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**Prepared for**  
Doxa Community Club Inc

**Prepared by**  
Colleen Peterson  
March 2019

**Town Planning**  
**Expert Evidence**  
Planning Panels Victoria  
Amendment C307

Electronic Gaming Local Policy

expert:evidence

**ratio:**consultants

8 Gwynne Street  
Cremorne VIC 3121  
ABN 93 983 380 225

**Prepared for: Doxa Community  
Club Inc**

Our reference 16041PR001

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## 1.1 Introduction

- 1.1.1 I have been engaged by Doxa Community Club Inc (Doxa), to review Amendment C307 to the Melbourne Planning Scheme.
- 1.1.2 Amendment C307 relates to the introduction of a revised Local Planning Policy (LPP) for electronic gaming at Clause 22.12 (Gaming). It also seeks to amend Clause 21.010-6 (Cultural/Arts and Entertainment Facilities), Clause 21.12 (Hoddle Grid) and the Schedule to Clause 52.28 (Gaming).
- 1.1.3 Doxa currently operates two existing venues known as the Meeting Place and Clocks at Flinders Street Station. Both are licensed club venues that include gaming machines as part of the entertainment offer for club patrons. Both venues are located within the CBD.
- 1.1.4 I have been specifically asked by LGS Legal (on behalf of Doxa) to provide my opinion in relation to the following question:
  - *Should the gaming policy proposed to be introduced into the Melbourne Planning Scheme (“MPS”) be included in the MPS?*
- 1.1.5 I have been specifically requested to focus my review on the implications of this policy being applied to the Melbourne CBD.
- 1.1.6 My review focuses on content within both the original version and the revised version of proposed local policies and the appropriateness of their content considering the strategic context.
- 1.1.7 I have also reviewed the City of Melbourne Draft Electronic Gaming Machine Decision Making Framework (October 2017) and City of Melbourne Electronic Gaming Machine Review Draft Background Report (October 2017) in order to form an opinion on whether or not these documents provide a proper and sufficient basis to support the proposed amendment.
- 1.1.8 I have considered the strategic context for Amendment C307 in response to existing State and existing and proposed Local Planning Policy Framework and have provided my opinions on the materials reviewed.

## 1.2 Name and Address

- 1.2.1 My name is Colleen Yvonne Peterson. I am Chief Executive Officer at Ratio Consultants Pty. Ltd, which conducts its business at 8 Gwynne Street, Cremorne.

## 1.3 Qualifications

- 1.3.1 I am a qualified Town Planner and have practiced town planning since 1992. My experience includes 6 years in local government, culminating as Planning Approvals Coordinator at the City of Stonnington in 1998. I have been practicing as a consultant town planner for the past 19 years and was formerly an Associate at SJB Planning and Director of Metropol Planning Solutions. I joined Ratio Consultants as an Associate Director in September 2004 and was made a Director in July 2005. In 2014 I was made Managing Director. In 2018 I was appointed CEO.
- 1.3.2 I hold a Bachelor of Planning and Design (Hons) from the University of Melbourne.
- 1.3.3 I am a board member of the Victorian Planning and Environmental Law Association (VPELA), a member of the Planning Institute of Australia (PIA) and am a Certified Practicing Planner.

## **1.4 Relevant Expertise**

- 1.4.1 During the past 25 years, I have gained extensive experience in a range of town planning matters, including medium and higher density housing, commercial land use such as regional shopping centres, liquor licencing matters and industrial developments throughout Victoria. I have experience in advising a variety of public sector and private clients on a wide range of planning and development issues, including social and economic impact analysis in the gaming industry and the preparation of cumulative impact assessments.
- 1.4.2 I was a member of the former RAPI working group on ResCode 2000 and was jointly responsible for the Institute's submission and presentation to the Ministerial Advisory Committee appointed to consider the Code. I was also an inaugural member of the Department of Sustainability's Planning Aid Program, which sought to provide free planning advice to the community.
- 1.4.3 I sat on the VPELA/PIA joint committee for the organisation of the 2010 State Planning Conference and in 2012 was selected as an Expert Community Panel Member for PIA's Clean Energy Future Project. I regularly present at VPELA/PIA events and in 2014, I was part of the 2014 Victorian State Planning Conference session on the zone reforms in Victoria.
- 1.4.4 I have been a guest lecturer at the University of Melbourne and RMIT in matters pertaining to planning and heritage on numerous occasions.
- 1.4.5 From 2010 to 2014 I was elected to the Architectural Registration Board of Victoria (ARBV), being Deputy Chair of the Board from 2013 to 2014.
- 1.4.6 I speak extensively at a variety of public forums, including the 2018 Glen Building Council of Australia Conference, the 2018 PIA National Congress in Perth and the 2018 International Urban Design Conference in Sydney. These topics range from social inclusion, protection of public spaces from overshadowing and the need for 'dangerous' ideas to reform the planning process in Victoria.
- 1.4.7 I have extensive experience before VCAT and the VCGLR regarding gaming matters. Since the creation of the 'net detriment test' in the Gaming Regulation Act in 2003, I have undertaken more than 100 social and economic impact assessments and given evidence before the VCGLR and VCAT dozens of times. These matters range from top ups, new venue applications – both in regional Victoria and metropolitan Melbourne. I have also undertaken work in this space in the Northern Territory.

## **1.5 Investigations & Research**

- 1.5.1 In the course of preparing this report I have (amongst other things):
  - Reviewed the following materials:
    - o The proposed Local Planning Policy as exhibited;
    - o The proposed track changes revisions to Clause 22.12 (Gaming) in response to submissions received;
    - o The Post VC 148 track changes version of the amendment documents;
    - o City of Melbourne Draft electronic gaming Machine Decision-making framework, October 2017;
    - o City of Melbourne Electronic Gaming Machine Review Draft Background Report, June 2017;

- o Submission of Mr Travis Finlayson (Ratio Consultants) on behalf of Doxa, dated 25 June 2018;
    - o Ratio Report – Melbourne City Council Gaming Policy Review (April 2015);
    - o Gambling Regulation Act 2003;
    - o Planning & Environment Act 1987;
    - o The Strategic Assessment Guidelines May 2017 – Planning Practice Note 46;
    - o Planning Panels Victoria Guide to Expert Evidence; and
    - o The Daily Population Estimates and Forecasts, City of Melbourne, 2017 Update.
  - Reviewed the relevant planning policies, including the PPF and LPPF of the Melbourne Planning Scheme and associated documents and policies.
  - Reviewed the schedules to Clause 52.27 (Licensed Premises) and Clause 52.28 (Gaming).
- 1.5.2 I was assisted by Mr. Brian Minogue, Ms Hayley Vinecombe and Mr. Ariel Utz Wirnsberger of my office in the preparation of this report.

## **1.6 Assumptions**

- 1.6.1 In forming my opinions about this proposal, I have relied upon the material referred to at 1.4.1 above as well as my experience in relation to applications under the Gambling Regulation Act and Planning and Environment Act.
- 1.6.2 In reviewing this proposal, I have been mindful of the importance of delineating the differences between the statutory considerations under the Gambling Regulation Act and the Planning and Environment Act.
- 1.6.3 In particular, the 'no net detriment' test under the Gambling Regulation Act is distinct in substance and application from the considerations under Clause 52.28, relevant to the consideration of an application of a planning permit to use or install gaming machines.

## **1.7 Relationship with Party for Whom the Report has been Prepared**

- 1.7.1 I have no relationship with Doxa other than a business agreement other than for the preparation of my independent expert opinion with regard to this matter and other venues owned by Doxa.
- 1.7.2 My company has also previously been engaged by Doxa for the preparation of a Planning Applications and Social & Economic Impact Statements for its two CBD venues. I have previously given evidence before the VCGLR regarding The Meeting Place and an application for additional EGMs. I have also been asked to provide advice to Doxa with regard to potential applications that concern gaming at venues operated by Doxa.

## **1.8 Summary & Opinion**

- 1.8.1 In summary, it is my opinion that:
- A revised and updated policy for gaming in the City of Melbourne is required. Such a policy should appropriately address the locational challenges for gaming related matters and provide better guidance as to how to determine applications to use or install gaming machines

in the City of Melbourne. The proposed amendment does not, in my view, do this adequately.

- The proposed amendment (pre and post exhibition) fails to acknowledge the differing context and issues influencing Gaming venues within the CBD compared to other areas of the municipality, and this is a fundamental failing of the policy;
- The proposed Clause 22.12 and Schedule to Clause 52.28 (post exhibition) do not properly address the considerations that are relevant to making planning decisions with regard to gaming machines under the Planning and Environment Act or Clause 52.28; and
- The Draft Background Report and Draft Decision Making Framework does not provide sufficient strategic policy basis to support the proposed amendment.

1.8.2 As a result, the amendment proposed by Council should not be included in the Melbourne Planning Scheme at this time.

1.8.3 These conclusions are expanded upon in the following sections of this statement of evidence.



### 2.1 Introduction

- 2.1.1 The City of Melbourne has several distinctly different geographical components that are fundamentally different to each other in terms of their spatial distribution of services and land uses.
- 2.1.2 The Central City (Hoddle Grid, Southbank and the Docklands) which includes Melbourne's primary business and financial centre, is home to retail, financial, legal, administrative, recreational, tourist and entertainment facilities and operates 24 hours a day, serving a wide variety of residents, workers and visitors (including tourists). This area is the engine room of the Victorian economy and the way in which land is both used and developed is markedly different here to other places in the City of Melbourne.
- 2.1.3 The future urban renewal areas of Arden-Macaulay and Fishermans Bend present their own challenges in terms of the spatial distribution of services and the use and development of land. The as yet unmet potential for these areas to make a significant contribution to urban consolidation, including the location of jobs, education and dwellings is considerable and requires an approach to planning not seen elsewhere in the municipality.
- 2.1.4 There are also the traditional lower rise residential areas such as South Yarra, Carlton, Flemington and North Melbourne, with their Victorian strip shopping centres and more traditional issues of heritage, neighbourhood character and residential amenity.
- 2.1.5 Of course, there are the areas that fall in between, such as the historical industrial and rail corridors of Dynon and Flemington, the mixed used precincts that surround them and other areas in between.
- 2.1.6 In my opinion, each of these different areas of the municipality requires a different approach with respect to consideration of gaming applications. The proposed policy, however, treats all areas as the same, which is a flawed approach.

### 2.2 The role of the Central City

- 1.1.1 The population of the CBD varies greatly from day to night and from week day to weekend.
- 2.2.1 Research undertaken by the City of Melbourne in 2017<sup>1</sup> indicated that there was an estimated 911,000 people who travelled to, or were present in the LGA on an average weekday in 2016.
- 2.2.2 In 2016, there were approximately 148,000 residents, 381,000 workers, 78,000 students, 170,000 metropolitan visitors, 14,000 regional visitors, 35,000 interstate visitors and 53,000 international tourists who lived in or travelled to the city on an average weekday. This clearly illustrates the draw of the CBD.
- 2.2.3 The study includes data relating to the spatial distribution of employment in the city, revealing that the vast majority of jobs<sup>2</sup> are concentrated in the three central areas being Melbourne CBD (48.4%), Docklands (12.9%) and Southbank (9.2%). These figures further emphasize the role played by the central city as well as the significant influx of non-residents who are present within the central city area on a regular basis

<sup>1</sup> Daily Population Estimates and Forecasts, City of Melbourne, 2017 Update.

<sup>2</sup> All jobs in 2016.

- 2.2.4 Forecasting for the City of Melbourne indicates that the resident population is expected to increase to 263,000 by 2036, whilst the number of workers is expected to increase to 549,000. International visitors are expected to triple to 159,000 in the same time period.
- 2.2.5 The primary reasons for Metropolitan Melbournians visiting the central city on a weekday include the following:
- Dining at a café/restaurant 5.2%
  - Shopping 20.9%
  - Sightseeing 10.6%
  - Personal Appointments 16.8%
- 2.2.6 The study forecasts that Melbourne will continue to grow in terms of daily population which will in turn translate into increased demand for more entertainment, cultural and sporting activities, as well as opportunities to socialise amongst other things.
- 2.2.7 Accordingly, the ‘community’ in which gaming machines are located is more complex and diverse than in any other locations in this state.

## 2.3 The Role of Tourism in Melbourne

- 2.3.1 Melbourne<sup>3</sup>, is a significant Victorian tourist destination for both international and national visitors. With two international airports, an extensive rail and road network the city is highly accessible.
- 2.3.2 According to Tourism Victoria<sup>4</sup>, Melbourne received 2.8 million international visitors, 9.8 million domestic overnight visitors and almost 18.7 million domestic day visitors for the year ended December 2018.
- 2.3.3 Domestic overnight visitors stayed 2.7 nights on average, compared with an average length of stay of 22 nights for international visitors. Domestic overnight visitors contributed the most to tourism expenditure in Melbourne, spending \$8.2 billion. This compares to \$7.7 billion and \$2.1 billion for international and domestic day visitors respectively.
- 2.3.4 The top three countries for international visitors to Melbourne are China (656,000), New Zealand (335,000) and the United States (231,500).
- 2.3.5 The role of tourism and the economic impact of spending is an important consideration in determining the social and economic effects of the location of gaming machines as the use of these machines by ‘non-locals’ is a consideration in determining the extent of their impacts, both positive and negative.

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<sup>3</sup> Greater Metropolitan Area

<sup>4</sup> Tourism Research Australia, Tourism Regional Profiles 2015, Melbourne, Victoria.

### 3.1 Introduction

- 3.1.1 The CBD is not only the State's largest activity centre but is by a significant measure the biggest entertainment and recreation precinct. The CBD is a focal point where hundreds of thousands of people travel every week for entertainment and recreation, whether it be going to a movie, a bar or nightclub, eating at a restaurant or playing gaming machines.
- 3.1.2 It follows that, venues that are located within the CBD or would be expected to be more concentrated and have higher than average Net Machine Revenue' (NMR). This is due to their location in an area that is more densely populated, where higher levels of activity of all kinds occurs for significant portions of the day and where they are accessible by a significant number of people than venues located outside such areas.
- 3.1.3 Whilst there are some venues in the central city that perform poorly and have a low NMR, from my inspection and knowledge of these venues. This is more likely to be because of the poor quality of the offer at the venue, including the physical environment.

### 3.2 Regional Caps

- 3.2.1 On 10 September 2012, the VCGLR re-determined the maximum permissible number of gaming machine entitlements available for gaming in each capped region. These caps were further revised by the Minister for Consumer Affairs, Gaming and Liquor Regulation on 20 September 2017, with the changes coming into effect from 3 November 2017. There are now 25 capped regions in Victoria.
- 3.2.2 The City of Melbourne has been divided into two parts – one is subject to the regional cap, whilst the remainder of the municipality is subject to a municipal limit<sup>5</sup>. The capped region comprises the localities of Carlton, Flemington, Kensington and North Melbourne that fall within the boundaries of the City of Melbourne. The number of EGMs within this region has been capped at 149.
- 3.2.3 The remainder of the municipality is subject to a municipal limit of 143 EGMs.
- 3.2.4 In accordance with Item 5 of the Ministerial Order, the precincts of the Melbourne Central Business District, Docklands and Southbank are excluded from this order and therefore there is no mandated limit on the number of entitlements that can be situated in these specific areas.
- 3.2.5 The differing approach to the imposition of caps within the City of Melbourne, and the absence of any cap over certain areas is one indicator that differing planning approaches are required for those areas. The proposed amendment does not reflect this.

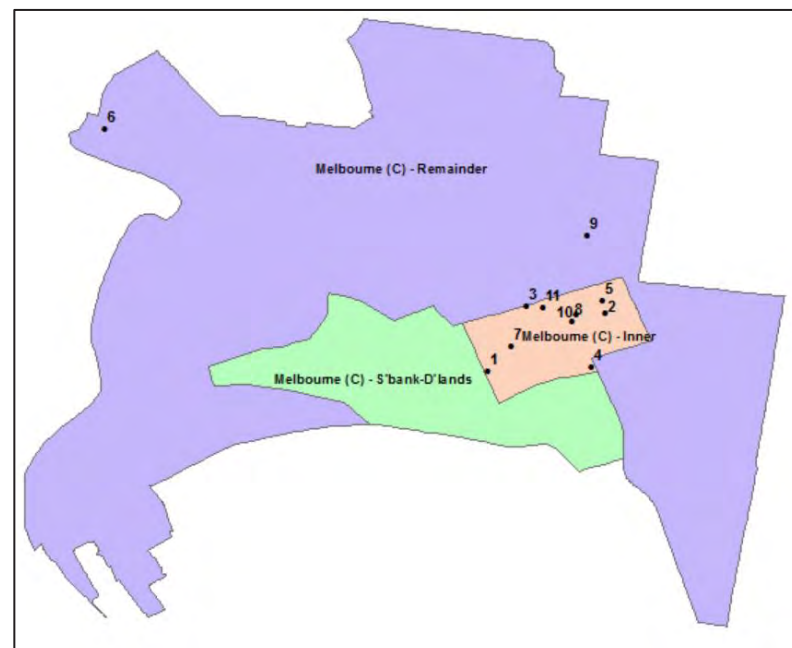
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<sup>5</sup> Not including any excluded areas.

The map displays the central business district (CBD) of Melbourne, Australia, with a focus on the Docklands and Southbank areas. A red line outlines the proposed Melbourne Cross Station, which is a large, irregularly shaped area. The map includes numerous street names and labels for various precincts and landmarks. Key precincts labeled include the Melbourne CBD, Docklands, Southbank, and various precincts within the CBD. Landmarks such as the Melbourne Museum, Melbourne Convention Centre, and Melbourne Cricket Ground are also indicated. The map is a detailed street map with a grid system, showing the layout of the city and the proposed station area.

### 3.1 Current Gaming Venues

- Figure 3.2: Location of Gaming Venues in the City of Melbourne



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**Table 3.1: Gaming Venues in the City of Melbourne (2016-2017 figures)**

	Venue	Address	Venue Type	Expenditure	Attached EGMs	Licensed EGMs	NMR <sup>[1]</sup>
1	Batman's Hill on Collins	623 Collins St, Melbourne	Hotel	\$2,067,959.99	22	22	\$257.53
2	Bourke Hill's Welcome Stranger	128 Bourke St, Melbourne	Hotel	\$14,375,382.55	100	100	\$393.85
3	Celtic Club	316-320 Queen St, Melbourne	Club	\$1,144,746.41	41	46	\$76.49
4	Clocks at Flinders Street Station	Shop 17, Flinders Street Railway Station, Melbourne	Club	\$10,478,362.92	100	100	\$287.08
5	Golden Nugget	117 Lonsdale St, Melbourne	Hotel	\$9,030,488.31	60	60	\$412.35
6	Headquarters Tavern	Epsom Rd, Flemington	Club	\$3,203,764.92	80	80	\$109.72
7	Mail Exchange Hotel	688 Bourke St, Melbourne	Hotel	\$7,981,761.67	80	80	\$273.35
8	Mercure Grand Hotel on Swanston	195 Swanston St, Melbourne	Hotel	\$14,764,179.74	90	90	\$449.44
9	Players on Lygon	186-200 Lygon St, Carlton	Hotel	\$7,755,690.64	69	75	\$307.95
10	Shanghai Club	242-244 Little Bourke St, Melbourne	Hotel	\$3,478,417.55	48	48	\$198.54
11	The Meeting Place	315-321 Elizabeth St, Melbourne	Club	\$6,068,466.14	56	56	\$296.89
<b>TOTAL EGMs</b>					<b>746</b>	<b>757</b>	

3.1.2 The metropolitan club average for machine performance was \$204.30 for the 2016-2017 financial year. For hotels this figures is \$368 per machine. It is evident that a number of venues fall below to well below metropolitan averages for Net Machine Revenue (NMR).

3.1.3 With high performing venues in the middle and outer suburbs achieving NMR of well over \$500 per machine per day, the performance of individual

<sup>[1]</sup> NMR is net machine revenue calculated by taking the total expenditure divided by the total number of machines and the days in the year (i.e. 365)

venues in the central city is not such as to put those venues in the category of the highest performing venues across the metropolitan area.

3.1.4 As at 20 November 2017, there were 11 gaming venues within the City of Melbourne. The latest statistics from the VCGLR website (2016-2017), which are based on the number of residents in a local government area, indicate that:

- Melbourne has a gaming machine density of 5.71 EGMs per 1000 adults which is higher than both the Metro and State averages of 5.15 and 5.47 respectively.
- Gaming expenditure (per adult) is \$615 which is higher than both the Metro and State averages of \$561 (\$54 higher) and \$542 (\$73 higher) respectively.
- Melbourne has a higher number of adults per venue (11,873) than both the Metro average (11,693) and the State-wide average (9,690).

3.1.5 As evidenced in Table 3.2 below, residents comprise a modest component of weekday users of the city.

**Table 3.2 Breakdown of weekday users of the central city**

Origin	No of People	%
Residents	148,000	16.8
workers	381,000	43.3
students	78,000	8.9
metropolitan visitors	170,000	19.3
regional visitors	14,000	1.6
interstate visitors	35,000	4.0
international tourists	53,000	6.0
Total	879,000	

Source: *Daily Population Estimates and Forecasts, City of Melbourne, 2017 Update*

3.1.6 I consider that the very high volumes of people who access the CBD on a daily basis and the extended levels of activity resulting from the broad entertaining offering throughout the central city over a 24 hour period that results in the overall high levels of gaming expenditure.



### 4.1 Introduction

- 4.1.1 There are two key pieces of legislation that control the use and operation of gaming machines in Victoria.
- 4.1.2 One of the challenges within the planning system, and the preparation of any planning policy pertaining to gaming, is to ensure that the different legislative considerations under each are recognised and that the ambit of consideration of planning applications does not stray from this statutory framework into the wider considerations that apply to applications made under the *Gambling Regulation Act 2003*.

### 4.2 State Legislation

#### Gambling Regulation Act 2003

- 4.2.1 The operation of gaming machines in Victoria is controlled by the *Gambling Regulation Act 2003* and is administered by the Victorian Commission for Gambling and Liquor Regulation (VCGLR).
- 4.2.2 The main objectives of the Gaming Regulation Act (GRA) are:
  - to foster responsible gambling in order to:
    - minimise harm caused by problem gambling; and
    - accommodate those who gamble without harming themselves or others;
  - to ensure that gaming on gaming machines is conducted honestly;
  - to ensure that:
    - i. community and charitable gaming benefits the community or charitable organization concerned;
    - ii. practices that could undermine public confidence in community and charitable gaming are eliminated; and
  - to promote tourism, employment and economic development generally in the State.
- 4.2.3 In determining whether a premises is suitable (either as a new premises with EGMs or an application for additional EGMs in an existing gaming premises), the VCGLR must, amongst other matters, be satisfied that the net economic and social impact of the approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.
- 4.2.4 The “no net detriment” test must be satisfied in response to the likely economic and social impacts of the introduction of machines. The test will be satisfied if, after weighing the likely positive and negative impacts of an application on the well-being of the community, the net outcome is either neutral or positive.
- 4.2.5 These considerations are different to the considerations relevant to planning applications, although there is some overlap.

#### Planning and Environment Act 1987

- 4.2.6 Section 60(1)(f) of the Planning and Environment Act 1987 (the Act) requires Council, as the responsible authority when determining an application (amongst other factors) to consider:
  - ‘any significant social effects and economic effects which the responsible authority considers the use or development may have.’

- 4.2.7 The Planning and Environment Act 1987 allows for the consideration of significant social and economic effects but does not require a consideration of net detriment.
- 4.2.8 For planning applications, these social and economic effects need to be considered in the context of the specific gaming provision at Clause 52.28 that is confined to considerations relating to the social and economic impacts of the location of the machines, rather than the particular issues of community well-being that are separately regulated under the *Gambling Regulation Act*.

### **Victorian Planning Provisions**

- 4.2.9 Clause 52.28 of the Victorian Planning Provisions (VPP) 'Gaming' requires a permit to install or use a gaming machine.
- 4.2.10 Clause 52.28 outlines the decision-making guidelines that Council must consider, as appropriate when determining whether to grant a planning permit for the use or installation of a gaming machine.
- 4.2.11 The purpose of Clause 52.28 is to:
- Ensure that gaming machines are situated in appropriate locations and premises;
  - Ensure the social and economic impacts of the location of gaming machines are considered; and
  - Prohibit gaming machines in specified shopping complexes and strip shopping centres.
- 4.2.12 The decision guidelines focus on locational criteria and include consideration of:
- '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.'
- 4.2.13 Clause 52.28 is directly worded to ensure that any permit required under the particular provision considers the social and economic impacts of the location of the machines and other impacts arising from the location of the machines.
- 4.2.14 Clause 52.28 does not provide discretion for the consideration of potential social harm or health issues as a result of gaming machines unless such effects would fall into significant social effects as referred to in Clause 4 of the Planning and Environment Act 1987. I discuss this further below.
- 4.2.15 Clause 71.02-3, which is discussed later, requires the balancing of conflicting planning policy objectives in favour of net community benefit and it is this component of the planning framework that is most often confused with the 'net benefit test' under the GRA.

### **What is the difference in the two legislative frameworks?**

- 4.2.16 There has historically been a degree of uncertainty and confusion between the considerations in the Planning and Environment Act 1987 (and the Planning Scheme) and the Gambling Regulation Act 2003. The



Tribunal has on many occasions identified and affirmed the substantive differences between these legislative regimes.

4.2.17 For the assistance of the Panel, I seek to clarify the differences as follows and will explore in further detail specific aspects later in this statement of evidence:

- The Gaming Regulation Act requires consideration of the net impact of gaming machines on the social and economic wellbeing of the community, which is often called the net benefit test. However, the Planning and Environment Act requires consideration of significant social and economic effects with Clause 71.02-3 requiring the balancing of competing planning policies to be weighed in the favour of net community benefit. These are, in my view, different tests and, as previously established by VCAT such as in the New Bay Hotel or Club Edgewater matters, it is not necessary to establish no net detriment under the planning framework.
- The Gaming Regulation Act requires the consideration of net impact on the community. This is defined as the whole of the municipality in which the relevant venue is located. In practice, this assessment looks firstly at the primary catchment in which the machines are proposed to be located, such as a 2.5km radius, and then secondly the entire LGA. Clause 52.28 requires the consideration of the social and economic impacts of the location of the machines. This requires a consideration of the land uses and interfaces proximate to the venue. This is similar to a proposal to develop land for an apartment building and the consideration of effects on the properties closest to the site from overshadowing, visual bulk and the like.

4.2.18 The requirement to consider the social and economic effects of the location of the machines is the greatest 'grey' area in the assessment of gaming machines under Clause 52.28.

4.2.19 A reading of Clause 52.28 indicates the relatively confined assessment required under the provision. On this basis and having regard to the numerous VCAT authorities relating to the confined scope of the assessment under Clause 52.28, only areas proximate to and directly impacted by the machines are relevant. This is consistent with the Exchange Hotel matter where social housing immediately adjacent to the proposed venue was found not to be compatible with gaming.

### 4.3 Planning Policy Framework (Melbourne)

4.3.1 I consider that some of the broader objectives and strategies of the Planning Policy Framework are relevant. These are as follows:

4.3.2 **Clause 11 (Settlement)** requires planning to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for employment and recreation amongst other things.

4.3.3 **Clause 11.03-1R (Activity centres – Metropolitan Melbourne)** includes strategies to support the development and growth of Metropolitan Activity Centres by ensuring they are, amongst other things, able to accommodate significant growth for a broad range of land uses.

4.3.4 **Clause 13.07.1S (Land use compatibility)** seeks to safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site effects. Strategies include ensuring the compatibility of a use or development as appropriate to the land use functions and character of the area by Directing land uses to appropriate locations and using a range of building design, urban design, operational and land use separation measures.

- 4.3.5 **Clause 17.01-1R (Diversified economy – Metropolitan Melbourne)** includes a strategy to Support the Central City to become Australia's largest commercial and residential centre by 2050, by planning for office, retail, residential, education, health, entertainment and cultural activity spaces.
- 4.3.6 **Clause 17.02-1S (Business)** has the objective *'to encourage development that meets the community's' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to their viability, accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities'.*
- 4.3.7 **Clause 17.04-1R (Tourism in Metropolitan Melbourne)** has the objective to maintain and develop Metropolitan Melbourne as a desirable tourist destination.

## 4.4 Local Planning Policy Framework

- 4.4.1 The Municipal Strategic Statement within Melbourne's Local Planning Policy Framework currently contains the following of relevance:
- 4.4.2 **Clause 21.02-2 (Context and history)** confirms that 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.
- 4.4.3 **Clause 21.02-2 (Melbourne's growth)** acknowledges the City's role as a national and international tourist destination and the State's entertainment and celebration capital, regularly drawing crowds from metropolitan Melbourne, regional Victoria and beyond.
- 4.4.4 **Clause 21.08 (Economic Development)** provides objectives and strategies for four key areas; retail, business, industry and knowledge. It re-confirms that the Hoddle Grid is the State's preeminent retail centre and that a proliferation of eating and entertainment uses should not undermine that character and range of services offered. Relevant Strategies include:

### Retail

*Strategy 1.4* Ensure that a proliferation of eating and entertainment establishments in local centres does not undermine the viability of their convenience retailing.

- 4.4.5 **Clause 21.10-6 (Cultural/Arts and Entertainment Facilities)** includes an objective to provide a diverse range of leisure, arts, cultural and entertainment facilities, one of the strategies to achieve this includes:

*Strategy 1.1* Discourage the concentration of sexually explicit adult entertainment, amusement parlours and gaming venues in the Central City.

*Strategy 1.3* Support entertainment, music and cultural attractions in Commercial and Mixed Use Zones, where consistent with the local amenity.

*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.

- 4.4.6 **Clause 21.12 (Hoddle Grid)** includes objectives under to Economic Development to 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.

Objectives also include supporting entertainment, bars, eating and other evening uses throughout the Hoddle Grid.

- 4.4.7 **Clause 22.12 (Gaming Premises)** applies to applications for gaming premises in the Mixed Use Zone, Public Use Zone, Public Park and Recreation Zone, Commercial Zones, Industrial Zones, Docklands Zone and Schedule 5 (City North) to the Capital City Zone.
- 4.4.8 The policy does not apply to Schedules 1-4 or Schedules 6 and 7 to the Capital City Zone.
- 4.4.9 The policy includes the following objectives:
- *To ensure that amenity, social and economic impacts of gaming are considered when deciding on a planning application.*
  - *To encourage applicants to submit a social and economic impact assessment with the 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 the surrounding residential areas.*
  - *To restrict the proliferation of gaming premises in areas where residential use is encouraged.*
  - *To ensure that a new gaming premises is consistent with the purpose of the zone applying to the land.*
- 4.4.10 Consistent with my previous review of Clause 22.12, I support the review and replacement of this policy.

## 4.5 Operational Provisions

- 4.5.1 **Clause 71.02-1 (Purpose of the Planning Policy Framework)** notes that 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 and sustainable development.
- 4.5.2 **Clause 71.02-3 (Integrated decision making)** seeks to integrate the range of policies relevant to the issues to be determined and balancing conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

## 4.6 Other policy documents

- 4.6.1 There are numerous documents, strategies and research papers that address gambling and problem gambling. Where relevant these have been referenced in the body of this evidence statement.
- 4.6.2 For the assistance of the Panel, I have provided a brief summary of the other municipality based policy documents.

### Gaming Machine Policy (1997)

- 4.6.3 This policy is a reference document to the current Clause 21.12 and presumably is the strategic basis upon which the current policy is based.
- 4.6.4 I understand that the policy itself cannot be found, and I also understand that this has been the case for some time. As an example, Council was unable to provide a copy of this document in 2015 when Ratio undertook its review of the gaming policy.

- 4.6.5 In view of the above, it is appropriate that any reference to this document be removed in any new policy.

#### **Melbourne City Council, Council Plan 2017-2021**

- 4.6.6 The 2017-2021 Council Plan, incorporates the Municipal Public Health and Wellbeing Plan, expresses the shared vision of the Council over the next four years.
- 4.6.7 The plan sets out the five health and wellbeing priorities for 2017-21 as follows:
- **Active Living:** Facilitate opportunities for people in the Melbourne municipality to live more active lifestyles.
  - **Healthier Eating:** Advocate for enhanced access to nutritious food in the municipality, so that eating healthy food is an easier choice.
  - **Preventing Crime, Violence and Injury:** Partner to create an environment that feels safe and minimises harm, including from alcohol and other drug use and violence against women and children.
  - **Planning for People:** Provide community and social infrastructure and services to maintain quality of life in a growing and increasingly diverse city.
  - **Social Inclusion:** Facilitate opportunities for all people to participate in the social, economic and civic life of the city, irrespective of ability, background, class, gender and orientation.
- 4.6.8 There is no reference to gaming or gambling within this document.
- 4.6.9 In Council Plan 2013-2017, an identified goal was to develop an Electronic Gaming Machine Policy for the municipality as a priority over the four year period.

#### **Melbourne City Council Gaming Policy Review, April 2015 (Ratio Consultants)**

- 4.6.10 Ratio Consultants was engaged by the City of Melbourne in 2015 to review the local policy contained at Clause 22.12 of the Melbourne Planning Scheme and produce a report outlining recommendations.
- 4.6.11 The review included a broad-brush overview of the existing local policy, the geographical context where the policy is applied, relevant legislation and noteworthy VCAT decisions.
- 4.6.12 Conclusions outline a number of deficiencies of the current local policy and make recommendations regarding the preparation of a new policy.
- 4.6.13 For the assistance of the Panel, these recommendations were:
- Include the Capital City Zone
  - Address locational issues
  - De-emphasise issues not typically associated with gaming machines, such as amenity and signage
  - Address the concentration of gaming venues in the CBD and provide a preferred method of calculation
  - Include criteria regarding venue layout and consider 25% as a threshold limit for gaming

### **4.7 Ministerial Direction 11**

- 4.7.1 Ministerial Direction 11 seeks to ensure that a comprehensive strategic evaluation is undertaken for planning scheme amendments.

- 4.7.2 It requires a planning authority to, amongst other matters, prepare an explanatory report as to why the planning scheme amendment is required, its consistency with various specified aspects of the PPF and the Planning and Environment Act and other authorities.
- 4.7.3 I am not satisfied that the proposed changes to the planning scheme are consistent with the Strategic Assessment Guidelines. In particular:
- As detailed later in this evidence statement, the effective outcome of the policy will be to prohibit gaming in central Melbourne or at the very least, to actively discourage it in the entirety of the CBD. I do not consider that such an outcome is consistent with the SPPF and the MSS, which recognising the important role of the Melbourne CBD in meeting the entertainment needs of Melbournians and its role as a tourist destination and economic powerhouse for the State
  - I consider such an outcome is not consistent with what should be the primary role of a gaming policy, which should be to provide guidance as to where gaming machines both should and should not be located, and to attempt to identify a proper strategic basis for those outcomes.
  - As discussed later in this evidence statement, the failure of the strategic documents to properly understand the differences between the central city area, the new and emerging urban renewal areas and the established areas is a major strategic failing and results in a policy that is both misguided and of little practical assistance to guiding planning decisions in these different contexts.

### 5.1 Introduction

- 5.1.1 Amendment C307 originally sought to include both the City of Melbourne Draft Background Report, October 2017 and the City of Melbourne, Draft electronic gaming Machine Review, Decision-making framework, October 2017 as reference documents in the proposed Clause 22.12<sup>7</sup>.
- 5.1.2 The most recent version of the documents proposed to remove reference to these documents in the decision guidelines to the proposed variation to the Schedule to Clause 52.28.
- 5.1.3 I agree that both these documents should not form part of the decision-making framework in assessing planning permit applications for gaming. As I explore in the sections below, I consider that both these documents fail to provide an appropriate strategic justification.
- 5.1.4 I consider that it is of assistance to the Panel to explore the failings of these documents as, regardless of whether they are referenced in the planning scheme, they have been central to the preparation of the policy.

### 5.2 City of Melbourne Electronic Gaming Machine Review Draft Background Report, October 2017

- 5.2.1 The Draft Background Report initially acknowledges the important economic role of the CBD, the city's diverse community of residents, workers, students and visitors and the relatively low levels of socio-economic disadvantage. It also notes that the Hoddle Grid operates 24 hours a day, seven days a week and includes events that are a major attractor for visitors from across the nation and globally.
- 5.2.2 The gaming context within the LGA is explored within the report and it confirms that the clear majority of gaming venues are located within the Hoddle Grid.
- 5.2.3 The report also highlights that the Hoddle Grid, Southbank and Docklands are not subject to the regional or municipal cap and this area includes the Crown Casino. However, no further discussion is provided around the significance of this and reasons why the Minister's Order<sup>8</sup> excludes these areas from the capped areas.
- 5.2.4 Whilst the background report compares the City of Melbourne's gaming machine density and venue characteristics to other suburban and regional municipalities it does not appear to do so in the context of the role of the City and more relevantly the CBD as a significant economic and tourism generator, and how this impacts on the gaming context.
- 5.2.5 In my opinion, it is not helpful to compare the gaming statistics in the City of Melbourne with other municipal results given the very significant influx of visitors and workers into the central city on a daily basis. The conclusions of this report, a number of which are based on the higher than average gaming statistics, demonstrates a failure to appreciate this significant factor.
- 5.2.6 The background report refers to the Crown Casino in terms of its overall size and offer as well as its location. The report states that a number of these factors as well as the level of expenditure on EGMs at the Casino need to be taken into account when assessing the overall accessibility to gambling activities in the municipality. However, it is not clear how these factors have been taken into account.

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<sup>7</sup> Or a decision guideline in Schedule to Clause 52.28 (Post VC148 version)

<sup>8</sup> Ministerial order 20 September 2017, Gambling Regulation Act 2003, Part 5



- 5.2.7 Whilst the report references that the Casino's 2,628 licensed EGMs and table games had a revenue of \$1.99 billion in FY 13/14, it does not address the significance of this in terms of overall EGM expenditure within the City.
- 5.2.8 I understand that the Main Floor EGMs within the Casino generated almost \$500 million<sup>9</sup> in FY 17/19<sup>10</sup>, this would account for 85% of all EGM expenditure within the City in the same year. The background report fails to properly acknowledge the significance of this figure and the very real influence the Casino has on the gaming landscape in the City of Melbourne. Out simply, the gaming landscape in the City of Melbourne is fundamentally different to anywhere else in Victoria.
- 5.2.9 The report does not address or investigate how the operation of the Casino and its 2,628 licensed EGMs might influence or affect expenditure at other venues within the CBD. Nor does the report provide guidance to a future decision maker on how the location of the Crown Casino and its EGMs may influence those attending gaming venues within the CBD.
- 5.2.10 Section 6.5 of the report attempts to distinguish the key differences between the considerations under planning and gaming legislation. A key failure in this discussion is the lack of clarity provided around the net community benefit test under the gambling legislation and the balancing of objectives in favour of net community benefit in the context of making a planning decision as required by Clause 71.02-3 of the Melbourne Planning Scheme.
- 5.2.11 As I have referenced above in Paragraph 4.2.15 there is a small but critical difference to how this assessment must be carried out, however the background report misses this key difference and appears to suggest that net community benefit is a material consideration for a statutory application for EGMs without further explaining how a decision maker should apply this consideration.
- 5.2.12 The report goes on to set out a framework for assessing socio-economic impacts of gambling related harm which provides a basis for the framework used in developing the proposed local policy.
- 5.2.13 The framework (8.3.2, page 51 of the report) includes a list of the geographic and physical factors that have been widely acknowledged as relevant to making decisions about potential for gambling-related harm. These include convenience vs destination gaming, density of EGMs, clustering etc.
- 5.2.14 The list could be appropriate for a typical suburban or activity centre context. But, it does not include any specific detriments which might relate to a geographical context such as the CBD, nor does it address how these widely accepted detriments might be affected by the significant and diverse population numbers interacting with the CBD daily and nightly.
- 5.2.15 The background report draws on a range of useful studies and reviews previous VCAT decisions as well as local gaming policies as they apply to municipalities such as Maribyrnong, Moonee Valley and Cardinia. The context of these municipalities is very different from that of the City of Melbourne.
- 5.2.16 Whilst I agree with many aspects within the background report, I consider there is a fatal flaw in that the background report fails to fully acknowledge and link the key role that the City of Melbourne, and more specifically the CBD, has on the gaming context within the municipality. Further, the background report makes no attempt to differentiate

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<sup>9</sup> Excluding VIP

<sup>10</sup> Crown Resorts, Annual Report 2018

between the very different areas of the City of Melbourne or develop policies or guidance that are tailored to these different contexts.

- 5.2.17 Melbourne is distinctly different to any other local context where gaming policies have been applied within Victoria and therefore needs to be treated in a unique and different manner.
- 5.2.18 I expand on these reasons further below (Section 5.4)

### **5.3 City of Melbourne, Draft electronic gaming Machine Review, Decision-making framework, October 2017**

- 5.3.1 The Draft Decision-making framework (draft framework) is said to have been developed to assist Council in its decision making and review of gaming applications under both planning and gaming legislations.
- 5.3.2 The draft framework includes much of the same information as the background report but in a condensed manner. Therefore, it also misses the key items I have referenced above and expand on below.
- 5.3.3 A key inclusion in the draft framework is the provision of a Social and Economic Assessment (SEIA) Tool at Appendix 2. The tool is proposed to be used by decision makers in the review of gaming applications under planning and gaming legislation.
- 5.3.4 Whilst I understand the benefits of such a tool, the draft framework fails to distinguish the application and use of the tool under the two different legislations.
- 5.3.5 The tool requires a significant level of detail to be provided and assessed, it is then allocated a positive or negative indicator. The tool does not distinguish the key differences between the planning and gaming decision making framework.
- 5.3.6 For a planning application for EGMs, the tool requires items such as employees employed as result of the proposal, harm minimisation measures and the extent of community contributions and their beneficiaries. I do not consider that these are all matters that are necessarily required for consideration or assessment of a planning application under Clause 52.28.
- 5.3.7 Other apparent failures in the SEIA tool is the assessment of the patron profile, where the tool suggests that the SEIA will need to review the suburb or LGA of residence of patrons if they reside in a municipality outside of Melbourne LGA. There is a real question as to how this could practically be done in the context of the City of Melbourne<sup>11</sup>, or the value of such information if it could.
- 5.3.8 In summary, the draft framework includes the fatal flaws of the background report as discussed further below.

### **5.4 Do the supporting reports provide sufficient strategic policy basis to support the proposed amendment?**

- 5.4.1 It is my opinion that both the draft background report and the draft decision making framework are fatally flawed and neither provide sufficient strategic policy basis to support Amendment C307.

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<sup>11</sup> This is based on several patron surveys I have seen for CBD venues where patrons come from almost all over Melbourne



- 5.4.2 Whilst I agree with Council's decision to remove reference to these documents in the Schedule to Clause 52.28, I consider that it is still relevant to explore the basis upon which the schedule and changes to the MSS have been prepared.
- 5.4.3 The key flaw within the documents is their failure to adequately address the locational challenges for gaming related matters and their failure to properly acknowledge the differing context and issues influencing Gaming venues within the CBD. This is a fundamental failing of the supporting material.
- 5.4.4 As discussed in Section 2.1.1 and 2.2.5 above, Melbourne CBD provides key services and facilities for its residents, workers and visitors including employment, recreation and leisure, retail, entertainment and education. It is also a significant tourist destination for both international and national visitors.
- 5.4.5 The City of Melbourne is a major contributor to the Victorian economy, with a Gross Local Product (GLP) of \$94.96 billion in 2017, it accounted for 25% of Victoria's Gross State Product<sup>12</sup>. There are over 460,000 jobs located within the municipality, with almost half of these located within the CBD<sup>13</sup>.
- 5.4.6 Whilst the City has an average weekday daily resident population of 148,000 it experiences a total daytime population<sup>14</sup> of 911,000 on an average weekday and over 660,000 on an average weekend. The City also experiences significant fluctuations of night time population of residents compared to overall population. This significant population makes up the overall community of city users and I would expect that the CBD accounts for a large share of this overall population.
- 5.4.7 This role the CBD plays within the local and state economy will have significant impact on the differing land uses contained within the CBD, including gaming venues.
- 5.4.8 In summary, this influence will affect:
- The overall level of gaming expenditure;
  - EGM expenditure per venue;
  - EGM expenditure per adult;
  - Density of EGMs per adult; and
  - Net Machine Revenue (NMR) per EGM.
- 5.4.9 All of these measures are widely used as key gaming indicators and are compared to other metropolitan councils to help make decision about the suitability of a location for gaming machines (i.e above or below average is identified as a risk factor).
- 5.4.10 These indicators are referenced in the above supporting reports to be used for determining risk factors associated with a proposal for EGMs within the City of Melbourne. The approach of comparing the above figures to the CBD is defective as the level of non-resident city users who partake in gaming will be significantly higher for the City compared to the Metropolitan average. Put simply, such comparison is entirely unhelpful.
- 5.4.11 The influence of the CBD's spatial distribution of land uses and services has a significant influence on how gaming is accessed (when compared to other metropolitan areas) including:

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<sup>12</sup> City of Melbourne Economic Profile

<sup>13</sup> Census of Land Use and Employment (CLUE) 2017, City of Melbourne

<sup>14</sup> Residents, workers, students and visitors

- The ability to travel by public transport to another gaming venue within the CBD;
  - The significant level of passer by trade;
  - The wide range of competing non-gaming entertainment facilities including food and drinks premises that operate throughout the night;
  - The mix of vertical land uses; and
  - The ability to access a range of services.
- 5.4.12 All of these (and many more) aspects undoubtedly have the ability to influence how and why gaming venues are accessed within the CBD. The supporting reports fail to appropriately instigate and address these significant matters. I consider this to be fatal to the ability of the reports to support an Amendment of this nature.
- 5.4.13 I note that the critical role of the CBD and its influence on gaming is clearly acknowledged by the Gambling Regulation Act 2003 and the Ministerial Order which relates to regional and municipal caps (Refer 3.1.1).
- 5.4.14 The unique characteristics of Melbourne's spatial fabric and impact on gaming is further acknowledged by the drafting of Clause 52.28-5, which specifically excludes the Capital City Zone from being considered a strip shopping centre. I assume that that this is exemption is included in acknowledgment of the city's unique role.
- 5.4.15 It widely understood that the City of Melbourne has unique characteristics that warrant a different approach to the 'standard' approach to consider gaming applications. The City of Melbourne has been regarded as the principal destination style gaming area in Melbourne apart from Crown Casino<sup>15</sup>. The exclusion of the CBD, Southbank and Docklands from regional and municipal caps and its treatment in Clause 52.28-5 is in recognition of the unique role that these areas have within the state, particularly as entertainment precincts.
- 5.4.16 I consider that a background report supporting a new local policy for Gaming would need to explore these differences in detail (and most likely apply a set of considerations that are specific to the unique nature of the CBD and the other excluded areas of Southbank and Docklands). In this instance, these differences have not been appropriately explored. Instead, the report simply paints all locations within the City with the same brush by applying the same strategic considerations regardless of context.
- 5.4.17 The treatment of the CBD or Central City as being fundamentally different to the remainder of the municipality is not a new principle in the drafting of local policies within the Melbourne Planning Scheme.
- 5.4.18 A number of local policies and particular provisions within the Melbourne Planning Scheme have particular regard to the unique role these precincts play both in terms of land use and built form outcomes.
- 5.4.19 Notably Clauses 22.01 and 22.17 have differing policies providing guidance on Urban Design within and outside the Capital City Zone. The same applies to Clauses 22.04 and 22.05 and their guidance on Heritage Places within and outside the Capital City Zone.
- 5.4.20 This difference in the role and influence of the Capital City on land uses is also established through Clause 22.11 (Sexually Explicit Adult Establishments), which applies specific considerations and guidance for

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<sup>15</sup> Regional EGM Machine Caps Review Panel, Office of Gaming and Racing, Doj, Nov 2005.

land use assessments with the Capital City Zone compared to the remainder of the municipality.

- 5.4.21 I also note that the schedule to Clause 52.27 (Licensed Premises) excludes all land from within the Capital City Zone and Docklands Zone from requiring a permit for a licence required under the Liquor Control Reform Act 1998.
- 5.4.22 These examples provide evidence of how the Melbourne Planning Scheme treats the central city differently from a built form and land use perspective to the remainder of the municipality. A policy that does not do this is not, in my view, an appropriate policy-particular with regard to gaming.
- 5.4.23 The starting point in development any local planning policy for gaming needs to treat the uniquely different geographical areas with an individual approach suitable to their context. The importance of this is heightened when seeking to apply a gaming policy, considering the unique and contrasting social and economic profiles within the municipality. It cannot be case where a 'shoe fits all approach' can be applied.
- 5.4.24 Whilst I consider the above matter to be fatal in and of itself, there are also several other matters which are of concern to me and I set these out as follows:
- Both documents fail to distinguish between the considerations under the relevant gambling and planning acts. A common mistake made is the blurring of considerations between the two pieces of legislation, confusing Council planners, the community, Councillors and other parties. Accordingly, I consider this failure of the supporting reports creates more confusion than clarity for the decision maker.
  - The documents intertwine a range of considerations which are not relevant to the planning framework making it difficult for the reader and future decision makers to distinguish what to place on elements (if any). This is particularly relevant for the SEIA tool within the draft framework.
  - There is insufficient connection between the documents and the local policy as drafted. It appears that the policy has been drafted picking out certain elements of the documents and excluding others (with equal weight) without any clear explanation. An example being that the benefits associated with gaming are not acknowledged in the local policy in any way.
  - The supporting reports refer to a cluster of venues being three venues within 400m of each other, this is varied in the proposed local policy which appears to discourage number of venues within 400m of each other to two.
  - A 400m buffer distance from incompatible land uses or sensitive community activities is referenced on page 53 of the background report for proposals that may be deemed appropriate. I consider the adoption of a distance of 400 metres is appropriate to a CBD context. This test, which is typically applied to represent easy walking distance to public transport and other facilities, is not the appropriate test in this instance. This is because the entirety of the CBD would be within 400 metres of one or more of these land uses, which means that everywhere is identified as being an inappropriate location.

- The supporting documents fail to appropriately address or discuss the influence of Crown Casino on the operation of EGMs within the city.
- The supporting reports appear to take a negative approach on minimising harm often associated with gaming machines rather than providing an unbiased analysis on the perceived benefits and negative impacts of gaming.

5.4.25 As a result, I consider that neither the Background report or the Decision-Making Framework provide sufficient strategic context and analysis to support the proposed amendment.

### 6.1 Introduction

- 6.1.1 Given the outcome of my above review of the supporting material for the proposed amendment I have reviewed the proposed Local Policy (and schedule to Clause 52.26) in light of my opinion that the amendment is fatally flawed and should not proceed in its current form. Wholesale review and changes are required.
- 6.1.2 Notwithstanding this, I consider it would be appropriate for Council to prepare a local planning policy that seeks to guide decision making under the parameters of Clause 52.28 and the locational/spatial issues associated with gaming machines.
- 6.1.3 The local planning policy will need to be based on a background that truly investigates and explains the influence of the CBD and wider central city on gaming. This may also be in the form of one policy that clearly distinguishes between the city's unique areas or multiple policies. Regardless, this work needs to be underpinned by strategic work that addresses the above referenced issues.
- 6.1.4 To assist with any future policy drafting and for the benefit of the panel I have identified the concerns I have with the drafting of the policy (post gazettal). I have been conscious not to revisit items of concern I have identified above.

### 6.2 Application

- 6.2.1 The policy is proposed to be applied to all planning permit applications to install or use a gaming machine under Clause 52.28 of the Melbourne Planning Scheme.
- 6.2.2 For the reasons I have detailed above, I consider there is a fatal flaw to the policies application as the supporting material fails to acknowledge the differing context and issues influencing Gaming venues within the CBD versus the balance of the municipality and this is a fundamental failing of the policy.

### 6.3 Policy basis

- 6.3.1 The policy basis fails to link back to the objectives and strategies of the MSS. A number of objectives and strategies (refer 4.4 above) reference the encouragement of entertainment uses and the vibrancy of these uses within the CBD, Docklands and Southbank.
- 6.3.2 The policy basis fails to acknowledge that there are both social and economic benefits to gaming. As such the policy basis is not suitably balanced or reflective of the objectives and strategies contained within the MSS. The policy seems to be entirely focused on identifying where gaming venues should not be located and gives no real regard to where they should.

### 6.4 Objectives

- 6.4.1 Clause 22.12 proposes to include seven objectives. I have identified the objectives which I have concern with and which should be addressed through a revised amendment.
- 6.4.2 The proposed objectives should better reflect the policy directions and the objectives and decision guidelines of Clause 52.28. Accordingly, I have reviewed these and provide commentary as to their appropriateness for inclusion in a new Clause 22.12.

- To minimise gambling-related harms to individuals and the community.

6.4.3 As a statement of intent, a desire to minimise 'harm' may be appropriate. However, the limited role of the planning scheme in addressing all types of gaming 'harm' is not recognised. Further I see no reason why the policy should not also have as a purpose to maximise benefits. This would properly recognise that are benefits that flow to the community from gaming machines.

- To ensure that gaming machines are situated in appropriate locations and premises to prevent convenience gambling

6.4.4 A local planning policy cannot feasibly prevent convenience gambling, particularly in the CBD, where conceivably everywhere has a high level of convenience. I agree that gaming machines should not be located in direct proximity to everyday shopping, such as a supermarket. However, accessibility and convenience must be considered in a CBD context.

- To ensure that gaming venues do not detract from the amenity of surrounding uses.

6.4.5 One of the decision guidelines of Clause 52.28 requires consideration of the compatibility of the proposal with adjoining and nearby land uses, and the policy needs to make an effort to recognise this and respond.

6.4.6 To this end, it is appropriate for one of the objectives of a local gaming policy to consider the amenity impacts of a proposal to install gaming machines, although this is rarely a significant issue.

- To ensure that the location and operation of gaming machines achieves net community benefit.

6.4.7 There has been some debate in the past about whether it is necessary to demonstrate that there will be a net social and economic benefit flowing from the approval of a planning permit application for gaming machines. I am mindful that under the Gaming Regulation Act 2003, the relevant test is that there be no net detriment to the social and economic wellbeing of the community.

6.4.8 Previous Tribunal decisions have clarified that it is not relevant as part of a gaming application to demonstrate that a proposal will result in a net community benefit.

6.4.9 Whilst Clause 60 of the Planning and Environment Act allows consideration to be given to any significant social and economic effects, this needs to be considered in the context of the specific gaming provisions at Clause 52.28 that focus on the social and economic impacts of the location of the machines as well as the requirements of Clause 71.02-3 which seeks to ensure that there is a balancing of competing planning policy objectives in favour of net community benefit.

6.4.10 Any objective relating to net community benefit within a local policy needs to be clear that it is to be applied as per the requirements of Clause 71.02-3 rather than the broader issues of community wellbeing that are separately regulated under the Gambling Regulation Act. In my experience, this often leads to confusion with decision makers where references to community benefit are contained within similar local gaming policies.

6.4.11 Inclusion of a requirement to achieve net community benefit would suggest that each and every gaming machine installed within the municipality must achieve a net community benefit. This is the incorrect application of Clause 71.02-3 of the Planning Scheme. It is also entirely



unnecessary, since this is a policy that already applies to every planning application already, being part of the State Policy Framework.

- To discourage the proliferation of gaming premises in locations where the predominant use is residential.

6.4.12 I am not convinced how discouraging gaming in areas where the predominant use is residential is in line with the strategic background documents. Nor am I aware of any studies or research that indicate that there is a link between problem gambling and proximity to residential land uses. It would seem to me that every part of the CBD might be regarded as 'predominately' residential. Yet, if this is not the case, it is not possible to work out which parts are not intended to fall within this description.

6.4.13 In the central city where many uses are 'as of right', it is difficult to see how this could be usefully determined in any event.

6.4.14 Furthermore, the use of the 'proliferation' could be interpreted in a number of ways adding to confusion for decision-makers.

## 6.5 Policy

6.5.1 It is appropriate for local gaming policies to provide guidance on the location of gaming machines. However, my concern with the proposed policy is that it primarily details where gaming should not be located and does not provide sufficient guidance on where gaming should or can be located.

6.5.2 Additionally, the application of Council's policy requirements to the CBD context would effectively discourage gaming across the entire CBD. This is clearly an effect of the poorly drafted supporting documents which fail to acknowledge the context of Melbourne's CBD and its influence on gaming.

6.5.3 Whilst I do not support the proposed policy proceeding in its current form and I consider that a completely different approach is required, I have reviewed each of the policy directions and provide commentary for the assistance of the panel and to further emphasise the many flaws in the drafting of this amendment and proposed policy.

### Location

6.5.4 The policy proposes that gaming venues and EGMs:

- 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 in the surrounding area such as hotels, clubs, cinemas, restaurants, bars, theatres, galleries, exhibition centres, sporting venues and indoor recreation facilities.

6.5.5 I have no particular concern with this policy but note that this seems to apply to all of the City of Melbourne and therefore is of very limited value to decision makers.

- Should be located where they would make a positive contribution to the redistribution of gaming machines away from relatively disadvantaged areas, as defined by the latest SEIFA Index of Relative Socio-economic Disadvantage.

6.5.6 I understand the logic behind this policy requirement however the ability to enact this requirement through a planning permit application is not achievable through the current regulatory framework. This policy appears

in other local gaming policies also and I understand it is a carryover from the previous gaming regime where EGMs were controlled by the Tattersalls and Tabcorp duopoly, enabling easier movement of EGMs between venues.

- 6.5.7 This policy requirement should therefore be deleted from any future policy as it is redundant, and is impossible to achieve.
- Should not be located in buildings used for residential purposes
- 6.5.8 I note that the VCGLR have issued a direction that the location of gaming machines in a building with permanent residential accommodation is inconsistent with the *Gambling Regulation Act 2003* responsible gambling objectives.
- 6.5.9 The policy objective should be revised to include the word 'permanent' as there is not valid reason to include a blanket discouragement on the co-location of gaming and other residential uses such as serviced accommodation or a residential hotel.
- Should not be located within locations where the predominant surrounding land use is residential
- 6.5.10 As per my comments above, this policy requirement is not supported by background policy or research and should be deleted.
- 6.5.11 An assessment on the appropriateness of the location needs to be undertaken on a case by case basis reflective of the immediate context of the location in review.
- 6.5.12 I also highlight the clumsy use of 'located within locations'.
- 6.5.13 At this point, no part of the policy is particularly useful or helpful in assisting a decision making about where gaming machines should or should not be located.
- 6.5.14 The final bullet point identifying where gaming machines should not be located does, in my view, highlights the failure of the policy to appropriately understand the context of the CBD and central city.
- 6.5.15 To assist the Panel in the understanding of the implications of applying the proposed policy I have prepared a series of maps which portray the application of the proposed policy to the CBD.
- 6.5.16 These maps are attached as APPENDIX A and demonstrate the effective outcome of the application of this aspect of the policy.
- Should not be located within 400m walking distance or a clear line of sight of:
- 6.5.17 I consider that the distance of 400 metres is too far considering its application to a CBD context. This test, which is typically applied to represent easy walking distance to public transport and other facilities, is not the appropriate test in this instance. I do not believe that such a blanket buffer distance is appropriate and that a performance-based approach should be undertaken.
- 6.5.18 The inappropriateness of the 400 metres is evident in reviewing the impact in the mapping in Appendix A.
- 6.5.19 Further, the concept of a 'clear line of sight' is vague, and unhelpful. The mere ability to see one or more of these various things has not been demonstrated in my opinion to be likely to have any significant influence on gaming behaviour, particularly in the context of the CBD.
- An existing or approved gaming venue



- 6.5.20 The supporting reports refer to a cluster of venues being three venues within 400m of each other<sup>16</sup>. However, this threshold is reduced to two venue in the proposed local policy, meaning that any other gaming venue within 400 metres creates a cluster.
- 6.5.21 There is no strategic support for a policy requirement of this nature and furthermore it does not make practical sense to include a requirement of this nature, particularly within the context of the CDB.
- Shopping complexes or strip shopping centres
- 6.5.22 Clause 52.26 specifically notes that strip shopping centres does not include any land within the Capital City Zone and therefore it is unclear and confusing to include reference to strip shopping centres with the local policy without clear direction to the decision maker that this policy does not apply to the Capital City Zone.
- 6.5.23 A prohibition of gaming within defined shopping complexes within the City already exists within Clause 52.28 and the Schedule to Clause 52.28. The policy seeks to discourage gaming within 400m of any of these defined shopping complexes.
- 6.5.24 There does not appear to be apparent strategic justification to support such a buffer in the context of the CBD where its role as a retail and entertainment precinct is clearly established through the MSS. Whilst I support the concept of gaming machines not being located directly proximate to convenience retail in the CBD, I consider that 400 metres is too great a distance.
- Public transport interchanges
- 6.5.25 A public transport interchange has been described by Council as an area where two or more public transport routes intersect. Given the location of railway stations, existing and proposed, the extensive tram network and extensive bus routes, it is arguable that almost every intersection in the Hoddle street grid is a public transport interchange.
- 6.5.26 The proposed policy seeks to apply a 400m buffer to public transport interchanges. Given the recognition of the Hoddle Grid as a transport hub within the MSS, the effect is to discourage gaming from virtually the entire central city area.. This requirement once again fails to understand the context of the CBD.
- 6.5.27 I have mapped these areas in Appendix A. I have not included bus interchanges as there are is a large number of these and it is difficult to map in limited time.
- Concentrations of social housing (housing for people on lower incomes that is owned or leased by the Department of Health and Human Services, registered housing associations or non-for profit housing organisations).
- 6.5.28 The background report (page 74) suggests that a concentration of social (community and public) housing will generally be said to exist if there are 50 or more dwellings of that type within a circle of a 150m radius (Moonee Valley) or 25 or more dwellings within a radius of 150m (Mount Alexander).
- 6.5.29 The background report does not discuss how this should be applied to a CBD or central city context. Given the nature of intense land use mix within the CBD I expect that any use of the term 'concentration' would be reflective of the highly concentrated spatial characteristic of the city rather than an area such as Mount Alexander or Moonee Valley.

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<sup>16</sup> It is not evident how this threshold was determined

- 6.5.30 Furthermore, the application of crude 400m buffer in this instance does not have strategic merit or research support.
- 6.5.31 I agree with the consideration of the location for gaming and its impact on vulnerable groups, however this should not be in the form of a one size fits all buffer, particularly within the context of the CBD. This should be assessed on a case by case basis but should be a consideration.
- Student Accommodation
- 6.5.32 I am aware that recent studies<sup>17&18</sup> indicate that young people are a high-risk group for gambling problems and that overseas students are at higher risk to problem gambling than domestic students.
- 6.5.33 In 2010, it was estimated that there was a total of 208,800 students in tertiary education within the City of Melbourne<sup>19</sup> with 12 per cent of these students are international students.
- 6.5.34 International students have been identified as being significantly more likely to be problem gamblers (6.7%) than domestic students (4.2%)<sup>20</sup>. However, the 2011 research into problem gambling and international students, outlines that EGMs are one of the least preferred forms of gambling.
- 6.5.35 This is verified by the findings of Moore, Thomas and Kale's study which identifies that the frequency of gambling by international students on EGMs is lower for international students when compared to domestic students.
- 6.5.36 The study also finds that the frequency of gambling on EGMs by international students sits well below a number of other preferred forms of gambling such as playing cards, sports betting, casino gaming tables and internet car games.
- 6.5.37 Whilst problem gambling among international students was found to be five to ten times that of the general population estimates, their preference for use of EGMs was amongst the lowest of preferred gambling options.
- 6.5.38 I also note that the decision making framework does not identify students as being within the socio-economic factors for increased gambling related harm.
- 6.5.39 As a result, I consider that the crude application of a 400m buffer is unjustified in this instance and has no strategic justification.
- *A gambling sensitive service or facility that is used by people experiencing or vulnerable to gambling-related harms such as offices of specific problem gambling services, financial counselling services and material and financial aid services.*
- 6.5.40 I acknowledge the importance of a location assessment of these uses given the potential for amenity impacts, however I consider that the distance of 400 metres is too far particularly considering its application to a CBD context.

<sup>17</sup> Problem gambling among international and domestic university students in Australia: who is at risk? J Gambl Stud. 2013 June

<sup>18</sup> Swinburne University, Bond University, and Deakin University, 'International student gambling: The role of acculturation, gambling cognitions and social circumstances (June 2011)

<sup>19</sup> Student and Education Profile of Melbourne Local Government Area, City of Melbourne, Melbourne City Research, May 2010.

<sup>20</sup> Swinburne University, Bond University, and Deakin University, 'International student gambling: The role of acculturation, gambling cognitions and social circumstances (June 2011)'

### **Venue design and operation**

- 6.5.41 I note that it is generally the ambit of the VCGLR and Gambling Regulation Act to determine if a venue is appropriate for the use of EGMs, however given many planning permits for gaming machines also include buildings and works components there is some overlap.
- 6.5.42 I do not raise significant concerns with requirements of this policy but do identify the following areas which some modification will be required in the drafting of a future local policy.
- 6.5.43 These are as follows:
- Second point; the reference to 'physical and functional separation' and 'passerby pedestrian and vehicle access' are likely to be near impossible to apply in a CBD context. These references should be deleted.
  - Third point: This is a requirement more appropriately covered under a policy relating to advertising signs.
  - Fifth point: I agree that gaming should not be the dominant activity associated with the use in terms of floor area. Whilst the 25% application may be a good starting point it could be difficult to achieve within the condensed nature of a CBD context. The policy should include guidance on when it might be appropriate to vary a 25% requirement.

### **6.6 Application requirements**

- 6.6.1 I am generally comfortable with a number of the application requirements set out at Clause 22.12-3 as they provide a suitable level of information required for the responsible authority to make an informed decision.
- 6.6.2 I also note that the post exhibition version of the policy includes an overarching 'where applicable' quantifier to allow some in what is considered to be an application requirement. This is more helpful than the exhibited version.
- 6.6.3 However, given my above opinion in relation to the failure of the policy to appropriately acknowledge the context of the CBD there are a number of application requirements which I view to be clearly inappropriate.
- 6.6.4 I have focused on highlighting my areas of concern below:

#### Proposal details

- Third sub point: As discussed above, details regarding transfer of EGMs from another venue is not a practical application requirement under the current regime because machines are not 'transferred' from venue to venue anymore. Furthermore, the application of density of gaming machines per 1,000 adults fails to acknowledge the unique characteristics of the city's community and therefore its application is unhelpful.
- Fourth sub point: Similar to the above this point needs to be reflective of the context of the CBD including the influence of tourism and the crown casino on gaming expenditure.
- Sixth sub point: The requirement to provide pedestrian counts within a CBD context is considered onerous and unhelpful in the determination of an application under the planning framework. No guidance is provided on how the results of a patron should be interpreted in terms of determining an appropriate location particularly when determining a proposal within a CBD context

and realistically, there will be high pedestrian counts in almost all locations.

- Eight sub point: The requirement to provide a list of community contributions and their beneficiaries is a requirement of a gaming proposal as reviewed by the VCGLR. Requiring this to be provided as an application requirement sets an expectation that each and every planning proposal for EGMs will include community contributions, this may not always be the case. Nonetheless, the planning review should be based on a review of the impacts on the location of the machines. If an applicant proposes community contributions as a social benefit then the onus should be on the applicant to provide this information to Council rather than make it an application requirement.

#### Location assessment

- First sub point: It is unreasonable to require this level of information for a proposal within the CBD context. I agree that some analysis is required in relation to the proposed location, however this should be framed in the context of the overall mix of land uses within the CBD and is impracticable to require, assess and check.
- Second, Third and Fourth sub points: As referenced above the use of a 400m buffer is inappropriate and not supported by evidence. The reference to 400m should be removed. Analysis should be undertaken on a case by case basis.

#### Venue design and operation

- Second sub point: This should be deleted as it is not a consideration under a planning assessment. This is a consideration under the relevant gaming legislation.
- Third sub point: This requirement shows a complete misunderstanding of the application of Clause 71.02-3 and the requirement for balancing objectives in favour of community benefit. It is not a requirement for a planning application to demonstrate net community benefit as I have discussed above. This should be deleted.

#### Social and economic benefits

- First sub point: This is an extremely onerous requirement and will rarely if ever be required within the CBD context, particularly for a top-up of EGMs. Furthermore, given the transient nature of city users as discussed above, a survey as required by the policy will not fully capture the profile of the community impacted by the proposal.

Under the Gaming Regulation Act 2003, it may be appropriate to consider community attitude to the introduction of EGMs on community wellbeing, in particular mindful of the Court of Appeal decision on the Romsey Hotel and the considerations of impact on the social and economic well being on the local community.

Given that the test under the Planning and Environment Act, where there must be significant social effects, the generic need for a community attitude survey is not an appropriate requirement for a planning policy. I also consider that in a locational context where access to gaming machines and venues is high, there is little value in such a survey.

Accordingly, I do not consider it appropriate to require community wellbeing to be a planning application requirement, including the potential provision of community attitude surveys or the like.

- Second sub point: I agree that a Social and Economic Analysis is required when assessing the requirements of Clause 52.06, however this needs to be tailored to be reflective of the considerations under the planning legislation and not confused with considerations under gaming legislation. For example, the impact of a proposed EGM top-up on a venue where machines are to be transferred from is misguided, because this no longer occurs under the current gaming regime.

## **6.7 Decision Guidelines**

- 6.7.1 As with my above review I consider that the proposed policy should not proceed in its current form and requires a complete rethink.
- 6.7.2 My below comments are made to assist with the drafting of a revised policy at some stage in the future:
- Third point: As discussed above, a planning application for gaming is not required to demonstrate net community benefit. This should be revised to consider whether the impacts on the amenity of the community are acceptable.
  - Fifth point: This should be revised to remove reference to 'contribute to the levels of socio economic disadvantage and/or'.. An assessment of adverse impacts is appropriate in itself.
  - Seventh point: This should be deleted as there is insufficient information as to what would be considered a 'spatial concentration'. The background report suggests that a cluster is the concentration of more than three venues within 400m, however the above locational guidance seeks to limit gaming venues to 1 per 400m radius. This point further adds to the confusion in trying to apply this policy to a CBD context and should be deleted in any revised policy that applies to the CBD and central city.

## **6.8 Reference Documents**

- 6.8.1 Given my comments above and my review of the proposed reference documents I consider them to be fatally flawed and in need of wholesale review before they can be reasonably be considered suitable for inclusion as reference documents.

## **6.9 The proposed MSS and Post VC148 Revisions**

- 6.9.1 Given my comments and opinions on the proposed amendment I have not reviewed the proposed MSS and Post VC148 revisions to the schedule to Clause 52.26 as it is clear that the proposed amendment is flawed in its ability to reflect the true nature and context of the CBD and central city.
- 6.9.2 I note the post VC148 revisions generally move the local policy content into the schedule to Clause 52.26 and moves the supporting reports into the decision guidelines. For obvious reasons, I do not support this.

## **6.10 Other considerations**

- 6.10.1 I am mindful of the need for any amendment to the Planning Scheme to be consistent with the objectives of the Planning and Environment Act.
- 6.10.2 The relevant parts of Section 4 of the Planning and Environment Act 1987 requires
- 1(a) to provide for the fair, orderly, economic and sustainable use, and development of land;
  - 1(c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;
  - 1(g) to balance the present and future interests of all Victorians;
  - 2(a) to ensure sound, strategic planning and co-ordinated action at State, regional and municipal levels;
  - 2(d) to ... provide for explicit consideration of social and economic effects when decisions are made about the use and development of land; and
  - 2(g) to encourage the achievement of planning objectives through positive actions by responsible authorities and planning authorities.
- 6.10.3 I do not consider that as currently drafted, the policy provides appropriate direction to the appropriate location and operation of EGMs in the LGA. I consider that the failure of the policy and the reference documents to properly address the context of the CBD and it's influence on entertainment and gaming are fatal and therefore are are not consistent with the objectives of the Act and, accordingly, should not be supported.

### 7.1 Summary

- 7.1.1 Following a review of the revised LPP, the proposed reference documents and the relevant strategic documentation it is my opinion that the gaming policy proposed to be introduced into the Melbourne Planning Scheme **should not be** included MPS for the following reasons:
- The proposed amendment (pre and post exhibition) fails to acknowledge the differing context and issues influencing Gaming venues within the CBD and should not proceed in its current form. I consider that the policy requires a complete overhaul;
  - The proposed Clause 22.12 and Schedule to Clause 52.28 (post exhibition) fail to provide meaningful guidance as to where gaming machines should and should not be located for planning permit applications for gaming; and
  - The policy is based on a Draft Background Report and Draft Decision-Making Framework that, whilst no longer are proposed to be reference documents, results in a policy that provides little practical assistance in guiding planning decisions in the City of Melbourne.

### 7.2 Recommendations

- 7.2.1 I recommend that Amendment C307 be revisited including wholesale changes and review of the supporting documentation. It should not be supported in its current form or a variation of its current form.

### 7.3 Declaration

- 7.3.1 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.

## Appendix A Ratio Mapping of Policy implications





# ELECTRONIC GAMING POLICY

City of Melbourne / Hoddle Street Grid





- City of Melbourne
- ▭ Hoddle Street Grid Area

- Existing Gaming Venues &
- 400m walking distance





■ 400m walking distance from Existing Gaming Venues

● Shopping Complexes and strip shopping centres (Schedule 52.28) &

□ 400m walking distance

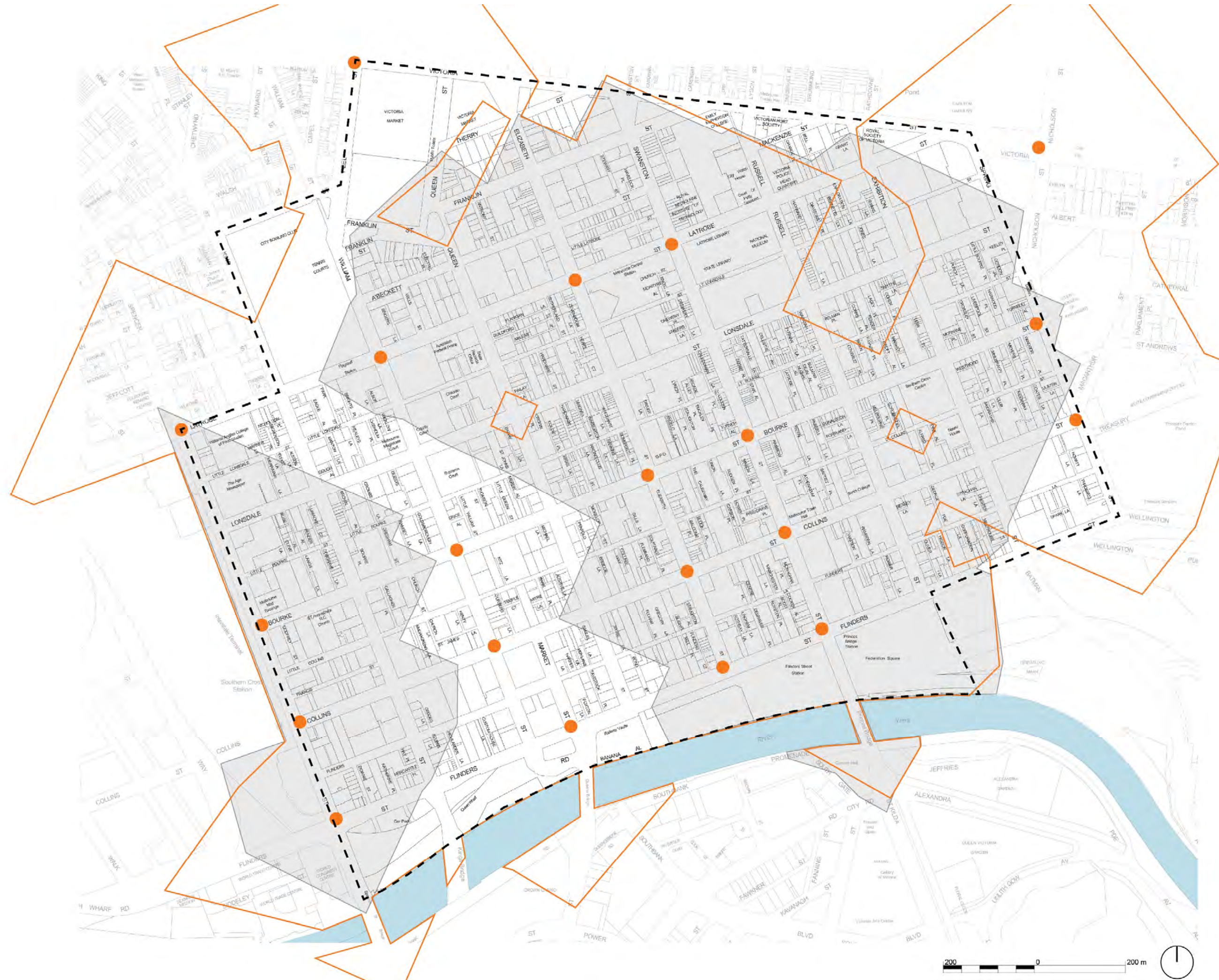




## Combined:

■ 400m walking distance from Existing Gaming Venues & Shopping Complexes and strip shopping centres (Schedule 52.28)





■ 400m walking distance from Existing Gaming Venues & Shopping Complexes and strip shopping centres (Schedule 52.28)

● Public Transport interchanges

Tram line intersections

□ 400 metres walking distance





## Combined:

- 400m walking distance from:
- Existing Gaming Venues
- Shopping Complexes and strip shopping centres (Schedule 52.28)
- Public Transport interchanges

**ratio:**

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