



# 317-319 Clayton Road, Clayton Section 72 Amendment Planning Report

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## 1 Introduction

### 1.1 Purpose of Report

proUrban Advisory, Planning & Management ('proUrban') act on behalf of Lunico Pty Ltd in relation to the land at 317-319 Clayton Street, Clayton ('the site'), which accommodates the Clayton Hotel ('the venue'), formerly trading as the L'Unico Hotel.

The site is currently subject to, inter alia, Planning Permit No. TPA/40027 ('the planning permit') issued on 01 May 2015 and Liquor Licence No. 31929415.

This report and the attached documentation form an application proposing a variation of trading hours and the provision of live entertainment. The application is made to the Monash City Council ('the responsible authority') to amend the relevant conditions on the planning permit pursuant to s72 of the *Planning and Environment Act* ('the Act').

A review of the Monash Planning Scheme and a detailed inspection of the subject site have been conducted to inform the following planning report, which includes:

- An overview of the planning background of the site;
- An outline of the Application to Amend including a summary of the proposed changes;
- A summary of the applicable statutory controls and policy provisions relevant to the proposed changes;
- An assessment of the key planning issues as they relate to the proposal; and
- An assessment of the merits of the proposed extension of trading hours.

This planning report should be read in conjunction with the Acoustic Report prepared by Octave Acoustics.

Overall, we submit that the proposed amendment is consistent with the relevant policy objectives and intent of the Monash Planning Scheme, and presents an outcome that responds to the commercial and strategic context of the surrounding area.

We seek to engage in a collaborative application process to ensure a mutually desirable outcome on the site, with a view to gaining Council support and planning approval for the proposed amendment.

## 2 Planning context

### 2.1 Overview

A useful overview of the site context and planning background is outlined in *Monash CC v L'Unico Pty Ltd (Review and Regulation) [2013] VCAT 1545*, which is the VCAT decision that granted the current planning permit and facilitated the redevelopment of the venue in its current operational form.

*The L'Unico Hotel is located at 317-319 Clayton Road, Clayton, on the corner of that road and Haughton Road. Clayton is a middle ring suburb located about 19 km from Melbourne CBD, situated within the Monash Council municipality. The subject land lies at the northern end of the Clayton strip shopping centre, with the Clayton railway station across the road from the hotel. We understand that the hotel has operated at the premises for over 20 years.*

*With respect to the history and internal layout of the hotel, the building operated much earlier as a retail arcade. We understand the site was then purchased by the Golotta family circa the early 1980s. Various alterations and necessary approvals were done/obtained to convert the building*

*into a licensed hotel. The operation of the whole building also included the hotel having a small upstairs function room, together with the balance of the upstairs area being leased by an office and a restaurant tenant. The family over time also obtained permission to operate a TAB and up to 35 electronic gaming machines (EGMs) and duly installed same.*

*The Golotta family then sold the tenancy/business in 2000, but retained ownership of the land title. Certain further internal building modifications were made by the interim owners of the business. Mr Golotta then re-purchased the business in 2008 and remains the hotel publican/business operator. Over this whole period the land title ownership has remained unchanged, ie still owned by the Golotta family through a family trust arrangement.*

## 2.2 Nearby sensitive uses

There are 'shop-top' residential dwellings in the adjacent building at 321A Clayton Road within commercially zoned land. The nearest known residential dwellings within residential zoned land are located along Nicholson Court, approximately 30m west of the Subject Land. There are no proximate residential dwellings to the east where music noise is most likely to emit from via the glazed frontage of the Subject Land building

## 2.3 TPA/40027

The current s72 Application to Amend pertains to Planning Permit No. TPA/40027, which was granted at the direction of VCAT and allowed for redevelopment of the hotel to incorporate the following improvements, which have now been completed:

- the creation of a new main entrance to Haughton Road;
- an increase in the size of the bistro, to a total of 150 seats;
- the construction of an expanded bar on the ground floor to service the bistro, the Tab, and the gaming room;
- the creation of a new café/lounge bar area on the ground floor;
- a reduction in the size of the Tab;
- the construction of three new smoking areas; and
- the construction of a new function/community room with 100 seats.

The proposed amendments subject to the current application relate to Conditions 5 and 13 of Planning Permit No. TPA/40027.

## 3 Application to Amendment

An Application to Amend a Planning Permit under s72 of the *Planning and Environment Act 1987* must explain the proposed changes, use and/or development and provide justification and a description of how it complies with the planning policies outlined in the Monash Planning Scheme. Assessment will be limited to the changes proposed.

### 3.1 Proposed changes

The changes propose amendments to the trading hours, service of alcohol, and limitations on live music pursuant to Conditions 5 and 13 of Planning Permit No. TPA/40027.

### 3.2 Current Trading Conditions

The current trading conditions pursuant to Conditions 5 and 13 on Planning Permit No. TPA/40027 allow for consumption on the licensed premises and live entertainment as follows:

*Condition 5:*

*The use (excluding gaming room) hereby permitted may operate only between the hours of:*

- *Monday to Saturday 7.00am and 3.00am the following day; and*
- *Sunday (not being Anzac Day) 12 noon and 11.00pm*

*Condition 13:*

*The only live entertainment permitted in non-amplified piano and/or non-electric guitar with a maximum of two (2) musicians.*

We also refer Council to attached Liquor Licence No. 31921495 and note that the trading hours and special conditions on the licence reflect the conditions identified above.

### 3.3 Proposed trading

The proposed changes to current trading conditions for consumption on the licensed premises and live entertainment are as follows:

*Condition 5:*

*The use hereby permitted may operate and trade alcohol for consumption on the premise between the hours of:*

- *Monday to Sunday at any time (excluding between 3am and 12 noon on Anzac Day)*

*Condition 13:*

*Live entertainment is permitted in the venue subject to the following:*

- i. Live entertainment does not occur after 1am;*
- ii. Windows to the function room remain closed during performances;*
- iii. Doors to the function room balcony close automatically;*
- iv. Live entertainment is in the form of:*
  - a. Karaoke;*
  - b. A DJ or other music playback or program material; or*
  - c. A band or performer that does not include acoustic drum kits*
- v. A noise limiting device is installed, such as the CESVA LRF-04 (<https://www.cesva.com/en/products/logger-limiters/lrf-04/>), calibrated to limit octave band music levels to the 'maximum music levels' defined as follows:*

<b>Maximum music level allowable inside function room, at 3m of loudspeakers</b>	<b>93</b>	<b>99</b>	<b>109</b>	<b>113</b>	<b>110</b>	<b>101</b>	<b>115</b>
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We note that trading hours and special conditions on Liquor Licence No. 31921495 will be amended to reflect the proposed conditions outlined above.

### 3.4 Built form

The proposal does not involve any building works or alteration to the internal and external integrity of the building, and the changes will be achieved through minor refurbishments and installation of necessary amenities for compliance.

The proposed intensification will utilise the existing built form, and not result in an increase in the building envelope or floor area.



## 4 Rationale for amendment

The amendment is proposed following the redevelopment of the hotel pursuant to Planning Permit No. TPA/40027, which was completed in March 2017. The redevelopment took 2 years and cost the landowner in excess of \$3.5 million.

Before the redevelopment, the only part of the venue open to the public after 21:30 was the Gaming Room and the existing liquor trading conditions were satisfactory because no liquor was served in any other part of the venue.

Since finishing the renovations, the venue has experienced a shift in the type of patrons attending the Hotel. Prior to redevelopment the venue was used largely for gaming and liquor consumption, with food and beverage sales minimal, functions non-existent and wagering sales in decline. Post development, the venue now attracts professional workers for meals and after-work drinks; families who come to dine; people watching sporting games on the large TV screen (especially the English Premier League late at night); groups for champagne breakfasts during the spring racing carnival; and shift workers wanting to wind down after work for a couple of drinks.

The proposed changes to the trading hours and service of alcohol ensures the venue complies with best practice standards by enabling the provision of liquor in those areas of the venue not co-located with gaming machines. (As an example, shift workers are currently only able to purchase and consume after-work drinks from and in the gaming area.)

The new venue has been well received by locals and there have been many requests from the community for the venue to host Karaoke Nights. We note also that the Australian Hotels Association has recently nominated the venue as a finalist for the Best Redeveloped Hotel with Gaming and Best Gaming Venue (50 machines or less) in Victoria (refer attached).

As Council may be aware, the venue has not received any complaints from adjoining or nearby land owners, has never been in breach of trading conditions or received a penalty/infringement from the VCGLR, and has a strong relationship with the local police department.

The venue manager and landowner has been President of the Local Traders Association for past 6 years now and plays an active role in the local community. The venue and venue management provide generous support local community with charitable monetary donations and by allowing use of the premises' function space for charitable events, including:

- Clayton Rotary:
  - Meet every Monday night in function room.
- Clayton Rotary:
  - Hold 3 events yearly in the function space (refer to attached letter).
- The Biggest Morning Tea:
  - In conjunction with Harcourts Real Estate Clayton, the venue supplies the function space and makes a significant donation each year.
- The Hayden Butler Foundation:
  - The venue supplies the function space once a month and make a significant donation each year.
- Clayton Sporting Club:
  - The venue is the Major Sponsor and supplies the function space for regular meetings.

- Clayton Football & Netball Club:
  - Major Sponsor.
- Clayton District Cricket Club:
  - Major Sponsor.
- Friday Night Raffle:
  - The venue supports the Royal Children’s Hospital Good Friday Appeal every Friday night with a Meat Tray Raffle.
- Every November the venue has Parma Month; \$2 of each parma sold goes directly to the Good Friday Appeal.
- Knights of The Southern Cross:
  - The venue is a major sponsor of all events throughout the year.
- Clayton North Primary School:
  - Vouchers each year for events.
- Clayton South Primary:
  - Vouchers each year for events.
- St Peter’s Primary School:
  - Vouchers each year for events.
- Level Crossing Removal Authority:
  - The venue holds regular information sessions for the general public & local traders about the removal of the Clayton Level Crossing.

Based on the details outlined above, we submit that the rationale for the proposal is appropriately established and will result in a positive outcome for the venue and the area.

## 5 Planning Policy

The proposed changes are limited in scope. The key planning policy considerations of relevance are therefore limited to the requirements of the:

- Clause 34.01 – Commercial 1 Zone (C1Z)
- Clause 52.27 – Licensed Premises

We have outlined the main points of relevance to the application, below.

### 5.1 Commercial 1 Zone

The subject site is situated within the Commercial 1 Zone (C1Z) pursuant to Clause 34.01 of the Monash Planning Scheme. In addition to implementing State and Local Policy, the relevant purpose of the C1Z includes:

- *To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.*

Of relevance is Clause 34.01-2, which outlines that a use must not detrimentally affect the amenity of the neighbourhood, including through the:

- *Transport of materials, goods or commodities to or from the land.*



- *Appearance of any building, works or materials.*
- *Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.*

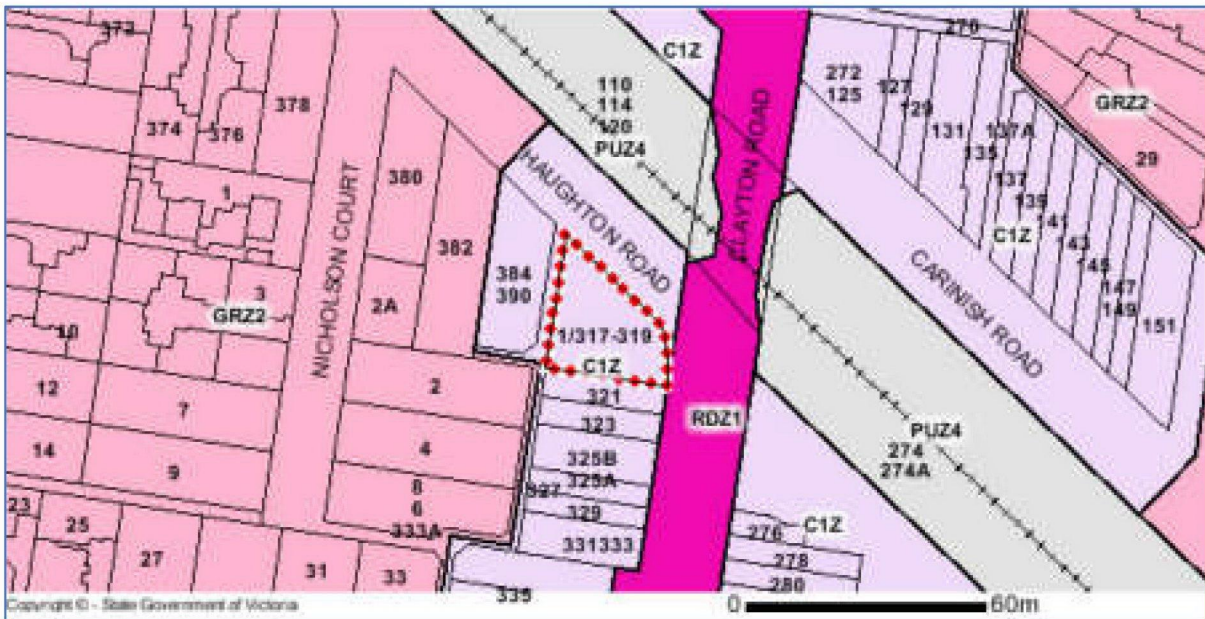


Figure 1: Zone map.

## 5.2 Licensed Premises

The application is subject to Clause 52.27 of the Monash Planning Scheme, which has the following relevant purpose:

- *To ensure that the impact of the licensed premises on the amenity of the surrounding area is considered.*

Pursuant to the Clause, a permit is required for the current application because:

- *The hours of trading allowed under a licence are to be extended.*
- *The area that liquor is allowed to be consumed or supplied under a licence is to be increased.*

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- *The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.*
- *The impact of the hours of operation on the amenity of the surrounding.*

## 5.3 Live Music and Entertainment Noise

The application is subject to Clause 52.43 of the Monash Planning Scheme, which has the following relevant purpose:

- *To recognise that live music is an important part of the State's culture and economy.*
- *To protect live music entertainment venues from the encroachment of noise sensitive residential uses.*

- To ensure that noise sensitive residential uses are satisfactorily protected from unreasonable levels of live music and entertainment noise.
- To ensure that the primary responsibility for noise attenuation rests with the agent of change.

Pursuant to Clause 52.43-3, a venue that has live music entertainment must meet the following requirements:

*A live music entertainment venue must be designed, constructed and managed to minimise noise emissions from the premises and provide acoustic attenuation measures that would protect a noise sensitive residential use within 50 metres of the venue.*

*A noise sensitive residential use must be designed and constructed to include acoustic attenuation measures that will reduce noise levels from any:*

- indoor live music entertainment venue to below the noise limits specified in State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2 (SEPP N2).

## 6 Statutory Requirements

### 6.1 Permit Requirements

The proposal requires a planning permit for the following reasons:

- To use the land as a licensed premises pursuant to Clause 52.27 because:
  - The hours of trading allowed under a licence are to be extended.

### 6.2 Notice and Review

An application to use land for the purposes of an Adult bookshop, Gambling premises, Bottleshop, Hotel, Nightclub or Tavern is not exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

## 7 Relevant Planning Policy

### 7.1 Plan Melbourne

Plan Melbourne (2014) was incorporated into Clause 9 of the Monash Planning Scheme as a state-level planning document outlining the strategic framework for the Melbourne region to 2050. The document encourages the redevelopment of underutilised land, particularly urban-renewal areas, within close proximity to employment, services, and public transport infrastructure.

Initiative 1.5.3 of Plan Melbourne outlines the intent to support planning of Activity Centres, as they “*play a diverse role in terms of accommodating housing, retail, commercial and civic services.*”

*“The continued growth and development of activity centres will provide communities with convenient access to a wide range of goods and services, and their growth will facilitate vibrant local economies across all neighbourhoods.”*

The proposed intensification is consistent with the growth envisaged in the Clayton Major Activity Centre.

### 7.2 State Planning Policy Framework

The State Planning Policy Framework (SPPF) seeks to ensure that the objectives of planning in Victoria (as set out in Section 4 of the *Planning and Environment Act 1987*) are fostered through appropriate land use and development policies and practices. It informs the preparation and implementation of local planning

policy objectives and the introduction of zone and overlay controls, and seeks to integrate relevant environmental, cultural, social and economic factors in the interest of net community benefit and sustainable development. Those clauses most relevant to the current proposal include:

#### Settlement

- Clause 11.01-1 Activity centre network: *To build up activity centres as a focus for high-quality development, activity and living for the whole community by developing a network of activity centres.*

#### Economic Development

- Clause 17.01-1 Business: *To encourage development which meet the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.*

#### Infrastructure

- Clause 19.02-3 Cultural facilities: *To develop a strong cultural environment and increase access to arts, recreation and other cultural facilities.*

### 7.3 Local Planning Policy Framework

The Local Planning Policy Framework (LPPF) sets a local and regional strategic policy context for a municipality. It comprises the Municipal Strategic Statement (MSS) and specific local planning policies and operates consistently with the SPPF.

#### 7.3.1 Municipal Strategic Statement

Council's MSS outlines the vision, strategies and objectives for use and development of land in the municipality. It provides the basis for the application of local policies, zones, overlays and other provisions in the Monash Planning Scheme. Those clauses most relevant to the current proposal include:

#### Clause 21.05 Economic Development

Clause 21.05 provides local content to support State Clauses pertaining to Activity Centres, economic development, and cultural facilities. We note the following passage of relevance to the proposal at Clause 21.05-1:

- *Industry, business and activity centres in Monash need to continue to positively attract and retain local business to provide employment opportunities and investment. This may be achieved by proactively supporting the industry and business communities, retaining and enhancing the competitive advantages of Monash, and by creating viable, attractive and convenient industry, business and activity centres*

#### Clause 21.06 Activity Centres

Clause 21.06 provides local content to support State Clauses pertaining to Activity Centres, and identifies the site as located within the Clayton Major Activity Centre at Map 5 of Clause 21.06-3.

The Hierarchy of Activity Centres at Table 1 to Clause 21.06-3 identifies the following relevant Strategic Directives for the Clayton Major Activity Centre:

- *Encourage a wide range of arts, cultural and entertainment facilities.*
- *Ensure licensed premises venues are well managed, to minimise any adverse amenity impacts so that they positively contribute to the overall diversity and vibrancy of the Centre.*

## 8 Planning Implications

A consideration of the planning merits of the proposed amendment and how it responds to relevant policies and planning provisions in relation to live entertainment and trading hours intensification is provided below.

The proposal provides an intensification of use consistent with commercial and recreational requirements of the Monash Planning Scheme. The primary planning provisions of relevance to the current application to amend are the considerations outlined in Clauses 21.05 (Economic Development) and 21.06 (Activity Centres), and Clauses 34.01 (Commercial 1 Zone), 52.27 (Licensed Premises) and Clause 52.43 (Live Entertainment Venues).

## 7.1 Live entertainment

The proposal attains a high level of consistency with State and Local Planning Policy by complying with the more specific requirements delineated within the provisions relating to activity centres and economic development, which place a strong emphasis on creating a vibrant, diverse mix of land uses that are appropriately located to manage potential amenity conflicts and ensure the enhanced liveability and role of the Activity Centre.

The Strategic Directives of the Clayton Major Activity Centre have a local emphasis and aim to encourage a range of entertainment facilities and ensure the good management of venues to revitalise the cultural and social core of the activity centre and enhance its role as a vibrant, mixed-use hub.

Adjoining and surrounding uses characterise a mixed-use hub by comprising commercial, retail and residential. The nearest residential uses are limited to the shop-top dwelling to the immediate south of the venue.

In regard to surrounding land uses, the Acoustic Report prepared by Octave Acoustics provides a detailed investigation to determine if and how the existing music related conditions on the Subject Land Liquor Licence and Planning Permit can be amended. The analysis clearly indicates that music noise from various live entertainment acts can comfortably comply with SEPP N- 2 and clause 52.43 noise limits at the potentially most affected sensitive residential receivers (i.e. the shop-top dwelling to the immediate south of the site), where certain restrictions are adhered to.

We reiterate that the proposed amendment incorporates the following restrictions:

### *Condition 13:*

*Live entertainment is permitted in the venue subject to the following:*

- i. Live entertainment does not occur after 1am;*
- ii. Windows to the function room remain closed during performances;*
- iii. Doors to the function room balcony close automatically;*
- iv. Live entertainment is in the form of:*
  - a. Karaoke;*
  - b. A DJ or other music playback or program material; or*
  - c. A band or performer that does not include acoustic drum kits*
- v. A noise limiting device is installed, such as the CESVA LRF-04 (<https://www.cesva.com/en/products/logger-limiters/lrf-04/>), calibrated to limit octave band music levels to the 'maximum music levels' defined as follows:*

<b>Maximum music level allowable inside function room, at 3m of loudspeakers</b>	<b>93</b>	<b>99</b>	<b>109</b>	<b>113</b>	<b>110</b>	<b>101</b>	<b>115</b>
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As such, we submit that the proposed amendment to Condition 13 is acceptable and responds to both the broader C1Z objectives and the Strategic Directives of the Clayton Major Activity Centre by supporting

an entertainment and commercial use that adds to the vibrancy of the centre without negatively impacting the liveability or amenity of nearby sensitive uses.

## 7.2 Trading hours

The Strategic Directives the Clayton Major Activity Centre have a local emphasis and aim to encourage a range of entertainment facilities and ensure the good management of venues to revitalise the cultural and social core of the activity centre and enhance its role as a vibrant, mixed-use hub.

As noted, the current trading arrangement force patrons not using the gaming machines to purchase liquor from the gaming room. Best practice encourages venues to offer other areas within a venue as an alternative to gaming to ensure patron have the option of a 'break'.

By way of example, it is noted that Clause 22.12 (Gaming Policy) of the Monash Planning Scheme outlines at Clause 22.12-3 that gaming machines should be located in appropriate venues that:

- *Promote non-gaming activities that increase net community benefit.*
- *Offers social, entertainment or recreational opportunities other than gaming as the primary purpose of the venue.*
- *Has a range of entertainment and leisure options.*

The venue already provides broad charitable services to local community groups. By enabling the provision of liquor in those areas of the venue not co-located with gaming machines, the proposal ensures the venue complies with best practice standards for venues with gaming machines.

(As an example, shift workers are currently only able to purchase and consume after-work drinks from and in the gaming area.)

## 7.3 Licensed Premises Policies

The proposal is consistent with the policy aims and objectives identified at Clause 52.27 because:

- The continued operation of the venue will have no unreasonable impact on the amenity and safety of surrounding uses, in relation to noise, hours of operation and car parking demand.
- The proposed amendment is appropriate given the location of the venue, the nature of surrounding uses, and Commercial 1 Zoning of the broader area.
- The proposal is consistent with the policy requirements, which outline that the preferred location for trading after 11:00pm is in principal and major activity centres.
- The existing use will not adversely affect the amenity of the area. The Acoustic Report prepared by Octave Acoustics clearly outlines that the proposal comfortably complies with SEPP N-2 and Clause 52.43.
- The venue has a positive record in terms of patron management. The proposal will not jeopardise safety of patrons, the public or nearby owners and occupiers of land.
- The proposal will not increase the cumulative effect on the area.

## 9 Conclusion

The site is located in the Clayton Major Activity Centre which is identified as an entertainment and social core of the Clayton Activity Centre and encourages uses that enhance its role as a vibrant, mixed-use hub.

Adjoining and surrounding uses are primarily characterised by commercial and retail. Sensitive uses are limited to a shop-top dwelling located to the south and some residential dwellings in a residential zone to the south-west.

The proposed extension of trading hours appropriately responds to both the C1Z and activity centre objectives by supporting an entertainment and commercial use that adds to the vibrancy of the centre without negatively impacting the liveability or amenity of nearby sensitive uses.

The changes will ensure that the venue operates in a manner consistent with best practice standards by offering areas within the venue as an alternative to gaming to ensure patron have the option of a 'break', and to ensure that attendees such as shift workers can purchase drinks from areas other than the gaming room.

We submit that the proposal is consistent with the relevant requirements of the Monash Planning Scheme. We seek to work closely with Council to ensure prompt processing and consideration of the application and request that the amendment be supported by Council.

