1.9 On 26 September 2019, Malvern Gateway submitted a modification of gaming machine area application pursuant to section 3.3.16 to the then VCGLR, to allow for the temporary relocation of the 45 EGMs so that demolition works could be conducted at the rear of the premises.
 - 1.9.1 This application was approved by the VCGLR on 1 November 2019.
 - 1.9.2 This modification was described as *stage 1* of the redevelopment.
- 1.10 As a result of the significant construction occurring on the adjacent sites, for reasons of occupational health and safety, the premises was deemed unsuitable for trading by Malvern Gateway in or around April 2023.
- 1.11 On 20 April 2023, the Victorian Gambling Casino and Control Commission (**the VGCCC** or **the Commission**) approved a modification of gaming machine area application pursuant to section 3.3.16 to allow for the decommissioning and removal of 45 EGMs from the existing gaming machine area.

2. Applications before the Commission for determination

- 2.1 The applicant seeks to complete the final stage of the redevelopment. This involves demolition of the existing premises, save for the heritage protected façade of the Angel Tavern, and reconstruction of the Angel Tavern, to achieve the following:
 - 2.1.1 New footings and structures for the Angel Tavern for the purpose of supporting the construction of 22 residential apartments within six levels above the Angel Tavern;
 - 2.1.2 Variation to the existing Angel Taven site so that the land that the former car park occupied can be joined to the adjacent site upon which two multi-storey buildings are being constructed;
 - 2.1.3 Removal of the drive through bottle shop, retail bottle shop, and cool room and storage areas associated with same;
 - 2.1.4 Improved hospitality offerings and facilities including a dining area, a public bar and a beer garden on the ground level;
 - 2.1.5 Conversion of the previously disused accommodation and office areas on level 1, to hospitality function spaces;
 - 2.1.6 Removal of smoking areas;

- 2.1.7 Modification of and improvement to the gaming machine area, which will result in reinstatement of the original green line plan, albeit with a reduced net floor area (from 217 square metres to 139 square metres), and in a slightly different location in the premises;
- 2.1.8 Reduction in size of premises (including gaming machine area) from 1085 square metres to 754 square metres).
- 2.2 On 25 March 2024, BSP Lawyers on behalf of the applicant, submitted a modification of gaming machine area application pursuant to section 3.3.16 (**modification application**).
- 2.3 On 27 March 2024, BSP Lawyers on behalf of the applicant, submitted a variation of approval of premises application pursuant to section 3.3.11 (**variation application**).

3. Legislation and the Commission's task

Variation application

- 3.1. The Commission's power to determine the variation application is contained within section 3.3.11 of the Act, which relevantly provides:

3.3.11 Variation of approval

- (1) *The holder of an approval of premises must give the Commission written particulars of any change in the size or layout of the premises, without delay after that change occurs.*
 - (1A) *Subsection (1) applies whether or not the approval is suspended.*
 - (2) *If the Commission is satisfied that the change in the size or layout of the premises will not result in the number of gaming machines for the premises being increased, the Commission may, on the application of the holder of the approval, vary the approval to incorporate those changes.*
- 3.2. Section 3.3.11(2) therefore confers a power that must be exercised upon satisfaction that the change in the size or layout of the premises will not result in the number of gaming machines for the premises being increased.

Modification application

- 3.3. The Commission's power to determine the modification application is contained within section 3.3.16, which relevantly provides:

3.3.16 Modification of gaming machine areas

- (1) *A venue operator must not modify a gaming machine area in an approved venue without the approval of the Commission.*
Penalty: 100 penalty units
 - (1A) *In subsection (1), a reference to an approved venue also refers to a venue whose approval under Part 3 is suspended.*
 - (2) *An application for approval must be accompanied by the prescribed fee.*
 - (3) *The Commission may grant, with or without conditions, or refuse to grant an application for approval of modification of a gaming machine area having regard to—*
 - (a) *the size, layout and facilities of the approved venue; and*
 - (b) *any other matter that the Commission considers relevant.*
- 3.4. The Commission places particular emphasis upon section 3.3.16(3) which confers a power to have regard to *any other matter* that the Commission considers relevant.

4. Decision and reasons

- 4.1 The Commission has considered the material filed and submissions made in support of the respective applications. Based on this material and the submissions made, the Commission has determined as follows:
- 4.1.1 The variation application is approved pursuant to section 3.3.11;
 - 4.1.2 The modification application is approved pursuant to section 3.3.16;
 - 4.1.3 Pursuant to section 3.4.17(4)(b) and section 3.4.20, the Commission exercises its discretion to impose amendments to the venue operator's licence in accordance with the conditions at Appendix A.

Variation application

- 4.2 The variation application is approved pursuant to section 3.3.11 on the basis that the Commission is satisfied that the change in the size or layout of the premises will not result in the number of gaming machines approved for use at the premises being increased.

Modification application

- 4.3 In determining the modification application, the Commission considered the broader redevelopment of the land at 641-675 Dandenong Road (which includes the premises) to be a relevant matter; specifically, the development of the Malvern Collective.
- 4.4 The Malvern Collective features two multi-residential towers developed on the adjacent site, and is designed to be a retail, dining and lifestyle precinct with over 200 luxury apartments.
- 4.5 The Commission understands that the offerings of the Angel Tavern are a key selling point of Malvern Collective.
- 4.6 Relevantly, six levels of the western annex of the residential tower will contain 22 residential apartments (a mixture of 1, 2, 3 and 4 bedroom residences) that will be situated directly above the Angel Tavern.
- 4.7 The Malvern Collective will also include 5 levels of basement car parking in the western annex of the residential tower.
- 4.8 The Commission raised concerns with the applicant over the broader development, and in particular, the location of the 22 residential apartments above the Angel Tavern.
- 4.9 The Commission expressed concern that the residential accommodation above and around the Angel Tavern posed a substantial risk that residents, including minors, will be enticed to gamble, as it reduces the capacity of residents to avoid exposure to gambling.
- 4.10 Further, the Commission raised concern that the 22 residential apartments appeared to be within the same building as the Angel Tavern.
- 4.11 Following lengthy consultation with Kokoda Property, the Commission is satisfied that the risk of associated gambling harm will be appropriately mitigated for the reasons that follow:
- 4.11.1 The 22 residential apartments are not within the same structure or building as the Angel Tavern:
 - 4.11.1.1 The 22 residential apartments are constructed on the adjacent site situated above the Angel Tavern roof line using an independent structure and load bearing supports, along with independent entry
 - 4.11.1.2 The 22 residential apartments only touch the space of the new roof, to the extent they fit within the 37% footprint – that percentage decreases as the apartment levels rise
 - 4.11.1.3 Once the plan of subdivision is registered, the Angel Tavern and the residential apartments will be allocated on individual certificates of title
 - 4.11.2 There will be no visual, auditory or functional connection between the Angel Tavern and the residential accommodation
 - 4.11.3 There will be no access, direct or otherwise, between the multi-storey buildings and residential accommodation and the Angel Tavern
 - 4.11.3.1 The only access to the Angel Tavern is via the street frontages on Glenferrie Road and Dandenong Road

- 4.11.4 There will be no gambling or directional signage for display on the exterior of, or outside, the premises;
- 4.11.5 Other than notification on the immediate door entering the gaming room, there will be no gambling or directional signage to the gaming machine area throughout the premises;
- 4.11.6 There will be windows and skylights in the gaming machine area which allow for natural light into the premises, but not visibility of the gaming machine area from the exterior of the premises, including from the residential accommodation above or adjacent to the premises;
- 4.11.7 There will be voice-over announcements in the gaming room every 2 hours for the purpose of communicating the time;
- 4.11.8 Travel distances between the Malvern Collective to the Angel Tavern:
- 4.11.8.1 At ground level, for a Malvern Collective resident to enter the Angel Tavern from Tower M (the closest residential tower to the Angel Tavern), the resident will be required to exit from the lift at ground level in the Malvern Collective building. They will then be required to exit the lift lobby area, walk to the exit of the Malvern Collective on Dandenong Road, and walk a total of 44 metres to reach Door 2, or 61.5 metres for entry through Door 1. The Tower M lift lobby area is only available to Malvern Collective residents
- 4.11.8.2 On level 1 of the Malvern Collective, where apartments do not sit above the Angel Tavern building, the closest resident to the lift stack has a further minimum distance of 14 metres from their apartment door to the lift entry which will transport them to the ground level lobby. Other apartments have a greater travel distance. These residents will then have to follow the same path as described at point 4.9.8.1 above.
The closest resident on level 1 is a minimum 48 metres to Door 2 and 75.5 metres to Door 1 of the Angel Tavern.
- 4.11.8.3 On level 3, where Malvern Collective apartments sit above the structure of the Angel Tavern, the resident furthest away from the lift stack will have an additional 36 metres to enter the level 3 lift to then descend to the ground level lobby. The closest resident has to travel 21 metres.
The closest resident on Level 3 is a minimum 65 metres to Door 2 and 82.5 metres to Door 1 of the Angel Tavern.
- 4.11.8.4 For Malvern Collective residents who seek to access the Angel Tavern directly from the car park, they have two lift stack options to choose from:
- 4.11.8.4.1 The resident lift stack situated under the Malvern Collective residence, closest to the Angel Tavern (key card access only); and
- 4.11.8.4.2 The additional lift stack that is also available for public use, but can only be accessed from other levels that do not require key card access.
There is an additional 14 to 33 metres for a resident to reach the key card lift stack to ascend to the resident lift lobby at ground floor, depending on where their designated car park is located.
Residents whose car park is furthest away from the second lift stack have a minimum 5 metres and up to 40 metres to reach the second lift stack.
Either residents or members of the public who park in the Malvern Collective car park and choose to access the Angel Tavern, will then have between 80 to 90 metres to walk to Door 2 at ground level once they have ascended from the second lift stack (in addition to the walking distance in the car park).
- 4.11.9 The applicant has agreed to the Commission imposing conditions on the venue operator's licence which give effect to the above characteristics of the premises, as set out in the conditions at Appendix A.

- 4.12 Approval is granted for the applications contained herein **only** and is not reflective of the Commission's position on any subsequent applications submitted in relation to the Angel Tavern. Any further amendments to the Angel Tavern premise or venue will require separate applications, made under the relevant sections of the Act, to be submitted to the Commission for consideration.

Imposition of conditions at Appendix A

- 4.13 Harm minimisation is a core consideration of the Commission in all its functions, including when determining an application for approval under the Act.
- 4.14 The main objectives of the Act include to foster responsible gambling to minimise harm caused by problem gambling, to accommodate those who gamble without harming themselves or others, to ensure that minors are neither encouraged to gamble, nor allowed to do so, and to ensure that gambling is conducted honestly, and their management is free from criminal influence and exploitation.
- 4.15 The *Victorian Gambling and Casino Control Commission Act 2011* expressly provides that the objective of the Commission is to minimize gambling harm.
- 4.16 Pursuant to section 3.4.17(4)(b), the Commission gave notice in writing to the applicant on 26 July 2024, and again on 30 September 2024, that it may consider imposing conditions upon the venue operator licence to allow the Commission to reach a state of satisfaction that the premises continue to be suitable for the management and operation of gaming machines.
- 4.17 The Commission considers that it is in the public interest, and for the proper conduct of gaming, to impose conditions upon the venue operator licence in the effect of the conditions at Appendix A.
- 4.18 The conditions at Appendix A were agreed to by the applicant on 10 October 2024.
- 4.19 The Commission has imposed the conditions at Appendix A pursuant to section 3.4.20 of the Act.

Appendix A

Venue Operator Licence – Malvern Gateway Pty Ltd (V1810036)

Licence conditions

This licence is subject to the following conditions:

Condition 1 – Risk Assessment and Risk Register

- 1.1 Prior to the reinstallation of any electronic gaming machines (**EGMs**) at the Premises, the Venue Operator (**VO**) must appoint a suitably qualified independent third party to:
 - 1.1.1 conduct a Risk Assessment to identify the risks related to gambling harm and criminal influence associated with the operation of EGMs at the Premises.
 - 1.1.1.1 the Risk Assessment must consider at least the people, systems and processes in place at the Premises.
 - 1.1.2 develop a Risk Register in relation to the Premises' people, systems and processes and how harm minimisation and criminal influence in gambling will be managed at the Premises.
 - 1.1.2.1 the Risk Register must identify the treatments and controls that will address each risk, along with the steps that the VO must take to implement those treatments and controls; and
 - 1.1.2.2 the steps set out in 1.1.2.1 must then be enshrined in the VO's operating manual.
- 1.2 Prior to appointing the suitably qualified independent third party, the VO must provide the details of that third party (including qualifications and experience) and the proposed scope of the Risk Assessment to the Commission for approval.

Condition 2 – Compliance with risk register

- 2.1 No later than 1 month after the development of the Risk Register in accordance with Condition 1, and every 6 months after that date, the VO must provide a written attestation to the Commission confirming the following:
 - 2.1.1 that the VO has made all necessary enquiries to be satisfied that all the identified treatments and controls have been, and continue to be, implemented; and
 - 2.1.2 that the VO has reviewed the Risk Register to ensure that any new risks or changes to risks have been identified and that the Risk Register has been updated to ensure the treatments and controls are effective to address those risks.
- 2.2 The written attestation is to be made by an office holder of the VO.

Condition 3 – Compliance with other obligations

- 3.1 At all times any EGMs are in operation at the Premises, the VO must ensure that:
 - 3.1.1 the service of any food and beverage to patrons whilst seated at the EGMs at the Premises will not occur;
 - 3.1.2 minimum staffing levels are maintained as follows:
 - 3.1.2.1 from 10:00 AM until 1:00 AM the following day, a minimum of 2 staff on duty in the gaming room, one of which must have completed Victorian Government Responsible Service of Gaming (RSG) Module 2 and Module 4 training;

- 3.1.2.2 from 10:00 AM until 10:00 PM, a minimum of 1 responsible gambling officer (RGO) on duty in the gaming room at all times the gaming room is operational;
 - 3.1.2.3 after 10:00 PM until 1:00 AM the following day, a minimum of 2 RGO's are to be on duty in the gaming room at all times the gaming room is operational;
 - 3.1.3 a person aged over 18 years who is appropriately qualified and trained as a manager is in charge of hotel operations at the Premises;
 - 3.1.4 all staff rostered in the gaming room are trained in YourPlay and able to assist patrons to enrol with YourPlay and set pre-commitment levels for EGM time and spend;
 - 3.1.5 a full-time RGO is employed at the Premises to coordinate the Premises' self-exclusion program, and to implement and maintain harm minimisation training for staff. The RGO must have completed RSG Module 2 and Module 4 within the last 2 years;
 - 3.1.6 staff are prohibited from using EGMs at the Premises at any time and for 1 month following the cessation of their employment at the Premises;
 - 3.1.7 patrons are prohibited from reserving an EGM in order to use another EGM;
 - 3.1.8 patrons are prohibited from reserving an EGM for longer than 10 minutes;
 - 3.1.9 EGMs are not to be made available for gaming before 10:00 AM or after 1:00 AM on any day;
 - 3.1.10 the ground floor front bar will be open for all hours that the gaming room is open and will provide a full range of services including food that is more than pre-packaged snacks;
 - 3.1.11 there is no gambling or directional signage for display on the exterior of, or outside, the Premises;
 - 3.1.12 other than notification on the immediate door entering the gaming room, there is no gambling or directional signage to the gaming machine area throughout the Premises;
 - 3.1.13 the gaming room is soundproof and cannot be heard by patrons in other areas of the Premises;
 - 3.1.14 there is no view into the gaming machine area by patrons in other areas of the Premises;
 - 3.1.15 clocks displaying the correct time are clearly visible in the gaming machine area;
 - 3.1.16 there are voice-over announcements in the gaming room every 2 hours for the purpose of communicating the time.
- 3.2 Figure 1 – "Angel Tavern door locations", confirms the required entry and exit locations to the Angel Tavern:
- 3.2.2 Door 1 is to be the main entry to the Angel Tavern
 - 3.2.3 Door 2 is to be labelled as DISABLED ACCESS ONLY
- 3.3 No later than 1 month following the reinstallation of any EGMs at the Premises and every 12 months after that date, the VO must provide a written attestation to the Commission confirming that they have made all necessary enquiries to be satisfied that the requirements in 3.1 and 3.2 above are being complied with. The written attestation is to be made by an office holder of the VO.
- 3.4 The written attestation must specify each of the systems, policies and procedures that have been developed and implemented to ensure continued compliance with each of the requirements in Condition 3.

Condition 4 – Risk of criminal influence

- 4.1 Prior to the reinstallation of any EGMs at the Premises, the VO must ensure that:
 - 4.1.1 all office holders of the VO, the nominee, managers and all gaming room staff have completed Anti-Money Laundering (AML) and Counter Terrorism Finance (CTF) Training within the last 12 months;

- 4.1.2 adequate systems, policies and procedures have been developed and implemented at the Premises to ensure all staff are appropriately trained in identifying and mitigating this risk.
- 4.2 Every 12 months after the reinstallation of any EGMs at the Premises, the VO must provide a written attestation to the Commission confirming that they have made all necessary enquiries to be satisfied that the requirements in 4.1 above are being complied with. The written attestation is to be made by an office holder of the VO.
- 4.3 The written attestation must specify each of the systems, policies and procedures that have been developed and implemented to demonstrate compliance with Condition 4.1.2.

Condition 5 – The Works and associated obligations

- 5.1. The modification approval does not take effect until the Commission has notified the VO in writing that the Premises have been inspected for the purpose of section 3.3.7(1)(b) of the *Gambling Regulation Act 2003* and the Commission is satisfied that the Premises are suitable for the management and operation of EGMs.
- 5.2. The Commission will use their best endeavours to provide such notification within 14 days of having been notified by the VO that the modification works have been completed.
- 5.3. The modification to, and variation of, the gaming machine area must generally accord with the floor plans of the Premises, as provided to the Commission on 22 October 2024 and annexed to this decision.
- 5.4. The windows and skylights for the gaming machine area must allow natural light into the Premises, but not visibility of the gaming machine area from the exterior of the Premises, including from the residential accommodation above or adjacent to the Premises.
- 5.5. There must not be any modification to the Premises which would result in the removal or modification of the windows and skylights as they appear within the floor plans provided to the Commission on 22 October 2024 and annexed to this decision, without prior approval of the Commission.
- 5.6. There must be no future modification of, or variation to, the Premises that would cause entry, access or functional connection between the Premises and the residential accommodation above and/or adjacent to the Premises.

Condition 6 – Breach of conditions

- 6.1 Where the Commission determines that the VO has not complied with one or more of the conditions, the Commission may require the VO to cease operating any EGMs at the Premises until it is satisfied that:
 - 6.1.1 such failure is rectified to the satisfaction of the Commission; and
 - 6.1.2 the VO has carried out the relevant and necessary action and/or implemented the relevant and necessary systems, processes and procedures to prevent the occurrence of a future breach.

Figure 1. Angel Tavern door locations

