



Melbourne City Council

Amendment C307 to the Melbourne Planning Scheme Expert witness statement

4 March 2019



Author:

Bonnie Rosen,
Principal, Symplan
Suite 1301
9 Yarra Street
South Yarra
Vic 3141

Tel: (03) 9523 7538
Mobile: 0419 574 481
Fax: 9804 8884
Email: brosen@symplan.com.au
www.symplan.com.au

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PRELIMINARIES

Full name and address

Bonnie (Batya) Brenda Rosen
Suite 1301
9 Yarra Street
South Yarra
VIC 3141

Phone: 9523 7538
Mobile: 0419 574 481
Email: brosen@sympatico.ca

Qualifications and experience

Academic qualifications

BSc TRP - Bachelor of Science in Town and Regional Planning
MSc TRP - Master of Science in Town and Regional Planning
Practitioner's Certificate in Mediation and Conciliation
Social Impact Assessment for Victorian Local Governments – Bell Planning Associates in association with The Hornery Institute

Professional Affiliations

RPIA – Registered Planner (Fellow), Planning Institute of Australia
MRTPI – Member of the Royal Town Planning Institute
PRIA – Professional Member Resolution Institute of Australia (Mediator)
Judge, Planning Institute of Australia, Awards for Excellence, Social and Community Based Planning

Academic Affiliations

Sessional lecturer, Department of Urban Planning, University of Melbourne. Subjects taught:

- Social Planning for Health (2005-2009)
- Participatory Planning Practice (2008-2009)
- Participation and Negotiation (2008)
- Managing Change (2004-2007)

Delivery of lectures on impact assessment to:

- University of Melbourne
- Royal Melbourne Institute of Technology
- Victoria University
- Australian National University

Area of expertise and expertise to make the report

As principal of *Sympatico*, I am a social town planner with extensive local and international experience in the fields of strategic planning, social and economic impact assessment, academic and professional research, education, community needs assessment, health planning, community

consultation and engagement, facilitation and mediation. I have worked with the public sector (local and state government), educational sector and private sector.

I have specialised in the fields of planning for health and wellbeing, gambling policy and liquor policy.

Refer to Appendix 1 for a full description of my relevant expertise and experience in relation to social impact assessment, gaming, planning for health and wellbeing and community infrastructure planning.

Private or business relationship with Melbourne City Council

I have no private or business relationship with Melbourne City Council.

Significant contributors to the report

No person has contributed to this report.

Instructions defining the scope of the report

The instructions in the memorandum accompanying my brief dated 16 January 2019 were as follows:

- We ask you to undertake a preliminary assessment of the amendment material included in your brief. Once you have formed your preliminary view, it will be appropriate to meet and discuss whether you support the amendment with or without conditions.
- Assuming you can, and subject to Council accepting your fee estimate, you are likely to be instructed to prepare a statement of evidence and appear as an expert witness at the panel hearing.

Identity of persons carrying out tests

No tests were undertaken.

Reports relied on to prepare the expert witness statement

Please refer to Appendix 2 for a list of the documents included in my brief.

Role in preparing the exhibited documents and reports

I played a role in preparing the following exhibited documents and reports:

- Explanatory Report
- Instruction sheet
- Clause 21.10-6 Cultural/Arts and Entertainment Facilities
- Clause 22.12 Hoddle Grid
- Clause 22.12 Gaming
- Schedule to Clause 52.28 Gaming
- City of Melbourne Draft Electronic Gaming Machine Decision-Making Framework 2017 (**Decision-Making Framework**)
- City of Melbourne Electronic Gaming Machine Review Draft Background Report 2017 (**Background Report**)

This is discussed further in Section 3.

Departures from exhibited reports

The broad departures between the documents I prepared and the exhibited Amendment C307 documentation is summarised below and discussed further in Section 5.

| | |
|--|--|
| Explanatory Report | Preparation of draft Explanatory Report which was exhibited with some revisions |
| Instruction sheet | Preparation of draft Instruction Sheet which was exhibited with a minor revision |
| Clause 21.10-6 Cultural/Arts and Entertainment Facilities | Preparation of original Clause 21.10-6 which was exhibited with some revisions |
| Clause 21.12 Hoddle Grid | Preparation of original Clause 21.12 which was exhibited with no revisions |
| Clause 22.12 Gaming | Preparation of original Clause 22.12 which was exhibited with some revisions |
| Schedule to Clause 52.28 Gaming | Preparation of original Schedule to Clause 52.28 Gaming with some additions |
| City of Melbourne Draft Electronic Gaming Machine Decision-Making Framework 2017 | Preparation of original City of Melbourne Draft Electronic Gaming Machine Decision-Making Framework which was exhibited with amendments to some of the actions in the Strategic Action Framework |
| City of Melbourne Electronic Gaming Machine Review Draft Background Report 2017 | Preparation of original City of Melbourne Electronic Gaming Machine Review Draft Background Report which was reformatted into the City of Melbourne Template. |

Questions falling outside the expertise of the witness

The legal and economic implications associated with the amendment documentation fall outside my expertise as an urban and social planner.

Key assumptions made in preparing the amendment documentation

It was assumed that all quantitative and qualitative information I sourced and used to prepare the Background Report and Decision-Making Framework was accurate.

Completeness and accuracy of exhibited documentation

The exhibited documentation is complete.

The City of Melbourne Electronic Gaming Machine Review Draft Background Report 2017 (**Background Report**) and the City of Melbourne Draft Electronic Gaming Machine Decision-Making Framework 2017 (**Decision-Making Framework**) require updating and some minor editing.

This is discussed further in Section 4.

Completeness of report

This report is complete.

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Declaration

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



RPIA (Fellow), MRTPI, PRIA

4 March 2019

1 INTRODUCTION

1.1 Background

1. Amendment C307 as exhibited proposes to:
 - implement the **Background Report** and **Decision-Making Framework** by replacing Clauses 21.10 and 21.12 of the Municipal Strategic Statement
 - replace the existing local planning policy for gaming at Clause 22.12 with a new gaming local planning policy
 - update the Schedule to Clause 52.28 Gaming

1.2 Terms of engagement

2. On 5 April 2017 I was engaged by the City of Melbourne to undertake the Electronic Gaming Machine (EGM) Local Policy Review (the review).
3. The following documentation accompanying the review was submitted to the City of Melbourne on 14th August 2017:
 - Background Report
 - Decision-Making Framework
 - Proposed amendments to Clauses 21.10 and 21.12 of the Melbourne Planning Scheme
 - New local planning policy at Clause 22.12 of the Melbourne Planning Scheme
 - Proposed amendments to the Schedule to Clause 52.28 Gaming of the Melbourne Planning Scheme
4. On 8 May 2018 I was engaged by the City of Melbourne to provide consultancy services to assist Council in the exhibition stage of Amendment C307. This involved attending two information sessions and preparing a written response to the submissions.
5. On 21 January 2019 I received a brief which included a Memorandum informing me the City of Melbourne had instructed Maddocks to engage me as an expert in the matter pertaining to Amendment C307. The instructions in this Brief were to undertake a preliminary assessment of the amendment material included in the brief and form a preliminary view.
6. On 24 January 2019 I was informed the City of Melbourne had accepted my fee proposal and I was formally engaged to prepare a witness statement and appear as an expert witness at the upcoming Panel Hearing which is to commence on 12 March 2019.
7. On 22 February 2019 I was instructed by Maddocks to prepare a witness statement that:
 - Explains my role in the preparation of the Decision-Making Framework and Background Report.
 - Explains my role in the formulation of the exhibited amendment documentation.
 - Explains my role in considering submissions received by Council following exhibition of the Amendment.
 - Outlines whether, in my opinion, there are aspects of the Decision-Making Framework and Background Report that should be corrected or updated, including my recommendations.

- Provides my opinion as to whether the form of the amendment proposed to be pursued is faithful to the findings and opinions expressed in the Decision-Making Framework and Background Report and my view in regards including the Decision-Making Framework and Background Report as reference documents to the Schedule to Clause 52.28 Gaming.
 - Addresses matters raised by the submissions to aspects of the Amendment.
8. In my instructions from Maddocks dated 22 February I was asked to bear in mind that Council's current intention is to pursue Amendment C307 with the following modifications to the exhibited Amendment:
- Changes in wording and layout in response to submissions received and VC148.
 - Converting the exhibited local planning policy (Clause 22.12 Gaming) to a schedule to Clause 52.28 Gaming.
 - Removing the Decision-Making Framework and Background Report as reference documents.
 - Relocation of relevant text in the policy basis in Clause 21.02-3 People City of the Municipal Strategic Statement.
 - Deletion of Clause 22.12 Gaming local planning policy 'shell'.
 - Deletion of the words "where applicable" where they appear in Clause 6.0 Application Requirements in the local Schedule to Clause 52.28 Gaming.
 - Deletion of the following proposed decision guideline in the local Schedule to Clause 52.28 Gaming:
 - "Whether the proposal is consistent with the Decision-Making Framework, and the Background Report"
 - Not including a 'policy basis' in the Melbourne Planning Scheme (at Clause 22.12 Gaming) in the knowledge that Clause 52.28 Gaming does not make provision for a 'policy basis'.
9. In my response to Maddocks' instructions dated 22 February 2019, also dated 22 February 2019, I confirmed I was also instructed to address the following specific points raised in the submissions:
- The Schedule to Clause 52.28 Gaming goes beyond the scope of planning considerations.
 - The concern that the supporting documentation presents an unbalanced framework for the assessment of applications under the Melbourne Planning Scheme.
 - The application requirements include overly onerous assessment criteria and considerations.
 - The amendment should use the existing strategies and objectives within the MSS to inform the local planning policy rather than retrofitting the MSS to support the local planning policy.
 - The use of the word 'ensure' in some of the objectives is inappropriate and prohibitive.
10. The local planning policy is contradictory and not supported by the broad objectives in the MSS to encourage entertainment uses (including gaming venues) in the Central City.

1.3 Methodology

11. The preparation of my expert witness statement involved the following tasks:
- Review documentation in my brief (refer to Appendix 2).
 - Review of a letter from Chair Dalia Cook to Melbourne City Council dated 21 February 2019 documenting the outcome of the Directions Hearing held on 14 February 2019.
 - Review of Planning Panels Victoria *Guide to Expert Evidence*.
 - Attending a meeting with Maddocks and Council officers on 21 February 2019 to discuss the scope of my expert witness statement.

1.4 Terminology

12. The most recent version of Clause 52.28 Gaming reflects the changes associated with VC148. Any references to Clause 22.12 Gaming in my witness statement are also applicable to the conversion of the relevant content of that local planning policy into a Schedule to Clause 52.28 Gaming.

2 ROLE IN PREPARING THE AMENDMENT DOCUMENTATION

2.1 Consultant's brief 'Electronic Gaming Machine (EGM) Local Policy Review'

13. In a letter dated 5 April 2017 Symplan was engaged by the City of Melbourne to conduct the Electronic Gaming Machine (EGM) Local Policy Review.
14. The aims of the project were:
 - To develop a revised EGM local planning policy for the Melbourne Planning Scheme.
 - To develop a decision making framework (sitting outside the planning scheme) articulating a position regarding EGMs that can be used as a basis to form submissions to the VCGLR and guide Council in roles such as advocacy and collaborative partnerships.
 - Minimise harm associated with gaming for vulnerable groups, local communities and visitors to the city, and maximise community benefit.
15. The scope of the brief covered the following tasks:
 - Review and update Melbourne City Council *Gaming Policy Review* (Ratio Consultants April 2015) report considering any recent developments, approvals and changes to planning policy since the Review was completed. Research into relevant policy and VCAT/VCGLR decisions in other metropolitan Councils is also to be undertaken.
 - Develop a new EGM local planning policy, an updated Schedule at 52.28 Gaming and related changes to the MSS (if required).
 - Develop a Decision-Making Framework which will sit outside the Melbourne Planning Scheme that can be adopted by Council, which may be used for advocacy, and to form the basis of submissions to the VCGLR.
 - Prepare planning scheme amendment documentation (in the correct statutory format) designed to implement the local planning policy and any other required changes to the Melbourne Planning Scheme.
 - Consult with relevant stakeholders and affected parties.
16. The brief required that the local planning policy should include provisions and decision guidelines that address the following:
 - Overarching themes to be considered throughout (social and economic impact, community benefit)
 - Specific guidance (location, venue and facilities, site context, convenience gambling, clustering)
 - On-going management/management plan (record keeping, ongoing monitoring, venue review)
17. I informed Council the provisions associated with on-going management/management plan of both existing and future gaming venues were beyond the scope of both the Decision-Making Framework and the local planning policy for gaming. These were issues solely under the jurisdiction of the Victorian Commission for Gambling and Liquor Regulation (VCGLR) and were outside the scope of Council's statutory roles in addressing gambling-related harms in the community.

2.2 Evidence base underpinning the amendment documentation

18. The evidence base underpinning the C307 Amendment documentation was produced from the following sources:

- **Environmental scan:**
 - site inspection and analysis of the spatial features and characteristics of each gaming venue including Crown Casino focussing on factors including location, clustering and concentration, size, zoning, surrounding land uses design, mix of activities and facilities, operating hours, liquor licensing provisions.
 - review of datasets and statistics to gain an understanding of the specific social, economic and gambling context within which gaming venues operate in the municipality.
- **Document review** to understand the strategic, statutory, legislative and decision-making framework within which gaming venues operate in the City of Melbourne.
- **Consultation and engagement** with key stakeholders, focussing on service providers and venue operators.

2.3 Amendment documentation prepared

19. I was responsible for preparing drafts of the following documentation to support Amendment C307 to the Melbourne Planning Scheme:

- Draft explanatory report
- Draft instruction sheet
- Draft Clause 21.10-6 Cultural/Arts and Entertainment Facilities
- Draft Clause 21.12 Hoddle Grid
- Draft Clause 22.12 Gaming
- Draft Schedule to Clause 52.28 Gaming
- Decision-Making Framework
- Background Report

3 ROLE IN THE EXHIBITION OF THE AMENDMENT

DOCUMENTATION

20. On 8 May 2018 I was engaged by the City of Melbourne to provide consultancy services to assist Council in the exhibition stage of the C307 Amendment documentation. This involved attending two information sessions and preparing a written response to the submissions.
21. My role during the two workshops (Wednesday 6 June 2018 for members of the public and Thursday 7 June 2018 for venue operators) was to provide technical input into the questions raised if required.
22. In preparing the *Draft Melbourne Planning Scheme Amendment C307 Response to Submissions Report, September 2018* I responded to each of the points raised in the eight submissions and provided a recommended management response to each of these points. This report also included a summary response to each of the key points raised (many of which were common).
23. The recommendations in this Submissions Report were:
 1. Rephrase the fourth objective to read “To manage the concentration of gaming machines and gaming venues in order to redistribute gaming machines and gaming venues away from communities and areas vulnerable to gambling-related harms.”
 2. Insert the words “if appropriate” after responsible authority at the end of the introductory sentence to Application Requirements.
 3. Discuss the role of the Melbourne CBD and Hoddle Grid in the Policy Basis [of Clause 22.12 Gaming].
24. My recommendations were adopted by the City of Melbourne and incorporated in a ‘post exhibition’ version of the C307 Amendment Documentation.

4 COMPLETENESS AND ACCURACY OF EXHIBITED DOCUMENTATION

4.1 Draft Background Report

25. Following my review of the Background Report subsequent to the exhibition of the C307 Amendment documentation, I recommend the following revisions:
- Update Figures 4 and 5 (SEIFA) to reflect the most recent SEIFA Index of Relative Socio-economic data as these were not available at the time the draft report was prepared.
 - Update Appendix 4 – Socio-economic profile of the community and associated risk factors for gambling-related harms to reflect the most recent ABS Census of Population and Housing Data as these were not available at the time the draft report was prepared.
 - Review Section 4 *City of Melbourne gambling and gaming context* to include the most recent gaming indicators and discuss the implications on accessibility to gaming following the removal of the EGMs from the Celtic Club in 2018.
 - Review Section 6 *Regulatory and legislative framework* to discuss the implications of VC148 on the gaming planning provisions as this amendment took place following the preparation of the draft report.
 - Restructure Section 8.4 *Impacts of gambling* so the benefits and disbenefits of gaming are presented with greater clarity in response to the concern raised in some of the submissions.
26. I recommend that the Background Report is reviewed to remove a number of typographical and editing issues.
27. I support the decision to remove the Background Report as one of the Reference Documents in the Schedule to Clause 52.28 Gaming.
28. I recommend that the Background Report be updated on a regular basis to ensure the quantitative data remains up to date and reflects the current legislative and strategic framework, socio-economic profile and gaming context within which EGMs operate in the City of Melbourne.

4.2 Draft Decision-Making Framework

29. Following a review of the Decision-Making Framework subsequent to the exhibition of the amendment documentation, I recommend the following revisions:
- Update Section 3 *The City of Melbourne context* to reflect the most recent ABS Census of Population and Household (including the SEIFA Index of Relative Socio-economic Disadvantage) and gaming data as these were not available at the time the draft report was prepared.
 - Review the document to address any typographical and editing issues.

5 CONSISTENCY OF EXHIBITED DOCUMENTATION SYMPLAN

DRAFTS

30. The differences between the C307 Amendment documentation and the documents I prepared as part of my brief are as follows:

Draft Decision-Making Framework 2017

31. My version of the Draft Decision-Making Framework contained a section describing the five principles underpinning Clause 22.12 Gaming. These principles were intended to provide the framework within which the objectives and policy provisions in the local planning policy were to be drafted. The principles included both a strategic justification for the principle (which served as the evidence base) and a description of the City of Melbourne Context (which illustrated how the broader evidence based applied to the particular features of the City of Melbourne).
32. Revisions were also made to some of the actions in the Strategic Action Framework. These revisions were made in consultation with me. I support all the revisions with the exception of the action under Action 2.1 *Advocate for no increase to the existing maximum number of EGMs currently permitted under the municipal cap (143)*. My reasons are:
- The regulatory framework determining the number of EGMs in a municipal cap is based on the density of EGMs per 1,000 adults and not a maximum number.
 - Should Council be successful in advocating for the inclusion of the uncapped area into the municipal cap, limiting the number of EGMs to 143 has the potential to restrict the increase in EGMs to reflect community expectations and population growth.
33. Other main departures from my original draft of the Decision-Making Framework are as follows:
- Inclusion of a second goal ‘to reduce the prominence of gaming as a form of entertainment’. While this goal may be construed by the submitters as prohibitive, I am of the opinion that it is sufficiently broad as:
 - it relates to the diversification and increase in non-gambling activities both in the surrounding area and within the venue
 - provides the basis for Council’s broader advocacy, service provision and leadership roles in minimising gambling-related harms incorporated in a document fulfilling the function of a social policy
 - Insertion of an action to address advertising for gambling in the media. I am of the opinion that this action falls within the scope of a document fulfilling the function of a social policy.

Clause 21.10 Cultural/Arts and Entertainment Facilities

34. My version of Clause 21.10-6 Cultural/Arts and Entertainment Facilities included the following objectives and three strategies:
- Objective 3 To minimise gambling-related harms to individuals and the community
- Strategy 3.1 Ensure that gaming machines operate as part of the overall range of social, leisure, entertainment and recreation activities and facilities in the gaming venue and in the surrounding area.
- Strategy 3.2 Reduce the concentration of gaming machines and gaming venues.

Strategy 3.3 Ensure that gaming machines are situated in appropriate locations and premises to prevent convenience gambling.

35. The exhibited version of Clause 21.10 included the following objective and strategy:

Objective 3 To minimise gambling-related harms

Strategy 3.1 Ensure that the location, design and operation of gaming venues across the City minimises gaming-related harms to the individual and the community.

36. In effect, Objective 3 and Strategy 3.1 in the exhibited version of Clause 21.10-6 of C307:

- consolidated the content of the original three strategies.
- excluded reference to EGMs as part of the overall range of non-gambling activities and reducing the concentration of EGMs and gaming venues.

37. It is my opinion that it is necessary to retain Strategy 3.1 of my original version of Clause 21.10-6 of C307 as ensuring a range of non-gambling activities is a protective factor against a form of entertainment associated with harm. This strategy is therefore relevant in a clause that focuses on cultural, arts and entertainment facilities.
38. I support the removal of Strategy 3.2 in my original version as this is included as a strategy under Clause 21.12 Hoddle Grid, Economic Development of C307.
39. I support the removal of Strategy 3.3 in my original version as this outcome is included in Objective 3 of the exhibited version of Clause 21.10-6 of C307.

Clause 21.12 Hoddle Grid

40. The exhibited version of this clause inserted the word 'spatial' which I consider appropriate.

Clause 22.12 Gaming

41. The variations between my original version of Clause 22.12 Gaming and the exhibited version of Clause 22.12 were as follows:
- Deletion of the table of definitions included at the end of the Clause.
 - Incorporation of the definitions of "convenience gambling", "facilities associated with day to day activities", "non-gaming entertainment, leisure, social and recreation uses", "social housing", "gambling-sensitive service or facility", and "community satisfaction", included at the end of my version of the clause into the relevant sections of the LPP. I support this departure.
 - Inclusion of the Background Report as a reference document.
42. My reasons for not including the Background Report as a reference document were:
- The Background Report does not include the principles specific to planning considerations.
 - The data describing the community profile, SEIFA Index of Relative Socio-economic Disadvantage and the gaming indicators in the Background Report require regular updating.
 - The Background Report covers both the Decision-Making Framework and the planning scheme amendment documentation and was therefore not entirely relevant to planning considerations.
43. Other than the inclusion of the Background Report as a reference document to the Schedule to Clause 52.28 Gaming I am of the opinion that the departures from my original

version of Clause 22.12 Gaming are appropriate. I note that both the Background Report and the Decision-Making Framework have been removed from the Panel Preferred Version of the C307 Amendment.

Clause 52.28 Gaming

44. Additional shopping complexes were included in the exhibited version of Clause 52.28 Gaming. This was done on my suggestion.
45. I note that the structural changes to my version of the Schedule to Clause 52.28 Gaming are as a result of VC148.

6 MATTERS RAISED IN SUBMISSIONS

46. This section provides my opinion on the following key matters raised in the submissions:
1. The regulatory mechanisms should be limited to locational considerations.
 2. The appropriateness of the 400m separation and assessment threshold.
 3. The relevance of the objective to ensure that proposals achieve net community benefit.
 4. Specific guidance for the Hoddle Grid and/or Capital City Zone.
 5. Guidance for 'top up' and new gaming venue applications.
 6. The Background Report and Decision-Making Framework present an unbalanced framework for the assessment of applications.
 7. The provisions in the C307 Amendment documentation are prohibitive.
 8. The application requirements include overly onerous assessment criteria and considerations.
 9. The amendment should use the existing strategies and objectives within the MSS to inform the local planning policy rather than retrofitting the MSS to support the local planning policy.
 10. The local planning policy is contradictory and not supported by the broad objectives in the MSS to encourage entertainment uses (including gaming venues) in the Central City.
 11. The use of the word 'ensure' in some of the objectives is inappropriate as it would mean that some of the existing venues would be non-compliant.
 12. Remove policy considerations relating to residential uses.
 13. Clusters of gaming venues reduce accessibility and therefore the risk of gambling-related harms.
 14. Evidence base discouraging EGMs in close proximity to student housing is insufficient.
 15. Domain Village should be listed as a strip shopping centre prohibited under Clause 52.28 Gaming.
47. These matters are reflected in each of the headings in this section.

6.1 The regulatory mechanisms should be limited to locational considerations

48. Some of the submissions indicated that the local planning policy goes beyond the scope of planning considerations which are limited to an assessment of the appropriateness of the location and not concerned with other matters pertaining to the operation of the gaming venue (which are the ambit of the Gambling Regulation Act 2003).
49. The purposes of Clause 52.28 Gaming are:
- To ensure that gaming machines are situated in appropriate locations and premises.
 - To ensure the social and economic impacts of the location of gaming machines are considered.
50. In *Francis Hotel Pty Ltd v Melbourne CC (includes Summary) (Red Dot)* [2012] VCAT 1896 [paragraph 8] and *Alston v Strathbogie SC* [2014] VCAT 760 [paragraph 6] the Tribunal noted that there is an overlap between planning and gaming considerations. The appropriateness of the premises and the consideration of the social and economic impacts of the location of gaming machines are two areas of overlap between the *Gambling*

Regulation Act 2003 and the Planning and Environment Act 1987/Victoria Planning Provisions.

51. Factors relating to the appropriate operation of gaming venues include design, operating hours and visual impact (signage). Conditions regulating these factors are included in some planning permit approvals.
52. The social and economic impacts of the location are a consideration under the *Planning and Environment Act 1987* and are not embodied in a statutory test in the same way as they are in the *Gambling Regulation Act 2003*. They are nevertheless still a factor that needs to be taken into account when assessing a planning permit under Clause 52.28 Gaming.
53. The objectives, policy criteria, application requirements and decision guidelines pertaining to the appropriateness of gaming premises and the consideration of social and economic impacts of the location of the EGMs are therefore within the scope of Clause 22.12 Gaming.

6.2 The appropriateness of the 400m separation and assessment threshold

54. Some of the submissions raised concerns with the proposed 400m separation and assessment threshold for listed land uses in Schedule 1 to Clause 52.28 Gaming on the following grounds:
 - It is not supported by evidence.
 - It could prohibit the installation of additional EGMs in existing gaming venues and establishment of an additional gaming venue within 400m of the listed land uses in the Hoddle Grid due to the concentration and location of the listed land uses in this part of the municipality.
 - It would result in existing venues not being able to satisfy the locational criteria.
 - An assessment threshold of 100m is more appropriate and would be consistent with Clause 22.11 Sexually explicit adult establishments and Clause 22.22 Policy for licensed premises that require a planning permit.
55. **Evidence base supporting the 400m threshold** I acknowledge there is no scientific evidence drawing a direct correlation between a walking distance of 400m and an increase in the incidence of gambling-related harm. Urban planning, and social planning in particular, remain inexact sciences. Under circumstances such as these, it is not uncommon to adopt standard planning and social impact assessment principles to formulate planning policy. This accords with the precautionary principle embodied in section 6 of the *Public Health and Wellbeing Act 2008* which states that “If a public health risk poses a serious threat, lack of full scientific certainty should not be used as a reason for postponing measures to prevent or control the public health risk”.
56. The evidence base for the 400m assessment threshold is drawn from the following:
 - Page 24 of the *Melbourne City Council Gaming Policy Review 2015* prepared by Ratio refers to a ‘specified walking distance’ in relation to an appropriate separation distance between gaming venues in order to prevent and/or minimise convenience gambling. Page 27 of this document recommends that “Whilst the Capital City Zone is exempt from the restrictions on strip shopping under Clause 52.28 Gaming, consideration should still be given to the issues surrounding convenience in the central city zone as well as other parts of the City”. This recommendation has been

adopted to include a separation distance between a proposal site and other uses that could contribute to convenience gambling.

- Problem gamblers tend to gamble in areas close to their home or workplace.¹ Research has found that 18 per cent of people surveyed reported avoiding walking or driving past certain locations in order to avoid convenience gambling, with problem gamblers (46 per cent) much more likely to do this than non-problem gamblers (11 per cent).² As a result, the rationale underpinning the selection of an appropriate assessment depicting the area understood to be ‘close to their home or place of work’ is the walkable distance.
- Walkability is a determinant of accessibility and convenience which in turn are determinants of gambling-related harms. Reference to a 400m walking distance may be found in the Melbourne Planning Scheme as follows:
 - Schedule to Clause 37.03 Capital City Zone
 - Clause 56.03-1 Liveable and sustainable communities refers to three walkability thresholds, namely 400m walking distance from bus stops, 600m walking distance from tram stops and 800m walking distance from train stations. Walkability assessment thresholds of 600m and 800m are unsuitable as they would impose impractical exclusion zones within which EGMs could not be located.
 - Clause 56.04-1 Lot design
 - Clause 56.05-2 Urban landscape
- Other references to the 400m assessment threshold in the Melbourne Planning Scheme include:
 - Assessment thresholds of 400m in the context of amenity are included in Clause 52.16 Pig Farm and Schedule 12 to Clause 43.02 the Design and Development Overlay.
 - An assessment threshold relating to a separation distance is included in Clause 13.02-1S Bushfire Planning in the State Planning Policy Framework.
- In *Francis Hotel Pty Ltd v Melbourne CC (includes Summary) (Red Dot)* [2012] VCAT 1896 (12 December 2012) the Tribunal regarded a cluster of gaming venues as consisting of three within a 400m radius.
- 400m as the threshold used to assess the location of the venue and EGMs in relation to gambling sensitive uses and people at an elevated risk of gambling-related harm has been inserted into the following local planning policies considered by a Panel:
 - Clause 22.33 Mount Alexander Planning Scheme C72 (2016)
 - Clause 22.04 Macedon Ranges Planning Scheme C64 (2015),
 - Clause 22.03 Wyndham Planning Scheme electronic Gaming Policy C192 (2015)
 - Clause 22.12 Monash Planning Scheme C113

¹ Wheeler et al, 2010 *The Relationship between Crime and Gaming Expenditure in Victoria Final Report* Centre for Regulation and Market Analysis, School of Commerce, University of South Australia pv

² Hing, N, Russell, A & Hronis, A 2016, *Behavioural indicators of responsible gambling consumption*, Victorian Responsible Gambling Foundation, Melbourne.

- Clause 22.08 Gaming Machines Yarra Ranges Planning Scheme C77 (2016).
 - The 400m threshold has also been included in following local planning policies:
 - Clause 22.07 Gaming Port Phillip Planning Scheme (2013)
 - Clause 22.05 Gaming premises and gaming machines Knox Planning Scheme (2017)
 - Clause 22.03 Gaming Cardinia Planning Scheme (2016).
57. The 400m threshold is particularly relevant in the City of Melbourne and the Melbourne CBD as the proportion of people walking to conduct their day to day business i.e. shopping, working, studying, using entertainment facilities, walking to and from public transport infrastructure is likely to be significantly higher in the Melbourne CBD than in suburban activity centres in the Shires of Cardinia, Macedon Ranges and Mount Alexander, and the Cities of Monash and Wyndham (for example). This assumption is based on the following indicators:³
- 30.6 per cent of people in the Melbourne State Suburb walked to work compared with 3.2 per cent of people in Victoria.
 - 37.9 per cent of people in the Melbourne State Suburb travelled to work by public transport compared with 12.6 per cent of people in Victoria.
58. The Victoria *Pedestrian Access Strategy* is founded on evidence demonstrating:⁴
- 75 per cent of all trips less than 400m in Melbourne are walked.
 - People walk further to and from train stations (average 800m – 1000m) than they do to bus and tram stops (average 400m-500m).
59. The following additional research supports 400m as a walkable threshold:
- Contemporary planning theory and practice incorporate the concept of walkable catchments which typically reflect the form of the actual area served within a 400m (five minute) or 800m (ten minute) walking distance.⁵
 - The 400m and 800m ‘ped sheds’ walking distance criteria, which roughly equate to five and ten minute walking times, have been incorporated in many planning documents reflecting the walkable catchments underpinning sustainable cities and neighbourhoods.⁶
 - The emphasis is usually on the 400m catchment with respect to access to local activity centres.⁷
 - People may walk further than 800m in central city environments.⁸

³ ABS Census of Population and Housing 2016

⁴ State Government of Victoria (2010) *Pedestrian Access Strategy. A strategy to increase walking for transport in Victoria*

⁵ Ker, I., & Ginn, S. (2003). ‘Myths and realities in walkable catchments: The case of walking and transit.’ *Road & Transport Research*, 12(2), 69. Retrieved from <https://search-proquest-com.ezproxy.lib.rmit.edu.au/docview/215247207?accountid=13552>

⁶ Ker, I., & Ginn, S. (2003). ‘Myths and realities in walkable catchments: The case of walking and transit.’ *Road & Transport Research*, 12(2), 69. Retrieved from <https://search-proquest-com.ezproxy.lib.rmit.edu.au/docview/215247207?accountid=13552>

⁷ Ker, I., & Ginn, S. (2003). ‘Myths and realities in walkable catchments: The case of walking and transit.’ *Road & Transport Research*, 12(2), 69. Retrieved from <https://search-proquest-com.ezproxy.lib.rmit.edu.au/docview/215247207?accountid=13552>

⁸ Ker, I., & Ginn, S. (2003). ‘Myths and realities in walkable catchments: The case of walking and transit.’ *Road & Transport Research*, 12(2), 69. Retrieved from <https://search-proquest-com.ezproxy.lib.rmit.edu.au/docview/215247207?accountid=13552>

- People observed walking to and from transport interchanges walked on average 548m which exceeds the 400m ‘rule-of-thumb distance.⁹
 - 74 per cent of pedestrians walking observed engaged in various activities while walking.¹⁰
 - 400m is the minimum walkability threshold with 65 per cent of walking trips being greater than 400m.¹¹
60. **Prohibition of EGMs** Walkability is a key determinant of accessibility and convenience in the interests of sustainability and health. Gaming venues within walking distance of land uses such as public transport interchanges, retail and service facilities associated with day to day activities and facilities used by people at risk of gambling-related harms are recognised as contributing to convenience gambling. Convenience gambling is a determinant of gambling-related harms, regardless of whether the gaming venue is located in the CBD or other parts of the municipality. It is a standard planning principle that gaming machines should not be conveniently located in order to prevent convenience gambling. As discussed above, 400m is the standard walking distance.
61. Clause 4 of Schedule 1 to Clause 52.28 Gaming is a guideline (in accordance with Clause 52.28-6). The application of the 400m separation distance during the assessment of a new gaming venue or a ‘top up’ will be applied as a discretionary factor. This discretionary assessment will involve balancing the various provisions in the C307 Amendment documentation and the whole Melbourne Planning Scheme taking account of the potential risk and protective factors, and potential benefits and harms associated with the proposal.
62. It has been asserted that the 400m threshold ‘effectively’ prohibits EGMs in the Melbourne CBD as there is nowhere that is not within 400m of one of the land uses listed in the 400m threshold. As discussed, the provisions in the Melbourne Planning Scheme are discretionary and a proposal will not necessarily fail if it is within 400m of all or any of the listed land uses, even if the proposal site is located in the Hoddle Grid.
63. The policy criterion is that the nominated land uses should not be within 400m or line of sight [my underlining]. Line of sight in relation to uses such as gaming venues and social housing has been identified by the Tribunal as a determinant of convenience gambling.¹²
64. **Existing gaming venues within 400m of the listed land uses** The planning scheme amendment is not applicable to existing gaming venues unless an application is made to increase the number of EGMs, extend the trading hours or increase the size of the gaming lounge in an existing gaming venue.
65. **Assessment threshold of 100m is more appropriate** One of the submissions has suggested that an assessment threshold of 100m is more appropriate as it is consistent with Clauses 22.11 and 22.22 that manage the location of sexually explicit adult establishments and licensed premises.
66. I do not agree with this opinion for the following reasons:

⁹ Ker, I., & Ginn, S. (2003). Myths and realities in walkable catchments: The case of walking and transit. *Road & Transport Research*, 12(2), 69. Retrieved from <https://search-proquest-com.ezproxy.lib.rmit.edu.au/docview/215247207?accountid=13552>

¹⁰ Ker, I., & Ginn, S. (2003). Myths and realities in walkable catchments: The case of walking and transit. *Road & Transport Research*, 12(2), 69. Retrieved from <https://search-proquest-com.ezproxy.lib.rmit.edu.au/docview/215247207?accountid=13552>

¹¹ Badland, H, Mavoa, S, Boulange, C, Eagleson, S, Gunn, L, Stewart, J, David, S, and Giles-Corti, B. "Identifying, Creating, and Testing Urban Planning Measures for Transport Walking: Findings from the Australian National Liveability Study." (2017). Web.

¹² Melbourne CC v Kingfish Victoria Pty Ltd & Anor (Includes Summary) (Red Dot) [2013] VCAT 1130 [paragraph 108], Melbourne City Council v Kingfish Victoria Pty Ltd and Victorian Commission for Gambling and Liquor Regulation 2013 [paragraph 138]

- Land uses such as sexually explicit adult establishments and licensed premises are associated with amenity impacts that typically occur in the immediate surrounds of the site. The nominated assessment threshold applied to these land uses seeks to address amenity issues. However, the separation distance between gaming venues serves to prevent convenience gaming, not minimise amenity impacts. As discussed above, the appropriate assessment threshold should be a standard walking distance (which is a determinant of accessibility and convenience) of 400m, not 100m.
- It is both appropriate and common for different assessment thresholds to be applied to specific land uses in the planning scheme in order to guide the appropriate location and operation of each land use according to its potential amenity issues, and social and economic impacts. It will therefore not lead to inconsistent, confusing or uncertain decision-making processes.

6.3 The relevance of the objective to ensure that proposals achieve net community benefit

67. Some of the submissions raise concern that the policy objective ‘to ensure that the location and operation of gaming machines achieves net community benefit’ reflects the ‘no net detriment test’ under the *Gambling Regulation Act 2003* and is beyond the scope of what a local planning policy can achieve in terms of the provisions of the *Planning and Environment Act 1987*. The primary concern is that net community benefit is not a relevant test under the *Planning and Environment Act 1987*.
68. I am of the opinion that the objective seeking ‘to ensure that the location and operation of gaming machines achieves net community benefit’ is a relevant matter for the following reasons:
- As stated in Clause 71.02-1 of the Melbourne Planning Scheme “The Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in section 4 of the Act) are fostered through appropriate land use and development planning policies and practices that integrate relevant environmental, social and economic factors in the interests of net community benefit [my underlining] and sustainable development”.
 - The following excerpts from decisions made by the Victorian Supreme Court and the Tribunal demonstrate that net community benefit is a relevant planning consideration even if it is not a test:
 - *Moreland City Council v Glenroy RSL [2018] VSC 126 [90]* “In my opinion net community benefit is a consideration to which the Tribunal is required to have regard” (paragraph 92)
 - *Hoskin v Greater Bendigo City Council (2015) 48 VR 715 [45]* “It is legitimate to have an objective seeking to ensure that the location, design and operation of a gaming machine premise delivers a net community benefit.”
 - The following Tribunal decisions demonstrate that local planning policy (and its objectives and decision guidelines) is a discretionary instrument:
 - “A local planning policy is not a requirement and must be applied flexibly having regard to the policy context as a whole and to the circumstances of the particular case” [*Glenroy RSL Sub Branch Inc v Moreland CC [2017] VCAT 531 [102]*]
 - A planning scheme clause referring to net community benefit “does not set out a particular test, rather it sets out policy considerations as guidance and does not require the applicant, in planning terms, to demonstrate the proposal will lead to

a net community benefit” [*CK & Sons Pty Ltd v Bayside City Council [2010] VCAT 505 [16] referring to Prizac investments Pty Ltd v Maribyrnong City Council [2009] VCAT 2616 [139] – [140]]*

- “The establishment of net community benefit is not a mandatory pre-condition to the grant of planning approval” [*Moreland City Council v Glenroy RSL [2018] VSC 126 [91]*]
 - A planning permit application will not automatically fail if it does not achieve net community benefit [*Glenroy RSL Sub Branch Inc v Moreland CC [2017] VCAT 531*]
 - The Panel has not recommended the removal of net community benefit as a relevant planning consideration in the following local planning policies for gaming:
 - Monash Planning Scheme Amendment C113 2016 (Appropriate venues).
 - Mount Alexander Planning Scheme C61 2016 (Decision Guideline).
69. One of the submissions raises a concern that “The net community benefit test may substantially disadvantage an existing fully renovated high quality venue from obtaining approval for gaming machines as opposed to a venue that proposes venue upgrades in conjunction with the application.”
70. I am not of the opinion that the net community benefit test disadvantages an existing gaming venue proposing an increase in EGMs. Net community benefit can be achieved in several ways other than upgrading a facility such as a reduction in operating hours, transfer of EGMs from areas with a high rate of socio-economic disadvantage, the provision of non-statutory community contributions, the implementation of non-statutory effective harm minimisation measures and the diversification of non-gambling activities.

6.4 Specific guidance for the Hoddle Grid and/or Capital City Zone

71. Some of the submissions raise a concern that the amendment documentation does not include different or specific assessment criteria and policy guidance for the Hoddle Grid and/or the Capital City as recommended in the Ratio Report (2015). The two bases for this concern are the unique characteristics of the Melbourne CBD, and the Clause 52.28 Gaming exemption of the Capital City Zone from the prohibition to operate EGMs in strip shopping centres.
72. I acknowledge that the Melbourne CBD has a unique land use mix that incorporates a range of high order retail, entertainment, education, service and commercial uses. However, I am not of the opinion that the C307 Amendment provisions should incorporate different policy and assessment criteria for the Hoddle Grid and/or the Capital City Zone for the following reasons:
- The Capital City Zone is not homogenous in terms of its social, economic or physical characteristics, and is significantly different in character and extent in 2018 compared with 2006 when Clause 52.28 Gaming [and the exemption from the prohibition of strip shopping centres in the CCZ] was included in the Victoria Planning Provisions.
 - Within the City of Melbourne municipal area, the Capital City Zone broadly applies to land in the Hoddle Grid (including Queen Victoria Market), Southbank, South Wharf, Lorimer (a precinct within Fishermans Bend), and parts of North Melbourne and Carlton which fall within the ‘City North’ structure plan area.¹³ It is possible that some of the urban renewal areas will have a different land use mix to the areas currently

¹³ The Capital City Zone has also recently expanded to include land outside of the City of Melbourne municipal area within the City of Port Phillip (being the Montague, Sandridge and Wirraway precincts within Fishermans Bend)

included in the existing Capital City Zone. These differences may mean a higher concentration of residential and different retail formation (i.e. less strip shopping) compared with the part of the CCZ that covers the Hoddle Grid.

- The only exemption in Clause 52.28 Gaming pertaining to the Capital City Zone is the prohibition of EGMs from strip shopping centres (Clause 52.28-5). The remaining policy provisions in this clause are universally applicable to all land use zones.
 - Capital City Zone 5 (City North) and Capital City Zone 6 (Carlton Connect site) are covered by the Regional Cap which is recognised as being vulnerable to gambling-related harms. Refer to Appendix 3.
 - The extent of the Capital City Zone has increased since the introduction of Clause 52.28 Gaming in the Victoria Planning Provisions in 2006. It would be inappropriate to exclude a significant portion of the municipality from the provisions of the local planning policy by virtue of zoning alone.
 - The provisions in the Schedule to Clause 52.28 Gaming are discretionary (other than the prohibition of EGMs in shopping complexes, and strip shopping centres in the Capital City Zone) applied on a case by case basis, considering the specific features of the proposal.
73. The determinants of gambling-related harms are universal, regardless of the mix of surrounding land uses and the role they play in servicing the needs of their users. It is therefore important to ensure that the policy and assessment criteria are uniform and universal to guide consistent decision-making and protect all groups at an elevated risk of gambling-related harms.
- It is particularly important to protect those most at risk of gambling-related harms across the municipality, including in the Hoddle Grid/Capital City Zone which displays the highest concentrations of specific groups at an elevated risk of gambling-related harms e.g. people experiencing homelessness, young people and students.
 - The community of the City of Melbourne includes high proportions and large numbers of visitors and workers from other municipalities. It is important for the responsible authority to reduce the potential for gambling-related harms for the community of the municipality, regardless of their place of residence.
74. I acknowledge that Clause 22.22 *Policy for licensed premises that require a planning permit* provides different assessment criteria for different land use zones, including the Capital City Zone and Docklands Zone. I also acknowledge that there are different clauses pertaining to urban design and heritage for the Capital City Zone in the Melbourne Planning Scheme. However, I am of the opinion that this approach is inappropriate for planning provisions pertaining to EGMs and gaming venues as the policy justifications underpinning this approach differ. For example, the differentiation in the licensed premises policy reflects the specific amenity impacts associated with different types of licensed premises and the fact that amenity expectations would differ in residential zones compared with land uses zones incorporating mixed non-residential uses. As discussed above, the justification for policy provisions pertaining to gaming premises is the prevention of convenience gambling, not the protection of amenity.

6.5 Guidance for ‘top up’ and new gaming venue applications

75. Some of the submissions have suggested that it would be appropriate to provide different policy guidance and assessment criteria for ‘top up’ and new gaming venue applications, as recommended in the Ratio Report (2015).
76. Based on my experience, I am assuming that this concern is founded on the opinion that new gaming venues are riskier as they increase accessibility and therefore the risks of gambling-related harms. I am also assuming that the submissions would prefer that the policy provisions favour ‘top up’ applications as opposed to applications for new gaming venues, for this reason.
77. I agree that applications for new gaming venues increase spatial accessibility and therefore the risk of gambling-related harm. However, the other risk and protective factors, and social and economic impacts associated with EGMs and gaming venues are universal regardless of whether the application is for a ‘top up’ or new gaming venue.
78. I am of therefore of the opinion that this approach is inappropriate for the following reasons:
 - The Commission¹⁴ and Tribunal¹⁵ have refused proposals for ‘top ups’ in existing venues due to their potential to result in gambling-related harms and/or because they did not satisfy the no net detriment test.
 - In some respects, ‘top up’ applications may be as risky as applications for new gaming venues as the location of the additional EGMs and design of the gaming venue may contribute to convenience gambling.
 - The ‘top up’ proposal may not necessarily be associated with additional protective factors and social and economic benefits.
 - Giving preference to ‘top ups’ could be seen in some cases as contrary to one of the objectives in the *Gambling Regulation Act 2003* which is to stimulate competition.
 - The inclusion of universal policy provisions and assessment criteria will guide discretionary decision-making according to the circumstances and merits of each proposal, regardless of whether it is a new venue or a ‘top up’.

6.6 The Background Report and Decision-Making Framework present an unbalanced framework for the assessment of applications

79. Some of the submissions are concerned that the supporting documentation provides an unbalanced framework for the assessment of planning permit applications under the Melbourne Planning Scheme.
80. There is reference to both benefits and harms associated with electronic gaming machines throughout both the Background Report and the Decision-Making Framework. These documents therefore present a balanced basis for the harm minimisation approach underpinning Amendment C307.
81. The Decision-Making Framework includes objectives and strategies that seek to minimise any potential harm resulting from gambling. The word ‘prohibit’ is only used in relation to gambling on Council-owned or managed land, the use of EGMs for Council activities and Council infrastructure (Action 3.7 Decision-Making Framework).

¹⁴ Altona RSL 2018, Dandenong Cranbourne RSL 2018, Lynbrook Hotel 2018, Noble Park Football Club 2017, Dromana Hotel 2015, Braybrook Hotel 2013

¹⁵ *Sporting Legends Club Inc v Wellington SC [2016] VCAT 1405*

82. The proposed objectives in Schedule 1 to Clause 52.28 Gaming provide the framework guiding the appropriate location and operation of EGMs and achievement of benefits associated with EGMs in support of the effective operation of a legitimate form of entertainment that is associated with social and economic benefits.

6.7 The provisions in the C307 Amendment documentation are prohibitive

83. Some of the submissions are concerned that the provisions of Amendment C307 are prohibitive and would seek to achieve no further growth in EGMs across the municipality.
84. Action 2.1 of the Decision-Making Framework advocates for the inclusion of the uncapped areas under the municipal cap, effectively enlarging the extent of the area covered by the municipal cap to include the Hoddle Grid, Southbank and Docklands. If this action is realised, the total number of EGMs permittable in the entire municipal cap (existing municipal cap and existing uncapped area) would be 940 in 2019, 2,249 in 2029 and 2,892 in 2039¹⁶. This demonstrates that this action would not result in the effective prohibition of EGMs in the areas covered by both the municipal cap and the uncapped area.
85. At present there are no EGMs in the area covered by the municipal cap and 187 EGMs (25 per cent) in the area covered by the regional cap. The remaining 75 per cent of the EGMs are therefore concentrated in the Hoddle Grid. This, together with the additional 2,628 EGMs at Crown Casino, demonstrates that there is a significant concentration of EGMs in the Melbourne CBD and Southbank. The Melbourne CBD also has concentrations of groups at an elevated risk of gambling-related harms.
86. One of the principles underpinning the amendment documentation is the overall reduction in the concentration of EGMs across the municipality. This principle is expressed as a proposed objective in Schedule 1 to Clause 52.28 Gaming “To manage the concentration of gaming machines and gaming venues in order to redistribute gaming machines and gaming venues away from areas vulnerable to gambling-related harms.” This objective seeks to reduce vulnerability to gambling-related harms (in areas characterised by a high concentration of EGMs and groups at an elevated risk of gambling-related harms), it also facilitates the installation and use of EGMs in other areas which are not characterised by both a concentration of EGMs and groups at an elevated risk of gambling-related harms.
87. The objective seeks to manage the concentration of EGMs, not reduce the number of EGMs.

6.8 The application requirements include overly onerous assessment criteria and considerations

88. Some of the submitters are concerned that the application requirements in Clause 6 of the proposed Schedule 1 to Clause 52.28 Gaming include overly onerous assessment criteria and considerations.
89. The application requirements are consistent with the information required to assess the application and are similar to application requirements in local planning policies for gaming I reviewed during the preparation of the Background Report.
90. Revisions to the exhibited version have provided more flexibility with regards the information to accompany the planning permit application. The introduction to the application requirements now reads “The following application requirements... must

¹⁶ As per the municipal cap limit of 10 EGMs per 1,000 adults, a projected adult population of 82,676 in 2019, 197,901 in 2029 and 254,456 in 2039 across the uncapped and municipal cap areas (source i.d consulting)

accompany an application as appropriate, to the satisfaction of the responsible authority [my underlining].

91. Council may choose to waive some of the application requirements under certain circumstances. The scope of the material to be accompany the application will therefore be determined on a case by case basis.
92. I do not consider that the application requirements include onerous assessment criteria and considerations.

6.9 The amendment should use the existing strategies and objectives within the MSS to inform the local planning policy rather than retrofitting the MSS to support the local planning policy

93. Some of the submitters are of the opinion that the MSS has been retrofitted in response to the proposed amendments whereas the proposed amendments should reflect the existing strategies and objectives in the Planning Scheme.
94. The scope of the revised local planning policy requires some amendments to the Clauses in the MSS subject to the amendment. The proposed new objectives and strategies do not contradict the MSS.
95. The proposed amendments are minor and do not effectively change or retrofit the content or intent of the Clauses in the MSS which are subject to the amendment.
96. MSS's are regularly updated in order to ensure their consistency with new or revised local planning policies.

6.10 The local planning policy is contradictory and not supported by the broad objectives in the MSS to encourage entertainment uses (including gaming venues) in the Central City

97. Some of the submissions have raised a concern that there is a contradiction between the overall principle in the Melbourne Planning Scheme to encourage entertainment uses and the management of the location and operation of EGMs.
98. The apparent contradiction arises out of the fundamental policy tension that the proposed Schedule to Clause 52.28 Gaming (previously Clause 22.12) is intended to address. This policy tension arises out of the fact that there is evidence demonstrating that EGMs (as a form of entertainment) are directly associated with social and economic harms.¹⁷ The purpose of Clause 52.28 Gaming and the Schedule is therefore to guide the location and operation, and the assessment of the social and economic impacts of this form of entertainment to minimise gambling-related harms.
99. The assessment of proposals will involve a balancing of policy considerations under other relevant provisions in the Scheme based on the specific merits of the proposal. The assessment of each proposal will therefore address any potential policy tensions within the Melbourne Planning Scheme.

¹⁷ Australian Government Productivity Commission (2010) *Productivity Commission Inquiry Report, Gambling* No. 50 p5.22, <https://responsiblegambling.vic.gov.au/resources/gambling-victoria/how-gambling-victoria-changing-over-time/what-are-highest-spend-gambling-activities-victoria/>

6.11 The use of the word ‘ensure’ in some of the objectives is inappropriate as it would mean that some of the existing venues would be non-compliant.

100. Some of the submitters are concerned that the word ‘ensure’ in the proposed Schedule to Clause 52.28 Gaming would compromise the operation of existing gaming venues.
101. The local planning policy is a discretionary instrument that will be used together with other relevant clauses when assessing an application for a planning permit.
102. The word ensure is used throughout the Victoria Planning Provisions, including in the following objectives:
 - Clause 11.02-1S Supply of urban land “To ensure a sufficient supply of land is available for residential, commercial, retail, industrial, recreational, institutional and other community uses”.
 - Clause 12.02-1S Protection of coastal areas “To ... ensure sustainable use of natural coastal resources”.
 - Clause 15.01-3S Subdivision design “To ensure the design of subdivisions achieves attractive, safe, accessible, diverse and sustainable neighbourhoods”.
 - Clause 15.01-6S “To ensure development respects valued areas of rural character”.
 - Clause 15.03-1S Heritage conservation “To ensure the conservation of places of heritage significance”.
 - Clause 19.01-3S Pipeline infrastructure “To ensure that gas, oil and other substances are safely delivered to uses and to and from port terminals at minimal risk to people, other critical infrastructure and the environment”.
103. The example in Planning Practice Note 8 *Writing a Local Planning Policy* uses the word ‘ensure’.
104. Clause 52.28 Gaming uses the term ‘ensure’ in the purpose:
 - To ensure that gaming machines are situated in appropriate locations and premises.
 - To ensure the social and economic impacts of the location of gaming machines are considered.
105. The local planning policy does not affect the operations and design of existing gaming venues operating within the scope of their planning permissions. The word ‘ensure’ does therefore not prejudice the operation of existing gaming venues.
106. The use of the word ‘ensure’ is considered appropriate.

6.12 Remove policy considerations relating to residential uses

107. One of the submissions raises concern with the policy objective in Schedule 1 to Clause 52.28 Gaming “to discourage the proliferation of EGMs in locations where the predominant use is residential” on the grounds that it is not founded on evidence and there is no policy support within the MSS.
108. I acknowledge that there is no research demonstrating a causal link between residential uses and gambling-related harms. However, the following indicates that proximity to residential uses can contribute to convenience gambling:
 - There is research demonstrating that most people do not travel very far to access venues with most patrons living within the general or immediate vicinity of the

venue.¹⁸ Other research has found that a significant proportion (87.2 per cent) of people travelled from home to the most recent EGM they had visited.¹⁹

- The use and installation of EGMs is prohibited in residential land use zones. This indicates that the co-location of gaming venues and residential uses is not appropriate.
- Residential uses are a Section 1 use under the schedules 1- 7 of the Capital City Zone. The expanse of the Capital City Zone, and projected growth in residential buildings in the area to be covered by the Capital City Zone in the future suggests that there will be a large residential population in these areas. This indicates the need to ensure that the current and future population in the Hoddle Grid and urban renewal areas is protected against the risk of gambling-related harms.

109. Overall within the Capital City Zone the dominant land use is not residential. There are also other areas outside the Capital City Zone that are predominantly residential and therefore inappropriate for the location of EGMs.
110. As discussed previously, this objective is discretionary and will be applied as part of a balance of policy as required by Clause 71 of the Scheme.
111. For these reasons I am of the opinion that it is appropriate to discourage EGMs in locations where the predominant use is residential.

6.13 Clusters of gaming venues reduce accessibility and therefore the risk of gambling-related harms

112. One of the submissions suggests that discouraging the concentration of gaming venues as sought by the amendment to Clause 21.12 will lead to an increase in accessibility and associated risk of gambling-related harms.
113. As discussed above, I acknowledge that the establishment of a new gaming venue has the potential to increase exposure and accessibility, and the risk of gambling-related harms. However, research has found that moderate risk and problem gamblers are more likely to visit multiple (typically three or more) venues than non-problem gamblers and low risk gamblers²⁰. It is therefore possible that the clustering of gaming machines within easy walking distance from one another or residential areas may facilitate the migration of patrons between venues, contributing to gambling-related harm. This is particularly relevant in the City of Melbourne where the proportion of people walking and using public transport is high relative to other municipalities in Victoria.
114. The proximity of venues to one another, often referred to as ‘clustering’, has been noted by the Tribunal²¹ and the Panel²² as a planning consideration as it may encourage movement of problem gamblers between venues which may in turn result in convenience gambling. Furthermore, the Panel identified the potential for a cluster of venues to alter the character and function of an area, both of which are planning considerations relating to the appropriateness of the proposal to the surrounding land uses.²³

¹⁸ O’Mahony, B & Ohtsuka, K (2015), ‘Responsible gambling: sympathy, empathy or telepathy?’, *Journal of Business Research*, online 23 March 2015.

¹⁹Centre for Gambling Research, Australian National University (2004) *2003 Victorian Longitudinal Community Attitudes Survey Gambling Research Panel, Report No 6*

²⁰ State Government of Victoria (2009) Fact Sheet 8

²¹ *Francis Hotel Pty Ltd v Melbourne CC (Includes Summary) (Red Dot) [2012] VCAT 1896*

²² Panel Report, Wyndham Local Planning Policy Amendment C174

²³ Panel Report, Wyndham Local Planning Policy Amendment C174

115. I am therefore of the opinion that it is appropriate to discourage a concentration of gaming venues in the City of Melbourne context.

6.14 Evidence base discouraging EGMs in close proximity to student housing is insufficient

116. Some of the submitters have queried the evidence base in support of discouraging EGMs where there is a concentration of student accommodation.
117. The following research underpins the inclusion of students among groups at an elevated risk of gambling-related harms:
- Although most students gamble infrequently, around five per cent of students are problem gamblers which is higher than in the general adult population. This proportion increases to 10 per cent among male international students. Popular gambling choices among students include games known to be associated with risk such as cards, horse racing, sports betting, casino games and gaming machines.²⁴
 - EGMs are among the gambling activities most frequently engaged in by domestic and international students. The incidence of problem gambling among international students is higher (2.6 per cent) than the Tasmanian adult population (0.5 per cent) and the Australian adult population (0.5-1 per cent). Males were more likely to experience problem gambling than females. International students were more likely to experience problem gambling than domestic students.²⁵
 - International students are an important contributor to university numbers in Australia. There are more than 30,000 international students in the City of Melbourne with half of those residing in the municipality.²⁶ They are a highly vulnerable population due to the range of stresses that can lead to negative emotions and feelings of isolation. International students from countries such as India and China, where gambling is illegal, experience a sudden increase in exposure to gambling opportunities in Australia, particularly as “EGMs … are available in thousands of venues throughout the community”. Exposure and accessibility to gambling is linked to increased participation, frequency and gambling-related harm. Although international students were half as likely to use EGMs outside the casino than at the casino (11.8 per cent and 21.2 per cent respectively), the proportion of domestic students using EGMs outside the casino and inside the casino is similar (35.9 per cent and 37.7 per cent respectively). A higher proportion of frequent domestic student gamblers uses EGMs outside the casino than inside the casino (1.2 per cent and 0.7 per cent respectively).²⁷
118. Young people aged 18-25 are at an elevated risk of gambling-related harm.²⁸ The vast majority of students fall into this age group.
119. Feedback from stakeholders during the consultation and engagement stage indicated that students are at an elevated risk of gambling-related harms.

²⁴ Moore, S. et al (2013) “Problem Gambling Among International and Domestic University Students in Australia: Who is at Risk?” *Journal of Gambling Studies* (2013) 29: 217. <https://doi.org/10.1007/s10899-012-9309-x>

²⁵ Department of Health and Human Services, Tasmania “Occurrence and Correlates of Gambling Behaviour among International UTAS Students https://www.dhhs.tas.gov.au/_data/assets/pdf_file/0010/281791/International_Students_Gambling_Report_FINAL.pdf [research undertaken in three universities in Tasmania, Australia]

²⁶ City of Melbourne *A Great Place to Study International Student Strategy 2013-2017*

²⁷ Thomas, S. et al (2011) *International Student Gambling: The Role of Acculturation, Gambling Cognitions and Social Circumstances* Gambling Research Australia [research undertaken in three universities in Victoria and Queensland, Australia].

²⁸ Department of Justice (2009) Problem gambling from a public health perspective Factsheet 4, Profile of Problem Gambling Risk Segments, VRGF (2014) *Study of gambling and health in Victoria*, Armstrong, A., & Carroll, M. (2017). *Gambling activity in Australia*. Melbourne: Australian Gambling Research Centre, Australian Institute of Family Studies.

120. I am therefore satisfied that there is sufficient evidence in support of discouraging EGMS where there is a concentration of student accommodation.

6.15 Domain Village should be listed as a strip shopping centre prohibited under Clause 52.28 Gaming

121. The submission from the Melbourne South Yarra Residents Group Inc suggested that the Domain Village shopping centre should be listed as a strip shopping centre in Clause 52.28 Gaming.
122. Five of the 13 businesses in the Domain Village shopping centre are shops, consisting of a convenience store, 7 Eleven, bakery, pharmacy and clothes store. One of the businesses is a dry-cleaners. The remaining seven the businesses are restaurants and cafes.
123. It is likely that Domain Village would be classified as a strip shopping centre for the following reasons:
 - In *Prizac Investments Pty Ltd & Ors v Maribyrnong CC & Ors (includes Summary) (Red Dot)* [2009] VCAT 2616 the Tribunal found that, even though an existing business (in the case of the Domain Village shopping centre a takeaway) does not fall within the definition the planning scheme of a shop, the ordinary meaning of a shop in relation to Clause 52.28-4 is preferred (paragraph 34). This is because, to the person in the street, a takeaway food premise is a shop.
 - More than a third of the businesses are shops (5/13 or 38.4 per cent). In the same case, the Tribunal referred to other decisions where the Tribunal found that significant proportion did not mean the majority.
124. The schedule to Clause 52.28 Gaming prohibits gaming machines from all strip shopping centres. In the event Domain Village is classified as a strip shopping centre, it would not be necessary to list it in the Schedule to Clause 52.28 Gaming which prohibits electronic gaming machines from strip shopping centres. In the event Domain Village does not meet the Planning Scheme definition of a strip shopping centre, calling it a 'strip shopping centre' in a Schedule to Clause 52.28 Gaming will not make it a strip shopping centre. A proposal to install or use electronic gaming machines would in any event be assessed in terms of relevant provisions in the Melbourne Planning Scheme.

7 SUMMARY AND CONCLUSION

125. Schedule 1 to Clause 52.28 Gaming is a discretionary instrument that is a policy guide to the balanced assessment of applications to install and use EGMs under Clause 52.28 Gaming. I am satisfied that the proposed amendment incorporates policy criteria and decision guidelines that are robust and relevant to all planning permit applications, regardless of the location of the subject site or whether the proposal is for a ‘top up’ or new gaming venue.
126. In conclusion I am supportive of Amendment C307 to the Melbourne Planning Scheme subject to the following:
 - Removing the Background Report and Decision-Making Framework as reference documents to Schedule 1 of Clause 52.28 Gaming.
 - Retaining Strategy 3.1 of my original version of Clause 21.10-6 of C307 as ensuring a range of non-gambling activities is a protective factor against a form of entertainment associated with harm.
 - Updating and revising the Background Report and Decision-Making Framework as indicated in Section 4.

APPENDIX 1 – CURRICULUM VITAE, BONNIE ROSEN

| | |
|----------------------------------|---|
| Qualifications | Masters of Science in Town and Regional Planning, University of the Witwatersrand, 1991 |
| Professional affiliations | Fellow, Planning Institute of Australia (FPIA) Registered Planner Professional member Resolution Institute Australia (PRIA) Member Royal Town Planning Institute (MRTPI) |
| Academic Affiliations | Sessional lecturer, Department of Urban Planning, University of Melbourne. Subjects taught: <ul style="list-style-type: none">• Social Planning for Health (2005-2009)• Participatory Planning Practice (2008-2009)• Participation and Negotiation (2008)• Managing Change (2004-2007) Delivery of lectures on impact assessment to: <ul style="list-style-type: none">• University of Melbourne• Royal Melbourne Institute of Technology• Victoria University Australian National University |
| Employment history | 2001 – present: Principal, Symplan 2004 – 2009: Sessional Lecturer, University of Melbourne 1995 – 2001: Career break, family duties 1994 – 1995: Strategic Planner, Holmesglen Institute of TAFE 1992 – 1994: Consultant and Planning Aid Volunteer, Birmingham (UK) 1989 – 1992: Strategic Planner, Johannesburg City Council (South Africa) 1987 – 1990: Statutory Planner, Sandton Town Council (South Africa) |
| Expertise and experience | Bonnie Rosen is an urban and social planner who has specialised in planning for healthy people and supportive places. She established Symplan in 2001 with a wealth of experience in urban planning, social planning and social impact assessment which was gained in the public, private and educational sectors. Bonnie has managed a number of small projects and larger multi-disciplinary teams, all of which have resulted in practical, sustainable and efficient solutions to complex and controversial issues. Bonnie's accreditation as a mediator enables her to work closely with individuals, agencies and stakeholders, and assist them in finding common aspirations and visions. Bonnie's approach to her projects involves applying a strong academic discipline to research and problem solving in a rigorous and pragmatic way. Her teaching experience has enabled her to remain up to date with contemporary research methodologies and findings. Bonnie's particular areas of expertise include: <ul style="list-style-type: none">• Management of multi-disciplinary teams |

- Strategic planning in the areas of health and wellbeing, licensed premises, EGM gambling
- Assessing needs for social infrastructure
- Social impact assessments
- Expert evidence
- Facilitation, mediation and consultation
- Training

Selected relevant experience

| | |
|---------------------------------------|--|
| Gambling Policies | Yarra Ranges Shire Local Planning Policy for Electronic Gaming (2007) Bass Coast Shire Background Paper for the Local Planning Policy for Electronic Gaming (2014) City of Manningham Local Planning Policy for Electronic Gaming (2014) City of Melton Local Planning Policy for Electronic Gaming (2017) City of Melbourne Gambling Decision-Making Framework (social policy) and Local Planning Policy for Electronic Gaming (2017) City of Maroondah Gambling Policy and Local Planning Policy for Electronic Gaming (2018 - underway) |
| Expert evidence, gaming venues | Social and economic impact assessment, Glenroy RSL (2015 and VCAT 2018) Social and economic impact assessment, Darebin RSL (VCGLR and VCAT 2018) Social and economic impact assessment, Officer Hotel, Cardinia Shire (VCGLR and VCAT 2018) Social and economic impact assessment, The Tigers Clubhouse, Wyndham Shire (VCGLR 2018) Social and economic impact assessment, Club Officer, Cardinia Shire (VCGLR 2017) Social and economic impact assessment, Wellington at Botanical Gardens, City of Greater Bendigo (2017) Social and economic impact assessment, Packenham Racing Club, Cardinia Shire (VCAT, 2016) Social and economic impact assessment, Doxa Club Inc, on behalf of the City of Melbourne (2016) Social and economic impact assessment, Wangaratta RSL, Rural City of Wangaratta (2017) Social and economic impact assessment, Croydon Hotel, City of Maroondah (VCGLR 2015) Social and economic impact assessment, L'Unico Hotel, City of Monash (VCAT 2013) Social and economic impact assessment, Grandview Hotel, City of Darebin (VCAT 2013) Social and economic impact assessment, the McKinnon Hotel, City of Glen Eira (VCGLR 2013) |

Social and economic impact assessment, proposed Castlemaine Community Club, proposed gaming venue, Mount Alexander Shire Council (VCAT 2012)

**Liquor and
Gaming policy
and research**

Young people and gambling City of Boroondara, 2015

Gaming policy, background report and local planning policy, Maroondah City Council, Melton City Council, City of Melbourne, Darebin, Manningham, Bayside²⁹, Shire of Yarra Ranges

Background report, gaming policy, Bass Coast Shire Council, 2014

Assessment of the impact of the Regional Caps on Electronic Gaming Machines, City of Casey – determining the extent to which the partial regional caps have avoided and minimised problem gambling (2010)

Preparation of the *City of Casey Gambling Impact Assessment Framework* (2010)

²⁹ In collaboration with Planisphere
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APPENDIX 2 – DOCUMENTS IN BRIEF TO EXPERT WITNESS

| Tab | Document |
|-----------------------------------|--|
| 1. | Amendment C307 Letter and Instrument of Appointment |
| Exhibition Material | |
| 2. | Notice of the Preparation of an Amendment, Explanatory Report, Instruction Sheet |
| 3. | <ul style="list-style-type: none"> ▪ Clause 21.10 – Infrastructure ▪ Clause 21.12 – Hoddle Grid ▪ Clause 21.12 – Gaming ▪ Schedule to clause 52.28 (Gaming) |
| 4. | Draft Electronic Gaming Machine Decision Making Framework (October 2017) |
| 5. | Electronic Gaming Machine Review Draft Background Report (October 2017) |
| Pre-VC148 and Post VC148 | |
| 6. | Pre-VC148 Amendment C307 proposal* |
| 7. | Post-VC148 Amendment C307 proposal * |
| Relevant Council Documents | |
| 8. | <p>Future Melbourne (Planning) Committee - 19 July 2016</p> <ul style="list-style-type: none"> ▪ Meeting minutes dated 19 July 2016 ▪ Report to the Future Melbourne (Planning) Committee dated 19 July 2016 ▪ Clause 22.12 ▪ Melbourne City Council Gaming Policy Review prepared by Ratio Consultants dated April 2015 |
| 9. | <p>Future Melbourne (Planning) Committee - 17 October 2017</p> <ul style="list-style-type: none"> ▪ Meeting minutes dated 17 October 2017 ▪ Report to the Future Melbourne (Planning) Committee dated 17 October 2017 ▪ Gaming legislation and Council roles and responsibilities ▪ Amendment C307 proposed amendment documents ▪ Draft Electronic Gaming Machine Decision Making Framework (October 2017)* ▪ Electronic Gaming Machine Review Draft Background Report (October 2017)* |
| 10. | <p>Future Melbourne (Planning) Committee - 20 November 2018</p> <ul style="list-style-type: none"> ▪ Meeting minutes dated 20 November 2018 ▪ Report to the Future Melbourne (Planning) Committee dated 20 November 2018 ▪ Response to Submissions for Amendment C307 ▪ Pre-VC148 Amendment C307 proposal* ▪ Post-VC148 Amendment C307 proposal * |

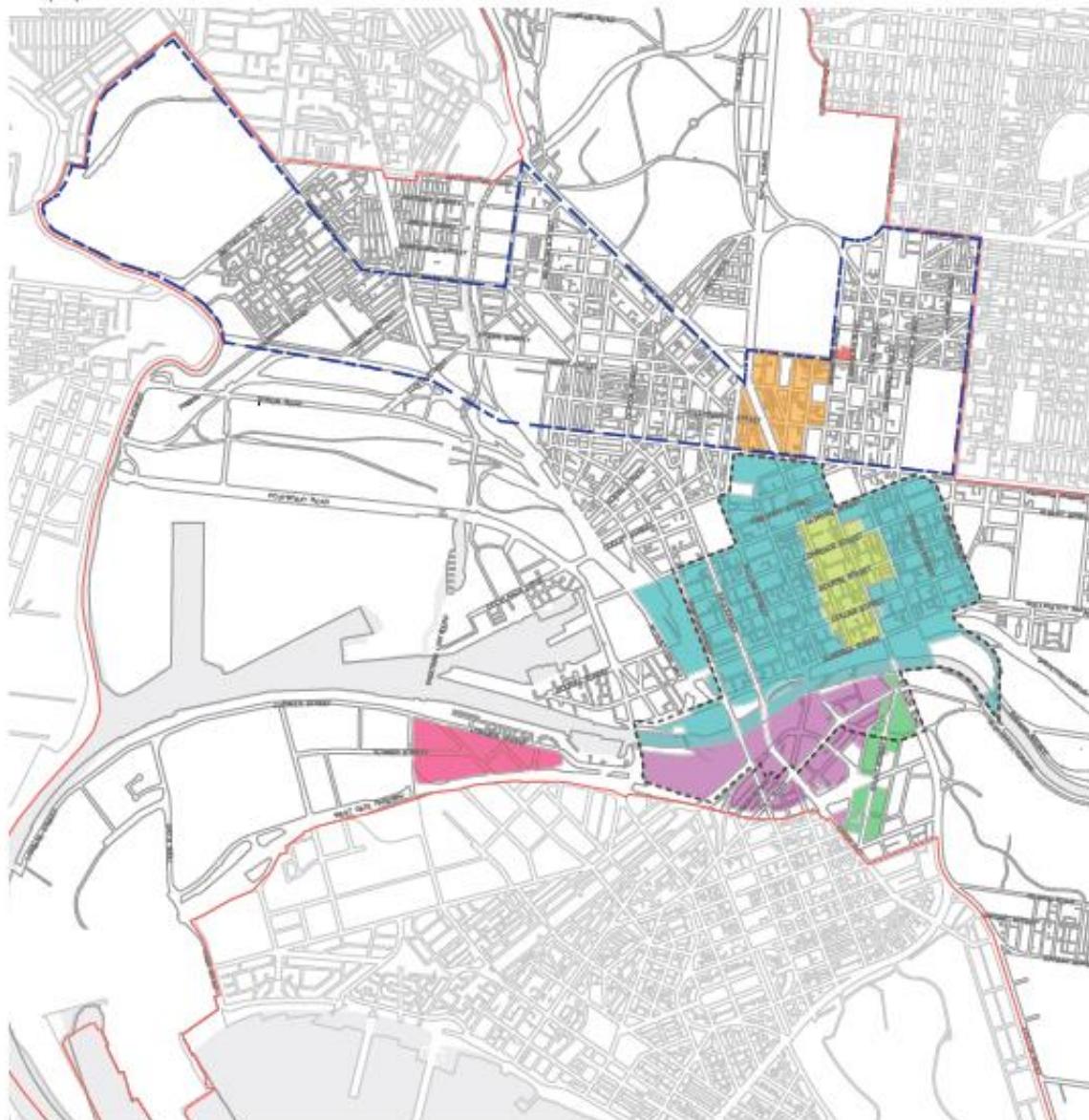
- Draft Electronic Gaming Machine Decision Making Framework (October 2017)*
- Electronic Gaming Machine Review Draft Background Report (October 2017)*

11. Submissions

APPENDIX 3 – MAP OF SCHEDULES TO THE CAPITAL CITY ZONE AND AREA COVERED BY THE REGIONAL CAP

Amendment C307: Gaming Policy
Map of Schedules to the Capital City Zone

Date prepared: March 2019



Schedules to the Capital City Zone

| |
|---|
| OCZ1 - Outside the Retail Core |
| OCZ2 - Retail Core |
| OCZ3 - Southbank |
| OCZ4 - Fishermans Bend Urban Renewal Area |
| OCZ5 - City North |
| OCZ6 - Carlton Connect Site |
| OCZ7 - Melbourne Arts Precinct |

| | |
|--|---------------------|
| | Original CCZ extent |
| | Municipal boundary |
| | Regional cap |



Source: City of Melbourne

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