

**Wyndham Planning Scheme Amendment C252wynd
Electronic Gaming Machine Policy**

Panel Report

Planning and Environment Act 1987

28 July 2021

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]


If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Wyndham Planning Scheme Amendment C252wynd

28 July 2021



Elissa Bell, Chair

Contents

	Page
1 Introduction.....	1
1.1 The Amendment	1
1.2 Background	1
1.3 Procedural issues	2
1.4 Summary of issues and the Panel’s approach	3
2 Planning context.....	5
2.1 Planning policy framework	5
2.2 Relevant amendments.....	6
2.3 Ministerial Directions and Practice Notes.....	6
2.4 Strategic justification	7
2.5 Discussion and conclusion	7
3 Growth areas and gaming.....	8
3.1 Assessing social and economic impacts	8
3.2 Growth areas and gaming policy.....	9
3.3 Conclusions and recommendations.....	15
4 Net community benefit	17
4.1 The issues	17
4.2 Evidence and submissions	17
4.3 Discussion.....	17
4.4 Conclusions and recommendation	17
5 Settlement Policy	18
5.1 Overarching policy	18
5.2 Objective and strategy.....	19
5.3 Background documents.....	20
6 Locational requirements	24
6.1 The issue.....	24
6.2 Background	24
6.3 Application of policy.....	24
6.4 Additional guidance required for appropriate locations.....	25
6.5 Redistribution of entitlements	25
6.6 Available non-gaming entertainment options.....	26
6.7 Separation distance from sensitive uses.....	27
6.8 Proposed sensitive uses.....	28
7 Venue design and operation	30
7.1 The issue.....	30
7.2 Evidence and submission.....	30
7.3 Discussion.....	31
7.4 Conclusions and recommendations.....	31

8	Other matters.....	32
8.1	Application requirements.....	32

Appendix A Document List

Appendix B Panel preferred version of Clause 21.02-3

Appendix C Panel preferred version of Schedule to Clause 52.28

Glossary and abbreviations

Action Plan	Wyndham Gambling Harm Minimisation Policy and Action Plan 2018-2022
Council	Wyndham City Council
EGM	Electronic gaming machine
PE Act	<i>Planning and Environment Act 1987</i>
PPF	Planning Policy Framework
PSP	Precinct Structure Plan
Review Report	Gaming Machines Policy Review – Clause 22.03 Wyndham Planning Scheme, Final Report July 2019 by 10 Consulting Group
Sayers	Sayers Property Holdings Pty Ltd
SEIFA	Socio-Economic Indexes for Areas
VCAT	Victorian Civil and Administrative Tribunal
VCGLR	Victorian Commission for Gambling and Liquor Regulation
Willoby and Leakes	Willoby Investment Nominees Pty Ltd and Leakes CUT Nominees ATF Leakes Commercial Trust Pty Ltd

Overview

Amendment summary

The Amendment	Wyndham Planning Scheme Amendment C252wynd
Common name	Electronic Gaming Machine Policy
Brief description	Amends existing and introduces new electronic gaming policy to the Wyndham Planning Scheme
Planning Authority	Wyndham City Council
Authorisation	18 June 2020
Exhibition	30 July to 19 September 2020
Submissions	<p>Number of Submissions: 6 Opposed: 2</p> <ul style="list-style-type: none"> - Willoby Investment Nominees Pty Ltd and Leakes CUT Nominees ATF Leakes Commercial Trust Pty Ltd (Willoby and Leakes) - Sayers Property Holdings Pty Ltd (Sayers) - Alliance for Gambling Reform - Victorian Local Governance Association - Brimbank City Council - Hobsons Bay City Council

Panel process

The Panel	Elissa Bell (Chair) and Sarah Carlisle (Chair for the Directions Hearing)
Directions Hearing	15 January 2021 by video conference
Panel Hearing	24 and 25 March 2021 by video conference 21 and 22 June 2021 by video conference
Parties to the Hearing	<p>Wyndham City Council represented by Greg Tobin, Aaron Shrimpton and Kim Piskuric of Harwood Andrews, with expert evidence from Rob Milner of Kinetica on Planning</p> <p>Sayers Property Holdings Pty Ltd (Sayers) represented by Hayley Vinecombe of Ratio Consultants</p> <p>Willoby Investment Nominees Pty Ltd and Leakes CUT Nominees ATF Leakes Commercial Trust Pty Ltd (Willoby and Leakes) represented by Nicola Collingwood of Counsel instructed by Sarah Kovatch of BSP Lawyers, with expert evidence from:</p> <ul style="list-style-type: none"> - Colleen Peterson of Ratio on Planning - Tim Stillwell of ShineWing Australia on Accounting
Citation	Wyndham PSA C252wynd [2021] PPV
Date of this report	28 July 2021

Executive summary

Wyndham Planning Scheme Amendment C252wynd (the Amendment) seeks to update existing gaming policy for the City of Wyndham. The updated policy guides the appropriate location and operation of electronic gaming machines, recognising that:

- the existing Wyndham community currently has convenient access to gaming
- the growth areas represent opportunity for new applications which ought to be considered at an appropriate time to ensure proper and orderly planning.

Key issues raised in submissions included:

- net community benefit is not a relevant test
- the Action Plan should not be included as a background document
- a general discouragement of gaming machines in growth areas is not warranted
- locational criteria for the appropriate siting of gaming machines should be included
- redistribution of entitlements is no longer relevant
- a firm 400-metre separation distance from sensitive uses is inappropriate
- whether social housing is an appropriate sensitive use and if so, whether it needs quantification
- whether the application requirements are reasonable and appropriate.

The Panel considered all written submissions made in response to the exhibition of the Amendment, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

Council submitted the Amendment was well justified based on extensive strategic work, enjoyed a substantial level of support (submissions 3 to 6) and even opponents recommended the Amendment be adopted, subject to changes. The Panel agrees the Amendment is well founded and strategically justified, and should proceed subject to addressing the more specific issues raised in submissions as discussed in the following report.

The Panel concludes:

- Reference to 'net community benefit' should be deleted.
- The Action Plan should be deleted as a background document as it is of limited utility to decision-makers.
- The Review Report should be included as a background document.
- It is appropriate for policy to discourage gaming machines in growth areas, the subject of a Precinct Structure Plan, whilst there remains significant uncertainty as to the final layout and composition of the physical and social community.
- Locational criteria provided are generally appropriate.
- Redistribution of entitlements is an appropriate consideration.
- The 400-metre separation distance is well understood, appropriate and not intended to be applied strictly.
- Social housing is an appropriate sensitive use and quantification is unnecessary.
- The application requirements are reasonable and appropriate.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Wyndham Planning Scheme Amendment C252wynd be adopted as exhibited subject to the following:

- 1. Amend Clause 21.02, as shown in Appendix B.**
- 2. Amend the Schedule to Clause 52.28, as shown in Appendix C.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to update existing gaming policy for the Wyndham Planning Scheme.

Specifically, the Amendment proposes to:

- remove the existing electronic gaming policy at Clause 22.03
- remove references to gaming in Clause 21.08 (Economic development)
- introduce references to gaming in Clause 21.02-3 (Liveability)
- replace the schedule to Clause 52.28 (Gaming) with a new schedule
- introduce a new background document being *Wyndham Gambling Harm Minimisation Policy and Action Plan 2018-22*.

1.2 Background

Council regularly reviews and updates its local electronic gaming machine (EGM) policy and the Amendment was the result of the latest review. The background to the Amendment was the preparation of the *Wyndham Gambling Harm Minimisation Policy and Action Plan 2018-2022* (the Action Plan) which was adopted by Council in June 2018. A key objective of the Action Plan was to ensure local planning policy and processes meet best practice in the assessment of EGM applications.

Consistent with the Action Plan, 10 Consulting Group undertook a comprehensive review of the existing EGM policy at Clause 22.03 in April 2019. The final report, *Gaming Machines Policy Review – Clause 22.03 Wyndham Planning Scheme, Final Report July 2019* (the Review Report) was delivered to Council in July 2019 and included 11 recommendations, eight of which were proposed revisions to the Planning Scheme.

Sayers is the operator of Hotel 520 located at 520 Sayers Road, Tarneit. This existing venue currently has 65 gaming machines.

On 19 August 2020, Council issued a notice of decision to refuse to grant an amendment to the planning permit for Hotel 520 which sought to extend operating hours to 3 am (all days) and make other changes. The decision to refuse to grant an amendment is subject of review proceedings at the Victorian Civil and Administrative Tribunal (VCAT) which was held on 2 and 3 June 2021, the decision has been reserved.

Willoby Investments has significant land holdings within the City of Wyndham, whilst Leakes Nominees are developers. A key project identified for these companies was Club Tarneit proposed for land at 115 Wood Road, Truganina, owned by Willoby. Leakes Nominees seeks to develop this land to Club Tarneit in partnership with the Werribee Football Club who would lease, operate, and manage the venue. On 1 April 2021 the Victorian Commission for Gambling and Liquor Regulation

(VCGLR) approved the premises for 70 EGMs, with the decision being released on 4 May 2021¹. Council had received a planning permit application for a Restricted Place of Assembly, including:

- installation and use of 70 EGMs
- bistro
- function space
- sports bar
- café
- signage.

The permit applicant lodged an appeal to VCAT for failure to determine this application in the prescribed time. On 13 April 2021, Council's planning committee resolved that Council present to VCAT its recommendation to refuse the permit based on numerous grounds including most relevantly, that the *"proposed gaming venue and EGM are contrary to Council's Electronic Gaming Policy at Clause 22.03 and Clause 52.28"*. Remaining reasons varied from inconsistency with the objectives of the relevant urban design framework, objection by the Victorian Planning Authority as a determining referral authority on the grounds it does not meet the relevant urban design framework and that the application is premature in that a separate proposal to vary the size of the nearby wetland and drainage reserve has not been resolved. The proceeding has been adjourned to November 2021.

Whilst these two examples provided useful context for the discussion and the Panel's deliberations as to the potential practical ramifications of the Amendment, the Panel makes no comment on the appropriateness of the issuing of any planning permits and notes they will be assessed on their merits against existing policy and that this is outside the scope of the Hearing.

1.3 Procedural issues

1.3.1 Panel constitution

Ms Sarah Carlisle was appointed as the Panel on 14 December 2020, however due to timing issues she had to stand down following the Directions Hearing. The Panel was reconstituted to appoint Ms Elissa Bell as the Panel on 19 January 2021.

1.3.2 Hearing deferment

On Day 1, Willoby and Leakes raised concerns the background research relied upon by Mr Milner's evidence had not been provided to all parties. Council advised it was not in a position to provide and circulate the material and so Willoby and Leakes sought directions from the Panel for Mr Milner to provide access to the research or, for Mr Milner's evidence to be ruled inadmissible. The first day concluded early to allow the Panel to consider making the directions sought.

On Day 2, Council advised it had received the requisite consent to provide and distribute the research, provided it remain confidential. To this end, confidential undertakings were sought by relevant parties in addition to directions regarding a new timing for the Hearing. In reply, Willoby and Leakes formally sought an adjournment and, considering the time spent the day before making submissions for the evidence to otherwise be ruled inadmissible, sought to hear the Panel's ruling in any case.

¹ Document 47

The Panel advised that considering Council was now in a position to distribute the material, it obviated the need for a ruling and as such concluded it inappropriate to provide a now unnecessary ruling. Parties agreed to provide the Panel with draft consent orders regarding the confidential material and the timing for the remainder of the Hearing. The matter was adjourned for a date to be set.

At the Parties' request, the Panel granted two extensions to provide the draft consent orders. On 14 April 2021, Council provided draft consent orders indicating the only aspect remaining in dispute was whether the material could be quoted directly in written form in Hearing documents as opposed to by page and paragraph only. Council proposed the material could be quoted in oral evidence.

On 15 April 2021, Willoby and Leakes opposed the relisting of the matter on the basis that the material had not yet been distributed and it was inappropriate for Council to attempt to restrict the use of the material in the Panel Hearing. Willoby and Leakes also submitted that it is not for the Panel to determine the contents of any confidentiality agreement.

The Panel provided directions relating to:

- sighting signed undertakings prior to the distribution of the research
- how the additional research was to be dealt with throughout the Hearing
- revised timetabling arrangements.

The Panel agreed with Willoby and Leakes that it was not for it to determine the wording of the confidentiality agreements and that these should be made to the party likely to be aggrieved by any unauthorised disclosure.

1.4 Summary of issues and the Panel's approach

Key issues raised in submissions included:

- net community benefit is not a relevant test
- a general discouragement of gaming machines in growth areas is not warranted
- the Action Plan should not be included as a background document
- locational criteria for the appropriate siting of gaming machines should be included
- redistribution of entitlements is no longer relevant
- a firm 400-metre separation distance from sensitive uses is inappropriate
- whether social housing is an appropriate sensitive use and if so, whether it needs quantification
- as a sensitive use, social housing needs quantification as it is often hard to identify
- whether the application requirements are reasonable and appropriate.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Growth areas and gaming
- Net community benefit
- Settlement Policy
- Locational requirements
- Venue design and operation
- Other matters.

2 Planning context

2.1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework (PPF), which the Panel has summarised below.

Victorian planning objectives

Council submitted the Amendment will assist in implementing State policy objectives set out in section 4 of the Act by:

giving direction to the appropriate location and operation of EGMs in the municipality, protecting existing and future communities from the harmful effects of gambling, and providing guidance in relation to the effective consideration of social and economic impacts during the planning permit assessment process.

Clause 52.28 (Gaming)

The purpose of this clause is:

- to ensure that gaming machines are situated in appropriate locations and premises
- to ensure the social and economic impacts of the location of gaming machines are considered
- to prohibit gaming machines in specified shopping complexes and strip shopping centres.

This clause:

- requires a permit to install or use a gaming machine
- provides the schedule may specify guidelines relating to: locations for gaming venues and machines and venues for gaming machines
- requires a permit application to be accompanied by information specified in the schedule
- sets out decision guidelines.

Strip shopping centres are defined as:

A strip shopping centre is an area that meets all of the following requirements:

- it is zoned for commercial use;
- it consists of at least two separate buildings on at least two separate and adjoining lots;
- it is an area in which a significant proportion of the buildings are shops;
- it is an area in which a significant proportion of the lots abut a road accessible to the public generally.

Planning Policy Framework

Council submitted the Amendment strengthens the PPF by providing specific guidance on the appropriate location and operation of gaming machines and by articulating Council's policy position on EGMs in terms of Clause 52.28.

Schedule to Clause 52.28

The existing schedule:

- prohibits gaming machines in listed shopping complexes
- prohibits gaming machines in all strip shopping centres
- does not specify:
 - guidelines relating to locations for gaming venues and machines

- guidelines relating to gaming venues
- application requirements.

Council submitted the Amendment is consistent with the following aspects of the PPF:

- Clause 21.01-1 Municipal Profile – by seeking to anticipate and address planning challenges from rapid population growth, liveability, infrastructure and transport.
- Clause 21.02-3 Settlement – by introducing a new strategy to the Liveability provisions which provides increased focus on connections between harm minimisation, health and wellbeing as articulated through the Action Plan.

2.2 Relevant amendments

(i) Amendment VC148

Amendment VC148 made substantial changes to the structure and content of the Planning policy framework, as well as other provisions in the Planning Scheme. In relation to gaming, the Review Report identifies that VC148 has created the opportunity for a local schedule to specify guidelines relating to:

- locations for gaming venues and machines
- venues for gaming machines
- any information to accompany an application for permit.

The Amendment uses the Schedule to Clause 52.28 rather than updating the local policy at Clause 22.03.

(ii) Melbourne Planning Scheme Amendment C307 and Melton Planning Scheme Amendment C182

As exhibited Melbourne Planning Scheme Amendment C307 (Melbourne C307) sought to introduce a revised gaming policy into the Melbourne Planning Scheme. Following Amendment VC148, Council proposed to convert the key content of the proposed policy into the Schedule to Clause 52.28. The Panel report was released 26 April 2019.

Melton Planning Scheme Amendment C182 (Melton C182) sought to introduce electronic gaming machine policy and replace the Schedule to Clause 52.28. The Panel for Melton C182 was released 11 February 2019.

Wyndham City Council relied upon the Panel reports for Melbourne C307 and Melton C182 to support some of its' submissions. The Panel refers to these reports in this context, however considers there are different circumstances between each municipality, especially between Wyndham and Melbourne.

2.3 Ministerial Directions and Practice Notes

Ministerial Directions

The Explanatory Report states the Amendment has been prepared to be consistent and in accordance with the following Ministerial Directions, that discussion is not repeated here:

- Ministerial Direction 9 (Metropolitan Strategy)
- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction on The Form and Content of Planning Schemes

- Ministerial Direction 15 (The Planning Scheme Amendment Process).

2.4 Strategic justification

The Review Report identified that the new schedules to Clause 52.28 introduced by Amendment VC148, created “*both a structural need and justification to revise the gaming provisions*” in the Planning Scheme.

Council submitted the Amendment “*represents the culmination of an extensive period of strategic work*” including the Action Plan and Review Report. Pointing to supporting submissions from Hobsons Bay and Brimbank Councils, the Victorian Local Government Association and the New Gaming Policy Alliance for Gambling Reform, Council submitted the Amendment “*enjoys substantial support*”. Acknowledging the changes proposed by Ms Peterson, Council submitted the Amendment should be adopted with the remaining question being drafting.

Ms Peterson’s evidence supported the Amendment subject to changes she proposes to deal with issues identified by her review.

2.5 Discussion and conclusion

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the PPF, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Growth areas and gaming

3.1 Assessing social and economic impacts

(i) Issue

The key issue is whether Clause 52.28 allows the consideration of social and economic impacts.

(ii) Submissions

Willoby and Leakes submitted the VCGLR was the body “*specifically tasked with considering the social and economic impacts of the proposal*”. In contrast, the planning jurisdiction was to focus on “*a spatial analysis of the impacts of gaming machines on their particular location*”.

In response to this submission, the Panel requested parties to address it on the role of Clause 52.28 in assessing social and economic impacts. Written responses were provided after the Hearing.

Willoby and Leakes submitted² it was well established the planning controls of Clause 52.28 are concerned with the appropriateness of the proposed location whereas the potential impacts of gaming as a land use were to be considered by the VCGLR. Willoby and Leakes provided a list of decisions, summaries and quotes to support its submission.

In response, Council³ agreed with the general position expressed however, submitted the letter did not:

expressly acknowledge that the relevant decisions have established that the locational considerations relevant to planning encompass both the physical features and characteristics of the location and the social and economic characteristics of the location.

Council submitted its position was supported by the cases referred to by Willoby and Leakes in addition to the following cases:

- *Moreland City Council v Glenroy RSL [2018] VSC 126*
- *Glenroy RSL Sub Branch Inc v Moreland CC [2019] VCAT 58.*

(iii) Discussion

The Panel agrees with Council’s summation that Clause 52.28 allows consideration of social and economic impacts of placing gaming machines in the proposed location (in addition to the purely spatial considerations). To the extent there is overlap between the considerations of the VCGLR and responsible authorities in considering gaming applications, their roles are quite different and well settled. The Panel does not consider the role of VCGLR in assessing social and economic impacts detracts from the role of responsible authorities under Clause 52.28 to consider the social and economic impacts of the location of gaming machines.

² Document 58

³ Document 59

(iv) Conclusion

The Panel concludes:

- Clause 52.28 allows consideration of social and economic impacts of placing gaming machines in the proposed location.

3.2 Growth areas and gaming policy**(i) The issue**

Key issues are whether:

- the proposed policy represents a ‘blanket ban’ or allows for a merits-based approach
- nearby or adjoining established areas could be profiled to overcome any uncertainty in social and economic characteristics of the proposed location
- the proposed policy to delay gaming in growth areas is appropriate and justified.

(ii) Background

A key shortcoming of the existing Gaming policy identified in the Review Report was:

The policy does not effectively address the special challenge identifying appropriate locations for new venues and additional EGMs in a growth area context where the attributes of the new community and suburb are not fully or clearly understood.

The Amendment proposes to introduce specific mention of the growth areas in the following locations.

In Clause 21.02-3 Liveability where the proposed new wording was as follows:

Gaming and gambling is a potential source of considerable harm to wellbeing, health and safety of the Wyndham community. Wyndham offers many established hotels and clubs with EGMs. Growth areas present further opportunities to increase the number of gaming venues and EGMs. These considerations need to be balanced against the lack of clarity regarding the socio-economic attributes of the new emerging communities; their potential vulnerability to harm from convenient access to gaming; the delays in delivering a full range of activity centres and other community facilities, which collectively will have a bearing upon the identification of appropriate locations for gaming.

In Clause 21.02-3 by introducing a new strategy:

8.1 Discourage the establishment of new gaming venues in the growth areas the subject of Precinct Structure Plans until the new community has fully established, its demographic characteristics can be surveyed and analysed and the layout, composition and form of land use and development have been delivered.

In the Schedule to Clause 52.28 the Amendment proposed the following relevant aspects:

Clause 1 - Objectives

...

- To discourage new gaming venues from establishing in a growth area covered by approved Precinct Structure Plan until the new community and land use patterns have substantially established.

• ...

Clause 4 - Locations for gaming machines

...

Gaming venues and the installation of gaming machines are discouraged in the following locations:

- ...
- In new growth areas being developed in accordance with an approved Precinct Structure Plan 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.

(iii) Evidence and submissions

Merits-based approach

The Willoby and Leakes submission raised concerns the proposed policy amounted to a *“blanket discouragement of gaming machines in growth areas”* which was *“concerning as these areas are generally where high-quality entertainment and recreation facilities are required to service growing populations. Due to financial viability, these venues often include gaming”*. Willoby and Leakes submitted that a merits-based assessment should be preferred and that whilst Precinct Structure Plan (PSP) areas are largely greenfield sites, they often adjoin established areas which could be profiled to assess the impact of a new venue. It submitted that this was a methodology accepted and used by VCGLR, and noted that Council had engaged consultants to profile the future population which could also be used.

Ms Peterson’s evidence echoed this sentiment and added that a delayed approach would *“deny the community of an important and valued social venue throughout the early years of its development where a large proportion of the population will have established”*.

Ms Peterson’s evidence considered the *“primary failing”* of the Amendment was *“its focus on discouraging gaming in its entirety”*, which in her view was a function of incorrect assumptions made regarding the magnitude of the risk of problem gambling in growth areas.

In Mr Milner’s evidence the proposed policy was *“properly seen as a time management tool”* and not *“prohibitive”*. In his view, the Review Report provided justification for a *“cautious approach”*.

Mr Milner gave evidence that:

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.

Mr Milner stated that *“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”*.

Mr Milner’s emphasised the limits of a PSP in providing certainty of the final layout and community characteristics.

A PSP can inform the amount and density of new housing.... where the principle 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 (sic) social and support networks.

In support of this, Mr Milner referred to the case of *Riverdale NAC Investments Pty Ltd v Wyndham CC [2020] VCAT 828* in demonstrating that in delivering a local activity centre in accordance with a

PSP, *“there remains uncertainty as the final layout, structure and composition of uses and development ... deemed to be generally in accordance with the PSP”*.

Mr Milner expressed a key problem being grappled with was *“how can a person make an informed decision on the merits of an application for a particular location when the community may not exist in entirety, when physical aspects may not exist and the final layout of activity centres may not be resolved”*.

In cross-examination, Mr Milner agreed with Willoby and Leakes that VCAT and VCGLR have approved venues in growth areas on numerous occasions having taken their cues of likely demographics from existing nearby areas.

Council rejected *“the proposition put in submissions that the proposed policy and objective do not seek anything a merits-based assessment”* (sic).

Appropriate and justified

Mr Milner gave evidence that the exhibited wording was drafted prior to more recent research conducted for a number of growth area councils which, in his evidence found:

... 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.

He provided that:

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
- prohibiting gaming in shopping complexes and strip shopping centres on the basis that prevents a high level of exposure to the opportunistic gambler
- the proximity and availability of alternate 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.

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. (Panel’s emphasis)

He agreed with submissions that more detailed definition of the appropriate timing for gaming machine applications would be helpful and, referring to the outcomes of the above research, recommended a new wording which delayed consideration until:

.... the future urban land within approximately 1.5-to-2-kilometre radius of the proposed venue can be demonstrated to exhibit most or all of the following attributes of community resilience and maturity including:

....

What followed was an extensive list of community attributes under the headings of:

- Facilities and infrastructure
- Social connections
- Local networks.

The research referred to was provided to the Panel as outlined in Section 1.3.

Ms Peterson undertook a detailed review of the research which in her evidence was said *“to provide the strategic justification”* for the Amendment. She summarised the tenant of the research *“to be that communities in growth areas are inherently less resilient and more prone to problem gambling than communities in more established communities”*. Ms Peterson was not satisfied that the research could form the basis of strategic merit for the Amendment. In her view the research *“lacks academic or investigative rigour, is based on a series of assumptions made by the authors and fails to demonstrate a connection between people living in growth corridors and problem gambling”*.

Ms Peterson gave evidence:

There is significant variation of SEIFA scores for individual suburbs within the municipality.

Willoby and Leakes raised concerns that Mr Milner’s proposed new wording took an already unacceptable discouragement policy too far by requiring a multitude of vague facilities and community attributes to be in existence prior to the consideration of a gaming venue. In its submission there was *“no nexus”* between those attributes and *“the harm asserted by Mr Milner arising from his concept of resilience”*. Further in its submission there was *“no cogent evidence in support of his ‘resilience’ thesis”*.

Willoby and Leakes submitted the proposed approach failed to recognise the proximity of many growth areas in Wyndham to already established urban areas which would offer new communities *“a full range of services and facilities”*. It submitted that *“insofar as the provisions seek to delay the approval of gaming machines they are likely to operate as an effective ban on new gaming venues”*. Willoby and Leakes submitted such an outcome would suit *“Council’s agenda to not only avoid approval of new gaming machines but to reduce their existing numbers in the municipality”*.

The consequences of such a ban would deprive the community of *“valuable and community building benefits”*. Willoby and Leakes used Club Tarneit to outline many examples of such benefits that would arise should such a venue be encouraged and approved.

Willoby and Leakes submitted it was grossly unfair for prospective owners of gaming venues to have to wait until all other land uses in a PSP had been determined. It submitted, a savvy investor ought to be able to rely upon the future directions for physical infrastructure presented in a PSP in order to invest in an appropriate location for a future venue before all potential opportunities had been snapped up and the opportunity was essentially built out.

In his oral evidence, Mr Milner cautioned the research *“was not intended to be evidence”* but was instead about exploring themes of research undertaken and expressing opinions. He stated it was not the justification for the Amendment but that it was useful in assisting in answering the problem of: when would it be appropriate to introduce EGMs into a growth area community?

Milner conceded that no one had undertaken a structured or documented assessment of a community against the proposed list of attributes to test the hypothesis that these demonstrate resilience. Instead, the ideas had been talked through and served more as a *“theoretical benchmark”*.

Exhibited wording:

The Panel raised the following questions of clarification of Council and Mr Milner:

- What were the key shortcomings identified of the exhibited wording for Clause 4 of Schedule to Clause 52.28?
- Was there any reason for the variations in language used throughout the Amendment to describe PSPs (in growth areas *“the subject of a PSP”* vs *“covered by an approved PSP”*).

Mr Milner stated he remained concerned the exhibited wording for Clause 4 was too imprecise to be genuinely helpful and needed to *“make reference to not only the physical but at least the concept of social connections and local networks”*.

Mr Milner clarified the delay policy should apply to all growth areas, whether or not they were subject to a PSP. In closing, Council submitted its intent was not to capture all the growth areas, only those to be developed in accordance with a PSP.

Ms Peterson proposed replacement wording in Clause 22.02-3 and Clause 1 and 4 of Schedule the Clause 52.28 to limit the specific policy relevant to growth areas to be the consideration of the availability of non-gaming entertainment opportunities. Ms Peterson did not give specific evidence on the proposed wording of strategy 8.1, instead stating the objective and strategies were redundant.

Ms Peterson considered the threshold test suggested in the Review Report that permit applications be made no earlier than when 80 per cent of the land is developed and housing occupied, or within 10 years, is arbitrary and without evidence.

Willoby and Leakes submitted there was *“no evidence or strategic basis to support the exhibited version that there should be a majority of lots built”*. It submitted if there was no strategic evidence for a delay policy, there was no basis for the exhibited wording.

(iv) Discussion

The Panel agrees with Council that the proposed policy does not present a blanket ban but allows a merits-based assessment whilst indicating clear Council policy to avoid growth areas during an initial period of rapid growth and development (and corresponding uncertainties regarding the likely final infrastructure and community composition).

If Council applied any of the policy in the Clause 52.28 schedule strictly for the separate purpose of denying any additional EGMs in the municipality then applicants would be able to seek Tribunal review. The Panel can only proceed on the basis the policy will be applied appropriately and correctly.

Insofar as there are uncertainties around the future of a growth area spatially and its local community – the Panel agrees with Mr Milner that these are uncertainties that could have a bearing on the appropriate location for EGMs. The Panel notes, among other factors, the low threshold definition for a strip shopping centre.

The Panel considers it appropriate for Council to adopt and signpost a cautious approach in these circumstances and that this is justified based on the conclusions of the Review Report.

Given the great variations between PSP and suburb areas in Ms Peterson's evidence, the Panel does not support an approach which profiles emerging communities based on what has or is happening next door.

The Panel accepts Mr Milner's evidence regarding the high level nature of a PSP, noting it has been described as a 'mud-map', but also notes that some aspects of PSPs may provide enough strategic direction (such as an urban design framework) to help assess an application against the future vision for the physical aspects of the locality.

The Panel agrees with Mr Milner's list of considerations that would historically inform and influence a decision on appropriate locations for gaming, and considers these still relevant.

The Panel disagrees with Mr Milner that there is a strategic point of difference between established and emerging communities in relation to resilience and respective vulnerability to problem gambling. This was not supported by any probative evidence presented to the Panel. The evidence of Ms Peterson demonstrated that communities in the growth areas of Wyndham vary in their nature. The Panel therefore disagrees with Mr Milner's proposed new wording.

The Panel considers the exhibited wording for Clause 21.02-3 appropriately captures the issue as drafted. The Panel disagrees with Ms Peterson's proposed changes which focus only on the availability of alternate, non-gaming entertainment options.

The Panel disagrees with Ms Peterson that the resilience concept was the strategic justification for the delay policy. Instead, the Panel finds sufficient justification in the context of the specific role of planning policy and the challenge presented by growth areas as highlighted in the Review Report (which was prepared prior to the resilience research).

The Panel agrees the exhibited wording for Clause 4 in Schedule to Clause 52.28 fails to specify social attributes for consideration (unlike the proposed policy in Clause 21.02-3). However, the Panel does not agree with Mr Milner's proposed improvements, because the emphasis on "*social connections and networks*" is reliant upon the resilience thesis.

Within the boundaries of policy considerations under Clause 52.28, the Panel considers the most pertinent uncertainties in growth areas to be:

- the nearby and adjacent land uses and developments
- proximity to sensitive uses
- the location of key infrastructure such as train stations and the like which may influence the location of key pedestrian routes
- the nature of the (existing and/or emerging) local community and its vulnerability to problem gambling from which one could assess potential social and economic impacts (of the location).

These were flagged by the Review Report and Mr Milner's evidence. In relation to the spatial boundaries of these uncertainties, the Panel agrees with Ms Peterson that there was no probative evidence to support the exhibited requirement for the majority of lots (or 80 per cent) of a PSP to be developed. The Panel considers the most pertinent spatial boundary for the consideration of sensitive, nearby and adjacent land uses would be 400 metres. This aligns with other parts of the policy.

In relation to the ability to survey demographic characteristics mentioned in strategy 8.1, the Panel considers this guidance an unhelpful threshold – even if only 20 per cent of a future community had moved in, they could be surveyed.

The Panel accepts submissions of Council that the focus ought to be on growth areas the subject of a PSP to the exclusion of growth areas that are not the subject of a PSP.

The Panel considers policy along the following lines to be consistent with the strategic justification, Mr Milner's evidence regarding the problem and more appropriate to that exhibited:

To discourage new gaming venues in growth areas, the subject of a PSP, until they are sufficiently established to overcome any significant uncertainties related to the location of key infrastructure, adjoining land uses, proximity to sensitive uses and the potential for social and economic impacts on the local future community.

The Panel considers that similar wording may be used for the strategy at 8.1 of Clause 21.02-3, the objectives at Clause 1 of the Schedule to 52.28 and in the locational guidance at Clause 4. The Panel has suggested wording consistent with this intent in Appendices B and C which may be refined further by Council.

The intent is to allow a case-by-case approach in which applicants have the right to assert that enough is known of the emerging characteristics to ensure an appropriate decision. Similarly, decision-makers are empowered to consider the extent to which remaining uncertainties will have a bearing on their ability to make an informed decision on the likely appropriateness of a gaming application at the specified location.

To the extent this approach gives favour to non-gaming uses to get in first, the Panel considers this to be entirely appropriate where gaming is a use that can cause social harm and the aim is for orderly planning of future urban areas which are expected to house up to 50 per cent of the growing Melbourne population.

Nonetheless, it is expected that in this policy there is sufficient latitude to ensure gaming is not the very last use. There would reasonably become a time when the adjoining land uses are sufficiently planned, permitted or developed, when the community is sufficiently established that a gaming venue could proceed (if appropriate on its merits) and any subsequent sensitive use would be on notice as to whether or not they choose to develop on a remaining lot.

The Panel accepts the importance of non-gaming entertainment options being available and this is discussed separately in section 6.6 below.

3.3 Conclusions and recommendations

The Panel concludes:

- the proposed policy allows for a merits-based approach
- given the great variations between PSP and suburb areas, profiling nearby or adjoining established areas will not necessarily overcome the uncertainty of social and economic characteristics of a proposed location
- subject to drafting changes, it is appropriate for policy to discourage gaming machines in growth areas, whilst there remains significant uncertainty as to the final layout and composition of the physical and social community.

The Panel recommends:

Amend Clause 21.02, as shown in Appendix B to:

- a) **Revise strategy 8.1 to discourage new gaming venues in growth areas until they are sufficiently established to overcome any significant uncertainties relating to adjoining land uses, proximity to sensitive uses and the potential for social and economic impacts on the local emerging community.**

Amend the Schedule to Clause 52.28, as shown in Appendix C to:

- a) **Revise the second objective to discourage new gaming venues in growth areas, the subject of a Precinct Structure Plan, until they are sufficiently established to overcome any significant uncertainties relating to adjoining land uses, proximity to sensitive uses and the potential for social and economic impacts on the local emerging community.**
- b) **Revise the third dot-point of the second list under Clause 4 to discourage new gaming venues in growth areas, the subject of a Precinct Structure Plan, until they are sufficiently established to overcome any significant uncertainties related to adjoining land uses, proximity to sensitive uses and the potential for social and economic impacts on the local emerging community.**

4 Net community benefit

4.1 The issues

The issue is whether a reference to ‘net community benefit’ should be included in the decision guidelines.

4.2 Evidence and submissions

Sayers submitted the reference to net community benefit should be removed from the decision guidelines as it is “*not a relevant test*”. Willoby and Leakes agreed.

Council clarified this reference had been mistakenly made and agreed to remove it. Council elaborated that upon inquiry it could not determine how or why the additional decision guideline had been included in the amendment as it had not formed part of the recommendations of the Review Report.

Council advised parties of this error in its decision to refer unresolved submissions to a Panel of and requested the Panel recommend the guideline be removed.

4.3 Discussion

Considering the nature of the mistake and agreement between parties, the Panel does not consider it necessary to provide lengthy discussion on the merits of the decision guideline. The Panel accepts Council’s explanation and agrees to recommending its removal.

Irrespective, any future permit would have to respond to Clause 71.02-3 (Integrated decision making).

4.4 Conclusions and recommendation

The Panel concludes ‘net community benefit’ should not be referenced in the decision guidelines.

The Panel recommends:

Amend the Schedule to Clause 52.28, as shown in Appendix C to:

- a) Delete the proposed decision guideline relating to ‘net community benefit’.**

5 Settlement Policy

5.1 Overarching policy

(i) Background

The Review Report identified that gaming is currently expressed as a subset of Economic Development (at Clause 21.08) and recommended it be made a settlement and liveability issue by relocating it to Clause at 21.02-3 Liveability. A key rationale was that this clause is where the planning scheme documents connections between harm minimisation, health and wellbeing.

The proposed wording has been provided above in Section 3.2(ii).

A key issue was then identified:

Ensuring that the impact of gambling on the health and wellbeing of the community are minimised.

(ii) The issue

The issues are whether:

- the settlement policy at Clause 21.02-3 needs to acknowledge or highlight the opportunities of gaming
- the key issue at Clause 21.02-3 needs to be focused on negative impacts of gambling as opposed to all impacts.

(iii) Evidence and submissions

Ms Peterson considered recognition needed to be made to the fact that gaming was a legitimate form of recreation which would result in benefits for those participating responsibly.

Mr Milner stated such changes were unnecessary as they *“seemed to go to matters in legislation already”*. Mr Milner also considered it unnecessary to pay homage to potential benefits as the focus was appropriately on harm minimisation.

Council submitted such changes were unnecessary.

Ms Peterson added the key issue should be qualified by specifying it was intended to address *“negative”* impacts of gaming.

Council agreed to this change.

(iv) Discussion

The Panel agrees with Mr Milner that there is no need for Clause 21.02-3 to repeat and pay homage to gaming as a legitimate form of recreation with potential benefits. That is not to deny those benefits, just to recognise and agree that this policy is aimed at harm minimisation.

The Panel accepts Ms Peterson’s amendment to the key issue.

(v) Conclusion and recommendations

The Panel concludes:

- the settlement policy at Clause 21.02-3 does not need to acknowledge or highlight the benefits of gaming

- the key issue should specify its focus on negative impacts of gaming.

The Panel recommends:

Amend Clause 21.02, as shown in Appendix B to:

- a) **Specify the fourth key issue is focused on negative impacts of gambling in line with Ms Peterson's evidence.**

5.2 Objective and strategy

(i) Background

The Review Report recommended a new objective on gaming and three strategies be included in the Liveability Clause. The exhibited amendment used the precise words as recommended in the Review Report. Note Strategy 8.1 was provided at 3.2(ii) and is not repeated here.

Objective 8

To site EGMs in appropriate locations and venues where the potential gambling related harm to the community will be minimised.

Strategies

...

8.2 Encourage additional EGMs to be consolidated in established venues where it can be demonstrated that they would not be proximate to areas of social and economic disadvantage, transport interchanges or convenience retail and community facilities, used by many people on a regular basis.

8.3 Ensure that a choice of other leisure and recreation pursuits are available proximate to gaming venues and alongside EGMs.

(ii) The issue

The issue is whether it is appropriate to have an objective and strategy relating to gaming in Clause 21.02-3.

(iii) Evidence and submissions

Ms Peterson gave evidence these strategies would become redundant if her earlier changes to the overarching policy were accepted.

Council's submission noted that in recommending they be deleted, Ms Peterson's evidence did not address the substance of the strategies, it further submitted that a strategy similar to 8.2 had been supported by the Melbourne C307 Panel.

(iv) Discussion

The Panel considers the objective and strategies to be legitimate and appropriate considerations for Council.

In terms of the strategies the Panel considers:

- 8.2 appropriately encourages EGMs in existing venues whilst balancing the consideration of whether those venues are up to current standards in terms of their location characteristics
- 8.3 appropriately ensures the availability of alternate recreational pursuits.

(v) Conclusion

The Panel concludes it is appropriate to have an objective and strategies related to gaming.

5.3 Background documents**(i) The issue**

The issue is whether the proposed background document is appropriate.

(ii) Background

The Amendment proposed to include the Action Plan as a background document.

Section 60 of the PE Act relevantly provides:

What matters must a responsible authority consider?

(1) Before deciding on an application, the responsible authority must consider –

- (a) the relevant planning scheme;
- (b)...

(1A) Before deciding on an application, the responsible authority, if the circumstances appear to so require, may consider –

...

- (g) any other strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or municipal council...

Practice Note 13 – Incorporated and Background Documents, provides the following instances when a document should be mentioned as a background document:

If they provide useful background information or general advice to applicants, or will assist in understanding the planning scheme, they may be suitable as background documents.

In terms of weight to be afforded to a background document, the Practice Note provides:

In practice, the test of how much weight is given to a document that is not incorporated when making a decision under the planning scheme will be based on:

- whether the planning authority has had the opportunity to incorporate the document
- the relationship and relevance between the objectives sought by the planning scheme and the objectives of the document
- the amount of public scrutiny the document has been subject to
- the strategic basis for the document
- the consistency with which the document has been applied in similar matters
- the availability of the document
- the currency of the document and whether it has been superseded by more recent studies or guidelines.

The Panel notes that in submissions parties referred to these documents being both “reference documents” and “background documents”. The Panel understands reference documents no longer exist in the new format planning schemes, instead background documents are the current terminology with their use explained by Practice Note 13. For consistency, the Panel has used the term “background document” throughout whether or not submitters did so.

(iii) Evidence and submissions**Action Plan**

Sayers submitted the Action Plan was an inappropriate background document as it was *“flawed, likely to confuse and mislead”*. Sayers submitted the Action Plan was based on the misguided premise that all gaming is harmful and should be discouraged, as opposed to focusing on problem gaming.

Willoby and Leakes similarly submitted the Action Plan was not balanced, provided blanket discouragement for gaming and failed to recognise it as a lawful and legitimate activity for many, causing detriment and harm to a minority.

Ms Peterson gave evidence the Action Plan should not be included as a background document and would be more appropriately maintained as a Council document which would be given less weight under the Planning Scheme. Ms Peterson’s key concerns were the failure to appropriately recognise the legitimacy of gaming and the fact the document relied upon data which was outdated and incomplete. In her view, the document did not provide any practical guidance to decision-makers assessing a planning application.

Ms Peterson stated it was her experience that, due to the specialised nature of gaming applications as a sub-set of planning, *“reference documents are relied upon heavily in guiding the decision-making process”*.

Mr Milner agreed the Action Plan should not be included as a background document. He gave evidence that although the Review Report was undertaken under the “umbrella” of the Action Plan, the Action Plan had not directly informed the recommendations that formed part of the Amendment. He noted that removing the Action Plan as a background document would not diminish its role as an adopted Council policy to be considered under section 60 of the PE Act.

Council opposed this change. It submitted the role of background documents, according to the Practice Note, was purely to inform the background of the planning scheme amendment and that little weight would be afforded it in any case.

Review Report

Ms Peterson considered the Review report was *“fundamentally flawed as it proceeds on the basis of a number of incorrect assumptions than (sic) unduly influence the recommended changes in the Planning Scheme”*. In particular she identified and provided further assessment of the following assumptions or misconceptions:

- communities in growth areas are inherently vulnerable and therefore are more included to become problem gamblers
- the extent of gambling in Wyndham is excessive
- there is little social or economic benefit from responsible participation in electronic gambling
- the location of electronic gaming in growth areas before other entertainment uses will result in problem gambling.

She then provided detailed analysis as to why in her view, these assumptions were flawed including:

- detailed demographic and socio-economic figures to disprove the notion that all growth areas were equally disadvantaged

- detailed analysis of gambling levels to demonstrate *“that the extent of gaming in Wyndham sites comfortably within the average levels of expenditure across the state”*
- the Review Report fails to recognise any of the social and economic benefits that can accrue from the location of gaming machines
- the car-centred nature of growth area communities meant the catchment for non-gaming entertainment options should be greater than proposed.

Ms Peterson stated that if the Panel were to accept the evidence of Mr Milner on the vulnerability of growth area communities to problem gambling, then the Review Report should be included as a background document. The Review Report helped to illuminate the assumptions (which she submitted were false) that the planning scheme amendment had been based upon and was therefore of assistance.

Mr Milner gave evidence that the Review Report was the key document preceding and informing the Amendment and should therefore be included as a background document. He gave evidence it was prepared to inform the Amendment and done so prior to, and without, the benefit of knowledge gleaned from his later research as outlined in his expert witness statement.

Council submitted the Review Report should be included consistent with Mr Milner’s evidence.

(iv) Discussion

The Panel agrees with the experts that the Action Plan should not be referred to as a background document. Balancing the factors considered in the Practice Note, the Panel agrees with Council that if it were a background document it would be afforded little weight. The Panel agrees with Mr Milner that there is only a vague relationship between the document and the planning scheme. The Panel accepts Ms Peterson’s evidence that data upon which it was based is outdated. The Panel does not consider it would be particularly “useful” in assisting applicants or decision-makers in considering applications under Clause 52.28.

The Panel does not agree with Ms Peterson’s evidence that the Review Report is based on false assumptions. The Panel considers the Review Report is sound and stands alone from Mr Milner’s later resilience evidence discussed in Chapter 3.2. Having considered the Review Report again, and in isolation from Mr Milner’s evidence, the Panel considers this document highlights:

- the separate roles of planning and gaming legislation in approving EGMs (at Chapter 3.1)
- the legitimacy of gaming as a lawful recreation activity in Victoria (at Chapter 6.1)
- the challenges presented by growth areas due to their rapidly evolving nature and uncertainties as to their final physical form and community (despite the presence of PSPs) (at Chapter 7.2)
- for similar reasons the attributes of emerging communities and their susceptibility to gambling harm cannot be fully appreciated (at Chapter 11).

This is all provided in the context that, the distance from the most remote areas of the municipality to existing EGMs is currently approximately 6 kilometres with most being within 4 kilometres. Residents therefore have an existing level of accessibility to gaming venues, without the need to rush in and risk the possibility of approving more venues at locations which may later turn out to be ‘too convenient’ to be considered appropriate with the benefit of hindsight.

The Panel accepts Mr Milner’s evidence that the expert witness statement and research were both written after the Review Report and Amendment and did not form part of the original strategic justification for the proposed Amendment. In fact, the Panel considers it to be easily divorced from Mr Milner’s subsequent evidence.

In disagreeing with Ms Peterson's reading of the Review Report, the Panel accepts her evidence and that of Mr Milner that including it as a background document would assist applicants and decision-makers in further understanding the policy behind the Amendment.

The Panel notes that Attachment 5 of the Review Report is actually the Action Plan. No evidence or submissions were made raising concerns of the Action Plan being introduced to the planning scheme by way of attachment to a background document. For completeness, the Panel considers it should be removed in line with previous conclusions that it will not be particularly useful to a decision maker and it is unnecessary to burden the planning scheme with copious, detailed documents of little utility in the decision-making framework.

(v) Conclusion and recommendation

The Panel concludes the Action Plan should be removed as a background document and replaced by the Review report.

The Panel recommends:

Amend Clause 21.02, as shown in Appendix B to:

- a) delete the background document: *The Wyndham Gambling Harm Minimisation Policy and Action Plan 2108-2022*
- b) insert the background document: *Gaming Machines Policy Review – Clause 22.03 Wyndham Planning Scheme (2019)*

6 Locational requirements

6.1 The issue

The overarching issue is whether the proposed locational requirements are appropriate and justified. This is further broken down to sub-issues below.

6.2 Background

The Amendment proposes to provide more policy guiding the appropriate location for gaming machines including by providing:

- Objectives at Clause 1
- Guidance for locations for gaming machines at Clause 4
- Guidance for venue design at Clause 5
- Application requirements at Clause 6, and
- Decision guidelines at Clause 7.

6.3 Application of policy

(i) The issue

The issue is whether locational criteria will be applied in a prohibitive manner or if they allow a merits-based approach.

(ii) Background

The two views of this issue were reflected in submissions on the merit or appropriateness of individual criteria.

(iii) Evidence and submissions

Consistent with submissions that the proposed growth area policy represented a blanket ban, submitters raised concern the locational requirements would be applied in a prohibitive manner.

Council submitted *“it is not intended or in practice will be, a tick the box exercise, it needs to be balanced”*. Council submitted that this was *“not unusual for any discretionary guidance in the planning scheme”*.

Ms Peterson gave evidence that although a decision maker should have consideration of the full suite of criteria, in her experience it was common for a Council officer to consider that an application failing on one criterion alone would be a fatal flaw to the application as a whole.

(iv) Discussion

The Panel considers ‘criteria’ in Clause 4 are appropriately considered policy, in contrast to the clear prohibitions provided in clauses 2 and 3. This policy at Clause 4 will need to be balanced and considered objectively on a case-by-case basis when an application is before Council.

(v) Conclusion

The Panel concludes the locational criteria allow a merits-based approach.

6.4 Additional guidance required for appropriate locations

(i) The issue

The issue is whether more guidance is required as to locations where gaming machine venues are to be encouraged.

(ii) Background

Clause 4 of the Amendment provided specific guidance on locations where gaming venues should be and where they are discouraged.

(iii) Evidence and submissions

Willoby and Leakes submitted the policy should be *“expanded to provide greater direction as to the preferred locations for gaming machines”* and provided examples of what this could include.

Ms Peterson’s evidence built on this theme suggesting the two new criteria to support locations that are convenient but not accessible and on the periphery of activity centres.

Council considered the exhibited provisions adequate and highlighted that the issues of convenience and proximity to retail were already addressed in the list of discouraged locations. Council submitted Clause 4 read as a whole provided a full picture of locations to be discouraged and encouraged and that *“all criteria will be read together and balanced as a whole”*.

(iv) Discussion

The Panel agrees with Council that the proposed additions are unnecessary as the locational characteristics are to be considered and balanced as a whole.

(v) Conclusion

The Panel concludes more specific guidance as to where gaming should be is unnecessary.

6.5 Redistribution of entitlements

(i) Issue

The issue is whether the redistribution of entitlements is a reasonable and appropriate consideration.

(ii) Background

The Amendment proposed the following policy encouraging redistribution of gaming machines:
Gaming venues and machines should be located:

...

- Where they would make a positive contribution to the redistribution of gaming machines away from relatively disadvantaged areas, as defined by the latest SEIFA Index of Relative Socio-economic Disadvantage.

The application requirements at Clause 6 included details of any such transfer.

(iii) Evidence and submissions

Willoby and Leakes submitted the proposed criterion would not assist with assessing an application as approvals are often sought prior to securing entitlements. Therefore, including it would ensure *“applications fail one of the locational criteria from the outset”*. It submitted this criterion was outdated, based on the previous duopoly between Tattersalls and Tabcorp, and unlikely to work under the current system.

Ms Peterson stated the criterion should be deleted as *“applications rarely, if ever, have the potential to relocate machines away from an existing venue within the municipality”*.

Mr Milner gave evidence this criterion formed part of *“existing policy”*, was commonly used, and *“does not necessarily mean that an application to consolidate or transfer entitlements in that venue will fail”*.

Council responded by quoting passages of the Panel Report for Melbourne C307 including the following conclusion:

Given changes in gaming approvals, the redistribution of EGMs between venues (especially within the City of Melbourne) is unlikely to constitute common practice. If it occurs, it may influence social and economic effects. Therefore, it is open to Council to determine what level of prominence it should have as a consideration under the policy or schedule although it does not warrant inclusion as a broad objective of the policy or schedule.

Council submitted the quoted passages confirmed the ongoing relevance of the policy.

(iv) Discussion

Having previously determined that locational criteria are policy expressions to be balanced and not applied strictly, the Panel disagrees with submissions that this criterion guarantees applications will fail. The Panel accepts submissions that in the current context the redistribution of machines is less likely to occur than previously under arrangements.

The Panel agrees that Melbourne C307 demonstrates to an extent the continued relevance of the criterion. It would have been of benefit to be provided with some more local context in the Wyndham municipality. Nevertheless, the Panel agrees with the Melbourne C307 Panel that if redistribution of entitlements were possible, the corresponding social and economic effects of such redistribution would be a relevant consideration for Council. That the Amendment allows for this possibility is therefore appropriate.

(v) Conclusion

The Panel concludes the redistribution of entitlements is an appropriate consideration.

6.6 Available non-gaming entertainment options**(i) The issue**

The issue is whether the wording for the consideration of non-gaming entertainment options is appropriate.

(ii) Evidence and submissions

Ms Peterson disagreed with the exhibited wording that *“gaming venues should not be established ahead of the provision of non-gambling entertainment, recreation activity and social infrastructure”* as in her evidence there was a:

... viability nexus between providing new gaming and new venues being able to be established. New venues by their very nature provide for a range of non-gambling entertainment, recreation activity and social infrastructure and by providing these early in the development of PSPs will result in benefits to the community through new facilities.

Her preferred wording was as follows:

In new growth areas where the community does not have access to a range of retail, non-gaming related entertainment and recreational opportunities.

In response to questioning from Council, Ms Peterson agreed she had not provided a parameter for how close those options would need to be, but opined they would need to be proximate and reasonable for example, a 10-minute drive.

Council opposed Ms Peterson’s proposed change.

(iii) Discussion

The Panel prefers the wording proposed by Ms Peterson because it reads better and is more clearly focused on the location.

In relation to the proximity of the alternate non-gaming entertainment options, the Panel does not consider it necessary for the provision to specify this. Whilst reference was made to a 10-minute drive and at times a corresponding 5-kilometre catchment, the rapidly changing nature of these areas could also result in a rapidly changing catchment that would be appropriate to consider. That is, as these once rural communities become urbanised and strive to become 20-minute neighbourhoods both the distance travelled and mode of travel will likely change.

(iv) Conclusion and recommendation

The Panel concludes the wording proposed by Ms Peterson is preferable to that exhibited.

The Panel recommends:

Amend Schedule to Clause 52.28, as shown in Appendix C to:

- a) **revise the criterion in Clause 4 relating to non-gaming related entertainment opportunities in line with Ms Peterson’s evidence.**

6.7 Separation distance from sensitive uses**(i) The issue**

The issue is whether the 400-metre walking distance measure is appropriate and justified.

(ii) Evidence and submissions

Sayers opposed the 400-metre walking distance, used in both Clause 4 policy guidance and Clause 6 application requirements, as *“it is likely to be interpreted in a prohibitive fashion”* instead of *“delving into whether the physical relationship will result in convenience gambling”*.

Willoby and Leakes' submission accepted the appropriateness of policy separating gaming from sensitive land uses but opposed to the use of a "400 metre walking distance or clear line of sight". In its submission the primary issue should be the presence or absence of connectivity or synergies between the venues.

Ms Peterson gave supporting evidence proposing either a "clear line of sight" or "synergies" between venues.

In oral evidence Ms Peterson stated in the context of other criteria being introduced which she considered were not fair and reasonable, she accepted the 400-metre measure was commonly accepted and "wouldn't die in a ditch over it".

Mr Milner gave evidence the 400-metre walking distance was a "widely used and well tested mechanism" that could be found in many planning schemes including six that were listed.

Council submitted the use of 400 metres was appropriate and consistent with other planning schemes and supported by previous Panel reports including Melton C180 and Melbourne C307.

(iii) Discussion

For reasons previously outlined by this same Panel in Melton C180, the Panel considers the use of the 400-metre measure is appropriate. Consistent with the findings outlined above, the Panel does not agree it is to be applied in a prohibitive fashion.

(iv) Conclusion

The Panel concludes the use of the 400-metre measure is appropriate and justified.

6.8 Proposed sensitive uses

(i) The issue

The issue is whether:

- it is appropriate to include specific reference to social housing as a sensitive use
- social housing needs to be quantified.

(ii) Evidence and submissions

Willoby and Leakes' submission acknowledged the appropriateness of social housing as a listed sensitive and vulnerable use, however submitted that due to privacy restrictions it was sometimes difficult for applicants to determine the location of social housing and therefore to be of greater assistance, the policy required some quantification.

Mr Milner agreed the parameter was too imprecise and that the exhibited wording "has the potential to deny an appropriate gaming venue location by the presence of one social housing dwelling". In his evidence, it would be more appropriate to specify a cluster of social housing, referring to previously cases referring to a cluster of fifty, before nominating his own figure of twenty.

Ms Peterson considered there was an absence of evidence that social housing residents were particularly vulnerable to problem gambling and that this should be removed from the sensitive use list.

Council supported Mr Milner's addition over Ms Peterson's proposed deletion. Council quoted from Melton C182 and Melbourne C307 in support of its submission. In the quote provided, the Melbourne C307 Panel:

- supported Council's proposal to identify social housing
- referred to the Kingfish case⁴ which refused planning permission for EGMs at the Exchange Hotel based on incompatibility with proximate social housing (Ebsworth House)
- was "*not inclined to put a threshold on the size of social housing*" since this could be arbitrary
- instead preferred to rely upon consideration of the particular characteristics of the housing in question, such as VCAT did in the Kingfish case.

(iii) Discussion

The Panel disagrees with Ms Peterson that social housing does not warrant mention as a potentially sensitive use.

The Panel is surprised by Mr Milner's evidence that the current wording could result in the rejection of a proposal based on one social housing dwelling. This is inconsistent with submissions by Council as to how the provisions operate and with the Panels conclusions at Chapter 6.3 of this report.

The Panel agrees with the Melbourne C307 Panel that a consideration of particular circumstances is preferable to specifying an arbitrary threshold of the size of social housing. The Panel accepts there are challenges in identifying the location of social housing but does not consider this warrants selecting an arbitrary number of social houses for an applicant or decision maker to look for.

The Panel notes the location in Clause 4 makes this a policy consideration and not a requirement. There is no need for applicants or Council to undertake detailed title searches to identify social housing within a 400-metre radius of an application.

Instead in the Panel's view a reasonable level of inquiry of the surrounding land uses and occupiers (for example, surveying the local area, talking to relevant stakeholders including Council) may serve to identify either definite or potential areas of social housing which may warrant further investigation. Should there be no indications of such a nearby land use, the applicant could proceed with its application. If there was nearby social housing, this would warrant further consideration.

(iv) Conclusion

The Panel concludes:

- it is appropriate to include specific reference to social housing as a sensitive use
- social housing does not need to be quantified.

⁴ Melbourne CC v Kingfish Victoria Pty Ltd & Anor (Includes Summary) (Red Dot) [2013] VCAT 1130

7 Venue design and operation

7.1 The issue

The issue is whether the proposed venue design and operational requirements are appropriate and justified.

7.2 Evidence and submission

Willoby and Leakes submitted the reference to a 24-hour day in the venue requirements was not necessary as gambling regulations already mandated a minimum 4-hour break in play. Instead, the submission considered requiring a greater break in play or ensuring venues not trade after 2 am, would be more appropriate.

Ms Peterson gave evidence she had the following concerns with the proposed considerations:

- preference for existing over new venues, as this could reinforce legacy issues of existing venues that are not up to current standards
- consideration of high-quality signage as this is adequately covered in Clause 52.05
- operation hours should be limited to exclude service after 2 am
- gaming machines should be discouraged in venues with no direct carpark access to the gaming room and where gaming could be easily accessed from other non-gaming entertainment areas.

Although Ms Peterson gave evidence that there was fundamentally less risk with machines in existing venues, in her view the policy should not negate the opportunity for new venues which bring with them proportionately higher benefits including the opportunity for more informal social interaction.

In support of referencing 2 am, Ms Peterson gave evidence it is not arbitrary but instead based on extensive research demonstrating that beyond this time displays an overrepresentation of problem gamblers.

Mr Milner agreed the reference to 24 hours was inappropriate and gave evidence the policy intent was to ensure alternate recreation opportunities were open at the same time as gaming to ensure it wasn't effectively the *"only game in town"*. He proposed revising the wording to this effect which was supported by Council.

Council opposed all other changes proposed by Ms Peterson.

In relation to existing venues, Council acknowledged that some existing venues may be less suitable than new ones unless supported by accompanying plans to bring the venue up to contemporary standards. Council submitted the preference for existing venues over new ones should be read in the context of all the surrounding policy which would ensure that any existing venues lacking in contemporary protective measures, would in any case be considered unacceptable. Council pointed to acceptance of the same policy wording by the Melbourne C307 Panel.

In relation to the additional guidance for where gaming machines should be discouraged, Council submitted these two points were already adequately covered in the fourth dot-point of where gaming machines should be located.

7.3 Discussion

It is interesting to note that in Melbourne Amendment C307, the industry submissions (presumably current operators) supported policy favouring existing venues, submitting this would reduce increased convenience gambling. Whilst Melbourne City Council did not consider this distinction to be so material as to warrant a different approach.

Here is the reverse, presumably because of the greater opportunity for new venues presented by growth areas compared to Melbourne City.

The Panel agrees with the Melbourne C307 Panel that there may be lower risk of an increase in convenience gambling when additional machines are placed in existing venues compared to new venues provided such venues are well run and meet the current requirements for good planning. The Panel agrees with Council that this is achieved by the policy when it is read as a whole.

In relation to hours of operation, the Panel accepts Mr Milner's evidence as to the rationale behind the policy and accepts his proposed amendments as appropriate.

The Panel agrees with Council that Ms Peterson's further two additions have adequately been covered elsewhere and duplication is unnecessary.

The Panel agrees with Ms Peterson that signage is adequately dealt with in Clause 52.05 and should be removed from this policy.

7.4 Conclusions and recommendations

The Panel concludes subject to the recommended changes, the proposed venue design and operational requirements are appropriate and justified.

The Panel recommends:

Amend Schedule to Clause 52.28, as shown in Appendix C to:

- a) Delete the proposed venue requirement related to signage in Clause 5.**
- b) Amend guidance relating to venue opening hours in Clause 5, in line with Mr Milner's evidence.**

8 Other matters

8.1 Application requirements

(i) Background

The Amendment proposes to introduce application requirements in the Schedule to Clause 52.28 which *“must accompany an application, as appropriate”*. Requirements include those under the following headings:

- proposal details
- locational assessment
- venue design and operation
- social and economic benefits.

(ii) The issue

The issue is whether the proposed application requirements are appropriate and justified.

(iii) Evidence and submissions

Ms Peterson considered that details regarding a transfer of entitlements should be prefaced by the words ‘if applicable’.

Council submitted this was not necessary given the words ‘as appropriate’ in the introductory clause.

In relation to the listed locational assessment, Ms Peterson gave evidence that the car-centred nature of growth corridor communities meant that the relevant catchment for alternate non-gaming forms of entertainment and recreation should be specified as 1.5 to 2 kilometres. Sayers’ submission agreed. Ms Peterson stated the remaining locational criteria, predominately interested in adjacent and adjoining land uses within 400 metres, should be deleted as she thought these considerations would be covered adequately by the social and economic impact assessment.

Sayers submitted the requirement to include information of game machine density at a local level was unhelpful. It also submitted that profiling the local community within 400 metres of the proposed venue would *“not provide any meaningful data”* and had the *“potential to exaggerate characteristics”*, instead the *“more commonly accepted method of profiling a community...based on a primary patron catchment of 2.5 kilometres for metropolitan venues and 5 to 10 kilometres for outer suburban/regional venues”*.

Sayers submitted including a locational requirement as follows:

- Discourage gaming venues within locations that would encourage impulse or convenience gambling.

Council opposed all changes and submitted the proposed locational assessment information would be useful for decision-makers and while it could be included in the social and economic impact assessment, there was no guarantees without expressly listing them as it had proposed. In support of its submission, Council quoted Mr Milner’s response being *“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 materials". In relation to the proposed new criteria, Council submitted the list was non-exhaustive.

(iv) Discussion

The Panel considers that an additional preface to the transfer of gaming machine criteria is unnecessary.

There is a need for the proposed locational assessment criteria to ensure the appropriateness of the proposed location can be adequately assessed. The Panel agrees the list is non-exhaustive. Considering the policy as a whole, an analysis or list of non-gaming entertainment opportunities in the surrounding area will likely accompany most applications in any case. Local machine density is a relevant consideration especially where related to the transfer of gaming machines, which is where it is expressed.

The potential social impacts on a broader catchment (broader than 400 metres) may be considered under the application requirements dealing specifically with social and economic benefits. The characteristics of the immediate surroundings are still relevant to the assessment of an appropriate application.

The Panel does not agree to the wording proposed by Sayers. Although the policy this supports is not controversial, it does not logically form part of a locational assessment.

(v) Conclusion

The Panel concludes the proposed application requirements are appropriate and justified.

Appendix A Document List

No.	Date	Description	Presented by
1	15/12/20	Directions Hearing notification	PPV
2	21/12/20	Adjournment request	Ms Kovatch of BSP Lawyers for Willoby and Leakes
3	11/1/21	Directions Hearing notification	PPV
4	14/1/21	Support of adjournment request from Ratio Consultants on behalf of the operator of Sayers	Ms Kovatch
5	15/1/21	Correspondence re adjournment dates	PPV
6	15/1/21	Distribution list	PPV
7	19/1/21	Directions, Distribution list and Timetable Version 1	PPV
8	22/2/21	Email advising of new Chair	PPV
9	23/2/21	Email requesting revision to hearing timetable	Mr Shrimpton of Harwood Andrews
10	2/3/21	Timetable Version 2	PPV
11	3/3/21	Email advising of additional expert witness, Mr Stillwell, to be called for Leakes CUT Nominees Pty Ltd	Ms Kovatch
12	10/3/21	Council Part A Submission with following annexures: <ol style="list-style-type: none"> 1. Extract minutes Council meeting 8 December 2020 2. Responsible Gambling Strategy 2012 3. Strategic Planning Policy Framework Electronic Gaming 2012 4. Permit application – 115 Woods Road 5. Permit application amendment documents – 520 Sayers Road Tarneit 	Mr Shrimpton of Harwood Andrews
13	17/3/21	Expert witness statement – Colleen Peterson	Ms Kovatch
14	17/3/21	Expert witness statement – Tim Stillwell	Ms Kovatch
15	17/3/21	Expert witness statement – Rob Milner	Mr Shrimpton
16	23/3/21	Submission for Hotel 520 on Sayers	Ms Vinecombe of BSP Lawyers
17	23/3/21	Additional evidence by Colleen Peterson	Ms Kovatch
18	24/03/21	Council Part B Submission	Mr Tobin of Harwood Andrews
19	24/03/21	The Gombac Group Pty Ltd v Vero Insurance [2005] VSC 442	Ms Collingwood
20	24/03/21	Margaret Isabelle Rees v Lumen Christi Primary School [2010] VSC 514	Ms Collingwood
21	24/03/21	The Gombac Group v Vero Insurance [2004] VCAT 2540	Mr Tobin

No.	Date	Description	Presented by
22	24/03/21	Truganina Metropolitan Pty Ltd v Wyndham CC [2020] VCAT 1343	Ms Collingwood
23	25/03/21	Email regarding Hearing adjournment	PPV
24	1/04/21	Email seeking extension for drafting of consent orders	Ms Kovatch
25	7/04/21	Email granting extension	PPV
26	8/04/21	Email requesting further extension	Mr Shrimpton
27	8/04/21	Email granting further extension	PPV
28	14/04/21	Letter with draft orders for future conduct and confidentiality	Mr Tobin
29	15/04/21	Letter opposing aspects of draft orders	Ms Kovatch
30	15/04/21	Email responding to document 29	Mr Shrimpton
31	16/04/21	Email advising of new hearing dates	PPV
32	21/04/21	Letter advising of Panel's ruling regarding confidentiality of additional material enclosing distribution list and Timetable version 3	PPV
33	21/04/21	Email advising of new representation and comment on Timetable Version 3	Mr Shrimpton
34	26/04/21	Distribution list version 2 and Timetable Version 4	PPV
35	14/05/21	Signed undertakings for Ms Peterson, Mr Stillwell and Ms Kovatch	Ms Kovatch
36	17/05/21	Signed undertaking to Panel for Ms Vinecombe	Ms Vinecombe
37	21/05/21	Signed undertaking to Council for Ms Vinecombe	Ms Vinecombe
38	21/05/21	Email advising of outstanding receipt of undertaking	Mr Shrimpton
39	21/05/21	Signed undertaking of Ms Collingwood	Ms Kovatch
40	21/05/21	Letter dated 21 May 2021 regarding and providing confidential documents	Ms Lo of Harwood Andrews
41	21/05/21	Footnote 14 materials - Confidential	Ms Lo
42	21/05/21	Footnote 15 materials	Ms Lo
43	3/06/21	Letter advising wish to file addenda expert material and seeking an extension	Ms Kovatch
44	8/06/21	Email granting extension and providing parties opportunity to supplement any submissions already tabled	PPV
45	11/06/21	Review of confidential document by Ms Peterson	Ms Kovatch
46	16/06/21	Letter re supplementary information for Council's Part A submission	Ms Piskuric for Harwood Andrews
47	16/06/21	VCGLR decision in Werribee Football Club's application for EGMs for Club Tarneit	Ms Piskuric for Harwood Andrews

No.	Date	Description	Presented by
48	17/06/21	Email advising Sayers Properties do not wish to submit revised submissions	Ms Vinecombe
49	18/06/21	Letter regarding supplementary information for Council's Part B submission	Ms Piskuric
50	18/06/21	Combined proposed tracked changes to Clause 21.02	Ms Piskuric
51	18/06/21	Combined proposed tracked changes to Clause 52.28	Ms Piskuric
52	21/06/21	Submission of Willoby and Leakes	Ms Kovatch
53	22/06/21	Clause 11 - 2013 pre VC148	Ms Kovatch
54	22/06/21	Assessing gambling-related harm in Victoria	Ms Kovatch
55	22/06/21	Truganina Precinct Structure Plan 2014	Ms Kovatch
56	23/06/21	Documents referred to in submissions: <ul style="list-style-type: none"> a. Victorian Planning Authority PSP map b. <i>Glenroy RSL Sub Branch Inc v Moreland CC</i> [2019] VCAT 583 c. Endorsed plans for Bunnings development 115 Woods Road, Truganina. 	Ms Piskuric
57	24/06/21	Further documents referred to in submissions: <ul style="list-style-type: none"> a. Town Planning Report concerning 115 Woods Road b. <i>Werribee Football Club Ltd at Tiger Clubhouse (Gaming EGM increase)</i> [2009] c. <i>Werribee Football Club Ltd at Tiger Clubhouse (Gaming EGM increase)</i> [2011] d. <i>Werribee Football Club Ltd at Tiger Clubhouse (Gaming EGM increase)</i> [2018] e. <i>Werribee Football Club Ltd at Club Tarneit (EGM-Premises Approval)</i> [2021] f. Architectural Drawings for 231 Leakes Rd by TM Design Group, dated 2018 	Ms Kovatch
58	25/06/21	Response to questions raised in Hearing referring to the following cases: <ul style="list-style-type: none"> a. <i>Mitchell SC v VCGLR</i> [2021] VCAT 300 b. <i>ALH Group Property Holdings Pty Ltd v Whittlesea CC (Corrected)</i> [2017] VCAT 2164 c. <i>Darebin CC v VCGLR & Ors (Red Dot)</i> [2013] VCAT 101 d. <i>Mount Alexander SC v VCGLR & Ors (Red Dot)</i> [2013] VCAT 101 e. <i>Melbourne CC v Kingfish Victoria Pty Ltd & Anor (Includes Summary) (Red Dot)</i> [2013] VCAT 1130 	Ms Kovatch
59	30/06/21	Reply to BSP response to questions raised in Hearing	Ms Piskuric

Appendix B Panel preferred version of Clause 21.02

[Tracked Added](#)

~~Tracked Deleted~~

21.02-3 Liveability

28/05/2015-1/1/11
G192 Proposed
C252wynd

Wyndham's future liveability will be centred on making it a connected, people friendly place where there are employment, recreation and appropriate living options. A priority for *Wyndham City's Plan for Community Health, Wellbeing and Safety (2010-2013)* is to recognise the risks and build on the strengths that its exceptional growth will bring.

Wyndham has a particularly high birth rate which has significant implications in terms of planning for the needs of children, young people and their families. While posing challenges, major growth provides significant opportunities to build a strong community that creates a platform for the good health, wellbeing and safety of residents.

Gaming and gambling is a potential source of considerable harm to the wellbeing, health and safety of the Wyndham community. Wyndham offers many established hotels and clubs with electronic gaming machines. Growth areas present further opportunities to increase the number of gaming venues and EGMs. These considerations need to be balanced against the lack of clarity regarding the socio-economic attributes of the new emerging communities; their potential vulnerability to harm from convenient access to gaming; the delays in delivering a full range of activity centres and other community facilities, which collectively will have a bearing upon the identification of appropriate locations for gaming.

Key Issues

- Planning for liveable, connected and healthy communities.
- Creating an employment corridor with jobs close to where people live.
- Providing a variety of housing typologies.
- Ensuring that the [negative](#) impacts of gambling on the health and wellbeing of the community are minimised.

Objective 6

To encourage safety, health, mobility, accessibility and a sense of place in design and development.

Strategies

- 6.1 Ensure new residential development is integrated with public transport and is connected to walking and cycling links.
- 6.2 Improve connectivity and access around the city for all members of the community.
- 6.3 Create opportunities for people to connect through the creation of urban parks, pedestrian plazas and urban links.

Objective 7

To ensure that Wyndham is a city in which people feel confident to move freely and safely.

Strategies

- 7.1 Ensure that issues of community safety and crime prevention are adequately considered.

- 7.2 Ensure that the integration of safety and security concerns are considered throughout the development assessment process.
- 7.3 Ensure that the design of infrastructure and neighbourhoods takes into account safety design principles.

Objective 8

To site electronic gaming machines in appropriate locations and venues where the potential gambling related harm to the community will be minimised.

Strategies

- 8.1 Discourage the establishment of new gaming venues in the growth areas, the subject of Precinct Structure Plans, until they are sufficiently established to overcome any significant uncertainties related to adjoining land uses, proximity to sensitive uses and the potential for social and economic impacts on the emerging local community. ~~the new community has fully established, its demographic characteristics can be surveyed and analysed and the layout, composition and form of land use and development have been delivered.~~
- 8.2 Encourage additional EGMs to be consolidated in established venues where it can be demonstrated that they would not be proximate to areas of social and economic disadvantage, transport interchanges or convenience retail and community facilities, used by many people on a regular basis.
- 8.3 Ensure that a choice of other leisure and recreation pursuits are available proximate to gaming venues and alongside EGMs.

21.02-4 Implementation

28/05/2015 / / / /
C192 Proposed C252wynd

Application of zones and overlays

The objectives, strategies and policy guidelines in the Planning Scheme are implemented through the application of appropriate zones and overlays as follows:

- Outside PSP areas, apply Environmental Significance Overlay with design guidelines along Werribee River, Skeleton Creek, Lollypop Creek and Little River.
- Apply Design and Development Overlays to areas requiring specific design solutions.
- Apply Development Contributions Plan Overlays to properly plan for infrastructure provision.

Policy Guidelines

The objectives, strategies and policy guidelines in the Planning Scheme will be implemented through the application of the following local planning policy.

- Clause 22.01 (Non-Residential Uses in Residential Zones Policy) seeks to provide direction on a range of discretionary use and development options in residential zones.

Further strategic work

- Prepare and implement 'Healthy by Design' guidelines to facilitate the development of liveable local communities.
- Prepare an Open Space Maintenance Strategy to maintain and improve standards of presentation in the municipality.

Reference documents

Wyndham Open Space Strategy (2004).

~~[The Wyndham Gambling Harm Minimisation Policy and Action Plan 2018-2022](#)~~

[*Gaming Machines Policy Review – Clause 22.03 Wyndham Planning Scheme \(2019\)*](#)

Appendix C Panel preferred version of Schedule to Clause 52.28

[Tracked Added](#)

~~Tracked Deleted~~

--/--
Proposed
C252Wynd

SCHEDULE TO CLAUSE 52.28 GAMING

1.0

Objectives

--/--
Proposed
C252Wynd

- To minimise gambling-related harm to individuals and the community and ensure that gaming machines are situated in appropriate locations and premises to minimise convenience gambling.
- To discourage new gaming venues from establishing in a growth area ~~covered by approved~~ [the subject of a precinct structure plan until ~~the new community and land use patterns have substantially established~~ it is sufficiently established to overcome any significant uncertainties related to adjoining land uses, proximity to sensitive uses and the potential for social and economic impacts on the emerging local community.](#)
- To manage the concentration of gaming machines and gaming venues away from areas or communities vulnerable to gambling related harm.
- To ensure that where gaming machines operate they do so as part of an overall range of social, leisure, entertainment and recreational activities and facilities.
- To discourage the proliferation of gaming premises in locations where the predominant use is residential.

2.0

Prohibition of a gaming machine in a shopping complex

--/--
Proposed
C252Wynd

Installation or use of a gaming machine as specified in Clause 52.28-4 is prohibited on land described in Table 1 below.

Table 1

Name of shopping complex and locality	Land description
Werribee Village Shopping Centre, Werribee	Land on the northwest corner of Shaws Road and Tarneit Road, Werribee.
Hoppers Crossing Shopping Centre, Hoppers Crossing	Land bounded by Old Geelong Road to the north, and Melbourne to Geelong railway line to the south, Hoppers Crossing. Nos 20-50A (even numbers) Old Geelong Road, Hoppers Crossing (Lot 1 on PS335092, and Lot on CP154553).
Pacific Werribee Shopping Centre, Hoppers Crossing	Land on the northwest corner of Heaths Road and Derrimut Road, Hoppers Crossing, except land occupied by the tavern containing 80 gaming machines.
Honour Avenue Shopping Area, Wyndham Vale	Land on the northwest corner of Honour Avenue and Ribblesdale Avenue, Wyndham Vale.
McGrath Road Commercial Area, Wyndham Vale	Land on the southeast corner of McGrath Road and Ballan Road, Wyndham Vale.

Tarneit West Village Shopping Centre, Tarneit	Land on the northwest corner of Tarneit Road and Hogans Road, Tarneit. 540 Tarneit Road, Tarneit.
Hogans Corner Shopping Centre, Hoppers Crossing	Land on the northeast corner of Hogans Road and Derrimut Road, Hoppers Crossing.
Hogans Road Shopping Area, Hoppers Crossing	Land on the northeast corner of Hogans Road and Deloraine Drive, Hoppers Crossing. 2-14 (even numbers) Deloraine Drive, Hoppers Crossing.
Tarneit Gardens Shopping Centre, Tarneit	53 Wickford Road, Tarneit (Lot A on PS708625) and any subsequent parcels created as a result of subdivision.
Wyndham Village Shopping Centre, Tarneit	Land on the northwest corner of Morris Road and Sayers Road, Tarneit. 380 Sayers Road, Tarneit.
Point Cook Shopping Centre, Point Cook	All land within the Commercial 1 Zone and Mixed Use Zone on the northeast corner of Dunnings Road and Boardwalk Boulevard, Point Cook.
Sanctuary Lakes Shopping Centre, Point Cook	Land on the northwest corner of Point Cook Road and Jamieson Way, Point Cook. 300 Point Cook Road, Point Cook.
Tom Roberts Parade Mixed Use Precinct, Point Cook	All land within the Mixed Use Zone on the northwest corner, northeast corner and southwest corner of Tom Roberts Parade and Boardwalk Boulevard, Point Cook.
Featherbrook Shopping Centre, Point Cook	Land on the southwest corner of Sneydes Road and Boardwalk Boulevard, Point Cook.
Soho Village Mixed-Use Precinct, Point Cook	All land within the Mixed Use Zone on the southeast corner of Sneydes Road and Malibu Boulevard, Point Cook.
Tribeca Village Mixed Use Precinct, Point Cook	All land within the Mixed Use Zone bounded by Saltwater Promenade and Carrick Street, Point Cook.
Williams Landing Shopping Centre, Williams Landing	Land on the southeast corner of Overton Road and Altair Street, Williams Landing. 100 Overton Road Williams Landing and any subsequent parcels created as a result of subdivision.
Allura Village Shopping Centre, Truganina	Land on the northeast corner of Elmhurst Road and Forsyth Road, Truganina. 50 Mainview Boulevard, Truganina and any subsequent parcels created as a result of subdivision.
Elements Shopping Centre, Truganina	185 Woods Road Truganina (Lot A on PS811258) and any subsequent parcels created as a result of subdivision.

Tarneit Central Shopping Centre, Tarneit	Land on the southeast corner of Leakes Road and Derrimut Road, Tarneit.
Riverdale Village Shopping Centre, Tarneit	Land on the northeast corner of Hummingbird Boulevard and Mulholland Drive, Tarneit, and on the southeast corner of Hummingbird Boulevard and Crimp Drive, Tarneit. Nos 177 and 200 Hummingbird Boulevard, Tarneit.
Manor Lakes Central Shopping Centre, Manor Lakes	Land on the northwest corner of Ballan Road and Manor Lakes Boulevard, Manor Lakes. 455 Ballan Road Manor Lakes.
Jubilee Neighbourhood Centre Shopping Centre, Wyndham Vale	Land bounded by Ballan Road, Welcome Parade and Memory Crescent, Wyndham Vale. Nos 1, 1A and 9 Welcome Parade, Wyndham Vale and Nos 772 and 940 Ballan Road, Wyndham Vale and any subsequent parcels created as a result of subdivision.
Wyndham Vale Square Shopping Centre, Wyndham Vale	Land on the southeast corner of Greens Road and Armstrong Road, Wyndham Vale.
Woodville Park Mixed-Use Precinct, Hoppers Crossing	All land within the Mixed Use Zone bounded by Warringa Crescent and Woodville Park Drive, Hoppers Crossing.

3.0 Prohibition of a gaming machine in a strip shopping centre

--/---
Proposed
C252Wynd

A gaming machine as specified in Clause 52.28-5 is prohibited in all strip shopping centres on land covered by this planning scheme.

4.0 Locations for gaming machines

--/---
Proposed
C252Wynd

Gaming venues and machines should be located:

- Where the community has convenient access to a choice of non-gaming entertainment, leisure, social and recreational uses that operate at the same time as the gaming venue in the surrounding area such as hotels, clubs, cinemas, restaurants, bars, theatres, galleries, exhibition centres, sporting venues and indoor recreation facilities.
- Where they would make a positive contribution to the redistribution of gaming machines away from relatively disadvantaged areas, as defined by the latest SEIFA Index of Relative Socio-economic Disadvantage.

Gaming venues and the installation of gaming machines are discouraged in the following locations:

- Areas of socio-economic disadvantage, being areas in or adjoining a Statistical Area Level 1 (SA1) which, accords to the most recent SEIFA index of relative disadvantage, is in the State's lowest 20% of relative disadvantage.
- Areas of everyday neighbourhood activity with high pedestrian access, where a decision to gamble may be spontaneous rather than predetermined.
- In new growth areas ~~being developed in accordance with an approved~~ [the subject of a](#) Precinct Structure Plan until [they are sufficiently established to overcome any significant uncertainties related to adjoining land uses, proximity to sensitive uses and the potential for social and economic impacts on the emerging local community, at least the majority of lots and the layout of activity centres, shopping centres and strip shopping centres have been developed on the ground.](#)

- ~~• Gaming venues should not be established ahead of the provision of non-gambling entertainment, recreation activity and social infrastructure.~~
- In new growth areas where the community does not have access to a range of retail, non-gaming related entertainment and recreational opportunities.
- In the rural townships of Wyndham where EGMs do not currently exist.
- In locations where the predominant surrounding land use is residential.
- In buildings used for residential purposes.
- Within 400 metres walking distance or clear line of sight of:
 - An existing or approved gaming venue
 - An existing or approved shopping complex and strip shopping centre
 - A train station
 - Social housing (housing for people of lower incomes that is owned or leased by the Department of Health and Human Services, registered housing association or a not for profit housing organisation)
 - A gambling sensitive service or facility that is used by people experiencing or vulnerable to gambling related harms such as the office of specific problem gambling services, financial counselling services, and material and financial aid services.

5.0 Venues for gaming machines

--/--/---

Proposed
C252Wynd

Gaming machines should be located:

- In venues that offer alternative forms of non-gambling activities, such as social, leisure, entertainment and recreational activities during gaming hours.
- In existing venues approved for the operation of gaming machines in preference over new venues.
- Venues with harm minimisation practices that can be demonstrated to exceed minimum standards.
- In venues where the gaming area is physically, visually and functionally separated from non-gambling facilities, passers by, pedestrian and vehicle access and car parking.
- ~~• In venues that have signage that is of high quality design and does not detract from the visual appearance and amenity of the surrounding area.~~

Gaming machines should not be located:

- In venues that ~~operate 24 hours per day~~ 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.
- In venues where the gaming area is more than 25 per cent of the total leasable floor area that is open to the public.

6.0

Application requirements

--/--/---

Proposed
C252Wynd

The following application requirements apply to an application for a permit under Clause 52.28, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

Proposal details

A description of the proposal including the following;

- How the application is consistent with the Planning Policy Framework.
- The existing and proposed number of gaming machines at a venue and within the municipality.

- Details regarding the transfer of gaming machines, including number of gaming machine to be relocated, potential changes to the density of gaming machines per 1,000 adults in the municipality and local areas, and potential changes to the number of venues in the municipality.
- Details regarding changes to gaming machine expenditure (at a municipal and venue level, per gaming machine and per adult).
- Existing and proposed number of people employed as a direct result of the proposal.
- A map indicating potential pedestrian paths of travel to and from the venue and within a 400 metre walking distance, including identification of public transport opportunities.
- Range and operating hours of the gaming facilities and activities within the venue.
- Range and operating hours of non-gaming facilities and activities within the venue, including areas licensed to serve and consume alcohol.
- Extent of the community contributions and benefits.

Locational assessment

A description of the location of the venue, including the following:

- Demographic profile of the area generally within 400 metres walking distance of the venue.
- Land use within 400 metres walking distance of the proposed venue and line of sight, including facilities associated with day to day activities, such as shops, major community facilities, and public transport networks that would contribute to convenience gambling.
- Locations of social support services within 400m walking distance and line of sight of the proposed venue including problem gambling services, financial counselling services and financial aid services.
- Location of, distance to and operating hours of gaming venues within 400 metres walking distance and line of sight of the proposed site.
- Location and operating hours of alternative non-gaming social, leisure, entertainment and recreation uses, both within the gaming venue and within 400 metres walking distance and line of sight of the venue.

Venue design and operation

- Detailed plans of the design and layout of the venue, including the location of all existing and proposed gaming machines, location of existing and proposed gambling and non-gambling facilities, entrances and exits to the gaming lounge, screening, facades treatment, external signage, external lighting, pedestrian and vehicle access and car parking.
- Details of the venue's non-statutory harm minimisation and responsible gaming practices.

Social and economic benefits

A social and economic impact assessment, prepared by a suitably qualified and experienced person, that details the following:

- SEIFA INDEX of Relative Socio-economic Disadvantage of the SA1 within which the venue is located and adjoining SA1s.
- The impact of the proposal on groups vulnerable to gambling-related harms as a result of their socio-economic and health profile within 400m walking distance of the proposed site.
- The impact of the proposal on venues from which gaming machines are to be relocated.
- The potential of the proposal to contribute to the local economy.
- The overall social and economic effects of the proposal.

7.0 Decision guidelines

Proposed
C252Wynd

The following decision guidelines apply to an application for a permit under Clause 52.28, in addition to those specified in Clause 52.28 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- Whether the proposal will increase gambling related harm.
- Whether the proposal will contribute to the levels of socio-economic disadvantage or have any other adverse impact on vulnerable communities.
- ~~Whether there is a net community benefit to be derived from this proposal.~~
- Whether the location and operation of gaming machines would increase exposure to gaming opportunities as part of day to day activities such that a decision to gamble may be spontaneous rather than predetermined.
- Whether the proposal would create or contribute to an increased concentration of gaming venues or machines in excess of the state average.
- Whether patrons will have access to non-gaming entertainment and recreation facilities in the surrounding area and in the gaming venue that operate at the same time as the gaming machines.
- The impact of the proposal on the safety, amenity, character, tourism and cultural assets of the surrounding land area and municipality.