

Planning and Environment Act 1987

Panel Report

Melbourne Planning Scheme Amendment C307

Gaming Policy

26 April 2019

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Panel Report pursuant to section 25 of the Act
Melbourne Planning Scheme Amendment C307

Gaming Policy

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Dalia Cook, Chair

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Glossary and abbreviations

AHA	Australian Hotels Association (Vic)
Background Report	<i>City of Melbourne Electronic Gaming Machine Review Draft Background Report, October 2017</i>
CBD	Central Business District
CCZ	Capital City Zone
Central City	Capital City Zone and Docklands
Council	Melbourne City Council
DELWP	Department of Environment, Land, Water and Planning
Doxa	Doxa Community Club Inc
EGMs	Electronic gaming machines
Framework	<i>City of Melbourne Draft Electronic Gaming Machine Decision-Making Framework, October 2017</i>
GR Act	<i>Gambling Regulation Act 2003</i>
LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
PE Act	<i>Planning and Environment Act 1987</i>
planning scheme	Melbourne Planning Scheme
VCAT	Victorian Civil and Administrative Tribunal
VCGLR	Victorian Commission for Gambling and Liquor Regulation

Overview

Amendment summary	
The Amendment	Melbourne Planning Scheme Amendment C307
Common name	Gaming Policy
Brief description	The Amendment as exhibited seeks to introduce a revised gaming policy into Clause 22.12 of the Melbourne Planning Scheme and to introduce two Reference Documents. Following Amendment VC148, Council now proposes to convert key content from the proposed policy into the Schedule to Clause 52.28 of the Planning Scheme pertaining to gaming.
Subject land	The Amendment applies to all land covered by the Melbourne Planning Scheme.
The Proponent & Planning Authority	Melbourne City Council
Authorisation	21 December 2017, subject to conditions
Exhibition	24 May – 29 June 2018
Submissions	Number of Submissions: 8

Panel process	
The Panel	Dalia Cook, appointed 17 December 2018
Directions Hearing	Planning Panels Victoria, 14 February 2019
Panel Hearing	Melbourne Town Hall, 12 March 2019 Planning Panels Victoria, 13, 14 and 15 March 2019
Appearances	<p>Mr John Rantino, Solicitor, Maddocks on behalf of Melbourne City Council who called Ms Bonnie Rosen, Town Planner, Symplan to give expert evidence.</p> <p>Ms Nicola Collingwood of Counsel instructed by BSP Lawyers on behalf of Australian Hotels Association (Vic) who called Ms Laura Thomas, Town Planner, Urbis to give expert evidence. Ms Kayla Gregg of BSP Lawyers appeared on its behalf on the third day of the hearing.</p> <p>Mr Nicholas Tweedie QC with Ms Sarah Porritt of Counsel instructed by LGS Legal on behalf of Doxa Community Club Inc who called Ms Colleen Peterson, Town Planner, Ratio to give expert evidence.</p>
Citation	Melbourne PSA C307 [2019] PPV
Date of this Report	26 April 2019

Executive summary

The City of Melbourne is identified as Victoria's premier entertainment destination. A component of its broad entertainment offer includes venues with Electronic Gaming Machines.

A layered approvals system applies to the operation of Electronic Gaming Machines, with certain permissions required under the *Gambling Regulation Act 2003* as well as under planning scheme controls, guided by considerations in the *Planning and Environment Act 1987*.

When a planning permit is required for the installation or use of gaming machines under Clause 52.28 of the Melbourne Planning Scheme, relevant considerations must focus on the appropriateness of the proposed location and operation of Electronic Gaming Machines – as distinct from other elements of gambling that may be controlled by other forms of regulation.

Electronic Gaming Machines are a lawful form of gambling. However, they are also known to generate particular risks of harm in connection with problem gambling. In this context, a Local Planning Policy currently operates within the Melbourne Planning Scheme to address the location and operation of Electronic Gaming Machines.

Since the introduction of that policy, planning scheme provisions applying to gaming have changed and there has been a notable expansion to the extent of the Capital City Zone – a zone in which there is no prohibition against Electronic Gaming Machines or venues locating in strip shopping centres. The City of Melbourne and its renewal areas are identified for significant population growth. Melbourne City Council anticipates this will affect the demand for entertainment including Electronic Gaming Machines.

In light of this, Council proposed an updated Local Planning Policy which was prepared and exhibited in the form of Amendment C307.

Submissions to the Amendment as exhibited were varied. Some considered the policy did not go far enough to regulate gaming and its potential impacts. Others regarded its proposed content as either ineffective or potentially misleading.

Submitters with interests in the gaming industry considered the Amendment was flawed since it did not have due regard to the diversity of land use within the City of Melbourne and strategic directions for its future, as well as heightened existing access to Electronic Gaming Machines. Key issues included whether the proposed policy was materially deficient since it did not differentiate between the Central City (including the Hoddle Grid), urban renewal areas and other areas of the municipality for the purposes of gaming. They were also concerned about a lack of articulation of the effects of Crown Casino.

Parties at the Hearing expressed differing views about whether the Amendment was strategically justified, and whether its alleged deficiencies could be overcome within the context of the Amendment to suitably guide decision making.

More recently (after public exhibition concluded), Amendment VC148 changed all planning schemes to permit more substantial inclusions in Schedule 52.28 pertaining to gaming. These inclusions are intended to be location specific. Council now seeks a recommendation from

the Panel that it convert the proposed policy to a tailored schedule to Clause 52.28 with generally comparable content.

All parties and witnesses agreed it was appropriate to progress the Amendment in the form of a Schedule to Clause 52.28 rather than as an amended Local Planning Policy. Likewise, they agreed it was appropriate to replace the current Local Planning Policy at Clause 22.12 pertaining to gaming, and that a policy or schedule should apply to the whole of the municipality rather than excluding areas within the Central City (a feature of the current policy).

The Panel concludes that:

- Following recent changes to the Melbourne Planning Scheme, it is appropriate to convert key elements from the proposed Local Planning Policy on gaming into a Schedule to Clause 52.28. The Schedule is a more bespoke way of managing the location and operation of Electronic Gaming Machines and venues following the introduction of the new Planning Policy Framework and varied structure of the Victorian Planning Provisions.
- The relatively confined conversion from one form of provision to another is unlikely to cause detriment such that re-exhibition of the Amendment is not required.
- Melbourne City Council's decision to no longer introduce two Reference Documents into the Melbourne Planning Scheme in connection with the Amendment is understood in light of the conversion of the proposed policy to a schedule. However, the concepts that underpin the Amendment are quite complex and the *City of Melbourne Electronic Gaming Machine Review Draft Background Report*, October 2017 would otherwise provide a useful point of reference if updated and refined and there was scope to include this in a schedule to a particular provision.
- Specific provisions pertaining to gaming in the City of Melbourne in the form of a Schedule to Clause 52.28 should extend to all areas of the municipality, including the Central City, as distinct from the more confined Local Planning Policy in the Melbourne Planning Scheme at present.
- A number of shortcomings of the Amendment identified by submitters are justified. However, they are not of a character or magnitude that would warrant its abandonment. For the most part, they can be reasonably addressed within the Amendment as recommended by the Panel in a way that is both fair and workable if Council elects to progress the Amendment.
- There is strong justification for separate locational guidelines to be included in the Schedule to reflect the particular features of the Central City that may influence the provision of Electronic Gaming Machines. There is capacity for Melbourne City Council to undertake more detailed strategic work to identify characteristics or sub-precincts where Electronic Gaming Machines are either preferred or discouraged.
- Likewise, a separate provision should guide the phasing of Electronic Gaming Machines into identified urban renewal areas, including the Arden Macaulay Precinct and Fishermans Bend. Council could potentially undertake further work to establish more detailed locational and venue guidelines for these areas as precinct planning for these areas formalises. In the meantime, Council should consider whether to

apply locational guidelines comparable to those proposed for areas outside the Central City in the schedule, having regard to the emerging character of these areas.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Melbourne Planning Scheme Amendment C307 be adopted as exhibited subject to the following:

- 1. Remove existing Clause 22.12 from the Melbourne Planning Scheme.**
- 2. Replace exhibited Clause 22.12 with a revised Schedule to Clause 52.28 to the Melbourne Planning Scheme in the form of Appendix C.**
- 3. Amend policy in the Municipal Strategic Statement (Clause 21) of the Melbourne Planning Scheme in accordance with the version included in Attachment 1 to Council's Part B submission (Document 12).**
- 4. Delete the *City of Melbourne Electronic Gaming Machine Review Draft Background Report, October 2017* and *City of Melbourne Draft Electronic Gaming Machine Decision-Making Framework, October 2017* from the proposed list of Reference or Background Documents under the Melbourne Planning Scheme.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The Amendment as exhibited proposes to replace Local Planning Policy for gaming at Clause 22.12 of the Melbourne Planning Scheme (planning scheme). It would also refine relevant parts of the Municipal Strategic Statement (MSS) and would amend the Schedule to Clause 52.28 (Gaming).

The intended purpose of the Amendment is to guide decision making for the installation and use of Electronic Gaming Machines (EGMs) across all areas of the municipality, including all Capital City Zones. It also aims to facilitate an assessment of the social and economic impacts of gaming and to guide the appropriate location and operation of EGMs. Fundamentally, it seeks to minimise gambling-related harms associated with the use of EGMs.

Specifically, the Amendment as exhibited proposes to:

- Amend Clause 21.10-6 (Cultural/Arts and Entertainment Facilities), to strengthen planning policy to ensure that EGMs operate as part of the overall range of entertainment activities in the municipality. The Amendment would introduce the objective of minimising gambling-related harms and ensure that the location, design and operation of gaming venues achieves these objectives.
- Amend Clause 21.12 (Hoddle Grid), to strengthen policy to reduce the concentration of EGMs in the Hoddle Grid where they contribute to convenience gambling.¹
- Replace Local Planning Policy at Clause 22.12 (Gaming) to apply to all planning permit applications to install or use a gaming machine under Clause 52.28 of the planning scheme, including application requirements and decision guidelines. As exhibited, Clause 22.12 proposes two Reference Documents – the *City of Melbourne Electronic Gaming Machine Review (Draft) Background Report 2017* and the *City of Melbourne Electronic Gaming Machine Decision-Making Framework 2017*.² Council later advised that this was no longer appropriate in its preferred form of the Amendment, although it confirmed that these documents had been relied on as part of the strategic justification for the Amendment.
- Amend the Schedule to Clause 52.28 to update the list of shopping complexes where the installation or use of EGMs is prohibited.³

Amendment VC148

Amendment VC148 was gazetted on 31 July 2018. It made a number of substantive changes to the structure and content of the Victoria Planning Provisions. The new format planning

¹ In later iterations of the Amendment documentation, Council agreed to modify this wording to “manage” their concentration.

² Prepared by Bonnie Rosen, Town Planner, Symplan.

³ No party took issue with the proposed additions to identified shopping complexes where EGMs would be prohibited. However, some parties mentioned that it was not entirely clear how these shopping centres were identified and why others are excluded for the time being.

scheme now permits a municipality to refine the Schedule to Clause 52.28 to include application requirements, location guidelines and decision guidelines to guide the exercise of decision making with a local focus.⁴

Previously, in the absence of an opportunity to tailor the specific provision, a number of councils, including Melbourne City Council, relied on a Local Planning Policy pertaining to gaming to guide decision making where a permit application was made under Clause 52.28.

The structure of the new Planning Policy Framework does not include an obvious location for gaming policy. At this early stage in the translation of planning schemes into the new format it is unclear how existing local gaming policies will be treated, although there may be scope for some outline elements to be included in the Municipal Planning Strategy.

Council advised that the Department of Environment, Land, Water and Planning (DELWP) supported the use of the Schedule to Clause 52.28 to encompass the substance of what was originally exhibited as the proposed replacement local gaming policy.

The Panel finds this approach consistent with the more specific, direct opportunities afforded by the new structure of the current planning scheme.

However, the Panel recognises that it is obliged to assess and report on the exhibited Amendment. To overcome this potential disconnect, Council requested that the Panel recommend the adoption of a revised Schedule to Clause 52.28 instead of progressing the local gaming policy as originally exhibited. It referred to section 25(2) of the *Planning and Environment Act 1987* (PE Act), confirming that the Panel is entitled to “*make any recommendation it thinks fit*”.

All parties and witnesses to the Panel Hearing were content with this approach.

The Panel considers that the proposed changes pertain more to form rather than substance – with a substantially direct transfer of content from the proposed local policy to the now proposed schedule. Accordingly, it does not consider that further notification of this change would be required before a generally supportive recommendation could be made.

(ii) The subject land and gaming features unique to the City of Melbourne

The Amendment applies to all land covered by the planning scheme. This is a notable shift from the current local gaming policy which applies to land in the Mixed Use Zone, Public Use Zone, Public Park and Recreation Zone, Commercial Zones, Industrial Zones, Docklands Zone and Schedule 5 to the Capital City Zone (City North). The policy notes that gaming premises are prohibited in Residential Zones.⁵

By deduction, the current policy does not apply to land in Capital City Zone Schedules 1-4 and 6-7 namely, the Central City including the Hoddle Grid and Southbank⁶ as well as Fishermans Bend, Carlton Connect and the Melbourne Arts Precinct. This report refers to the Central City

⁴ This is reflected in the amended Ministerial Direction on the Form and Content of Planning Schemes.

⁵ At present, this applies to stand alone gaming venues, but not necessarily to Hotels or Clubs that may offer EGMs as part of their broader operations.

⁶ To some extent, the Hoddle Grid has been used interchangeably with the term Central Business District (CBD).

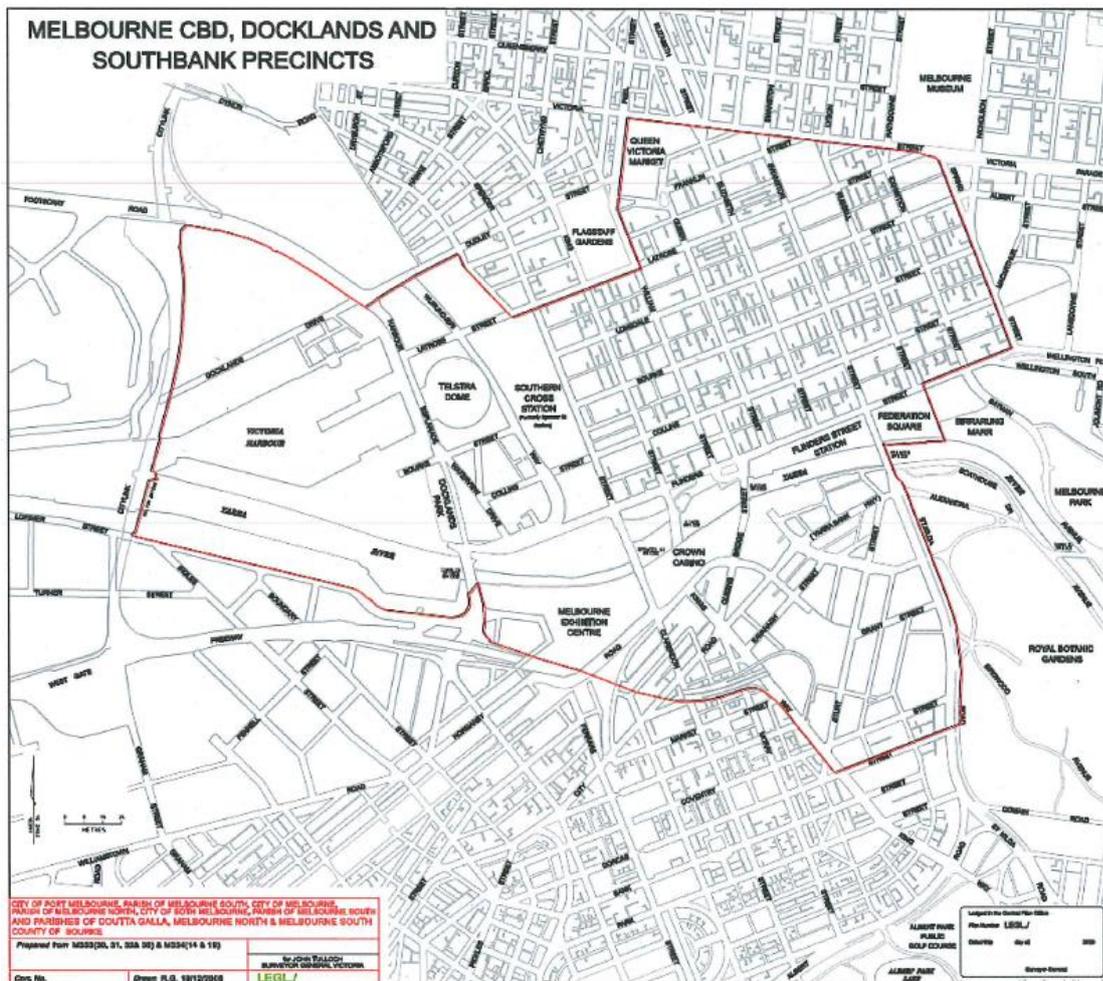
as the Capital City Zone (all Schedules including Fishermans Bend renewal area) and the Docklands precinct.

In considering this Amendment, parties emphasised the relatively unique structure that shapes opportunities for gaming within the City of Melbourne.

The City of Melbourne has been divided into two parts. One part is subject to a regional cap, with the remainder subject to a municipal limit. The number of EGMs that can be operated within the region of Carlton, Flemington, Kensington and North Melbourne (within the municipal boundary) are capped at 149 machines. The remainder of the municipality has a municipal limit of 143 machines, although it does not currently contain any EGMs.

However, by virtue of Item 5 of the Ministerial Order on 20 September 2017⁷ (taking effect from 3 November 2017), the Central Business District, Docklands and Southbank are excluded from this order. Consequently, there is no cap or regional limit on the maximum number of entitlements to operate gaming machines within these areas.⁸

Figure 1 Area of Melbourne Where The Municipal Limit Does Not Apply (Ministerial Order, 20 September 2017)



⁷ Pursuant to sections 3.2.4 and 3.4A.5(3A) of the GR Act.

⁸ The background and detail supporting these caps is outlined in summary in the expert witness report of Ms Thomas at page 6.

The Regional Electronic Gaming Machine Caps Review Panel (Caps Review) observed in its final report dated November 2005 (Department of Justice Office of Gaming and Racing):

The City of Melbourne has unique characteristics that warrant a separate consideration of the issues with respect to regional caps. There is a significant concentration of gaming machines located within the central business district. Of the City's 859 gaming machines, 572 of these are located in the central business district. In addition, 2500 gaming machines are located at Crown Casino. The City of Melbourne, particularly the central business district, Docklands and Southbank, is a significant entertainment precinct in Melbourne, drawing large numbers of tourists, workers and day visitors ...

In a sense, the City of Melbourne is the principal destination style gaming area in Melbourne apart from Crown casino. As stated in chapter 5, the Panel supports a shift towards more destination gaming venues. The Panel considers, therefore, that the central business district, Docklands and Southbank should not have their number of gaming machines capped.

There are large parts of the City of Melbourne, however, that are regional areas, some with significant housing commission accommodation. These areas should be capped in accordance with the Panel's recommendation regarding all other local government areas.⁹

This offers significant insight into the gaming attributes of the City of Melbourne and the Central City¹⁰ in particular.

Another feature unique to the Central City is the 'carve out' of the Capital City Zone from the general prohibition on the installation or use of EGMs in strip shopping centres in Clause 52.28. This is discussed further in Chapter 3.2.

1.2 Background

(i) Clause 52.28 (Gaming)

The purpose of this specific provision is:

To ensure that gaming machines are situated in appropriate locations and premises.

To ensure the social and economic impacts of the location of gaming machines are considered.

To prohibit gaming machines in specified shopping complexes and strip shopping centres.

A planning permit is required to use or install a gaming machine (subject to exceptions in Clause 52.28-3).

Decision guidelines are provided at Clause 52.28-9 and include the full suite of applicable planning policies; compatibility with adjoining and nearby land uses; site capability and whether a full range of facilities or services are provided for a hotel or club venue.

As mentioned, there is now capacity for the schedule to detail specific objectives, application requirements, locational and venue guidelines and decision guidelines.

⁹ As reproduced in Laura Thomas' expert witness statement para 64.

¹⁰ This reference to the Central City as representing the Hoddle Grid, Southbank and Docklands is repeated throughout the wording and mapping of the existing planning scheme and has been replicated in this Report accordingly.

These are in addition to the ongoing use of the schedule to identify shopping complexes and strip shopping centres where gaming machines are prohibited.

Presently, the Schedule to Clause 52.28 lists a number of shopping complexes by name where EGMs are prohibited. It also identifies that EGMs are prohibited in all strip shopping centres (excluding land in the Central City Zone by operation of the head clause). It does not list these individually, but relies on an assessment of centres against the characteristics in the definition in Clause 52.28-5.

(ii) Current Gaming Premises Local Planning Policy (Clause 22.12)

The policy applies to identified zones, excluding most Central City zoned land as detailed above. The policy basis refers to preserving amenity and an intention to avoid concentrations of EGMs in particular areas. It also discourages gaming in residential areas.

Objectives include the consideration of amenity, social and economic considerations in permit applications. The policy expresses a preference for EGMs in existing venues in commercial centres which offer a range of other entertainment uses; conversely, seeking to restrict the proliferation of gaming premises in areas where residential use is encouraged. In applying the policy, it is relevant to consider the extent to which EGMs are located in the subject area.

While this policy seeks to facilitate consideration of the social and economic effects of gaming, it also has a key focus on ensuring that gaming venues do not cause detriment to amenity.

The impacts on amenity from EGMs and gaming venues has been downplayed as a current concern for Council given the nature and operation of gaming premises. It has been reflected in the proposed Amendment as one of a number of broader considerations.

(iii) The Amendment – its inception, aims and process

Amendment C307 is the first comprehensive review of Council's local gaming policy since the introduction of the 'new' format planning scheme.

Basic statistics pertaining to the municipality derived from the VCGLR website indicate¹¹:

- 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).¹²

These statistics were put into perspective by each of the expert witnesses, who identified that there are a high number of visitors in the City of Melbourne that need to be taken into account when interpreting them.¹³

¹¹ The most recent information is dated 2016-2017 when one additional gaming venue was operating within the City of Melbourne. The statistics are based on the number of residents in a local government area at the relevant time. This is extracted from Ms Peterson's expert witness report.

¹² A version of this data was outlined in the Background Report in greater depth, but the Panel finds this quote to be more succinct for purposes of its report.

¹³ EGM expenditure and density figures were considered by the VCGLR as comparatively less important in the specific context of the City of Melbourne and its role as a tourist and community hub when considering planning approval in

Melbourne City Council Gaming Policy Review, April 2015, Ratio Consultants and Council response

In 2015, Council commissioned a report into its existing gaming policy in light of current planning scheme provisions, case law and local context. In summary, that report concluded the policy should:

- apply to all Capital City Zoned land beyond the current reach of the policy
- address locational issues
- de-emphasise issues not typically associated with EGMs, such as amenity and signage
- potentially distinguish between the Central Business District (CBD) versus other areas within the municipality when formulating revised policy – such as to address the concentration of gaming venues in the CBD and provide a preferred method of calculation
- include criteria regarding venue layout.

Council identified that the municipality contains areas of socio-economic disadvantage and groups or individuals at an elevated risk of gambling-related harm. It considered that a more refined and up-to-date policy was required. This was particularly emphasised given changes to the extent of the Capital City Zone in recent years, anticipated residential growth as well as changes within the gaming industry.

On 19 July 2016, Melbourne City Council's Future Melbourne Committee endorsed a review of Council's existing local gaming policy to ensure it reflects the current statutory and regulatory framework for gaming.

City of Melbourne Electronic Gaming Machine Review Draft Background Report, October 2017 (Background Report)

This report was prepared by Symplan on behalf of Council. The Background Report noted:

- after the introduction of policy at Clause 22.12, in 2006 the state government introduced a state-wide clause (Clause 52.28 Gaming) to guide the location and operation of EGMs
- in recent years, significant changes have occurred to the regulatory framework within which gaming venues and EGMs operate in Victoria. The outcomes of gaming application licences and applications for planning permits in the municipality have established several principles that are likely to influence the future of gaming in the City of Melbourne.

The Report primarily sourced information from three sources – a review of relevant legislation and policies; a review of the current land use and gaming context and engagement with key stakeholders. It also outlined the current characteristics of gaming venues in the City of Melbourne.

In addition to Crown Casino, 11 gaming venues were operating within the City of Melbourne as at 16 January 2019 (noting that the Celtic Club had closed since the Background Report was

Queensberry Hotel Pty Ltd v Minister for Planning and Community Development [2013] VCAT 444. VCAT upheld the refusal to grant planning permission since the intended uses in the surrounding area would typically include day to day activities. The gaming venue had potential to result in convenience gambling which could contribute to gaming-related harms.

prepared citing 12 venues). These venues provide a total of 747 EGMs (with a licence for 757 EGMs).¹⁴

The Background Report was intended to be a Reference Document in the Amendment as exhibited. However, Council confirmed at the Directions Hearing that it would not be appropriate for this document to have this status since it is not principally a guide for decision making. That said, Council relied on its content as part of the strategic justification for the Amendment.

This position was confirmed by its author Ms Rosen, town planner, Symplan, when called by Council as an expert witness at the Hearing. She advised that she had not proposed for either this or the following document to be Reference Documents in the planning scheme, given their intended function and their need for ongoing updates to remain current.

Although the Background Report may benefit from refinement (including updating), the Panel would have thought that this document is informative as an adjunct to the schedule.¹⁵ A more fundamental issue is the apparent lack of scope to include a Reference¹⁶ or Background Document as part of the schedule to Clause 52.28 (as opposed to a local policy, where this scope exists). The likely outcome is that this document will not be given any recognised status in the planning scheme.

City of Melbourne Draft Electronic Gaming Machine Decision-Making Framework, October 2017 (Framework)

The Framework was prepared by Symplan and describes the potential effects of EGMs including social, economic and wellbeing-related harms and benefits. It outlines the objectives and actions Council proposes to adopt to minimise the potential harm caused by EGMs.

The Framework proposes to underpin future Council decisions in gaming applications under both the licensing and planning approval regimes. It also outlines ongoing opportunities for Council to engage through advocacy, partnerships and service provision.

Preparing and exhibiting the Amendment

Council prepared Amendment C307 to respond to these concerns, seeking to introduce a new replacement Local Planning Policy at Clause 22.12. A key aim was to implement new criteria to seek to ensure that EGMs are designed, operated and located in a manner that reduces gambling-related harm.

The Amendment was authorised and exhibited as summarised in the overview above. Eight submissions were received by Council. A number of viewpoints were expressed including, in summary:

- some submitters sought to prohibit gaming in the City of Melbourne altogether, given its potential for harm

¹⁴ The information provided in the Background Report was updated by Ms Rosen in her expert witness statement at p14.

¹⁵ Practice Note 13 provides “Background documents provide information to assist in understanding the context within which a particular policy or provision has been framed. . . If they provide useful background information or general advice to applicants, or will assist in understanding the planning scheme, they may be suitable as background documents”.

¹⁶ Being a transitional planning scheme amendment.

- others expressed general support for a replacement policy that seeks to minimise problem gambling and its effects
- some alleged that the policy had significant flaws, for example, since it does not differentiate between different areas of the municipality or provide specific direction for urban renewal areas. It also neglected to address the influence of Crown Casino in a localised context
- an overall concern about the basis for the proposed locational guidelines and their achievability within the City of Melbourne
- lack of support for the proposed “reduction” in the concentration of gaming venues, especially potential impacts on current gaming entitlements
- the proposed content blurs the distinction between gaming and planning legislation in so far as it refers to net community benefit, community wellbeing and the like.¹⁷

The AHA is a key industry representative of employers in the hospitality and liquor industry. A number of its members operate gaming venues within the Central City. It had concerns about the functionality of the proposed provisions and the fact that the Amendment represented an unbalanced approach to gaming in the municipality.

One submitter, Doxa Community Club Inc uses funds primarily generated from the operation of its venues to conduct a significant foundation for disadvantaged youth. It operates two gaming venues within the City of Melbourne – The Meeting Place and Clocks. Its overarching concern was that the Amendment as drafted fails to assist a responsible authority to make decisions on gaming applications and would not assist the community or an applicant to understand their prospects of success. It regarded the Amendment as a “*blunt instrument*” and recommended it be abandoned.

1.3 The Panel’s approach

The Panel has considered all written submissions in response to the exhibition of the Amendment and submissions, evidence and other material presented to it during the Hearing. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned. It has necessarily been selective in referring to the more relevant or determinative material in this Report.

This Report deals with the issues under the following headings:

- Planning context
- Strategic justification
- Proposed objectives
- Locational guidelines for EGMs
- Application requirements
- Decision guidelines
- Other issues raised in submissions.

¹⁷ Some submissions related to issues beyond the Amendment, going to the substance and structure of the Victorian Planning Provisions, such as how licensed and retail premises are addressed. The PE Act confirms that these matters are not matters that the Panel may make recommendations about since it is obliged to take the state-standard parts of the planning scheme as it finds it.

2 Planning context

2.1 Legislation

The approval of EGMs in Victoria is subject to two key legislative regimes.

Gambling Regulation Act 2003

The *Gambling Regulation Act 2003* (GR Act) regulates the operation of EGMs in Victoria. The GR Act is administered by the Victorian Commission for Gambling and Liquor Regulation (VCGLR).

Premises are required to be licensed as suitable for the provision of gaming, with approval predicated on:

- the suitability of the premises for the management and operation of EGMs; and
- a finding by the VCGLR or the Victorian Civil and Administrative Tribunal (VCAT) on review, that the “*net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located.*”¹⁸ Case law has determined that such impact must either be found to be neutral or positive.¹⁹

Part of this approval consists of a “*green line plan*” depicting the layout of the gaming room, with operating conditions imposed under the gaming licence.²⁰

Melbourne Planning Scheme and the *Planning and Environment Act 1987*

Section 4(1) of the *Planning and Environment Act 1987* (PE Act) provides a number of objectives with direct relevance to this Amendment, including:

- (a) to provide for the fair, orderly, economic and sustainable use, and development of land. . .
- (c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria. . .
- (g) to balance the present and future interests of all Victorians.

More specifically, section 60(1)(f) of the PE Act requires responsible authority to consider a range of factors including “*any significant social effects and economic effects which the responsible authority considers the use or development may have*” when determining an application. This may be relevant when considering applications to install or use EGMs.

2.2 Planning policy

(i) Planning Policy Framework

Council submitted that the Amendment is supported by various elements of the Planning Policy Framework, which the Panel summarises below.

¹⁸ Part 3 GR Act, section 3.3.7 in particular. In addition to demonstrated authority to make the application.

¹⁹ For example, *Macedon Ranges SC v Romsey Hotel Pty Ltd* [2008] VSCA 45.

²⁰ Venue operators are also required to obtain a relevant licence.

Clause 11 (Settlement) – planning should recognise the need for, and contribute to health, wellbeing and safety; diversity of choice; adaptation in response to changing technology; economic viability; a high standard of urban design and amenity and accessibility.

The Amendment is intended to provide guidance for the appropriate location for the installation or use of EGMs in new or existing gaming venues. Council submitted that the Amendment would provide increased certainty about potential land use outcomes across the municipality.

Clause 11.03-1S (Activity Centres) – a relevant strategy is to *“improve the social, economic and environmental performance and amenity of activity centres”*. Council submitted that the Amendment will implement policy to minimise gambling-related harms, manage the spatial concentration of EGMs and gaming venues, and ensure that gaming venues do not reduce the amenity of surrounding uses.

Clause 13.07-1S (Land Use Compatibility) – this clause includes the objective, *“to safeguard community amenity while facilitating appropriate commercial, industrial or other uses with potential off-site effects”*. Strategies include to *“ensure the compatibility of a use or development as appropriate to the land use functions and character”*. This is to be achieved by:

- Directing land uses to appropriate locations.
- Using a range of building design, urban design, operational and land use separation measures.

Council submitted that the Amendment will facilitate consideration of the social and economic impacts that may result from the location of EGMs and gaming venues.

Clause 15.01-4S (Healthy Neighbourhoods) – Council submitted that the Amendment encourages the growth and maintenance of neighbourhoods within the municipal area to support healthy living and community wellbeing. The Amendment discourages the concentration of gaming premises in locations where the *“predominant”* use is residential.

Clause 17.02-1S (Business) – this provision was emphasised strongly by parties to the Hearing, including gaming operators. It includes the objective *“to encourage development that meets the community’s needs for retail, entertainment, office and other commercial services”*. Strategies include:

Ensure commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.

Council originally submitted that the Amendment supports this clause as it requires applications seeking permission to install or use EGMs in gaming venues to show how the proposal will *“achieve net community benefit”* through the location or operation of EGMs. It subsequently tempered its position at the Hearing to confirm that this was not a *“test”* for the appropriateness of EGMs under the planning scheme.

Policy at Clause 17.04-1R also seeks to maintain and develop Metropolitan Melbourne as a desirable tourist destination. This is supplemented by numerous local planning policy provisions.

(ii) Clause 21 – Municipal Strategic Statement (MSS)

The MSS contains numerous complementary and more detailed expressions of policy relevant to gaming, the role of the Central City, activity centres and transport planning as well as accommodating an increase in residential population and visitation.

Numerous policies such as Clauses 21.07 and 21.08 emphasise the importance of retail land use for the Central City and encourage an increase in convenience retailing and community facilities to support new development, including for urban renewal areas. This is relevant for reasons explored later in this Report seeking to make EGMs accessible for users, while discouraging them from being overly convenient in connection with day-to-day activities.

The whole of the Central City is identified as a “*high intensity pedestrian area*”, with support for 24 hour, 7 day a week public transport access in Clause 21.09.

Clause 21.10-6 (Cultural/Arts and Entertainment Facilities) – seeks “to provide a diverse range of leisure, arts, cultural and entertainment facilities. It includes Strategy 1.1, “*Discourage the concentration of sexually explicit adult entertainment, amusement parlours and gaming venues in the Central City*”. Council submitted that the Amendment would better regulate the concentration of EGMs and gaming venues within the entire municipal area.

Clause 21.12 (Hoddle Grid) – this clause includes objectives under economic development, which encourage development of complementary precincts within the Hoddle Grid that provide for specialist retail, cultural and entertainment uses. Policy discourages the “*spatial concentration*” of EGMs within the Hoddle Grid. Various precincts are identified in Figure 6 of Clause 21.12, pointing to differing aspirations for these areas. Clause 21.12 is proposed to be amended to “*discourage the spatial concentration of gaming machines*”.

(iii) Proposed changes to MSS

The Panel preferred version of Clause 21.02-3 proposes to make reference to concentrations of socio-economic disadvantage and groups at an elevated risk of gambling-related harm throughout the municipality. It would also refer to expected population growth with potentially increased demand for EGMs.

2.3 Other relevant planning strategies and policies**(i) Gaming Machine Policy 1997**

This policy is a Reference Document for the current Clause 21.12, although Council was unable to locate this document despite extensive searching. It has been superseded by more current strategic work.

(ii) Council Plan 2017-2021

The 2013-2017 Council Plan includes an identified goal to develop an EGM policy for the municipality as a priority over the four year period.

(iii) Plan Melbourne 2017-2050

Council explained that the Amendment was consistent with Plan Melbourne at Outcome 5 and Direction 5.2 in particular.

2.4 Other planning scheme provisions

Clause 71.02-1 seeks to ensure that the objectives of planning in Victoria (as set out in section 4 of the PE Act) are met through appropriate land use and development planning policies and practices. It confirms that policy should integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

Clause 71.02-3 is a key operational provision that was central aspect to submissions at the Hearing. It provides:

Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

It is noteworthy that the provision applies to Council in its capacity as both planning authority for the purposes of this Amendment, as well as responsible authority when assessing permit applications.

Given this framework, parties raised the question as to whether the proposed references to “*net community benefit*” in the proposed policy or schedule were duplicitous or liable to be misapplied. This is considered in Chapter 4.2.

2.5 Ministerial Directions and Practice Notes

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines, August 2018* (PPN46).

The following Ministerial Directions are also relevant:

- The Form and Content of Planning Schemes, especially in so far as opportunities are now provided to create a bespoke schedule to Clause 52.28
- Ministerial Direction 9 (Metropolitan Strategy), which requires the Amendment to be consistent with and support Plan Melbourne
- Ministerial Direction 15 (Planning Scheme Amendment Process).

3 Strategic justification

3.1 Overview

Council submitted that for a planning scheme amendment to have strategic support, it should stem from proper research, serve a proper planning purpose as reflected in the policy framework and be supported by an established or properly founded strategy.²¹

The Panel notes the extent of agreement between Council and submitters about key matters that bear on the strategic justification for the Amendment in-principle. There was no dispute about the appropriateness of a well drafted policy or schedule relating to gaming as a suitable component of the planning scheme.

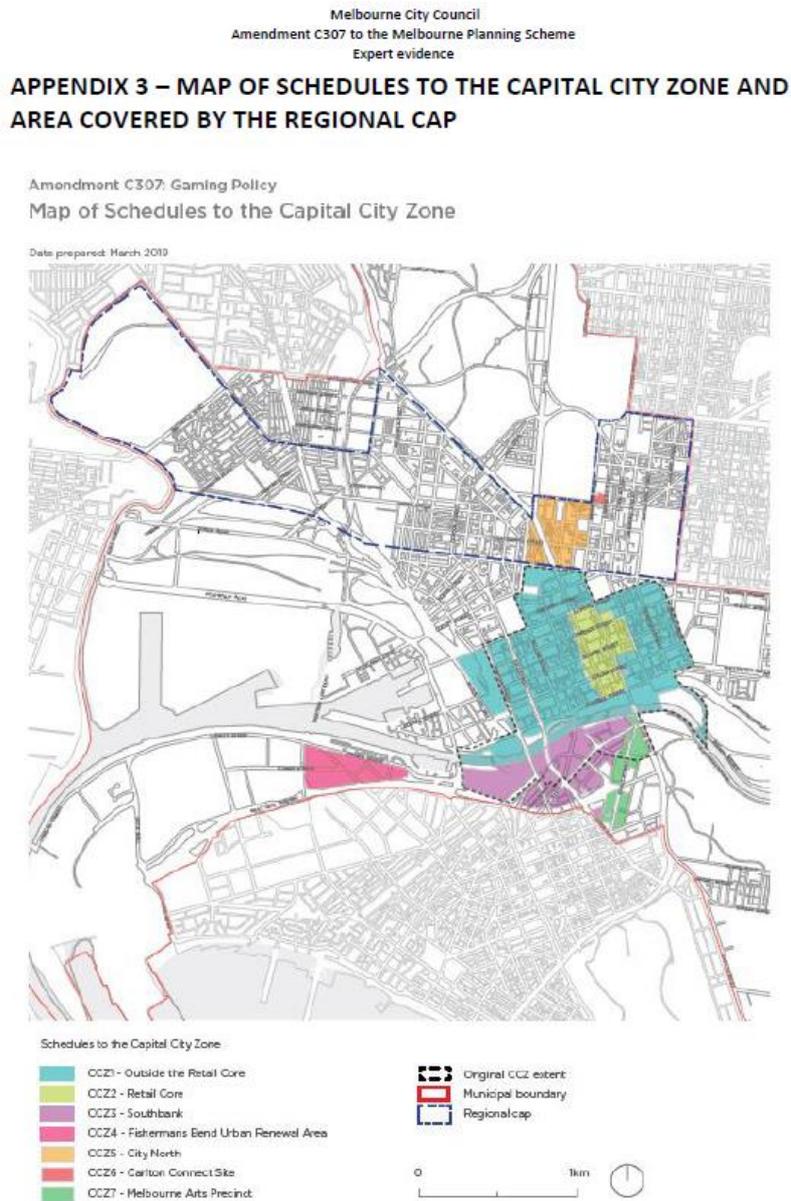
The Panel supports earlier findings of independent Panels considering numerous local planning policies pertaining to gaming that there is scope for local policy to provide guidance as to the location, operation and assessment of impacts of gaming venues. This supplements the provisions of Clause 52.28 and provides for local emphasis.

Beyond this, all parties and their witnesses regarded the underlying purpose of the policy or schedule – to seek to minimise gambling-related harms – as valid. This would be reiterated in a new objective in Clause 21.10-6 to minimise gambling-related harm through the location, design and operation of gaming venues.

All parties and witnesses also acknowledged factors precipitating and supporting the Amendment, including projections of future growth for the City of Melbourne, especially in commercial (including entertainment) and residential sectors. That said, there was arguably insufficient explanation by Council as to *how* the increase in the extent of the Capital City Zone has influenced the direction of the Amendment in a practical sense, aside from indicating that it has significantly expanded the areas where gaming could be established in strip shopping centres.

²¹ Part B submission, Page 18.

Figure 2 Map of Schedules to the Capital City Zone and Area Covered by the Regional Cap (source: Bonnie Rosen expert witness statement, p38)



Source: City of Melbourne
38

Symplan
Planning for People Place Purpose

Parties also generally supported a policy or schedule replacing the current gaming policy in Clause 21.12. They expressly considered that it should address all areas of the municipality, including the Central City as a whole.

The Panel supports this approach and, for reasons explored in greater detail below, considers this an integral part of the Amendment.

The Panel accepts that there is strategic justification for a replacement policy or enhanced schedule pertaining to gaming having regard to the provisions outlined in Chapter 2 and the particular context of the City of Melbourne. This is a threshold issue.

However, a number of submitters including Doxa and AHA regarded the Amendment as “*fundamentally flawed*” because of its comparable treatment of areas within the municipality for the purpose of gaming applications. That is, a uniform set of provisions are proposed to apply to the Central City, urban renewal areas, mixed use areas (such as Carlton and South Melbourne) as well as more conventional residential areas. They considered the Amendment was deficient in its approach to providing locational and operational guidance for EGMs in light of the particular characteristics of the municipality.

Submitters also alleged that the wording of the Amendment demonstrates a flawed approach to assessing applications for EGMs under planning scheme provisions.

A broader concern emphasised by AHA and Doxa was the lack of balance in the Amendment overall since it did not refer to the potential benefits of gaming in the policy or schedule. This position was echoed by their expert witnesses.

In Chapters 3.2.1 and 3.2.2, the Panel evaluates the alleged shortcomings of this Amendment in light of submissions and finds a number of them valid, at least in part. However, it is not persuaded that these fundamentally indicate a lack of strategic justification for the Amendment. Rather, it considers these shortcomings indicate that the Amendment documentation requires redrafting and refinement to improve its efficacy and consistency with existing planning policies in the scheme. This concerns suitability of content and is capable of rectification.

Later in this chapter, the Panel discusses the question as to whether the extent or nature of changes needed to achieve functional content are such that the Amendment should be abandoned (as advocated for by parties such as AHA and Doxa). Ultimately, this view is not supported, although the Panel outlines options for further work that could be considered by Council as planning authority beyond the changes recommended in this Report.

3.2 Is the content of the Amendment suitably targeted to the unique features of the City of Melbourne?

This issue is of significant potential consequence.

As a general principle, the essence of strategic planning is that each planning scheme amendment needs to be directed to and capable of implementation across the area it intends to cover. Therefore, the relatively unique characteristics of the City of Melbourne need to be explored when formulating a gaming policy or schedule for the municipality as a whole.

The question is whether the Amendment has given or could give due regard to these characteristics in formulating a guide for the location and operation of EGMs and the assessment of their potential impact.

3.2.1 Does the policy or schedule need to differentiate between various areas within the municipality, especially the Central City, to have strategic validity?

There are numerous existing planning policies pertaining to gaming within other planning schemes for suburban and regional municipalities. Many of these policies were compared and contrasted in submissions and evidence in this matter.

The City of Melbourne shares some spatial characteristics with more suburban municipalities that have the potential to influence the effects of gaming. But, there are also some spatial elements of the municipality (and the Central City in particular) that are more intensive as a legitimate response to other policy aspirations. This may mean that gaming policies or schedules need to be more tailored for effective implementation in these areas.

(i) Evidence and submissions

Council's position

Mr Rantino posed the question on behalf of Council – do existing planning policies suggest a point of differentiation between the Capital City Zone or Central City and other parts of the municipality that should be reflected in gaming policy? Alternatively, are these points of differentiation addressed sufficiently by the current planning scheme provisions, such that separate guidance is not needed?

From the outset, Council acknowledged the planning scheme 'carve out' from the prohibition on locating EGMs within strip shopping centres within the Capital City Zone. It also pointed to the lack of a cap on the number of EGMs within this area, but noted this was an initiative under the GR Act, not the PE Act.

Throughout its submissions, Council emphasised the priority it had given to consistency in drafting the Amendment. Its starting point was that the entire municipality raised similar challenges to ensuring the appropriate location of EGMs, since the prevalence of problem gambling and socio-economic disadvantage was spread throughout.

It considered that existing policies within the planning scheme, especially those within the MSS, were sufficient to differentiate policy objectives for different areas of the municipality such as the Central City and Hoddle Grid, Victoria Market and so on. Mr Rantino submitted that aspirations for these different parts of the municipality would form part of the suite of policies to be considered by a Council officer when evaluating a particular permit application for gaming.

Mr Rantino also explained that although entertainment uses are encouraged within the Central City, a balanced approach is required to avoid the concentration of gaming venues in line with existing local policy, given their potential for harm. This position was supported by the evidence of Ms Rosen, Council's expert witness.

Ms Rosen acknowledged the unique land use mix within the Melbourne CBD but explained why different policy and assessment criteria were not justified. Her reasons included the lack of homogeneity within the CBD; the fact that Capital City Zone 5 (City North) and Capital City Zone 6 (Carlton Connect site) are covered by the regional cap which is recognised as vulnerable to gambling related harms; the increase in the extent of the Capital City Zone over time and the fact the provisions would be discretionary. She explained that the Capital City Zone including the Hoddle Grid displays the highest concentrations of specific groups at an elevated risk of gambling-related harms such as people experiencing homelessness, young people and students.²²

²² Page 24 of her report.

This ties in with the Background Report which explains that²³:

Key findings

... At a municipal level, the City of Melbourne/Greater Melbourne Area would not be considered at an elevated risk of gambling-related harms due to the overall level of socio-economic disadvantage and other features relating to occupation, and volunteerism.

However, there are certain features of the population of the City of Melbourne that increase the risks of gambling-related harms. These include households with rental stress, median annual household income, proportion of lone and group households, students and proportion of young people aged 15-24 years, and proportion of people with Chinese ancestry. The central, southern and northern areas including Melbourne, Southbank, Carlton, North Melbourne and Parkville display the most indicators of gambling-related harms. These areas contain ten of the 11 EGM venues and Crown Casino.

Implications for the Electronic Gaming Decision-Making Framework and Local Planning Policy for Gaming

The Local Planning Policy for Gaming will need to incorporate specific guidance on measures to prevent convenience gambling, particularly amongst groups that are at an elevated risk of gambling-related harms. . . [it] will also need to include strategies to reduce the concentration and density of EGMs and gaming venues in the Hoddle Grid.

It is relevant to bear in mind that the vast majority of existing EGMs both in terms of the number of venues and the number of machines are located within the Central City and the Hoddle Grid in particular.

In cross examination, Ms Rosen acknowledged the different strategic role of the Central City, including the express encouragement for entertainment opportunities to locate there. However, she reiterated that a gaming policy need not directly reflect the strategic role of the Central City since the determinants of gambling harms are “universal”, regardless of where they operate.

The Panel identified that Ms Rosen had presented an alternative option to Council in her Response to Submissions document (Document 9). At that time, she expressed the view that it would be appropriate to identify *different* assessment thresholds for the Hoddle Grid (but not necessarily to the Capital City Zone as a whole).

When formulating this suggestion, she confirmed that sections of the community using and living in the Hoddle Grid are vulnerable to gambling related harms; there are clusters of gaming venues within a 400 metre radius and the area is highly accessible by public transport to vulnerable groups outside the area. Therefore, she proposed alternative locational guidelines for the Hoddle Grid, noting that a 400 metre threshold would cover most if not all of this area and may be impractical. At that time, Ms Rosen suggested EGMs and venues be discouraged where they are:

- ... in direct line of sight of shopping complexes and public transport interchanges
- ... functionally and visually integrated with gambling-sensitive uses
- ... functionally and visually integrated with concentrations of student accommodation and social housing
- Within 400 metres of a cluster of gaming venues.

²³ Page 47.

In cross examination, Ms Rosen advised that she had changed her professional opinion after liaising with Council and no longer supported differing provisions for the Hoddle Grid. In her view, this approach was not warranted and could otherwise lead to inconsistent decision making.

Industry submitters' position

Doxa and AHA regarded the approach taken to apply comparable policies and locational guidelines to all areas of the municipality as inadequate. A key tenet of their submissions was that gaming policy needs to be cognisant of and respond to other policies in the planning scheme that emphasise and seek to enhance the role of the Central City as Victoria's premier activity centre and entertainment district.

Ms Peterson, town planner, Ratio was called to give evidence on behalf of Doxa, with a particular focus on the implications for the CBD.²⁴ She considered that the Background Report and Draft Decision Making Framework did not provide sufficient strategic policy basis to support the Amendment. She explained²⁵:

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 ...

The 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 ...

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:

- 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.

In her evidence at the Hearing, she further emphasised the important differences between accessibility and convenience in the Central City versus other areas of the municipality, which may influence gambling-related harm.

Ms Peterson also expressed concern that measures often used as key gaming indicators (such as gaming expenditure) had not been refined having regard to characteristics of the municipality, such as significantly higher non-resident users engaging in gaming activities. For example, she explained that residents comprise a modest component of weekday users of the Central City, with far higher numbers of workers and comparatively higher numbers of metropolitan visitors. She deduced that the overall high level of gaming expenditure results from the very high volumes of people who access the Central City on a daily basis as well as its broad entertainment offering.

Ms Peterson considered that the proposed Amendment required wholesale review and should not be included in the planning scheme currently.

²⁴ She declared that she had been engaged by Doxa to provide it with advice, to prepare social and economic impact statements and to appear as an expert witness before the VCGLR in respect of applications made by it.

²⁵ At page 25.

Some submitters were concerned that the effective outcome of the locational guidelines would be to “*prohibit*” gaming in the Central City or at least to “*discourage*” gaming in the entirety of the CBD or Hoddle Grid. They regarded this approach as directly inconsistent with other policies in the planning scheme that emphasise the role of the CBD as meeting entertainment and tourism needs, as well as being Melbourne’s “*economic powerhouse*”.

In particular, they considered this did not meet the primary purpose of a gaming policy – to provide guidance as to where EGMs should or should not be located.

Ms Collingwood on behalf of AHA submitted that “*the particular planning tools to be applied have low utility in the Hoddle Grid*” and were potentially more beneficial in a suburban environment (as used in other planning scheme local gaming policies). To a large extent, this was regarded as a consequence of existing (relatively high) levels of access to EGMs in the Central City.

AHA’s witness, Ms Thomas, considered it was necessary for the Amendment to provide distinct provisions to deal with the Hoddle Grid, Docklands and Southbank given the recognised state significance of the Central City and its identification as a prime activity hub. She also referred to the fact that projected population growth is expected to lead to additional demand for leisure, entertainment and other services in this area.

Like Ms Peterson, Ms Thomas considered that the exclusion of the Hoddle Grid, Docklands and Southgate from the municipal cap on EGM numbers was indicative of the fact that the number of residents is a small proportion of the overall number of people visiting the city on any given day. Consequently, she regarded the number of machines per adult residents as less relevant for these areas.

Mr Tweedie for Doxa submitted that it is critical to put gaming policy into the context of broader planning policy that treats the Central City differently from other locations. A key example is the exemption from the prohibition against gaming in strip shopping centres. He urged the Panel to interpret the exemption from the prohibition on EGMs within strip shopping centres as a deliberate, strategic decision by the state government that the benefits that flow from allowing EGMs to locate within these areas are considered to outweigh the potential detriments.

Council rejected this interpretation and considered there was no evidence this was the intent behind the exemption.

Ms Thomas pointed out that in the absence of an express exclusion, potentially all EGMs would be prohibited in the Central City because of their inability to locate outside a strip shopping centre.

Both Doxa and AHA submitted that it was necessary to delve deeper into the locational characteristics of ‘sub-precincts’ within the City of Melbourne for the purposes of identifying where EGMs should or should not be located within a policy or schedule. For example, they referred to the ‘Theatre precinct’, King Street ‘Nightclub precinct’, the central retail core, ‘Chinatown’, and the like, suggesting that areas such as these should be critically evaluated for their suitability to host EGMs. They emphasised that this strategic work had not been undertaken by Council to date, such that the Panel was not in a position to make specific recommendations to address this deficiency.

(ii) Discussion

Council's approach to the Amendment relies heavily on preferred fixed separation distances from what it regards as sensitive uses or facilities; to be applied consistently across the municipal area, including the Central City. The Panel discusses the workability of this approach in Chapter 5.

The starting point is the purpose of Clause 52.28, "*to ensure that gaming machines are situated in appropriate locations and premises*". In the Panel's opinion, this dictates that a key focus of the Amendment needs to be how to address and respond to locational features within the municipality in gaming applications.

Existing policies pertaining to the Central City and Hoddle Grid encourage a concentration of mixed land use, with a focus on entertainment and retail uses. They also expressly discourage a "*concentration*" of gaming venues in those areas.

Reflective of policy, the Panel considers that the physical and operational characteristics of many land uses within the Central City are notably different from those in other parts of the City of Melbourne which may be less intensive or less directly integrated with one another. As explained by the expert witnesses, potentially enhanced connectivity across the Central City (including walkability) may increase opportunities for access to gaming venues compared with other areas of the municipality.

As mentioned, there are also key distinctions made in the application of gaming legislation and planning controls to the Central City. VCAT in *Melbourne CC v Kingfish Victoria Pty Ltd & Anor*²⁶ recognised that the CBD could be described as a "*liberal gaming setting*".²⁷

However, the Panel is not persuaded by Doxa's arguments about the rationale behind the state government decision to 'carve out' areas of the Central City (excluding Docklands) from the prohibition on EGMs in strip shopping centres. It is only speculative that the state government had determined that the benefits of allowing their co-location would outweigh the potential detriments. Instead, the exemption could be based on a number of drivers.

In the Panel's view, the most likely reason is as proposed by Ms Thomas, that "*this was an explicit policy decision that recognised the nature of retailing in the Capital City Zone and sought to support both the continued development of retailing in the central city and the provision of entertainment uses*".²⁸ As pointed out by Ms Thomas, the important practical effect of the 'carve out' is to allow gaming applications within the Central City to be considered on their merits.

Fundamentally, the Panel accepts that these distinctions and targeted planning policies for the Central City need to be considered carefully when formulating policies for gaming across the City of Melbourne. Otherwise, one questions how the full suite of policy objectives (not only for gaming) could be achieved for the Central City without giving rise to inherent conflict.

This potential for conflict is seen most clearly in the formulation of locational guidelines as part of the Amendment that, when mapped, indicate that there are no (or exceptionally

²⁶ (Red Dot) [2013] VCAT 1130.

²⁷ Also noting the absence of planning policy applying to that area at the time, now being reconsidered by this Amendment.

²⁸ Page 5 of her report.

confined areas) within the Central City where EGMs would not be discouraged. The mapping produced by Council to illustrate the geographic effect of the locational guidelines would also suggest that urban renewal areas such as Fishermans Bend (by default) are effectively the only areas of the Central City where EGMs are not discouraged.

Therefore, the Panel considers that the approach taken to locational guidelines is a somewhat unsophisticated and potentially heavy-handed approach for the Central City. On balance, it considers that the spatial characteristics and circumstances of the Central City make it too onerous to rely on a quantitative separation distance of 400 metres as proposed.²⁹

Some Council constituents may support a blanket approach as suitably giving effect to harm minimisation, taking a broad approach to identified risk factors. However, in the Panel's view, this approach has the potential to curtail the fulsome achievement of policies for this state-recognised area. At the same time, it would be rendered relatively meaningless in its application if EGMs are discouraged in all locations.

While this deficiency detracts from the efficacy of the Amendment, the Panel does not regard the fact that separate locational guidelines have not been provided for the Central City as undermining the underlying strategic validity of the Amendment overall.

The Panel suggests that a more nuanced approach is required, with specific locational guidelines to be crafted at least for the Central City. It considers that in-principle guidance has emerged from generally consistent expert evidence in this Hearing, pointing to a potential way to craft locational guidelines for the Central City. This is addressed further in Chapter 5.3.

(iii) Conclusions

The Panel concludes:

- The Amendment has sufficient strategic justification, either in the form of a local policy or schedule to Clause 52.28, subject to refining its content to overcome identified deficiencies.
- The policy, regulatory and spatial characteristics of the Central City (Capital City Zone and Docklands) justify the application of more tailored guidelines for the location of gaming venues in these areas, compared with the rest of the municipality.

3.2.2 Does the policy or schedule need to provide distinct guidance for urban renewal areas?

(i) Evidence and submissions

Industry submitters pointed to the substantial areas identified for renewal within the City of Melbourne, including precincts such as Arden Macaulay and Fishermans Bend. These areas are expected to transform fully over time into thriving communities of inner Melbourne, hosting dramatically increased working and residential populations.³⁰

²⁹ This was evidenced by the extensive, virtually comprehensive reach of the mapping provided on behalf of Council as to where gaming machines would be actively discouraged by the policy or schedule, even acknowledging the consolidated mapping is layered by reference to differing categories in the preferred form of the Amendment.

³⁰ Fishermans Bend has recently been included in the Capital City Zone (Schedule 4).

A number of submitters were concerned that the strategic work underpinning the Amendment had not explored potentially suitable locational characteristics for gaming venues in identified renewal areas. They suggested that the Panel did not have the benefit of strategic work to inform how the Amendment could be modified to address these areas.

The Background Report considers these areas, explaining that it is not possible to predict the extent to which non-gaming entertainment uses will be available in growth areas since staging of development and provision of facilities will be influenced by market forces to some extent.³¹

Council generally relied on general submissions that the content of the proposed schedule, combined with planning policy as to what is sought for these areas, would be workable and sufficient.

(ii) Discussion

The Panel endorses the importance of forward planning for urban renewal areas. The provision of new gaming venues has the potential to generate significant challenges for renewal areas when they are not specifically planned for.

In terms of timing, the future planning for Fishermans Bend for example is relatively high level, at an early stage and is still somewhat aspirational. At the moment, broad expectations have been outlined for each precinct in terms of both land use and development. Even with emerging Precinct Plans, new activity centres, services and facilities are likely to be provided in these areas at differing times, contrasted with a master planned community that may be in common ownership.

This makes it somewhat nonsensical to expect Council to be in a position to meaningfully provide direct guidance for the location of EGMs in differing precincts within such renewal and growth areas. There will come a time when this work will be opportune and the Panel encourages Council to revisit these policies at that point in time with a keen eye to its preferred land use mixes for each precinct. This may justify policies that are more tailored than for the rest of the Capital City Zone schedules for the time being.

At the current time, at minimum, the Panel considers there is merit in the Amendment addressing the temporal provision of gaming venues (none of which exist in these renewal areas presently), potentially in a similar way to local gaming policy for the City of Greater Geelong at Clause 22.57. That policy reflects anticipated population growth in identified areas and confirms that *“gaming venues should not be established ahead of the provision of non-gambling entertainment, recreation activities and social infrastructure”*.

The Panel regards this important. It would give effect to the protective intent of the remainder of the policy or schedule to provide a broad variety of non-gaming options within which gaming venues would operate in seeking to minimise gaming related harm. This principle was endorsed by all expert witnesses and parties. It would also enable more informed decisions to be made about the location of new gaming venues – being an inherently sensitive land use – once a range of other land uses emerge.

³¹ Page 53.

No doubt an argument could be made that a hotel or club offering gaming entertainment could represent the cornerstone of a renewal area. It may be open to a proposed venue to demonstrate that it can itself provide sufficient 'critical mass' in terms of other entertainment opportunities and facilities such that gaming is but one component of a more significant entertainment offer, such that it should otherwise be approved first in time. Issues of broader social and economic benefit or disbenefit may also come into play in such an assessment. This would involve a merits consideration but does not detract from the guideline being proposed as an indicator.

Beyond a temporal guideline, the Panel considers it is not feasible to include more detailed locational provisions for gaming venues in urban renewal areas – especially at the current time.

It also recognises that the role of locational guidelines for these areas may shift over time. When redevelopment of these areas first gets underway, it is unlikely to exhibit the same spatial concentration of land use as the Central City, for example. There may be justification and scope for increased separation between proposed venues and potentially sensitive uses, services or facilities.

For this reason, the Panel is inclined to the view that policies pertaining to the remainder of the municipality (outside the Central City) are likely to represent a suitable and achievable starting point, in the short to medium term.

It may also be relevant for Council to consider whether or how to apply the guideline to avoid locating EGMs in areas that are "*predominantly residential*" as a protective element for urban renewal areas. This would recognise that the mix of land uses encouraged in many of these areas includes substantial anticipated increases in residential populations and densities.

This terminology is likely to be difficult to apply to renewal areas, many of which are expected to encourage integrated mixed use in the true sense. Therefore, a better approach may be to update gaming policy for urban renewal areas once full precinct planning is undertaken.

(iii) Conclusions

The Panel concludes:

- An imminent challenge for urban renewal areas is that, in the absence of detailed guidance, EGMs may be introduced before other non-gaming facilities are operational in a particular area, with potentially detrimental social and economic impacts.
- A specific locational guideline should be provided for urban renewal areas to address the issue of timing for the establishment of gaming venues, to follow the substantive provision of non-gambling uses and facilities.
- Beyond this, the quantitative measures proposed for the location of gaming venues outside the Central City could be applied to sites within urban renewal areas as they first develop.
- Over time, once precinct plans are endorsed, it may be appropriate to develop more detailed locational guidelines.

3.2.3 Does the policy or schedule need to respond expressly to the effects of Crown Casino on the gaming ‘landscape’ within the municipality?

(i) Evidence and submissions

The Background Report prepared by Symplan explained that (in late 2017) Crown Casino was the 11th largest casino in the world. Nineteen million people visited Crown Casino in the period between July 2013 and June 2014. Its revenue was more than twice the largest casino in Las Vegas. It considered that³²:

The scale of the facility, range of gambling activities and its proximity to public transport, cultural and arts precincts and the adjoining municipality of Port Phillip mean that the Casino is likely to attract a diverse patron profile from a wider catchment. However, its proximity to other venues in the municipality, and the fact that the hotel and club gaming venues also serve a wide catchment and diverse patron profile mean that the Casino is likely to act as a major competitor to the hotel and club gaming venues in the municipality. These factors, in addition to the expenditure on EGMs at the Casino need to be taken into account when assessing the overall accessibility to gambling activities in the municipality.

Some submitters regarded the Amendment as fundamentally flawed because its content and the Background Report on which it was based did not sufficiently or directly address the impact of Crown Casino within Southbank on gaming within the remainder of the City of Melbourne.

More specifically, it was said that the Amendment did not expressly address locational or operational opportunities for new or “top up” applications for EGMs in light of the influence of Crown Casino. This was considered necessary because of its sphere of influence, as a stand-alone venue providing some 2,500 EGMs over extended operating hours in addition to providing a substantial number of other gambling, entertainment and retail opportunities. It is also geographically part of a broader sports and entertainment precinct.

Bearing this in mind, Ms Thomas explained that there is already a “*threshold level of accessibility*” to EGMs within the City of Melbourne, such that additional EGMs at least in certain areas may not necessarily result in a significant difference in accessibility.

In response to cross examination, Ms Peterson suggested that the presence of Crown Casino may mean that new EGMs or venues should be discouraged in nearby areas. However, the reason for her suggestion was not explored to any great extent the Hearing.

At the Panel’s request, Council subsequently confirmed that Crown Casino is regulated by the *Casino Control Act 1991* under which the VCGLR may regulate certain matters (Document 37). Crown Casino was granted a Casino licence in 1993 and is subject to a Management Agreement with the Minister limiting the overall number of EGMs to 2,628.³³

Council considers that Crown Casino benefits from existing use rights for gaming and believes that it would not need relevant permissions under Clause 52.28³⁴ and would thereby not be affected directly by a replacement policy or updated schedule.

³² Chapter 4.2.

³³ Incorporated Documents apply but generally control the development of the Casino rather than its use.

³⁴ Relying on *McKinnon Hotels Pty Ltd v Glen Eira CC* [2011] VSC 627.

(ii) Discussion

If the Amendment were to result in a replacement Local Planning Policy at Clause 22, it may theoretically be possible to include commentary as to the effects of Crown Casino on gaming behaviours and accessibility of EGMs in the City of Melbourne as a component of the policy basis. This could in theory be addressed in the MSS if considered necessary or reasonable but is not proposed as part of this Amendment.

However, if the Amendment is progressed as a schedule to Clause 52.28 (as preferred by Council and recommended by the Panel), there is no ready location for information of this type.

The Panel was also not presented with any discrete evidence about the impact of gambling at Crown Casino on proximate areas. Suffice to say that it provides ready access to a substantial number of EGMs and other gambling opportunities within a substantial multi-hotel and entertainment complex.

The absence of this research is not considered fatal to the Amendment in either form.

The Casino operates as an entity in its own right and sits outside the direct ambit of the Amendment. The Panel is not persuaded at this stage that locational guidelines are necessary for areas near Crown Casino or elsewhere in the City of Melbourne in direct response to Casino operations since they operate under different regimes and are quantitatively and qualitatively different.

Further work on behalf of Council could potentially include research on the spatial impact of the gaming offer at Crown Casino on the City of Melbourne or areas within it. This could potentially inform the state of knowledge as to whether it would be desirable or undesirable to locate another gaming facility nearby. Conceivably, there could be arguments advanced both ways.

More likely, the impact of Crown Casino may need be considered if and when a permit application is made for land nearby. This analysis would potentially be captured by the proposed locational guidelines or application requirements for a highly proximate proposal (referencing an existing gaming facility), or could be considered within a broader social and economic impact assessment if considered relevant. It may also be a relevant consideration when considering proposed hours of operation or other operational characteristics of a proposed gaming facility nearby.

(iii) Conclusions

The Panel concludes:

- The operation of Crown Casino within the City of Melbourne has been broadly considered in the documents underpinning the Amendment.
- The draft policy or schedule are not inherently deficient by virtue of their lack of direct reference or response to Crown Casino. In particular, the schedule would not have any practical ability to influence the operations of Crown Casino.
- Instead, there is an opportunity to consider the particular effects of the Casino on a proposed gaming venue nearby as part of a detailed social and economic impact analysis if its sphere of influence warranted this consideration.

3.3 Recommendations

The Panel recommends:

Remove existing Clause 22.12 from the Melbourne Planning Scheme.

Replace exhibited Clause 22.12 with a revised Schedule to Clause 52.28 to the Melbourne Planning Scheme in the form of Appendix C.

Amend policy in the Municipal Strategic Statement (Clause 21) of the Melbourne Planning Scheme in accordance with the version included in Attachment 1 to Council's Part B submission (Document 12).

Delete *City of Melbourne Electronic Gaming Machine Review Draft Background Report, October 2017* and *City of Melbourne Draft Electronic Gaming Machine Decision-Making Framework, October 2017* from the proposed list of Reference Documents under the Melbourne Planning Scheme.

4 Proposed objectives

An important issue is whether the objectives of the policy or schedule are acceptable.

To some extent, this hinges on whether they have sufficient regard to municipal context and are suitably founded on evidence. The Background Document indicates that it considered a full range of local policy objectives pertaining to gaming in various existing planning schemes.

The objectives of the policy as exhibited included (in summary):

- to minimise gambling related harms
- to ensure suitable locations and premises for EGMs to prevent convenience gambling
- to ensure EGMs operate as part of a range of social, leisure, entertainment and recreation facilities
- to reduce the concentration of EGMs and gaming venues
- to ensure EGMs do not detract from the amenity of surrounding areas
- to ensure the location and operation of EGMs *“achieves net community benefit”*
- to discourage the proliferation of EGMs in locations where the predominant use is residential.

Some of these objectives were refined and consolidated in the Panel preferred version of the schedule now supported by Council.

Notable changes include deletion of the word *“reduce”* and introduction of the word *“manage”* when referring to the concentration of EGMs and gaming venues, with the intent to *“redistribute gaming machines and gaming venues away from areas vulnerable to gambling related harms”*. Other changes in wording also to seek to *“minimise”* rather than *“prevent”* convenience gambling.

Both of these are regarded by the Panel as important improvements to the Amendment to reflect the underlying concerns expressed by submitters about the appropriate role of a policy or schedule.

4.1 Extent of agreement and disagreement

As mentioned, all parties accepted the notion of a policy or schedule seeking to minimise gambling related harms. It was acknowledged that although gaming is a lawful pastime, it has the potential for negative impacts that may be influenced by spatial or operational factors.

In substance, witnesses supported the intent to minimise (rather than prevent) *“convenience gambling”*, where this concept was broadly understood as having the potential to lead a person (especially one who may be prone to problem gambling) to make an impulsive decision to gamble when undertaking their day-to-day activities.³⁵

They also considered there was strong merit in encouraging the use of EGMs as part of a broader entertainment offer within premises or a particular area. This is also consistent with broader state and local planning policies for activity centres, especially the Central City.

³⁵ The Bayside Planning Scheme contains a definition in Clause 22.09-6 as *“exposure to gaming opportunities as part of day to day activities such that a decision to gamble may be spontaneous rather than predetermined”*.

Likewise, parties accepted that a policy objective could seek to ensure that gaming does not detract from amenity. This is a feature of the existing policy. However, over time it has become apparent that this is a comparatively lesser concern, especially if a gaming venue is operated in accordance with a gaming licence and planning permit.

Areas of dispute centred around the use of terminology such as:

- managing the “*concentration*” of EGMs (and the connected reference to “*spatial distribution*”). Council suggested that this term could be given its normal meaning, to discourage a cluster, close gathering or collection of EGMs or venues
- net community benefit (as both an objective and decision guideline beyond Clause 71.02)
- whether the “*redistribution*” of EGMs away from vulnerable areas was a realistic possibility
- whether EGMs should be discouraged in areas that are “*predominantly residential*” and this the terminology could be applied.

4.2 Disputed objectives

4.2.1 Net community benefit

Originally, the policy (now schedule) proposed to reference net community benefit in a number of locations – the objectives, application requirements and decision guidelines.

Council refined its preferred form of the Amendment throughout the Hearing, to retain this concept in the objectives “*to ensure that the location and operation of gaming machines achieves net community benefit*”, and in the decision guidelines “*how the proposal delivers net community benefit*”.

(i) Evidence and submissions

All parties and their experts considered that net community benefit is a relevant consideration in assessing any permit application by virtue of Clause 71.02. However, they differed in whether this should manifest itself expressly in an individual local policy or in the schedule to Clause 52.28.

Council considered that the reference in the policy or schedule would “*cement the role of net community benefit in balancing policy when assessing an application [for EGMs]*”. It therefore preferred its retention in the objectives and decision guidelines of the policy or schedule.

AHA and Doxa were particularly concerned that including this in specific provisions relating to gaming would have real potential to mislead a decision maker into either:

- thinking this was a ‘test’ that needed to be satisfied for an approval, or
- assessing net community benefit within the “*four corners*” of the policy or schedule, without integrating other policies in the planning scheme such as those relating to economic considerations.

Ms Collingwood on behalf of AHA referred to a wide variety of officers reports considering planning permission for the use of EGMs where she considered the officers fell into error by

applying net community benefit as a stand-alone test. Some of these determinations were the subject of review by VCAT, and Ms Collingwood tabled relevant decisions.³⁶

Council rebutted these submissions by suggesting that the Panel should not evaluate draft policy or the schedule on the basis that it may be misapplied by a planning officer. It considered it valuable to include reference to community benefit since it would ensure that net community benefit would be considered in gaming applications.

Mr Tweedie queried why it would be appropriate to expressly reference net community benefit as an objective, application requirement or decision guideline when there was an overriding obligation to consider this for all types of permit application under the planning scheme. He questioned why gaming should be treated differently from other lawful pastimes carrying risk, such as licensed premises and brothels that do not include this as an objective in specific policies or provisions.

In cross examination, Ms Rosen responded that it could potentially be as appropriate to refer to *“minimising gambling related harms and maximising their benefits”*. However, she did not regard this difference in proposed wording as representing a meaningful shift compared with the wording used in the Amendment.

Some industry submitters also considered that the policy or schedule did not sufficiently refer to the positive benefits that may result from the operation of EGMs.

Council considered there was no real need to emphasise these in the policy or schedule.

(ii) Discussion

The law regarding the role of an assessment of net community benefit in applications for the use of land for gaming is now well resolved.³⁷

In summary, it has been confirmed as a relevant consideration but not a ‘test’ for the approval of a planning application, in other words, a permit for gaming could potentially be granted even if the proposal would not result in net community benefit. This is the proper effect of Clause 71.02 (formerly Clause 10).

The Panel has had reference to and largely supports the analysis of the Panel in Melton C182 on this issue.³⁸ However, how this principle may legitimately manifest in planning policy or a schedule is open to differing views.

The Panel commented that:

The Panel agrees with Council’s position that it is curious that Zahav submitted net community benefit should not be duplicated in local policy, but section 60(1)(f) which assesses significant social effects and significant economic effects should be. The Panel considers either of these could be equally included in a local policy to guide decision-making and accepts Council’s choice in this instance ...

³⁶ Folder of documents, Document 22.

³⁷ Numerous cases were referred to by the parties to the proceeding. Including a high proportion recorded by the Panel in Melton C182 at pages 7 and 8, most notably *Prizac Investments Pty Ltd & Ors v Maribyrnong CC & Ors* (Red Dot) [2009] VCAT 2616 and *Moreland CC v Glenroy RSL* [2018] VSC 126.

³⁸ Chapter 3.3 of its report in particular.

This Panel agrees with previous Panels that the act of balancing competing policy issues in the interests of net community benefit is a fundamental planning policy and that any proposed wording should not by intent or accident seek to elevate net community benefit to more than a policy consideration.

The Panel also noted comments in Macedon Ranges Amendment C64 and Bayside Amendment C98 that net community benefit is an appropriate consideration for a planning policy, but alternative language aimed at 'harm minimisation' or the 'avoidance of impacts' is more strategically justified based on supporting policies.

While there is nothing inherently improper about referring to community benefit or disbenefit in an objective for a gaming provision (or any specific provision in fact), this Panel considers that it is not generally desirable to import the accepted terminology of "*net community benefit*" into a policy or specific provision. This terminology tends to connote a particular type of overarching assessment that cannot normally be applied effectively through a specific provision alone.

Another concern is that the objective as drafted seeks to "*ensure*" net community benefit which may be applied (to use the words of the Panel in Melton C182) "*by intent or accident to elevate net community benefit to more than a policy consideration*".

The Panel considers that this concern can reasonably be resolved by a somewhat subtle but important change in terminology. It prefers the wording "*to ensure that the location and operation of gaming machines reduces disbenefits and increases benefits to the community*".

This wording would appear to give effect to the underlying intent of Council as well as the broad thrust of submissions by industry submitters, that the policy or schedule do not sufficiently recognise the community benefits that can flow from the use of EGMs.

Further, the Panel accepts Council's concession that it may be relevant to consider statutory community contributions as part of the suite of benefits that may accrue from the operation of EGMs. Accordingly, it is appropriate to remove this proposed exclusion.

Similar to findings of the Panel in C182, this Panel regards the further proposed reference in the decision guidelines as superfluous, since it is a matter required to be considered anyway in the proper application of the planning scheme (confirmed by the standard introduction to Clause 7.0).

(iii) Conclusion

The Panel concludes:

- Net community benefit is a relevant consideration for the installation or use of EGMs in applications under Clause 52.28 by virtue of Clause 71.02 of the planning scheme.
- An objective to policy or the schedule to Clause 52.28 should be careful not to use this accepted terminology out of context since it may be misapplied.
- Alternative wording is preferred that is more targeted and balanced. This should emphasise the desire to increase the benefits and decrease disbenefits associated with the location and operation of EGMs.
- There is no need to include reference to net community benefit in the decision guidelines of the policy or schedule.

4.2.2 Other matters

Council accepted that it would not be reasonable for a policy or schedule to seek to prevent convenience gambling since this is multi-factorial, but the aim to “*minimise*” would be valid.

For reasons outlined in Chapter 6, the Panel regards the reference to the redistribution of EGMs and gaming venues as overstated as an objective. The reference to areas vulnerable to gambling related harms should similarly be expanded to refer to communities who are vulnerable.

In general, the consolidated objectives seek to merge concepts from discrete objectives in earlier iterations in an attempt to meet new format and content restrictions. It is probably preferable to streamline them further, with the suggestion to delete reference to impacts on amenity caused by gaming venues given the Panel’s comments above.

4.3 Recommendations

The Panel recommends:

Amend the wording in Clause 1.0 of the Schedule to Clause 52.28 to read:

- **To minimise gambling-related harms to individuals and the community and ensure that gaming machines are situated in appropriate locations and premises to minimise convenience gambling.**
- **To manage the concentration of gaming machines and gaming venues away from areas or communities vulnerable to gambling related harms.**
- **To discourage the proliferation of gaming premises in locations outside the Central City (Capital City Zone and Docklands) where the predominant use is residential.**
- **To ensure that the location and operation of gaming machines increases community benefit and decreases community disbenefit.**

Delete the decision guideline referring to net community benefit from Clause 7.0 of the Schedule to Clause 52.28.

5 Locational guidelines for EGMs

5.1 Has a sound approach been taken to identify areas encouraged and, by contrast, areas discouraged for the location of EGMs?

This was a fundamental point of difference between Council and some submitters.

Doxa and AHA submitted that the key purpose of a gaming policy or schedule to Clause 52.28 was to provide guidance as to where EGMs should or, conversely, should not be located. They considered that the proposed policy or schedule was unworkable because of the extent of overlap between areas encouraged for the location for EGMs and areas discouraged in terms of their location.

Council disagreed. It emphasised the discretionary nature of these provisions. Council considered that a balanced application of the policy or schedule would be likely to lead to acceptable results in individual proposals.

In summary, the Panel considers there is merit in encouraging separation between EGMs and sensitive uses in an attempt to minimise gambling related harm for those who may be at risk. This goes directly to dual purposes of Clause 52.28 *“to ensure that gaming machines are situated in appropriate locations and premises”* and *“to ensure the social and economic impacts of the location of gaming machines are considered”*.

Pertinent questions are how this should be achieved in policy or a schedule to Clause 52.28, whether it should be more tailored for land in the Central City and which uses or facilities are ‘sensitive’.

(i) Evidence and submissions

Industry submitters’ position

All parties and witnesses supported the expectation that EGMs should be located in areas well serviced by a range of non-gaming facilities to minimise gambling related harm. For example, Ms Rosen explained that this has been demonstrated through research to be a protective factor for a form of entertainment that can be associated with harm for some individuals.

Doxa and AHA highlighted that the wording of the schedule would lead to all areas of the municipality being identified as locations where gaming venues were encouraged. It troubled them that, at the same time, mapping prepared by Council and Ms Peterson based on proposed provisions of the schedule indicated that virtually all areas of the municipality would be characterised as areas where gaming is *discouraged* due to proximity to identified land uses, services and the like (relative to the 400 metre proposed walking distance).

They submitted that this was a fundamentally inappropriate approach to managing the location of EGMs in the City of Melbourne.

Ms Thomas considered that the primary role of the schedule to Clause 52.28 was to identify locations where EGMs *“should”* be located rather than the Amendment which focused more heavily on where they should not be located. She gave evidence that the provisions do not appropriately respond to the different locational, environmental, social and economic

considerations relevant to the Central City, for example. Instead, it takes a “*one size fits all approach*”.

Council

Mr Rantino for Council submitted that it was not unusual for planning policies to nominate characteristics of particular settings that would result in a proposal being both encouraged and discouraged to some extent. He pointed to the fact that a proposed location is likely to meet some negative locational elements but not necessarily all – bearing in mind the mapping prepared by Ms Peterson and the consolidated mapping prepared by Council (Document 5a) reflected all locational ‘layers’ cumulatively.

This would give the impression that virtually the whole municipality was unsuitable for EGMs when this was not necessarily the case. Closer examination would be required on a site specific basis.

Mr Rantino expressed the view that town planners are commonly required to evaluate differing levels of support for a particular proposal in evaluating its merits, especially when dealing with a complex land use such as gaming.³⁹

(ii) Discussion

The Panel accepts that it may sometimes be inevitable that an area or site will be subject to policies both encouraging and discouraging a particular land use. However, this should be avoided to the extent possible when formulating a new policy or schedule.

Otherwise, it will be difficult for an applicant or the community to obtain practical guidance as to preferred or discouraged locations for such uses. It may also be difficult for a planning officer to accord appropriate weight to elements of the policy or schedule relative to its objectives.

Therefore, the Panel agrees with submissions that the Amendment as currently drafted falls short of suitably identifying areas encouraged and, conversely, areas discouraged for gaming. Further refinement of these guidelines is recommended as discussed below.

5.2 For areas outside the Central City, are the ‘discouraged’ locational characteristics justified? Is the 400 metre separation distance workable?

The Amendment seeks to discourage gaming venues within 400 metre walking distance or clear line of sight from what Council regards as sensitive or potentially incompatible uses. This stems from a generally accepted preference for gaming venues to be “*accessible but not convenient*” as a suitable starting point when considering the appropriateness of the location and operation of EGMs.

³⁹ He used the former Mercat Cross Hotel site on the corner of Queen and Therry Street opposite the Victoria Market as an example where positive locational attributes may outweigh the negative. This was one of the very few areas not covered by the consolidated mapping discouraging EGMs, although the effects of the proximity to the state-significant market would require careful consideration if such application was proposed.

Some submitters challenged these propositions. On the whole, expert witnesses acknowledged potential sensitivity to a number of listed uses, facilities or features, albeit generally suggested a more performance based approach be adopted both inside and outside the Central City.

Ms Thomas elaborated on the potential effect of accessibility on problem gambling. She referred to the statistics presented in Productivity Commission findings.⁴⁰ She also replicated some of its comments on the accessibility of EGMs, noting that “*there is a link between accessibility and gambling related harms*” with some qualifications – the link weakens when a threshold of accessibility has been exceeded; it can vary over time; causality can work both ways; and there is capacity for community adaptation.⁴¹

Fundamentally, Ms Peterson regarded the threshold test within the City of Melbourne not whether EGMs are “*accessible*” but whether they are “*highly convenient*”. In her opinion, a 400 metre separation distance had not been upheld by a court or tribunal even where discouraged. She regarded this locational guideline as effectively redundant. Instead, ease of connectivity and extent of pedestrian access were regarded by her as much more suitable measures to encourage deliberate decisions to gamble and to discourage impulsive behaviours.

Divergent submissions focused particularly on whether there is sufficient justification for the preference against locating EGMs:

- near “*public transport interchanges*”, explained by Council as a location where two nodes of public transport intersect
- within locations where the predominant surrounding use is residential
- near student accommodation.

5.2.1 Proximity to or connection with residential use

(i) Evidence and submissions

The proposed guidelines for the location of EGMs provide that EGMs should not be located in buildings used for residential purposes. A number of submitters and witnesses accepted that this was consistent with the current Ministerial Direction under gaming legislation and did not oppose its inclusion in the planning provision.

However, Ms Peterson was more cautious about these relationships in the City of Melbourne where it may be possible to achieve suitable “*vertical separation*” of a gaming venue from residential uses within the same building, citing the example of a potential venue on a high level of a building. She considered this may be acceptable since it would not provide convenient or impulsive opportunities to gamble.

A more contested issue was whether gaming venues should be separated from areas that are “*predominantly residential*” and how this could be assessed.

⁴⁰ Page 14 of her report.

⁴¹ *Productivity Commission Report into Gaming 2010*, Chapter 14.

Ms Rosen acknowledged there is no research demonstrating a “*causal link between residential uses and gambling-related harm*”. However, she pointed to factors indicating that proximity to residential uses can contribute to convenience gambling.⁴² These factors include a large projected residential population increase within the Central City. At the Hearing, Ms Rosen explained that proximity to residential use was an identified risk factor in the Caps Review.

In addition, some submitters considered that it would be challenging to identify whether the land use in a particular location was “*predominantly residential*”, especially in Capital City or mixed use areas, and this may change over time.

(ii) Discussion

The Panel agrees that, at least at first instance, gaming venues should not be located in residential buildings. This is also consistent with the Ministerial Direction that influences whether approval of premises could be granted. Even recognising the separate nature of the dual planning – gaming regimes, the Panel accepts that there is cause to examine whether a gaming venue within a residential building could exacerbate convenience for problem gamblers.

This criterion could possibly be tempered in its practical application, such as where vertical separation is proposed without expressly referring to this factor in the locational guidelines. For example, considerations of practical ease of access are already evaluated by decision makers such as VCAT in cases such as *Benmara Pty Ltd v Whittlesea CC*⁴³.

A significant practical challenge for this municipality is that many areas (especially in the Central City and renewal areas) have been expressly identified in policies for increased residential development, with associated increases in densities. It is unclear at this stage how this may affect opportunities to locate new venues or to expand the gaming offer at existing venues.

Although it may be challenging in practice to identify whether the predominant surrounding land use is residential in some locations within the City of Melbourne, the Panel accepts the evidence of Ms Rosen that this could be a factor that heightens convenience and therefore, risk for problem gamblers.

Balancing these considerations, it is reasonable for it to be included as one of a number of factors bearing on the appropriateness of the location when considering areas *outside* the Central City in particular (possibly excluding urban renewal areas intended for integrated mixed use). This may help to refine suitable or unsuitable locations outside the Central City, such as avoiding predominantly residential areas within Carlton or South Melbourne to reduce highly convenient access.

⁴² Page 28 of her expert witness report. Although Mr Rantino qualified that stand-alone gaming venues are prohibited in residential areas but hotels or clubs could be permitted which offered gaming machines.

⁴³ [2015] VCAT 1463.

5.2.2 400 metre walking distance

(i) Evidence and submissions

Ms Rosen explained the evidence base for the 400 metre assessment threshold in her report, with a focus on walkability as a determinant of accessibility and convenience which, in turn, are determinants of gambling-related harms.⁴⁴ She also referenced research that concluded that problem gamblers tend to gamble in areas close to their home or workplace.

Some submitters suggested that it may be more appropriate to provide a separation distance of 100 metres, referencing this separation distance in local policies pertaining to licensed premises (Clause 22.22) and sexually explicit adult entertainment (Clause 22.11).

Ms Rosen responded to questions put to her in cross examination that a 100 metre separation distance for these uses was targeted to issues of amenity, rather than the potential for interrelationships between facilities, which was a more direct concern for gaming venues⁴⁵. She considered that the 400 metre separation was especially relevant in the Central City given the high proportion of pedestrian activity in connection with day-to-day activities.

Ms Rosen conceded that *“there is no scientific evidence drawing a direct correlation between a walking distance of 400 metre and an increase in the incidence of gambling-related harm”*. Notwithstanding, she suggested that it was reasonable to adopt what she regarded as standard planning and social impact assessment principles when formulating policy (in addition to having regard to the precautionary principle⁴⁶).

Council referred to a number of other current local policies and relevant Panel decisions in seeking to justify the 400 metre reference.⁴⁷ At the same time, it acknowledged that this aspect was not a *“perfect measure”* but was at least understandable and quantifiable.

These examples included the recent Panel Report for Melton Amendment C182 (Local Gaming Policy). At Chapter 4.3, the Panel summarised how this issue was dealt with by other Panels, commenting that:

... the Panel understands the desire to separate gaming from sensitive uses is meant to meet the well accepted aim of gaming being accessible but not convenient...

The Panel agrees that a separation distance may not be the perfect measure to achieve the objective of venues being accessible but not convenient ...

After consideration of alternate wording, the Panel agrees with previous Panels that although not perfect a separation distance provides a pragmatic approach.

A number of submitters and their witnesses did not support the proposed 400 metre walking distance separation as an appropriate measure, especially in the inner city where land uses are often highly concentrated. They particularly regarded this measure as misguided in the Central City, being an arbitrary separation distance.

⁴⁴ Pages 18 and 19 of Ms Rosen’s expert witness report.

⁴⁵ The Tribunal in the *Francis Hotel* decision acknowledged that the impact of this type of use differs from that of gaming.

⁴⁶ Referenced in the *Public Health and Wellbeing Act 2008*, section 6.

⁴⁷ Including Mount Alexander Planning Scheme Clause 22.33, Macedon Ranges Planning Scheme Clause 22.04, Wyndham Planning Scheme Clause 22.03, Monash Planning Scheme Clause 22.12, Yarra Ranges Planning Scheme Clause 22.08, Port Phillip Planning Scheme Clause 22.07, Knox Planning Scheme Clause 22.05 and Cardinia Planning Scheme Clause 22.03.

In a practical sense, if this provision was introduced, Ms Thomas was also concerned that it would be challenging to identify which aspects were most critical for harm minimisation in the absence of an accompanying Reference Document.

(ii) Discussion

For similar reasons expressed by the Panel in Melton C182 on balance, the Panel accepts the 400 metre walking separation distance proposed by Council as a generally suitable measure. However, this is subject to the important proviso that it should only apply to areas *outside* the Central City in light of the considerations discussed in Chapters 3.2 and 5.3.

5.2.3 Separation from sensitive uses

(i) Evidence and submissions

Turning to the various elements of discouraged locations, Council submitted that it was appropriate to discourage gaming venues in close proximity (400 metre walking distance) to:

- existing or approved gaming venues
- shopping complexes and strip shopping centres
- public transport interchanges
- concentrations of social housing (defined in the policy or schedule)
- student accommodation
- a gambling sensitive service or facility (explained in the policy or schedule).

Submitters argued that these criteria, when combined, would effectively preclude EGMs within almost all of the municipal area.

All experts accepted that there is evidence that problem gamblers frequent multiple facilities, and that it would reduce the risk to these people if venues were not located close together. This would support the desire to separate new venues from existing and approved gaming venues.

The decision of VCAT in *Francis Hotel Pty Ltd v Melbourne CC*⁴⁸ was referred to by some parties as base benchmark, where its potential association with the nearby gaming venues were held to be a “*functional cluster*” that would increase risk for problem gamblers. In the context of gaming venues, the Tribunal regarded a “*concentration*” and a “*cluster*” as being generally equivalent. To a large extent, they were influenced by likely routes of travel, including tram routes, that would mean that it would be difficult for pedestrians (including office workers) to avoid passing a gaming venue in their day-to-day activities. This was considered to be a question of fact to be determined on the basis of the particular circumstances of each permit application.⁴⁹

No submitters directly challenged the intent for separation from shopping complexes. However, they made it clear that the prohibition against locating within a strip shopping centre was expressly excluded for much of the municipal area by virtue of the Ministerial

⁴⁸ (Red Dot) [2012] VCAT 1896.

⁴⁹ In that case, VCAT was not persuaded that the potential relationship between the proposed venue and student housing was a reason to refuse the application in light of studies undertaken and consideration of the clientele of the particular venue. See para [96]-[102] in particular.

declaration. It would therefore not make sense to expand the prohibition spatially for such land (that is, within the Capital City Zone).

Submitters and their witnesses expressed caution about seeking separation from “*public transport interchanges*”, and highlighted that this term is not readily defined or understood.

Ms Peterson accepted that it would be eminently reasonable to seek to separate gaming venues from heavily used train stations, on the basis of their function in transferring people to their place of work, place of residence or day to day activities. However, she was not persuaded that it was necessary or reasonable to avoid direct proximity with other forms of public transport.

Some witnesses considered it was reasonable to avoid a separation from concentrations of social housing, given their socio-economic profiles. Others, such as Ms Peterson explained that residents of social housing have not been identified in evidence as being more vulnerable to the risks of EGMs than the general population.

Ms Rosen explained that students are particularly vulnerable to the risks of gambling given their age and status. She considered this was exacerbated by the challenges facing international students, which form a high percentage of the student cohort in the City of Melbourne.

Other expert witnesses acknowledged the body of evidence that confirms that students are more likely to be affected by gambling related harms than the general population. However, on deeper analysis, they considered that this evidence also shows that students (especially international students) are not disproportionately affected by EGM use, as opposed to other forms of gambling or Casino-based gambling (which are statistically higher)⁵⁰.

All submitters seemed to accept that it would be undesirable to locate a gaming venue close to a gambling sensitive service. This was consistent with the VCGLR’s refusal to grant approval for the Victoria Hotel given the venue’s proximity to Urban Seed, a facility for people experiencing health issues and socio-economic disadvantage. This was combined with the design of the venue and potential to result in a cluster of gaming venues.

Some raised the practical challenge of identifying such facilities, noting that they had not been mapped by either Council or the expert witnesses to date in preparing for the Hearing given the detailed work involved. Likewise, all expert witnesses considered that it would be undesirable for a gaming venue to be located within clear line of sight of uses or facilities they identified as gambling sensitive.

(ii) Discussion

The important consideration in respect of these potentially sensitive uses or facilities is to ensure compatibility of land use, in line with planning policy at Clause 13.07-1S. This is an area where the schedule has the most effective capacity to guide appropriate outcomes.

⁵⁰ To some extent, this issue was canvassed by the VCGLR when considering approval for the Victoria Hotel. It was not persuaded that proximity to a tertiary education facility justified refusal since EGMs were not the main form of gambling favoured by students.

Having considered all evidence and submissions, the Panel considers that there is merit in retaining a proposed separation from existing or approved gaming venues, given what is known about the behaviour of problem gamblers.

The Panel also considers there is some, although not strong, justification for separation from shopping complexes. It notes that a policy decision has been made at state level seeking to avoid EGMs locating within nominated shopping complexes.

By contrast, the boundaries of strip shopping centres may be less well defined spatially and it is probably reasonable at first instance to avoid to locate gaming venues at their peripheries outside the Central City.

However, the Panel considers that it would not be reasonable to seek to apply this discouragement against locating near strip shopping centres to the area of the municipality that is covered by the exemption from locating EGMs within strip shopping centres. Otherwise, the proposed provision would be unnecessarily onerous for this land. This observation should be read with the Panel's recommendations elsewhere in this Report that more performance-based locational guidelines are justified for the Central City.

The Panel accepts the evidence of witnesses in this proceeding that it would be undesirable in principle for gaming venues to be located in close proximity to highly frequented public transport facilities such as key train stations.⁵¹

It is more challenging to identify whether it is reasonable to discourage gaming venues in close proximity to other transport nodes such as tram stops, since the evidence of this interrelationship was not clearly presented to the Panel. In reality, the City of Melbourne has a relatively high level of public transport connectivity compared with more suburban locations. The mapping prepared by Council indicates that substantial areas of the municipality would be within a 400 metre radius of what it regards as a public transport interchange. This has the capacity to vastly increase overall areas where gaming venues or machines would automatically be discouraged, without sufficient justification at this stage.

Although tram stops and other forms of public transport may not be as heavily frequented, they may still play an important role as considered by VCAT in the *Francis Hotel* decision where this combines to form a functional cluster of venues that make it more difficult to avoid gaming venues when undertaking day-to-day activities.

The Panel suggests that a more reasonable balance would be to discourage EGMs within 400 metres of train stations unless Council is able to identify other discrete data about heightened levels of gaming risk from conjoined public transport connections specifically.

In the absence of this, it would be reasonable for the Responsible Authority to consider the extent of practical connectivity (including by all forms of public transport) in the circumstances of a particular permit application having regard to the varied decision guideline that seeks to consider whether a proposal would *"increase exposure to gaming opportunities as part of day to day activities such that a decision to gamble may be spontaneous rather than*

⁵¹ Notwithstanding the existing The Clocks gaming venue operated by Doxa, located on the Flinders Street Station concourse.

predetermined” as discussed in Chapter 7. A comparable approach was taken by VCAT in the *Francis Hotel* decision in the absence of an applicable guideline.

As to whether separation should be sought from “*concentrations of social housing*”, all experts agreed that EGMs should not be located close to communities vulnerable to their harms. In *Kingfish*, VCAT refused to grant planning permission since the proposal would be incompatible with a proximate specialist social housing facility (Ebsworth House).

Only Ms Peterson appeared to consider that occupants of social housing had not been demonstrated to be at higher risk to gambling by EGMs than the general population.

The Panel supports Council in identifying social housing (with the accompanying explanation in the clause) within the list of discouraged locations. While not all types of social housing may be associated with increased levels of risk, the prevalence of such housing should trigger a threshold for closer consideration of impact. To convert the wording to ‘housing for people who may be vulnerable to gambling related harms’ or similar would be too amorphous for day-to-day application.

The Panel is also not inclined to put a threshold on the size of social housing for consideration or to refer to concentrations being required for discouragement (as has been included in other planning schemes, such as a minimum of 50 units), since this may be more arbitrary than considering the particular characteristics of the housing in question, such as the Tribunal did in *Kingfish* in respect of Ebsworth House.

Similarly, there is evidence that students are more vulnerable to gambling related harms than the remainder of the community. The fact that these students may be drawn more to Casino-based gambling does not eliminate potential risks to this class of user from EGMs.

Students represent a notable portion of housing occupants who study and recreate within the municipality and this is an important sector recognised in and encouraged by the planning scheme.

In these circumstances, the Panel considers that Council has taken a suitably protective approach to discourage gaming venues within close proximity of student accommodation, at least warranting closer consideration of the likely inter-relationship. However, given the general policy encouragement and extent of student housing in the City of Melbourne, the Panel accepts that this should be phrased to avoid “*concentrations*” of student housing, not just their intermittent provision to make this workable on a municipal level.

The Panel accepts that even though it may take relatively specialised enquiries to identify gambling sensitive services or facilities (and that these may expand the areas where gaming is discouraged), this is an important part of the proposed policy or schedule. As explained by the expert witnesses, this is a type of land use that will commonly have a direct relationship with EGMs, since many beneficiaries of services are patrons of gaming venues.

It would be reasonable at first instance to avoid direct physical relationships between preventative or restorative agencies and a facility that generates the potential to cause harm to a segment of users. This has also been confirmed in numerous decisions of the VCGLR and VCAT referred to in this Report.

5.2.4 Discretionary nature of the guidelines

(i) Evidence and submissions

Some submitters raised concerns about how the agglomerated locational considerations could be assessed. Mr Tweedie submitted that it is no answer that the provision is discretionary, stating that *“a bad policy that has no strategic justification, and does not materially assist decision makers to make planning decisions, does not become acceptable simply because it is discretionary”*. Ms Collingwood took a similar approach on behalf of AHA.

Mr Rantino responded on behalf of Council that although elements of Clause 4.0 appear as a *“checklist”*, it will be important to consider issues of proximity and inter-relationships between sensitive uses and gaming venues. Weighting would need to be given when assessing the appropriateness of location, rather than adopting an approach where any negative locational characteristic leads to an automatic *“strike out”*. This approach to policy has been repeated in court and tribunal decisions such as *Pink Hills Hotel Pty Ltd v Yarra Ranges SC & Ors*⁵².

(ii) Discussion

The issue of the provisions for location being discretionary was considered in similar terms by the Panel in Melton C182 at Chapter 4.3 when it concluded:

The policy is not mandatory and is not worded as such (it uses ‘should’), it simply provides a checkpoint for a decision-maker to consider in making a merits-based assessment of an individual application before it.

This Panel agrees with this role of the proposed policy or schedule when applying locational guidelines.

It acknowledges Doxa and AHA’s point that the policy or schedule does not focus particularly on where might be suitable locations for EGMs within the municipality, aside from the relatively sweeping first criterion – that they be located where the community has convenient access to a choice of non-gaming entertainment operating at the same time. This is targeted to diversity and choice, which are matters emphasised in state and local planning policies for the City of Melbourne as a premier entertainment and tourism destination.

That said, the Panel recognises that given the potential for gambling-related harm, it will not be an easy task to identify more precise locations where gaming could expressly be supported. The fact that the Amendment does not advance this substantially is not regarded as a fundamental flaw.

In some ways, this issue could be addressed more generally by recognising the potential for well located and operated gaming venues to lead to benefits in the objectives of the policy or schedule as proposed by the Panel.

(iii) Conclusions

The Panel concludes:

⁵² [2013] VCAT 954

- For the most part, research and a harm minimisation approach justify discouragement of gaming venues in close proximity to the sensitive uses or facilities identified.
- For areas outside the Central City, the reference to 400 metre walking distance or clear line of sight are acceptable on balance as a pragmatic and measurable criterion.
- It would be preferable to delete the reference to public transport interchanges and to substitute a reference to train stations for all areas of the municipality.

(iv) Recommendations

The Panel recommends:

Amend the reference to public transport interchanges in Clause 4.0 of the Schedule to Clause 52.28, to a reference to train stations.

5.3 How should locational guidelines be crafted for the Central City?

The Panel does not support the uniform application of the locational guidelines to the Central City. The nature of land use and development in the Central City is so diverse, intensive and layered that casting the net broadly has the potential to be arbitrary and to detract from potentially legitimate opportunities for such land use. In these circumstances, the Panel prefers a qualitative approach for areas within the Central City.

As mentioned, in the Central City context, the separation proposed from “*public transport interchanges*” may also mean that virtually all locations are unsuitable for EGMs given their proximity to multiple modes of public transport.

The challenge is in balancing other policies that seek to improve access to activity centres especially in the City of Melbourne and seek to locate gaming venues within areas that offer other forms of entertainment. On balance, the Panel is not persuaded that the provision proposed would strike a reasonable balance between providing such access yet restricting overly convenient access to EGMs.

There is also no legitimate basis for a prescribed separation between gaming venues and strip shopping centres at least in the Capital City Zone given the opportunity for gaming venues to locate in these centres under the planning scheme.

For reasons explained in Chapter 5.2, the Panel is persuaded that most of the remaining factors nominated by Council represent a legitimate inclusion in the policy or schedule. They would at least generate a presumption that a relationship with nominated uses or facilities is not supported *unless* the applicant can demonstrate that the relationship is an acceptable one on the planning merits.

That said, the Panel notes the perpetual challenge that many land uses are permissible within the Central City without permission for their use under planning controls, so current conditions are far from static.

The Panel’s approach below is regarded as a more standardised but pragmatic way of guiding the location of gaming venues and machines within the Central City. In practice, it would be open to Council to consider whether to apply these criteria to the Docklands area as well as

the Capital City Zone, since it is excluded from the cap of EGMs, but is subject to the prohibition on EGMs within strip shopping centres. In many substantive ways, policies for certain precincts within Docklands seek a broad mix of land use and a genuine extension of or connection with activity centres within the Capital City Zone.

A more sophisticated alternative approach to the Amendment would entail analysis of particular sub-areas within the Central City and identification of where gaming venues should be either encouraged or discouraged (potentially subject to qualifications).

To be effective, a comprehensive strategic analysis would need to synthesise existing policy, strategic directions and current conditions. Other relevant inputs (subject to opportunity) may include targeted research about the specific characteristics and vulnerability to gambling related harm within the Central City and its precincts, such as in proximity to Crown Casino or the retail core.

Council will need to decide whether to embark on this path which is likely to warrant further public and industry input, or whether to adopt the position recommended by the Panel as a practical way forward in this Report.

5.3.1 Can the guidelines be refined sufficiently within the context of the current Amendment?

The question is whether there is sufficient material before the Panel for it to make suitable recommendations as to a more refined form of the Amendment to address the Central City specifically.

As pointed out by Ms Peterson and others, it is not uncommon for parts of the Melbourne Planning Scheme to provide separate controls for areas within the Central City (for example) versus other areas outside the Central City.⁵³ There is no reason why a similar approach could not be adopted for this Amendment.

In reality, it appears that there is an absence of research that differentiates between the Central City as distinct from other areas of the municipality in terms of gambling behaviours and vulnerability. Unfortunately, it also seems that minimal direct research has been undertaken to date to shed light on the particular risks of gaming on vulnerable groups within the Central City or how these groups are spatially represented. In these circumstances, a first-principles approach should be taken to managing risk. This was addressed directly by all expert witnesses at the Hearing in broad terms.

In the Panel's opinion, the starting point should be to avoid an increase in "*concentration*" of gaming venues as is the term used in existing policy.

Another key underlying objective should be to caution against closely locating gaming venues near other uses that have been demonstrated by broader research as having the potential to generate relationships that enhance the risk of gambling-related harm. Convenience retailing is a category of use that was regarded by the witnesses as having increased potential for negative interaction with gaming venues.

⁵³ For example, in Clauses 22.01 and 22.17 concerning Urban Design policy and Clauses 22.04 and 22.05 concerning Heritage policy.

The challenge is how to achieve practical separation within a principal activity centre context.

5.3.2 An alternative approach?

The Panel asked all witnesses at the Hearing how it may be possible to draft locational characteristics for the Central City if the Panel was inclined to support more tailored controls for this area.

Ms Rosen originally suggested an alternative approach to managing venues in the Central City by referring to “*visual or functional separation*” from potentially sensitive uses or facilities.⁵⁴

Ms Peterson particularly supported locational guidelines avoiding a close and immediate proximity to convenience retailing in the Central City. She considered that direct line of sight should definitely be avoided between proposed and existing gaming venues, as well as to sensitive service providers and key train stations. Beyond this, she gave evidence that a useful barometer would be whether a gaming venue would have a “*synergy*” with a sensitive use or facility of this type. She advocated for the use of performance-based language in respect of proposed separation from sensitive uses in place of the 400 metres measure proposed by Council.

Similar evidence was given by Ms Peterson in Melton C182. In that context, the Panel explained:

The Panel shares Council’s concerns that Ms Peterson’s proposed language is unclear. The Panel notes the 2017 Policy did not refer to a 400-metre separation distance, instead using the words to avoid locations “*visually and functionally integrated with...*” sensitive uses however does not consider this language superior.

Ms Thomas considered that many of the proposed locational criteria did not have validity in a Central City context. She too explained that guidelines for this area should assess the potential synergy or relationship between venues and other facilities, including how they are accessed and what features exist in the surrounding area.

Ms Thomas supported separation from social housing and gambling-sensitive services with some focus on proximity to residential land use, but not necessarily to a distance of 400 metres. She preferred to evaluate whether there would be a relationship between users of these services and the venue under consideration. She also considered it relevant to consider the spatial concentration of the number of EGMs and venues in proximity to the site by reference to the ease of travel.

On closer consideration, the Panel considers that there is substantial in-principle agreement between the expert witnesses as to how to buffer EGMs within the Central City from uses, facilities or services to minimise gambling related harm.

The extent of agreement generally pertains to avoiding “*direct line of sight*” or a “*synergy*” between a venue with EGMs and:

- other gaming venues

⁵⁴ The Panel notes submissions on behalf of Doxa and AHA requesting it to give limited weight to Ms Rosen’s evidence because of her direct involvement in drafting the Amendment, such that she is effectively critiquing her own work. Ms Rosen’s qualifications, experience and expertise are recognised by the Panel. At the same time, it would have been more helpful for the Panel for Council to provide independent evidence in the nature of a peer review to assist the Panel to reconcile areas of potential deficiency.

- gambling-sensitive services and facilities such as financial aid agencies, gamblers help agencies and the like
- core retail areas and convenience retailing in particular
- heavily used train stations (and potentially other heavily used forms of public transport)
- social housing (with the exception of Ms Peterson who considers this link is not demonstrated by evidence)

The Panel has used this evidence to craft guidelines for the Central City in its preferred version of the Amendment at Appendix C. It notes that VCAT in the *Francis Hotel* decision was not persuaded about line of sight as a workable test for the Central City but considers that this remains appropriate as a guideline in light of the evidence in this Hearing. Ultimately, the event of synergy beyond pure line of sight will need to be considered by a decision maker.

There was less commonality of approach to proximity to student housing.

All witnesses explained that the synergy to be avoided may be a visual, physical or functional one. It is inevitable that this will require a qualitative assessment by a decision maker. A prime example of this was VCAT's qualitative assessment of the likely ease of travel between the venue and an approved supermarket which was more determinative than pure distance in *Benmara*.

The Panel is conscious that a key purpose of the schedule is to minimise gambling harms in connection with the location and operation of gaming venues. It considers there is sufficient research about potential vulnerability to gambling harms in connection with the characteristics of some residents of social housing and the behavioural patterns of students to generally discourage line of sight or synergies with these uses within the Central City at first instance (even recognising its substantial and ongoing spread).

Being discretionary, this policy discouragement could ultimately be displaced by specific evidence or a demonstrated lack of connectivity in a particular permit application. A comprehensive social and economic impact analysis is likely to underpin this.

The Panel considers that these proposed refinements of the policy or schedule to include varied criteria for the Central City would not of itself be likely to generate a need for further public notice, since the land uses or facilities to be avoided are consistent with the exhibited Amendment although this should be revisited by Council. The intent was always to enable the spatial and operational relationships to be considered. The key change to the wording of the schedule would be to the measure of separation – with the direct relationship to be considered, rather than distance alone as a threshold.

(i) Conclusion

The Panel concludes:

- Council's preferred approach to separation distances is not supported as realistic or suitably targeted to the particular circumstances of the Central City.
- There is justification for differing controls pertaining to discouraged locations for EGMs and venues in the Central City, at least for the Capital City Zones, and potentially for Docklands.

- Such controls will necessarily be more qualitative and should focus on avoiding a direct line of sight or synergy with uses or facilities that may be sensitive to gambling related harms. This should refer to the majority of uses or facilities listed in the locational guidelines identified in the Amendment documentation, with variations in line with the Panel’s recommendations.

5.4 Does the policy or schedule need to differentiate between applications for new venues and “top up” applications at existing gaming premises?

(i) Evidence and submissions

Industry submitters claimed that the Amendment was deficient since it did not differentiate between locational and operational issues associated with new venues, as opposed to “top up” applications where additional EGM approvals were sought for an existing venue.

Overall, they suggested that “top up” applications as generally preferable, since they do not fundamentally change the level of accessibility of EGMs in an area. Advocates referred to a suite of decisions by the VCGLR and VCAT to illustrate their point where there was often lesser perceived risk and greater corresponding benefit where a “top up” application was made. They also pointed to the Ratio Consultants 2015 report commissioned by Council in the inception to this Amendment that suggested may be merit in distinguishing between new gaming premises applications and EGM “top up” applications.

They considered the policy or schedule should *encourage* the location of EGMs within existing venues. This approach is introduced by the current policy at Clause 22.12.

Council acknowledged that there are commonly factors that lend greater support to “top up” applications compared with permit applications for new gaming venues. However, it did not consider this distinction to be so material as to warrant a different approach in the policy or schedule. It preferred a fulsome merits based approach.

(ii) Discussion and conclusions

The Panel accepts that there may be lower levels of gambling-related harm where additional machines are sought⁵⁵ – especially within well run existing venues – compared with new gaming venue applications which may be more variable since they introduce EGMs into new settings.

The Panel agrees with industry submitters that this is likely to be a relevant consideration in assessing the appropriateness of the location and operation of the EGMs proposed where a “top up” application is made.

This distinction is well recognised by those working with gaming approvals and will no doubt be key feature outlined upfront in a permit application of this type. It also has capacity to streamline a social and economic assessment of impact.

⁵⁵ Following the reasoning in *Glenroy RSL Sub Branch Inc v Moreland CC* [2017] VCAT 531. It is not considered that this principle was notably departed from in the Supreme Court Appeal.

The Panel considers that it could provide sensible guidance as to where new EGMs may be encouraged, provided their impacts are demonstrated to be acceptable and would reasonably broaden the areas of the municipality where EGMs are encouraged (being a key element of the schedule).

The policy or schedule should express a preference for EGMs within existing venues similar to policy at Clause 22.03 of the Cardinia Planning Scheme. The track record of these venues could be evaluated as part of a particular permit application. This would represent a more balanced approach to where EGMs were encouraged within the municipality.

Another example where this has been incorporated into local planning policy is in Clause 22.02-3 of the Cardinia Planning Scheme. Under the heading “*Appropriate venues*” it provides that EGMs should be located in venues “*that already have gaming machines (in preference to the establishment of a new gaming venue)*”.

Council should entertain this addition in the final version of the Amendment, subject to satisfying itself that no additional notice would be required. Also, a guideline of this type may potentially lean in favour of larger gaming venues. The anticipated spatial and socio economic impact of this strategic direction for the City of Melbourne should be considered as part of this assessment.

(iii) Conclusion

The Panel concludes:

- Subject to further consideration, Council should include a locational guideline for all areas within the municipality indicating that there is a preference to locate additional EGMs within existing gaming venues over the establishment of new gaming venues.

Recommendations

Amend the Schedule to Clause 52.28 to:

Include a new provision in Clause 4.0 for Areas Within the Central City:

Gaming machines or venues should not be located in direct line of sight of:

- a shopping complex (whether or not listed in the Schedule to Clause 52.28-4)
- core retail areas
- a supermarket or other convenience retail facility targeted to meet the day-to-day needs of customers
- an existing gaming venue
- a train station.

Gaming machines or venues should not be functionally or visually integrated with:

- a gambling sensitive service or facility that is used by people experiencing or vulnerable to gambling-related harms such as the offices of specific problem gambling services, financial counselling services and material and financial aid services.
- concentrations of student accommodation.

- **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 not-for-profit housing organisations).**

Include a new provision in Clause 4.0 for Areas Outside the Central City, to:

Clarify that the 400 metre walking distance separation applies to Areas Outside the Central City.

Include a new provision in Clause 5.0 to:

Prove a preference for gaming machines to be located in existing venues approved for the operation of gaming machines.

6 Application requirements

6.1 The issue

The proposed application requirements address “proposal details”, “location assessment” and “venue design and operations”.

The question is whether the application requirements are proportionate and relevant to the type of application. Are they likely to directly assist the exercise of discretion?

A number of concerns were raised by submitters including the proposed requirement for a survey of community satisfaction or wellbeing.

Near the conclusion of the Hearing, Council conceded that it was not appropriate to seek to require demonstration of “*how the proposal will achieve net community benefit in addition to any statutory contributions scheme*”. This was especially the case when it was proposed under the “*venue design and operations*” subheading. This resolved one aspect of concern for submitters.

More detailed concerns were raised by submitters in respect of the proposal to require a description of details regarding a proposed transfer of machines, passing pedestrian counts and identification of the location of all existing or proposed EGMs within the venue. Concern was also expressed by Mr Tweedie and Ms Porritt on behalf of Doxa that façade and signage details were not matters for consideration in a gaming application under Clause 52.28.

6.1.1 Proposed survey requirement

Under the subheading “*venue design and operations*”, Council proposes an applicant provide the findings of a rigorously conducted survey of residents, businesses, community organisations, agencies and service providers within a 400 metre walking distance of the venue. This is intended to measure current levels of community satisfaction in connection with the local area and the potential impact of the proposal on this.

(i) Evidence and submissions

Submitters’ position

Some submitters challenged the appropriateness of a requirement for a survey measuring community satisfaction and wellbeing. Their key concerns were threefold.

First, this ‘benchmark’ was said to pertain to legislative tests under the gaming legislative regime, not the relevant planning regime.

Second, submitters considered that it would not be meaningful to survey in the manner proposed given the high percentage of non-residents including tourists frequenting the city on any given day. This was said to make it much more complicated to identify the community who may be affected by the application.

Third, if a survey was to be undertaken, it should be in the context of an *expert* evaluation of community satisfaction and wellbeing as part of a broader social and economic impact assessment, rather than a subjective assessment.

Doxa and AHA emphasised that a mandatory threshold for the approval of premises as suitable for gaming under the GR Act was a finding that the “*net economic and social impact of approval will not be detrimental to the well-being of the community of the municipal district in which the premises are located*”. Case law has confirmed that such impact could be perceived rather than actual.

By contrast, they emphasised the relevant test under the PE Act as whether the location and operation of EGMs and gaming venues was appropriate.

They submitted that in line with opportunities to object to a permit application under the PE Act, an objection had to be well founded and an objector had to explain how they would be affected by a proposal. Likewise, in section 60(1)(f), the PE Act focuses on “significant” social and economic impacts, which is a higher threshold that would not necessarily be met for survey participants. The mere fact of opposition is not itself a significant effect of itself.⁵⁶

Submitters were concerned that there could be a presumption that such a survey was required, it could only be dispensed with if a particular applicant displaced this presumption.⁵⁷ This was considered overly onerous.

While some experts tended to accept that community wellbeing could be regarded as a component of social impact, they considered a community satisfaction survey was misguided in light of the differences between the two legislative regimes.

Ms Thomas disagreed that wellbeing is a relevant consideration in a planning application. She and Ms Peterson highlighted the outcomes of longitudinal studies that a reasonably high percentage of the population have formed negative views about EGMs and it would be difficult to extract any meaningful information from a survey in this context, especially where there is already a high level of existing access in a municipal context.

Ms Thomas accepted that there may be some connection between factors such as alcoholism and the propensity for problem gambling, but considered this type of data was unlikely to be available for a confined geographic area, such as within 400 metres of a site. She preferred to consider whether there would be a “*significant social impact*” in line with the provisions of the PE Act.

Council position

Council submitted that social impact comprises a number of considerations, and that community satisfaction may be a relevant indicator or input.

It considered that a professionally crafted and administered survey could be a legitimate tool to gain an understanding of the effects of a proposal on its location. It noted that the survey would encompass not only permanent residents but others working or operating in the vicinity of the proposed venue. It did not expressly propose to extend this to visitors such as tourists in subsequent iterations of the Amendment.

At a number of points during the Hearing, Council acknowledged that there is no “demonstrated science” behind the 400 metre walking distance measurement. Rather, this

⁵⁶ *Rutherford & Ors v Hume CC* (Red Dot) VCAT 786.

⁵⁷ There are review processes to VCAT under the PE Act for example.

measure was intended to provide a tangible baseline for analysis. It was considered generally consistent with separation distances approved by various Panels when considering gaming venues and their direct sphere of influence.

(ii) Discussion and conclusions

The Panel agrees with submitters that it is important to carefully reflect the distinctions between the planning and gaming legislative regimes in planning controls.

That is, community satisfaction is not of itself a determinative test for a planning proposal for the use of land or premises for EGMs. The more fundamental question in this context is whether a community survey is likely to be required to gauge social and economic impact for conventional applications, such that it should be prescribed as an application requirement.

The Panel considers that the answer lies in the proper formulation of the next dot point proposed under *“venue design and operations”*. That would require a professional assessment of the Socio-Economic Indexes for Areas (SEIFA Index), the impact of the proposal on nearby groups vulnerable to gambling-related harms, the impact of a potential transfer of EGMs and on employment and potential contributions to the local community.

In refinements proposed at the Hearing, Council proposed to delete the requirement to assess the impact of the proposal on the health and wellbeing of the community (including potential net community benefit), and to replace it with *“the social and economic effects of the proposal”*.

A fulsome assessment of the social and economic effects of a proposal may well involve a well-designed, targeted and suitably applied survey or consultation process. Surveys or consultation are a relatively common mode of input into a professional analysis, but a competent professional in this field should have flexibility to decide how this information is obtained and analysed.

This method should not be mandated in the context of planning controls, especially since community satisfaction or wellbeing is only a potential component of social assessment but not a determinative test. To imply otherwise through permit application requirements would have the potential to confuse or distort the emphasis on what should be a synthesised analysis of overall impact.

6.1.2 Other matters

(i) Evidence and submissions

Potential transfer of machines

The proposed policy or schedule refers to the potential to redistribute or transfer EGMs from one location to another, with consideration to be given as to whether the shift may be from a more vulnerable to less vulnerable community or vice versa.

AHA and Doxa submitted that this concept reflects a “hang over” from the former Tattersalls-Tabcorp duopoly at a time when there were particular machine entitlements. They suggested that while it may be possible for an operator with multiple venues in the same municipal district to “transfer” machines from one venue to another, this would be rare and, in any

event, could not reasonably be assured via a guaranteed reduction in the number of EGMs at the venue that would source the relocated machines.

Council responded that it was reasonable for a Council officer to consider the effect of a transfer of machines since this was a possibility in the City of Melbourne notwithstanding current approvals. For example, Mr Rantino referred to a number of VCGLR and VCAT cases to confirm that the concept of transfer post Tattersalls-Tabcorp system is still possible; and capable of being regulated by amendment of a corresponding venue operator's licence, either by condition of a permit or section 173 agreement.

Council suggested that it may be material to consider the impact of a relocation of EGMs on vulnerable communities, since there are differing socio-economic characteristics including pockets of disadvantage across the municipality.

Other issues

AHA queried the potential relevance of pedestrian counts in the context of the City of Melbourne, which has a high proportion of pedestrians, especially in the central city. It submitted that the connection between this feature and the suitability of the proposed venue or machine location had not been established by Council.

Questions also arose as to the potential relevance of identifying signage and façade treatment as part of an application for the use of land for gaming. Mr Tweedie emphasised that signage for gaming venues is controlled via specific provisions of the planning scheme (Clause 52.05) as well as by specific limitations (as to content, number and the like) by the VCGLR approval system under gaming legislation. He also suggested that façade treatment would not be relevant to an application for the use of land for gaming – this being a matter for building and works controls.

Similarly, Doxa submitted that it was not appropriate for requirements under the planning scheme to require an applicant to document the location of existing or proposed EGMs within the facility, since the layout of gaming rooms is expressly controlled under gaming legislation and relevant approvals (depicted on a "*green line plan*" endorsed by the VCGLR). Mr Tweedie submitted that it would not be lawful for a responsible authority to seek to regulate the location of EGMs within a venue by including them on endorsed plans under a planning permit.

Ms Thomas expressed the view that issues of venue layout and operation were to be addressed principally by the VCGLR as the expert authority, rather than being assessed by planning officers expressly. She was also concerned to avoid double handling and potential inconsistencies.

Ms Peterson appeared to take a less dogmatic view, offering broad support for venue design and operation to be considered in an application under Clause 52.28, especially where buildings and works permission was being sought. This would enable a decision maker to consider issues of venue layout, for example, to ensure that EGMs are a reasonably subservient offer within the premises, there is good visibility and accountability for patrons and the like.

Mr Rantino confirmed that Council intends to endorse plans under a permit issued under Clause 52.28, implying it intended to regulate this aspect of the approval.⁵⁸

(ii) Discussion

The Panel is not overly concerned with the way the Amendment approaches a potential redistribution of EGMs. While it may be rare given limited operators with multiple venues (or challenging to secure in terms of lawful approvals) Council has reasonably identified that if redistribution does occur, its differential impacts would be relevant considerations.

Although the Panel has some doubt this matter warrants specific reference in the purpose of the policy or schedule, there should be some scope for a planning authority to prioritise matters it regards as material in a planning scheme amendment.

The Panel has also considered the question of whether the specific layout of EGMs within a venue is a relevant consideration in an application under Clause 52.28, such that it should be included as an application requirement.

This is not a new application “requirement” under existing local policies, included in Mount Alexander and Macedon Ranges Planning Schemes for example.

At the same time, a broad review of most local planning policies relating to gaming reveal that they are more commonly directed to “bigger picture” issues that enable an analysis of social and economic impact of the location of the venue. They tend to defer the appropriateness of the gaming room layout to the VCGLR. This is presumably what is referenced in the local planning policy for Monash using the words “*evidence of compliance with the relevant gaming regulations for premises layout and design*”.⁵⁹

The most common permission sought under Clause 52.28 is for the use of EGMs.⁶⁰ A key purpose of the provision is to ensure that EGMs are located in suitable locations and premises. In the Panel’s opinion, when assessing the appropriateness of the use in the proposed location, a council would in theory be entitled to call for a layout of EGMs within a venue to understand the proposed operations of the use within that venue. This may represent either a positive or negative influence in the assessment of a proposal.

While Responsible Service of Gambling is squarely within the domain of the VCGLR, locational and use-related aspects of planning controls could justify some overlap. Social and economic impact experts commonly refer to operational measures such as the placement of EGMs (relative to other features of the gaming room such as the cashier’s desk or other features within a facility) as influencing the capacity of a venue to affect those who may be vulnerable to problem gambling.

⁵⁸ It is not for the Panel to advise how this information should translate to a permit. This may depend on whether a council is entitled to specifically regulate the location of EGMs within a gaming venue. This is a question that would require legal analysis involving a synthesis of the dual system of approvals applying in Victoria, and is a question for another day.

⁵⁹ A potential complication with replicating this in the current planning scheme is that an applicant may elect to seek gaming permission after applying for a planning permit, such that compliance with gaming regulations may not be conclusively demonstrated when a planning permit application is lodged.

⁶⁰ As distinct from their “installation”, following the Supreme Court case of *McKinnon Hotels*.

The more fundamental question is whether this information would be directly useful for a decision maker when evaluating compliance with the objectives and decision guidelines. This is tenable but may raise matters outside the expertise of a planning officer.

The Panel does not consider the requirement for pedestrian counts near a venue to be particularly to the point, especially in a context with high pedestrian flows as standard and encouraged.

Also the outcomes of pedestrian counts could be interpreted in a number of ways. They may be of limited value as a stand-alone requirement. The more fundamental inputs for decision making should identify the relative ease of access to the venue relative to other services or facilities in the area.

Therefore, the Panel prefers a reference to a map indicating potential pedestrian paths of travel to and from the venue a 400 metre walking distance, including identification of public transport opportunities.

(iii) Conclusions

The Panel concludes:

- The specification of a survey of community wellbeing in seeking to gauge the impacts of a gaming application is not justified as a separate application requirement. It could form a component of an expert social and economic assessment of the proposal in line with the requirements of the second proposed application requirement.
- The remaining elements of the application requirements have sufficient validity within the relevant decision making framework to be included. A balanced evaluation of their content will need to be undertaken as part of the assessment of a permit application.
- Given changes in gaming approvals, the redistribution of EGMs between venues (especially within the City of Melbourne) is unlikely to constitute common practice. If it occurs, it may influence social and economic effects. Therefore, it is open to Council to determine what level of prominence it should have as a consideration under the policy or schedule although it does not warrant inclusion as a broad objective of the policy or schedule.

(iv) Recommendations

Amend Clause 6.0 in the Schedule to Clause 52.28 to

- **Amend the requirement for pedestrian counts**
- **Delete the requirement for a representative survey of residents, businesses, community organisations, agencies and service providers within 400 metre walking distance of a proposed venue.**

7 Decision guidelines

The Panel's comments above flow to the decision guidelines and the way they are worded.

The Panel is in two minds about the use of the term "*convenience gaming*" in this context noting that it is undesirable to include notes or definitions in contemporary planning instruments. This term appears to be well understood in the planning industry for those familiar with potential social impacts of gaming. Notwithstanding, increased certainty for all users may be provided by elaborating on this term in the decision guidelines in a neutral way.

Beyond this, the term "*spatial concentration*" of gaming venues could be more suitably described as an increase in concentration. In applying this provision, an assessment of whether there is a "functional cluster" may be relevant as considered by VCAT in the *Francis Hotel* decision.

There are decision guidelines in other existing gaming policies that are more nuanced and potentially more relevant than those proposed by Council in the Amendment. However, there is limited scope for the Panel to suggest a substantial re-write when this proposal was not squarely before it through submissions or evidence. Useful guidance could potentially be obtained from Clause 22.12 of the Monash Planning Scheme. For example, this includes the extent of access to the venue by a variety of transport modes, which could potentially be refined for the City of Melbourne context.

8 Other issues raised in submissions

(i) Evidence and submissions

Domain Village

The Melbourne South Yarra Residents Group requested that Domain Village be expressly nominated as a strip shopping centre in Clause 3.0 of the schedule where EGMs would be prohibited. The Residents Group was concerned that the centre includes a number of retail premises (including food and drink premises) and that the co-location of EGMs could cause gambling-related harm.

Council responded that no listed strip shopping centres within the municipality are expressly listed in the schedule. Rather, it has taken an approach to prohibit EGMs in all strip shopping centres on land covered by the planning scheme. This necessarily excludes the area delineated within the Ministerial Direction, so EGMs are permitted in strip shopping centres within areas of the Central City.

The term “strip shopping centre” is defined in Clause 52.28-5 as:

... an area that meets all of the following requirements:

- it is zoned for commercial use;
- it consists of at least two separate buildings on at least two separate and adjoining lots;
- it is an area in which a significant proportion of the buildings are shops;
- it is an area in which a significant proportion of the lots abut a road accessible to the public generally;

but it does not include the Capital City Zone in the Melbourne Planning Scheme.

Council considered that the Domain Village would meet the definition of a strip shopping centre such that EGMs would be prohibited even if the centre was not listed separately in the schedule.

Requests to strengthen policies against gaming

A number of individual submitters referred to the personal toll that problem gambling has taken on their lives. They requested Council to ban EGMs within the municipality to prevent the potential for harm to vulnerable groups.

Council responded that gaming is a lawful activity in Victoria, and that it would not be appropriate for a planning policy or a schedule to effectively ban its conduct in all areas of the municipality. It considers that this reflects a state government decision that EGMs may be installed and used subject to meeting planning and gaming requirements. Council also noted that the planning system can only go so far, to consider whether the location and operation of EGMs and venues are appropriate.

(ii) Discussion

The Panel accepts Council’s continued intention for a blanket ban on EGMs within shopping centres across the municipality, aside from locations covered by the Ministerial declaration. As explained by Council, it is highly likely that the characteristics of the Domain Village would

meet the definition of a “strip shopping centre” in Clause 52.28 and would therefore be protected.

The Panel acknowledges that gaming, including the use of EGMs is a lawful activity in Victoria. It forms part of a range of entertainment options that may be permissible subject to individual circumstances and settings, even though it carries the inherent propensity to cause harm to some users and needs to be permitted judiciously and managed carefully. Licensed premises and brothels can be said to be in a similar category of land use, and are likewise subject to rigorous controls both within and outside the planning system.

It is not an appropriate role for planning policy or a schedule to seek to ban a lawful use entirely. Rather, the proper role for planning policy is to guide considered decision making on relevant aspects that are regulated by the planning system.

Even though the potential for negative social and economic effects of EGMs is a clear risk for the municipality of Melbourne (as it is for other municipalities), the Panel was not presented with evidence of specific municipal-wide negative impacts of gaming to demonstrate that it would never be appropriate to permit land to be used for gaming through EGMs. There was an overall lack of available evidence as to the discrete impacts of EGM usage on residents, workers, or visitors beyond broad statistics.

This could potentially be the subject of further analysis if funds allow and may also give a more precise understanding of the location and nature of vulnerable communities.

(iii) Conclusion

The Panel concludes:

- Council has appropriately considered and responded to submissions from community groups and individuals in framing the Amendment.

Appendix A Submitters to the Amendment

No.	Submitter
1	South Yarra Residents Association Inc
2	Doxa Community Club Inc
3	Australian Hotels Association (Vic)
4	Anthony van der Craats
5	Claudia Marck
6	Don (undisclosed surname)
7	Astonmill Pty Ltd and 128 Bourke St Pty Ltd
8	Mercury Group Victoria Inc

Appendix B Document list

No.	Date	Description	On behalf of
1	12/03/2019	Map of Schedules to the Capital City Zone	Council
2	12/03/2019	Map of Submitters	Council
3	12/03/2019	Aerial view of the municipality	Council
4	12/03/2019	Map – Areas subject to a regional cap, municipal cap and uncapped areas and venue locations	Council
5a-k	12/03/2019	Walkability maps prepared by Council officers	Council
6	12/03/2019	Bonnie Rosen (Symplan) expert witness statement, 4 March 2019	Council
7	12/03/2019	Email to Bonnie Rosen from Council attaching consultant project brief dated March 2017	Council
8	12/03/2019	Proposal Melbourne City Council Electronic Gaming Machine Policy Review, 7 April 2017	Council
9	12/03/2019	Response to submissions prepared by Bonnie Rosen, July 2018 Draft	Council
10	12/03/2019	Emails between Department Environment, Land Water and Planning and Council, March 2019	Council
11	12/03/2019	Part A submission	Council
12	12/03/2019	Part B submission	Council
13	13/03/2019	Residential population and projections data prepared by ID Consulting	Council
14	13/03/2019	Melbourne's growth – Daily population by year estimates prepared by Council staff	Council
15	13/03/2019	<i>Pakenham Racing Club Inc v Cardinia SC</i> [2017] VCAT 72	Council
16	13/03/2019	<i>Blue Emporium Pty Ltd & Ors v Stonnington CC</i> [2004] VCAT 292	Council
17	13/03/2019	Melton Planning Scheme Amendment C182 Electronic Gaming Policy, Panel Report dated 11 February 2019	Council
18	13/03/2019	<i>Macedon Ranges SC v Romsey Hotel Pty Ltd</i> [2008] VSCA 45	Council
19	13/03/2019	Social and Economic Impact Assessment, The Meeting Place, City of Melbourne Submission, prepared by Bonnie Rosen, Symplan for Council to submit to the Victorian Commission for Gambling and Liquor Regulation, 31 October 2016	Council
20	13/03/2019	Submission for Australian Hotels Association (Vic) (AHA)	AHA
21	13/03/2019	Laura Thomas (Urbis) expert witness statement, 4 March 2019	AHA

No.	Date	Description	On behalf of
22	13/03/2019	Hearing folder of officers reports and relevant cases	AHA
23	13/03/2019	Bundle of cases referred to in submission	AHA
24	14/03/2019	Submission for Doxa Community Club Inc	Doxa
25	14/03/2019	<i>Hoskin v Greater Bendigo CC</i> [2015] VSCA 350	Doxa
26	14/03/2019	<i>Benmara Pty Ltd v Whittlesea CC</i> [2015] VCAT 1463	Doxa
27	14/03/2019	Colleen Peterson (Ratio) expert witness report, March 2019	Doxa
28	14/03/2019	Bundle of documents pertaining to contributions made by Doxa	Doxa
29	14/03/2019	Extract from <i>Destination Gaming, Evaluating the benefits for Victoria</i> , May 2008	Doxa
30	14/03/2019	<i>Francis Hotel Pty Ltd v Melbourne CC (Red Dot)</i> [2012] VCAT 1896	Doxa
31	14/03/2019	<i>Melbourne CC v Kingfish Victoria Pty Ltd & Anor (Red Dot)</i> [2013] VCAT 1130	Doxa
32	14/03/2019	Original paper – Problem gambling among international and domestic university students in Australia: who is at risk? J Gambl Stud. 2013 June	Doxa
33	14/03/2019	Swinburne University, Bond University, and Deakin University, 'International student gambling: The role of acculturation, gambling cognitions and social circumstances (June 2011)	Doxa
34	15/03/2019	VCGLR decision <i>Tiplane Pty Ltd at Point Cook Hotel premises (Gaming – new premises)</i> , 16 May 2007	Doxa
35	15/03/2019	<i>Walker Corporation Pty Ltd v Wyndham CC</i> [2007] VCAT 1396	Doxa
36	15/03/2019	Panel Preferred version of Amendment (Amended)	Council
37	19/03/2019	Email to Panel about Crown Casino	Council
38	25/03/2019	Email to Panel about wording of the Amendment	Doxa
39	29/03/2019	Council response to email above	Council
40	02/04/2019	Further response on behalf of Doxa	Doxa

Appendix C Panel preferred version of Schedule to Clause 52.28

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SCHEDULE TO CLAUSE 52.28 GAMING

1.0

Objectives

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- To minimise gambling-related harms to individuals and the community and ensure that gaming machines are situated in appropriate locations and premises to ~~prevent~~ minimise convenience gambling.
- To ensure that where gaming machines operate, they do so as part of ~~the~~ an overall range of social, leisure, entertainment and recreation activities and facilities.
- To manage the concentration of gaming machines and gaming venues ~~in order to redistribute gaming machines and gaming venues~~ away from areas or communities vulnerable to gambling related harms.
- To discourage the proliferation of gaming premises in locations outside the Central City (Capital City Zone and Docklands) where the predominant use is residential, ~~and ensure that gaming venues do not detract from the amenity of surrounding uses.~~
- To ensure that the location and operation of gaming machines ~~achieves net community benefit~~ increases community benefit and decreases community disbenefit.

2.0

Prohibition of a gaming machine in a shopping complex

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Installation or use of a gaming machine as specified in Clause 52.28-4 is prohibited on land described in Table 1 below.

Table 1

Name of shopping complex and locality	Land description
St Collins Lane, Melbourne	258-274 Collins Street, Melbourne
The Sportsgirl Centre, Melbourne	234-250 Collins Street, Melbourne
The Southern Cross, Melbourne	113-149 Exhibition Street, Melbourne, being land on the west side of Exhibition Street, Melbourne between Bourke Street and Little Collins Street
Melbourne Central Shopping Centre, Melbourne	Land between La Trobe Street and Lonsdale Street, Melbourne
Southgate Plaza, Southbank	Part of the Southgate Complex, Southbank Promenade, Southbank
QV, Melbourne	278-300 Swanston Street, Melbourne
Emporium Melbourne	269-321 Lonsdale Street, Melbourne
The District, Docklands	420-454 Docklands Drive, Docklands
South Wharf Retail	20-30 Convention Centre Place, South Wharf
Spencer Outlet Centre, Docklands	163-261 Spencer Street, Docklands

3.0 Prohibition of a gaming machine in a strip shopping centre

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A gaming machine as specified in Clause 52.28-5 is prohibited in all strip shopping centres on land covered by this planning scheme.

4.0 Guidelines for the Locations for gaming machines

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Gaming venues and machines should be located:

- Where the community has convenient access to a choice of non-gaming entertainment, leisure, social and recreation uses that operate at the same time as the gaming venue in the surrounding area such as hotels, clubs, cinemas, restaurants, bars, theatres, galleries, exhibition centres, sporting venues and indoor recreation facilities.
- 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.

In all locations, gaming venues and machines should not be located:

- In buildings used for residential purposes
- ~~Within locations where the predominant surrounding land use is residential.~~

In areas outside the Central City and urban renewal areas, including Capital City Zone (Schedule 4 – Fishermans Bend), gaming venues and machines should not be located:

- Within 400m walking distance or clear line of site sight of:
 - an existing or approved gaming venue
 - shopping complexes and strip shopping centres
 - ~~public transport interchanges~~ train stations
 - ~~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 not-for-profit housing organisations)
 - concentrations of student accommodation
 - a gambling sensitive service or facility that is used by people experiencing or vulnerable to gambling-related harms such as the offices of specific problem gambling services, financial counselling services and material and financial aid services.
- Within locations where the predominant surrounding land use is residential.

Within the Central City (defined as Capital City Zone and Docklands):

Gaming machines or venues should not be located in direct line of sight of:

- a shopping complex (whether or not listed in the Schedule to Clause 52.28-4)
- core retail areas
- a supermarket or other convenience retail facility targeted to meet the day to day needs of customers
- an existing gaming venue
- a train station.

Gaming machines or venues should not be functionally or visually integrated with:

- a gambling sensitive service or facility that is used by people experiencing or vulnerable to gambling-related harms such as the offices of specific problem gambling services, financial counselling services and material and financial aid services.
- concentrations of student accommodation.
- social housing facilities (housing for people on lower incomes that is owned or leased by the Department of Health and Human Services, registered housing associations or not-for-profit housing organisations).

In urban renewal areas including Fishermans Bend and Arden Macaulay:

[Gaming venues should not be established in locations ahead of the provision of non-gambling entertainment, recreation activities and social infrastructure.](#)

5.0 **Guidelines for Venues for gaming machines**

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Gaming machines should be located:

- In venues that offer alternative forms of non-gambling activities, such as social, leisure, entertainment and recreation activities during gaming hours
- [In existing venues approved for the operation of gaming machines in preference over new venues](#)
- In venues where the gaming area is physically, visually and functionally separated from non-gambling facilities, passers by, pedestrian and vehicular access and car parking
- In venues that have signage that is of high quality design and does not detract from the visual appearance and amenity of the surrounding area.

Gaming machines should not be located:

- In venues that operate for 24 hours per day
- In venues where the gaming area is more than 25 per cent of the total leasable floor area that is open to the public.

6.0 **Application requirements**

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The following application requirements apply to an application for a permit under Clause 52.28, in addition to those specified elsewhere in the scheme and must accompany an application, as appropriate, to the satisfaction of the responsible authority:

Proposal details

- A description of the proposal including the following:
 - how the application is consistent with the State and Local Planning Policy Framework
 - existing and proposed number of gaming machines at a venue and within the municipality
 - details regarding the transfer of gaming machines, including number of gaming machines to be ~~transferred~~ [relocated](#), potential changes to the density of gaming machines per 1,000 adults in the municipality and local areas, and potential changes to the number of venues in the municipality
 - details regarding changes to gaming machine expenditure (at a municipal and venue level, per gaming machine and per adult)
 - existing and proposed number of people employed as a direct result of the proposal
 - [a map indicating potential pedestrian paths of travel to and from the venue a 400m walking distance, including identification of public transport opportunities](#)
 - ~~pedestrian counts outside the venue on different days and at a variety of times~~
 - range and operating hours of non-gaming facilities and activities within the venue, including areas licensed to serve and consume alcohol
 - extent of the community contributions and their beneficiaries.

Location assessment

- A description of the location of the venue, including the following:
 - land uses within 400m walking distance of the proposed venue [and line of sight](#), including facilities associated with day to day activities, such as shops, major community facilities and public transport networks and hubs that would contribute to convenience gambling
 - location of social support services within 400m walking distance [and line of sight](#) of the proposed venue including problem gambling services, financial counselling services and material and financial aid services

- location of, distance to and operating hours of gaming venues within 400m walking distance [and line of sight](#) of the proposal site
- location and operating hours of alternative non-gaming social, leisure, entertainment and recreation uses, both within the gaming venue and within 400m walking distance [and line of sight](#) of the venue.

Venue design and operations:

- Detailed plans of the design and layout of the venue, including the location of all existing and proposed gaming machines, location of existing and proposed gambling and non-gambling facilities, entrances and exits to the gaming lounge, screening, façade treatment, external signage, external lighting, pedestrian and vehicle access and car parking.
- Details of the venue's non-statutory harm minimisation and responsible gambling practices.

Social and economic benefits

- ~~The findings from an academically rigorous representative survey of residents, businesses, community organisations, agencies and service providers within 400m walking distance of the proposed venue. The survey should measure current and anticipated levels of community satisfaction (i.e. happiness, contentment, wellbeing) from living, working and recreating in the local area, and the potential impact of the proposal on current and anticipated levels of community satisfaction.~~
- A robust assessment, prepared by a suitably qualified person, that details the following:
 - SEIFA Index of Relative Socio-economic Disadvantage of the SA1 within which the venue is located, and adjoining SA1's
 - the impact of the proposal on groups vulnerable to gambling-related harms as a result of their socio-economic and health profile within 400m walking distance of the proposal site.
 - the impact of the proposal on venues from which gaming machines are to be ~~transferred~~ [relocated](#)
 - the impact of the proposal on employment in the municipality
 - the potential for the proposal to contribute to the local economy
 - the social and economic ~~impacts (positive and negative) arising out~~ [effects](#) of the proposal.

7.0

Decision guidelines

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Proposed
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The following decision guidelines apply to an application for a permit under Clause 52.28, in addition to those specified in Clause 52.28 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- Whether the proposal will achieve the objectives and outcomes of this schedule to Clause 52.28.
- Whether the proposal will increase gambling-related harm.
- ~~How the proposal delivers community benefit.~~
- Whether the proposal will contribute to the levels of socio-economic disadvantage or have any other adverse impacts on vulnerable communities.
- Whether the location [and operation](#) of the gaming machines would ~~result in~~ [increase exposure to gaming opportunities as part of day to day activities such that a decision to gamble may be spontaneous rather than predetermined.](#)
- Whether the proposal would create, or contribute to ~~an existing, spatial~~ [an increased](#) concentration of gaming venues.
- Whether patrons will have access to non-gaming entertainment and recreation facilities in the surrounding area and in the gaming venue that operate at the same time as the gaming machines.
- The impact of the proposal on the safety, amenity, character, tourism and cultural assets of the surrounding land area and municipality.