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STONNINGTON PLANNING SCHEME
GAMING ESTABLISHMENT RELOCATION
265-267 CHAPEL STREET, PRAHRAN

PANEL REPORT

DECEMBER 2001
PLANNING AND ENVIRONMENT ACT 1987
STONNINGTON PLANNING SCHEME
AMENDMENT C13

RELOCATION OF GAMING ESTABLISHMENT
TO 265-267 CHAPEL STREET, PRAHRAN
REPORT OF PANEL

COLIN M BARLOW
(CHAIRPERSON)

ASSOCIATE PROFESSOR
RENADE HOWE, MEMBER

DECEMBER 2001
1 INTRODUCTION

This is the Report of the Panel constituted for consideration of the above proposed Amendment. The Amendment seeks to exclude the premises 265-267 Chapel Street Prahran, from those premises listed in the Schedule to clause 52.28-6 of the Stonnington Planning Scheme (“the Scheme”) upon which gaming establishments may not be established. The proposed Amendment was exhibited, and submissions in relation to it were received by the Responsible Authority for the Scheme, the Stonnington City Council (“the Council”). Following its request to the Minister for the appointment of a Panel pursuant to the provisions of the Planning and Environment Act 1987 (“the Planning Act”) the Minister, acting under Sections 153 and 155 of the Planning Act appointed Colin Barlow and Associate Professor Renate Howe as a panel to consider those submissions.

2 EXECUTIVE SUMMARY

The amendment relates to the premises 265-267 Chapel Street, Prahran (“the Subject Land”). If approved the amendment would remove the Subject Land from the land description in the Schedule to clause 52.28-6 of the Stonnington Planning Scheme, relating to the strip shopping centre of Chapel Street, Prahran. The result would be that the Subject Land would be released from the “embargo” against use for gaming activities and able to be used for such activities, provided all other necessary permits and approvals were subsequently obtained.

A number of submissions were received following upon exhibition and notification of the Amendment but those persons who appeared before the Panel were as follows:

- The Council as the Responsible Authority for the Scheme.
- The Prahran Football Club Social Club, PhilChapel Pty Ltd and BilChapel Pty Ltd, the latter two companies being owners of the Subject Land. The Club operates a gaming establishment at 332–338 Chapel St. and 1–17 Lt Chapel St (“the Current Premises”) and desires to re-locate to the Subject Land.
- Faso Pty Ltd, the owner of premises 270 Chapel Street, the Court Jester Hotel, a gaming venue which is opposite the Subject Land.
- Karenlee Pty Ltd, the owner of the Current Premises.
Commercial interests are at stake in this matter. Economic and social issues were nevertheless issues of proper concern.

The Panel considers, however, that to approve the Amendment would be contrary to government policy, including planning policy, and accordingly recommends that it not be adopted.

3 THE RELEVANT LEGISLATION, AND PLANNING SCHEME PROVISIONS

Provision of electronic gaming machines (“EGMs”) within appropriate premises and other forms of gaming are controlled by a number of Acts, policies and guidelines. The operation and effect of these was the subject of submissions by those who appeared before the Panel. The Gaming Machine Control Act 1991 (“the Gaming Act”) provides for Approval of Premises for Gaming (Part 2A) and Licensing of Operators, Employees and Technicians and Listing of Manufacturers (Part 3). The third, fifth and sixth Purposes of this Act are:-

- (c) **regulating the use of gaming machines in approved venues where liquor is sold**
- (e) **promoting tourism, employment and economic development in the State; and**
- (f) **fostering responsible gambling.**

The Gaming No. 2 Act 1997 controls what it calls “minor gambling” including bingo.

Under the Gaming Act, Applications for Approval of Premises are made to the Authority set up under it, accompanied by a submission which, in the event of the application being for 24 hour operation, must include information “on the net economic and social benefit that will accrue to the community of the municipal district…” The application must be submitted to the responsible authority for the municipality in which the land is situated, (whether or not 24 hour operation is sought) which may then make a report to the Authority on the application including a submission “addressing the economic and social impact of the proposal for approval on the wellbeing of the community of the municipal district in which the premises are located.” The Authority is prevented (Section 12D of the Gaming Act) from granting an application for Approval of Premises for Gaming, unless it is satisfied about a number of matters (whether or not 24 hour operation is sought) including that “the net economic and social impact of approval will not be detrimental to the wellbeing of the community of the municipal district in which the premises are located”. Section 12I of the Gaming Act provides that once premises are approved as suitable, that approval remains in force until cancelled, revoked or surrendered or the expiration of five years from the date of approval whichever first happens. Approvals can be renewed.

Section 19 of the Gaming Act enables a person to apply to the Authority to be granted a Venue Operator’s Licence. Such a licence authorises the licensee to obtain EGMs approved by the authority and to manage and operate an approved venue.
EGMs are installed in licensed clubs and hotels. Such premises are controlled under the provisions of the Liquor Control Reform Act 1998 (“the Liquor Act”). That Act provides that the use of licensed premises must not contravene the planning scheme that applies to the licensed premises under the Planning Act. It enables a transfer of license to take place if the licensee was legally evicted from the premises or the lease or occupation of the premises has expired or been lawfully determined. The only provisions in the Liquor Act which have any similarity to others discussed in this report (namely that the relevant Council or a member of the public can object in relation to a proposed licence) are Sections 38 and 40. The basis of any objection needs to be that a licence would detract from or be detrimental to the amenity of the area in which the proposed licensed premises are to be situated.

The Planning Act provides for the Objectives of planning in Victoria and indicates the matters which can be provided for in Planning Schemes. Amongst the objectives of this Act are the following:

(a) to provide for the fair, orderly, economic and sustainable use, and development of land;

(c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.

Amongst the objectives of the planning framework established by the Planning Act as set out in Section 4(2) are the following:

(a) to ensure sound, strategic planning and co-ordinated action at State, regional and municipal levels;

(c) to enable land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels.

Section 6(1)(a) of the Planning Act provides that a planning scheme “must seek to further the objectives of planning in Victoria within the area covered by the scheme”.

There is, perhaps surprisingly, little inter-action between these various legislative provisions, except as set out above. It is clear from them, however, that the Planning Act is the primary provision. Premises cannot be used as a Club or Hotel and, then, for gaming unless authorised under the Planning Act.

Following upon the introduction of “pokies” into Victoria, amendments were made to the State Section of the Planning Schemes then operative throughout Victoria, by a series of amendments referred to by the parties involved in the hearing before the Panel. These will be referred to later. The provisions of the current New Format Planning Scheme operative in the Stonnington, relevant to this matter are now as follows:

Clause 19.02 provides for State Planning Policy in respect to gaming in Victoria. The objective, set out in clause 19.02-1 is:
“To provide consistent planning controls for the installation and use of gaming machines throughout Victoria, co-ordinated with the provisions of the Liquor Control Act 1987 and the Gaming Machine Control Act 1991.”

The statewide policy in respect of gaming is set out in clause 19.02-2 as follows:

“The installation of gaming machines should be allowed in a hotel or club if it does not result in a change of land use.

Gaming machines should not be located in a shopping complex if the complex is specified in the planning scheme.

Gaming machines should not be located in a strip shopping centre except on:

- land used as a hotel or club on 19 December 1997
- land in relation to which on 16 June 1998 a permit to use or develop a hotel or club is in force and a licence under the Liquor Control Act 1987 has been granted;
- land formerly used as a hotel or club which has been recently destroyed by fire; or
- land for which a permit to install or use a gaming machine in a restricted area is in force on 19 December 1997. (the term "restricted area" is defined in the Scheme to mean a physically discrete area within an approved venue which minors should not enter and which is devoted primarily to the conduct of gaming)

Gaming premises should provide a full range of hotel facilities or services to patrons or a full range of club facilities or services to members and patrons.”

Clause 52.28 of the Scheme deals with Gaming. It is set out as Appendix 1 to this Report, and is the most relevant planning control for the purposes of this matter.

Clause 52.28-1 provides that “no permit is required to install and use a gaming machine in a restricted area if that area does not exceed 25% of the gross floor area of the premises where liquor may be consumed”.

Clause 52.28-6, effectively provides that no gaming machine may be used or installed in any building on land in a strip shopping centre specified in the Schedule to the clause. The Schedule to clause 52.28-6 in the Scheme includes Chapel Street Shopping Centre Prahran as a strip shopping centre and describes land in it, in a way which includes the three premises which are at the heart of the dispute in relation to this proposed Amendment.

There are other provisions in and policies under the Scheme which apply within Stonnington, and to the area involved in this matter which will be referred to during the Panel’s discussion of the relevant issues. Submissions put by the parties on the effect of the legislative provisions, in the circumstances of this matter, will also be considered there.
Further, as is apparent from the references earlier to the Planning Act, social and economic issues may be relevant in planning. Such issues were raised in this matter.

4 THE AMENDMENT

The Subject Land is part of the land described in the Schedule to Clause 52.28-6 of the Scheme on which no gaming machine may be operated or installed. What the Amendment seeks to do is to except those premises from land within the description contained in the Schedule, with the result that they will no longer be affected by the “embargo” against the installation and use of gaming machines. Plans submitted to the Council indicated that the gaming venue would be established at the upper level of the premises, with an entrance towards the rear in Chatham Street. There are existing shop premises on the ground floor.

The original request for the amendment was made to the Responsible Authority on behalf of the Prahran Football Club. The Prahran Football Club Social Club currently operates gaming and social facilities at the Current Premises and the proposal put to the Responsible Authority was as to a need and desire to relocate its social and gaming activities to the Subject Land. Submitted with the request was a planning report by R.G. Harvey Pty Ltd, stated to be made on behalf of PhilChapel Property Pty Ltd and BilChapel Property Pty Ltd, who are the owners of the Subject Land, a car parking assessment by Grogan Richards Pty Ltd, and a Heritage Assessment by D.V. Bick. The Subject Land is one of a number of premises within the Chapel Street Shopping Centre affected by a Heritage Overlay under the Scheme. It is listed as HO126.

The request came before the Council at its meeting of 16 October 2000 along with a recommendation from Council Officers that it refuse to prepare an Amendment as requested. The basis of the recommendation from the Officers was that it was inappropriate to allow for the possible increase of gaming machines within the relevant area. The Council, however, after direct representation to it on behalf of the Prahran Football Club resolved, at its meeting of 20 November 2000, to prepare the requested Amendment.

Following upon preparation of the Amendment, it was placed on exhibition from 12 February 2001 to 19 March 2001, notice was given by way of a notice on the Subject Land, and by published notification as required by the Planning Act and notification was given to relevant government departments. Direct notification was also given to adjoining and nearby owners and occupiers. A copy of the Amendment and Explanatory Report is given in Appendix 2.

A number of submission were received from owners or occupiers of premises in the area, they being shown as “Objectors” on the Plan which is Appendix 3 to this Report. The Council identified the concerns which were raised about the Amendment in these submissions as follows:

- The appropriateness of locating two gaming facilities so close to one another. (This is a reference to the fact that gaming facilities are available at the premises 270 Chapel Street, The Court Jester Hotel which is opposite the Subject Land).
• Impact of potentially negative patron behaviour on the area.

• Appropriateness of a number of gaming venues in the retail area constituting a District Centre.

• Lack of need.

• Preferable use of the land for another purpose such as office.

• Conflict with State Policy prohibiting gaming machines in strip shopping centres.

• Inappropriateness of reason for proponent wanting relocation.

• Concerns about an increase in the number of gaming machines in the immediate area if the gaming licence for the existing premises was not surrendered.

• Generally, adverse social and economic effects of gaming.

Council Officers reported to the Council in relation to exhibition of the Amendment and submissions received at its meeting of 18 June 2001, recommending that Council resolve to abandon the Amendment. The Council resolved, however, to request that a Panel be appointed to hear submissions and make recommendations on it.

5 PANEL HEARING

As indicated earlier, pursuant to the provisions of the Planning Act, the Minister appointed Colin Barlow (Chairperson) and Associate Professor Renate Howe as a Panel to report upon the Amendment. A Directions Hearing was held at the Prahran Offices of the Council on 19 September 2001 when the following parties appeared by their representatives, indicating their desire to be heard before the Panel:

- The Council.

- Prahran Football Club Social Club, PhilChapel Pty Ltd and BilChapel Pty Ltd,

- Faso Pty Ltd, the owner of the premises 270 Chapel Street, The Court Jester Hotel.

- Karenlee Pty Ltd, the owner of the Current Premises

The Panel fixed a Public Hearing for 30 and 31 October and 1 November, and gave directions for service and delivery of statements of proposed witnesses in advance of the hearing. The Public Hearing in relation to the Amendment was held at the premises of the Panel’s Branch of the Department of Infrastructure, 80 Collins Street, Melbourne on the days stated.

At that hearing, the Council was represented by Ms Dalia Cook Solicitor of Maddock Lonie & Chisholm, Lawyers. She provided to the Panel an opening written submission covering all relevant matters in relation to relevant legislation issues and policies, and the processing of the Amendment and the reasons for the support of the
Council for the proposed Amendment. She indicated that there were no Ministerial Directions which needed to be considered in relation to the Amendment.

The Club, PhilChapel Pty Ltd and BilChapel Pty Ltd were represented by Mr G Garde Q.C. and Mr John Larkins of Counsel instructed by Mahonys Solicitors. They made written submissions to the Panel in support of the Amendment and called as witnesses Mr Robert Milner, Consultant Planner of Coomes Consulting Group Pty Ltd and Mr Robert Hawkins of Access Economics, and Mr Hine, a Director of the Club. Statements of each of these witnesses had been filed and circulated generally in accordance with the directions given by the Panel.

The Statement of Mr Milner dealt with relevant planning policies and issues and indicated his views as to why the proposed Amendment should be supported. The Statement of Mr Hawkins was concerned with various economic and social issues involved in gaming and its effect generally.

The evidence of Mr Hine had to do with the operations of the Club in relation to its gaming activities. Substantial amounts of money derived from the revenue from the gaming activities were channelled into sporting and youth services within the Municipality, particularly, as attested to by the documents, to schools in the area.

The desire of the Club to continue and if possible expand these activities through income derived from gaming was put forward as the main reason for the proposal to, as it put it, “relocate” to the Subject Land, it having a concern in relation to rental moneys, and possibility of interference with long term occupancy under leases, at the premises currently occupied by it.

At the immediate commencement of the Public Hearing, Mr Garde indicated he wished to call evidence from another witness, a valuer, a statement from whom had been provided to other parties, either that morning or the day before, but which had not been provided to the Panel. The representatives of The Court Jester Hotel and Karenlee Pty Ltd submitted to the Panel that if evidence was to be taken from that witness, the hearing ought to be adjourned, to enable them to consider the statement properly and seek instructions as to whether any other witnesses should be called to give evidence. After argument, the Panel was requested to stand the hearing down for a few moments and Mr Garde then indicated that he would not seek to call that witness.

The Court Jester Hotel was represented by Mr Michael Wright Q.C. and Ms Susan Brennan of Counsel instructed by Williams Winter & Higgs, Solicitors. They also made written and oral submissions to the Panel, and they called to give evidence Mr Andrew Rodda, Consultant Planner of Contour Consultants Aust Pty Ltd. Mr Rodda’s evidence was to the effect that to approve the Amendment would be clearly against Government policy – the “embargo” on establishment of gaming facilities in strip shopping centres.

Karenlee Pty Ltd, the owner of the Current Premises was represented by Mr Chris Canavan Q.C. and Mr Matthew Townsend of Counsel. As well as making written and oral submissions to the Panel, they called to give evidence Ms Maxine Cooper of Offor Sharp & Associates Pty Ltd, her statement of evidence being in relation to the
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adverse effect she considered would flow from the establishment of gaming facilities on the Subject Land.

Following upon the hearing the Panel made an external inspection of the three properties and their environs.

6 THE THREE PROPERTIES AND THE AREA

As fore-shadowed, the three properties whose owners were represented before the Panel are located within the strip shopping centre of Chapel Street. That is a District Centre providing shopping, recreational and commercial facilities not only for residents of the municipality of Stonnington but for visitors to the area. Chapel Street has public transport (trams) running along it, as do the intersecting streets of Toorak Road, Commercial (Malvern) Road and High Street. It is a very busy Centre extending from Toorak Road in the north to Dandenong Road, Windsor in the south. The relevant area is zoned Business 1 under the Scheme.

The Current Premises is located on the east side of Chapel Street a little south of Malvern Road and opposite Pran Central with its Safeway/Woolworths store. The gaming facilities of the Club are located in those premises, a bingo operation being conducted on the premises with a frontage to Little Chapel Street. The gaming premises are located on the first floor and are accessed by a wide entrance constructed out of the ground floor shop premises of No. 332 Chapel Street. The Club also uses those premises for its normal club activities.

The Subject Land is located further south on the west side of Chapel Street on the corner of Chatham Street. The proposal in relation to this site is to have the entrance to the upper floor of these premises to be used for the proposed new facility, towards the rear of the premises in Chatham Street. There is a large car park a short distance north west of the Subject Land. Also located in this general area, east of Chapel Street, are two large, dense, Office of Housing Developments and the Horace Petty residential area.

The Court Jester Hotel at 270 Chapel Street is located on the east side of that street on the corner of Princes Street, opposite the Subject Land. It has 48 gaming machines against the 81 machines at the Current Venue and the 75 proposed at the Subject Land according to the submission made in relation to the Amendment. A plan produced by Ms Cook indicated that there was another gaming establishment some distance further south, near the railway line.

Ms Cook, for the Council, indicated that in Chapel Street, and particularly, perhaps in the area around Subject Land, ground floor premises are used for retail purposes with upper floors either vacant or used for small scale office purposes. There are, however, a limited number of entertainment type uses.

7 THE ISSUES

In her opening submission Ms Cook said “It is worth noting that each of the parties, aside from the Planning Authority, has a direct interest in gaming in contributing to its income, whether directly or indirectly”. A similar comment was made by others. That does not mean that such commercial issues do not have to be given consideration by
the Panel. The Planning Act refers in a number of places to economic as well as social issues as being matters to be taken into account (for example Section 4(2)(e)). They should, therefore, be taken into account, but so far as relevant, in this matter - compare remarks in the Judgement of Hayne J in Returned Services League of Australia (Victorian - Branch) Inc., Glenroy Sub-Branch v Mordialloc City Council and Another (1998) 2 V.R. 406. Nevertheless the Panel considers that the Primary matter for its consideration is the relevant aspects of planning policy.

The issues which appear to the Panel to require consideration following upon the submissions made to it are as follows:

- The role which the Panel must play in relation to the legislation discussed earlier in this Report – the Planning Act, the Gaming Act and the Liquor Act.
- The position of the Club as it is put on its behalf - its submission that this matter is all about relocation of its premises, in the light of those legislative provisions.
- Relevant economic and social issues.
- Relevant Statements and Policies appearing in the Council’s Municipal Strategic Statement (“MSS”) and policies and studies.
- Planning policy issues and relevant strategic guidelines, in relation to gaming which to the Panel is the most important issue in this matter.

**The Role of the Panel**

The situation in relation to relevant legislative provisions, the Panel considers, is as follows. Firstly, gaming can only be carried on on licensed premises – those of a hotel or club. Secondly, such licensed premises require appropriate licensing under the provisions of the Liquor Act. Thirdly, no such licensed premises can be carried on unless appropriate planning approval is available under the provisions of the Planning Act. Fourthly, there are specific provisions (to be dealt with in more detail later) within the Planning Scheme under the Planning Act which impose particular requirements in relation to the use of premises for gaming. The primary provisions, therefore, are those of the Planning Act and the Scheme, and particularly those particular provisions in the Scheme which deal with gaming. Unless premises can comply with those particular provisions, they cannot be used for gaming.

It was submitted on behalf of the proponents for this Amendment, and to some extent initially by the Council, that the Panel should approach this matter upon the basis that planning approval for an Amendment as sought here should be treated as only the first step in the process. More detailed matters are required to be considered later in connection with any application for a Planning Permit including, as well as an application for a Liquor Licence, an application for Venue Approval and then an Operator’s Licence under the Provision of the Gaming Act. Accordingly it was suggested it would be inappropriate if the Amendment were not to proceed thus denying the proponent the opportunity to have applications for permits and approvals properly considered.
The Panel does not agree with that submission. It considers, as was put by Mr Wright Q.C. and Mr Canavan Q.C. that the Panel would be failing in its duty if it did not consider this application for amendment to the scheme fully in the light of those provisions of the Planning Act and the Scheme which are relevant. That requires proper consideration to be given to relevant policy issues, including, most importantly, the provisions of the Scheme (principally Clause 52.28 of it) which are concerned with gaming. The panel will return to that important aspect after considering the other issues.

The Position of the Club

The main basis of the application for the amendment as put on behalf of the club (and, of course, Phil Chapel Pty Ltd and Bill Chapel Pty Ltd, the owners of the Subject Land) was that what the proposal amounted to was a relocation of its gaming premises from the current premises to the Subject Land. This was put on the basis of contentions in relation to the relevant provisions of the Gaming Act. That submission carried with it a submission that if relocation was possible, one corollary was that the current premises could not continue to be used for gaming. An alternative proposition to that latter submission was put that if that were not correct, nevertheless it would be appropriate for the Panel to recommend approval of the amendment, even if it considered it likely, or even possible, that the result would be opening the door to the establishment of a third gaming venue.

The Panel is not prepared to accept those submissions. At the very least, they are dependent upon future circumstances about which it cannot really speculate to any significant degree. Whilst, as indicated, the proponent has put forward the amendment on those two bases (relocation so there are no more than two, or, alternatively, establishment of a third) the emphasis, particularly initially to the Council, seems to have been on the basis of a “relocation”. In closing submissions Ms Cook indicated that a “Primary Consideration, and the one which swayed the Council was its understanding that there was a strong likelihood, that, in a practical sense, the amendment, if approved would result in the relocation of the Prahran Football Club facility, and that it would be most unlikely that there would be three gaming facilities in this part of Chapel Street, Prahran in view of the practical, legal and commercial constraints.” (Emphasis in original). She further indicated that “the Council had information which suggested that there were mechanisms by which Council could, in practical terms, restrict the use of the existing premises upon a successful relocation.”

Approval of a venue for gaming is provided for under part 2A of the Gaming Act. Section 12A(1) indicates that gaming premises need to have a liquor licence. Section 12B(2) provides that the “owner” of premises or a person authorised by the owner may apply for a venue licence. Section 12(I) provides that once approved, venue approval lasts until it is cancelled, revoked or surrendered, or until the expiration of 5 years, whichever first happens, and in the event of expiration there are provisions which allow for effective renewal to be applied for. Section 12L provides that if the liquor licence for the premises is cancelled, relocated, surrendered or released, approval is immediately revoked (our emphasis). It is apparent that it is the owner who applies for a venue approval (or someone on behalf of the owner). It is to be noted that there are no provisions in this Part for anything in the nature of a transfer, or relocation, of a Venue Approval from one premises to another.
The Notice of Approved Venue granted to the Club indicates that the premises in question are “Prahran Football Social Club, 1st Floor, 328-338 Chapel Street, Prahran, Vic 3181”, and the Panel considers that it must be assumed that the application for that Approval was made with the authority of the owner of the Current Premises. The Panel does not consider, given the silence of the legislation on this point, that it could be held that Venue Approval, granted to the Club in the circumstances indicated, could be somehow transferred (“relocated”) to other premises, except with the consent of the owner of Current Premises. In the circumstances of this matter, given the submissions made by that owner, the Panel considers that it would be incorrect for it to conclude that the Venue Approval for the current premises could be transferred to the subject premises at the whim of the applicants for the amendment.

Part 3A of the Gaming Act deals with the licensing of operators of gaming establishments. Section 13 provides that a Venue Operator’s Licence authorises the licensee to manage and operate an approved venue. Section 19(I), which the Panel does not find all that clear, is apparently designed to enable a person to apply for a Venue Operator’s Licence in relation to licensed premises. The natural meaning of this provision, the Panel considers, is that it relates to a particular premises or more than one particular premises (compare subsection (1B) and section 21). The latter provision prevents the Gaming Authority from granting an Operator’s Licence on certain grounds, and the terms of that provision make it clear that an Operator’s Licence applies to a particular venue or venues and not generally. Section 26 provides that an Operator’s Licence is not transferable to another venue, subject to Section 27 which, however, gives the Authority power to amend the conditions of the licence, including to add or remove venues.

It is apparent from this short exposition of these provisions in the Gaming Act, that the Club, here, could not, of its own motion, arrange for a transfer of the Venue Approval from the Current Premises to the subject premises, without the consent of the owner of the Current Premises, which as indicated, would not be forthcoming. The Panel accepts the submission made by the representatives of the Court Jester and Karenlee in relation to this aspect of the matter. It could, however, take steps to have the Operator’s Licence transferred to new premises.

There is another way in which it was argued on behalf of the proponents of the Amendment that action on their behalf, principally the Club, towards relocating to the Subject Land could be achieved so that, effectively, the current premises would not be able to be used for gaming. Perhaps it would be more appropriate to say that the submission indicated that there would be difficulties in the way of the current premises being retained for that activity.

This submission was to some extent supported in the opening submission of the Council. Ms Cook indicated that if the Club were to be allowed to relocate to the Subject Land:

“the new operator of the existing premises would be entitled to act on the current planning permit, and probably to retain the status of the premises as an approved gaming premises. It would, however, require control by an entity with a Venue Operator’s Licence. It would also require a Bingo Operator’s Licence. It may or may not require a Liquor Licence”.
Ms Cook referred to the “relatively involved” nature of these processes. Mr Garde, for the Proponents, went further and said that it was highly unlikely given the processes to be followed, that all appropriate approvals would be effectively retained at the Current premises. An additional item of “evidence” put forward on behalf of the proponents on this issue was correspondence from Tabcorp, one of the two suppliers of EGMs, offering support for the Club’s relocation, indicating that if the Club was successful in relocating, it would not support operations at the Current Premises, but only if it was unsuccessful would it seek retention at the Current Premises. This was countered by a letter produced by Mr Canavan suggesting that if relocation occurred, Tattersalls would support establishment at the Current Premises. The Panel does not consider that it is justified in giving much weight at all to these “commercial” suggestions.

The Panel finds it difficult to envisage a situation where the owner of the current premises, having a valuable commercial entity, those premises, used for some time for gaming, and having venue approval, would not, before that approval ran out, take steps to make sure that that valuable entity was protected. The Panel does not think it would be justified in assuming that control of the subject premises for gaming purposes rests sufficiently, only, in the hands of the Club, to be satisfied that those premises would be lost to gaming, by action of the Club in relation to the subject premises.

A subsidiary argument put on behalf of the Club, perhaps not so strongly on this aspect of the matter was that it would itself be able to control “non-use” of the Current Premises on relocating, by taking steps to maintaining its position as Lessee although not using it, itself, for gaming purposes. This seems to the Panel to be an unreal suggestion, particularly given the fact that the occupation by the Club under its lease is required to be for gaming activities.

All in all, the Panel does not consider it is justified in adopting any view that if the Club were to take whatever steps might be open to it to “relocate” to the subject premises, that would mean that the current premises would lose all rights to be used for gaming activities. The Panel considers that the appropriate way to view the matter is that the most likely result of any such “relocation” would be that there would be a real possibility of all three premises - the current premises, the Subject Land, and the Court Jester - being premises available for gaming activities.

**Economic Issues**

The provisions of the Planning Act and of the Scheme, and also, for that matter the Gaming Act require some consideration to be given to economic and social issues. There are a number of economic issues which were raised in the hearing.

From the time of its initial application to the Responsible Authority the Club has pointed to the part that it plays in providing social benefit to the community of the Municipality and elsewhere from the monies raised from gaming. The Panel is satisfied that the Club does provide a worthwhile social benefit in channelling substantial amounts, to this purpose. Evidence was given by Mr Hine, a director of the Club, in relation to this and documentation was produced testifying to the work that the Club does for schools and other groups in the community to assist young people in sports, who might otherwise, perhaps, spend time in less worthwhile activities. The
objectors to the proposed Amendment say, correctly, that there is no guarantee that these activities will continue. Whilst those objectors accept that those activities are presently carried on, they point out that there is no statutory or contractual commitment on the Club to continue them. The Panel considers that it is likely that these activities will continue, and that that is an “economic”, no doubt also, a “social” element to be given some consideration in this matter. Weighed in the balance, however, it is not decisive.

Similarly, it was put on behalf of the Club that one of the main reasons for it wishing to relocate has been the position of its rental at the Current Premises, the attitude of the landlord in wishing to increase the rental, and its possible problems when the time comes when it may be unable to further renew its leases, except at what may be an uneconomic rent. The Panel notes that the Officer’s report to Council spoke of rental increases in the vicinity of 800%. The reality of the situation is, however, as documentation produced to the Panel shows, that increased rentals of the current premises have been dealt with in accordance with the provisions of existing leases and by recourse to appropriate independent determinations as provided by those documents. In the view of the Panel, what is occurring here is no more than the normal commercial situation where a landlord seeks to recover as much rental as he reasonably can for his premises, the tenant seeks to keep the rental as low as possible, and each has recourse to what their documentation provides to arbitrate disputes between them. It may be that, come 2010, 9 years from now, when the current and only available renewal for the premises comes to an end, that the occupancy of the Club will be in doubt. The Panel considers that that is a matter too far into the future for it to reasonably prognosticate about for the purposes of this matter.

The Club contends that it will be better off, financially taking a lease of premises at the Subject Land. At the very conclusion of the hearing, and although the matter was mentioned earlier, agreements for lease were provided to the Panel and the parties in relation to the Subject Land, indicating, as put on behalf of the Club and the other proponents, that the Club will be able to secure those premises if appropriate permits, approvals and consents are available. The panel directed that the other parties appearing before it should have an opportunity to comment on those documents. The comments then made and in return responded to on behalf of the Proponents, do not lead the Panel to conclude that the Club would be so substantially better off on any relocation as to warrant that aspect being given any real weight.

In any event all of these matters are “guess work”, into the future, which the Panel considers it is not appropriate for it to enter into in detail. All in all therefore, the Panel does not consider that it is much assisted by a consideration of these various economic matters. Whilst, as indicated earlier in this Report, economic and social issues have some relevance, it does not appear to the Panel that the matters brought to its attention as set out above should carry very much weight.

**Social Issues**

From the point of view of the Club in relation to this topic there is, no doubt, the service it provides to its own members, and to the members of the public in relation to gaming. There is also the service to the community provided by its activity in relation to young people, referred to earlier. This social benefit will continue, however, wherever it is located.
Of more concern in relation to the Amendment, is the social effect of gaming at the Subject Land, particularly if that is on the basis of there being three establishments in the area.

The evidence of Mr Hawkins, of Access Economics Pty Ltd was directed to this point. His company, of course, is well known in a number of areas relating to economic matters. It has also, however, carried out a number of studies for various bodies in relation to gaming, and has appeared at a number of hearings of the Victorian Casino and Gaming Authority (“VCGA”). He produced extensive figures in relation to the effect of gaming in various suburbs of Melbourne, including Stonnington.

The thrust of his evidence was that the City of Stonnington had the social and economic capacity to support additional gaming facilities. “Persons resident in Stonnington are, on average, well-educated and earning relatively high incomes in skilled or semi-skilled occupations.” He produced statistics indicating that the number of EGMs in Stonnington is well below the State average, as is spending on EGMs. He considered that the residents of the City of Stonnington are less susceptible to developing gambling related problems than persons living elsewhere in Melbourne, because of their higher average levels of income, and higher levels of education attainment.

Mr Hawkins replied to a question from Ms Cook, by conceding that if one was looking at a matter such as this other than from a consideration of the general municipality, it would be necessary to know where people lived and worked. To Mr Canavan he indicated that it would be necessary to carry out further research to be satisfied about what real effect the presence of people living in the nearby Office of Housing buildings would have. To Mr Wright he conceded that his views were based on statistics of the whole municipality rather than the particular area or venues involved here. To a question from the Panel he maintained the view, nevertheless, that he did not expect patrons to the proposed venue would include a high proportion of persons “who are liable to cause harm to themselves from their gambling related activities”. The basis of that view was that Stonnington residents using the facility would be likely to be educated, in full-time employment, and earning above average incomes.

Ms Cooper was called to give evidence on behalf of Karenlee Pty Ltd, the owner of the Current Premises. Her statement of evidence was directed specifically at a consideration of social effects. Ms Cooper has considerable experience in social planning and research, and social impact assessments. She accepted that Stonnington has a higher socio-economic status or socio-economic index for its area when compared to Melbourne as a whole, but pointed out that the City is not “homogenous”, having the affluent suburbs of Toorak, Malvern, Armadale and South Yarra, but also the higher density public housing estates in Prahran and Windsor around Chapel Street. She expressed the view that to examine the socio-economic situation for the whole municipality, rather than at the local level where the machines are located and where people can least afford to lose, is misleading.

Ms Cooper produced figures contrasting the median household annual income in the area within 500 metres radius of the Subject Land, with the area of Prahran/Windsor and even more, with the municipality as a whole. She also referred to the fact that it appeared from the Report presented to the Council on behalf of the Club from Grogan
Richards (not, of course, tested before the Panel) that the majority of those to attend at the Subject Land would be likely to walk to it. Her overall conclusion was that “while the overall impact of the Amendment would not affect the social interactions of the people at a municipal level, it certainly would have an overall negative social impact on the well-being of the local community”. Under cross-examination from Mr Garde, Ms Cooper agreed that she had not carried out an in-depth study of the situation of persons in the Housing Department Buildings. She nevertheless relied upon “anecdotal” evidence and her overall experience for her views.

The Panel considers that the evidence of Ms Cooper is of more assistance to it than that of Mr Hawkins for the purposes of this enquiry. In re-examination by Mr Garde, Mr Hawkins pointed out that a detailed business plan for establishment of a new venue at the Subject Land would have to be put to the VCGA, and that that would provide details of patronage. He also pointed out that that information would be made available to the Council which would be able to comment on it. The Panel points out, however, that the enquiry before the VCGA is in relation to the well-being of the municipality as a whole and not to a more limited area. It notes that a submission that it, the VCGA could look at a more limited area than the municipality as a whole was rejected by it in its reasons for decision in relation to an application to it on behalf of the Werribee Football Club.

It is the Panel’s view that the probability is that re-location will mean a third venue in this area, that there will be two in close proximity (to the possible dis-amenity to those who occupy ground floor shops at the Subject Land) and that those two are in the vicinity of residents who are probably the least able to afford gambling. This all leads to a conclusion that social considerations argue against the Amendment.

General Planning Policy

The main controls in relation to gaming are now found in Clause 52.28 of the Scheme. Before turning to those, there are other aspects of planning policy which require some attention. A number of Scheme provisions, statements, and policy issues were referred to in the opening submission of the Council and to some extent by the representatives of the other parties.

The Panel notes, itself, that the following statements appear in the Council’s Municipal Strategic Statement.

*The City covers an area of 25.62 square kilometres, running east from Punt Road to Warrigal Road and from north to south between the Yarra River and Gardiner’s Creek to Dandenong Road.*

*Embracing the suburbs of South Yarra, Prahran, Windsor, Armadale, Toorak, Kooyong, Malvern, Malvern East and Glen Iris, Stonnington has an economically and culturally diverse population of around 90,000.*

*Stonnington residents can be summarised as being ethnically diverse and well educated, with a high proportion in well paid professional and managerial positions. Households are mostly small – 1-2 people. A high proportion of Stonnington’s population is young adults or elderly people and there is a low proportion of families with children.*
Ms Cook indicated that the Municipal Strategic Statement identifies Chapel Street as an extensive commercial area of the City and sees a need to provide opportunities to enhance the economic viability and effectiveness of the retailing area. One of the strategies for the area is to:

“Encourage the more effective use of all commercial land and buildings, including the re-use or re-development of land and buildings that become vacant, and the full use of upper floors for retail, offices or residential use depending on their location.”

She also referred to the issue of Heritage, the Subject Land being heritage listed as indicated earlier, and that one of the Council’s strategies was to:

“Retain, recycle, restore and renovate, as appropriate, protected heritage places including commercial buildings their shopfront and verandahs.”

Again, Ms Cook referred to Council’s Retail Centres Policy and its Entertainment Uses Policy. She indicated that the former policy comments that businesses which will enhance economic viability are encouraged but:

“A balance between retail and entertainment uses is sought along with protection of the amenity of any surrounding residential area.”

The Entertainment Uses Local Policy observes that Council’s MSS “provides that Entertainment Uses are to be encouraged during the day to compliment retailing activities”, and one of its clauses indicates that “new Entertainment Uses (should) be discouraged from locating at ground level…”.

These various policies were referred to in the evidence which Mr Milner gave to the Panel, and he also referred to the “Entertainment/Retail Premises Review for Chapel Street, Toorak Road, and Environs” undertaken for the Council by Henshall Hansen & Associates in 1997. He offered the view, as the Panel understood him, that building on this Study, Council had identified an entertainment precinct in this area, and it would not be expected that planning would diminish that precinct; in other words, that gaming should be considered as “within” entertainment and supported within the precinct. He suggested that “the language and intent of the policy appears to be open to consider new additional or relocated facilities, provided it is within the general provisions of the gaming policy” (our emphasis); and that “it is evident that Chapel Street is a special case where the community might reasonably expect to find gaming as one of the many forms of entertainment uses available to the public”. Accordingly he was of the view that provided that the use is at an upper floor and does not cause detriment to residential properties it would be appropriate to support the use put forward, and accordingly the Amendment.

The Panel is prepared to accept that policy statements can be found in the various provisions in the MSS, and no doubt elsewhere, which might be said to support the use of upper floors of heritage buildings in Chapel Street for appropriate forms of entertainment to support retail viability of the strip centre as a whole. With reference to what Mr Milner put about gaming being a form of entertainment, it appears to the Panel that it is a form which can have an inappropriate social and amenity impact, as discussed above. The Panel also considers, as Mr Wright submitted, that it is not a
use truly complimentary to retailing – witness the controls against it in, for example, shopping centres. It is, anyway, again, only a matter to be weighed in the balance along with other planning policy considerations which the Panel considers should be given much more weight.

Planning Policy in Relation to Gaming

The controls now found in Clause 52.28 of the Scheme came about as a result of a series of amendments to the State Section of all the Planning Schemes in Victoria prior to the introduction of the New Format Schemes. These amendments have been the subject of comment by those who appeared before the Panel. The history in relation to them is as follows:

The first of the amendments on this topic was Amendment S22 which provided that a permit was required to install and use gaming machines in a restricted area (defined as a physically discrete area where minors are not allowed and which is devoted to gaming), if that area exceeded 25% of the floor area of the premises where liquor might be consumed. On the other hand a permit was not required to install and use gaming machines in a restricted area if that area was 25% or less of that floor area. The explanatory report in relation to this amendment indicated that the controls were “based on the view that if gaming machines are installed and used on 25% or less of the floor area of the premises there will be no change in the basic function of the premises”, whilst “if the floor area exceeds 25% a permit is needed and all relevant planning matters can then be considered”. A corollary was that a permit would not be required for the installation and use of gaming machines in an unrestricted area.

Amendment S58 came into effect on 20 December 1995. The Explanatory Report indicated that it gave “effect to Government policy that there should be no more gaming machines in specified shopping complexes”. The Amendment therefore provided that gaming venues should not be located in shopping complexes and should provide entertainment and a full range of services to patrons. It was stated that the intention of the amendment was “to prevent additional machines being installed in existing gaming venues in a specified shopping complex”. A schedule to the Amendment then listed various shopping centres for its purposes, those in Stonnington being Pran Central Shopping Centre, the Jam Factory, and Pran Market.

The next relevant amendment for present purposes was Amendment S69. The Explanatory Report indicated in relation to the background of the amendment that “in May 1992, planning controls were introduced to facilitate the establishment of gaming venues in liquor licensed premises in accordance with the Gaming Machine Control Act 1991”, but further that “the Premier and Minister for Gaming announced in December 1995 a two year cap of 27,500 on the total number of machines in Victoria”. It then went on to indicate that the “main provision introduced by the amendment is to the effect that no new gaming venue can be established in a strip shopping centre”. It further stated that “it is policy that no gaming machine is to be installed in a strip shopping centre” and further “that no gaming machine may be used or installed in a strip shopping centre”. Exceptions to these prohibitions were provided in relation to gaming venues in operation at certain dates set out in this Amendment, with the Explanatory Statement specifically indicating that it was the intention of the amendment that no gaming machine might be otherwise installed or used in a strip shopping centre in which there were none as at the specified dates.
“Strip shopping centre” was defined for the purposes of the Amendment and the Amendment expressed that it was intended to apply to a wide variety of centres. This Amendment was essentially clarified and extended by Amendment S70 which came into effect on 16 June 1998.

Finally, Amendment S76 followed the policy set out in Amendment S69. The Background to this Amendment indicated that when that latter Amendment came into operation on 19 December 1997 “new provisions were inserted in each planning scheme which had the general effect of prohibiting the establishment of a new gaming venue in a strip shopping centre.” It stated that this was an interim Amendment because the Minister had invited Councils to nominate those strip shopping centres, or parts of them for which the prohibition ought to continue. Stonnington was one of the Councils to nominate centres and the Chapel Street Strip Shopping Centre was nominated by reference to specific properties although two specific properties were omitted from the description.

Submissions were put to the Panel concerning the history of these Amendments, and the use which should be made of them in reaching a decision as to the effect of the current Clause 52.28. Some comments were made about the process followed by the Council in establishing the “list” of premises which found its way into what is now the Schedule to Clause 52.28-6 and whether the council really had enough time to consider such a list. The Panel does not find this a helpful inquiry given that that list is now in the New Format Scheme which was on exhibition for some time prior to approval. The Council submission set out the above history in more detail but did not indicate how that history might be considered to affect Clause 52.28. In its submission, however, it indicated the following:

123. **Clause 52.28 – 6 creates the key prohibition, in that it provides that no gaming machine may be used or installed in any building on land in a strip shopping centre listed in the Schedule to Clause 52.28-6.**

124. **Clause 52.28 specifically contemplates that the Planning Authority may wish to exclude individual premises within strip shopping centres, allowing the potential installation of gaming machines. The Planning Scheme does not provide guidance as to when it may be appropriate to include a property in the schedule.” (Emphasis in original).**

Whilst that last comment by the Council may be literally true, it is clear that a change to the schedule can only be achieved by an amendment to the Scheme as is proposed here. The Clauses could have been worded, of course, in a way which would have opened the door to a permit for additional premises for gaming activity, subject to such criteria, strict or otherwise, as was thought appropriate. Such a process, the Panel considers, might more accurately fall within “providing guidance” as to ability to exclude.

Mr Milner, who gave evidence on behalf of the proponents for the amendment, indicated that there was “an established body of planning policy at State and Local level that seeks to limit the establishment of premises offering gaming facility where those facilities are located in Shopping Centres and nominated strip shopping centres.” He addressed the proposed amendment both on the basis of it being an application seeking to resite an existing facility in the same general locality (in which
case there would be no increase in the number of gaming venues or machines) but also on the basis of the alternative which might see the establishment of an additional venue with approximately 75 additional machines. He considered that Council’s policy in relation to gaming and location of gaming facilities was “non-existent at the time it was called upon to nominate locations for the prohibition of gaming in strip centres, it having taken no more than “a blanket exclusion approach” to the question of nominations”. He considered that “there is a case for a limited addition of opportunities for gaming in Chapel Street given its important entertainment role and the need to provide a choice and diversity of entertainment venues and allow existing businesses to develop”. Other comments he made on this issue are referred to in paragraph 72 above.

In addressing the history of the amendments referred to above (S22, S58, S59, S70 and S76) Mr Milner indicated that the purpose of the policies could be summarised as preventing growth of gaming venues, limiting to a secondary role gaming facilities in hotels and clubs, but then “to delegate to Council’s decision making in the strip shopping centres where gaming machines may be prohibited and where they might be considered on their merits.” The Panel does not agree that that last point should be accepted. As indicated, if any consideration was to be given to allowing gaming venues “on their merits”, it would have been expected that a permit issuing regime with appropriate controls would have been included in the Amendments, rather than a blanket prohibition which could only be changed by Amendments to the relevant Scheme.

That is the view essentially put forward by Mr Andrew Rodda who was called to give evidence on behalf of Faso Pty Ltd the owner of the Court Jester Hotel. He summarised his opinion that the proposed Amendment “is not justified or appropriate on the basis that it is directly at odds with and would undermine established State policy which seeks to prohibit gaming machines in the strip shopping centre in which the land subject to Amendment C13 is located.” Mr. Rodda agreed with comments made by Mr Milner, based on the retail and entertainment policies of the Council, that it was desirable to locate entertainment venues other than on ground floor shopfront positions in retail strips, if for no other reason than that that would assist Council in the desire to recycle preserve and maintain heritage buildings, the upper floor of the Subject Land being listed for heritage purposes. Nevertheless, he expressed the following views:

Clause 52.28 implements the State Planning Policy expressed in Clause 19.02 of the Scheme.

Both clauses are “a clear reaffirmation of deliberate State Government Policy, which as a planning outcome seeks to exclude the installation and use of gaming machines in strip shopping centres”.

The proposed Amendment “is about trying to overcome a State wide recognition that gaming machines are not suitable in core retail areas.”

The policy on gaming machines in Clause 19.02 is directly implemented by Clause 52.28 in a manner which in his opinion is unambiguous in its intent and outcome.
Having considered this aspect of the matter, the Panel is of the opinion that the views of Mr Rodda are to be preferred. The Panel considers that Clauses 19.02 and 52.28 do establish a clear policy in relation to gaming venues, consistent with the history of the amendments as referred to in paragraph 74 above, which is that they should be prohibited in strip shopping centres unless those gaming activities have established rights. Even if it were convinced, and it is not, that the proponent for this Amendment could so order the affairs at the Subject Land and the Current Premises so that the latter would lose the opportunity to be used for gaming purposes (thus keeping the "status quo" to two venues in the area) it still does not consider it would be appropriate to "open the door" for the establishment of the Subject Land for gaming purposes. Planning Schemes, as Mr Wright indicated, are "policy driven". The policy here, in the view of the Panel, is such that if one premises loses its right to be a gaming venue that does not lead to the conclusion that it should be replaced by another, unless factors much stronger than those advanced here and with clear planning policy backing, are present. The fact that the Government had imposed a "cap" on EGMs is an additional important factor.

8 CONCLUSION AND RECOMMENDATION

The Panel is of the view that in putting forward this proposed Amendment the Council has not properly considered the implications which it would have for the State Planning Policy Framework. The Council has exhibited an Amendment which, in the Panel’s view, is contrary to State Planning Policy, in regard to gaming as set out in its own Scheme. It is in the nature of “ad hoc” planning without any strategic basis and is contrary to Strategic Assessment Guidelines for planning schemes.

Accordingly the Panel recommends that the Amendment not be adopted.

C.M. Barlow Chairperson

Associate Prof. R. Howe Member
STONNINGTON PLANNING SCHEME
AMENDMENT C13

APPENDIX 1 TO REPORT OF PANEL
52.28  GAMING

52.28-1  Restricted area - no permit required

No permit is required to install and use a gaming machine in a restricted area if that area does not exceed 25 per cent of the gross floor area of the premises where liquor may be consumed.

*The gross floor area where liquor may be consumed does not include bedrooms, external drinking and dining areas, service areas, kitchens, area behind bars, storage areas, administrative areas, lifts, stairs, ramps, escalators, corridors, hallways, lobbies, service ducts, plant rooms and toilets.*

52.28-2  Restricted area - no permit required - strip shopping centres

Despite clause 52.28-1, if a restricted area is located in a hotel or club in a strip shopping centre –

(a) specified in clause 52.28-6(aa) or

(ab) to which clause 52.28-6(ab) applies-

no permit is required to install or use a gaming machine in a restricted area provided all of the following requirements are met.

(a) If the hotel or club existed on 19 December 1997:

(i) the floor area of the restricted area must not exceed 25 per cent of the gross floor area of the premises where liquor may be consumed as at 16 June 1998, and

(ii) the restricted area must be located on the land used as a hotel or club on 16 June 1998.

(b) If the hotel or club existed on 19 December 1997 and

(i) if a permit to use or develop alterations and extensions to that hotel or club is in force on 16 June 1998 in relation only to the whole or part of the land used as a hotel or club on 19 December 1997, and

(ii) if a residential licence, general (class 1) licence or club licence (whether full or restricted) under sections 46, 47 or 48, respectively, of the Liquor Control Act 1987 has been granted on or before 16 June 1998 or a determination to grant such a licence has been made on or before 16 June 1998 in relation to those alterations and extensions:

(iii) the floor area of the restricted area must not exceed 25 per cent of a combination of the gross floor area of the premises where liquor may be consumed as at 16 June 1998 and any increase to that gross floor area approved in or under the permit at 16 June 1998, and

(iv) the restricted area must be located on the land used as a hotel or club on 16 June 1998.

(c) If the hotel or club existed on 19 December 1997 and

(i) if a permit to use or develop alterations and extensions to that hotel or club is in force on 16 June 1998 in relation to the whole or part of the land used as a hotel or club on 19 December 1997 together with adjoining land not used as a hotel or club on 19 December 1997; and

(ii) if a residential licence, general (class 1) licence or club licence (whether full or restricted) under sections 46, 47 or 48, respectively, of the Liquor Control Act 1987 has been granted on or before 16 June 1998 or a determination to grant
such a licence has been made on or before 16 June 1998 in relation to those alterations and extensions:

(iii) the floor area of the restricted area must not exceed 25 per cent of a combination of the gross floor area of the premises where liquor may be consumed as at 16 June 1998 and any increase to that gross floor area approved in or under the permit at 16 June 1998, and

(iv) the restricted area must be located on the land being a combination of the land used as a hotel or club on 16 June 1998 and the land to which that permit relates.

(d) If the use as a hotel or club started after 19 December 1997 and is land to which clause 52.28-6(b) applies:

(i) the floor area of the restricted area must not exceed 25 per cent of the proposed gross floor area of the premises where liquor may be consumed approved in or under the permit in force at 16 June 1998, and

(ii) the restricted area must be located on the land to which the permit in force at 16 June 1998 for the hotel or club relates.

(e) If the use as a hotel or club started after 19 December 1997 and is land to which clause 52.28-6(c) applies:

(i) the floor area of the restricted area must not exceed 25 per cent of the proposed gross floor area of the premises where liquor may be consumed approved in or under a permit in force at 16 June 1998 for the re-building of the former hotel or club, and

(ii) the restricted area must be located on the land to which the permit in force at 16 June 1998 for the hotel or club relates.

In this clause, ‘gross floor area of the premises where liquor may be consumed’ excludes the same floor areas excluded from the expression ‘gross floor area where liquor may be consumed’ in clause 52.28-1.

52.28-3 Restricted area - permit required

A permit is required to install or use a gaming machine in a restricted area if the requirement is not met and the installation and use of one or more gaming machines is not otherwise permitted under the scheme.

This requirement applies even if gaming is ancillary to another use of the land.

No permit may be granted if the restricted area is in a hotel or club in a strip shopping centre-

(a) specified in clause 52.28-6(aa) or

(b) to which clause 52.28-6(ab) applies.

52.28-4 Unrestricted area - no permit required

No permit is required to install and use a gaming machine in an unrestricted area.

52.28-5 Gaming machines - prohibited in shopping complexes

Despite clauses 52.28-1 to 52.28-4 (inclusive), land described in the schedule to this clause must not be used for gaming and no gaming machine may be installed or used in any building on the land.

This does not apply to a part of the land in relation to which a permit granted to install or use a gaming machine in a restricted area is in force on 20 December 1995.
52.28-6 Gaming machines - prohibited in strip shopping complexes

This clause does not apply in the municipal districts of Cardinia Shire, Delatite Shire and Golden Plains Shire.

Despite clauses 52.28-1, 52.28-3 and 52.28-4, no gaming machine may be used or installed in any building on land in a strip shopping centre –

(a) specified in the schedule to this clause, or
(b) in a municipal district in respect of which no strip shopping centre is specified in the schedule to this clause.

This does not apply to any of the following:

(a) Land used as a hotel or club on 19 December 1997.
(b) Land not used as a hotel or club on 19 December 1997 in relation to which:
   (i) a permit to use or develop a hotel or club has been granted and is in force on 16 June 1998 and
   (ii) a residential licence, general (class 1) licence or club licence (whether full or restricted) under sections 46, 47 or 48, respectively, of the Liquor Control Act 1987 has been granted on or before 16 June 1998 or a determination to grant such a licence has been made on or before 16 June 1998.

Despite the definition of ‘hotel’ and ‘club’ in clause 52.28-7:

(A) no premises are deemed to fall outside the definition of ‘hotel’ in clause 52.28-6(b)(i) by virtue only of the fact that a residential licence or general (class 1) licence under sections 46 or 47, respectively, of the Liquor Control Act 1987 has not been granted in respect of the premises at the date the permit was granted, and
(B) no premises are deemed to fall outside the definition of ‘club’ in clause 52.28-6(b)(i) by virtue only of the fact that a club licence (whether full or restricted) under section 48 of the Liquor Control Act 1987 has not been granted in respect of the premises at the date the permit was granted.

(c) Land not used as a hotel or club on 19 December 1997 if:
   (i) the land was lawfully used as a hotel or club before 19 December 1997, and
   (ii) all or part of the hotel or club was destroyed by fire between 1 September 1992 and 16 June 1998.

(d) Land in relation to which a permit granted to install or use a gaming machine in a restricted area is in force on 19 December 1997.

52.28-7 Definitions

In this clause and in clause 19.02:

“club” means land used by members of a club or group, or by members’ guests, for religious or cultural activities, entertainment or meetings, and in respect of which a club licence (whether full or restricted) under section 48 of the Liquor Control Act 1987 is in force.

“hotel” means land used to:

- sell liquor for consumption on and off the premises, in respect of which a general (class 1) licence under section 47 of the Liquor Control Act 1987 is in force, or
- provide accommodation in serviced rooms for persons away from their normal place of residence, in respect of which a residential licence under section 46 of the Liquor Control Act 1987 is in force.
“strip shopping centre” means an area:

- zoned for business use, and
- consisting of at least two separate buildings on at least two separate and adjoining lots, and
- in which a significant proportion of the buildings are shops, and
- in which a significant proportion of the lots abut a road accessible to the public generally,

but does not include the Capital City Zone in the Melbourne Planning Scheme.
# SCHEDULE TO CLAUSE 52.28-5

<table>
<thead>
<tr>
<th>Name of shopping complex and locality</th>
<th>Land description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chadstone Shopping Centre, Chadstone</td>
<td>1341 Dandenong Rd, Chadstone</td>
</tr>
<tr>
<td>Malvern Central Shopping Centre, Malvern</td>
<td>110 Wattletree Rd, Malvern</td>
</tr>
<tr>
<td>Como Gaslight Shopping Centre, South Yarra</td>
<td>259 Toorak Rd, South Yarra</td>
</tr>
<tr>
<td>Pran Central Shopping Centre, Prahran</td>
<td>325 Chapel St, Prahran</td>
</tr>
<tr>
<td>Jam Factory, South Yarra</td>
<td>500 Chapel St, South Yarra</td>
</tr>
<tr>
<td>Pran Market, Prahran</td>
<td>177 Commercial Rd, South Yarra</td>
</tr>
</tbody>
</table>
## SCHEDULE TO CLAUSE 52.28-6

<table>
<thead>
<tr>
<th>Name of strip shopping centre and locality</th>
<th>Land description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Batesford Road/Warrigal Road Shopping Centre, Malvern East</td>
<td>50 Batesford Rd; 602-616 (even numbers) Warrigal Rd</td>
</tr>
<tr>
<td>Beatty Avenue Shopping Centre, Armadale</td>
<td>11-31 (odd numbers) Beatty Ave</td>
</tr>
<tr>
<td>Chadstone Road Shopping Centre, Malvern East</td>
<td>61-93 (odd numbers) Chadstone Rd</td>
</tr>
<tr>
<td>Chapel Street Shopping Centre, Prahran</td>
<td>Land bounded by Malvern Rd, Little Chapel St, Kings St and Chapel St (excluding 3 Princes Close); 10 Little Chapel St; 218-252 (even numbers) Chapel St; 4-16 (even numbers) Cecil Place; 3-11 (odd numbers) Anchor Place; land bounded by Anchor Place, Clifton St, High St and Chapel St; land bounded by High St, St Edmonds Rd, Greville St and Chapel St (excluding land occupied by the Town Hall complex); 99A-137 (odd numbers) High St; 96-162 (even numbers), 95-127 (odd numbers) and 147-155 (odd numbers) Greville St; land bounded by Greville St, Izett St, Chatham St and Chapel St; land bounded by Chatham St, Chapel St, Commercial Rd and Cato St; land bounded by Commercial Rd, Cato St, Wattle St and Izett St; 49 Izett St; 162-180 (even numbers) Commercial Rd</td>
</tr>
<tr>
<td>Chapel Street Shopping Centre, South Yarra</td>
<td>347-527 (odd numbers) and 346-470 (even numbers); land bounded by Garden St, Surrey Rd, the railway line and Chapel St (excluding 514 Chapel St, 43-59 (odd numbers) Garden St and 65 Surrey Rd); 34 Elizabeth St; 189-251 (odd numbers) Commercial Rd</td>
</tr>
<tr>
<td>Name of strip shopping centre and locality</td>
<td>Land description</td>
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<tr>
<td>------------------------------------------</td>
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</tr>
<tr>
<td>Chapel Street Shopping Centre, Windsor</td>
<td>174 Peel St; 168-182 (even numbers) Albert St; 102 Vine St; 7-179 (odd numbers) (excluding land at the rear of 63-69 (odd numbers) but including land at the rear of 171-179 (odd numbers)) and 28-180 (even numbers) Chapel St; land bounded by Chapel St, Dandenong Rd and the railway line; 1-3 (odd numbers) Maddock St; 151-161 (odd numbers) Dandenong Rd; 1-21 (odd numbers) and 2-14 (even numbers) Millwick St; 1-15 (odd numbers) White St; 2-12 (even numbers) and 9 James St; 2-4 (even numbers) and 7-9 (odd numbers) Duke St; 2-4 (even numbers) and 7-9 (odd numbers) Earl St; 1-7 (odd numbers) and 2-4 (even numbers) Eastbourne St; 13-17 (odd numbers) Victoria St; 160-190 (even numbers) High St; 146 Union St.</td>
</tr>
<tr>
<td>Commercial Road Shopping Centre, Prahran and South Yarra</td>
<td>Land bounded by Balmoral St, Perry St, Elizabeth St, the west boundary of the Prahran Market and Commercial Rd; 57-121 (odd numbers) (including land at the rear of 121) and 110-120 (even numbers) Commercial Rd; land east of 120 Commercial Rd and on the west side of the railway line (excluding land at the rear of this land)</td>
</tr>
<tr>
<td>Como Shopping Centre, South Yarra</td>
<td>169-336 (even numbers) (excluding land at the rear of 316-320 (even numbers)), 169-257 (odd numbers) and 305-345 (odd numbers) Toorak Rd; 522-594 (even numbers), 531-709 (odd numbers) Chapel St; 1-55 (odd numbers), 2 and 6-58 (even numbers) Claremont St; 7-9 (odd numbers) and 6-10 (even numbers) Almeida Cr; 1-19 (odd numbers) Yarra St; 2-8 (even numbers) Daly St; 1-5 (odd numbers) and 4-6 (even numbers) Bond St; 2-8 (even numbers) and 3-9 (odd numbers) Oxford St; 2-96 (even numbers) River St; 2 Victoria Terrace; 4-10 (even numbers) Penny Lane</td>
</tr>
<tr>
<td>Dandenong Road/Tooronga Road Shopping Centre, Malvern East</td>
<td>781-875 (odd numbers) Dandenong Rd (excluding land in the northeast corner of 811 Dandenong Rd located on the southwest corner of John St and Boardman St); 1-33 (odd numbers) Waverley Rd</td>
</tr>
</tbody>
</table>
### Name of strip shopping centre and locality

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<thead>
<tr>
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</tr>
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<tbody>
<tr>
<td>Glenferrie Road Shopping Centre, Armadale and Malvern</td>
<td>Land bounded by Glenferrie Rd (east side), Dandenong Rd and the railway line; 1-29 (odd numbers), 12-278 (even numbers) and 35-277 (odd numbers) Glenferrie Rd; 1-53 (odd numbers) Station St; 105-141 (odd numbers) and 136-154 (even numbers) (excluding land at the rear of 136) Wattletree Rd; 515-621 (odd numbers) Dandenong Rd; 1 Evandale Rd; 1 Edisall St; 38 Stanhope St; 2A and 2B Willis St; 2B, 4 and 6A Barkly Ave; 1A, 1B, 1C and 1D Llaneast St</td>
</tr>
<tr>
<td>High Street Shopping Centre, Armadale</td>
<td>835-1253 (odd numbers) (excluding land at the rear of 873) and 914-1282 (even numbers) (including land at the rear of 1122, and excluding land at the rear of 1066) High St; 21-27 (odd numbers) Osment St; 13-31 (odd numbers) Morye St; 1-10 (all numbers) Kingsway; 303-315 (odd numbers) Glenferrie Rd; 37 Seymour Ave; 1 William St; 2-6 (even numbers) Northcote St</td>
</tr>
<tr>
<td>High Street Shopping Centre, Prahran</td>
<td>255-319 (odd numbers) (including land at the rear of 319) and 258-266 (even numbers) (including land at the rear of 258) High St</td>
</tr>
<tr>
<td>High Street Shopping Centre, Prahran</td>
<td>69-87 (odd numbers) and 70-94 (even numbers) (including land at the rear of 94, and excluding land at the rear of 72) High St; 14 Latrobe St</td>
</tr>
<tr>
<td>High Street/Orrong Rd Shopping Centre, Prahran</td>
<td>693-731 (odd numbers) and 694-730 (even numbers) High St</td>
</tr>
<tr>
<td>High Street/Tooronga Road Shopping Centre, Glen Iris and Malvern</td>
<td>1382-1446 (even numbers) (including land at the rear of 1412) and 1339-1379 (odd numbers) High St; 208 Tooronga Rd</td>
</tr>
<tr>
<td>High Street/Williams Road Shopping Centre, Prahran</td>
<td>388-476 (even numbers) (excluding land at the rear of 396-450 (even numbers)) and at the rear of 444-476 (even numbers), 419-545 (odd numbers) and 546-554A (even numbers) High St; 1-3 (odd numbers) Russell St</td>
</tr>
<tr>
<td>Holmesglen Shopping Centre, Malvern East</td>
<td>550-554 (even numbers) Warrigal Rd</td>
</tr>
<tr>
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<tr>
<td>Malvern Road Shopping Centre, Malvern and Glen Iris</td>
<td>1314-1459 (even numbers) and 1361-1511 (odd numbers) Malvern Rd (including land at the rear of 1445-1455 (odd numbers) Malvern Rd, and including land at the rear of 288-298 (even numbers) Tooronga Rd)</td>
</tr>
<tr>
<td>Malvern Road/Burke Road Shopping Centre, Glen Iris</td>
<td>1599-1609 (odd numbers) Malvern Rd; 266-285 (odd numbers) Burke Rd; 1-3 (odd numbers) Glenarm Rd</td>
</tr>
<tr>
<td>Malvern Road/Darling Road Shopping Centre, Malvern East</td>
<td>1810-1852 (even numbers) and 1891-1957 (odd numbers) Malvern Rd; 1-12 (all numbers) Ilowa St</td>
</tr>
<tr>
<td>Malvern Road/Glenferrie Road Shopping Centre, Malvern and Toorak</td>
<td>1112-1126 (even numbers), part of 1128 (in the northwest corner of the land) and 1111-1159 (odd numbers) Malvern Rd; 318-332 (even numbers) Glenferrie Rd</td>
</tr>
<tr>
<td>Malvern Road/High Street Shopping Centre, Glen Iris</td>
<td>1509-1545 (odd numbers) and 1586-1636 (even numbers) High St; land on the south side of High St between 1506 High St and the railway; 1721-1739 (odd numbers) Malvern Rd</td>
</tr>
<tr>
<td>Malvern Road/Williams Road Shopping Centre, Hawthorn</td>
<td>371-617 (odd numbers) (including land at the rear of 543 and 545) and 508-590 (even numbers) Malvern Rd; 162 and 164 Williams Rd; 3-19 (odd numbers) Robinson St; 5 and 49 Errol St; 1A, 1B and 1-7 (odd numbers) Hobson St; 2-4 (even numbers) Cromwell Rd; 2-18 (even numbers) Howitt St; 48 Westbourne St; 1 and 1A Malhoula Rd</td>
</tr>
<tr>
<td>Punt Road Shopping Centre, Windsor</td>
<td>30-88 (even numbers) Punt Rd; 2 and 2K Union St</td>
</tr>
<tr>
<td>South Yarra Hill Shopping Centre, South Yarra</td>
<td>11-165 (odd numbers) (including land at the rear of 95-99 (odd numbers)) and 6-162 (even numbers) (excluding land at the rear of 26, and including land at the rear of 34-42 (even numbers), and including land at the rear of 134-144 (even numbers)) Toorak Rd; 44 and 46 Caroline St; 4 and 5 Avoca St; 2 and 3 Murphy St; 1 and 2; Darling St; 141 Osborne St; 50 Davis St; 48 MacFarlan St; 40 Caroline St South</td>
</tr>
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<tr>
<td>Toorak Village Shopping Centre, Toorak</td>
<td>412-484 (even numbers) and 429-537 (odd numbers) Toorak Rd; 98 and 109 Mathoura Rd; 1-21 (all numbers) Canters Ave; 34-60 (even numbers) and 43-59 (odd numbers) Ross St; 131-157 (odd numbers) Canterbury Rd; 2-14 (even numbers) Wallace Ave; 30-40 (even numbers) Jackson St.</td>
</tr>
<tr>
<td>Wattletree Road/Burke Road Shopping Centre, Glen Iris and Malvern</td>
<td>393-411 (odd numbers) and 346-362 (even numbers) Wattletree Rd; 120-148 (even numbers) and 145-175 (odd numbers) (excluding land at the rear of 149 and 151) Burke Rd</td>
</tr>
<tr>
<td>Wattletree Road/Tooronga Road Shopping Centre, Malvern and Malvern East</td>
<td>253-275 (odd numbers), 262-288 (even numbers) and 279-307 (odd numbers) Wattletree Road, 128 Tooronga Rd</td>
</tr>
<tr>
<td>Waverley Road/Belgrave Road Shopping Centre, Malvern East</td>
<td>401-417 (odd numbers) and 428-516 (even numbers) (including land at the rear of 488 fronting Belgrave Rd) Waverley Rd; 2002-2004 (even numbers) Malvern Rd</td>
</tr>
<tr>
<td>Waverley Road/Burke Rd Shopping Centre, Malvern East</td>
<td>80-100 (even numbers), 81-215 (odd numbers) and 150-186 (even numbers) (including land at the rear of 184 and 186) Waverley Rd</td>
</tr>
<tr>
<td>Waverley Road/Darling Road Shopping Centre, Malvern East</td>
<td>265-319 (odd numbers) and 266-340 (even numbers) Waverley Rd; 75 and 77 Darling Rd</td>
</tr>
<tr>
<td>Waverley Road/Warrigal Road Shopping Centre, Malvern East</td>
<td>660-692 (even numbers) Warrigal Rd; 730-756 (even numbers) Waverley Rd</td>
</tr>
</tbody>
</table>
CITY OF STONNINGTON

STONNINGTON PLANNING SCHEME

AMENDMENT C13

NOTICE OF AMENDMENT TO A PLANNING SCHEME

Stonnington City Council has prepared Amendment C13 to the Stonnington Planning Scheme.

The Amendment will exclude land at 265 – 267 Chapel Street from the schedule to Clause 52.28 - 6 thus enabling a Gambling Venue to be established on the subject land.

Amendment C13 can be inspected during office hours at:

City of Stonnington Planning Department
Corner Chapel and Greville Streets,
PRAHRAN.

Department of Infrastructure Customer Service Centre
Upper Plaza - Nauru House,
80 Collins Street,
MELBOURNE.

Any submission in response to the amendment must be in writing and directed to City of Stonnington, Statutory Planning, P.O. Box 21, Prahran 3181 and should be received by 19 March 2001

Manager Planning Operations
Amendment C13  
List of changes to the Stonnington Planning Scheme

<table>
<thead>
<tr>
<th>Clause Numbers</th>
<th>Change</th>
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</tr>
</thead>
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<tr>
<td><strong>PARTICULAR PROVISIONS</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 52.28 - 6 Schedule | In the Column *Land Description* adjacent to Chapel Street Shopping Centre  
1. delete the words *land bounded by Greville St, Iset St, Chatham St and Chapel St*  
2. substitute the words *land bounded by Greville St, Iset St, Chatham St and Chapel St* (excluding 265–267 odd numbers Chapel St). | Allows a Gaming Premises to be established at 265–267 Chapel Street. |
| **LIST OF AMENDMENTS** | | |
| List of Amendments | Insert:  
Amendment number 'C13'; In operation from DATE; and the Brief description 'Introduces into the Schedule to Clause 52.28–6 a variation to allow a Gaming Premises to be established at 265–267 Chapel St, Prahran.' | Updates list of amendments to the planning scheme. |
CITY OF STONNINGTON

Planning & Environment Act 1987

STONNINGTON PLANNING SCHEME

AMENDMENT C13

EXPLANATORY REPORT

Who is the Planning Authority?

The Stonnington City Council has prepared Amendment C13 to the Stonnington Planning Scheme. Stonnington City Council is the planning authority for this amendment.

Land affected by the Amendment

The amendment applies to 265 – 267 Chapel Street, Prahran.

What the Amendment does

The amendment removes the subject land from the schedule to Clause 52.28 – 6.

The amendment will enable the establishment of a Gaming Venue on the subject land.

Why is the amendment required

The amendment will facilitate the relocation of the Prahran Football Club and its associated Gaming facilities from their current premises at 332 – 338 Chapel Street and 5 – 7 Little Chapel Street to the subject land.

Impact of the amendment

- The amendment should not result in significant adverse social or economic impacts in the area.
- The amendment should not have any significant effect on the environment.
- The amendment is not affected by any of the Minister's Directions under Section 12 of the Planning and Environment Act 1987. The amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7 of the Act.

Strategic and policy justification of the amendment

The amendment is consistent with Council’s strategic objective of utilising and maintaining heritage buildings, locating entertainment uses on the upper levels of Group 1 Commercial Centres (i.e. Chapel Street Toorak Road) and enable a Sporting Club with established links to the community to remain in the area.

Where you may inspect this amendment

The amendment is available for public inspection, free of charge, during office hours at:

City of Stonnington
Customer Service Centre
Corner of Greville and Chapel Streets
PRAHRAN 3181

Department of Infrastructure
Customer Service Centre
Upper Plaza, Nauru House
80 Collins Street
MELBOURNE 3000
STONNINGTON PLANNING SCHEME
AMENDMENT C13

APPENDIX 3 TO REPORT OF PANEL