

PLANNING PANELS VICTORIA

MELBOURNE PLANNING SCHEME, AMENDMENT C307

**STATEMENT OF TOWN PLANNING EVIDENCE PREPARED BY
LAURA THOMAS**

4 MARCH 2019

URBIS

INTRODUCTION

1. My full name is Laura Michelle Thomas. I am a Director of Urbis Pty Ltd, based in the firm's Melbourne office at Level 12, 120 Collins Street, Melbourne. My qualifications and experience are described in Appendix A.
2. On 12 February 2019, I was requested by BSP Lawyers, on behalf of Australian Hotels Association (Vic) Inc. to provide an independent town planning assessment of exhibited Amendment C307 to the Melbourne Planning Scheme.
3. Specifically, my written instructions required me to undertake the following:
 - Review exhibited Amendment C307 material;
 - Prepare an expert witness statement for filing with Planning Panels Victoria; and,
 - Attendance and presentation at the Panel Hearing.
4. Additional verbal instructions were to review the implications of the proposed new policy on the municipality broadly but particularly to consider the implications on the CBD, Southbank and Docklands. I have also been asked to consider the implications particularly for Hotels.
5. Amendment C307 applies to the whole of the land within the municipality of the City of Melbourne and seeks to introduce a new gaming policy. This is proposed to be facilitated through:
 - Amending the content of Clause 21.10-6 (Cultural/Arts and Entertainment Facilities);
 - Amending the content of Clause 21.12 (Hoddle Grid);
 - Replacing Clause 22.12 (Gaming) with a revised policy;
 - Amending the Schedule to Clause 52.28 (Gaming).
6. In addition to the planning scheme changes sought, the exhibited materials also included two Reference Documents:
 - City of Melbourne Electronic Gaming Machine Decision-Making Framework, 2017
 - City of Melbourne Electronic Gaming Machine Review Background Report, 2017
7. In the course of preparing this evidence I have reviewed proposed amendment documentation, read (amongst a range of background documents) the Council delegate report and the summary of submissions lodged. I note that Council have made minor amendments as per their Part A submission including preparing a new version of the Schedule to Clause 52.28 (consistent with Amendment VC148).
8. I have also reviewed a number of gaming policies in other planning schemes and panel reports that supported those gaming policies. I have also reviewed the relevant gaming indicia and am familiar with the existing location of gaming venues within the municipality.
9. A summary of my opinions with respect to Amendment C307 is as follows:
 - I support the intention to minimise the potential for gambling related harms, however not in the form of the new policy proposed.
 - I believe the policy requires extensive reworking to appropriately respond to the special characteristics of the Melbourne CBD, Docklands and Southbank (the Central City).
 - Proposed Clause 22.12 fails to identify the Central City as unique within the wider municipal and state context, applying a 'cookie-cutter' approach to assessing the acceptability of new EGM permit applications that is more akin to the approach one might take for a suburban municipality.

- The Central City area is the primary focus for an aggregation of social, employment, retail, tourism and economic activity in Victoria. In failing to recognise these unique characteristics, the policy is fundamentally flawed.
- The policy creates a high level of ambiguity where the 'should' location sites have significant overlap with the 'should not' sites.
- The discouragement of the establishment of EGMs in locations that meet the 'should not' criteria nominated within Clause 22.12-3, in my view effectively creates a 'ban' on future EGM provision within the Central City.
- Proposed Clause 22.12 does not reflect recent decisions which indicate a permit applicant seeking approval for the use and installation of gaming machines does not need to demonstrate a net community benefit.
- The application requirements of proposed Clause 22.12 are onerous. I consider a number of the requirements provide little utility and are requested with no guidance as to how the materials may assist the Responsible Authority make a decision.
- In many areas, the proposed policy in my view presents a duplication of matters dealt with already via Clause 52.28 of the Melbourne Planning Scheme or matters under the control of the Victorian Commission for Gambling and Liquor Regulation (VCGLR). This level of duplication is inappropriate.
- I consider there to be a vacuum within the Planning Scheme Amendment concerning the existing gaming venues within the municipality. I note proposed Clause 22.12 does not provide differentiated criteria for assessing the merits of a planning application that specifically seeks to increase the number of EGMs at an existing gaming venue. This is an area that was previously identified as an area for improvement of the existing policy.
- I consider the Reference Documents do not present a balanced approach to the assessment of benefits and disbenefits arising from the operation of gaming machines.
- I consider that the policy should be reworked so as to differentiate the Central City, the area expressly nominated by Government as excluded from the strip shopping prohibitions and uncapped in terms of total gaming machine numbers, from the 'rest of Melbourne'.

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

1. PROPOSED AMENDMENT

11. Draft Planning Scheme Amendment C307 seeks to replace the existing gaming policy at Clause 22.12 to guide the assessment of all planning permit applications to install or use a gaming machine under Clause 52.28 (Gaming) of the Melbourne Planning Scheme.
12. Furthermore, the amendment seeks to:
 - Introduce a new strategic objective and strategy for gaming within Clause 21.10-6 (Cultural/Arts and Entertainment Facilities);
 - Introduce a new policy reference to gaming within Clause 21.12 (Hoddle Grid);
 - Amend the Schedule to Clause 52.28 (Gaming) to list several additional shopping complexes in which the installation or use of a gaming machine is to be prohibited;
 - Incorporate two (2) reference documents into the Melbourne Planning Scheme - *City of Melbourne Electronic Gaming Machine Decision-Making Framework, 2017* and *City of Melbourne Electronic Gaming Machine Review Background Report, 2017*.
13. Amendment C307 was exhibited between 24 May 2018 and 29 June 2018. I understand that eight (8) submissions were received during this period (all from private parties).
14. Due to the nature of the submissions received, Council requested that a Planning Panel consider the submissions.
15. I am aware that Council have suggested some minor changes as part of their Part A submission.

2. CURRENT CONTROLS AROUND ELECTRONIC GAMING MACHINES

16. From a town planning perspective, gaming policy in the Melbourne Planning Scheme can be considered to be currently expressed via the following planning controls:

- State Policy/Planning Policy Framework
- Local policy (current one)
- Clause 52.28 & Schedule to 52.28

2.1. PLANNING POLICY FRAMEWORK

17. Whilst my statement will consider the application of the draft policy to all areas of the municipality, my focus is on the implications for the CBD/Southbank and Docklands (the 'Central City').

18. It is my view that the role of these areas as the Capital City for Victoria has not been sufficiently considered and that the application of the proposed policy will effectively prohibit the potential for additional gaming machines in the Central City – a precinct well recognised as a social and cultural hub of state significance.

19. The Planning Policy Framework is silent on matters directly relating to the use and installation of gaming machines.

20. I note that before the changes to Clause 52.28 introduced in October 2006 and discussed further below, the SPPF (as it was) did include consideration of gaming as follows:

19.02 Gaming

19.02-1 Objective

To provide consistent planning controls for the installation and use of gaming machines throughout Victoria coordinated with the provisions of the Liquor Control Act 1987 and the Gaming Machine Control Act 1991.

19.02-2 General implementation

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

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

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

- *Land used as a hotel or club on 19 December 1997;*
- *Land in relation to which on 16 June 1998, a permit to use or develop a hotel or club is in force and a licence under the Liquor Control Act 1987 has been granted;*
- *Land formerly used as a hotel or club which has been recently destroyed by fire; or*
- *Land for which a permit to install or use a gaming machine in a restricted area is in force on 19 December 1997.*

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

21. The (major) update of Clause 52.28 in October 2006 was accompanied by removal of the reference in the state section detailed above.

22. Whilst the planning policy framework does not explicitly deal with gaming machines, it does implicitly, by providing strong policy support for the concentration of major retail, residential and entertainment uses into activity centres. This support is for activity centres in the suburbs as well as the central city

– albeit the central city gains additional prominence in the policy context as the aggregation of a full range of activities.

23. The planning policy framework recognises the Central City as a place of ‘state significance’ where investment and growth should be focused and further it is recognised for its ability to accommodate ‘significant’ growth in a broad range of uses. Indeed, the planning for the Central City is predicated on the expectation of future growth in residents, workers and visitors.
24. It is important to recognise the unique role that ‘entertainment’ plays in the Central City and this is further supported through Clause 17.04-1R, which seeks to maintain and develop Metropolitan Melbourne as a desirable tourist destination and ‘*Melbourne’s position as a global, national and local destination in its own right and a gateway to regional Victoria.*’
25. *Plan Melbourne 2017-2050: Metropolitan Planning Strategy* intends to guide the way Melbourne will grow and change over the next 31 years. It identifies the Central City as a “*desirable destination for business investment and a major destination for tourism*” and requires that “*new space must be found for office, retail, education, health, entertainment and cultural activities*”.
26. Supported within the Melbourne Planning Scheme at Clause 17.01-1R, *Plan Melbourne* seeks to support the Central City in becoming Australia’s largest commercial and residential centre by 2050, by planning for appropriate provision of office, retail, residential, education, health, entertainment and cultural activity spaces. This Clause further encourages the co-location of facilities to better utilise existing infrastructure.
27. The PPF clearly places the Central City at the top of the activity hierarchy in Victoria.
28. Over the past 25 years the central city has undergone a renaissance with the significant increase in residential apartments across the CBD and beyond with nearly 82,000 people calling Melbourne’s CBD home. The success of Melbourne’s CBD is multifaceted. It provides a convergence of critical land use functions, supported by physical components and infrastructure. Overlaid with this are more intangible elements such as public safety, cultural diversity and interest, environmental and landmark qualities.
29. The aim of the Local Planning Policy Framework is to build on State policies and apply them to a local context. Clause 21.02 (Municipal Profile) identifies the context and history of Melbourne, whilst also defining what the Central City means for the wider metropolitan context. Melbourne is described as follows (**emphasis added**):

*Melbourne is Victoria’s capital city and at its heart is the City of Melbourne. The Municipality is the location for many of the State’s premier economic and cultural infrastructure and for a wide diversity of uses **24 hours a day, 7 days a week** including office and commercial, cultural, leisure, **entertainment**, research, educational and residential uses. The City is the venue for many major events and festivals, attracting visitors from the Metropolitan area, Victoria, interstate and globally.*
30. The focus for 24/7 activity in the Central City can be contrasted to suburban areas where such activity is constrained/restricted. The relatively unrestricted nature of the Central City is a large part of its attraction.
31. Council’s Municipal Strategic Statement directly recognises the important role the Central City plays in wider Melbourne, and the role Melbourne plays to interstate and international visitors at Clause 21.02-2 (Melbourne’s Growth):

The City is a national and international tourist destination and the State’s entertainment and celebration capital, regularly drawing crowds from metropolitan Melbourne, regional Victoria and beyond. In 2011, there were approximately 73,000 daily tourist visitors to the municipality. By 2020, around 84,000 national and international visitors are expected. (COM City User forecasts) The numerous large sports and entertainment venues, convention facilities and cultural facilities draw visitors to the city.
32. The uniqueness of the CBD “community” was also discussed in *Francis Hotel Pty Ltd v Melbourne CC [2012] VCAT 1896*, where the Tribunal considered the City of Melbourne “community” to be not

only the City's 93,000 residents, but the 771,000 people using the city each weekday and the 304,000 people using it each weeknight. Since then, the daily non-resident population has increased.

33. Policy also recognises Melbourne as a global city, a key hub and gateway for trade, commerce and culture, linking into the world economy. The Central City supports the largest concentration of government and advanced business services in Victoria.

34. The Central City is the state's main retail centre.

35. Council's Vision (at Clause 21.03) recognises the economic importance of the Central City:

The City of Melbourne makes an important contribution to the economic prosperity of the state through the provision of its local, corporate and global businesses, its strong retail, major cultural, sporting and tourism industry, and its significant industrial uses.

36. This concept is further expressed in at Clause 21.08 – Economic Development which seeks amongst other things:

- *21.08-1 Retail To support the Central City and local retail uses*
 - *Strategy 1.1 Maintain and enhance the Retail Core as a world class retail offer, by supporting land uses and a built form which sustains this.*
 - *Strategy 1.4 Ensure that a proliferation of eating and entertainment establishments in local centres does not undermine the viability of their convenience retailing*
- *21.08-2 Business To reinforce the City's role as Victoria's principal centre for commerce*
 - *Strategy 1.1 Support the Central City as metropolitan Melbourne's principal centre for commerce, professional, business and financial services, and encourage new and innovative business that takes advantage of the Capital City location.*
 - *Strategy 1.2 Support the development of Docklands and Southbank as a vibrant business and retail areas along with the Hoddle Grid.*
 - *Strategy 1.7 Support the provision of facilities and services for the changing and diverse needs of residents, visitors and workers.*
 - *Strategy 1.8 Ensure noise and disturbance from late night commerce related activity does not compromise the reasonable needs of residents and other users of the City.*

37. In relation to Cultural/Arts and Entertainment facilities, the MSS outlines the following objectives and strategies:

- *Objective 1 To provide a diverse range of leisure, arts, cultural and entertainment facilities.*
 - *Strategy 1.1 Discourage the concentration of sexually explicit adult entertainment, amusement parlours and gaming venues in the Central City.*
 - *Strategy 1.2 Support quality public institutions, including art galleries, libraries and museums, throughout the municipality, where consistent with the local amenity.*
 - *Strategy 1.3 Support entertainment, music and cultural attractions in Commercial and Mixed Use Zones, where consistent with the local amenity.*
- *Objective 2 Enhance the City as Victoria's pre-eminent cultural and entertainment location.*
 - *Strategy 2.1 Support and encourage the growth of a vibrant cultural environment in the Hoddle Grid, Southbank and Docklands, by supporting entertainment uses, music and the arts.*
 - *Strategy 2.2 Support the City's major sports facilities and parks in recognition of their national significance.*

- *Strategy 2.3 Promote the Docklands waterfront as a tourism and leisure destination of State significance.*

38. Strategies for the Hoddle Grid specifically include:

- *Encourage the development of a range of complementary precincts within the Hoddle Grid that offer a diverse range of specialist retail, cultural and entertainment opportunities.*
- *Encourage the retention and enhancement of specialised shopping and entertainment precincts within the Hoddle Grid, particularly, Hardware Lane, Chinatown, Collins Street and Little Collins Street.*
- *Support entertainment, bars, eating and other evening uses throughout the Hoddle Grid.*
- *Support the Retail Core as a compact, high-density retail precinct and facilitate easy pedestrian access.*

39. Strategies for Southbank include:

- *Support Southbank's development as an extension of the Central City, providing a mix of commercial and residential land uses.*
- *Support arts, entertainment, cultural, educational attractions in Southbank, especially in the Arts Precinct.*

40. Strategies for Carlton include:

- *Support the ongoing tourism, cultural and entertainment role of Lygon Street (south of Grattan Street), Melbourne Museum and the Royal Exhibition Building.*
- *Support the ongoing regional role of Lygon Street (south of Grattan Street) as a retail, restaurant and entertainment precinct.*
- *Ensure Lygon Street (north of Grattan Street) continues to provide for the convenience retail needs of the local residents and working community while discouraging the encroachment of restaurants and entertainment uses.*

41. Together these strategies support the primacy of the Central City area in providing a full range of activities and services for residents and non-residents of which entertainment, including entertainment with gaming, is one part. It is the concentration of these mix of activities that assists in creating the vibrancy of the CBD.

2.2. LOCAL POLICY

42. The existing Local Policy (Gaming) at Clause 22.12 was introduced with the New Format Planning Scheme in 1998. Whilst the Background Document to this amendment indicates this was before the introduction of the Clause 52.28, Clause 52.28 also existed at the time of the new format planning scheme (this is detailed more in the following subsection).

43. Other than minor amendments, the City of Melbourne local policy has remained essentially the same over the past 23 years.

44. I note that the current policy '*applies to applications for gaming premises in the Mixed Use Zone, Public Use Zone, Public Park and Recreational Zone, Commercial Zones, Industrial Zones, Docklands Zone and Schedule 5 to the Capital City Zone*'. The policy therefore does not apply to the Central City (including Hoddle Grid and Southgate), Fishermen's Bend or the Arts precinct.

45. The current policy also does not apply to land in the Residential zones (RGZ, GRZ, NRZ). However, the failure to apply to the residential zones appears to be a fundamental error in understanding under the land use categories used by club and hotel operators. The current policy indicates:

It is noted that gaming premises are prohibited in the Residential Zones.

46. However, in my experience, no one applies for an application for a 'gaming premises'. The primary land use is not gaming but rather a hotel or club. The Hotel, Restricted Place of Assembly, Restricted Recreation Facility and Tavern definitions in the VPPs all include gaming and/or gambling as a permissible component of the broader land use.
47. I consider it is appropriate that the policy be expanded to cover all parts of the municipality, although as this statement will detail, I believe there are sound reasons why the policy should differentiate between the Central City and the rest of the municipal area.
48. I note the City of Melbourne's post-exhibition changes have sought to respond to criticisms regarding a lack of clear support for the role and function of the central city as a location for entertainment by suggesting an addition to Clause 22.12 as follows:

The Municipal Strategic Statement identifies the Central City (Hoddle Grid, Southbank and Docklands) as a state significant retail and entertainment area. Nine of the municipality's gaming venues are located in the Hoddle Grid. Crown Casino is in Southbank.

49. I do not consider the additional statement adds particular value in isolation of wholesale changes to the rest of the policy. The state significance of the role of the Central Area is not expressed in the policy as exhibited.

2.3. CLAUSE 52.28

50. At the introduction of the Victoria Planning Provisions, Clause 52.28 was introduced to deal specifically with gaming. At that time, no permit was required to install or use a gaming machine in a restricted area if that area did not exceed 25 per cent of the gross floor area (the 25% rule).
51. Clause 52.28 specifically prohibited gaming machines from shopping complexes as follows:
- "Despite Clause 52.28-1, land described in the schedule to this clause must not be used for gaming and no gaming machine may be installed or used in any building on the land".*
52. VC3 amended Clause 52.28 and introduced the prohibition relating to strip shopping centres. The definition, which has only been amended slightly in the 20 years since was:
- "strip shopping centre" means an area:*
- *zoned for business use, and*
 - *consisting of at least two separate buildings on at least two separate and adjoining lots, and*
 - *in which a significant proportion of the buildings are shops, and*
 - *in which a significant proportion of the lots abut a road accessible to the public generally,*
 - ***but does not include the Capital City Zone in the Melbourne Planning Scheme.***
(emphasis added)
53. There is limited explanatory information to confirm why the Capital City Zone was expressly excluded from this definition. I consider that this was an explicit policy decision that recognised the nature of retailing in the Capital City Zone and sought to support both the continued development of retailing in the central city and the provision of entertainment uses.
54. Over time the City of Melbourne have amended the Schedule to Clause 52.28 to update the shopping complexes where the prohibition applies. The proposed amendment seeks to again refresh this schedule.
55. Clause 52.28 provides objectives:
- *To ensure that gaming machines are situated in appropriate locations and premises.*
 - *To ensure the social and economic impacts of the location of gaming machines are considered.*
 - *To prohibit gaming machines in specified shopping complexes and strip shopping centres.*

56. Clause 52.28 provides decision guidelines:
- Before deciding on an application, in addition to the decision guidelines of Clause 65, the responsible authority must consider, as appropriate:
 - *The Municipal Planning Strategy and the Planning Policy Framework.*
 - *The compatibility of the proposal with adjoining and nearby land uses.*
 - *The capability of the site to accommodate the proposal.*
 - *Whether the gaming premises provides a full range of hotel facilities or services to patrons or a full range of club facilities or services to members and patrons.*
 - *Any other matters specified in the schedule to this clause.*
57. Given this overarching policy basis, any local policy should not seek to replicate or undermine these requirements but provide a localised context.

2.4. THE MUNICIPAL AND REGIONAL CAPS

58. Separate to the planning scheme, more broadly the number of gaming machines is controlled by the State Government in a number of ways.
59. Firstly, there is a maximum number of permissible machines in the State of Victoria. The total number of gaming machines allowed in Victoria is 30,000. Of these:
- 2,628 are allocated to the Melbourne casino
 - the remaining 27,372 are allocated to clubs, and to hotels.
60. Originally there were no geographic restrictions on where gaming machines could be located. This gave rise to a concern that the gaming machines were being disproportionately located in regions of lower socio-economic status. In response to this in 2001 the State Government introduced 'regional caps' on five areas in Victoria – these caps limited the number of permissible machines in those specific regions. Regional caps are broadly based on the density of gaming machines per thousand adults, average player loss per adult per year and the socio-economic status of areas although there is no set criterion that applies
61. In November 2005 a Report by the Office of Racing and Gaming (*Regional Electronic Gaming Machine Caps Review Panel*) considered the potential for extending the regional caps and introducing municipal limits. In relation to regional caps, there were areas within the City of Melbourne identified where there was the increased potential for gambling related harm. Regional caps now apply to the localities of Carlton, Flemington, Kensington and North Melbourne.
62. Unlike the analysis considered for the regional caps, the municipal limits were set as a specific number of machines per 1,000 adults. Where a municipal limit applies it is set at 10 machines per 1,000 adults.
63. I note that in addition to the explicit recognition of the central city in Clause 52.28, the differentiated role of this precinct was also recognised by the State Government in the consideration of Municipal limits.
64. The Review Panel report presented specific commentary to justify the exemption of the Central City from these caps:
- The City of Melbourne has unique characteristics that warrant a separate consideration of the issues with respect to regional caps. There is a significant concentration of gaming machines located within the central business district. Of the City's 859 gaming machines, 572 of these are located in the central business district and Docklands area. In addition, 2 500 gaming machines are located at Crown Casino. The City of Melbourne, particularly the central business district, Docklands and Southbank, is a significant entertainment precinct in Melbourne, drawing large numbers of tourists, workers and day visitors....*

2.5. CROWN CASINO

66. Any consideration of the impact of gambling on the City of Melbourne community, be it resident, worker or visitor, needs to recognise the role and impact of Crown Casino. Crown has more than 2,500 gaming machines as well as a licence for 540 table games.
67. I note that the jurisdiction for the number of gaming machines and other gambling opportunities provided at Crown Casino is outside of the consideration of Clause 52.28.
68. Crown Casino exerts an influence, not only over the Central City area, but within metropolitan Melbourne, Victoria and Australia as a major casino. Crown would appropriately be described a 'destination venue'.
69. Information on number of gaming machines, density of machines, expenditure etc in the City of Melbourne excludes Crown's impact and influence. It is my view that any consideration of managing the concentration of, or access to access to, gaming machines in the City of Melbourne, needs to be cognisant of the influence of Crown in terms of the existing spatial distribution and availability of gaming machines 24 hours a day.

3. PLANNING CONSIDERATIONS

71. As an initial observation, I find the proposed policy framework for gaming applications to be detailed and expansive. However, I find the way in which the Central City has been treated is inappropriate.
72. I consider the policy highly 'preventative' in its approach. I say this on the basis of:
- The objectives, particularly 'to reduce the concentration of gaming machines and gaming venues;
 - The locational criteria (so broad as to encompass most land in the municipality as 'should not be located' land);
 - The requirement for achievement of net community benefit;
 - The tone of the supporting documentation, including the Social and Economic Impact Assessment Tool.
73. The following subsections will discuss the above and other concerns.

3.1. DOES THE AMENDMENT RESPOND TO THE MINISTERIAL DIRECTIONS AND PLANNING PRACTICE NOTES?

74. The State Government through its Advisory Note No. 9 *Changes to the Gaming Provisions in Planning Schemes* (October 2006) supported the changes to Clause 52.28 to require a planning permit for the use and installation of all gaming machines. In removing the previous as-of-right provisions (the 25% rule), Councils were then able to consider applications. Many metropolitan and regional Councils have since drafted and implemented gaming specific local policies into their planning schemes.
75. Amendment VC148 was gazetted on 31 July 2018 and made many changes to the Victoria Planning Provisions (VPPs) to improve their structure, function and operation. Of specific relevance, Amendment VC148 implemented changes to the wording of Clause 52.28 (Gaming). Specifically, changes were made to enable the schedule to Clause 52.28 to specify objectives, location guidelines, venue guidelines, application requirements and decision guidelines which was not possible in the old Clause.
76. Planning Advisory Note 72 suggests that the changes made to the form and content of certain Schedules (including Clause 52.28) will essentially limit the need for Council to prepare separate local policies, in some instances.
77. It is in my view preferable that the policy take the new form of the control. I note that the City of Melbourne have provided a schedule to Clause 52.28 which seeks to respond to this revised format of the planning scheme. This is effectively a translation of the exhibited Clause 22.12.
78. I find however that in the translation to the new schedule to Clause 52.28 it becomes apparent there are duplications in the decision guidelines between the head clause and the proposed schedule. These will be discussed further in later sections of this statement.
79. I have considered the Ministerial Direction No. 11 and Planning Practice Note No. 46 which consider the Strategic Assessment of Amendments. It is my view that the Explanatory Report fell short in addressing the requirements of this Direction including the following ways:
- The summary description provided as to what proposed Amendment C307 seeks to achieve does not truly reflect the changes that will be implemented, for example:
 - The first dot point in the explanatory report indicates that Clause 21.10-6 (Cultural/Arts and Entertainment Facilities) will be amended in order to "*strengthen policy to ensure that*

electronic gaming machines operate as part of the overall range of entertainment activities in the municipality". Given gaming is already widely accepted and acknowledged as an entertainment facility, I firstly consider that there is no tangible need to strengthen policy in the manner suggested.

- Amendment C307 is said to be consistent with the objectives of Clause 21.10-6 by "*ensuring that electronic gaming machines are provided as part of the overall range of social, leisure, entertainment and recreation uses in the municipality*". This is seemingly at odds with the strategic intent to "*reduce the concentration of gaming machines and gaming venues*".

80. In my view, Clause 22.12 does not assist in guiding the appropriate location and operation of gaming venues when the 'should be located' and 'should not be located' criteria are read in tandem.
81. The first criteria indicates gaming machines should be located where the community has convenient access to a choice of non-gaming entertainment, leisure, social and recreation uses that operate at the same time as the gaming venue..... This suggests an activity centre, a concentration of land uses. However, the next criteria that '*gaming machines should not be located*' effectively dismisses all potential 'activity' locations.
82. This is a tension that has been considered in a number of VCAT cases and planning panels – the stated desire for the co-location of entertainment facilities within activity centres coupled with a planning policy framework that seeks to put gaming venues on the periphery of, or in the case of this proposal, at least 400m from a strip centre.
83. In the DSL Securities v Cardinia SC [2011] VCAT hearing regarding the proposed Pink Hills Hotel in Beaconsfield this tension was discussed with the tribunal finding in that case:

16 We accept Ms Peterson's evidence. In colloquial terms, the hotel might be described as being within a 'Goldilocks' location. It is close to but not within the proposed Whiteside Road Neighbourhood Activity Centre under the Officer Precinct Structure Plan. Its proximity to the activity centre is not too close nor yet too far. It is just right. People will need to travel purposefully to the venue to engage in gaming. They will not pass the venue incidentally in the course of their shopping or undertaking other activities within the activity centre. The venue will offer other attractive facilities for eating, drinking and socialising. It will not be a venue devoted solely or primarily to gaming. There is already access to gaming machines within the municipality and we accept Ms Peterson's evidence that the introduction of 60 gaming machines in a multi purpose recreation and entertainment venue will have little impact on accessibility or access to machines for problem gamblers. People with existing problems are already able to access machines within the region and travel to these venues to participate in gaming, so that additional machines at this venue are not likely to contribute to additional problem gambling.

17 We find that the location of this venue is sufficiently separated from any activity centres so it is unlikely to increase risky behaviour by problem gamblers. Its location requires patrons to make a conscious decision to visit the venue rather than participate in so called risky behaviour because it just happens to be on their way to somewhere else. We consider that the location is in line with other VCAT decisions, which have encouraged gaming venues to be located at the edge or near the periphery of activity centres, but not within them. This ensures that gaming venues benefit from proximity to these venues but are not located so as to encourage convenience gambling.

3.2. ARE THE CHANGES TO THE MSS SUPPORTABLE?

84. Planning Practice Note No. 8 'Writing a Local Planning Policy' indicates that "*a local planning policy should be derived from an objective or strategy in the MSS*". In my opinion, the proposed changes to Council's MSS (specifically policy references at Clause 21.10-6 and 21.12), have been included purely to strengthen the policy basis of proposed Clause 22.12 (Gaming).
85. The second dot point in the explanatory report indicated that Clause 21.12 (Hoddle Grid) will be amended in order to "*strengthen policy to reduce the concentration of electronic gaming machines in the Hoddle Grid where they contribute to convenience gambling*". Although similar, the actual policy provision proposed within exhibited Clause 21.12 fails to include the line: "*where they contribute to convenience gambling*", instead discouraging the spatial concentration of gaming machines overall.
86. I consider this omission leads to ambiguity in how this policy objective is to be achieved. There is no clarification provided as to what "spatial concentration" is in reference to, and how this applies to new gaming venue applications versus applications for additional EGM's in existing facilities. In the context where a definition of 'cluster' has been provided in the Background Documents the use of the term spatial concentration is questioned.
87. Whilst the concern of spatial concentration is proposed in the MSS in relation to the Hoddle Grid, the decision guidelines also include reference to this concept.
88. The Hoddle Grid is the location of the majority of existing venues in the City of Melbourne. It is also a location that is covered by neither a regional cap or municipal limit. It could be read that the introduction of any new venue within the Hoddle Grid is increasing the spatial concentration, even if a cluster as defined in the policy is not created.
89. I believe more information is required so that the references to spatial concentration can be understood both by potential applicants but also by the responsible authority.

3.3. ARE THE CHANGES TO THE LOCAL POLICY APPROPRIATE?

90. A local policy is a tool to implement the objectives and strategies of the Municipal Strategic Statement. Importantly, local planning policies provide guidance to decision making on a day-to-day basis and assist in allowing the community to understand how the Responsible Authority will consider a particular proposal.
91. The purpose of policy within the Planning Scheme is to ensure balanced outcomes are achieved.
92. As part of Amendment C307, Council seeks to introduce a revised Clause 22.12. Again, I agree with the idea to include a Local Planning Policy relating to Gaming, and I believe a well-worded document can provide clear guidance to the installation of gaming machines within City of Melbourne.
93. I am concerned that the revised planning policy has fundamental flaws.
94. As an overriding issue, the draft policy provides no differentiation between the Central City area and the other areas of the City of Melbourne – I find this to be a significant failing of the policy.
95. At the time of the last major change to Clause 52.28 (October 2006), the amendment was accompanied by an Advisory Note that sought to provide guidance to Councils including under the topic: What is the role of the Local Planning Policy Framework (LPPF) as it relates to gaming? The response was:
- Objectives and strategies for the location of gaming machines to respond to local environmental, social and economic considerations can be expressed in the LPPF. Local policy can also direct gaming machines to appropriate locations and premises in a municipality.*
96. It is my view that the proposed new local policy and its supporting reference documents have failed to respond to the explicitly different social and economic conditions, role and function of the Central City vs the rest of the municipality.
97. The *City of Melbourne Electronic Gaming Machine Decision Making Framework 2017* and the *City of Melbourne Electronic Gaming Machine Review Background Report 2017* both fail to acknowledge the unique characteristics of the Central City area. I will discuss this in greater detail below.

3.3.1. Policy Basis

98. I consider the policy basis is focused on the harms associated with gaming rather than giving a more balanced, neutral policy statement aimed at guiding decision making.
99. I also note that references to the CBD/Hoddle Grid not subject to a cap fails to appropriately recognise that Southbank and Docklands have equally been expressly considered by the State Government as areas where the cap should not apply.
100. Under the post-exhibition version of the new Clause 52.28 these policy statements have primarily been removed from the proposed control. I note that it is now proposed to shift the commentary regarding concentrations of socio-economic harm and the likely demand for more gaming machines to Clause 21.02-3 – People City. It is questionable if this might be better placed under Clause 21.02-2 – Melbourne's growth.
101. It may be appropriate that these (relocated) comments are prefaced with the statement 'Gambling is a legal form of entertainment', noting otherwise this statement is removed entirely from the policy framework.

3.3.2. Objectives

102. Draft Clause 22.12-2, presents a set of policy objectives that represent a significant change from the focus of the current Clause 22.12.
103. The previously policy had a clear direction that sought to separate residential and gaming uses through objectives including:
- *To ensure that amenity, social and economic impacts of gaming are considered when deciding on a planning application.*
 - *To ensure that gaming premises are primarily located in existing venues in commercial centres.*
 - *To ensure that gaming premises are established in locations that will not detract from the amenity of surrounding residential areas.*
 - *To restrict the proliferation of gaming premises in areas where residential use is encouraged.*
104. New policy has a number of new objectives including:
- To ensure that gaming machines are situated in appropriate locations and premises to prevent convenience gambling.*
105. The post-exhibition version retains (but varies) this objective as follows:
- To minimise gambling-related harms to individuals and the community and ensure that gaming machines are situated in appropriate locations and premises to prevent convenience gambling.*
106. Firstly, in relation to this objective, I note that I do not support the concepts of Destination Gaming and Convenience Gaming as they are defined in the background document. The definitions used include both locational criteria (proximity to highly utilised facilities) and function considerations (the experience of non-gaming, social or entertainment facilities).
107. My view is that venues can be both 'destination' and have a limited range of facilities, and conversely 'convenience' and a full range of facilities. My point is that the definitions should not confuse two separate considerations – the background document should be amended in this respect.
108. Initial local planning policies looked at the concept of convenience quite differently to the current proposition. A number of policies in the early 2000s sought to plan for gaming venues to be 'Accessible, but not Convenient'. However, the consideration of convenience has in my view been extended significantly without a solid evidence base.
109. The introduction of the strip shopping definition into Clause 52.28 identified retail areas as being prohibited from the introduction of gaming machines. Whilst not expressly prohibited, the 'should not' be located considerations now extends through this amendment to being within a 400m walking distance or a clear line of sight.
110. The amendment includes references to 'Public transport interchanges', these were nominated not for the research that people who catch public transport were more likely to be problem gamblers, but that this is a proxy for a concentration of people. In the Central City, given the transport connections, the whole area represents a concentration of people.
111. Further, whilst 'Convenience Gambling' forms a key consideration in the proposed policy, it is important to recognise that there are a range of contributing factors which may result in problem gambling or an increase in such that do not all relate to locational characteristics.

112. The *Destination Gaming – Evaluating the Benefits to Victoria, May 2008* publication identified that:
- While accessibility can contribute to the development of problematic behaviour, it is not the sole driver of gambling problems. Rather, the accessibility of gaming is just one ingredient in a mixture of contributors, and may be less important than other factors such as*
- *Poor judgement and decision making leading to behavioural conditioning;*
 - *Pre existing psychological and biological issues;*
 - *Severe adverse life events;*
 - *Impulsive behaviour and other behavioural problems.*
113. The research also suggested that it is not possible to draw conclusions from simply causal connections between individual factors and the development of gambling problems, nor is it possible to measure what proportion of problem gambling is a consequence of environmental factors. In view of the general level of accessibility across Victoria, this report did not support a conclusion that the individual placement of venues has a discernible effect on problem gaming.
114. I also believe that in considering the ‘convenience’ element, it is appropriate to consider the *Productivity Commission Report into Gaming*. The Commission’s final report was provided to the Australian Government on 26 February 2010. The Government publicly released the report on 23 June 2010.
115. These latest Productivity Commission findings suggest that the prevalence of problem gaming in Australia is in the order of 0.5-1.0% of the adult population with a further 1.4-2.1% of adults experiencing moderate risks that may make them vulnerable to problem gambling.
116. The Productivity Commission made specific comments in relation to the accessibility of gaming machines. The Commission found:
- There is a link between accessibility and gambling harms, but*
- *it is weaker once a threshold of accessibility has been exceeded*
 - *it may change over time*
 - *it can vary with different dimensions of accessibility (time of day, distance and number of machines)*
 - *Causality can work both ways (Productivity Commission Report into Gaming, Chapter 14).*
117. Further, the Productivity Commission report states:
- “In particular, there has been community adaption to gaming machine accessibility. Adaptation can occur, for example, as the novelty of gaming machines reduce, as people experiencing initial harm resolve their problems, or with increased public awareness of gambling harms. Thus, gambling harms might stabilise or even reduce in the face of increasing exposure to the machines.*
- That then raises the question of whether at current levels of accessibility, incremental changes to accessibility would have any substantive effects. An important underlying issue here is whether the links between accessibility and harm continue to grow linearly as accessibility rises, or whether the ‘dose response’ effect diminishes at some point. From a theoretical perspective, it seems likely that once gaming machines are ubiquitous in any community, additions to their number make little difference. The Victorian example appears to bear that out — the number of machines is a fraction of that in New South Wales, but without a commensurate effect on problem gambling prevalence rates.*
- That said, as shown in appendix I, some studies do find strong apparent links between accessibility across regions and harm (and certainly between accessibility and gaming expenditure), with even small changes to already high levels of accessibility apparently still having effects. However, these findings probably reflect the difficulties in distinguishing between the relative strengths of the two causal links between accessibility and harm:*

- *On the one hand, greater accessibility stimulates demand, with the result that some gamblers are exposed to risks that were originally muted or not present.*
 - *On the other hand, a population that already includes problem gamblers will be typified by higher expenditure levels (chapter 5), encouraging greater supply of gaming machines in those areas. In that case, reducing accessibility in that area will result in greater utilisation of existing machines or shifts in the location of demand, without reducing harm” (Chapter 14.6).*
118. The opportunity to gamble currently exists in the City of Melbourne and particularly in the Central City area, not only with the existing gaming venues but with the influence of Crown Casino.
119. In my view the consideration of ‘convenience gaming’ as it relates to the Central City area was defined by the government in the setting of the exemption to the strip shopping provisions in Clause 52.28 and should not be revisited through this policy approach.
120. I am concerned with the inclusion of the objective “*To reduce the concentration of gaming machines and gaming venues*’. I understand that Council have sought to amend this post-exhibition to:
- 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.*
121. Whilst I prefer the second version, I am concerned that this conflates multiple considerations in the one objective.
122. The current spatial distribution of gaming machines in the municipality is that the majority of them are located in the Central City area. In this respect I read the objective to redistribute machines and venues as a desire to reduce the number of gaming machines and prevent any additional venues in the Central City area.
123. Gaming is a recognised and legitimate form of entertainment and I consider this objective is contrary to Council’s Municipal Strategic Statement which supports ‘entertainment’ uses throughout the Hoddle Grid. Further, proposals should be considered on their merits, not from a starting point of reduction.
124. Whilst the underlying demographics of the City of Melbourne may suggest that parts of the Central City area has population cohorts vulnerable to gambling-related harms, this must be balanced against the significant worker and visitor populations. The ‘community’ of the municipality is not just comprised by its permanent resident population. The policy and its background documentation does not sufficiently address the role of the visitor and worker population in the demand for gaming.
125. The term ‘redistribute’ also appears to rely on the previous Tattersalls/Tabcorp duopoly whereby those companies controlled the location of all gaming machines. In most case new entrants are no longer able to definitively confirm where their machines are coming from, hence they cannot confirm if this represents a redistribution from a more vulnerable area.
126. I am particularly concerned with the proposed objective around net community benefit: *To ensure that the location and operation of gaming machines achieves net community benefit.*
127. (Previously Clause 10), Clause 71.02-3, Integrated Decision Making makes the following comments:
- Society has various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development. Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.*
128. Whilst I acknowledge that the concept of net community benefit in the manner expressed in the draft policy has been adopted in other Council planning schemes, the discussion around this concept has focused on the (now rejected) findings of the VCAT member in the Beretta’s Langwarrin case (i.e. Mitchell Shire Amendment C50, Final Panel Report, October 2009).

129. However, subsequent cases before VCAT (including Prizac, CK & Sons and Bright Newbay) confirmed that net community benefit was not a required outcome of a gaming application. On this basis, it is inappropriate that the policy seeks this outcome.
130. I note the final objective, '*to discourage the proliferation of gaming machines in locations where the predominant use is residential*', forms part of the current Policy. This policy wording is in my view ambiguous.
131. I am aware that the Minister for Gaming in February 2017 sought to prohibit the approval of new gaming venues in a building with permanent residential accommodation on the basis that it would increase exposure to gambling for residents which in turn may increase the risk of gambling on impulse. However, I am not aware of any research about a more general concern of residential areas and gambling related harms.

3.3.3. Policy

Location

132. I agree it is preferable that gaming machines are located in areas where the community also has access to a range of non-gaming entertainment.
133. The locational criteria relating to redistribution of gaming machines again is a holdover from the Tattersalls/Tabcorp duopoly. Venues may be unable to confirm where their machines may be sourced from geographically. I also refer back to my comments regarding the utility of socio-demographic characteristics in the Central Area given the large non-resident population.
134. I find the 'should not' locational requirements of Clause 22.12-3 are so overarching as to be unrealistic not only for the Central City area but also for the municipality more broadly.
135. The maps at Figure 2 and Figure 3 demonstrate the application of the locational criteria:
- Existing or approved gaming venue
 - Shopping complexes (as defined by the exhibited Schedule to Clause 52.28)
 - Public transport interchanges (as per background document, two or more transport modes connecting)
 - Gambler's Help service (sourced from gamblershelp.com.au; noting this is not a definitive list)
136. The mapping is based on a 400m radial distance, so slightly varied from the draft control that stipulates walking distance. In some instances therefore, the extent of the area may be overstated. I do not believe this has a significant impact on my conclusions.
137. I note the policy also discusses 'clear line of sight' – I have not made provision for this in the mapping presented.
138. The mapping also shows the residentially zoned land (RGZ, GRZ, NRZ). I have used these zonings as a proxy for '*locations where the predominant surrounding land use is residential*'.
139. I note the mapping has not included:
- Concentrations of social housing
 - Student accommodation
 - Other gambling sensitive services or facilities.
140. The mapping does not include these characteristics as the materials are more difficult to obtain (not impossible but more difficult and in my view would not add to the conclusions that I can draw from what has been mapped). I also note that in many cases it is difficult to confirm the extent to which 'financial counselling services' provide advice to gamblers specifically or provide more generalised services.

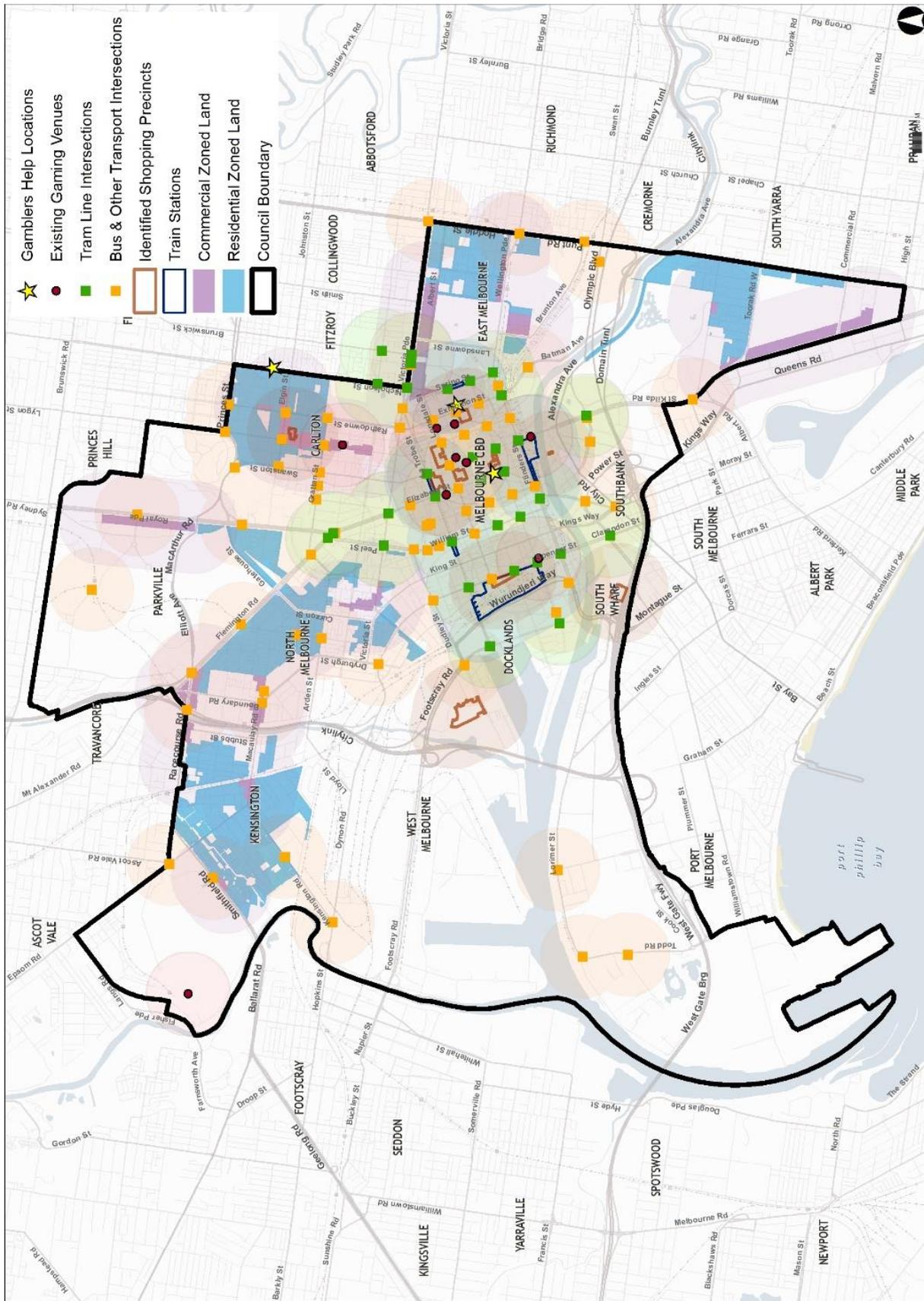
141. The application of the 'should not' locational criteria covers the majority of the municipality. These criteria exclude the Central City from being a suitable location entirely.
142. More so, when read in conjunction with the first 'should' location criteria, it is clear that those parts of the municipality that might be considered appropriate locations are also those that clearly demonstrate the 'should not' characteristics.
143. Given the role and function of the Central City and its concentration of activity (including public transport), the application of the criteria noted above is of no utility – other than to suggest that the either the Central City area should be preferred or should be 'off limits'.
144. Based on the mapping results presented, it is questionable whether the 'should not' criterion provides the Responsible Authority with information of assistance. It may be more appropriate to reconsider the criterion so as to determine which of the characteristics has the greatest potential influence on problem gambling.
145. As noted above, I have concerns around the 'public transport interchange' as it is a proxy for concentrations of people rather than necessarily concentrations of people some of whom are potentially more vulnerable to problem gambling.
146. There also appears to be differing views as to whether or not students have a greater propensity for problem gaming. A number of studies of gaming do not identify students as a particular group for consideration (i.e. Study of Gaming & Health in Victoria, 2014). Some research has found that international students are more vulnerable to problem gambling, but that the use of EGMs is not the favoured choice of gambling. I do not believe the Background Document provides sufficient justification for adding this locational criterion.
147. Against the qualifications above, whilst the 400m may have some utility in the 'suburban' areas of the municipality, I do not believe this is relevant in the Central City given the mix of varied land uses and the sheer concentration of people (workers, residents, tourists). I note the local policies dealing with amusement parlours and sexually explicit adult establishments include a 100m criteria (Clause 22.10 and 22.11 respectively).
148. In any event, I find the use of a stringent meterage-based approach to be problematic as it can lead to undesired planning outcomes. It is preferable that a site context analysis takes into account the particular circumstances of any given location rather than the strict application of a distance criteria.
149. The Practice Note for Writing a Local Policy (PPN08, June 2015) provides examples regarding when criteria are included and includes the statement:

Proposals that do not meet these criteria may still meet the objectives of this policy.
150. I consider such a statement would be useful in this policy to clarify that whilst the locational criteria are a performance measure, they are not mandatory.

Figure 2 – Central City with ‘Should Not’ Locational Characteristics Applied



Figure 3 – City of Melbourne with ‘Should Not’ Locational Characteristics Applied



Venue design and operation

151. In relation to venue design and operation, I believe there is a degree of duplication between the existing requirements of Clause 52.28 and the proposed control. It is a decision guideline under 52.28 that venues offer a full range of facilities or services to patrons.
152. The best practice in relation to physical, visual and functional separations of gaming rooms from other activities are changing over time. Whilst it is the goal to achieve best practice, this has to be tempered against the practical realities of design of existing buildings.
153. I also consider the proposed criteria that gaming machines should operate in venues that “where the gaming area is physically, visually and functionally separated from non-gambling facilities, passers-by, pedestrian and vehicular access and car parking” is overly prescriptive in relation to the internal design and layout of a venue.

3.3.4. Application Requirements

154. A number of the information requirements set out under the Application requirements section are undertaken by applicants as part of the Social and Economic Impact Assessment required by the VCGLR and are in my view entirely appropriate in the context of assessing an application for gaming machines.
155. In my opinion, a number of the proposed application requirements outlined under Clause 22.12 are of limited value as outlined below:
156. Firstly, I support the post-exhibition/Part A change proposed by Council – that is that the application requirements are to be ‘as appropriate’.
157. I find that the proposal details requested are generally supportable save for the following comments:
 - The ‘transfer’ of gaming machines is a concept that is a hangover from when all machines were controlled by Tattersall’s or Tabcorp. In that situation it was clear where the machines were coming from (an existing venue or from the ‘pool’). In the current situation where operators buy gaming machine entitlements, the concept of transfer is not clear.
 - The density of gaming machines per 1,000 adults is a measure completely inappropriate to be used in the Central City.
 - The proposal details section also makes reference to the ‘local area’ but no guidance on what this area is has been provided.
 - I do not see the utility in providing pedestrian counts – it is unclear how this will assist the responsible authority consider an application. I do not believe there is any research that will assist Council in determining at what point does the volume of pedestrian traffic past a licensed venue equate to whether or not convenience gambling is likely to result. If this requirement is to remain within the policy, I believe it needs more consideration so as to confirm the benefit of the data to be provided in making a decision on a gaming application in a ‘suburban’ context. I believe it is completely inappropriate to be used in the Central City.
158. The locational assessment’s fixation on a 400m radius does not differentiate between Central City and the ‘rest of’ Melbourne.
159. In relation to the Venue design and operation requirements, much of this material is required by the VCGLR and would be endorsed by them under the gaming ‘green line’ plans. This issue is assessed by the VCGLR and should in my view remain their jurisdiction without duplication. I consider this requirement raises ongoing issues where Council may seek to endorse a gaming machine layout plan in conjunction with any permit issued. Having to gain secondary consent from Council to allow for a change in layout is overly burdensome when approval for the layout change is also required to be obtained from the VCGLR. This is particularly so where the VCGLR is a specialised body and has in place venue best practice design guidelines.

160. I am equally concerned about the utility to the Responsible Authority of the venue's non-statutory harm minimisation and responsible gambling practices. There is nothing provided in the background documents to provide any direction as to what constitutes 'appropriate' practices. Further, the requirement seems to be requiring a level of practice beyond what is otherwise statutorily mandated but provides no guidance as to what that might be.
161. I do not support the requirement '*to demonstrate how the proposal will achieve Net Community Benefit in addition to any statutory community contributions scheme*'.
162. This reference to Net Community Benefit is also referenced in the Decision Guidelines. As mentioned previously, the PPF already seeks to balance the interests of net community benefit and sustainable development. However, this does not mean that a net community benefit must be demonstrated. Expectations of net community benefit from every application to be assessed under proposed Clause 22.12 are therefore overly restrictive.
163. Even more so when the policy expressly discounts the benefits to be applied that are attributed by venues to their statutory community contributions scheme.
164. The background document outlines the statutory community contributions scheme *as a contribution included in an annual audited community benefit statement lodged with the VCGLR*. I note that the requirement for a Community Benefit Statement applies to Club venues only and requires them to provide a minimum of 8.33% of gaming revenue as community contributions.
165. These contributions are required to be detailed against specific criteria including:
- Donations, gifts, sponsorships for a range of purposes including: educational purpose, health services or care, housing assistance for disadvantaged persons, relief of poverty, provision of services and assistance to the aged/to young people.
 - Cost of providing and maintaining sporting facilities for use by club members
 - Cost of any subsidy for the provision of goods and services (excluding alcohol)
 - Capital expenditure
 - Responsible provision of gaming measures and activities
 - Reimbursement of expenses incurred by volunteers
166. In contrast, hotels are not required to input into a statutory community contributions scheme as they pay greater level of taxation on gaming machine revenue.
167. The proposed decision guidelines require a consideration of whether there is a net community benefit beyond any statutory community contributions scheme. There is no guidance given as to at what benefits above that statutorily required are needed to satisfy this criterion.

Social and Economic Benefits

168. Whilst I note that a number of local policies in other planning schemes seek a survey of residents, I do not agree with the concept of a survey as proposed. The focus on happiness, contentment and wellbeing are to a certain extent nebulous concepts that may not go to the focus of whether the proposal will cause a social impact. More so, they are concepts that do not go to the locational context of the site.
169. If the survey were to need to distinguish between residents, businesses, community organisations, agencies and service providers and be 'academically rigorous' as suggested by the policy, it would equate to hundreds of surveys to provide the level of confidence in the survey for each sub-group. This would be at extensive cost to the applicant. Based on previous experience, I believe the cost to fulfil this requirement would be easily in excess of \$30,000. The important question is to what benefit?

170. In the CBD, how would the responsible authority gain an appreciation of the view of the 'community' when on any given day the Central City encompasses an extensive number of 'communities' of people. Who makes up this community will change by day of week, week of year, time of day.
171. In addition, community surveys are generally aimed at measuring a 'change' in the level of contentment of a community – in a community as broad and diverse as the CBD where members of the community do not simply live in the area but work, recreate, are entertained and shop in the area the concept of contentment and changes in levels of contentment would be almost impossible to measure in any probative and useful way that might inform a decision maker.
172. In addition, surveys undertaken for and on behalf of government generally indicate that less than half of the population support electronic gaming machines. Such a result for an individual proposal therefore would not in any way be surprising. And yet there is no detailed guidance on what outcomes are sought/required from the survey.
173. Even if the survey were to include considerations of direct relevance to locational issues, the 400m radius for such a survey is not appropriate. Whilst this is a proxy for 'walking distance' that is not to say that visitors to a hotel or club with gaming will only come from this close proximity, in either a Central City or rest of Melbourne environment. Nor to say that impacts (both positive and negative) would be felt exclusively within this geographic area.
174. I note that other local policy survey requirements are more likely to use a 2.5km radius from the subject site. Whereas this may be appropriate in a 'suburban' setting, I find such a radius would equally be inappropriate in the Central City area given the concerns I have expressed above regarding the 'community' of interest.
175. The requirements of the 'robust assessment' generally represent items expected to be included in materials to support a gaming application.
176. However, in light of my comments above on the utility of the 400m radius for the survey, the 400m radius for socio-economic indicators provides too specific a focus on the residential population vs the broader Central City user population. This comment is the same for the limited relevance of SEIFA in the Central City.
177. Further, I cannot think of what 'health profile' data that could be available to this limited geographic unit. Again, the background documents fail to provide the Responsible Authority any detail on what health information is being sought at this limited geography and for what express purpose.

3.3.5. Decision Guidelines

178. Many of the decision guidelines are not warranted or duplicate matters already required to be considered by Clause 52.28.
179. I considered the design guideline to be consistent with the Reference Documents is inappropriate given the Decision-Making Framework calls for additional information not requested in the Application Documentation. Requiring consistency with the Framework effectively adds an additional set of requirements. To the extent they are necessary for the Responsible Authority to make a decision, they should form part of the policy. I note that this has been amended in the Council's Part A submission.
180. To a large extent the decision guidelines are derived from other components of the policy, many of which I have expressed a concern with previously. I do however reiterate my concern with the decision guideline regarding net community benefit:
- Whether the proposal can demonstrate that this is to be a net community benefit beyond any statutory community contribution scheme.*
181. The wording of this guideline coupled with the objective relating to net community benefit and the application requirements set up net community benefit as a 'test', a mandatory requirement, to be applied to which an application may pass or fail.

182. I note the Practice Note for Writing a Local Policy (PPN08, June 2015) provides the following commentary with respect to decision guidelines:

It should be remembered that decision guidelines only require the responsible authority to give specific consideration to a particular issue or fact. Of themselves they should be 'policy neutral'. They will gain direction from the LPP objective under which they serve.

183. I consider the decision guideline is not 'policy neutral' and is likely to lead a decision maker into error.

3.4. INTRODUCTION OF REFERENCE DOCUMENTS

City of Melbourne Electronic Gaming Machine Review, Background Report, 2017

184. Whilst the background document provides some interesting information, I find it does not present a balanced approach to the issue of gaming.
185. I find it fails to provide clarity on many of the policy statements in the exhibited clause.
186. The document makes reference to the Ratio Report (The Gaming Policy Review, 2015) and notes the recommendations of that review, but then fails to explicitly respond to the recommendations. An example is that rather than present a discussion of why the draft policy does not distinguish between top ups and new gaming venues, the background document is silent. To discuss why this issue hasn't been addressed in the policy would be useful.
187. The VCGLR has found in favour of arguments that existing venues seeking to 'top up' their number of gaming machines are less likely to impact the potential for problem gambling than a new venue. However, this concept is not discussed in the background documents.
188. I find that the summary of the differences in planning and gambling considerations (Section 6.5) places too much emphasis on net community benefit in the planning context. As previously stated, a gaming application need not demonstrate a net community benefit in the context of the gaming clause alone. Net community benefit needs to consider the broader impacts of the application across all relevant policies, which in the case of a Central City application in particular would need to consider issues such as aggregation of entertainment uses, tourism, economic vitality. Finally, applications are not required to achieve net community benefit – a neutral outcome may be acceptable.
189. I am of the view that the discussion of benefits (8.4.1) seeks to qualify these benefits to the point most are discounted as 'true benefits' and discussed as gambling harms. It does not present as a balanced assessment of the positives and negatives associated with electronic gaming machines.

The City of Melbourne Electronic Gaming Machine Decision Making Framework, October 2017

190. The Decision Making Framework is in part a synthesis of the background document with the key new material being the 'Strategic Action Framework'. I find however it provides insufficient assistance in confirming which of the myriad of issues presented are of greatest concern.
191. Whilst purporting to be an approach that seeks to 'accommodate the demand for gaming', I consider the outcome of the application of the Strategic Action Framework will not support any new applications. The objectives and actions to be undertaken by Council are designed to permit no increase in the number of gaming machines and to expressly reduce the number of gaming machines operating.
192. The 'check box' exercise does not then provide guidance as to which of the criteria are of greatest relevance.
193. This is particularly the case for Central City applications where applications will undoubtedly be located within 400m proximity of the majority of the land uses noted.
194. The application of a number of measures (net increase in density of gaming machines per 1, 000 adults, expenditure above the average etc) are in my opinion not relevant in the Central City context.

Just as the central area has more food stores, licensed premises or nightclubs than 'average', it is not surprising that it would have higher density of gaming machines.

195. The State Government, by not placing a restriction on the maximum number of gaming machines in the Central Area, has established that the density of machines per 1,000 residents is not a relevant criteria.
196. Equally, considerations of the socio-economic profile of the residential catchment are only of limited value when the totality of the catchment is not considered.
197. I note the Assessment Tool (6.2) encourages operators to prepare venue management plans but that this does not form part of the policy application requirements.

APPENDIX A STATEMENT OF QUALIFICATIONS AND EXPERIENCE

Name and Address

Laura Thomas
Director
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Level 12, 120 Collins Street
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Qualifications

- Bachelor of Applied Science (Planning) 1993

Professional Experience

- Current Position: Director, Planning, Urbis
- 2003-2019 Planner, Urbis Pty Ltd
- 2001-2003 Economic Consultant, Jebb Holland Dimasi
- 1993-2001 Town Planner, Hames Sharley Pty Ltd

Area of Expertise

- Statutory planning on a range of commercial, retail and hospitality issues.
- Consulting advice to a wide range of commercial clients addressing the management of urban development and the statutory planning process.
- Preparation of rezoning requests to facilitate urban development

Expertise to Prepare this Report

Professional qualifications and expertise in town planning.

Instructions which defined the Scope of the Report

My instructions required me to undertake a town planning assessment of the Planning Scheme Amendment C307 to the Melbourne Planning Scheme. In so doing, I have relied upon those matters set down below.

Facts, Matters and Assumptions Relied Upon

I have relied upon the following in the preparation of this report:

- Review of the Melbourne Planning Scheme
- the C307 Amendment materials as exhibited
- Submissions made to the exhibited material
- Council officer reports regarding the Amendment
- Ministerial Directions and Planning Practice Notes
- Panel reports and VCAT decisions regarding the introduction of gaming policies

Documents taken into Account

Relevant documents are described above.

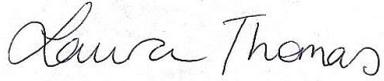
Identity of Persons undertaking the work

Laura Thomas, assisted by Lauren Grusauskas and Kathleen Akers, Urbis.

Summary of Opinions

A summary of my opinions in relation to this matter is included at the conclusion of my evidence.

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

A handwritten signature in black ink that reads "Laura Thomas". The signature is written in a cursive, flowing style.

Laura Thomas
Urbis Pty Ltd



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