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8 August 2018

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Dear Sir/Madam

Submission in relation to City of Melton Planning Scheme Amendment C182

We act on behalf of Zahav (Aust) Pty Ltd, and which entity has received a gaming machine entitlement allocation in the City of Melton.

We have been instructed to prepare a submission to the proposed Planning Scheme Amendment C182 to the Melton Planning Scheme (**Scheme**).

Amendment C182 to the Scheme seeks to:

1. Insert a new local planning policy for electronic gaming at clause 22.13 of the Scheme;
2. Amend the schedule to clause 52.28 of the Scheme to include further designated shopping complexes; and
3. Implement the recommendations in the City of Melton Electronic Gaming Policy Project Reference Document, June 2017 (**Reference Document**) as well as the City of Melton Responsible Gambling Policy, October 2014 (**Policy**) and reference documents in the Scheme.

Our client has concerns with various aspects of the amendment material, particularly as they pertain to a Greenfield site, and these concerns are detailed in the submission below.

<u>Proposed Local Policy - clause 22.13</u>

The following objectives in the proposed local policy are of concern:

(a) *To maximise the potential for gaming venues to deliver net community benefit.*

Net community benefit is not a relevant test. The inclusion of net community benefit is not supported by case law and seeks to impose a higher standard than required under the *Gambling Regulation Act 2003* (**Gambling Act**). Various cases confirm that State Policy

Framework does not mandate the need to demonstrate a net benefit. A neutral outcome is acceptable from a planning perspective when considering the merits of a gaming application.

The following excerpt from *Bright Newbay Pty Ltd v Bayside CC* [2010] VCAT 1347 at paragraph 28 is relevant.

> *"One of the objectives of the policy is* "to ensure that gaming venues achieve a new community benefit". *In our opinion, this objective is contrary to clause 11 of the State Planning Policy Framework, which contains an endeavour to integrate the range of policies relevant to the issues to be determined and to balance conflicting objectives within those policies in favour of net community benefit and sustainable development. We agree with the findings in* Prizac Investments Pty Ltd v Maribyrnong CC *and* CK & Sons Pty Ltd v Bayside CC *that clause 11 does not set out a particular test, unlike the provisions contained within section 3.3.7 of the* Gambling Regulation Act *2003 – that the net economic and social impact will not be detrimental to the wellbeing of the community of the municipal district in which the premises are located. We agree with* Prizac *that there are different roles and responsibilities under the gaming application and the planning application. It appears to us that this 2010 policy objective may be contrary to the gaming legislation that mandates no net community detriment (as opposed to achieving a net community benefit). Ultimately, we agree with the findings in* Prizac *and* CK & Sons *that a proposal does not necessarily fail if an application cannot demonstrate a net benefit, particularly in a case where there may be a neutral outcome."*

It appears that there is confusion between the relevant considerations of the *Planning and Environment Act* 1987 (**P&E Act**) and the Gambling Act.

Under the Gambling Act, when assessing the application, the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) must be satisfied that the net economic and social impact of the approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located. This is commonly referred to as the 'no net detriment test' and is satisfied by consideration of the economic and social impacts of the introduction of gaming machines. This involves weighing the likely positive and negative impacts of an application against the well-being of the community. A net outcome that is either neutral or positive satisfies this test.

Conversely, the planning considerations under the P&E Act and clause 52.28 of the Scheme are different to that under the Gambling Act. It is well established that planning considerations for gaming machines are locational in nature, focusing on the appropriateness of the location, the social and economic impacts of the location and the appropriateness of the venue to accommodate gaming machines[1].

It is not helpful to include an objective in a local planning policy that contradicts the position underpinned by the Scheme and the P&E Act.

We note that other panel hearings for local gaming policies in both Macedon Ranges Shire and Bayside City Council specifically considered this matter and agreed that such an objective should be removed from the local gaming policy[2].

[1] *CK & Sons Pty Ltd v Bayside CC* [2010] VCAT 505
[2] Bayside C98 (PSA) [2012] PPV3 (10 January 2012); Macedon Ranges C64 (PSA) [2011] PPV 52 (9 May 2011)

(b) More generally, there is no clear policy directional objective which directs the decision-maker to consider both the benefits and disbenefits in a balanced manner. Gaming can bring many benefits, such as:

- Employment;
- Revenue for government local and state levels;
- Improved or new facility; and
- Committee funds programs.

The following aspects of the policy (at clause 22.13-3) are of concern:

1. Location

   It is submitted that the policies focused predominantly on where gaming machines should not be located, offering little guidance on appropriate locations for gaming machines. The policy should be phrased in a more discretionary tone.

   There is strong focus in the policy on locations where gaming venues are discouraged which does not facilitate a case-by-case merits based assessment that gives equal consideration to the potential benefits and disbenefits of a new venue.

   Discouragement of electronic gaming machines in vast areas of the municipality based on the basis of vague locational criteria is unhelpful. For example the draft policy discourages gaming machines in areas where socio economic disadvantage, where a "cluster" exists, in residential areas, in the core of activity centres etc. This raises concerns as to where in the municipality would be considered.

   The extent to which this policy position is so cautious and so restrictive will effectively prohibit any new electronic gaming machines being introduced to the municipality. Such a position not only will restrict access to gaming machines for people whom gambling is not a problem, but more broadly, will likely restrict access to the range of important dining, entertainment, social and other functions generally available through hotel and club venues. Accordingly, the policy should be redrafted to ensure that every application is considered on a case-by-case basis and on its merits.

2. The policy that electronic gaming machines and gaming venues should not be located on land where a shopping complex or a strip shopping centre has not fully established or a land identified as a future activity centre in an approved precinct structured plan is concerning. It is submitted that discretion should be available to consider electronic gaming machine proposals in such locations and the possibility of electronic gaming machines in emerging centres should not be precluded. In a new developing activity centre or the like, it may be impossible to understand where all land uses will ultimately sit and the circumstances of same can change radically in a relatively short period. The policy, as it is currently drafted suggest that planning for a hotel or club with gaming machines cannot occur until everything else is clearly planned for, potentially limiting the opportunities for a venue to be developed at the earliest possible time to satisfy residential needs.

   The following dot points under the heading 'Location' are of concern:

   (a) 400 metre walking distance or clear line of site of

   The policy states that gaming venues and gaming machines should not be located within 400 metre walking distance or within clear line of site of a list of various uses. It

is submitted that this distance is prohibitive in nature and would severely limit the available locations left which would not offend this policy objective. Further such a policy is of concern at a location at the edge of an activity centre, which is generally the preferred locale.

More specifically, the following needs to be carefully considered:

(i) An existing or approved gaming venue

Consideration needs to be given to any specific radial distance and the prohibition should not be mandatory. Each application should be considered on its merits, with a proper assessment of benefits associated with the application carried out.

(ii) Shopping complexes and strip shopping centres

This is unnecessary. The Scheme already prohibits gaming machines in shopping complexes at Clause 52.28-3 and strip shopping centres at Clause 52.28-4.

(iii) Public transport interchanges

There is no evidence based research to support problem gambling risks of locating gaming machines near public transport interchanges.

(iv) Social housing

Whilst we acknowledge research linking persons of lower social and economic status with problem gambling, we submit that the radial distance needs to be considered, as well as the mandatory nature of the prohibition and that applications ought be considered on a case-by-case basis.

3. Venue design and operation

The following policy dot points under the heading 'Venue design and operation' should be removed as they are matters regulated by the Gambling Act and Regulations:

(a) That gaming machines should only be located in venues with signage that is modest in size and discrete in nature; and

(b) Should not be located in venues that operate for 24 hours per day.

The following sections under the application requirements (Clause 22.13-4) are of concern:

1. The requirement that the Social and Economic Impact Assessment shows the proposal will "produce a net community benefit" should be deleted or re-worded. As detailed above, this is not the relevant test.

2. The requirement to provide evidence of the impact of the proposal on community wellbeing through a community survey or other appropriate qualitative data is excessive. Such surveys can cost in excess of $30,000 and are more typically provided in circumstances where an area has little to no exposure to gaming machines, such as Romsey, Jan Juc and Castlemaine. This should not be an application requirement in a municipality which already has ready access to gaming machines.

Reference Documents

City of Melton Responsible Gambling Policy

The Policy is dated 2014 and has an expiry date of 21 October 2017. We assume that the Policy is to be reviewed and the expiry date extended by Council.

The main concern with the Policy is that it states that it is to be used for assessing both applications for gaming licences submitted under the Gambling Act and planning permits submitted under the P&E Act. In respect of an application for a planning permit under Clause 52.28, the Policy goes far beyond what a Council is entitled to consider under the Scheme and the P&E Act.

As discussed above, planning considerations for gaming machines are locational in nature, whilst considerations under the Gambling Act are broader in scope. By creating a Policy which is to be used by Council for both applications under the Gambling Act and P&E Act, it has introduced issues that are irrelevant to the Council when considering an application under Clause 52.28 of the Scheme and therefore under any local gaming policy and therefore it should not be reference in that proposed policy.

City of Melton Electronic Gaming Machine Planning Policy Project Reference Document, July 2017

The Reference Document has been prepared by Symplan on behalf of the City of Melton (**Council**) by Bonnie Rosen who regularly provides expert evidence on behalf of local councils in opposing applications at the Victorian Commission for Gambling and Liquor Regulation (**VCGLR**) and at the Victorian Civil and Administrative Tribunal (**VCAT**) for gaming machines. Ms Rosen has also been involved in preparation of other local gaming policy for other local government areas.

Further, we note that the Reference Document refers to a separate document entitled the *City of Melton Electronic Gaming Planning Policy Project, Stakeholder Engagement and Community Consultation Findings 2017*. We have been unable to obtain a copy of this document.

It is submitted that the Reference Document largely concentrates on harm minimisation, and cannot be considered to be a balanced approach to the assessment of the benefits and disbenefits associated with the operation of gaming machines.

The Reference Document suffers from similar criticisms to the Policy document. As a whole, the Reference Document adopts an unduly negative view of gaming machines that fails to acknowledge the benefits that can also be associated with gaming. The combined effect of the Reference Document and the Policy makes it clear that any applications for gaming machines (whether top-ups or for new venues) will be harshly scrutinised and Council are likely to assess same from a position of discouragement rather than a balanced and considered assessment.

Conclusion

It is submitted that the Amendment material requires significant revision in order to provide a well-balanced policy which would result in a balanced approach to the assessment of applications involving gaming machines.

We confirm that our client would like to be kept informed of the process of Amendment 182 and would like the opportunity to participate in any future Planning Panels Victoria hearing, where it is submitted that the merits of Amendment C182 should be examined in greater detail.

8 August 2018

Yours faithfully
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Dear Sir/Madam

Submission in relation to Melton Planning Scheme Amendment C182

We act on behalf of CSJV Nominees Pty Ltd, the venue operator of West Waters Hotel, located at 10-20 Lake Street, Caroline Springs.

We have been instructed to prepare a submission to proposed Planning Scheme Amendment C182 to the Melton Planning Scheme (**Scheme**).

Amendment C182 to the Scheme seeks to:

1. Insert a new Local Planning Policy for electronic gaming at Clause 22.13 of the Scheme;
2. Amend the Schedule to Clause 52.28 of the Scheme to include further designated shopping complexes; and
3. Implement the recommendations in the City of Melton Electronic Gaming Policy Project Reference Document, June 2017 (**Reference Document**) and make this Reference Document, as well as the City of Melton Responsible Gambling Policy, October 2014 (**Policy**) reference documents in the Scheme.

Our client has concerns with various aspects of the Amendment material and these are detailed as follows.

Address Clarification – Schedule to Clause 52.28

The proposed amendment to the Schedule to Clause 52.28 seeks to include the Caroline Springs Town Centre, Caroline Springs as a shopping complex where gaming machines are prohibited. The

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land description is *"Land bounded by Caroline Springs Boulevard, Commercial Road and Lake Street, referred to as 29 Lake Street, Caroline Springs, including car parking area to the west of Lake Street referred to as No 10 Lake Street, Caroline Springs and The Place abutting Caroline Springs Boulevard".*

West Waters Hotel is situated on land referred to as 10-20 Lake Street, Caroline Springs, more particularly described as Lot 2512 on Plan of Subdivision 530036 (copy planning report and map **enclosed**).

It appears that separate land exists to the west of Lake Street, closer to Caroline Springs Boulevard, which is also referred to as 10 Lake Street, Caroline Springs, albeit with a different lot plan and plan number (Lot RES2 on Plan of Subdivision 510172) (copy planning report and map **enclosed**).

We believe the exact boundary sought to be included within the "Caroline Springs Town Centre" land description is ambiguous, particularly given the duplication of street addresses for 10 Lake Street. We assume that it is not intended to include West Waters Hotel within this boundary and submit that the land description should be redrafted to make this clear. For example, use of a map outlining the relevant boundary in the Schedule or Reference Document, or a note which clarifies that the land description does not refer to the West Waters Hotel at 10-20 Lake Street, Caroline Springs.

Proposed Local Policy – Clause 22.13

The following objectives in the proposed local policy are of concern:

1. To maximise the potential for gaming venues to deliver net community benefit

   Net community benefit is not a relevant test. The inclusion of net community benefit is not supported by case law and seeks to impose a higher standard than required under the *Gambling Regulation Act* 2003 (**Gambling Act**). Various cases confirm that State Policy Framework does not mandate the need to demonstrate a net benefit. A neutral outcome is acceptable from a planning perspective when considering the merits of a gaming application.

   The following excerpt from *Bright Newbay Pty Ltd v Bayside CC* [2010] VCAT 1347 at paragraph 28 is relevant:

   > *"One of the objectives of the policy is* "to ensure that gaming venues achieve a new community benefit"*. In our opinion, this objective is contrary to clause 11 of the State Planning Policy Framework, which contains an endeavour to integrate the range of policies relevant to the issues to be determined and to balance conflicting objectives within those policies in favour of net community benefit and sustainable development. We agree with the findings in* Prizac Investments Pty Ltd v Maribyrnong CC *and* CK & Sons Pty Ltd v Bayside CC *that clause 11 does not set out a particular test, unlike the provisions contained within section 3.3.7 of the* Gambling Regulation Act *2003 – that the net economic and social impact will not be detrimental to the wellbeing of the community of the municipal district in which the premises are located. We agree with* Prizac *that there are different roles and responsibilities under the gaming application and the planning application. It appears to us that this 2010 policy objective may be contrary to the gaming legislation that mandates no net community detriment (as opposed to achieving a net community benefit). Ultimately, we agree with the findings in* Prizac *and* CK & Sons *that a proposal does not necessarily fail if an application cannot demonstrate a net benefit, particularly in a case where there may be a neutral outcome."*

It appears that there is confusion between the relevant considerations of the *Planning and Environment Act* 1987 (**P&E Act**) and the Gambling Act.

Under the Gambling Act, when assessing an application, the Victorian Commission for Gambling and Liquor Regulation must be satisfied that the net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located. This is commonly referred to as the 'no net detriment test' and is satisfied by consideration of the economic and social impacts of the introduction of gaming machines. This involves weighing the likely positive and negative impacts of an application against the well-being of the community. A net outcome that is either neutral or positive satisfies this test.

Conversely, the planning considerations under the P&E Act and clause 52.28 of the Scheme are different to that under the Gambling Act. It is well established that planning considerations for gaming machines are locational in nature, focusing on the appropriateness of the location, the social and economic impacts of the location and the appropriateness of the venue to accommodate gaming machines[1].

It is not helpful to include an objective in a local planning policy that contradicts the position underpinned by the Scheme and P&E Act.

Therefore our client believes that any of the following references should be deleted from the Policy:

(a) References to net community benefit

(b) Reference to community contributions

(c) Detailed community surveys

(d) Impact of a proposal on the health and wellbeing of the community

(e) Deletion of reference to potential net community benefit associated with the proposal

(f) Any references to the community broadly, rather than the local community

We note that other panel hearing for local gaming policies in Macedon Ranges Shire and Bayside City Council specifically considered this matter and agreed that such an objective should be removed from a local gaming policy[2].

The following aspects of the policy (at Clause 22.13-3) are of concern:

1. Location

The following dot points under the heading 'Location' are of concern:

(a) 400 metre walking distance or clear line of site of

The policy states that gaming venues and gaming machines should not be located within 400 metre walking distance or within clear line of site of a list of various uses. It is submitted that this distance is prohibitive in nature and would severely limit the

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available locations left which would not offend this policy objective. Further such a policy is of concern at a location at the edge of an activity centre, which is generally the preferred locale.

Additionally, the policy would result in a number of existing venues not being able to achieve the locational criteria, despite these venues already operating. At a very minimum, the policy should be reworded to distinguish between existing and new venues and should be discretionary, not mandatory in nature.

More specifically, the following needs to be carefully considered:

(i) An existing or approved gaming venue

Consideration needs to be given to any specific radial distance and the prohibition should not be mandatory. Each application should be considered on its merits, with a proper assessment of benefits associated with the application carried out.

(ii) Shopping complexes and strip shopping centres

This is unnecessary. The Scheme already prohibits gaming machines in shopping complexes at Clause 52.28-3 and strip shopping centres at Clause 52.28-4.

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There is no evidence based research to support problem gambling risks of locating gaming machines near public transport interchanges.

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Whilst we acknowledge research linking persons of lower social and economic status with problem gambling, we submit that the radial distance needs to be considered, as well as the mandatory nature of the prohibition and that applications ought be considered on a case-by-case basis.

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The following sections under the application requirements (Clause 22.13-4) are of concern:

1. The requirement that the Social and Economic Impact Assessment shows the proposal will "produce a net community benefit" should be deleted or re-worded. As detailed above, this is not the relevant test.

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The Reference Document suffers from similar criticisms to the Policy document. As a whole, the Reference Document adopts an unduly negative view of gaming machines that fails to acknowledge the benefits that can also be associated with gaming. The combined effect of the Reference Document and the Policy makes it clear that any applications for gaming machines (whether top-ups or for new venues) will be harshly scrutinised and Council are likely to assess same from a position of discouragement rather than a balanced and considered assessment.

Conclusion

It is submitted that the Amendment material requires significant revision in order to provide a well-balanced policy which would result in a balanced approach to the assessment of applications involving gaming machines.

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We confirm that our client would like to be kept informed of the process of Amendment 182 and would like the opportunity to participate in any future Planning Panels Victoria hearing, where it is submitted that the merits of Amendment C182 should be examined in greater detail.

Yours faithfully
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