

**Department of Planning and Community Development
Statutory Approvals – Central City Planning
Delegation Report**

Application Details:

Application is for:	Permit application to install and use 30 electronic gaming machines
Applicant's/Owner's Name:	Queensberry Pty Ltd C/- [REDACTED] Kearneys Legal [REDACTED]
Date Received:	21 September 2011 (further information received 13 April 2012)
More Information Requested:	18 October 2011
More Information Received:	13 April 2012
[REDACTED]	
Application Number:	2011/011152
Planner:	[REDACTED]
Land/Address:	593 Swanston Street, Carlton (the Queensberry Hotel)
Zoning:	Comprehensive Development Zone 2 – Carlton Brewery
Overlays:	Heritage Overlay (HO108)
Under what clause(s) is a permit required?	Clause 52.28 - Gaming
Restrictive covenants on the title?	No
Current use and development:	Hotel

[REDACTED]

[REDACTED]

PLANNER'S NAME: [REDACTED] **SIGNATURE:** [REDACTED] : 29/6/12
Ph: [REDACTED]

PURPOSE

1. To brief you on Planning Permit Application No.: 2011/011152 to install and use 30 electronic gaming machines (EGMs) at the Queensberry Hotel, 593 Swanston Street, Carlton.

PROPOSAL

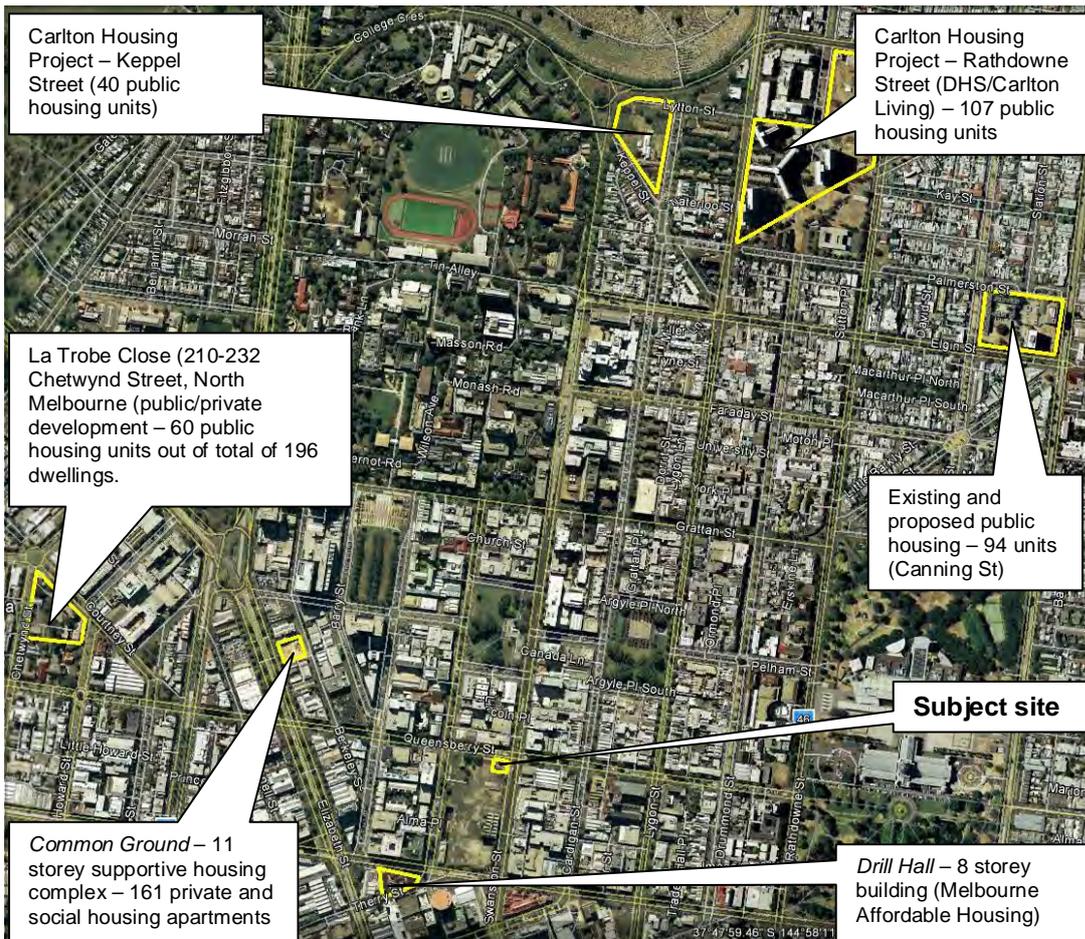
2. The Minister for Planning is the Responsible Authority for considering and making a determination on the application as this site is part of the Carlton Brewery redevelopment site (the CUB site) as per the schedule to Clause 61.01 of the Melbourne Planning Scheme (Scheme).
3. The Queensberry Hotel is owned by [REDACTED]
4. The proposal is to install and use 30 EGMs within a proposed dedicated gaming lounge on the ground level of the Queensberry Hotel (the Hotel). This requires planning approval under Clause 52.28 (Gaming) of the Melbourne Planning Scheme.
5. The gaming lounge is to have an area of 76.6 sqm, which equates to approximately 2.6 sqm per EGM. The gaming lounge will occupy approximately 21% of the total floor area accessible to the public (**see Attachment 1**). In terms of layout, twenty (20) EGMs would be located around the perimeter of the gaming lounge with 10 EGMs arranged in a row of 2 x 5 EGMs in the centre.
6. The gaming lounge will be located in an area currently used for dining and storage, and would be accessed through an existing door directly opening to Queensberry Street.
7. No external buildings and works are proposed as part of this application. The internal reconfigurations required to accommodate the EGMs involve the deletion of internal stairs and walls. The existing bar would be extended into the gaming area, with a cashier point at the end facing into the gaming lounge. As a result, the gaming lounge would be largely separated from the remainder of the Hotel.
8. The gaming room is proposed to operate during the hours that the internal areas of the Hotel are licensed to trade.
9. The application included a Social and Economic Impact Assessment (Harvest Data, dated 25 August 2011), which concluded that the economic and social impact of the approval of the Queensberry Hotel as suitable for gaming with 30 EGMs will not be detrimental to the well-being of the community of the municipal district in which the premises are located (**see Attachment 2** for a summary).
10. If the present permit application is approved, the applicant intends to lodge a separate permit application for Stage 2 renovations of the Hotel. The applicant informally lodged Stage 2 plans that show upgrades of the bar operations, cellar, and food and beverage offer at ground level, and relocation of the gaming lounge to the prominent Queensberry/Swanston Street corner of the Hotel.

Approval Process for Gaming Machines

11. The process for approval of a gaming venue is a two-fold process. Separate approvals are required under the *Gambling Regulation Act 2003* and the *Planning and Environment Act 1987* (P&E Act).
12. Under the *Gambling Regulation Act 2003* the Victorian Commission for Gambling and Liquor Regulation (the Commission) must approve the venue as suitable for gaming. In determining to grant approval the Commission considered, amongst other things, the *net* economic and social impact of the proposal on well-being of the community of the *municipal district*, and the suitability of the premises for the management and operation of EGMs.
13. The City of Melbourne as the municipal authority and City of Yarra as the adjacent municipality opposed the application at the Commission.
14. On 15 December 2011 the Commission approved the Queensberry Hotel as suitable for 30 EGMs.

SUBJECT SITE AND LOCALITY

15. The Hotel site is a rectangular shaped parcel of land located in the northeast corner of the former Carlton United Brewery site (the CUB site), bounded by Swanston Street to the east, Queensberry Street to the north, Bouverie Street to the west and Victoria Street to the south. The overall area of the CUB site is 1.983 hectares.
16. The Hotel site has an area of approximately 245 sqm, with frontages of 25 metres to Queensberry Street and 19 metres to Swanston Street. It is currently occupied by a 2-storey building operating as the Queensberry Hotel. A location map is provided below:



17. Around the site there is currently a mix of retail, residential, office and industrial uses. To the north is a large Beaurepaires tyre shop, to the northeast is a 9-storey residential development with ground floor retail, to the east is the ETU trade union office building, Comrade's Bar, Baron's Cellars, and a lighting shop.
18. To the south and west is the remainder of the former CUB site, with the existing Pixel office building and low-scale industrial retail building along Queensberry Street, and the Malt Store heritage buildings along Swanston Street. The approved CUB Masterplan and Comprehensive Development Plan show the building envelopes for six education, office and residential buildings with ground floor retail, supermarket, and basement parking.
19. There are number of public, social and affordable housing facilities located between 600 metres and 2 kilometres walking distance from the Queensberry Hotel.

Local Gaming Venues and Gaming Machine Density

20. The nearest gaming venue is Players on Lygon, located approximately 750 metres from the site at 186-200 Lygon Street, Carlton. Within the City of Melbourne there are a total of 12 gaming venues (excluding Crown Casino) located between 750 metres (Players on Lygon) and 4.8 kms (Flemington Racecourse Tabaret) from the site (**see Attachments 3 and 4**).
21. Prior to August/September 2010 there were three gaming venues within the capped Region 14 – Melbourne (A): Flemington Racecourse Tabaret, Players on Lygon, and Oasis Oz Hotel with a total of 177 *operating* EGMs (**see Attachment 5**). On 28 May 2012 the Department received written confirmation from the Commission that a total of 32 EGMs were removed from the Oasis Oz Hotel (on 31 August 2010) and Players on Lygon (on 9 September 2010). These machines were removed and subsequently transferred to the Mail Exchange Hotel (cnr Bourke and Spencer Street, Melbourne) in accordance with the Commission’s conditional approval of the Mail Exchange Hotel to operate 80 EGMs issued on 30 July 2009. The Mail Exchange Hotel opened for business on 7 October 2010.
22. Therefore, there are currently a total of 145 operating EGMs within the capped region (**see Attachment 6**).

PERMIT/SITE HISTORY

23. On the broader [REDACTED] site, the following proposals have been approved or under consideration by the Minister for Planning:
 - Planning Permit No.: 2008/0783 was issued for the development of the RMIT Design Hub for education purposes on the south-eastern corner of the CUB site. The building is currently under construction.
 - Planning Permit No.: 2010/022948 was issued by the Minister for Planning for Building 5, a 32-storey residential and mixed-use development (above RL35.00) at the centre of the CUB site.
 - Planning Application No.: 2012/004954 is currently under assessment by the Department and is for the use and development of land below RL35.00 for Building 5, and alterations to the heritage Maltstore on Swanston Street and the heritage bluestone facade on Bouverie Street.

STATUTORY CONTROLS

24. The site is affected by the following zone, overlays and particular provisions under the Melbourne Planning Scheme (the Scheme):

Clause	Permit Trigger/Notification
Schedule 2 to the Comprehensive Development Zone – Carlton Brewery – (CDZ2)	<p>Under the CDZ2 a permit is not required to use the land for the purpose of retail premises (other than Adult sex bookshop, Hotel, Manufacturing sales, Motor vehicle, boat or caravan sales, Primary produce sales, Tavern and Timber yard). Gaming is nested under Retail. Therefore, use of the land for gaming does not require a permit.</p> <p>Clause 6.0 specifies that the provisions of Clause 52.06 (Car parking) do not apply and that planning approval is required to provide in excess of 1500 car parking spaces on site. It further states that loading/unloading facilities must be provided to the satisfaction of the Responsible Authority.</p>

43.01 (Heritage overlay) – HO108	The schedule to Clause 43.01 does not specify that internal controls apply. Therefore no permit is required under this overlay.
Clause 52.07 – Loading and unloading of vehicles	The proposal is essentially a use application, and does not involve buildings and works for the manufacture, servicing, storage or sale of goods or materials. Therefore this clause does not apply.
Clause 52.28 – Gaming	Under Clause 52.28-2 a permit is required to install or use a gaming machine. The current application is not exempt as the gaming machines are not in an approved venue under the <i>Gambling Regulation Act 2003</i> on 18 October 2006. A full assessment against the provisions of Clause 52.28 is provided below under 'Issues and Assessment'.
<i>Clause 52.34 – Bicycle facilities</i>	Under Clause 52.34, the gaming component (nested under retail) would require a total of 0.4 spaces to be provided on-site (0.25 for employees, and 0.15 for customers). Given the existing use of the space to be occupied by the gaming lounge as a dining (or lounge) room, there exists a parking 'credit' as the existing use requires a total of 1.52 spaces (0.76 for employees, and 0.76 for customers), leaving a parking 'credit' of 1.12 spaces.
<i>Clause 61.01 (Administration and enforcement of this scheme)</i>	The Minister for Planning is the responsible authority for considering and determining applications relating to land affected by the Comprehensive Development Zone; Schedule 2 – Carlton Brewery
<i>Clause 65.01 (Decision Guidelines)</i>	Under Clause 65.01 before deciding on an application the Responsible Authority must consider as appropriate a number of matters, including Section 60 of the P&E Act, the orderly planning of the area and potential amenity impacts. This is discussed below under 'Assessment'.

POLICY FRAMEWORK

State Planning Policy Framework (SPPF)

25. There are no State planning policies directly relevant to gaming. However the following are policies which provide general guidance on decision making and which support economic development through the provision of entertainment related venues and services:
- Clause 10.04 (Integrated decision making)
 - Clause 17.01 (Business)

Local Planning Policy Framework (LPPF)

26. The following policies within the LPPF are relevant:
- Clause 21.02 (Municipal Profile)
 - Clause 21.04-2 (Retail, Entertainment and the Arts)
 - Clause 21.08 (Local Areas)
 - Clause 22.12 (Gaming Premises)

Reference Documents

27. The **Carlton Brewery Masterplan, October 2007** (the Masterplan) is listed as a Reference Document at Clause 21.11 (Reference Documents). The Masterplan sets out the vision and structure for the overall development of the CUB site. It includes nominal building envelopes for six high-rise buildings (including RMIT's Design Hub) and provides for 'a broad and full mix of land uses' (including education, accommodation, tourism and entertainment, retail, cafe, restaurant and office and other commercial uses). The Incorporated Document **Carlton Brewery Comprehensive Development Plan October 2007** (CDP) was incorporated into the Scheme via Amendment C126. The CDP, derived from the Masterplan, provides the statutory implementation of the Masterplan and outlines a general framework for the development of the CUB site.
28. The Masterplan and CDP do not provide any guidance on the future development and use of the Hotel site, and does not make reference to gaming for the CUB site.

NOTIFICATION

29. Pursuant to section 52(1)(b) of the P&E Act the application was referred to the City of Melbourne (CoM). On 13 March 2012 Council **objected** to the proposal. The reasons for its objection are discussed further below under 'Advice from Municipal Authorities'.
30. Pursuant to section 52(1)(d) of the P&E Act the applicant was directed to give notice of the application as it was considered that the grant of a permit may cause material detriment to other persons. The application was advertised via direct notice, display of two signs on the site, and an advertisement in The Age and Melbourne Leader/Times for two consecutive issues. Those interested parties directly notified of the application included the City of Yarra, [REDACTED]
31. On 16 March 2012 the applicant supplied a Statutory Declaration confirming that the notification requirements had been undertaken.
32. A total of ten (10) objections to the proposal were received, including the City of Melbourne, City of Yarra, [REDACTED]. The main issues raised by the objectors can be summarised as:
- Proximity of venue to vulnerable communities like students and public/social/affordable housing;
 - High accessibility of venue;
 - Proximity of venue to existing EGM venues;
 - Venue does not have full range of facilities and services, and will be biased towards gaming;
 - Inappropriate location, adjacent to retail and mixed use development at the CUB site;
 - Security and noise issues;
 - Claimed benefits of proposal will not offset negative social impacts; and
 - Devaluation of neighbouring properties.

REFERRALS

33. No formal referrals were required under section 55 of the P&E Act.

ISSUES AND ASSESSMENT

34. The application has been assessed against all relevant policies within the Melbourne Planning Scheme. The key issues worthy of discussion are:
- The Decision of the Victorian Commission for Gambling and Liquor Regulation (VCGLR)
 - Compliance with State and Local Planning Policies
 - Compliance with the Provisions of Clause 52.28 (Gaming)
 - Advice from Municipal Authorities

The Decision of the Victorian Commission for Gambling and Liquor Regulation (the Commission)

35. On 15 December 2011 the Commission granted approval of the Queensberry Hotel as suitable for gaming. The Commission concluded that the proposal to install 30 EGMs poses a risk of some detriment to the community but that the benefits such as community donations, increased job opportunities, social benefits of Stage 2 renovations, and continued use as a Hotel are sufficient to balance out the risk of detriment associated with the proposal (**see Attachment 7**).
36. It is considered that the following key points of the Commission's Reasons for Decision are relevant to this application for planning merit:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Compliance with State and Local Planning Policies

37. The State and Local planning policies provide limited guidance for the assessment of gaming applications on this site.
38. Clause 10.04 provides high level guidance on general decision making on planning applications. Specifically it states that the Responsible Authority should integrate the range of relevant policies and balance conflicting objectives *in favour of net community benefit* and sustainable development for the benefit of present and future generations. Additionally, Clause 17.01-1 seeks to encourage development which meet the communities' needs for retail, entertainment, office and other commercial services and provides net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.
39. The relevant Local planning policies encourage a diversity of uses including retail services which better meet the needs of students and the local workforce for the Carlton area in general and the CUB site in particular (Clauses 21.02, 21.04-2, and 21.08).
40. The assessment against the relevant State and Local planning policies and particular provisions (Clause 52.28) provided below concludes that the social and economic impacts of the proposal

are not outweighed by the benefits, and therefore the proposal does not comply with the objectives of Clause 10.04 and is only partially consistent with Clause 17.01-1.

41. It is important to note that the Local Planning Policy for gaming premises (Clause 22.12) specifies that it does not apply to the Comprehensive Development Zone. However, under normal circumstances the policy would apply. It is considered that, on balance, the proposal does comply with the policies listed in Clause 22.12 as the existing licensed premises does not offer a range of other entertainment uses, the proposal would result in a concentration of gaming machines and venues within Carlton, and the social and economic impact of the assessment does not support the location of the gaming premises in the Carlton area. These issues are discussed in further detail under the next section 'Compliance with the Provisions of Clause 52.28 (Gaming)'.

Compliance with the Provisions of Clause 52.28 (Gaming)

Consideration of the Purposes of Clause 52.28

42. An assessment against the purposes of Clause 52.28 is as follows:

Is the proposed gaming venue in a strip shopping centre?

43. One purpose of Clause 52.28 is to prohibit gaming machines in specified shopping complexes and strip shopping centres.
44. The schedule to Clause 52.28-3 specifies that EGMs are prohibited in six shopping complexes within the City of Melbourne's municipal boundaries, none of which affect the present application.
45. Clause 52.28-4 specifies that the installation or use of a gaming machine is prohibited in a strip shopping centre if:
- the strip shopping centre is specified in the schedule to this clause.
 - the schedule provides that a gaming machine is prohibited in all strip shopping centres on land covered by this planning scheme.
46. The schedule to Clause 52.28-4 specifies that EGMs are prohibited in all strip shopping centres on land covered by the Melbourne Planning Scheme. Therefore an assessment of the area in which the subject land is located is required to be undertaken. Clause 52.28-4 specifies that a strip shopping centre is an area that meets all of the following requirements:

Criteria	Assessment
<i>It is zoned for business use</i>	No. The site is zoned CDZ2. However, consistent with the decision of <i>Prizac Investments Pty Ltd & Ors V Maribyrnong Cc & Ors</i> , the land is not considered to be zoned for business use as there is no specific purpose that directs the land to be used for business over and above other uses.
<i>It consists of at least two separate buildings on at least two separate and adjoining lots</i>	No. The Queensberry Hotel is the only building in the northeast corner of the CUB site.
<i>It is an area in which a significant proportion of the buildings are shops</i>	No. Currently, the land to the east along Swanston Street has a mix of office, retail, and residential uses. To the north there is a mix of office, motor repairs, and retail uses. To the west is a mix of retail, office and motor repairs. As these retail tenancies largely do not serve a day-to-day convenience role, it is unlikely that the result would be increased exposure to gaming opportunities and impulsive decisions to gamble as a result of their proximity to the proposed gaming venue. Furthermore, the approved CUB Masterplan and CDP have not been given any weight in this regard, as no planning approvals for future retail uses on the site have been issued to-date. This is consistent with the approach taken in <i>Bright Newbay Pty Ltd v Bayside CC [2010]</i> .
<i>It is an area in which a significant proportion of the</i>	Yes. Adjoining lots have frontages to both Queensberry and Swanston Streets.

lots about a road accessible to the public generally	
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47. In light of the above assessment, it is considered that the Queensberry Hotel does not satisfy all of the criteria defining a strip shopping centre specified in Clause 52.28, and therefore the installation or use of a gaming machine is not prohibited.

Consideration of the Social and Economic Impacts of the Location of the Gaming Machines

48. The purpose of Clause 52.28 is to ensure the social and economic impacts of the location of gaming machines are considered. To provide guidance in the application of this particular purpose, [REDACTED] stated in *Bright Newbay Pty Ltd v Bayside CC* the following:

Two discrete permissions are required. The planning permission is focused upon whether it is an appropriate location suitable for gaming and, secondly, the social and economic impacts of the location. The gaming considerations include whether the net economic and social impact of the machines would or would not be detrimental to the wellbeing of the community of the *municipal district* in which the premises are located [emphasis added]. Hence, it is our view that a more detailed analysis of the economic and social impacts upon the community is a matter that is best dealt with as part of the consideration under the *Gambling Regulation Act* rather than as part of the planning application.

49. Accordingly, the following assessment of the social and economic impacts is confined to the location of the proposed gaming venue.

50. The planning application documentation (and the VCGLR's Reasons for Decision) state that the proposal is in substance for a new gaming venue with 22 EGMs being transferred from Oasis Oz Hotel in North Melbourne and 8 EGMs from Players on Lygon in Carlton. [REDACTED]

[REDACTED]. The current application therefore is to install and use 30 wholly new EGMs into an area of high relative disadvantage. Here relative disadvantage is measured by the ABS Social and Economic Indexes for Areas Index of Disadvantage (SEIFA-D).

51. Carlton has a SEIFA-D score of 962 which is below the Victorian average of 1000, which places it in the second decile and 19th percentile for the State. ABS data shows that median individual incomes (\$280 pw), family incomes (\$995 pw), and household incomes (\$528 pw) are relatively low, making Carlton the second lowest income area in the City of Melbourne. Nearly 20% of Carlton's population lives in areas categorised as severely disadvantaged: low income families, people with little or no education, and a tendency to work in unskilled occupations, placing Carlton in the lowest 10% of all of Victoria. Furthermore, 50% of all disadvantaged residents in the City of Melbourne reside in Carlton (see table below).

Carlton SEIFA Index of Relative Disadvantage by Collector Districts (CDs)			
SEIFA Index Decile	Population	% Population of Suburb	Cumulative % of Population at or Below this Decile
1	2259	20%	20%
2	0	0%	20%
3	1021	9%	29%
4	2383	21%	50%
5	159	1%	51%
6	447	4%	55%
7	2938	26%	81%
8	766	7%	87%
9	238	2%	89%
10	1205	11%	100%
Total	11416	100%	100%

52. Furthermore, the proposal will result in an unacceptable increase in the density of gaming machines in the City of Melbourne LGA. City of Melbourne LGA has a total 779 operational EGMs

- (excluding Crown Casino, which has 2,500 EGMs). This equates to an EGM density of 8.31 EGMs per 1,000 adults, compared to that of Metropolitan Melbourne's average of 6.08 per 1,000 adults, and the Victorian average of 6.19 per 1,000 adults. The City of Melbourne is ranked 6th in Victoria's 31 urban municipalities in terms of EGMs per 1,000 adult residents.
53. Based on a total adult population of 22,914 for the capped Region 14 – Melbourne (A) the proposal for 30 EGMs would increase the number of EGMs from 145 to 175 within the capped Region 14 – Melbourne (A). This would be two (2) EGMs below the cap, but would result in an increase in EGM density *within the capped region* from 6.3 EGMs to 7.6 EGMs per 1,000 adults.
 54. More specifically, based on a total adult population of 10,696 for Carlton, the proposal would result in an increase in EGM density *within Carlton* from 6.1 EGMs to 8.9 EGMs per 1,000 adults. Just over 54% of the total number of EGMs within the capped region would be located within Carlton (an increase of 10%).
 55. In light of this, the proposal is in essence for the creation of a *new gaming venue* in Carlton and an *increase in the number of gaming machines* from 145 to 175 within a capped region, which will result in a concentration of EGMs and gaming venues in an *area that demonstrates a high level of disadvantage*. Taken together, the outcome of this would be an increase in the accessibility and concentration of EGMs in the Carlton area.
 56. In VCAT decision *Branbeau PL v Victorian Commission of Gambling Regulation* [redacted] assessed the social and economic impacts of a proposal to install and use 20 EGMs at the Family Hotel (65 Princes Way, Drouin), and agreed that 'problem gambling is more likely if an area has a high number of gaming machines per adult person [and that] problem gambling is more likely if an area is relatively poor'.
 57. Consistent with [redacted] conclusion, the increase of 30 EGMs in a new venue in Carlton, which demonstrates a high level of relative disadvantage, is considered to raise an unacceptable level of risk of convenience and problem gambling in the Carlton area.

Social and Economic Benefits of the Proposal

58. In terms of social and economic benefits associated with the application, the applicant intends to provide direct annual cash donations to particular community groups, estimated to be [redacted]. Subsidised meals and drinks and free room hire will be provided for local not-for-profit groups. [redacted] It is unclear however whether any donations will be provided to the Carlton community. Additionally, the Productivity Commission's 2009 study on gambling identified the principal benefit of gaming is the increased satisfaction that consumers gain from having access to legalised gambling, whereas the costs relate mainly to problem gambling and its social repercussions.
59. Taken together, it is considered that these social and economic benefits are inadequate in terms of the tangible benefits for the Carlton community. Furthermore, it is beyond the scope and powers of the planning system to ensure that the social and economic benefits are indeed provided to the Carlton community into the future.

Do the Social and Economic Benefits of the Proposal Outweigh the Impacts?

60. It is considered that, on balance, the social and economic benefits associated with the proposal do not outweigh the social and economic impacts to the Carlton area, for the following reasons:
 - The benefits of the proposal are limited in tangible benefit to the Carlton community;
 - The benefits are incapable of being enforced through conditions on any planning permit;
 - The proposal would result in a concentration of gaming machines *and* venues in Carlton which is an area of high relative disadvantage;
 - The proposal would increase the accessibility of gaming machines in Carlton; and
 - The proposal would pose an unacceptable risk for convenience and problem gambling in Carlton.

The Appropriateness of the Location and Premises

61. Another purpose of Clause 52.28 is *to ensure that gaming machines are situated in appropriate locations and premises.*
62. In regards to the appropriateness of the location, [REDACTED] in *Prizac Investments Pty Ltd & Ors v Maribyrnong CC & Ors* concluded that outside of the prohibition of gaming machines in strip shopping centres and prescribed shopping centres, there is nothing under Clause 52.28 to suggest any other location is inappropriate. However, the Member acknowledged that the location of the EGMs in a Hotel, as opposed to a Club, provides relatively easier access to the EGMs and may encourage impulsive visits.
63. Consistent with the conclusions of *Bright Newbay* referred to above, [REDACTED] concluded that *the scale and layout of the use* of the proposal has been considered to determine the appropriateness of the premises. The assessment is as follows:

Scale of the Use

64. The proposal to install 30 EGMs into the gaming lounge with an area of 76.6 sqm would equate to approximately 2.6 sqm per EGM, which appears minimal. Indeed the author of the Gaming Expenditure Report who appeared as an expert witness at the VCGLR hearing stated that it will be difficult to house the 30 EGMs and impossible under normal trading conditions to have all 30 EGMs trading at once. He went on to state that during peak trading periods up to 8 EGMs would not be able to be traded.
65. In terms of the temporal scale of the proposed use, the gaming room opening hours (most notably Monday to Saturday from 7am to 3am) are considered to be excessive. The Productivity Commission recommends gaming venues be closed for a minimum of 6 hours a day to provide sufficient breaks for problem gamblers and recommends a closure of 2am.

Layout of the Gaming Lounge

66. The proposed gaming lounge is to have an area of 76.6 sqm, which makes up approximately 21% of the total publically accessible area of the Hotel. This equates to approximately 28% of the publically accessible area *on ground level only*, and considered to be a significant proportion of the Hotel dedicated to gaming. Furthermore, the gaming lounge is located along the Queensberry Street frontage with the existing door providing direct and discrete access to the gaming lounge from Queensberry Street. Moreover, the gaming lounge only has a small internal doorway to the main bar area and one to the bistro area, and would be largely concealed and separated from the remainder of the Hotel. This particular design and layout allows persons wishing to play the EGMs to both enter the gaming lounge directly from the street and to play the EGMs without having to pass through the main bar area or to be subject to passive surveillance by other patrons. This layout poses a risk for convenience and problem gambling, and is therefore considered inappropriate.
67. The applicant supplied plans for Stage 2 illustrating a revised layout but does not form part of the present application. The Stage 2 plans show an enlarged gaming lounge relocated to the prominent Queensberry/Swanston Street corner directly accessible from Swanston Street, heightening the concerns about the visibility of the gaming lounge from the street and reduced passive surveillance opportunities for persons wishing to play the machines.
68. It is considered that the size, location and design of the proposed gaming lounge makes the venue inappropriate for gaming.

Decision Guidelines of Clause 52.28

69. An assessment of the application against the decision guidelines of Clause 52.28 is as follows:

Does the Hotel provide a full range of facilities or services to patrons?

70. The Hotel provides traditional pub-style meals and bar services and is divided into five discrete 'rooms' across two levels that provide a range of bar experiences. The Hotel's bistro provides for

regular dining, celebrations, and events, and the venue has background music only. There is no on-site accommodation or bottle shop facility. Indeed, the PVS EGM Expenditure Report lodged with the application defines the Hotel as having a 'limited range of facilities'.

71. It is considered therefore that the Hotel does not provide a full range of hotel facilities and services, such as dancing, live music, accommodation, or amusement machines.

Is the proposal compatible with adjoining and nearby land uses?

72. The land surrounding the site is either zoned Comprehensive Development Zone or Mixed Use Zone, both encouraging a mix of residential, commercial and other uses which complement the mixed-use function of the locality. Gaming is not a prohibited use under these zones.
73. The venue is not located within a prohibited shopping complex as listed in the schedule to Clause 52.28-3. Likewise the venue is not considered to be located within a strip shopping centre, prohibited under Clause 52.38-4.
74. The current land uses adjacent to the Hotel include shops, industry, accommodation, and office, and do not appear to pose any compatibility issues with the proposal. However, two affordable and supported housing facilities are located within 500 metres of the Hotel. They have a combined total of 139 units for low income earners and persons with complex support needs. In light of the established link between problem gambling and poorer communities, it is considered that the proximity of the Hotel to these two facilities will increase the accessibility of EGMs and pose an increased risk for convenience and problem gambling among those residents.
75. Additionally, it is worthy to note that the CUB site is designated for significant change which is considered to pose a future risk of convenience gambling.
76. The Masterplan and Comprehensive Development Plan (CDP) for the CUB site are approved documents and incorporated into the Melbourne Planning Scheme as reference and incorporated documents respectively. They provide for an expansive mixed use precinct with retailing and other active frontages, including a supermarket at basement and ground levels. It is unknown at this stage exactly what the mix of retail tenancies will be and at present no approvals for the ground level have been granted. Given that the Masterplan and CDP are approved documents their guidance on future development and use on the CUB site must be given considerable weight in assessing the compatibility of the current proposal. It is reasonable to assume that the site will incorporate a supermarket and significant offer of retail tenancies at ground and basement levels through the CUB site. Therefore there is a real potential that the precinct will play a day-to-day convenience role, increasing exposure to gaming opportunities and posing a risk that decisions to gamble at the Hotel will be made more impulsively.

Is the site capable of accommodating the proposal?

77. As discussed above, the proposed gaming lounge is considered to be too small to accommodate 30 EGMs. This suggests that the site is incapable of accommodating the full proposal of 30 EGMs, unless the Stage 2 works are approved.
78. The application for the number of EGMs can therefore be considered to be pre-emptive as in reality future approval of the Stage 2 expansion/modification of the Hotel is required to operate the 30 EGMs.

Advice from Municipal Authorities

79. On 13 March 2012 the City of Melbourne provided comments, objecting to the proposal for the following reasons:
- The application is for the establishment of a new gaming venue in an area of high socio-economic disadvantage;
 - The premises will encourage increased gambling by vulnerable persons and groups;
 - The premises will generate social and economic impacts and this will adversely affect the local community;
 - The proximity of the premises to the CUB site and future retail uses thereon is contrary to the proper and orderly planning of the area and has the potential to encourage unplanned or convenience gaming; and

- The gaming lounge may be independently accessed off Queensberry Street, is too small and does not comprise an adequate range of facilities.
80. On 23 April 2012 the City of Yarra objected to the proposal on the basis that the location of the venue would improve access to gaming to the detriment of disadvantaged persons and vulnerable groups.
 81. City of Melbourne is the municipal authority for the site and would typically deal with gaming applications for venues located within its municipal boundaries. Likewise the Minister for Planning and the Department would not normally assess such an application as it clearly is not of state significance. It is therefore considered that considerable weight should be given to the City of Melbourne's comments in making a determination on the current application.

CONCLUSION

82. The City of Melbourne and City of Yarra object to the application, and they have the knowledge and experience with dealing with these types of planning applications.
83. The proposal is for the establishment of a new gaming venue in Carlton which would result in a concentration of EGMs and gaming venues within Carlton, and therefore would result in an increase in the accessibility of gaming machines in Carlton. The City of Melbourne object to the proposal on similar grounds.
84. The relationship between problem gambling and relative disadvantage has been generally accepted in VCAT decisions, government reports, and academic literature. Carlton is an area that demonstrates a high level of relative disadvantage, and the proposal would result in an increased risk of problem gambling in Carlton. The City of Melbourne object to the proposal on similar grounds.
85. The social and economic benefits lack tangible outcomes for the Carlton community, cannot be enforced through conditions on any permit, and do not outweigh the social and economic impacts of the proposal on the Carlton community. The City of Melbourne object to the proposal on similar grounds.
86. The venue is inappropriate for gaming, as it does not provide a full range of facilities and services, and the size, location and design of the proposed gaming lounge is likely to increase the likelihood of convenience and problem gambling. The City of Melbourne object to the proposal on similar grounds.
87. The adjacent CUB site will play a day-to-day convenience role in the future, increasing the exposure to gaming opportunities and posing a risk that decisions to gamble at the Hotel will be made more impulsively. The City of Melbourne object to the proposal on similar grounds.

RECOMMENDATION

88. The application has been assessed against all the relevant State and Local Policies, the application requirements and decision guidelines of the Comprehensive Development Zone 2, and the provisions of Clause 52.28 (Gaming) of the Melbourne Planning Scheme. The assessment has also taken into account the objections raised to the application including those by the City of Melbourne. Consideration has also been given to a number of significant VCAT decisions related to gaming (see **Attachment 8**). The application should be refused on the grounds that the location of the venue is inappropriate, the proposal will have adverse social and economic impacts on the Carlton community, and that the location is likely to encourage convenience gambling due to proximity to future retail uses at the CUB site.

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ATTACHMENT 1 – PROPOSED FLOOR AREA - QUEENSBERRY HOTEL

Ground Floor	Area	% of total floor area accessible to the public
Front/cellar bar	86.5 sqm	23.5
Gaming Lounge	76.6 sqm (2.6 sqm per EGM)	20.9
Alfresco dining exterior	107.7 sqm	29.2
Total Ground Floor Area	270.8 sqm	
First Floor		
Large lounge	36.5 sqm	9.9
Large function room	20.0 sqm	5.4
Small lounge	10.8 sqm	2.9
Small function room	30.0 sqm	8.2
Total First Floor public area	97.3 sqm	
Total Public Area	368.1 sqm	100

ATTACHMENT 2 – SUMMARY OF THE SOCIAL AND ECONOMIC IMPACT ASSESSMENT

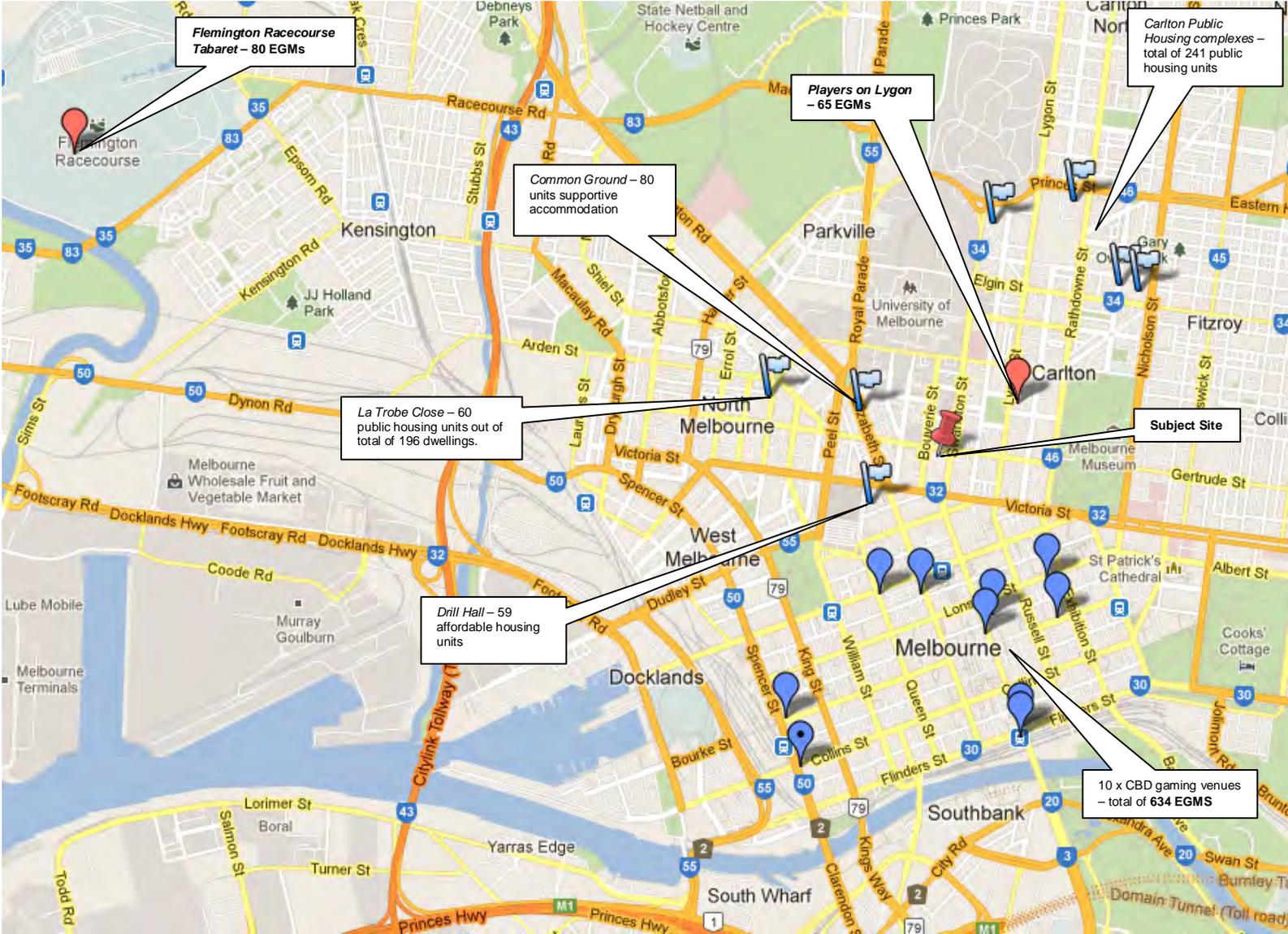
The application included a Social and Economic Impact Assessment (Harvest Data, dated 25 August 2011), which concluded that the economic and social impact of the approval of the Queensberry Hotel as suitable for gaming with 30 EGMs will not be detrimental to the well-being of the community of the municipal district in which the premises are located. Moreover, it concluded that new employment opportunities, capital investment at the Hotel and regeneration of one of Carlton's iconic hospitality facilities, and community donations from the Hotel will create social and economic benefits. This conclusion is based on the following findings:

- Carlton has entrenched pockets of disadvantage, but that this is a poor predictor of problem gambling;
- EGMs have been available in Victoria and Carlton for many years, and as such the EGM market is considered to be mature, with high levels of repeat purchase (as opposed to new consumers entering the market);
- The transfer or relocation of EGMs to the Queensberry Hotel from two other venues is unlikely to provide consumers with a novel or new access to EGMs that does not already exist;
- New consumers are reasonably informed of the risks associated with the consumption of EGMs, with advertising campaigns increasing the awareness of problem gambling; and
- Although EGM expenditure and EGM density are moderately higher in the City of Melbourne than the rest of the state, commuters and tourism to the area contribute to this. Additionally, with the increase in residents within Carlton the EGM density is trending downwards towards the Victorian average.

ATTACHMENT 3 - GAMING VENUES WITHIN THE CITY OF MELBOURNE

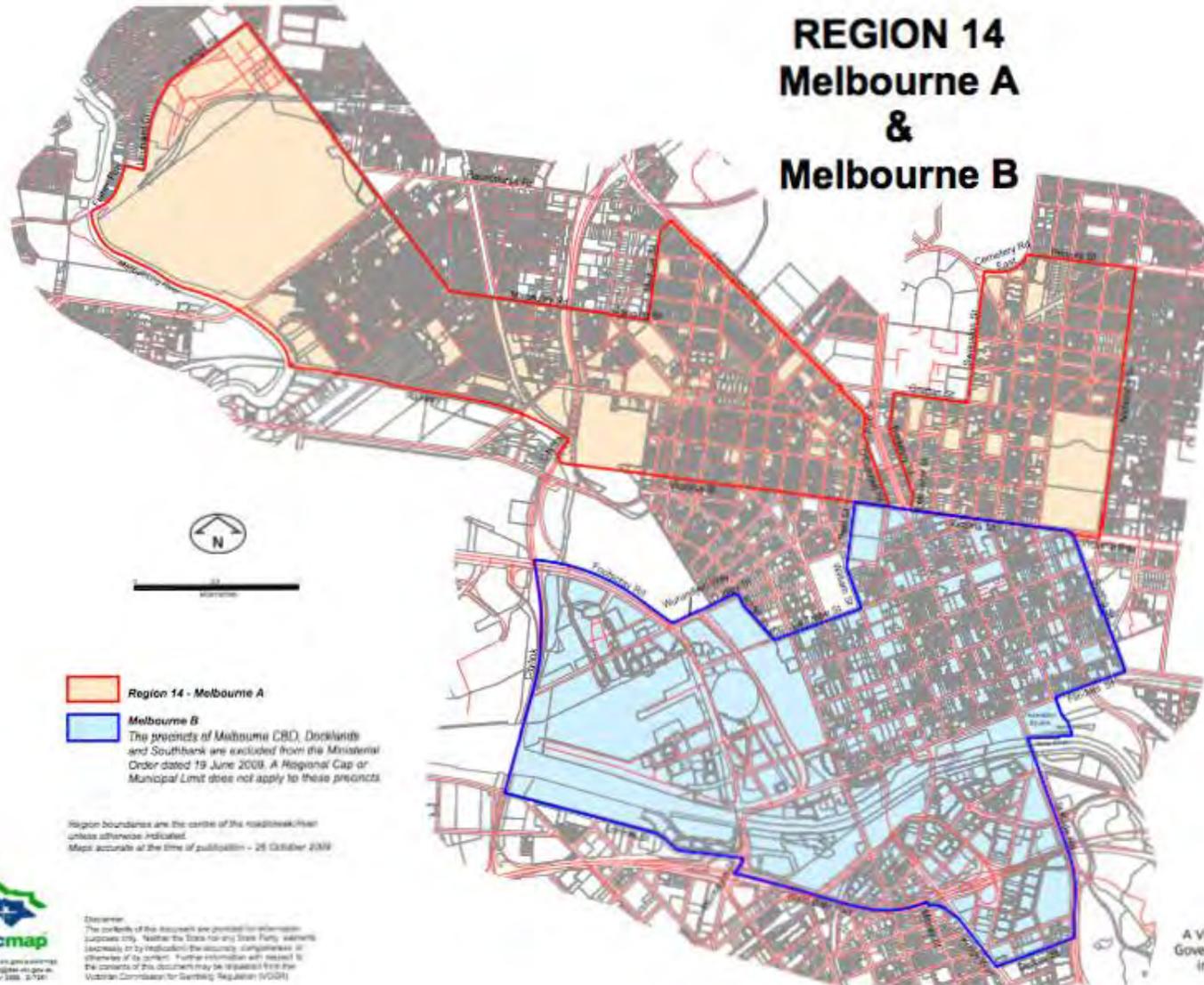
Venue	Venue Name	Address	No. EGMs	Hotel/Club	Expenditure (Jul-Dec 2011)
1	Batman's Hill On Collins	623 Collins Street Melbourne	22	Hotel	██████████
2	Bourke Hill's Welcome Stranger	128 Bourke Street Melbourne	100	Hotel	██████████
3	Celtic Club	316 - 320 Queen Street Melbourne	46	Club	██████████
4	Clocks at Flinders Street Station	Shop 17, Flinders Street Melbourne	100	Club	██████████
5	Flemington Racecourse Tabaret	Epsom Road Flemington	80	Club	██████████
6	Golden Nugget	117 Lonsdale Street Melbourne	60	Hotel	██████████
7	Mail Exchange Hotel	cnr Bourke and Spencer Streets Melbourne	80	Hotel	██████████
8	Mercure Grand Hotel on Swanston	195 Swanston Street Melbourne	90	Hotel	██████████
9	Oasis Oz Hotel	177-197 Dryburgh Street North Melbourne	22	Hotel	No longer has operating EGMs. Venue has been demolished.
10	Players on Lygon	186-200 Lygon Street Carlton	75	Hotel	██████████
11	Shanghai Club	242-244 Little Bourke Street Melbourne	48	Hotel	██████████
12	The Meeting Place at Melbourne Central	315-321 Elizabeth Street Melbourne	56	Club	██████████
13	Young & Jacksons Hotel	1 Swanston Street Melbourne	0	Hotel	Presently holds no EGMs.
			779		██████████

ATTACHMENT 4 – SPATIAL LAYOUT OF GAMING VENUES IN THE CITY OF MELBOURNE



ATTACHMENT 5 – CAPPED REGION 14 – MELBOURNE (A)

REGION 14 Melbourne A & Melbourne B



ATTACHMENT 6 – GAMING MACHINES IN CAPPED REGION 14 – MELBOURNE (A)

Venue in Capped Region 14 - Melbourne (A)	Current No. of Operating Gaming Machines	Notes
Flemington Racecourse Tabaret	80	Flemington Racecourse has purchased 80 EGM entitlements under the new 2012 gambling arrangements.
Players on Lygon, 186-200 Lygon Street, Carlton	65	Players on Lygon has a licence to operate 75 EGMs. However, the Hotel now operates 65 EGMs as 10 EGMs were transferred to Mail Exchange Hotel in August 2010. The venue has purchased 65 EGM entitlements under the new 2012 gambling arrangements.
Oasis Oz Hotel	Zero operating machines	Prior to August 2010, venue operated 22 EGMs. Venue still has licence for 22 EGMs, but the machines were transferred to Mail Exchange Hotel in August 2010.
TOTAL	145	

ATTACHMENT 7 – SUMMARY OF THE DECISION OF THE VICTORIAN COMMISSION FOR GAMBLING AND LIQUOR REGULATION (VCGLR)

On 15 December 2011 the VCGLR granted approval of the Queensberry Hotel as suitable for gaming. The VCGLR concluded that, on balance, the proposal to install 30 EGMs at the Queensberry Hotel would not cause net community detriment. To support its decision, the VCGLR were of the view that:

- It is appropriate to assume there is a link between lower socio-economic status and problem gambling;
- The City of Melbourne is a major tourist and commuter hub attracting people from outside the area, and therefore average EGM expenditure and density are of little application to venues in the City in determining overall impact of a proposal;
- The new expenditure associated with the proposal is relatively low;
- The proposal is, in substance, a transfer of EGMs, which is expected to have a lower impact than the introduction of wholly new EGMs;
- Because the EGMs are moving from an area of relatively lower disadvantage (North Melbourne has a SEIFA-D index of 1034) to an area of higher disadvantage (Carlton has SEIFA-D index of 962), it is reasonable to expect the EGMs to have a higher impact at the Queensberry Hotel, although still less than that associated with the installation of wholly new EGMs;
- The installation of EGMs at the Hotel does not pose any particular risk to students, whether international or domestic;
- The Hotel is unlikely to become a convenience gambling venue upon completion of the Grocon development at the adjoining CUB site;
- The proximity of the Queensberry Hotel to social/public/affordable housing means that there is a real risk that problem gamblers residing in the public housing may utilise the EGMs, and therefore the installation of EGMs at the Hotel poses a risk of detriment to the community.
- Any risk of detriment to the community is moderated by the existing high levels of accessibility to EGMs within the municipality and by the Hotel's demonstrated commitment to responsible service of gaming:
 - The existing high levels of EGM accessibility in the City of Melbourne may be expected to mute the impact of a new venue such as the Queensberry Hotel, as problem gamblers already have ample other opportunities to gamble; and
 - A commitment to RSG by the Hotel suggests that any impact from the approval of the premises is likely to be less than it would be from a venue where RSG was not practiced.
- In summary, the proposal poses a risk of some detriment to the community of Melbourne, albeit not a large risk. However, the likely benefits of the proposal, such as increased job opportunities, community donations, and social benefit of the Stage 2 renovation of the 'C' graded Hotel and continued use as a Hotel, are sufficient to balance out the risk of detriment associated with the proposal.

ATTACHMENT 8 – VCAT DECISIONS CONSIDERED IN THE ASSESSMENT OF THE PROPOSAL

VCAT Decision	Application/Relevance
Prizac Investments Pty Ltd & Ors v Maribyrnong CC & Ors (Red Dot) VCAT 2616 (15 December 2009)	<ul style="list-style-type: none"> • Relocation of gaming machines into a new venue • Impact on well-being of community • Strip shopping assessment
Romsey Hotel Pty Ltd v Victorian Commission for Gambling Regulation & Anor (Occupational and Business Regulation) VCAT 2275 (12 November 2009)	<ul style="list-style-type: none"> • Strip shopping assessment
Whittlesea CC v George Adams Pty Ltd [2011] VCAT 534 (7 April 2011)	<ul style="list-style-type: none"> • Differentiation between assessments under <i>Planning and Environment Act 1987</i> and <i>Gambling Regulation Act 2003</i> • Assessment against Clause 52.28
CK & Sons Pty Ltd v Bayside CC [2010] VCAT 505 (19 March 2010)	<ul style="list-style-type: none"> • Assessment against Clause 52.28 • Social and economic impact • Background material
Beretta's Langwarrin Pty Ltd v Frankston CC (includes Summary) (Red Dot) [2009] VCAT 74 (16 January 2009)	<ul style="list-style-type: none"> • Assessment against Clause 52.28 • Application of Clause 10.04
Branbeau PL v Victorian Commission of Gambling Regulation (Occupational and Business) [2005] VCAT 2606 (16 December 2005)	<ul style="list-style-type: none"> • Impact on well-being of community • Background material
Bright Newbay Pty Ltd v Bayside CC [2010] VCAT 1347 (11 August 2010)	<ul style="list-style-type: none"> • Differentiation between assessments under <i>Planning and Environment Act 1987</i> and <i>Gambling Regulation Act 2003</i> • Assessment against Clause 52.28