

*Planning and Environment Act 1987*

Panel Report

Melton Planning Scheme Amendment C182

Electronic Gaming Policy

11 February 2019



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Panel Report pursuant to section 153 of the Act

Melton Planning Scheme Amendment C182

Electronic Gaming Policy

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Elissa Bell, Chair

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**List of Abbreviations**

2014 Policy	City of Melton Responsible Gambling Policy, October 2014
2017 Policy	City of Melton Electronic Gaming Machine Planning Policy Project Reference Document, June 2017
the Act	<i>Planning and Environment Act 1987</i>
DELWP	Department of Environment, Land, Water and Planning
EGMs	Electronic gaming machines
SA1	Statistical Area 1
SEIFA	Socio-Economic Indexes for Areas
VCAT	Victorian Civil and Administrative Tribunal
VCGLR	Victorian Commission for Gambling and Liquor Regulation

## Overview

Amendment summary	
<b>The Amendment</b>	Melton Planning Scheme Amendment C182
<b>Common name</b>	Electronic Gaming Policy
<b>Brief description</b>	The Amendment proposes to insert a new Local Planning Policy for Electronic Gaming at Clause 22.13, include two gaming policies as reference documents and amend the Particular Provisions at Clause 52.28 by replacing the Schedule to Clause 52.28.
<b>Subject land</b>	City of Melton
<b>Planning Authority</b>	Melton City Council
<b>Authorisation</b>	20 April 2018
<b>Exhibition</b>	28 June 2018 to 9 August 2018
<b>Submissions</b>	Number of Submissions: two - Zahav (Aust) Pty Ltd - CSJV Nominees Pty Ltd, the venue operator of West Waters Hotel Both submissions opposed to certain aspects of the Amendment only. One aspect was resolved prior to the Hearing.
Panel process	
<b>The Panel</b>	Elissa Bell
<b>Directions Hearing</b>	12 November 2018 at Planning Panels Victoria
<b>Panel Hearing</b>	3 December 2018 at Western BACE, Melton South 18 December 2018 at Planning Panels Victoria
<b>Site inspections</b>	Unaccompanied to Bridge Inn Hotel, 1425 Plenty Road, Mernda on 29 November 2018
<b>Appearances</b>	Melton City Council represented by Greg Tobin of Harwood Andrews Zahav (Aust) Pty Ltd represented by Nicola Collingwood of Counsel, instructed by Sarah Kovatch of BSP Lawyers and calling town planning evidence from Colleen Peterson of Ratio Consultants.
<b>Citation</b>	Melton PSA C182 [2019] PPV
<b>Date of this Report</b>	11 February 2019

## Executive summary

### (i) Summary

The City of Melton, located in the western region of Melbourne, includes land in two of Melbourne's four identified growth corridors. The majority of Melton is located in the West Growth Corridor, with the township of Diggers Rest being located in the Sunbury-Diggers Rest Growth Corridor. It is anticipated that these areas of Melton will experience a significant increase in population. Whilst the area is considered to be well serviced with access to electronic gaming machines, there is currently a policy gap to guide the appropriate location of new gaming venues and electronic gaming machines.

Melton Planning Scheme Amendment C182 (the Amendment) seeks to:

- insert a new Local Planning Policy for Electronic Gaming at Clause 22.13
- include two gaming policies as reference documents
- amend the Particular Provisions at Clause 52.28 by replacing the Schedule to Clause 52.28.

There were two submitters to the Amendment, largely raising the same submissions. All parties agreed the Amendment was strategically justified and would be of benefit to the Melton Planning Scheme.

Parties conceded that while some submissions were a matter of drafting preference, others were matters of policy with which the parties were fundamentally opposed. Key issues raised in submissions included:

- the references to 'net community benefit' were of no assistance to the Local Policy and should be removed
- the locational requirements were too restrictive and could be improved upon
- the venue design and operation requirements could be enhanced
- the application requirements were too onerous
- the proposed reference documents were fundamentally flawed and should be removed.

The Panel has considered all written submissions, observations from a site visit, evidence and other materials presented to it at the Hearing. The Panel has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

The Panel concludes:

- The use of 'net community benefit' in the Local Policy is appropriate and justified however duplication within the decision guidelines should be removed.
- The locational requirements as agreed between parties are generally appropriate and some minor changes could enhance these.
- Some changes as agreed between parties are appropriate to the venue design and operational requirements.
- The requirement for a detailed Social and Economic Impact Assessment to include some evidence of the impact of the proposal on the community is appropriate.

- The 2017 Policy may be useful as a background document and should be retained.

**(ii) Recommendations**

Based on the reasons set out in this Report, the Panel recommends that Melton Planning Scheme Amendment C182 be adopted as exhibited subject to the following:

- 1. Amend Clause 22.13, as shown in Appendix B, to:**
  - a) adopt Council's proposed changes to the objectives and application requirements relating to net community benefit
  - b) delete the proposed decision guideline relating to 'net community benefit'.
- 2. Amend Clause 22.13-3, as shown in Appendix B, to:**
  - a) Split guidance according to locations where gaming venues and electronic gaming machines should and should not be located.
  - b) Insert the following guidance for where gaming venues and electronic gaming machines should be located:
    - In locations that are accessible but not convenient to the day to day retail/shopping needs of local residents, such as away from the central core of activity centres or at a destination venue.
    - Where the location of gaming venues is at the edge or periphery of an activity centre.
    - In locations where it can be established that they are a destination rather than convenience venue.
  - c) Insert the following guidance for venue design and operation:
    - In venues that provide a comprehensive entertainment offer and where gaming is a minor component of the venue's layout.
  - d) Improve clarity and implementation.
- 3. Amend Clause 22.13-5, as shown in Appendix B, to:**
  - a) Delete the proposed decision guideline relating to the location of gaming venues facilitating or discouraging convenience gaming.
- 4. Amend Clause 22.13-3, as shown in Appendix B, to:**
  - a) Ensure electronic gaming machines are not located in venues with less than a 6-hour break in play.
  - b) Insert new guidance that electronic gaming machines are not located in venues where the amenity of the surrounding area is unreasonably affected by way of design, location or operating hours.
  - c) Improve clarity.
- 5. Amend Clause 22.13-4, as shown in Appendix B, to improve clarity and readability.**
- 6. Amend Clause 22.13-6 to delete the 2014 Policy.**
- 7. Amend the Policy basis of Clause 22.13-01 as shown in Appendix B.**
- 8. The land description of Caroline Springs Town Centre, Caroline Springs be amended in Schedule to Clause 52.28 Gaming to delete the words "referred to as No 10 Lake Street, Caroline Springs".**

## 1 Introduction

### 1.1 The Amendment

#### (i) Purpose of the Amendment

The Amendment is required to *“address a policy gap and aid decision-making in relation to the use and installation of electronic gaming machines (EGMs) in the municipality.”*

#### (ii) Proposed changes to the Amendment post exhibition

During the Panel process submissions proposed multiple wording changes to the Local Policy. Council’s final position on the Amendment incorporated many of these changes as discussed in this report. The Panel has used the exhibited version of the Amendment as the basis of all recommendations.

### 1.2 Procedural issues

The Hearing was originally set for one day. The Panel made directions for Council to provide further information including *“if available, any current spatial maps of the proposed locational requirements of Clause 22.13-3”*.

Council responded such information was not available. In evidence, Zahav proposed to introduce a series of maps which had been prepared by Ms Peterson to illustrate the spatial implications of the policy in conjunction with existing provisions in the Planning Scheme, which in Zahav’s submission would unreasonably block part of the municipality.<sup>1</sup>

Council submitted the maps ought to have been distributed with the evidence to allow appropriate consideration, by Council. Ms Collingwood submitted preparing maps was not a matter of expertise, although interpreting them may be. She submitted it would be more expedient for Ms Peterson to present them and for the Panel to determine their weight.

The Panel directed the maps be presented and explained by Ms Peterson for expediency. Additional time taken to discuss the maps resulted in the Hearing being extended by one day which was two weeks later to accommodate all parties. Council was afforded the opportunity to respond in writing and recall Ms Peterson for questioning if required.

The Panel considers Ms Peterson accurately and explicitly explained her methodology and how the maps could be interpreted. The Panel accepts Council’s submission that there may have been some aspects of the policy that had been misinterpreted and thus, misapplied to the maps. In assessing the Amendment, the Panel placed little weight on the maps as they were useful for illustrative purposes only of a particular time and place in the Amendment process. This was demonstrated by Ms Peterson’s acknowledgment that minor wording changes to the Amendment would have the effect of contracting boundaries in places, similarly Council identified future Precinct Structure Plans that had not been considered.

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<sup>1</sup> Document 19



### 1.3 Background to the proposal

Council provided the following chronology regarding the Amendment.

**Table 1** Chronology of events

Date	Event
2014	<i>City of Melton Responsible Gambling Policy 2014 (2014 Policy) and Melton City Council Gambling Discussion Paper 2014</i> developed by Council’s community and social planning department.
September 2015	City of Melton’s Electronic Gaming Machine Planning Policy Project (the Gaming Project) commenced. Council retained Bonnie Rosen of Symplan Consulting to conduct the Gaming Project.
2017	Four key outputs from the Gaming Project: <ul style="list-style-type: none"> <li>- Two preliminary reports:                             <ul style="list-style-type: none"> <li>- City of Melton Electronic Gaming Planning Policy Project, Stakeholder Engagement and Community Consultation Findings 2017</li> <li>- City of Melton Electronic Gaming Planning Policy Project, Background Report 2017</li> </ul> </li> <li>- <i>City of Melton Electronic Gaming Machine Planning Policy Project Reference Document June 2017 (2017 Policy)</i></li> <li>- The exhibited Amendment.</li> </ul>
24 July 2017	Council resolved to adopt the Reference document, note the Background report, prepare Planning Scheme Amendment C182 and authorise the relevant managers to resolve any issues raised during the exhibition process.
20 April 2018	Authorisation received from the Department of Environment, Land, Water and Planning (DELWP) to commence the Amendment
17 May to 16 July 2018	Melton Planning Scheme Amendment C200 – Municipal Strategic Statement Review exhibited.
28 June – 9 August 2018	Amendment C182 exhibited.
15 October 2018	Council considered submissions to Amendment C182 and resolved to request the appointment of an independent panel to consider submissions.
9 November 2018	Panel Report for Amendment C200 completed
10 December 2018	Planning authority adopted Amendment C200

Council provided the following figure to represent the evolution of policy work to the proposed Amendment.



**Figure 1 Evolution of policy work contributing to the Amendment**

Source: Council's Part A

The 2017 Policy included recommendations of revisions to the Municipal Strategic Statement. Amendment C200 to the Melton Planning Scheme proposes to re-write the entire Municipal Strategic Statement and so these recommendations are not part of this Amendment but were picked up by Amendment C200. As indicated in Table 1 the Panel report for Amendment C200 has been completed; it did not include any recommendations relating to the relevant sections.

### 1.4 Issues dealt with in this Report

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from the site visit, and submissions, evidence and other material presented to it during the Hearing.

The Panel has reviewed a large volume of material. The Panel has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Net community benefit
- Locational requirements
- Venue design and operation
- Application requirements
- Reference documents
- Other matters.

## 2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report and further in its Part A submission.

The Panel has reviewed Council's response and the policy context of the Amendment and has made a brief appraisal of the relevant provisions.

### 2.1 Planning Policy Framework

#### (i) State planning policies

Council submitted that the Amendment is consistent with the following clauses in the State Planning Policy Framework:

- Clause 71.02-2 Objectives – by giving guidance to the appropriate location and operation of EGMs and the assessment of relevant environmental, social and economic factors associated with EGMs in the interests of net community benefit.
- Clause 11.02-3S Sequencing of development – by promoting the availability of services in growth areas early in the life of the development of new communities.
- Clause 11.03-1S Activity centre planning – by facilitating the appropriate location of EGMs in activity centres.
- Clause 17.02-1S Business – by facilitating development that meets the community's needs for entertainment in the interests of net community benefit.
- Clause 17.02-2S Out-of-centre development – by giving preference to the location of EGMs in activity centres.

The Amendment was prepared prior to the State-wide Amendment VC148 and introduction of the Planning Policy Framework. Council submitted the Amendment remains consistent with these provisions in their translated form, presented above. The Panel concurs with this analysis.

#### (ii) Local planning policies

Council submitted that the Amendment strengthens the Local Planning Policy Framework by providing specific guidance on the appropriate location and operation of EGMs in the municipality, and supporting decisions made under Clause 52.28 Gaming. In addition, Amendment C200 pre-empts the preparation of a local planning policy dealing with electronic gaming providing further strategic justification for the Amendment.

#### (iii) Other planning strategies or policies used in formulating the Amendment

Council submitted that the Amendment is required to implement recommendations in the 2017 Policy, to address an existing policy gap and aid decision-making in relation to the use and installation of EGMs in the municipality.

## 2.2 Ministerial Directions and Practice Notes

Council submitted that the Amendment meets the relevant requirements of:

- Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the *Planning and Environment Act 1987* (the Act) – referred to as Ministerial Direction 7(5) in this report.
- Ministerial Direction 9 (Metropolitan Strategy)
- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction 15 (The Planning Scheme Amendment Process).
- Planning Practice Note 13 (PPN 13): Incorporated and Reference Documents.

## 2.3 Amendment VC148 changes

Council's submission recognised the Amendment conforms with the pre-VC148 structure of the planning scheme and that the reforms have amended the content of Clause 52.28-Gaming. To this extent, the Amendment does not conform with the latest Ministerial Direction on the Form and Content of Planning Schemes which permits the schedule to Clause 52.28 to include aspects that would previously be included in local policy. The Panel notes the advice from the DELWP included in Council's submission that the Amendment could either be approved in its current form and translated to the Planning Policy Framework format as part of the Melton transition, or approved and translated simultaneously, depending on the timing. The Panel accepts Council's submission that changes introduced by VC148 do not restrict the ability for the Amendment to proceed.

The Panel notes that the punctuation and capitalisation do not follow drafting conventions.

## 2.4 Discussion and conclusions

Both parties agreed the Amendment is strategically justified with Zahav submitting there is a "clear benefit" arising from its introduction. The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework, and is consistent with the listed Ministerial Directions and Practice Note. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

### 3 Net community benefit

#### 3.1 The issue

The issue is whether net community benefit is an appropriate and justified consideration for a local gaming policy.

#### 3.2 Evidence and submissions

##### (i) Net community benefit

Council submitted that 'net community benefit' is a relevant planning consideration for assessing permit applications to use or install EGMs<sup>2</sup> and that consistent with that, "the Amendment does not seek to impose a 'net community benefit' test".

The written submission by Zahav raised concern with the proposed objective stating that:

*Net community benefit is not a relevant test. The inclusion of net community benefit is not supported by case law and seeks to impose a higher standard than required under the Gambling Regulation Act 2003.*

Written evidence by Ms Peterson was that:

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

In response to questions by the Panel, Ms Peterson clarified the above paragraph ought to read:

*Previous Tribunal decisions have clarified that it is not necessary or determinative as part of a planning application to demonstrate that a proposal will result in a net community benefit.*

Ms Peterson's evidence was that net community benefit is regularly misinterpreted as a test at the permit application stage creating the need for constant education and communication with community and Councils regarding the ambit of their decision-making power and manner in which it should be exercised. Ms Peterson emphasised the role of net community benefit is illustrated by its context in Clause 71.02-3 'Integrated decision making' being that when there are competing policies, the aim is to balance these according to net community benefit. In her opinion, the proposed Amendment takes the words out of this balancing context, potentially imputing a different role.

Ms Collingwood submitted the proposed wording goes beyond a mere duplication of Clause 71.02 and that there is a body of evidence of net community benefit regularly being misapplied in this context in the assessment of permit applications, such that it is of no real benefit to include it in the policy and it should therefore be removed.

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<sup>2</sup> Part B at 10-11

Ms Collingwood provided a long list of authorities from the Victorian Civil and Administrative Tribunal (VCAT), Supreme Court and previous Panel reports to support this submission and later submissions regarding locational requirements. For simplicity, the full list of authorities is shown in Table 2.

**Table 2** References Panel was directed to

Date	Type	Municipality
19 March 2008	SC, COA	<i>Macedon Ranges Shire Council v Romsey Hotel and Victorian Commission for Gambling Regulation</i>
October 2008	PR	Greater Bendigo C110
November 2008	PR	Maroondah C60
2009	VCAT	<i>Beretta's Langwarrin P/L v Frankston CC</i> (Red Dot)
October 2009	PR	Mitchell C50
15 December 2009	VCAT	<i>Prizac Investments Pty Ltd &amp; Ors v Maribyrnong CC &amp; Ors</i> (includes Summary) (Red Dot)
February 2010	PR	Greater Geelong C168
19 March 2010	VCAT	<i>CK &amp; Sons Pty Ltd v Bayside CC</i>
April 2010	PR	Yarra Ranges C77
6 April 2010	VCAT	<i>De Group Pty Ltd v Wyndham CC</i>
11 August 2010	VCAT	<i>Bright Newbay Pty Ltd v Bayside CC</i>
13 August 2010	VCAT	<i>Sayers Property Holdings Pty Ltd v Wyndham CC</i>
12 April 2011	VCAT	<i>Drayton Manor Pty Ltd v Greater Bendigo CC</i>
May 2011	PR	Macedon Ranges C64
19 September 2011	VCAT	<i>DSL Securities v Cardinia SC</i>
10 January 2012	PR	Bayside C98
22 February 2012	PR	Campaspe C87
27 April 2012	PR	Port Phillip C88
8 June 2012	Interim PR	Benalla C21
14 February 2013	VCAT	<i>Mount Alexander SC v Victorian Commission for Gambling and Liquor Regulation &amp; Ors</i> (includes Summary) (Red Dot)
20 May 2013	VCAT	<i>Hunt Club Commercial Pty Ltd v Casey CC</i> (Includes Summary) (Red Dot)
24 June 2013	VCAT	<i>Pink Hills Hotel Pty Ltd v Yarra Ranges SC &amp; Ors</i>
25 June 2013	VCAT	<i>Melbourne CC v Kingfish Victoria Pty Ltd &amp; Anor</i> (Includes Summary) (Red Dot)
11 July 2013	PR	Ballarat Amendment C154

Date	Type	Municipality
9 August 2013	PR	Maribyrnong Amendment C115
4 September 2013	VCAT	<i>Monash CC v L'Unico Pty Ltd</i>
18 March 2014	PR	Wyndham C174
14 July 2014	VCAT	<i>Rutherford &amp; Ors v Hume CC</i> (includes Summary) (Red Dot)
8 December 2014	PR	Mount Alexander C72
8 January 2015	PR	Corangamite C40
22 May 2015	PR	Monash C113
16 September 2015	VCAT	<i>Benmara Pty Ltd v Whittlesea CC</i>
25 November 2015	VCAT	<i>Backman &amp; Company Pty Ltd v Boroondara CC</i> (includes Summary) (Red Dot)
16 December 2015	SC, COA	<i>Julie Hoskin &amp; Anor v Greater Bendigo CC and Anor</i>
28 September 2016	PR	Frankston C100
4 April 2017	PR	Knox C150
21 December 2017 Corrected 16 January 2018	VCAT	<i>ALH Group Property Holdings Pty Ltd v Whittlesea CC</i> (Corrected)
28 December 2017	PR	Corangamite C45
27 March 2018	SC	<i>Moreland City Council v Glenroy RSL</i>

Abbreviations: PR Panel Report, SC Supreme Court, SC COA Supreme Court, Court of Appeal, VCAT Victorian Civil and Administrative Tribunal.

Ms Peterson gave evidence that a more appropriate consideration for this Local Policy would be the potential for 'significant social and economic impacts' as per section 60(f) of the Act. Based on this she encouraged a number of changes to the policy.

In response to questioning from the Panel, Ms Peterson gave evidence that if a policy were to use the terms net community benefit, then they should be used in the context of Clause 71.02 so that they are linked to their purpose. As an example, Ms Peterson stated the wording used for the decision guidelines in the Moonee Valley Planning Scheme would provide a better outcome. These read:

*In terms of Clause 10.03, whether there is to be a net community benefit as derived from the application, aside from any community contribution scheme.*

**(ii) Proposed wording**

Council's revised version of the Local Policy includes references to 'net community benefit' as follows:

**Objective**

- *To encourage gaming venues to deliver net community benefit.*

**Decision guidelines**

*Before deciding on an application the responsible authority must consider, as appropriate:*

- *Whether the proposal can demonstrate that a net community benefit can be derived from the application, including but not limited to any statutory community contributions scheme.*

In addition, Council proposed to remove the words 'net community benefit' from the Application Requirements.

Zahav submitted both the above clauses should be omitted from the policy and instead replaced with equivalent provisions worded in terms of significant social and economic impacts.

**3.3 Discussion****(i) Background**

The following background has informed the Panel's consideration of the issues.

**Legislative context**

Section 3.3.7 of the *Gambling Regulation Act 2003* sets out matters to be considered in determining applications for gaming including:

- (1) The Commission must not grant an application for approval of premises as suitable for gaming unless satisfied that-*
- a. ...*
  - b. ...*
  - c. 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.*

This is commonly referred to as the 'no net detriment test'.

Clause 71.02 of the Planning Scheme (previously Clause 10) provides:

**71.02-1 Purpose of the Planning Policy Framework**

*...The Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in section 4 of the Act) are fostered through appropriate land use and development planning policies and practices that integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development...*

**71.02-3 Integrated decision making**

*...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...*



This is commonly referred to as 'net community benefit'.

#### Case law

A review of the cases referred to underpins the following understanding of the evolution of the application of 'net community benefit' to gaming applications:

- Net community benefit is a test requiring an applicant to demonstrate a proposal will *"create a net community benefit i.e. a positive planning outcome"* (Beretta's Langwarrin P/L v Frankston).
- Net community benefit is not a test in that the absence of a net community benefit is *"not a prohibition on the grant of a permit"*; instead, the policy is to *"guide the decision making, not dictate outcomes"* (Prizac Investments P/L v Maribyrnong).
- It is *"not necessary to demonstrate a net benefit as it is not a test"* (CK & Sons P/L v Bayside).
- Including a specific objective in a local policy *"to ensure that gaming venues achieve a net community benefit"* is *"contrary"* to Clause 11 which does not set a particular test. *"At the same time, the objective to balance policies in favour of net community benefit where possible is generally relevant"* (Bright Newbay P/L v Bayside).
- Net community benefit is appropriately described as a *"consideration"* to which a decision-maker is required to have regard to if it considers it appropriate to do so (Moreland v Glenroy RSL).

#### (ii) Net community benefit

That 'net community benefit' is not a 'test' has been a consistent conclusion of previous gaming Panel Reports and VCAT decisions since Prizac Investments in 2009. The Panel accepts the submission from Zahav that there may have remained some confusion or uncertainty in Councils with respect to this point to the extent that Moreland City Council recently raised this as an issue at the Supreme Court. The Panel also accepts Council's submission that the Glenroy case now conclusively resolves the issue and that is demonstrated by both parties agreeing that net community benefit is not a 'test'. Both parties also agreed that 'net community benefit' is a relevant consideration pursuant to section 60 and Clause 71.02 of the Planning Scheme in the exercise of a discretion under Clause 52.28.

In response to questioning, Council submitted that a local policy could not elevate 'net community benefit' to a test and the Panel agrees with this.

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 addresses significant social effects and economic effects should be. The Panel considers either of these could equally be included in a local policy to guide decision-making and accepts Council's choice in this instance.

A review of previous Panel reports post Prizac Investments found the following findings:

- The integration of competing factors in the interests of net community benefit is fundamental planning policy (Bayside C98).
- The acceptance that net community benefit is an appropriate consideration, however a finding that alternate language aimed at 'harm minimisation' or the 'avoidance of

impacts' is more strategically justified based on the relevant supporting policies (Macedon Ranges C64, Bayside C98).

- A desire to ensure wording in the local policy does not purport to elevate net community benefit to a test and instead, where used, retains the context of Clause 71.02 (Maribyrnong C115).
- It would be extremely difficult to establish that the installation of EGMs would create a net community benefit (Bayside C98).

This Panel agrees with previous Panels that the act of balancing competing policy issues in the interests of net community benefit is 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 considers net community benefit is so fundamental to planning in Victoria that, used correctly as a consideration, it is unnecessary to be supported by detailed strategic policies. The Panel notes VCAT in the Bright Newbay case stated that the *"the objective to balance policies in the favour of net community benefit where possible is generally relevant to planning permit applications for the use of land for gaming"*.

The Panel respectfully disagrees that it would be extremely difficult for an application of EGMs to demonstrate a net community benefit. Compared to 'harm minimisation', the Panel considers an objective of net community benefit provides greater flexibility for a merits-based assessment which can consider both actions to minimise harms and increase benefits. Both parties at the Hearing provided a long list of potential benefits arising from the installation of EGMs at a particular location which would need to be considered for a particular application. In any case, a finding of a net community benefit for an individual application is clearly not necessary.

The Panel notes previous panels have adopted wording similar to Moonee Valley that specifically references Clause 10 (now Clause 71.02 following VC148) to cement the role of net community benefit in balancing policy when assessing an application but does not think this necessary.

In terms of the proposed decision guideline, the Panel considers this unnecessarily duplicates the first decision guideline which directs the decision-maker to consider all the objectives. The Panel notes the Panel in Maribyrnong C115 raised concerns with explicitly including statutory community contribution schemes in the consideration of benefits as such an assessment *"in terms of the broad goals of planning in Victoria should not be reliant on a cash contribution to get it over the line"*. The Panel considers if the decision guideline were to remain, the reference to the community contributions scheme should be removed, and notes this would not necessarily prevent it being considered if deemed appropriate in the particular circumstances of an application.

The Panel agrees with the proposal to remove 'net community benefit' from the Application Requirements.

### 3.4 Conclusions

The Panel concludes:

- Net community benefit is an appropriate and justified consideration for the Local Policy.
- The drafting proposed post-Hearing is appropriate subject to the following recommendation.

### 3.5 Recommendations

The Panel recommends:

**Amend Clause 22.13, as shown in Appendix B, to:**

- a) adopt Council's proposed changes to the objectives and application requirements relating to net community benefit**
- b) delete the proposed decision guideline relating to 'net community benefit'.**

## 4 Locational requirements

### 4.1 The issue

The issue is whether the proposed locational requirements are appropriate and justified.

### 4.2 Evidence and submissions

#### (i) General locational guidance

The exhibited Local Policy focused on areas where gaming should not be located. Council submitted *“it is appropriate to articulate a protective policy in negative, exclusionary terms”*. Council’s final version however took on board many of the suggested changes by Zahav to include locational guidance of both areas where EGMs should and should not be located and included other minor changes to improve clarity.

Uncontested locational guidance submitted by Zahav included guidance that EGMs should be located in venues that contain comprehensive entertainment options, where gaming will be accessible but not convenient, on the edge of activity centres and in destination locations. With respect to locations being accessible but not convenient, Council proposed slightly different drafting. Council contested additional guidance relating to EGM density as further outlined below.

In relation to policy on where gaming venues and EGMs should not be, Zahav proposed some amendments to the drafting. Council accepted some, but not all of these amendments as discussed further below.

#### (ii) EGM density

Ms Peterson gave evidence that additional guidance should be included that EGMs should be located:

*...in growth corridors where the provision of gaming machines should not exceed 10 EGMs per 1000 adults in line with the State Government Regional Cap to ensure the provision of gaming in line with population growth.*

To support this inclusion, Ms Peterson gave evidence that *“density of gaming machines provides a quantitative measure to assess the accessibility of gaming machines within a geographic region and is one that the Victorian Commission for Gambling and Liquor Regulation (VCGLR) uses in their assessment of applications”*. Council did not agree with inserting this sub-section.

#### (iii) Statistical Area 1

Ms Peterson provided evidence that clarification was required to define areas with high socio-economic disadvantage as being the bottom 20 per cent of Socio-Economic Indexes for Areas (SEIFA) scores in Victoria. Council accepted this amendment but did not support replacing “area” with “SA1”.

**(iv) Shopping complexes**

Although principally on board with the policy direction, Ms Peterson recommended the sub-section relating to shopping complexes be removed as it was covered by other changes recommended by her drafting. In response to submissions, Council proposed to amend this sub-section to recognise it may be hard for it to prove that a shopping strip was ever “fully established”, proposing the words “substantially constructed” instead.

**(v) Separation from sensitive uses**

Although Ms Peterson agreed it was appropriate to identify locations unsuitable for gaming due to their proximity to incompatible uses, she did not consider the 400-metre walking distance to be the most appropriate measure. Her proposed words of “*direct and immediate interface with, or clear synergies with*” were intended to capture the primary issue in her view being “*the connectivity or lack thereof between the uses*” giving further evidence that:

*...venues may be within 400 metres from a sensitive use but have no synergies with that use through physical barriers or accessibility, such as railway lines, freeways, topography and even other intervening land uses.*

To support its submission, Zahav referred to relevant passages of a number of the references cited in Table 2. Zahav submitted that VCAT in Bright Newbay raised concern about the appropriateness of the 800-metre separation distance proposed in that case and stated that:

*In our opinion, the incorporation of a distance sets an expectation for both Council and the community that may be unreasonable. We note that other gaming polices that exist in local sections of other planning schemes at present tend to include more generic references to have regard to the location of sensitive uses and pedestrian movement, which may be a more appropriate approach.*

In response to submissions, Council proposed revisions to the third sub-bullet to clarify “*that a site on a periphery of an activity centre may, because of established protective factors, be an appropriate location for gaming machines despite being within 400 metres*” of the sensitive uses.

**(vi) Relevant catchment for non-gaming entertainment options**

Ms Peterson gave evidence the relevant catchment for non-gaming entertainment options should be reduced from 5 kilometres to 2.5 kilometres. Council provided that this change would be more onerous on gaming applicants. Council submitted 5 kilometres was more appropriate due to the growing nature of the municipality and that in time as the municipality becomes more built out, it may consider dropping the catchment to 2.5 kilometres.

**(vii) Proposed sensitive uses**

Ms Peterson gave evidence the proposed sensitive uses should be amended to specify a cluster of social housing being more than 50 dwellings and to provide examples of a gambling sensitive service or facility being “*such as financial or problem gambling counselling services*”.

### 4.3 Discussion and conclusions

#### (i) General

The Panel considers the additional locational guidance which was agreed by Council to be appropriate content and commends both parties for keeping an open mind as to the drafting of the controls. With respect to the advice for gaming venues to be located in venues that provide a comprehensive entertainment offering, the Panel considers whilst appropriate, this would be better placed under the venue design and operation section, leaving the location aspect to deal with matters of geography.

With respect to the policy objective that EGMs should be accessible but not convenient, the Panel considers there is unnecessary duplication in the decision guidelines which include both a general guideline regarding meeting the policy objectives and a second whether the location will “*facilitate or discourage convenience gaming*”. For this reason, the Panel considers the second decision guideline should be removed.

The Panel considers Council’s changes proposed in Part A to improve clarity are also appropriate.

#### (ii) EGM density

The Panel does not agree to the additional guidance dealing with EGM density as it is a measure dealt with by the VCGLR and not something that should be duplicated in the Local Policy.

#### (iii) Statistical Area 1

According to the Australian Statistical Geography Standard a “*Statistical Area 1 (SA1) is the second smallest geographic area defined*”. These areas have been the basis for the output of most data produced from the Census. The Panel considers reference to ‘SA1’ in the planning scheme is unnecessary and unhelpful.

#### (iv) Shopping complexes

The Panel notes Ms Peterson supported the principal behind this sub-section and considers it is required as not all relevant changes recommended by Ms Peterson have been accepted. The Panel accepts the changes proposed by Council.

#### (v) Separation from sensitive uses

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 considers Council’s proposed words to clarify this sub-section with respect to activity centres assists the application of the policy to meet this aim. The Panel has considered many of the cases and previous Panel Reports referred to by the submitters and notes the following views:

- that separation distances are a “*crude*” measure but that 400 metres is ample (Yarra Ranges C77)

- *“ready accessibility... is more significant than mere distance”* however they may serve as a *“useful check list... although such distances might be found to warrant little weight on the merits”* (Pink Hills Hotel v Yarra Ranges)
- that separation distances, though *“not perfect”* are a *“pragmatic”* approach, (Corangamite C45)
- that a 400-metre separation distance may be less relevant in a car-dependent regional setting (Corangamite C45)
- that a 400-metre separation distance is a reasonable walkable catchment and that a ‘walking’ distance recognises physical barriers such as railway lines and watercourses (Port Phillip C88)

The Panel agrees that a separation distance may not be a perfect measure to achieve the objective of venues being accessible but not convenient. The Panel accepts the definition of walking distance and considers this addresses some of Ms Peterson’s concerns regarding physical barriers between a sensitive use and a gaming venue. The definition of walking distance may not however automatically exclude unsafe and inconvenient routes such as a Pedshed or similar model.

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. After consideration of alternate wording, the Panel agrees with previous Panels that although not perfect a separation distance provides a pragmatic approach. Further, the Panel agrees with the analysis in Pink Hills and considers this was echoed in Council’s approach to the Hearing – a local policy is to guide decision-making with respect to considerations but not to prescribe outcomes. 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. The weight to be attributed on the merits will be up to the individual circumstances.

**(vi) Relevant catchment for non-gaming entertainment uses**

The Panel agrees with Council’s approach.

**(vii) Sensitive uses**

There was insufficient evidence before the Panel to support the changes requested with respect to sensitive uses.

#### **4.4 Recommendations**

The Panel recommends:

**Amend Clause 22.13-3, as shown in Appendix B, to:**

- a) Split guidance according to locations where gaming venues and electronic gaming machines should and should not be located.**
- b) Insert the following guidance for where gaming venues and electronic gaming machines should be located:**

- In locations that are accessible but not convenient to the day to day retail/shopping needs of local residents, such as away from the central core of activity centres or at a destination venue.
  - Where the location of gaming venues is at the edge or periphery of an activity centre.
  - In locations where it can be established that they are a destination rather than convenience venue.
- c) Insert the following guidance for venue design and operation:
- In venues that provide a comprehensive entertainment offer and where gaming is a minor component of the venue's layout.
- d) Improve clarity and implementation.
- Amend Clause 22.13-5, as shown in Appendix B, to:
- a) Delete the proposed decision guideline relating to the location of gaming venues facilitating or discouraging convenience gaming.



## 5 Venue design and operation

### 5.1 The issue

The issue is whether the proposed venue design and operational requirements are appropriate and justified.

### 5.2 Evidence and submissions

Ms Peterson gave evidence that she agreed with the policy intent of the proposed venue design and operation requirements however she recommended:

- rewording the second requirement in the policy to link it to the VCGLR Venue Manual requirements
- stipulating a minimum 6-hour break in play
- adding a requirement to protect amenity of the surrounding area.

Council disagreed to the proposed rewording of the second requirement in the policy but considered the other two recommendations appropriate.

### 5.3 Discussion and conclusions

The Panel notes both parties agreed on the policy of the second requirement but disagreed whether it necessary to link to the external VCGLR Venue Manual. The Panel considers the wording as proposed, serves the policy aim appropriately and that it is unnecessary and undesirable to link to a manual outside the Planning Scheme and more relevant to gaming legislation considerations.

### 5.4 Recommendation

The Panel recommends:

**Amend Clause 22.13-3, as shown in Appendix B, to:**

- Ensure electronic gaming machines are not located in venues with less than a 6-hour break in play.**
- Insert new guidance that electronic gaming machines are not located in venues where the amenity of the surrounding area is unreasonably affected by way of design, location or operating hours.**
- Improve clarity.**

## 6 Application requirements

### 6.1 The issue

The issue is whether the proposed application requirements are appropriate and justified.

### 6.2 Evidence and submissions

The key issue in dispute was the proposed requirement for “*evidence of impact of the proposal on the community wellbeing*” and the indication that this may be provided through a “*community survey*”. Ms Peterson gave evidence that she was “*generally comfortable*” with the application requirements but that “*the generic need for a community attitude survey is not an appropriate requirement*” and that, consistent with VCAT “*it is the merit of the objection, not the number of objections*” and accordingly, this requirement should be removed.

Zahav went further. Zahav submitted that a community attitude survey in most areas in the State would indicate most people are against gaming in their local area. However, there are few instances where such a survey is evidence of a genuine significant social impact, as was found in *Macedon Ranges v Romsey Hotel*. It therefore submitted that in this respect the application requirements “*strays outside the ambit of proper planning considerations*” and:

*... effectively require permit applicants to disprove in every case an impact that is likely to legitimately arise in only the rarest of cases – that community views about an application are so strong as to constitute a significant social impact.*

Zahav therefore raised concern with how such a survey could be assessed by Council in determining a permit application.

Council responded:

*The second limb of the objectives of Clause 52.28 includes the objective to ‘ensure the social and economic impacts of the location of gaming machines are considered’. It is almost trite to say that an assessment of wellbeing will inform the overall assessment of social and economic impacts.*

Council proposed deleting the word ‘wellbeing’ to avoid the perception of any duplication with considerations under the Gambling Regulation Act.

### 6.3 Discussion and conclusions

The Panel understands much of the concerns around a community survey are based on the Romsey Hotel situation in Macedon Ranges which involved a decision under the Gambling Regulation Act which was appealed to VCAT. In its decision, the Commission had declined to grant a permit due to finding the “*members of the local community find the prospect of gaming at its only hotel so disconcerting that it would have a significant effect upon the community*”.

The Panel agrees there is a difference between general community dislike of gaming machines and the situation in Romsey. The Panel agrees with Council that a social and economic impact assessment should include evidence of impact on the community. The Panel considers the guidance provided that “*this may be provided though a community survey or other*

*appropriate qualitative data*” is to be taken at its face value as guidance and not as a mandatory provision. That is, the Panel does not consider this requires a community survey or a community attitude survey but that these may form components of evidence of the impact. The Panel notes the requirement is seeking qualitative data indicating it is not looking for a popularity vote. The Panel also considers that the preceding requirement for an assessment of the surrounding context provides applicants with an avenue to present a case as to the relative weight that results of any community survey should take in the assessment of the particular application.

The proposed application requirements are appropriate and justified.

In addition, there were some minor wording changes were proposed by Ms Peterson, some of which Council took on board and are reflected in the Panel’s final version but which do not require further discussion.

#### **6.4 Recommendation**

The Panel recommends:

**Amend Clause 22.13-4, as shown in Appendix B, to improve clarity and readability.**

## 7 Reference documents

### 7.1 The issue

The issue is whether the inclusion of the two policies as reference documents is appropriate and justified.

### 7.2 Evidence and submissions

The exhibited Amendment proposed two reference documents being:

- City of Melton Responsible Gambling Policy, October 2014 (the 2014 Policy)
- City of Melton Electronic Gaming Machine Planning Policy Project Reference Document, June 2017 (the 2017 Policy)

In response to submissions Council proposed to remove the 2014 Policy but retain the 2017 Policy as a Reference Document for the final Amendment. Council submitted this document:

*... provides extensive guidance to permit applicants and the Responsible authority regarding the location, design and operation of gaming venues that can be used in the preparation and assessment of any application.*

Council cited relevant parts of Planning Practice Note 13 and submitted including the 2017 Policy would be consistent with the it in that it provides the background of the evolution of the Amendment and “*may be useful*”.

Ms Peterson provided a detailed review of each policy and gave evidence the 2017 Policy fundamentally fails to distinguish the different considerations under the Planning and Environment Act and Gambling Regulation Act and has the “*real potential to confuse future decision makers*”. Despite this, Ms Peterson’s evidence identified a number of sections of the report that in her evidence were “*useful*”.

Consistent with the evidence, Zahav submitted the 2017 Policy was fundamentally flawed, likely to confuse or mislead and unnecessary to provide strategic support to the Local Policy.

### 7.3 Discussion

The Panel accepts Council’s post-exhibition change to delete the 2014 Policy from the Amendment.

The recent reforms to the Victoria Planning Provisions brought with it a new clause outlining the role of background documents (previously called reference documents). Clause 72.08 provides:

*A background document may:*

- *Have informed the preparation of, or an amendment to, this planning scheme.*
- *Provide information to explain the context within which a provision has been framed.*
- *Assist the understanding of this planning scheme.*

*A background document does not form part of this planning scheme.*

Further guidance is provided by Planning Practice Note 13 which provides the distinction between Background documents and Incorporated documents and reiterates the limited role Background documents may have in decision-making as they are not part of the planning scheme. It is accepted in the Practice Note that Background documents may be *“wide-ranging in their content and contain information not directly relevant to specific decisions under the planning scheme”*. They may be included to provide context for particular provisions, the key determinate of whether or not to include a Background document according to the practice note is whether or not it *“contains additional useful information”*.

The Panel agrees with submissions that the 2017 Policy is not necessary to provide strategic justification for the Amendment.

The Panel accepts the 2017 Policy is a broad policy that is not limited to considerations under the Planning and Environment Act. Section 1 of the 2017 Policy sets out the relevant legislative context, State and local policy context. The Panel does not agree that the 2017 Policy fails to distinguish between the separate legislative regimes or that it confuses the issues. The key consideration of whether to include the document is its potential utility to future decision makers. As the Practice Note anticipates that background documents may be *“wide-ranging”* in content, the Panel considers it unnecessary for the document in its entirety to be useful so long as some aspects are. The Panel agrees with Council’s assessment that the document may be useful and considers Ms Peterson’s evidence supports the notion that some aspects of the document are indeed useful.

#### **7.4 Conclusions**

The Panel concludes:

- The 2014 Reference Document should be removed.
- The 2017 Reference Document should be retained.

#### **7.5 Recommendations**

The Panel recommends:

**Amend Clause 22.13-6 to delete the 2014 Policy.**

## 8 Other matters

### 8.1 Policy basis

#### (i) Evidence and submissions

Whilst Ms Peterson gave evidence there was *"nothing fundamentally wrong with the policy basis proposed"* she encouraged wording changes to emphasis what in her view is the role of the planning policy and to better reflect considerations of locational aspects of disadvantage.

Council agreed to some changes but not all. Council did not object to including a sentence to explicitly state the role of the policy in the context of other State and Local planning provisions but did not consider it likely to be approved by DELWP.

#### (ii) Discussion and conclusion

The Panel agrees with the changes proposed by Council and considers the additional sentence explaining the role of the policy is superfluous. The Panel notes, advice from the DELWP that the vast majority of the Amendment can be translated across to the new format planning scheme with the exception of the 'Policy Basis' which is *"not directly transferable"*. To this extent the Panel considers the precise wording of the policy basis to be less important considering all parties were agreed with the general content. Further the Panel considers once translated to the new format planning scheme, the internal linkages will be more prominent.

#### (iii) Recommendations

The Panel recommends:

**Amend the Policy basis of Clause 22.13-01 as shown in Appendix B.**

### 8.2 Schedule to Clause 52.28 Gaming

#### (i) Submissions

CSJV submitted the description of the Caroline Springs Town Centre shopping centre could be read as including West Waters Hotel as there happened to be two parcels of land with the same address of 10 Lake Street.

Council sought to resolve this description with a minor revision to the schedule sub-section.

#### (ii) Discussion and conclusion

The Panel agrees to the changes proposed to clarify this description.

#### (iii) Recommendations

The Panel recommends:

**The land description of Caroline Springs Town Centre, Caroline Springs be amended in Schedule to Clause 52.28 Gaming to delete the words "referred to as No 10 Lake Street, Caroline Springs".**

## Appendix A Document list

No.	Date	Description	Presented by
1	22/11/2018	Response to Directions Letter	Council
2	22/11/2018	Melton City Council Gambling Discussion Paper 2014	Council
3	22/11/2018	Melton City Council Stakeholder Engagement and Community Consultation Findings 2017	Council
4	22/11/2018	City of Melton Electronic Gaming Planning Policy Project Background Report 2017	Council
5	26/11/2018	Council Part A Submission	Council
6	3/12/2018	Updated Version of Clause 22.13	Zahav
7	3/12/2018	Updated Version of Clause 22.13	Council
8	3/12/2018	Copy of all the Gaming Policies in Victoria	Council
9	3/12/2018	Council Part B Submission	Council
10	3/12/2018	<i>Bright Newbay Pty Ltd v Bayside City Council</i> [2010] VCAT 1347	Council
11	3/12/2018	<i>Moreland City Council v Glenroy RSL</i> [2018] VSC 126 First Revision 9 April 2018	Council
12	3/12/2018	<i>Hoskin v Greater Bendigo CC and Anor</i> [2015] VCAT 1124	Council
13A	3/12/2018	Bayside Amendment C98 Panel Report	Council
13B	3/12/2018	Macedon Amendment C64 Panel Report	Council
14A	3/12/2018	Maribyrnong Amendment C115 Panel Report	Council
14B	3/12/2018	Maribyrnong Planning Scheme Clause 22.06	Council
15A	3/12/2018	Monash Amendment C113 Panel Report	Council
15B	3/12/2018	Monash Planning Scheme Clause 22.12	Council
16	3/12/2018	Mount Alexander Amendment C72 Panel Report	Council
17A	3/12/2018	Corangamite Amendment C45 Panel Report	Council
17B	3/12/2018	Corangamite Planning Scheme Clause 22.03	Council
18	3/12/2018	Town Planning Expert Evidence by Colleen Peterson of Ratio Consulting	Zahav
19	3/12/2018	Amendment C182 mapping exercise and methodology	Zahav
20	18/12/2018	Clause 22.13 tracked changes Zahav	Zahav
21	18/12/2018	Summary of net community benefit references in Local Gaming Policies	Zahav

No.	Date	Description	Presented by
22	18/12/2018	Hearing Folder 1– Local Gaming Policies and Panel Reports	Zahav
23	18/12/2018	Hearing Folder 2 – General information, Wyndham C174 Panel Report and range of VCAT and Supreme Court decisions	Zahav
24	18/12/2018	Hearing Folder 3 of documents – Officer reports and VCAT decisions	Zahav
25	18/12/2018	Zahav’s submission	Zahav
26	18/12/2018	Hunt Club Commercial Pty Ltd v Casey City Council (includes summary) (Red Dot) [2013] VCAT 725	Zahav
27	22/12/2018	Clause 22.13 consolidated tracked changes and Council’s final position	Council
28	9/01/2019	Email response from Zahav	Zahav
29	10/01/2019	Email response from Council	Council



## Appendix B Panel Preferred Version

### 22.13 ELECTRONIC GAMING

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Proposed  
C182

This policy applies to all planning permit applications to install or use an electronic gaming machine (EGM) under Clause 52.28.

#### 22.13-01 Policy basis

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Proposed  
C182

This policy guides Council's decisions in relation to planning applications for EGMs by setting out criteria for the location, design and operation of gaming venues and outlining the information required to accompany a planning permit application.

The City of Melton is expected to experience a significant increase in population in its growth areas. ~~This may drive industry demand for additional EGMs and gaming venues.~~ This policy seeks to guide the location of gaming machines, given the location of areas of socio-economic disadvantage.

The municipality is characterised by pockets of socio-economic disadvantage in its established areas. Evidence shows a link between people experiencing socio-economic disadvantage and gambling related harm.

#### 22.13-2 Objectives

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Proposed  
C182

- To adopt a harm minimisation approach that establishes a balance between the accessibility of EGMs in the municipality and minimising harms associated with EGM gambling within the community.
- To ensure that gaming venues and EGMs are located, designed and operated in a manner that minimises opportunities for convenience gambling.
- To ~~maximise the potential for~~ encourage gaming venues to deliver net community benefit.
- To ensure that gaming venues are appropriately located in activity centres as part of the overall range of entertainment facilities and activities offered.

#### 22.13-3 Policy

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Proposed  
C182

##### Location

It is policy that gaming venues and EGMs should be located:

- ~~Should be located in~~ In areas where the community in a 5 kilometre radius of the proposal has a choice of non-gaming entertainment and recreation uses operating at the same time as the venue.
- In locations that are accessible but not convenient to the day to day retail/shopping needs of local residents, such as away from the central core of activity centres or at a destination venue.
- Where the location of gaming venues at the edge or periphery of an activity centre is consistent with the activity centre hierarchy as detailed in Clause 21.05 as part of the overall range of entertainment facilities and activities in the LGA.
- In locations where it can be established that they are destination rather than convenience venues.

It is policy that gaming venues and EGMs should not be located:

- ~~Should not be located in~~ In the core(s) of activity centres. The core(s) of an activity centre are those parts of the activity centre that incorporate shopping, transport, community and civic facilities and services. This includes activity centres that are not fully established or those identified as a future activity centre on an approved Precinct Structure Plan or Clause 21.05.
- ~~Should not be located in~~ In areas of high socio-economic disadvantage (as defined by the SEIFA Index of Relative Socio-economic Disadvantage and being the bottom 20 per cent of SEIFA scores for Victoria) or communities displaying high vulnerability to gambling-related harm.
- ~~Should not be located on~~ On land where a shopping complex or a strip shopping centre has not been fully established substantially constructed or on land identified as a future activity centre in an approved Precinct Structure Plan, unless it can be clearly demonstrated that the location and operation of the venue will effectively separate the venue from shops and other convenience services and areas with high levels of pedestrian traffic to discourage impulse gaming.
- ~~Should not be located within~~ Within residential areas except when directly proximate to an activity centre or other appropriate non-residential use.
- ~~or within~~ Within a residential buildings or complexes that include a residential use.
- Should not be located within 400 metres walking distance or within clear line of site of:
  - An existing or approved gaming venue;
  - Shopping complexes and strip shopping centres specified in the schedule to Clause 52.28 Gaming;
  - Areas with ~~shopping~~, transport, community and civic facilities and services, unless the proposed location is within the periphery of an activity centre and satisfies other relevant locational characteristics under this clause;
  - ~~Public transport interchanges;~~
  - Social housing;
  - A gambling sensitive service or facility that is used by people experiencing or vulnerable to gambling-related harm.

#### Venue design and operation

It is policy that EGMs should:

- Only be located in venues that provide a comprehensive entertainment offering and where gaming is a minor component of the venue's layout.
- ~~Should only~~ Only be located in venues that offer alternative forms of recreation and entertainment during gaming hours.
- ~~Should only~~ Only be located in venues that physically and functionally separate the gaming area from non-gaming facilities, pedestrians and vehicular access, and car parking.
- ~~Should only~~ Only be located in venues with signage that is modest in size and discreet in nature and where the gaming area is not more than 25 ~~per cent~~% of the total leasable floor area that is open to the public.
- ~~Should not~~ Not be located in venues with less than that operate for 24 hours per day a minimum 6-hour break in play.
- Not be located in venues where the amenity of the surrounding area is unreasonably affected by way of design, location or operating hours.

**22.13-4 Application Requirements**

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Proposed  
C182

An application must be accompanied by the following information to the satisfaction of the responsible authority:

- A description of the proposal.
- Detailed plans of the design and layout of the premises including, but not limited to:
  - The location of all existing and proposed EGMs, including number of EGMs to be transferred (if applicable);
  - Potential changes to the density of EGMs per 1,000 adults in the municipality, and local areas or growth corridor (as appropriate);
  - Proposed gambling and non-gambling facilities;
  - Entrances and exits to the gaming lounge;
  - Screening, external signage, external lighting, pedestrian and vehicle access; and
  - Car parking.
- Range and operating hours of non-gaming facilities and activities within the venue, including areas licensed to serve and consume alcohol.
- Any of the venue's harm minimisation and responsible gambling practices and those which may be secured by planning permit conditions.
- A detailed Social and Economic Impact Assessment to determine if the proposal will produce a net community benefit overall social and economic impact of the proposal:  
The assessment should include:
  - A clear definition of the local community which will be affected by the application.
  - Assessment of any vulnerable populations within the defined local community.
  - Assessment of the socio-economic disadvantage of the suburb, including SEIFA index of disadvantage.
  - Assessment of surrounding context, including location of activity centres, transport routes, areas of congregation, sensitive uses and location of alternative non-gambling entertainment options.
  - Evidence of the impact of the proposal on the community wellbeing. This may be provided through a community survey or other appropriate qualitative data.

**22.13-5 Decision Guidelines**

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Proposed  
C182

Before deciding on an application the responsible authority must consider, as appropriate:

- Whether the proposal will achieve the objectives of this policy.
- ~~Whether the location of the gaming venue and /or EGMs will facilitate or discourage convenience gaming.~~
- ~~Whether the proposal can demonstrate that a net community benefit can be derived from the application, including but not limited to any statutory community contributions scheme.~~
- Whether residents and patrons will have access to non-gaming entertainment and recreation facilities in the area and the gaming venue that operate at the same time as the EGMs.
- The impact of the proposal on the safety, amenity and character of the area and surrounding land uses.
- The impact of the proposal on social disadvantage and local communities vulnerable to gambling-related harm.

**22.13-6 Reference documents**

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Proposed  
C182

~~City of Melton Responsible Gambling Policy, October 2014~~

*City of Melton Electronic Gaming Machine Planning Policy Project Reference Document, June 2017*