

Wyndham Planning Scheme

Amendment C252wyd

Expert Planning Evidence

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instructed by
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on behalf of

WYNDHAM CITY COUNCIL



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1. INTRODUCTION

1.1. Introduction

- (1) I have been asked by Harwood Andrews, Lawyers, on behalf of Wyndham City Council (**Council**) to provide strategic and statutory planning expert evidence in relation to Amendment C252 to the Wyndham Planning Scheme (the **Amendment**).
- (2) The Amendment provides for revisions to the current gaming policy and provisions in the planning scheme based on a 2019 strategic policy review that I undertook (as 10 Consulting Group) on behalf of Council in conjunction with Dr Kate Kerkin of K2Planning.

1.2. Submissions and issues

- (3) The Amendment has been exhibited and six submissions have been received, four supporting the amendment and two raising issues and concerns regarding:
- Net community benefit is not a relevant test and ought not be included as a decision guideline at Clause 7.0 to the proposed schedule to clause 52.28.
 - A merits-based assessment based on a review of existing and proposed community profile should be preferred over the proposed discouragement of new gaming venues in growth areas (Objective 8 to clause 21.02-3).
 - Clause 4.0 to the schedule to Clause 52.28.
 - Should include guidance on where gaming machines should be located.
 - Inappropriately relies on outdated criteria for the redistribution of gaming machines away from areas of relative disadvantage and ensures applications fail on one criterion.
 - Should provide guidance as to the appropriate time for gaming machines to be located in growth areas.
 - Inappropriately references to a 400-metre walking distance or clear line of sight of certain uses (including, in particular social housing).
 - Should provide policy direction at Clause 5.0 to the schedule to Clause 52.28, to ensure a break in play, rather than the proposed reference to 24-hour operation;

- The application requirements to the schedule to Clause 52.28 should not include details of gaming machine density within the local area or the demographic profile of the area within 400 metres walking distance to the proposed venue.
- The proposed reference document includes outdated density figures, presents a negative view of gambling and is not balanced, and inappropriately discourages gaming or acts as a blanket policy that bans or discourages EGMs.

1.3. Scope and content

- (4) In this report I advance additional context to the background report justifying the rationale of the Amendment and present my opinion on the merits of the submissions.
- (5) This report presumes that the Panel has familiarised itself with the Amendment and has read the report *Gaming Machine Policy Review – Clause 22.03 Wyndham Planning Scheme* prepared by 10 Consulting Group in July 2019 and which was exhibited alongside the Amendment.

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1.4. Witness Statement, Curriculum Vitae & relevant experience

- (6) **Attachments 1 and 2** set out my witness statement and curriculum vitae.
- (7) I have a long association with numerous engagements to prepare local gaming policies for inclusion in planning schemes across Victoria, during the period 2006 until the current day. **Attachment 3** details that work.
- (8) I have also provided expert planning evidence in numerous gaming matters considered by VCAT over the same period as also detailed in **Attachment 3**.
- (9) I have had previous engagements with the City of Wyndham on gaming related policy including providing a peer review and expert evidence regarding the current local policy and provisions that were the subject of Amendment C174.
- (10) I have most recently provided evidence in the matter of *Truganina Metropolitan Pty Ltd v Wyndham CC [2020] VCAT 1343* on behalf of Council. This case is referenced in the body of this report and is of relevance as it addresses some of the issues to be resolved in the context of Amendment C252.
- (11) I have in the last 15 years also had an involvement in a consulting and witness capacity with the Phoenix Hotel on Wallace Avenue and the Brook Community Club on Sneydes Road, both in Point Cook.

2. AN OVERVIEW

2.1. Community development and wellbeing

- (12) Wyndham City Council has demonstrated a diligence to regularly review and as appropriate amend the local policy of the *Wyndham Planning Scheme* as it applies to gaming. Such a review was made particularly important after Amendment VC148 that introduced a new format and schedules to the gaming provisions of Clause 52.28.
- (13) It is fair to observe that most planning authorities have struggled to know how to integrate and frame their gaming policy in the context of planning policies and provisions that have been principally directed at the physical and spatial consequences of the management of growth, liveability, the protection of the environment, culture, and the built environment.
- (14) For some municipalities, including Wyndham (prior to this review), gaming has often been included in policies that emphasise economic development.
- (15) While there is an economic consequence associated with gaming decisions the association with economic development policy may convey an inappropriate and unstated intent that gaming should be solely encouraged as an economic benefit.
- (16) The reality is that many gaming policies linked to economic development have been expressed in terms of caution. The caution has usually been expressed in terms of minimising harm and the potentially detrimental social and community consequences of gaming.
- (17) In reviewing and revising the Wyndham gaming policy and provisions an important strategic change in emphasis and categorisation is advanced that seeks to recognise the legitimacy of gaming while being more forceful in linking gaming with resilient community development and its well-being rather than economic development.

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2.2. The distinction between established & emerging communities

- (18) For growth area municipalities, such as Wyndham, there are two distinct communities to be mindful about.
- The existing, established, community whose demographic attributes are documented and understood, and which has convenient access to a broad and

relatively comprehensive range and choice of formal and informal services, facilities, networks and support, and

- The new and emerging communities of the growth area whose attributes are only partially recorded and that are confronted with the multifaceted challenges of 'starting from scratch' with incomplete neighbourhood physical and social infrastructure, an absence of established and accessible networks and support and the added burden of new costs and demands on time to travel to work.

(19) This twofold distinction between communities in growth area municipalities was partially recognised in the existing gaming provisions of the Wyndham Planning Scheme.

(20) The local gaming policy at Clause 22.03-3 includes a provision of discouraging EGMs on land zoned for commercial use where a shopping complex or strip shopping centre has not been fully established or on land identified in a PSP for a future activity centre, but which has not been developed.

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(21) This provision was an early attempt to grapple with the challenge of establishing gaming venues in the midst of evolving but neither established nor mature communities. It sought to acknowledge that during the planned or emerging phase of community development uncertainty remains and concern should be held for decision making on gaming which with hindsight could be judged as premature and harmful decisions because the selected location was inappropriate from either or all, an economic, social or spatial perspective.

(22) Wyndham is not alone among growth area municipalities in recognising that new and emerging communities in growth areas present a different challenge and warrant a nuanced response in the context of gaming.

(23) In 2020 the Shire of Mitchell and the Cities of Hume and Whittlesea with funding provided through the State Government of Victoria, Office of Suburban Development and supported by the Northern Metropolitan Partnership, (an advisory group established by the Victorian government), undertook a project seeking to build greater resilience in new and emerging communities and used gaming as case study.

(24) I was a sub-consultant with Dr Kate Kerkin from K2 Planning in undertaking the project. The additional research and experience associated with that project has served to confirm the strategic justification and merit in the approach embedded in Amendment C252 to the Wyndham Planning Scheme.

2.3. Resilience and harm minimisation

(25) At the heart of this Amendment is the intersection and the connections between planning policy addressing:

- the place of **health, wellbeing, and safety** in community development,
- what constitutes a **resilient community** in a new and emerging neighbourhood,
- the **minimisation of harm** in the context of new gaming venues and additional Electronic Gaming Machines, in an emerging community; and
- the **appropriate location** for gaming venues.

(26) These themes are examined below.

2.4. Health wellbeing and safety

(27) The health, wellbeing and the safety of the community is a key policy issue and outcome sought by the planning framework as it intersects with gaming.

- The Objectives of planning in Victoria include - to secure a pleasant, efficient and **safe working, living and recreational environment** for all Victorians and visitors to Victoria.¹
- The Planning Policy Framework (**PPF**) as it relates to Settlement recognises, among other matters, that planning is to recognise the need for and as far as practical contribute towards **health, wellbeing, and safety**.²
- This intent is reproduced regularly in the WPS.
 - A key planning issue for *Settlement* is to ensure that major growth also provides opportunities to build a strong community that **creates a platform for the health, wellbeing, and safety of residents**.³
 - The *Strategic Vision* sets the ‘*Mission*’ to strive to serve the best interests of the Wyndham community by providing quality services; **managing growth; and supporting residents to lead healthy, safe, vibrant and productive lives**, while protecting the environment.⁴

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¹ Section 4 *Planning and Environment Act 1987*

² Clause 11, WPS

³ Clause 21.01-3, WPS

⁴ Clause 21.01-5, WPS

- The *Community Health, Wellbeing and Safety Plan (2013-2017)* is one of the key plans dealing with issues that impact on the health and wellbeing of the community. **“With its rapid growth, the community health, wellbeing and safety are central to the City’s future”**.⁵
- The *Gaming* strategy forming part of the *Economic Development Policy* sets the *Key Issue* as **ensuring the impact of gambling on the health and wellbeing of the community are minimised**.⁶

2.5. Achieving resilience in emerging communities

- (28) Alongside supporting the health, wellbeing and safety of the community, the objective for *Settlement* across Victoria promotes ‘**the sustainable growth and development of Victoria and deliver choice and opportunity through a network of settlements**’.⁷
- (29) Among the strategies advanced to achieve that outcome is a desire to develop **“settlements that will support resilient communities and their ability to adapt and change”**.⁸
- (30) The sense of familiarity, wellbeing and safety that the community appears to derive from living in established neighbourhoods arises in large part from the knowledge and assurance that the context of everyday living is established, mature and supportive because of the leadership, governance, facilities, services, associations and connections the community experiences.
- (31) Not being threatened by uncertainty about those issues enables the community to cope better with the other challenges thrown up from day to day.
- (32) In new and emerging communities those foundations of daily life are either not or only partially in place.
- (33) While there may be a documented vision and structure plan for the new community, neighbourhood or precinct, in the short to medium term there is likely to be varying degrees of uncertainty, anxiety about how to become established, and settled.

⁵ Clause 21.04-4, WPS

⁶ Clause 21.08-5, WPS

⁷ Clause 11.01-1S, WPS

⁸ Clause 11.01-1S, WPS

- (34) At an individual or household level this is likely to be experienced as a sense of personal or household vulnerability and / or threat, and to be reflected in the sense of mental, emotional, and physical wellbeing.
- (35) The sense of threat and vulnerability ought to diminish as the attributes of a mature, established and fully functional community become evident.
- (36) The concept and term 'resilience' is not defined or explained in the planning scheme and yet it is used with greater frequency in policy and many precinct structure plans to describe a stage in community development, liveability and the robustness of the environment.
- (37) 'Resilience' is a term with wide application and implied understanding about the capacity of individuals and groups (and the environment) to be able to experience change, stress, uncertainty and shocks that take them out of their 'comfort zone', and not only to be able to cope and absorb those events but to be able to learn, build and positively grow from those experiences.
- (38) In recent times the resilience of the community and its ability to minimise harm have been tested in unimagined and compounding ways with the global, national and regional threats of a pandemic, bushfires, drought and recession adding to more localised uncertainty and stress.
- (39) In the context of the above, the challenge of 'starting from scratch' in a new community comes with its own series of significant and additional 'shocks' and stresses.
- (40) For the new and emerging communities of the Wyndham Growth Areas (and the other metropolitan growth areas), it starts with an absence of many or most of the physical, social and economic facilities, services, connections and networks that are to be found in established and mature communities.
- Many new houses may be built or awaiting occupancy but there are no or minimal shops, community, health and education facilities and services.
 - Recreation spaces and leisure activities are probably limited.
 - Public transport may be at the threshold to commence service rather than offer multiple routes and choice of mode.
 - Neighbours will be arriving, but neighbourhood and street associations, immediate family, kinship or cultural groups may be some time off or far away.

- The mix of cultures, first languages and backgrounds create a new challenge with their associated uncertainty, cautions and unknowns.

(41) In these emerging communities there are likely to be other new and challenging personal and household stresses.

- Mortgage stress and the new major financial burden of setting up a new home, may combine with longer travel times and increased costs to access work.
- Single car households may leave part of a family without access to transport and confined in the new home with the possible prospect of a sense of isolation and loneliness.

(42) In these communities the familiar support and help is not yet established.

- The sporting clubs are just starting, the schools and child-care centres are just beginning to take enrolments, the community-based functions, clubs and associations are not established.
- The local branch of help services such as alcoholics anonymous, beyond blue and the gamblers support may be some time away.

(43) These emerging neighbourhoods are not yet resilient. They may have a minimum of five and probably more years before they reach a sense of maturity and can be said to be established and fully functional.

(44) The underlying premise of growth area planning and PSPs is that:

- the new and emerging community should be helped to be resilient earlier in its life;
- a priority is placed upon the early delivery of services and infrastructure;⁹
- this will be achieved if the planning and delivery of new homes is matched by the early, comprehensive and integrated delivery of a well-considered range of opportunities, and choices in the form of facilities, services and connections; and
- that as much attention should be given to community development, capacity building and engagement as to the development and delivery of the built environment.

⁹ Clause 11.02-1S 19.02, -1S/2S/3S/4S and 19.03, WPS

2.6. Minimising harm and its applying to gaming

- (45) The counterbalance to building community resilience is minimising potential threats and harm.
- (46) Minimising harm is about identifying and responding with carefully considered strategies and controls to those activities that pose an embedded threat to the health, safety and wellbeing of the emerging community and its resilience to withstand unforeseen events.
- (47) Gambling and EGMs pose an unusual but a significant challenge not only to established communities but particularly new and emerging ones.
- (48) On the one hand gambling and gaming is a lawful activity and carried out responsibly is a well patronised and enjoyed form of leisure and recreation activity.
- (49) On the other hand, gaming can be a form of leisure that can, for some vulnerable members of the community, be an addiction with serious financial losses and social consequences that extend beyond the 'problem gambler' to detrimentally impact upon family, friends and even work colleagues.
- (50) Mindful of these consequences, government, particularly at State and local levels, has developed and applied a series of harm minimisation strategies associated with gaming including controls and guidance upon the design of venues; operators and entitlements; limitations on signage; regional caps; codes of responsible behaviour and limits upon the amount of expenditure at any time.
- (51) Within that framework land use planning provisions have a role in minimising harm, by seeking to identify appropriate locations for gaming venues and the installation of electronic gaming machines, considering, the social and economic impacts of the location.¹⁰
- (52) Historically the choice of an appropriate location has been informed and influenced by:
- the local context of existing venues and EGM densities,
 - minimising the convenience of access by residential communities,

¹⁰ Purposes of gaming provisions, Clause 52.28 WPS

- prohibiting gaming in shopping complexes and strip shopping centres on the basis that prevents a high level of exposure to the opportunist gambler,
- the proximity and availability of alternative leisure and recreation opportunities to gaming venues, which would serve as equally attractive choices to spend leisure or spare time,
- encouraging gaming to be established in locations which would be destinations removed from frequently visited locations; and
- the vulnerability of the proximate community, measured in social and economic indicators, to be able to withstand the potential harmful consequences of a venue in their midst, when problem gambling behaviour negatively impacts upon the individual or household.

(53) The strategic point of difference between gaming in established communities and new communities is their respective resilience and capacity to absorb shocks, stress and minimise new threats and harm.

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(54) It also goes to the fact that the social, economic, and built environment attributes of the proposed location for gaming are emerging, incomplete, and not fully understood.

(55) Depending upon the stage of development, the community may be inherently more vulnerable to the opportunities and temptations presented by a new gaming venue within its midst and poorer in its ability to prevail when gambling problems compound upon the stresses and new burdens of establishing within a new community context.

(56) The potential harms of EGMs, in a new emerging community, might be characterised in the following terms.

- A gaming venue might be one of the early or the only passive leisure attraction.
- There may be few or no other choices or alternatives to fill in leisure time, particularly considering the extended hours gaming venues are usually open.
- New residents in new communities are a sector vulnerable to the temptations of gaming as a possible way of countering or escaping the burden of financial stress, boredom, or loneliness.
- New residents are a sector of the community probably least prepared to cope when gaming gets out of hand and / or becomes an addiction.

(57) The above suggests that a different and distinct approach is needed to the management of gaming in emerging communities and growth areas.

- (58) In this setting the harm minimisation response ought to consider not only the appropriateness of location but also timing related to the location.
- (59) It would be prudent to withhold the approval and the establishment of new gaming venues until the threshold of a mature, established, and resilient community can be demonstrated.
- (60) Regardless of the appropriateness of the location a harm minimisation strategy should contemplate the merits of gaming being one of the latter parts in the development of the community rather than one of the earlier.

2.7. The strategic planning approach to gaming

- (61) A key influence underpinning the review of the Wyndham local gaming policy has been to take a strategic appreciation of gaming opportunities and issues in Wyndham rather than rely upon an approach that relies upon the individual merits of each application.
- (62) A distinctive feature of a review of gaming in Wyndham during the period 2019 -2021 is to recognise that the established and emerging community is already well served by access to 13 different venues and 901 EGMs¹¹. Most of those venues are centrally located within the community and municipality and therefore the underlying principle of gaming being accessible but not convenient is already established. Even the furthest reaches of the growth areas are within approximately 5-6 kilometres of one or more existing gaming venues.
- (63) This condition and context give the municipality an opportunity to be careful and cautious about introducing new potential harms into the city and more vulnerable new communities because it can genuinely demonstrate that the Wyndham community is not being unreasonably denied access to appropriate gaming opportunities.
- (64) I would concede that if it were not for the established legacy and choice of multiple convenient EGM venues it might be put that the proposed Amendment C252 was overly prohibitive.

¹¹ This was the number of EGMs in Wyndham in December 2020

- (65) The other important observation to make about C252 is that it is a policy appropriate to a period of time – the time required for the newer and emerging communities to establish and mature.
- (66) At a future date and with the establishment and maturity of those communities I envisage a review of the gaming policy to diminish the proposed emphasis upon discouraging gaming in mature growth neighbourhoods.

2.8. The scale of the challenge

- (67) The importance and scale of growth areas, and the distinction between established metropolitan areas and growth areas, as set out in the metropolitan planning strategy *Plan Melbourne 2017 – 2050* is crystallised in the following analysis. Growth areas will:
- Accommodate approximately 53% of Greater Melbourne’s population growth over the 2016-2031 period;
 - Provide approximately 49% of Greater Melbourne’s dwelling requirements over the next 15 years;
 - Support Greater Melbourne’s labour force requirements by providing approximately 53% of labour force growth between 2016-2031; and
 - Include 55% of Greater Melbourne’s local road network, including a considerable amount of non-sealed local roads.
- (68) Despite this significant role of growth areas, compared to Greater Melbourne averages, the growth areas are characterised by:
- A deficit in local employment opportunities;
 - Poor provision of public transport options;
 - Heavy reliance on vehicle-based travel; and
 - Relatively low provision of professional jobs, higher order medical services such as hospitals, preschool services, and arts and cultural services including libraries, arts centres etc.¹²

¹² Essential Economics Pty Ltd. 2018, *One Melbourne or Two? Implications of Population Growth for Infrastructure and Services in Interface Areas*, Updated Report 2017 Final Prepared for Interface Councils, p. 1.

- (69) This lack in infrastructure and other opportunities impacts on the well-being of growth area communities contributing to:
- High level of unemployment, youth disengagement with regard to higher education and workforce participation, and socio-economic disadvantage (highlighted through SEIFA and VAMPIRE);
 - Relatively low average incomes and levels of educational outcome¹³; and
 - Fragile families, poor health outcomes, at risk youth, and isolated aged.
- (70) More recent research conducted amongst northern metropolitan growth area Councils¹⁴ finds a significant shortfall in liveability in these areas including:
- Generally poor social conditions and social isolation compounded by distance to services and facilities, lack of transport options, weak social capital and long travel times for commuters, and
 - Greater social vulnerability and additional barriers including: spatial gaps in employment access with men and women in growth areas experiencing greater disadvantage in access to employment compared to men and women in non-growth areas; and women in growth areas being more disadvantaged in accessing employment compared with men.¹⁵
- (71) While growth areas offer places of aspiration for many residents who seek new opportunities and vibrant new communities, these social challenges undermine the ability of individuals and communities to cope with threats and challenges, to develop 'resilience'. It is in this context that the concept and practice of building community capacity and in turn resilience takes on specific meaning in growth area locations.
- (72) In essence, the objective of developing resilience in growth areas is to provide a framework for an urban environment that meets community health, well-being and safety needs as early as possible in the life of the new community.

¹³ Essential Economics Pty Ltd. 2018 (above) p. 2. adapted by K2 Planning 2020.

¹⁴ Work under taken in conjunction with Dr Kate Kerkin K2Planning 2020

¹⁵ City of Whittlesea *Early Activation of New Communities Policy; Community Building Strategy 2019; Gender Equity in Employment 2019*

(73) The aim is to ensure that no one living in a growth area community should feel unsupported, or without help, and everyone should have access to the resources needed to withstand the shocks and stresses associated with growth area living.

2.9. What defines a mature new and emerging community?

(74) There are a range of spatial and time-based concepts around which new and emerging communities might be identified and defined.

(75) Relying upon historical boundaries (such as post codes or municipal boundaries) is not particularly useful when considering the extent of new growth and emerging communities.

(76) Precinct Structure Plans (PSP) provide a more useful spatial definition for new growth precincts, but even these boundaries should be treated with caution for two reasons:

- The extent of the emerging community will invariably transcend one PSP area and
- The catchment and sphere of influence of the potential source of harm, such as a gambling venue, will not be bound by PSP boundaries, rather by the location and sphere of influence of the established and competing gambling venues.

(77) An emerging community is a dynamic entity, changing in size and space with the passage of time. In defining an emerging community, it is appropriate to take an expansive and strategic view of the community at large and seek to distinguish sub precincts applying the following attributes to determine the level and timing of maturity when a robust level of resilience might be established.

(78) Community development and establishment can be characterised as a series of stages including:

- A **planning** stage in which the vision and the preferred social, economic and environmental attributes and broad layout of land uses in the new community are agreed;
- An **early development** stage in which the framework or 'bare bones' of the new community are laid down;
- An **emerging** stage when some of the land is partially developed, some but not all of the facilities and intended services are in place, part but not all of the new resident community and workforce is established, and formal and informal associations and connections are beginning to be made. An emerging stage may

be evident as quickly as a year or two depending on the demographic and economic drivers and will last until maturity is achieved;

- A **mature** stage is reached when the growth area land is fully developed, a full range of facilities and services are in place, a choice of modes of transport and attractions are available, community services are established, and opportunities for diverse social contact, relationships, networks and support are evident. The mature stage may take five or more years to attain and once reached will be measured in decades;
- A **decline** stage is when land uses, building stock and facilities become obsolete and approach the end of their functional life; and
- A **renewal** stage is reached where strategic and structure changes commence within the established community reinvigorating prior plans, facilities and networks.

(79) A genuinely resilient community is likely to be found at the threshold of the mature stage, with the preceding stages being the period of capacity building.

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(80) The consequences and conclusions from the above are that new and emerging communities may be spread over a series of land development fronts and over extensive areas with fruition of the mature stage coinciding with the progressive establishment of fully functional '20-minute neighbourhoods'.

(81) The 20-minute neighbourhood is a model of urban development and community organisation sought through *Plan Melbourne 2017-2050*.

(82) If the above perception of the resilient community is viewed as coinciding with the mature stage of community development, then the appropriate concurrent strategies for harm minimisation should also be respectful of similar attributes.

(83) Applied to the establishment and location of new gambling venues it is relevant to have regard to not only the immediate surrounds of the proposed venue and its likely resilience, but to also have regard to the extent of the emerging communities that, while distant and removed from the location of the venue, might find it the most convenient and accessible.

(84) There is an accessible, established, body and choice of gambling venues available in established metropolitan locations and regional towns. These existing EGM venues are available to the growth area communities, but they are not as conveniently located, or attractive to the opportunistic gambler. Those existing venues take on stronger

attributes of the 'destination venue' requiring greater time and effort to access, which is a further harm minimisation strategy.

(85) The table below provides indicators that should be discernible and capable of being objectively established to recognise that a mature stage of community development has been achieved. These indicators partially build on data commonly used in the development of Municipal Public Health and Wellbeing Plans.

Indicators of a Mature Resilient Community

Category	Measure
Facilities, Services and Infrastructure	<ul style="list-style-type: none"> • Almost fully developed residential neighbourhoods • Fully developed shopping centres including retail, business and community services, • A range and diversity of leisure and entertainment facilities • Active and passive recreation spaces • A range of employment opportunities suited to a range of skills, • Public transport services • Walking trails and bicycle networks • Access to a full range of educational opportunities from kindergarten to tertiary level • A range of local medical, physical and mental health and well-being services • Access to local help and support services • Aged care facilities, active and health ageing programs • Community hubs • Multi- purpose sports facilities
Relational: Social Connections	<ul style="list-style-type: none"> • Innovative ways to reduce social isolation • Positive ageing programs and events • Positive early childhood and education participation rates • Evidence of increased access to social support • Positive levels of childhood well-being (eg. Australian Early Development Census results) • Positive family/household wellbeing indicators • Evidence of community economy 'leaving no one behind', irrespective of race, gender, ethnicity, and so forth • Local cooperatives and community associations etc. • Facilitated relationships between developers and non-government organisations for the provision of services and the early activation of community spaces

Category	Measure
<p>Human Capital: Social Support, Learning</p>	<ul style="list-style-type: none"> • Community businesses, social enterprises, co-operatives and hybrid ventures that create work and other types of social value • Percentage of people living and working locally; or percentage of locally owned business; or percentage of home-based business, • Increased educational participation, • Increased educational attainment, • Increased labour market participation • Using community assets as outcomes: jobs, educational achievement/satisfaction • Average distance travelled from home to place of work • Local economy diverse enough to meet the basic needs of residents, • Fostering of local innovation • Local and flexible jobs • Transport infrastructure • Education infrastructure • Closest distance of a train station with connection to CBD
<p>Networks: Participation, Communication, Preparedness, Trust</p>	<ul style="list-style-type: none"> • Opportunities for people to connect and participate (formal and informal) • Communities activating their own activities, • Residents involved in decision-making and collective action not only through participation in committees, • Volunteering rates • People, especially young people, feeling an increased sense of belonging, empowerment and ability to actively participate in the community, • Programs bringing users, their families, practitioners, community experts and other stake holders together to design new facilities, services and systems, • Participation in decision making processes (i.e. Council)
<p>Cohesion: Community Building Initiatives, Shared Values, Community Outlook</p>	<ul style="list-style-type: none"> • Local solutions, as communities solve challenges themselves, • Improved community planning - less controversy and more support for implementation • Fostering of local innovation, • Resident investment in local businesses, projects, and people • Increased connection to culture • Increased tolerance of diversity - community is more accepting of people from diverse backgrounds and values and upholds their human rights

Source: K2 Planning 2020 based on RDV 2011, City of Whittlesea *Growth Area Social Planning Tool* and *Early Activation of New Communities Policy*, Mitchell Shire *Liveability Assessment* RMIT 2018, State Govt of Vic 2015, and Shuman, M. 2020 *Comparative Resilience: 8 Principles for Post-COVID Reconstruction*, <https://www.resilience.org/> April.

Evidence of the above resilience indicators within mature and resilient communities should be apparent through the following social trends:

Lower levels of: -	Higher levels of: -
<ul style="list-style-type: none"> • People living in poverty • Alcohol consumption • Illicit and prescriptive drug use • Domestic violence • Households running out of food • Children subject to child abuse and neglect • Disengaged young people 	<ul style="list-style-type: none"> • Life satisfaction • People feeling valued by their community • Individual and community safety • Someone to rely on in an emergency • Early childhood development • Young people in work, education and community • Volunteering and codesign opportunities • People engaged in Council, clubs and groups • People participating in arts and cultural events • People engaged in resident led initiatives • People engaged in the workforce • People working at home or in the local area • Locally owned businesses • Social enterprises and community-based businesses • Access to life-long learning • Local co-worker spaces

3. RESPONSE TO SUBMISSION

3.1. Introduction

(86) The following systematically responds to the issues raised in submissions.

(87) I note the planning authority has previously accepted those submissions that challenged the inclusions of reference to a demonstration of a net community benefit. It is clear between all parties that reference was not included in the policy and planning provisions adopted by Wyndham City Council.

3.2. A merit-based assessment

3.2.1. Submission - A merits-based assessment based on a review of existing and proposed community profile should be preferred over the proposed discouragement of new gaming venues in growth areas (Objective 8 to clause 21.02-3).

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(88) A purpose and strength of strategic policy driven planning schemes is that all parties have the benefit of clear strategic, justified direction and preferences upon how the discretion embodied in planning schemes might be exercised in the context of individual applications.

(89) The background report to the new policy has advanced a strategic appreciation and justification why the growth areas of Wyndham warrant a cautious approach to the establishment of new gaming venues at this time and has demonstrated that the Wyndham community has reasonable access to gaming venues.

(90) A PSP can inform the amount and density of new housing in a locality and the likely size of the population and it can inform where the principal features of community and transport infrastructure will be located, but it cannot inform or prescribe the socio-economic composition of the new community, its ethnicity and cultural composition, the role or propensity for gambling of the select population, the rate of growth or the timing and establishment of formal and inform social and support networks.

(91) A PSP can advance a preferred urban design framework for a local activity centre but the evidence of cases such as *Riverdale NAC Investments Pty Ltd v Wyndham CC [2020] VCAT 828* demonstrates that in the delivery of such centres there remains

uncertainty as the final layout, structure and composition of uses and development, that is deemed to be generally in accordance with the PSP.

- (92) No amount of prospective merits assessment of the attributes of a future community will overcome the uncertainty about the timing of infrastructure delivery, community composition and its vulnerability to gaming harm.
- (93) The last twelve months is a real and clear example of how influences beyond the land use planning framework can fundamentally change prospective community projections.
- (94) While we are still to fully appreciate the consequences of the pandemic, some fundamental changes might be anticipated in growth area development.
- (95) In the short to medium term, immigration is expected to notably diminish, and household and population growth will slow. Regional locations may take a much stronger role in accommodating growth with implications for outer metropolitan growth areas.
- (96) If population growth notably slows this will be reflected in the pace with which growth area land is developed and the rate of community formation and the timing for the delivery of infrastructure.
- (97) Under this scenario a merits-based gaming assessment of a future community profile might estimate the size of the end community, but it would struggle to usefully inform the variables about timing and delivery, actual composition, social and economic profile and relative resilience.
- (98) Submitters for a 'merits' assessment do not advance short comings in the strategic rationale for a cautious approach in growth areas. They tend to avoid mention of the qualification advanced in the proposed policy and provisions that links discouragement of gaming venues in growth areas to a time when a new community can demonstrate attributes of a resilient, established and mature community.
- (99) The proposed policy is not a prohibitive tool. It is properly seen as a time management tool that seeks to order the timely delivery of gaming to a period when the community has demonstrated the attributes of resilience and maturity.

3.3. Proposed Clause 4 of Clause 52.28

3.3.1. Include guidance on where gaming machines should be located

(100) The proposed Sub clause 4 sets out locations where gaming should be located and where they should be discouraged. The provisions of Sub-clauses 2 and 3 add further substance to appropriate locations by identifying shopping complexes and strip shopping centres where gaming is prohibited.

(101) Beyond that policy guidance and prescription all other matters are discretionary. It would be inappropriate to nominate specific sites, with such an approach being discriminatory against other land that might be suitable, but which has not been effectively assessed or evaluated.

3.3.2. Inappropriately relies on outdated criteria for the redistribution of gaming machines away from areas of relative disadvantage and ensures applications fail on one criterion

(102) This a criterion that forms part of the existing policy and is a feature of many municipal local gaming policies acknowledging that person with a gambling problem probably have the least resources and safety nets when gambling behaviour gets out of control.

(103) The Clause is not to be read to infer that problem gamblers are only found in the lowest socio-economic groups.

(104) The fact that a venue is located within an area of relative disadvantage does not necessarily mean that an application to consolidate or transfer entitlements in that venue will fail, but it is an important cautionary reminder.

3.3.3. Should provide guidance as to the appropriate time for gaming machines to be located in growth areas

(105) As currently written proposed Clause 4 identifies that in growth areas being developed in accordance with a PSP, gaming should be discouraged until at least the majority of lots and the layout of activity centres, shopping centres and strip shopping centres have been developed on the ground.

(106) This recommended consideration of Clause 4 was drafted before the more recent fulsome research on what constitutes a mature growth area as detailed in the earlier overview.

- (107) I concur that a more detailed definition of the timing for gaming machines in new growth areas would be of assistance. I therefore recommend the following wording should be substituted for the above reference.

In new growth areas being developed in accordance with a Precinct Structure Plan until the future urban land within approximate 1.5 to 2km radius of the proposed venue can be demonstrated to exhibit most or all the following attributes of community resilience and maturity including:

Facilities and infrastructure

- *Almost fully developed residential neighbourhoods.*
- *Fully developed shopping centres including retail, business and community services,*
- *A range and diversity of leisure and entertainment facilities,*
- *Active and passive recreation spaces,*
- *A range of employment opportunities suited to a range of skills,*
- *Public transport services,*
- *Walking trails and bicycle networks,*
- *Access to a full range of educational opportunities from kindergarten to tertiary level,*
- *A range of local medical, physical and mental health and well-being services,*
- *Access to local help and support services,*
- *Aged care facilities, active and health ageing programs,*
- *Community hubs,*

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Social connections

- *Multi- purpose sports facilities,*
- *Evidence of innovative ways to reduce social isolation,*
- *Positive ageing programs and events,*
- *Positive early childhood and education participation rates,*
- *Evidence of increased access to social support,*
- *Positive levels of childhood well-being (e.g. Australian Early Development Census results),*
- *Positive family/household wellbeing indicators,*
- *Local cooperatives and community associations etc.*
- *Facilitated relationships between developers and non-government organisations for the provision of services and the early activation of community spaces,*

Local networks

- *Opportunities for people to connect and participate (formal and informal,*
- *Communities activating their own activities,*
- *Residents involved in decision-making and collective action not only through participation in committees,*
- *Volunteering rates,*
- *People, especially young people, feeling an increased sense of belonging, empowerment and ability to actively participate in the community,*
- *Programs bringing users, their families, practitioners, community experts and other stake holders together to design new facilities, services and systems,*
- *Participation in decision making processes (i.e. Council).*

3.3.4. Inappropriately references to a 400-metre walking distance or clear line of sight of certain uses (including, in particular social housing

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- (108) The reliance upon a 400-metre walking distance to uses of land that are considered threatening to or threatened by gaming venues is a widely used and well tested mechanism in statutory gaming planning policy and provisions.
- (109) The use of this separation technique can be found in many planning schemes including the following examples of local gaming or the revised provisions of the schedules to Clause 52.28:
- Wyndham,
 - Port Phillip,
 - Murrindindi,
 - Moreland,
 - Macedon Ranges, and
 - Maroondah.
- (110) The measure applies the broad planning application of 400 metres as being a comfortable walking distance. For example, the primary grid of roads is set at 1.6 km so that if a bus route is offered at 800 metres intervals within the grid of roads, no home would be more than 400 metres walking distance from a public transport route.
- (111) This measure of comfort has been translated into a measure of convenience with the understanding that a feature (such as social housing, a support agency or an area of lower socio-economic characteristics) would not be conveniently located relative to a

gaming venue if it was more than 400metres walking distance away or removed from direct line of sight.

(112) I do accept that the reference to 400 metres walking distance or clear line of sight to social housing is too imprecise and has the potential to deny an appropriate gaming venue location by the presence of one social housing dwelling. In previous cases and policies, the presence of a cluster of approximately 50 such dwellings in an inner city location such as Port Phillip has applied.

(113) I recommend the proposed provision be varied to recognise that more recent social housing developments do not generally occur in such large concentrations and 20 or more social houses in close proximity to each other would be more appropriate to the Wyndham setting.

3.4. Amendment to Clause 5.0

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3.4.1. Should provide policy direction at Clause 5.0 to the schedule to Clause 52.28, to ensure a break in play, rather than the proposed reference to 24-hour operation

(114) The inclusion of the reference to 24-hour operations of allied facilities was intended to break the nexus between gaming venues being in premises where activity was occurring 24/7/365.

(115) The gaming regulations already require a break in play over a 24-hour period.

(116) The planning objective goes towards a different objective, that being to ensure that the community is offered access to other recreation and leisure activities that align with the hours of operation of gaming venues so that gaming is not 'the only game in town' and that there are some genuine alternative choices to gaming both in the gaming venue and preferably also outside the venue.

(117) The latter point has been addressed in the context of gaming venues proposed to be located in growth areas where the above recommended provisions provide for evidence of other attractions being open.

(118) A more useful wording of the Clause as it relates to 24 hours would be that:

Gaming machines should not be located:

In venues that offer access to gaming when there are no other recreation and leisure venues in the locality that are open to the public during the same period as the gaming room.

3.5. Application requirements

3.5.1. The application requirements to the schedule to Clause 52.28 should not include details of gaming machine density within the local area or the demographic profile of the area within 400 metres walking distance to the proposed venue

(119) There is no merit in this submission.

(120) Simply stated how is an appropriate location to be established if the information on demographic profiles and gaming machine density are not to be submitted with the application material.

(121) This information would have to be central to any party seeking to prepare a business case to establish a gaming venue.

(122) If it's not supplied by the applicant, then it would have to be collected by the Responsible Authority and therefore it is not an unreasonable or inappropriate burden to place upon applicants.

3.6. Reference document

3.6.1. The proposed reference document includes outdated density figures, presents a negative view of gambling and is not balanced, and inappropriately discourages gaming or acts as a blanket policy that bans or discourages EGMs

(123) The proposed revision to *Settlement* policy at Clause 21.02 proposes to include the *Wyndham Gambling Harm Minimisation Policy and Action Plan 2018-2022* as a reference document.

(124) The local gaming planning policy review was undertaken under the 'umbrella' and in the context of the recommendations of that adopted council policy, but it has not directly informed the recommendations that appear in the planning scheme.

- (125) A more appropriate document to reference in the planning scheme would be the *Gaming Machines Policy Review – Clause 22.03 Wyndham Planning Scheme (2019)*.
- (126) I recommend that this change be made. It does not diminish the standing of the Council's policy as an adopted municipal policy as provided for by section 60 of the *Planning and Environment Act*.

4. CONCLUSIONS

- (127) This evidence and the background report to Amendment C252 has advanced a body of strategic evidence and discussion that justifies why growth areas should attract different planning policy and provision to effectively enable the resilient growth of new and emerging communities and minimise harm from gaming.
- (128) There is merit in some of the submissions made to the amendment. In this report I have advanced recommendations for additional or expanded provisions that would improve:
- The ability to measure the establishment of a mature and resilient community in a growth area,
 - The control on the hours of operation on a gaming venue,
 - The basis upon which social housing should be used a discouragement against the establishment of gaming venue, and
 - The appropriate reference document.

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Rob Milner
February 2021



ATTACHMENT 1 - WITNESS STATEMENT

The name and address of the expert

Robert Milner, Principal of Kinetica Studio Pty Ltd, located at 25/500 Collins Street, Melbourne 3000.

The expert's qualifications and experience

Robert Milner holds an Honours Diploma in Town and Country Planning from Liverpool Polytechnic. He is a Life Fellow of the Planning Institute of Australia and a Fellow of the Victorian Planning and Environmental Law Association.

A Curriculum Vitae is included at Attachment 2.

The expert's area of expertise to make this report

Robert has a broad range of expertise in planning and development matters enabling him to comment on a wide spectrum of urban and rural, statutory and strategic planning issues and processes.

Other significant contributors to the report

Not applicable.

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Instructions that define the scope of the report

Robert Milner has been instructed by Harwood Andrews, Lawyers, on behalf of Wyndham City Council to provide strategic and statutory planning expert evidence in relation to Amendment C252 to the *Wyndham Planning Scheme*.

The identity of any person who carried out tests or experiments upon which the expert has relied on and the qualifications of that person

Not applicable.

The facts, matters and all assumptions upon which this report proceeds

There are no other facts, matters or assumptions upon which the report relies other than those explicitly stated in the report.

Documents and other materials the expert has been instructed to consider or take into account in preparing his report, and the literature or other material used in making the report

Robert Milner has reviewed the material as referenced in the body of this report.

A summary of the opinion or the opinions of the expert

A summary of Robert Milner's opinions is provided within the body of the report.

Any provisions or opinions that are not fully researched for any reason

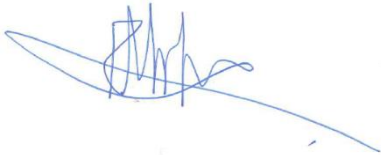
Not applicable.

Questions falling outside the expert's expertise and completeness of the report

Robert Milner has not been instructed to answer any questions falling outside his area of expertise. The report is complete.

Expert declaration

I have made all inquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.



Robert Milner
February 2021

ATTACHMENT 2 - CURRICULUM VITAE



Robert Milner

Principal

Rob Milner is a respected strategic and statutory planner and a recognised leader of the planning profession in Victoria. He has had a high profile career spanning more than 40 years with extended periods of experience working for local government and in private practice. His clients have included many State government agencies (including planning, community development, justice, roads, growth areas and regional development), municipalities throughout Victoria, as well as a broad range of corporate and other private sector interests. He has a reputation for integrity, objectivity, an original style of evidence and for providing clear and fearless advice to proponents and objectors; the responsible authority; claimants and government agencies. Particular expertise is in complex and controversial projects, gaming matters, acquisitions and restrictive covenants.

Principal kinetica

Melbourne, Australia
2019 - present

Director

10 Consulting Group Pty Ltd
Melbourne, Australia
2010 - 2019

General Manager - Planning

CPG Australia Pty Ltd
1999 - 2010

Director

Rob Milner Planning Pty Ltd &
Savage Milner
1994 - 1999

Project Director

Collie Planning and Development
1991 - 1994

General Manager Town Planning

Jones Lang Wootton
1988 - 1991

City Planner

City of Box Hill
1980 - 1988

Planner

Perrott Lyon Mathieson Architects
and Planners
1977 - 1980

Planner

Kirklees Metropolitan Borough
Council, United Kingdom
1976 - 1977

Diploma in Town and Country Planning (First Class Honours)

Liverpool Polytechnic

Areas of Expertise and Experience

- Strategic studies, policy development and statutory implementation
- Expert evidence and advocacy
- Rob is regularly retained to provide expert evidence to courts, panels and tribunals on the broadest range of land use and development planning issues. He is able to evaluate and form a robust opinion on complex matters quickly and has a capacity to manage a considerable body of work in an efficient and timely manner. Rob is also an acknowledged advocate and negotiator and is regularly engaged in development approval and rezoning projects where process and relationships need to be carefully nurtured to ensure a viable and timely outcome. Legislative and planning scheme reviews and amendments
- Gaming policy and applications
- Restrictive Covenants
- Acquisition and compensation
- Organisation audits and process reviews

Rob's ability to communicate effectively among a broad range of stakeholders means that he is regularly engaged to facilitate workshops, conferences, consultation and other situations

where leadership and engagement of groups is required.

He has committed to 'giving back' to a profession that has provided him with a rewarding career. As well as contributing to the development of the Planning Institute of Australia he has acted over the last two decades in the capacity of mentor for many younger planners. Additionally, he regularly attends and gives papers at professional development forums.

Associations

- Life Fellow Planning Institute of Australia (PIA)
- Fellow of the Victoria Planning and Environmental Law Association (VPELA)
- Former State and National President of the Planning Institute of Australia (PIA)
- Member, Planning and Local Government Advisory Council (1994 - 1999)
- Deputy Chairman, Future Farming Expert Advisory Group (2009)

ATTACHMENT 3 – PREVIOUS POLICY AND EVIDENCE ON GAMING

1 Rob Milner has been responsible for preparing gaming policies for the following municipalities in the context of the gaming policy and the provisions at Clause 52.28 of planning schemes.

- Greater Bendigo;
- Greater Geelong;
- Surf Coast;
- Hume;
- Whittlesea;
- Casey;
- Warrnambool;
- Maribyrnong;
- Moonee Valley;
- Greater Shepparton;
- Mount Alexander;
- Brimbank;
- Frankston;
- Mornington Peninsula;
- Kingston;
- Mitchell;
- Macedon Ranges;
- Cardinia;
- Benalla;
- Murrindindi;
- Wyndham;
- Cardinia; and
- Yarra.

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2 In recent years he has provided expert evidence in gaming cases before the Tribunal including the following examples of hotels and clubs:

- Exchange Hotel – Melbourne;
- Francis Hotel – Melbourne;
- Bay and Bridge Hotel – Port Melbourne;
- Terminus Hotel, Healesville;
- Peppermill Inn – Shepparton;
- Fyansford Hotel - Greater Geelong;
- Flying Horse Hotel – Warrnambool;
- Pink Hills Hotel – Officer;
- Euroa Hotel – Euroa;
- Bendigo Stadium – Bendigo;
- Royal Hotel – Benalla;
- Glenroy RSL – Glenroy;
- 231 Leakes Road - Truganina and
- Phoenix Hotel and Reception Centre – Williams Landing.



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