



MURRINDINDI SHIRE GAMING POLICY REVIEW

OCTOBER 2015

PLANNING REPORT
PREPARED BY
10 CONSULTING GROUP

ON BEHALF OF
MURRINDINDI SHIRE COUNCIL



Expert Evidence | Strategic Advice | Development Approvals

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1 EXECUTIVE SUMMARY

- 1 This report has the following purposes:
 - To provide a concise overview of gaming issues affecting Murrindindi Shire.
 - To set out an evidence-base and policy framework to guide decision making on new gaming proposals within the Shire.
 - To form a strategic basis for statutory implementation of gaming policy in the *Local Planning Policy Framework* of the *Murrindindi Planning Scheme*.

- 2 Five Principles drive the revised policy framework:
 - Gaming machines should be accessible but not convenient.
 - Protect problem gamblers and vulnerable communities.
 - The provision of gaming machines should be capped, densities controlled and the number of new venues minimised.
 - A choice and diversity of other entertainment facilities and attractions should be available.
 - Venues should be designed and operated to minimise harm and amenity impacts.

- 3 The report finds:
 - The Murrindindi community and visitors to the Shire have access to a gaming venue and 25 machines in Thornton, a location that is central and accessible to only part of the community.
 - The density of electronic machines and choice of venues offering gaming is low for the region and expenditure is similarly relatively low.
 - The community is able to access additional venues and machines that are not as convenient but are accessible within the broader region.
 - The planning policy framework provides a rationale for enabling a limited expansion of gaming venues and facilities in the Shire in

locations where visitation and tourism are concentrated and economic development is sought.

- The underlying social and economic characteristics of the community warrant care and caution in identifying suitable locations. Yea, Marysville and Eildon would be among possible candidates subject to suitable and detailed site selection.
- The Schedule 4 to Clause 52.28 prohibits gaming machines in the strip shopping centre in and adjacent to the retail core of main town centres. It is desirable that gaming is also strongly discouraged in areas immediately adjacent venues and prohibited areas.
- Similarly gaming venues in small settlements with convenient services but no other forms of recreation and entertainment should form discouraged areas.
- A direction of positive leadership would be by identification and facilitation of new and alternative recreation and entertainment choices for residents and visitors. This would have a secondary benefit in minimising the harmful effects of gaming.
- Through the careful identification of appropriate areas and sites for the location of gaming venues and by best practice in venue design and operation, Council can practically contribute to a safer living and recreation environment and minimize gaming based harm.
- The following strategic direction and local policies are recommended for inclusion in the Municipal Strategic Statement at Clauses 21 and 22.
- Given the current structure of the Municipal Strategic Statement, a strategy statement regarding gaming is most appropriately included at Clause 21.04.

2 PURPOSE AND BACKGROUND

2.1 Purpose

- 4 This report has the following purposes:
 - To provide a concise overview of gaming issues affecting Murrindindi Shire, including an outline of recent experience of regulating gaming through the *Victorian Planning Provisions*.
 - To set out an evidence-base and policy framework to guide decision making on new gaming proposals within the Shire under the *Victorian Gaming Regulation Act 2003* and the *Planning and Environment Act 1987*.
 - To establish a strategic basis for statutory implementation in the *Murrindindi Planning Scheme*.
 - To advance a draft planning scheme amendment including:
 - New provisions to the Municipal Strategic Statement at Clause 21;
 - A new local policy to be included at Clause 22; and
 - Revised schedules to be added to the Particular Provisions on gaming at Clause 52.28.

2.2 Background

2.2.1 The need for a policy

- 5 The provisions of Clause 52.28 on *Gaming* are generic in their application across the State.
- 6 The planning scheme provides minimal guidance upon the exercise of discretion on permit applications save for a select number of decision guidelines.
- 7 The decision guidelines of Clause 52.28 do not provide a strategic context of evidence and insight in to the particular issues presented by the Murrindindi community and the visitors to the Shire.
- 8 This reference document seeks to fill that gap.

2.2.2 Driving principles underpinning the revised policy

- 9 The recommended planning policy is based upon 5 principles that have a direct bearing and relevance to the purposes and decision-making guidelines of Clause 52.28 and their emphasis upon identifying appropriate areas, sites and venues for the use and installation of EGMs.
- 10 The five principles that drive this revised policy framework are:
 - Gaming machines should be accessible but not convenient.
 - Gaming provisions should seek to protect problem gamblers and vulnerable communities.
 - Minimise potential harm provision of gaming machines should be capped, densities controlled and the number of new venues minimised.
 - A choice and diversity of other entertainment facilities and attractions should be available.
 - Venues should be designed and operations conducted to minimise potential harm and amenity impacts.
- 11 These principles are discussed and applied in the body of this report to the context of Murrindindi Shire and are directly linked to the framework of the recommended local policy.

2.3 Recent relevant events and matters

- 12 Since the earlier adopted Council gaming policy, there have been a series of important additional events and matters that further inform the consideration of the appropriate location of EGMs in Murrindindi Shire.

2.3.1 Decisions in various jurisdictions

- 13 A number of decisions by the Supreme Court of Victoria, the Victorian Civil Administrative Tribunal (VCAT) and the Victorian Commission for Gambling and Liquor Regulation (VCGLR) on proposals to establish new gaming venues and install machines in existing venues have broadened the understanding and debate about the merits of various locations. Those decisions apply to metropolitan and regional applications in both clubs and hotels.
- 14 Those decisions and their associated commentary have informed and are referenced in this report.

- 15 The issues considered in those decisions have included:
- The clustering of gaming venues;
 - The location of venues immediately adjacent to vulnerable communities;
 - The distinction between convenience and destination gaming;
 - The definition of strip shopping centres;
 - The weight to be given to problem gamblers and vulnerable communities;
 - The role and importance of community opinion and attitude,
 - The balancing of community contributions and venue enhancement;
 - Existing use rights as they apply to the area set aside for gaming in established venues.

2.3.2 ABS 2011 Census of population

- 16 It is only in 2013 that a current SEIFA assessment of the Murrindindi Shire community has been available. This report has had the benefit of that current data.

2.3.3 Changes to gaming machines entitlements

- 17 Up until August 2012, the ownership and control of gaming machines in Victoria was held by two organisations. An auction of 10-year licenses in 2010 (which became operational in August 2012) witnessed a significant reallocation of the ownership and location of EGM entitlements between the operators of hotels and clubs with licenses in Victoria.
- 18 This marked a notable change in the gaming environment, considered and accounted for in the 2010 gambling policy framework.

2.3.4 Further research on problem gambling

- 19 Since 2010, the research to understand and address problem gambling has been further advanced. Of particular relevance in this matter is the inquiry of the Victorian Competition and Efficiency Commission examining problem gambling in Victoria. The recent findings of the inquiry are referenced in this report.

2.3.5 Recent local gaming policies

- 20 A number of municipalities have recently prepared local gaming policies. Recent cases such as Moonee Valley, Mount Alexander and Benalla follow a similar framework and justification to that advanced in this report.

3 LEGISLATIVE CONTEXT

3.1 Relevant legislation

- 22 The Murrindindi Shire gaming planning policy will sit within the context of a broader legislative and statutory framework.
- 23 The *Planning and Environment Act 1987* (P&EA) and the *Gambling Regulation Act 2003* (GRA) establish the legislative framework for gaming.
- 24 The relevance and distinction between the two Acts as they apply to this policy are important. A local planning policy gains its head of power as a gazetted provision of the *Murrindindi Planning Scheme* and planning schemes are enabling instruments of the P&EA.
- 25 Each Act has a different overarching 'test' to measure acceptable outcomes:
- In the *Gambling Regulation Act 2003* the relevant test is 'no net detriment' test
 - In the *Planning and Environment Act 1987*, 'net community benefit' is the relevant test.

3.2 Planning legislation and policy

- 26 The objectives of the P&EA as they are relevant to this matter seek:
- To provide for the fair, orderly, economic and sustainable use and development of land;
 - To secure a safe working, living and recreational environment for all Victorians and visitors to Victoria;
 - To facilitate development in accordance with the objectives of the Act;
 - To balance the present and future interests of all Victorians.
- 27 The planning legislative framework does not specifically reference the term 'harm minimisation' but expresses the concept more broadly with reference to the "safe" environment to be secured for all Victorians.

- 28 The planning scheme emphasises 'integrated decision making', noting at Clause 10.04 of the *Murrindindi Planning Scheme* that planning aims to meet the various needs and expectations of society by addressing aspects of economic, environmental and social well being affecting land use and development.

Planning authorities and responsible authorities should endeavour to integrate the range of 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.

- 29 There are no clearly articulated State planning strategies or policies providing direction on gaming (and thus the need and value of a local policy). However the planning provisions that are relevant draw particular attention to the role of the planning decision being to identify **appropriate locations** for gaming machines.
- 30 Economic and social considerations are relevant it is in the context of identifying the **appropriate locations for gaming machines**.
- 31 This is made clear in the purposes and decision guidelines of Clause 52.28 addressing gaming.

Clause 52.28 – Purposes:

- *To ensure that gaming machines are situated in **appropriate locations and premises**;*
 - *To ensure the **social and economic impact of the location of gaming machines** are considered; and*
 - *To prohibit gaming machines in **specified shopping complexes and in strip shopping centres**.*
- 32 A permit is required to install or use electronic gaming machines on a site.
- 33 The decision guidelines (Clause 52.28-5) require a responsible authority consider as appropriate:

- *The State Planning Policy Framework and the Local Planning Policy Framework including the Municipal Strategic Statement and local planning policies.*
 - *The compatibility of the proposal with adjoining and nearby land uses.*
 - *The capability of the site to accommodate the proposal.*
 - *Whether the gaming premises provides a full range of hotel facilities or services to patrons or a full range of club facilities and services to members and patrons.*

- 34 The form and structure of many of the local gaming policies developed since 2007 are quite similar. They seek to assist the identification of appropriate locations for the use and installation of EGMs by providing guidance upon features that might distinguish an appropriate area, site and venue as more or less suitable. In each case, social and economic considerations are brought to bear.

- 35 Of the 79 municipal districts in Victoria, 43 (54%) have developed gaming policies in the past decade. 18 of these have proceeded as far as seeking a planning scheme amendment to have the policy recognised in the MSS.

3.3 Gaming legislation

- 36 The *Gambling Regulation Act 2003* has different purposes and measures of acceptable outcome as they apply to gaming machines. The Act establishes the lawfulness of operating gaming machines and provides that they should be accessible to all Victorians.

- 37 The purposes of the Act focus upon honesty and freedom from criminal influence, the regulation of approved venues and the activities of persons in those venues and the following objectives, which are particularly relevant in this matter.
 - Promoting tourism, employment and economic development generally in the State;
 - Fostering responsible gambling;
 - Minimise harm caused by problem gambling;
 - To accommodate those who gamble without harming themselves and others; and

- To allocate gaming machine entitlements to maximise the financial and social benefits to Victorians.
- 38 The objectives of the *Gambling Regulations Act*, as they apply to gaming machines, provide for the consideration of social and economic costs and benefits and a judgement as to whether there will be 'no net detriment' arising from the approval.
- 39 The following considerations can be identified as major themes considered under the Gambling Regulations by the VCGLR.
- Social and Economic impact (no net detriment).
 - Concentration of EGMs/Venues and available licences under the cap.
 - Proximity to local educational institutions.
 - Population growth (changes in demand).
 - Proximity to shopping centres.
 - Resident opinion.
 - Responsible gaming practices.
- 40 This Local planning policy and reference document on gaming seeks to reconcile the tension between the community's reasonable access to gaming machines while being mindful of a range of harm minimisation strategies to assist problem gamblers and vulnerable communities.
- 41 This policy does not seek to address the full ambit of the Gambling Regulations.

4 THE MURRINDINDI - STRATEGIC CONTEXT TO GAMING

4.1 Overview

- 42 The Shire of Murrindindi is a large municipality (3,887 square kilometres) comprising land used principally for afforestation and agricultural practice.
- 43 The size of the population (approximately 13,494 persons in 2011) is relatively small and stable although this has been projected to increase to approximately 17,000 persons by 2031.
- 44 The population is distributed relatively sparsely across the shire with principal concentrations in the Kinglake / Kinglake West – Pheasant Creek area, (adjacent to the Shire of Whittlesea), Yea, Alexandra and Eildon (Figure 1).

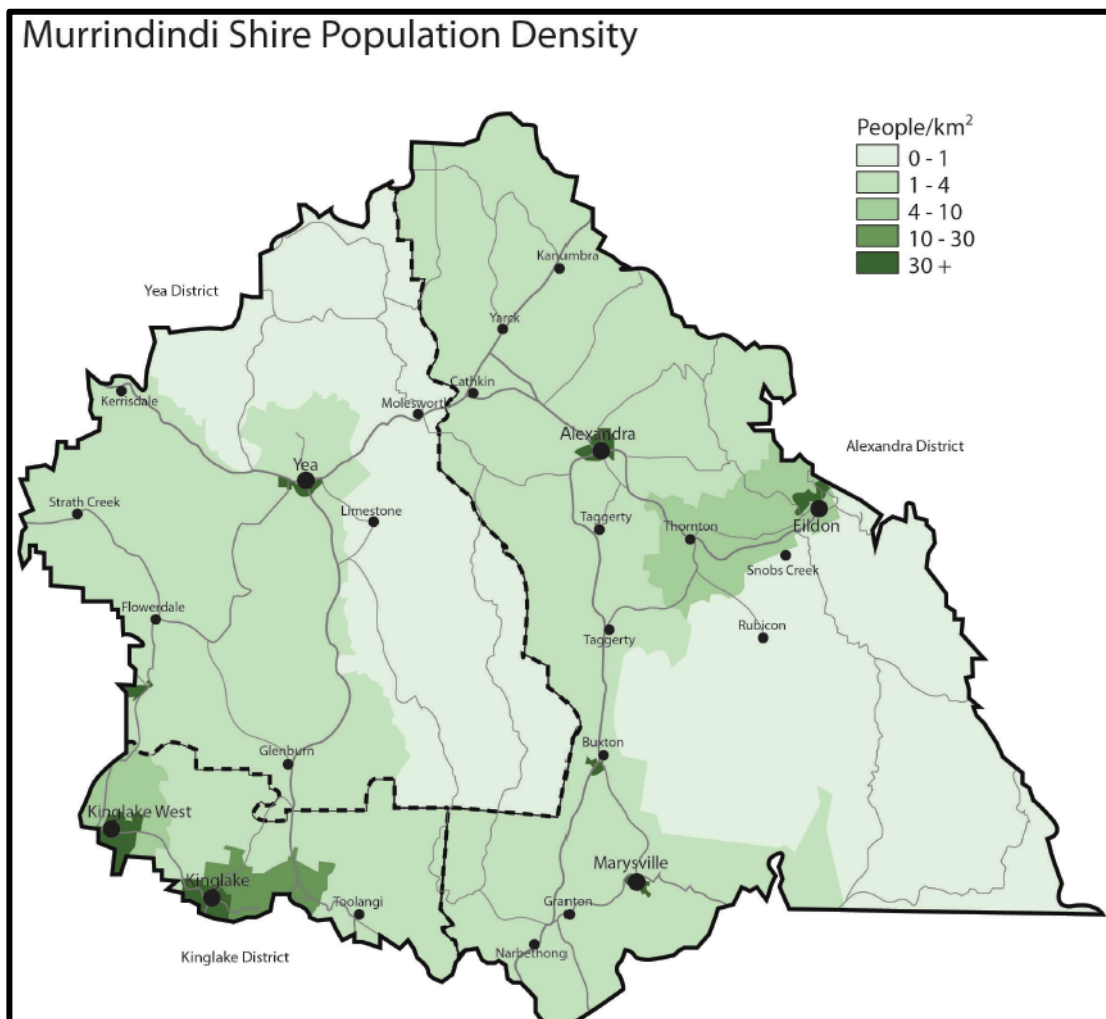


Figure 1: Murrindindi Shire Population Density

- 45 Aside from the notable presence and demand for rural residential living, the resident population is distributed between a series of townships, smaller settlements and villages. Alexandra, Yea, Eildon and Marysville are the largest and the only ones that are fully serviced (Figure 1).
- 46 The municipality is a centre of significant visitation and tourism attracted by the lifestyle, natural environment, National and State Parks, the river systems and the water based activities and opportunities of Lake Eildon and the region's emergence as a centre of food and wine.
- 47 Residents and visitors understandably strive to have access to a diverse range of recreation and entertainment facilities and attractions. The existing hotels and clubs and select other venues are noted in Figure 2.
- 48 To date gaming has had minimal presence in the shire. One venue with 25 machines at Thornton, a small township, is both proximate to Eildon and Alexandra but removed from residents in the west and southern quadrants of the Shire.
- 49 The Shire is surrounded by 6 other municipalities that collectively offer higher order, larger towns with a broader range of services and attractions and a greater choice of gaming venues and machines (Table 1 and Figure 3).
- 50 Some of these venues are convenient and accessible to parts of the Murrindindi community, particularly if work or weekly shopping takes residents to or through these centres.
- 51 Alexandra is the largest settlement within the Shire, with 17% of the Shire's population, some 2,301 persons. All other settlements have a permanent population of less than 1,500 persons. The Eildon area experiences short seasonal peaks that make it a major focus of activity and the largest community in the Shire for a brief period.

Table 1: Summary of the quantity of EGMs within each municipality

Municipality	Venues	Licensed EGMs	EGMs/1000 persons
Strathbogie	1	32	4
Mansfield	1	40	6
Mitchell	5	228	8
Whittlesea	10	691	5
Nillumbik	2	97	2
Yarra Ranges	9	457	4

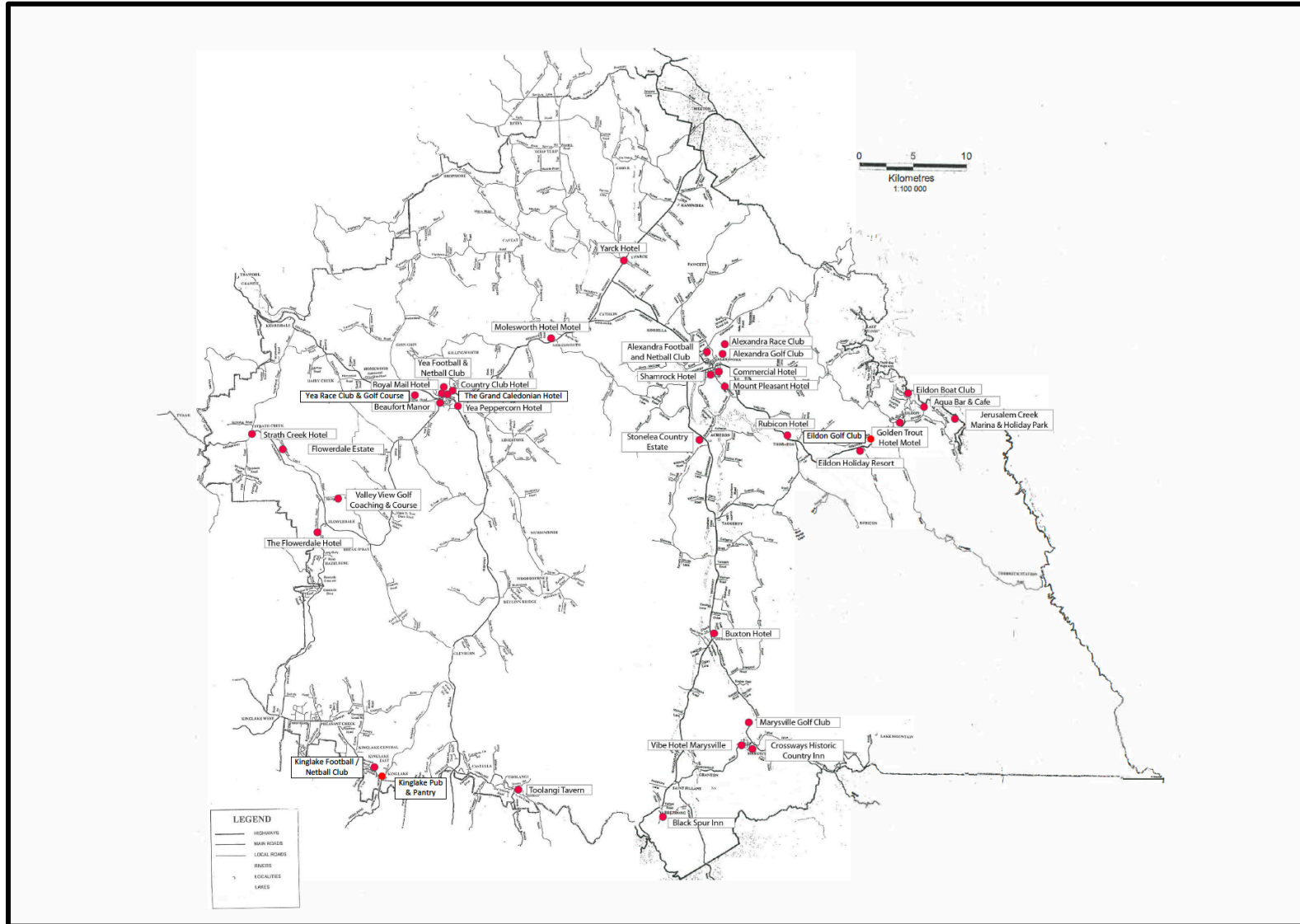


Figure 2: Existing hotels, clubs and select other venues with the Shire of Murrindindi

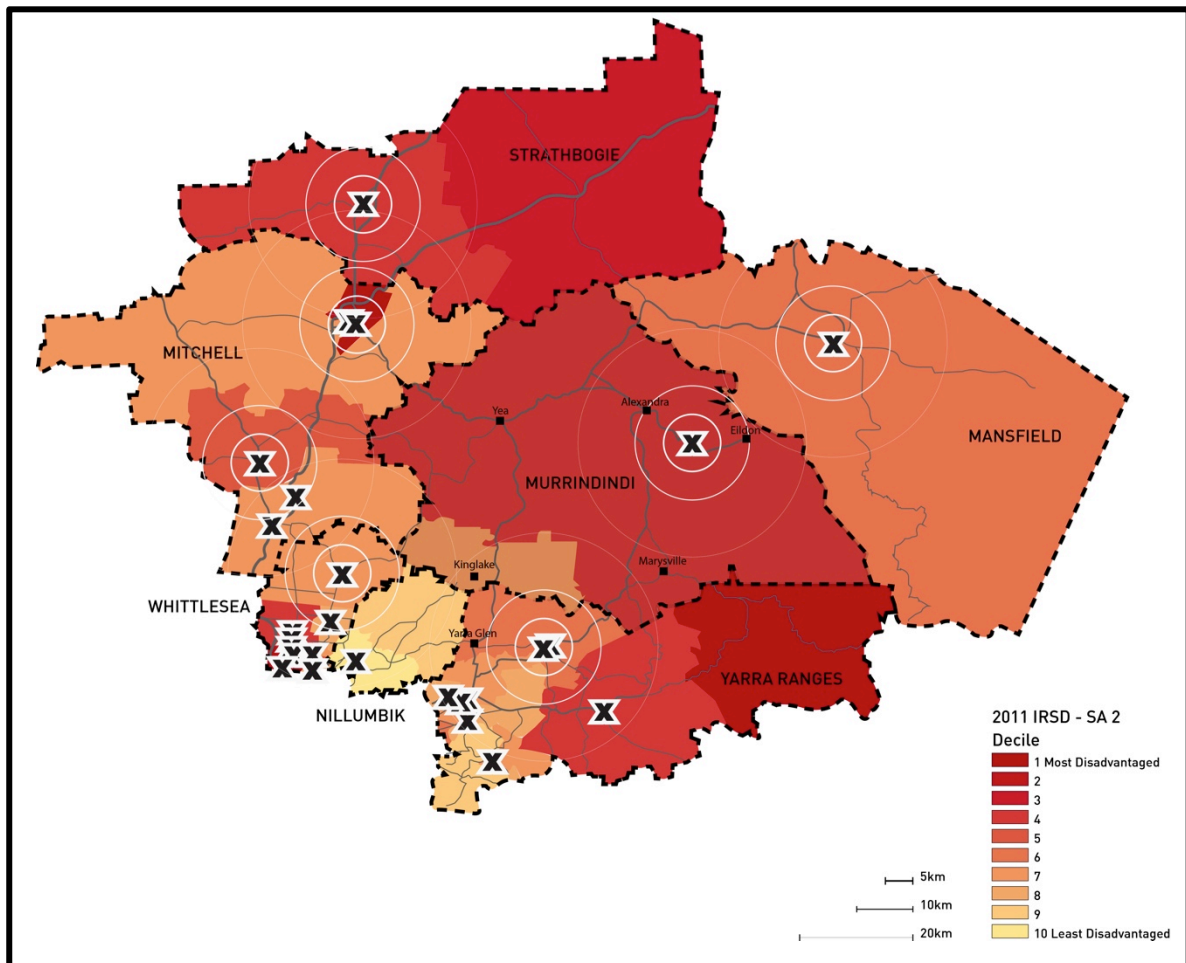


Figure 3: Electronic gaming machines in the Shire of Murrindindi and surrounding districts and SEIFA analysis.

4.2 Regional planning and development context

- 52 State planning policy strongly promotes the development of regional Victoria through a network of settlements identified in the *Regional Victoria Settlement Framework Plan* (Clause 11.05). The settlement framework nominates Yea and Alexandra as serving peri-urban township roles.
- 53 Murrindindi is located adjacent to the southern boundary of the *Hume Regional Growth Plan*.
- 54 The Growth Area Plan sets out to develop a more diverse regional economy and enhance key regional economic assets. This policy objective specifically and strongly references the tourist economy and while aligned to the natural assets of the municipality it also implies the recreational offer to visitors that might be found in commercial premises within the larger urban settlements.

- 55 The settlements of Murrindindi are not seen as significant contributors to accommodating growth in the region but are expected to experience limited expansion respectful of their roles.
- 56 Protection of environmental and heritage assets is a principal regional role for the shire, while managing exposure to natural hazards.

4.3 Council Plan and local plan context

4.3.1 Council Plan 2013-2017

- 57 This plan sets Council's vision and direction for the next 4 years to meet the priorities and aspirations of the community.
- 58 The community and economic goals of the plan are the most relevant in the context of gaming, although the plan does not specifically reference gambling or gaming.
- 59 The Community goal is:

"We will support and promote health and wellbeing, social connectedness and community involvement. "

- 60 This is addressed through health and wellbeing strategies, which include reference to the opportunities for the community to conduct healthy physical, mental and emotional lifestyles and choices.

- 61 The economy goal is:

"We will support the sustainable growth of Murrindindi's businesses and the local economy."

- 62 This is to be achieved by maximising the potential of the local workforce, advocating for the provision of infrastructure and services to support business growth; seeking to retain and grow new business investment and growing the tourism sector.
- 63 When applied to gaming, these strategies would require a balance to be struck by facilitating the business, workforce and tourism benefits that might flow from greater access to gaming with a caution about how this will affect the wellbeing of sectors of the community vulnerable to or prone to have a gambling problem.

- 64 The health and wellbeing issues are further addressed in Council's *Municipal Public Health and Wellbeing Plan 2013-2017*. This plan does not reference gaming but the 'Keeping People Well' acknowledges the role of alcohol, drugs and tobacco in detracting from community wellbeing. It might also have included a caution about the role of problem gambling.

4.3.2 Planning policy framework

- 65 The local policy Clauses 21 and 22 of the *Murrindindi Planning Scheme* make no direct references to gaming at the present time, but address a series of issues, strategies and policies that provide a context to a gaming strategy and policy.
- 66 The Strategic Shire vision is principally directed to the natural environment but in the context of gaming sets out to facilitate economic development and consolidate and focus development within and proximate to townships to improve and utilise existing infrastructure and community facilities.
- 67 This vision is carried forward in tourism and township strategies.
- 68 The *Tourism Strategy* (Clause 21.06) emphasises the role of Yea, Eildon and the re-established Marysville as having the significant tourism features and activities which should be directed at year round utilisation by visitors and persons passing through the Shire.
- 69 The *Serviced Township Strategy* (Clause 21.07) is directed at Alexandra, Yea Eildon and Marysville. These towns are seen as having a service provision role with excellent community, educational and recreational facilities and easy access to regional centres.
- 70 While retail development and consolidation will be directed to these centres it does not discount a possible role for gaming in one or more of these towns.
- 71 The strategies for Marysville are particularly emphatic in ensuring that Marysville has a strong image as a tourist centre with large accommodation developments, conference facilities, guest houses and complementary tourist facilities so as to increase tourist visitation and establish it as a year round tourist destination.
- 72 The strategies of Clause 21.07-3 provided detailed direction on where future retail and commercial development will be encouraged and are

therefore relevant when considering where gaming should be prohibited and discouraged.

- 73 *The Kinglake Strategy* (Clause 21.08) and the other township strategies (Clause 21.09) complement the serviced towns strategy but address either an agglomeration of communities (Kinglake) or smaller communities.
- 74 Greater caution might be exercised in considering this latter group of communities as suitable for gaming, particularly if the range of recreational services is minimal or negligible creating a context in which the only attraction for a small resident community is a gaming venue.
- 75 The *Townships Policy* at Clause 22.03 provides more detailed guidance in interpreting policy for each of the major settlements. There are matters of relevance that should be considered in this policy in the event of an application being made for a permit to establish a venue or install machines.

5 PRINCIPLES AND POLICIES APPLICABLE TO GAMING (POLICY FRAMEWORK)

- 76 A review of the considerable body of research on gaming and the experience of regulating gaming through the Victorian Planning Provisions enables 5 principles to be identified that usefully inform the consideration of the appropriate location of gaming facilities.
- 77 These principles are advanced and applied to examine the particular issues, context and circumstances presented by gaming in the Shire of Murrindindi.
- 78 The principles and discussion are linked to recommended policy provisions that can be usefully ordered under policy considerations that address appropriate areas, sites and venues.

These principles are as follows:

- Gaming machines should be accessible but not convenient.
- Gaming provisions should seek to protect vulnerable communities and persons with a gambling problem.
- The provision of gaming machines should be controlled and managed through the use of caps, densities of machines relative to the adult population and by minimising the number of new venues.
- A choice and diversity of other entertainment facilities and attractions should be available.
- Venues should be designed and operations conducted to minimise harm and amenity impacts.

6 PRINCIPLE 1 – GAMING MACHINES SHOULD BE ACCESSIBLE BUT NOT CONVENIENT

6.1 The Principle

- 79 The principle – ‘Accessible but not convenient’ – has become synonymous with local gaming planning policy.
- 80 The legislative framework provides for the community and visitors to be able to access gaming facilities throughout the State but simultaneously recognises that convenience, for some sectors of the community, has the greatest potential to undermine harm minimisation.
- 81 The State Government has made clear its concern regarding convenience (temptation, impulse and opportunity) by giving responsible authorities the ability to identify and prohibit gaming machines in shopping complexes and strip shopping centres as defined at Clause 52.28. The distinction of prohibited areas has been provided since the outset of gaming considerations in Victorian planning system.
- 82 Policy and strategic planning have acknowledged the greatest level of accessibility to the community is offered at higher order activity centres.
- 83 The central location of these centres in cities and shires make them the focus of road and fixed rail transport networks and provide the most efficient accessibility to the broad community.
- 84 Particular attention has been promoted in planning policy to concentrating entertainment and recreation facilities in higher order activity centres.
- 85 Thus, a tension has established which suggests merit in locating gaming facilities in and around higher order activity centres and larger townships, but not in convenient locations such as proximate to the main retail core and retail uses.
- 86 The on going relevance of these observations was revisited in the Tribunal decision - *Queensberry Hotel Pty Ltd v Minister for Planning and Community Development* [2013] VCAT444.

- 87 The Tribunal turned its mind to its jurisdiction with regard to the gaming provisions of Clause 52.28 and found them to be limited to the question of location.

“It appears to us that the concern about strip shopping centres and restriction on EGMs in shopping centres is really focussed on the problem of so called “convenience gaming”. “ We think that Clause 52.28 reflects a view that the temptation to convenience gaming is an evil that should be avoided by controlling the location of EGMs. We understand the expression “convenience gambling” to mean gambling that comes about as a result of people going about other business and other concerns being confronted with opportunities to gamble that they have not set out to find.”

The Tribunal went on to note:

“Confronting and tempting gamblers is said to be avoided by preventing the establishment of gambling venues in and about places where people will go for other convenience shopping, for example people frequent supermarkets, convenience shop, milk bars, hairdressers, newsagents and so on to buy daily, weekly or other regular needs.

And

Generally speaking it is policy to avoid them being confronted, at such time, with electronic machine gaming opportunities.”

- 88 The observations outlined above are important to consider in developing the Murrindindi Shire gaming policy. While there are a range of other relevant principles and considerations, it is this principle that commonly sits at the heart of whether or not a particular site is an appropriate location for gaming.
- 89 A further dimension to the principle of ‘accessible but not convenient’ is the concept of destination gaming. Research in the mid 2000 the State Government concluded that destination gaming (EGMs in more remote locations (‘destinations’) incurring a conscious decision and effort to access EGMs and thus a disincentive to opportunity gaming) did not offer a robust response to problem gambling.

- 90 None the less, the principle of 'accessible but not convenient' implies aspects of creating destinations and this has found expression in local policy and the distinctions drawn by practitioners between 'convenience' and 'destination' venues.

6.2 Application to the context of Murrindindi Shire

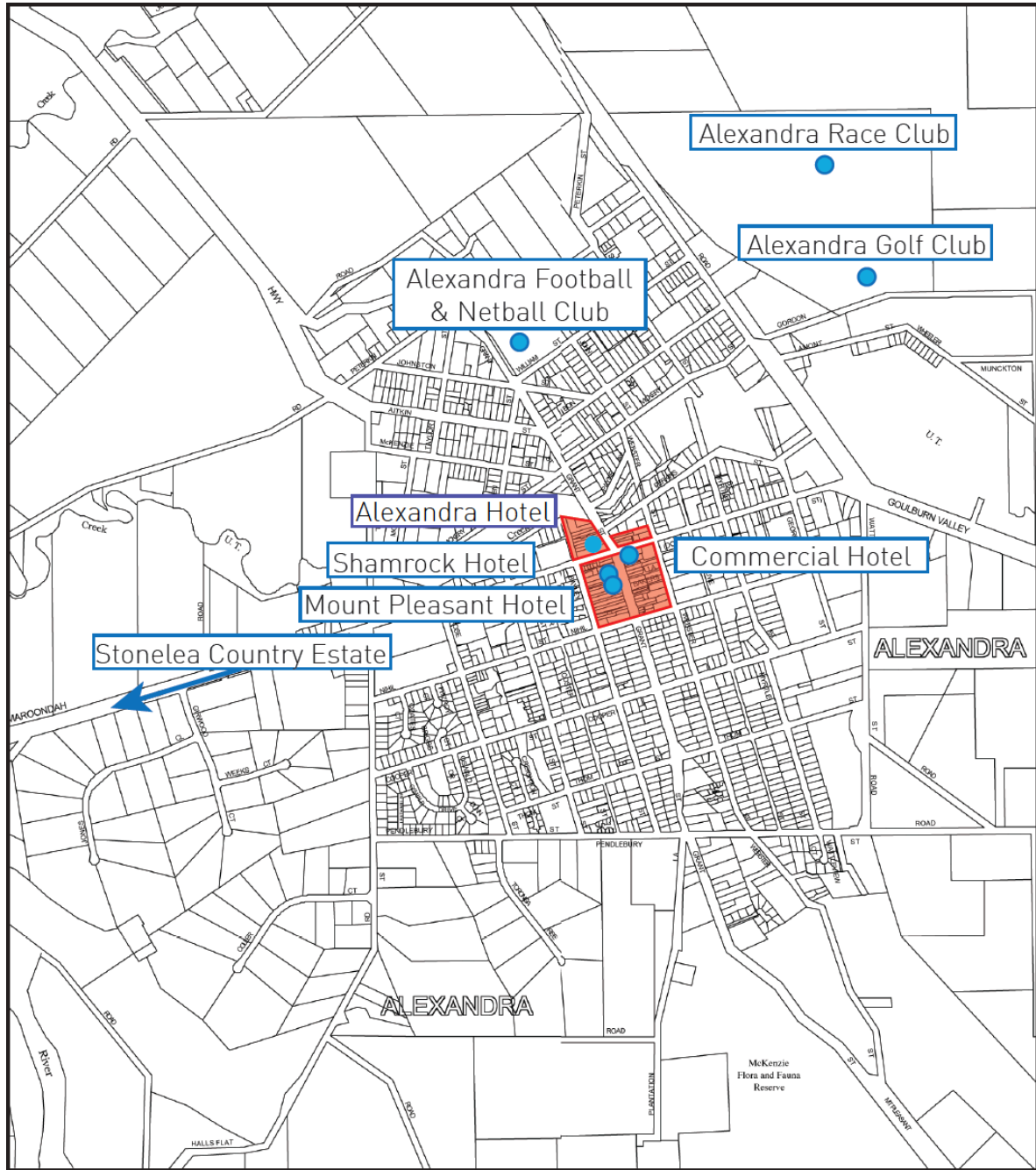
6.2.1 Accessibility to gaming

- 91 The Murrindindi community's access to gaming machines and venues is appropriately addressed in both its regional and municipal context.
- 92 Figure 4 and Table 1 illustrate the broader context. While there is only one venue in the Shire, persons travelling out of the Shire to other regional centres or Melbourne, pass a choice of accessible venues offering gaming. This particularly the case for residents in the Kinglake area.
- 93 In a regional municipality where the residents of the outlying towns and rural areas will regularly have cause to come to or pass through proximate regional towns and centres, gaming facilities in those towns and centres are also accessible.
- 94 Within the Shire the Rubicon Hotel (25 machines) could reasonably be held to be accessible to both the Alexandra and Eildon communities given its central location.
- 95 The spatial analysis along side the policy commentary at Section 4.3.2 indicates Yea, Marysville and Eildon areas might be potential candidate locations for a gaming venue because of either their tourism / visitation roles and or their centrality to the resident population.
- 96 Other locations which might be candidates include golf clubs, race courses and the like where the facility is removed from day to day convenience activities and the setting of the venue necessitates an effort to access.

6.2.2 Locations where gaming machines should be discouraged or prohibited

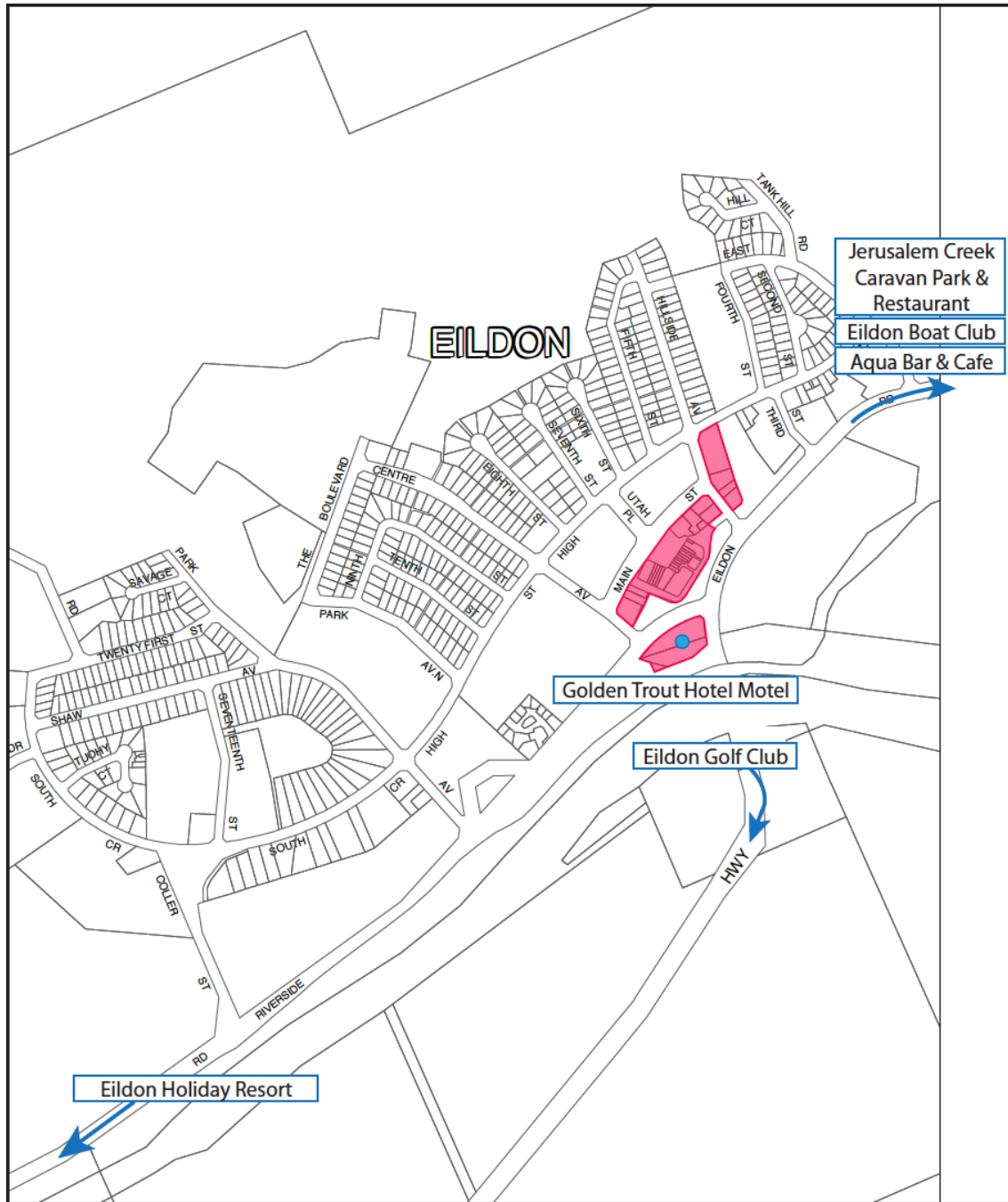
Strip Shopping Centres

- 97 The existing provisions of the *Murrindindi Planning Scheme* do not nominate specific locations where gaming provisions are prohibited save to suggest that they are prohibited in all areas where the definition of a *shopping complex* or *strip shopping centre* would apply.
- 98 A *strip shopping centre* is an area that meets the following requirements:
- It is zoned for commercial use;
 - It consists of at least separate buildings on at least two separate and adjoining lots;
 - It is an area in which a significant proportion of the buildings are shops; and
 - It is an area in which a significant proportion of the lots abut a road accessible to the public generally.
- 99 The application of the definition is not static. It only takes the redevelopment of some properties or a change in land uses to vary the scope and boundaries of the strip shopping centre.
- 100 Areas which appear to qualify as strip shopping centres include part or all of commercially zoned land in the centres of Alexandra, Eildon, Kinglake, Marysville and Yea (Figures 4 – 8).



 Commercial 1 Zone

Figure 4: Commercial 1 Zone and location of relevant clubs, hotels and other venues in Alexandra




 Commercial 1 Zone

Figure 5: Commercial 1 Zone and location of relevant clubs, hotels and other venues in Eildon

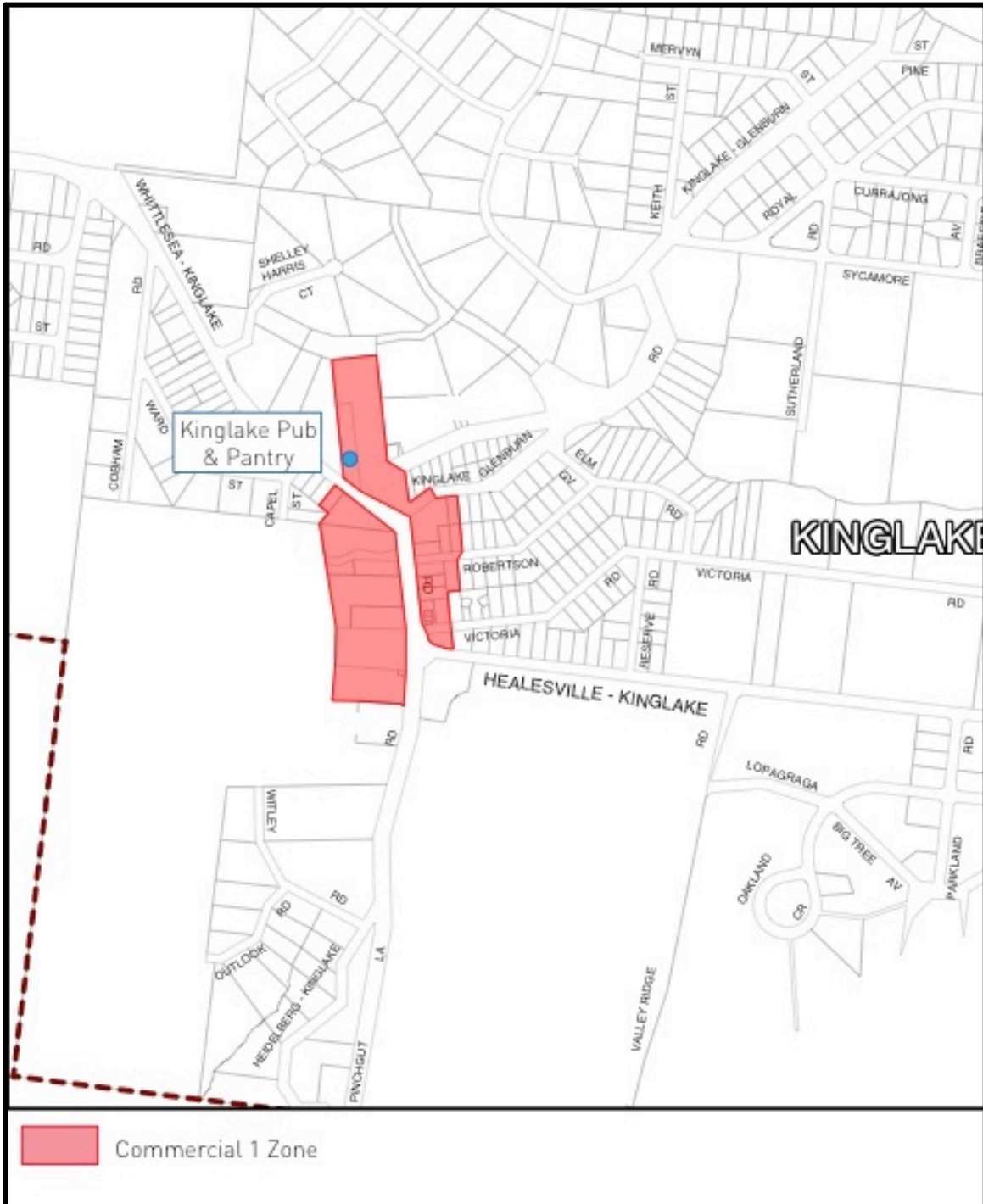


Figure 6: Commercial 1 Zone and location of relevant clubs, hotels and other venues in Kinglake

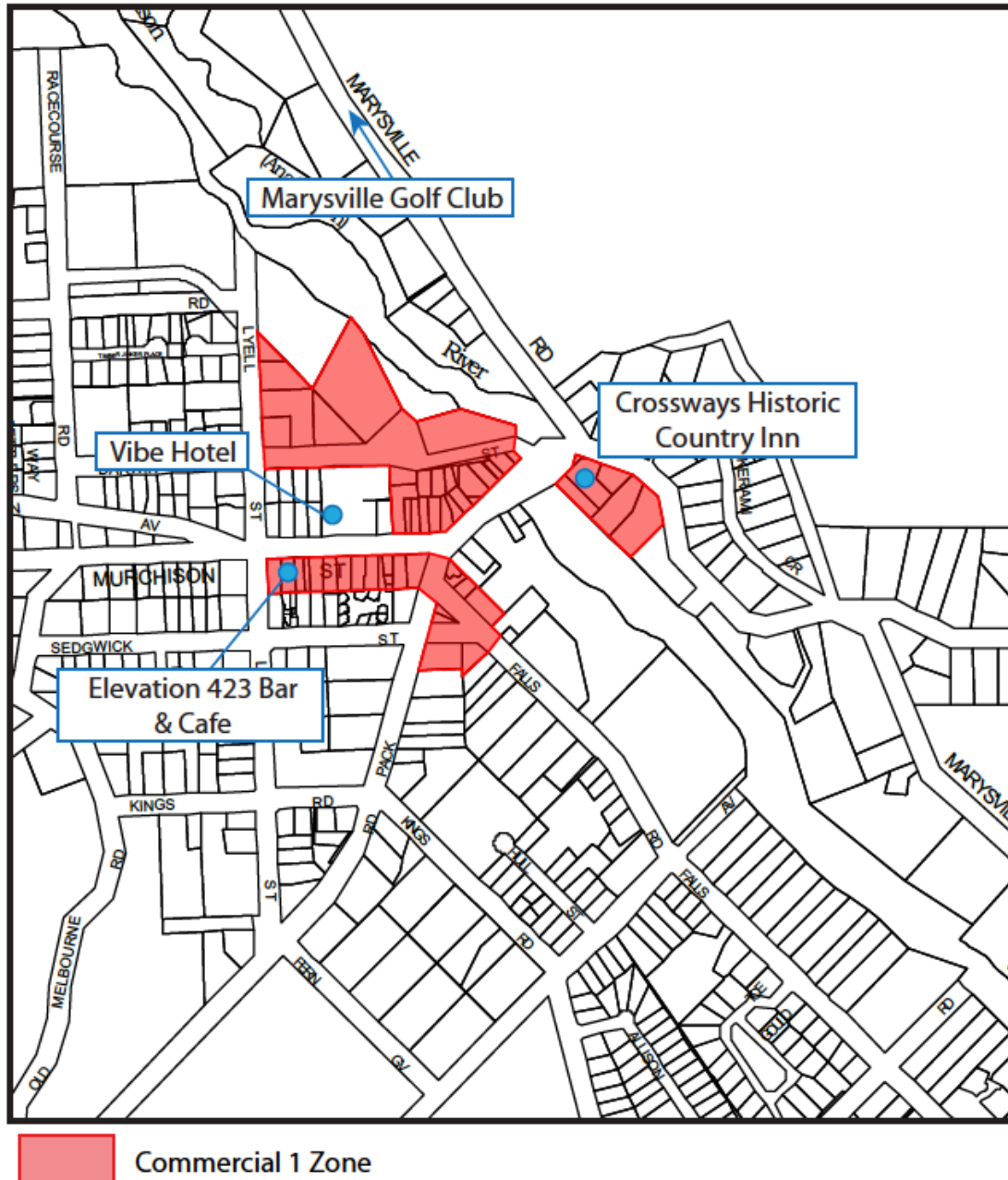


Figure 7: Commercial 1 Zone and location of relevant clubs, hotels and other venues in Marysville

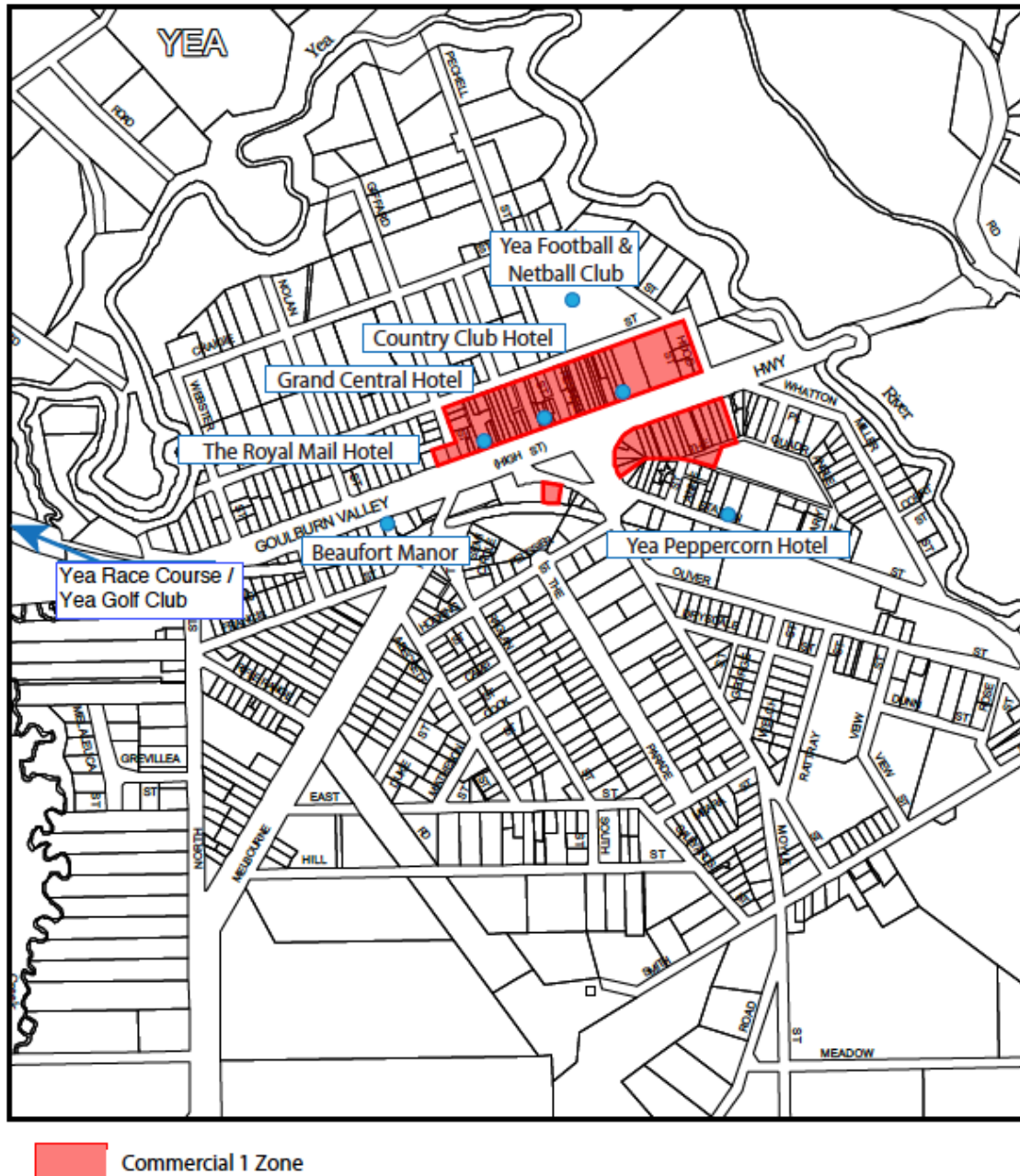


Figure 8: Commercial 1 Zone and location of relevant clubs, hotels and other venues in Yea

6.2.3 The distinction between prohibition and discouragement

- 101 The concept of having areas where gaming machines are prohibited and strongly discouraged by a local policy is a feature of some municipalities' policies.
- 102 The term 'discouraged areas' has its origins in the observation that while a gaming venue might be prohibited in a particular centre or area, on land zoned for a commercial purpose the policy would be self defeating if a venue could be established directly opposite and in clear view of a strip shopping centre.
- 103 Accordingly, it has been practice to identify areas which are opposite, adjacent or in close proximity to strip centres as areas where the establishment of EGMs will be explicitly discouraged.
- 104 Aside from areas in immediate proximity to prohibited areas, the concept has further merit in the case of the establishment of gaming venues in heart of small settlements and centres where there are convenience services offered (and limited or no other attractions) but where land is not zoned for commercial purposes.
- 105 Locations where gaming machines and venues should be discouraged in the absence of prohibited areas include the townships of Buxton, Taggerty, Yarck, Molesworth and Narbethong, Taylor Bay and Flowerdale.

6.2.4 Mapping of prohibited and discouraged areas

- 106 Some early gaming policies provided for the mapping of the boundaries of prohibited and discouraged areas on a cadastral base. The benefit of this approach was to give proponents, Council and the community clear direction where such policies would apply.
- 107 An Independent Panel considering the inclusion of mapping of such areas in the *Macedon Ranges Planning Scheme* recommended against the use of this technique.
- 108 The caution and concern with such an approach is that the definition of the boundaries of a strip shopping centre, as defined in Clause 52.28, can change with the turnover of one or more tenancies. If the boundaries of a centre are shown in the planning scheme, it would take a further amendment to the planning scheme to vary them.

- 109 To overcome this limitation, Amendment C115 to the *Maribyrnong Planning Scheme* has included plans in the background reference document that do not include a cadastral base, but show prohibited and discouraged areas in a generalised form.
- 110 In these circumstances, the plans of prohibited and discouraged areas include the caution that the exact boundaries of a prohibited or discouraged area should be reviewed and tested at the time of an application being made.

6.3 Recommendations

- 111 Amend the fourth schedule to Clause 52.28 of the *Murrindindi Planning Scheme* nominating the specific towns and properties where gaming would be prohibited.
- 112 In the local gaming policy make specific reference to the principle of 'accessible but not convenient,' indicate the policy intent to deter impulse gaming and provide for areas, as nominated above, to be discouraged.
- 113 Add this report to the Reference Documents nominated at Clause 21.12 of the *Murrindindi Planning Scheme*.
- 114 Include in the reference document to the local policy, maps showing prohibited and discouraged areas, which do not rely upon a cadastral base.
- 115 Place a caution note on such plans requiring the reader to treat the maps as guidelines and to verify the boundaries of the prohibited / discouraged areas at the time of making an application for the approval of gaming machines.
- 116 Include the following considerations in the local policy:

Appropriate Area

- Gaming machines should be located:
 - In townships where tourism is strongly evident and supported in policy and where large numbers of persons passing through the region are inclined to stop.

- Townships where the population is growing or expected to grow. In these areas, gaming machines should not be established ahead of the provision of non-gambling entertainment, recreation facilities and social infrastructure.
- In townships where commercial and business development is encouraged and a choice of recreational and entertainment facilities is offered.
- Gaming machines should not be located in areas:
 - Specified in the 4th Schedule to Clause 52.28 and will be strongly discouraged in areas that abut, or are adjacent, opposite or in such close proximity to prohibited areas that a facility in such a location would reasonably be considered, particularly convenient to users of the strip shopping centre.
 - In and proximate to areas within townships and small centres where local convenience services are provided and where no or limited alternative attractions are offered.

Appropriate sites

- Gaming machines should be located on sites:
 - That minimise the likelihood of impulse gaming by people passing the venue in the course of their usual business or every day activities.
 - At the periphery of activity centres and removed from land zoned for a commercial purpose, or at a sports or recreation club.
 - Where the location could reasonably be perceived as a destination in its own right. This would be achieved by separation from strip shopping centres, shopping complexes, railway stations and community facilities involving a high concentration of people undertaking daily activities.

7 PRINCIPLE 2 – PROTECT PROBLEM GAMBLERS AND VULNERABLE COMMUNITIES

7.1 The Principle

- 117 The socio economic circumstance of the local community is consistently considered when having regard to the location of gaming machines. These circumstances are inferred and referenced in the purposes and decision guidelines of Clause 52.28 and routinely cited in the policy basis of various gaming policies (including *Greater Geelong Planning Scheme* - Clause 22.57; *Greater Bendigo Planning Scheme* – Clause 22.28; *Hume Planning Scheme* – Clause 22.17) that place significant emphasis upon this principle and consideration.
- 118 The objectives of these policies seek to avoid the risk of exacerbating problem gambling.
- 119 Problem gamblers are to be found throughout the community regardless of social or cultural background or economic circumstance. They may represent a very small proportion of the community but their losses amount to a considerable proportion of all money spent on gaming.
- 120 The further distinction is made of vulnerable or more disadvantaged members of the community because they are arguably the sector of the community least equipped with the resources and life skills to cope with the consequences of problem gambling.
- 121 Planning policy on problem gambling is often couched in terms of distancing the location of gaming machines from areas exhibiting a particular concentration of persons with attributes of disadvantage as measured by information about the socio-economic conditions for specific smaller areas such as the SEIFA Index.
- 122 In *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation and others* [2013] VCAT 101 the Tribunal has provided a useful summary of the relevance of problem gambling.

It noted:

I agree with the Commission that the broader issue of problem gambling is relevant to the Tribunal's consideration of the no net

detriment test at a community level. It is now generally accepted that problem gambling is more likely to arise, albeit without clear correlation, in areas of socio- economic disadvantage. Social impact assessments therefore commonly and properly, have regard to indicators such as the Socio-Economic Impact for Areas (SEIFA) published by the Australian Bureau of Statistics – although these are not wholly determinative. There is room for debate in particular cases about what areas of a gaming venues catchment or municipal district should be considered as a measure of its socio economic status.

- 123 The Tribunal advanced that a proper consideration of economic impacts of a proposal under the ‘no net detriment test’ of the Gambling Regulations Act 2003 should make allowance and estimates for the costs of problem gambling to off set against the economic benefits of a proposal.
- 124 While estimates have been made of the national cost of problem gambling, a significant lingering, micro level, difficulty is objectively identifying the prevalence of problem gamblers in a small area and quantifying the costs associated with that addiction. The Tribunal drew the analogy of ‘stabbing in the dark’ in the matter of Royal Hotel Benalla v Victorian Commission for Gambling Regulation (Occupational and Business Regulation) [2012] VCAT 1972.
- 125 In the decision - Queensberry Hotel Pty Ltd v Minister for Planning and Community Development [2013] VCAT 444, the Tribunal faced similar but also different considerations. It was deliberating on a matter in the City of Melbourne where the local policy framework did not place the same explicit reference on problem gamblers and vulnerable communities, but it did observe at paragraph 65 of its decision that it could find nothing in Clause 52.28 to suggest that that it is only in relation to the ‘poor’ that concern about the social and economic effects is to be taken in to considerations.

It may be true that EGMs are a preferred mode of gambling among people of modest or inadequate financial means, although we are not satisfied, on the material before us, that so called problem gambling is limited to such persons. Excessive gambling creates serious adverse social conditions where too much money is expended upon it. People who become addicted to gambling can come from any financial strata in society, and ultimately the result might be just as serious for people from within any such strata. People with very limited financial resources may find themselves in financial trouble more quickly than those that are more well to do, although the

ultimate result might be the same and it might be achieved just as quickly if well to do addicted gamblers insist on gambling for high stakes, as apparently, some do.

- 126 The Tribunal went on to note “... *it appears somewhat paternalistic to seek to protect the poor, including the thrifty poor, from themselves; whilst not having a similar concern for the unthrifty problem gamblers in other areas.*”
- 127 It was on this basis that the Tribunal went on to place a greater emphasis upon reducing convenience gaming for all rather than nominating a particular social / economic strata within the community.
- 128 A more recent addition to this vein of analysis and commentary has been to distance gaming venues from locations where there is a concentration of social support services to disadvantaged members of the community or where there is a particular concentration of social housing. This approach has been advanced in Amendment C88 to the *Port Phillip Planning Scheme* and is proposed in Amendment C115 to the *Maribyrnong Planning Scheme*.

7.2 Problem gamblers and vulnerable communities in Murrindindi

7.2.1 Demographic characteristics

- 129 In 2012 Murrindindi Shire had an estimated residential population of 13,434 persons, an increase from 13,197 in 2001. Since 2001, the Shire has experienced minimal growth at a rate of 0.15% per annum, notably lower than proximate municipalities.
- 130 Alexandra accounts for 8% of the 1,300 additional people in the Shire between 2001 and 2013, with the balance of the Shire growing by just 237 people.
- 131 Murrindindi Shire’s population is forecast to significantly increase until 2031, with the Shire expected to grow at an annual rate of 1.38%¹, resulting in an overall increase of some 3,700 people over a 20-year horizon.

¹ DPCD Victoria in Future 2012

- 132 Murrindindi Shire has historically experienced minimal growth in the younger 0-14 and 25-34 age groups, while significant growth has been seen in older age groups over the age of 50.
- 133 The average household size continues to decrease. A drop of 2.5 persons per household in 2001 to 2.4 in 2006 has continued with the number of single person households in 2011 being 109 more than it was in 2006.
- 134 The demographic profile may be summarised as reflecting an ageing population, exhibiting a decline in household size, increases in lone person households, declines in couples with children and changes in social structure that include an increase in one parent families.

7.2.2 Problem gambling – a regional analysis

- 135 A recent Victorian study - *Counting the Cost², the Inquiry into The Social and Economic Costs of Problem Gambling in Victoria* - a draft report by the Victorian Competition and Efficiency Commission, dated October 2012 has looked at the cost of problem gambling from a metropolitan and regional perspective.
- 136 The study is aimed to inform policy makers and the community about the true costs of problem gambling and where they fall.
- 137 The report found:
- *“Prevalence of problem gamblers varies across regions in metro areas from 0.3 per cent to 1.2 per cent and in regional areas from 0.1 per cent to 0.8 per cent.*
 - Regional Victoria recorded a higher proportion of gamblers than metro Victoria, however, had broadly lower ‘at-risk’ rates relative to metro areas.
- 138 These results are not conclusive, however they did support the existence of a relationship between higher prevalence rates of problem gambling in metro areas and:
- *Higher concentrations of EGMs*

² Victorian Competition and Efficiency Commission 2012, Counting the Cost: Inquiry into the Costs of Problem Gambling, draft report, October

- *Higher average net and relative expenditure on EGMs*
- *Higher level of relative disadvantage.*

The results for regional Victoria were more inconsistent.

- 139 The report noted the results were broadly consistent with a recent review of the geographical impacts of gambling:

Geographical analysis of the relationship between the density of EGMs, net expenditure and problem gambling prevalence rates consistently show greater densities to be associated with greater expenditure and a larger proportion of problem gamblers. EGMs tend to be most strongly concentrated in areas with greater social disadvantage, but this may only be because hotels and clubs have traditionally been more concentrated in poorer areas. (Delfabbro, Le Couteur, and IGASA 2009, 7)³

- 140 The report concluded these studies point to a number of potential drivers of the prevalence of problem gambling at a local level, but could not establish if costs associated with problem gambling also varied by region.
- 141 The inconclusive nature of the findings makes it difficult to infer implications for the Murrindindi Shire gaming policy other than the insight that there is a lack of consistency between factors impacting problem gambling rates and each region must be evaluated on its particular merits.
- 142 As such, the contextual variables/conditions in Murrindindi Shire are highly relevant to develop an appropriate policy for minimising problem gambling

7.2.3 Murrindindi Shire's Population relative to Problem Gambling Risk Segment Profile

- 143 The Problem Gambling risk Segment Profile reported the demographic profile of problem gamblers, relative to the Victorian adult population (based on ABS Census 2006 data and projections).⁴
- 144 The overall Victorian profile of problem gamblers shows there is a significantly

³ As cited in Victorian Competition and Efficiency Commission 2012, *Counting the Cost: Inquiry into the Costs of Problem Gambling*, draft report, October p. 124

⁴ *A Study of Gambling in Victoria – Profile of Problem Gambling Risk Segments* p.87

- Higher proportion of males and lower proportion of females
- Lower proportion of people 65yrs and older
- Higher proportion of people of Indigenous backgrounds
- Lower proportion of professionals, technicians/trades-workers and clerical/administrative staff
- A significantly higher proportion of sales workers, machinery operators/drivers and labourers
- Lower proportion of people with a personal income of under \$31,199
- A significantly higher proportion with an income of \$31,200-\$51,999
- Lower proportion of households with an income of under \$33,799
- A significantly higher proportion of households with an income of \$62,400-\$103,999
- Lower proportion in Eastern Metro and Grampians
- Lower proportion of people who have migrated to Australia in the past 5 years
- Lower proportion of 'other households'.

145 When this profile of problem gamblers is considered against the population of Murrindindi Shire, the following is notable:

7.2.4 Social and economic advantage and disadvantage

146 The Socio-Economic Index for Areas (SEIFA) is a product developed by the Australian Bureau of Statistics that ranks areas in Australia according to relative socio-economic advantage and disadvantage. The 2011 version of SEIFA consists of four products.

- The index of relative socio-economic disadvantage (IRSD),
- The index of relative socio-economic advantage and disadvantage (IRSAD),
- The index of education and occupation (IEO),
- The index of economic resources (IER).

147 Each index is a summary of a different subset of Census variables and focuses on a different aspect of socio-economic advantage and disadvantage.

- 148 Figure 3 indicates the geographic pattern of relative disadvantage (IRSD) in the Shire of Murrindindi in relation to the six adjoining municipalities. The data has been adapted from the Statistical Area Level 2 (SA2) scale.
- 149 The index of relative socio-economic advantage and disadvantage (IRSAD) is useful for comparing a range of areas, rather than focussing on disadvantaged areas.
- 150 SEIFA analysis from the LGA scale highlights that the Shire of Murrindindi fares well against other municipalities in rural and regional Victoria. Ranked 40 of 48 on the index of relative advantage and disadvantage (IRSAD - where 1 reflects relatively greater disadvantage and lack of advantage).
- 151 On a statewide scale, Murrindindi Shire was ranked 41 of 79 municipalities on the IRSAD. This represents a reputable score for a regional shire.
- 152 The number of homes owned outright within Murrindindi Shire is also noticeably higher than the figure for rural Victoria – 45.0% compared to 41.7% for the latter. This is likely to be representative of the older population in the municipality and the lower median house prices.
- 153 Education attainment levels in Murrindindi are generally representative of the Victorian rural averages.
- 154 The labour force participation rate in Murrindindi is slightly lower than the average level for rural Victoria. The overall participation rate in Murrindindi is 57.5% (61.8% for males and 53.2% for females), compared to 59.2% (64.6% for males and 53.9% for females) for regional Victoria (according to 2011 Census data).
- 155 Unemployment in the Murrindindi Shire was 4.7% of the labour force in September 2014, significantly lower than 6.1% for regional and rural Victoria. Murrindindi's unemployment rate has been declining since late 2012.
- 156 The challenge of relying on SEIFA was discussed by Deputy President Mark Dwyer in the recent VCAT case *Murrindindi SC v Victorian Commission for Gambling and Liquor Regulation & Ors* [2013] VCAT 101 (14 February 2013).
- 157 *“the inputs or factors that might particularly influence a SEIFA index outcome in a particular community (e.g. a higher older-age population) do*

not necessarily correlate with factors relevant to the prevalence of problem gambling in that community.”

7.3 Conclusions

- 158 It should be a primary concern of a local policy that gaming venues and machines are not located in positions that makes them particular convenient to use by vulnerable members of the community or those with or a propensity towards a gambling problem.
- 159 The forgoing analysis emphasises the complexity of influences and factors that might have a bearing upon accentuating problem gambling in the community, but in the final analysis problem gamblers and vulnerable communities are not to be found just in discrete small clustered areas, but more randomly distributed across the community.
- 160 Preventive steps can be taken by discouraging the location of gaming venues immediately proximate to localities of particular disadvantage; concentrations of social housing and in locations where social support agencies are located.
- 161 Seeking to control the location of gaming machines and venues on the basis of small area boundaries used for statistical collection and selecting an arbitrary quartile or decile in a statistical analysis to identify where the greater threat and vulnerability to gaming problems may exist is fraught with imprecision.
- 162 Some local gaming policies have historically advanced a control that requires a gaming venue to be located more than 400 metres away from a local statistical area with a certain SEIFA rating. The robustness of this criterion in isolation is open to challenge.
- 163 An additional practical and precise criterion would be to apply a separation distance between gaming venues and notable clusters of social housing and the location of the offices of support agencies for vulnerable and disadvantaged persons and problem gamblers. This is articulated in the following recommendations.
- 164 The most practical and effective approach is to avoid the siting of venues in locations of particular convenience and susceptibility to impulsive behavior, such as shopping, where higher concentrations of people are regularly

exposed to the temptation of gaming. This has been addressed in Principle 1.

7.4 Recommendations

7.4.1 Local policy – protect vulnerable communities and problem gamblers

165 The relevant related provisions for consideration in a local policy and not previously recommended are:

Appropriate Areas

Gaming machines should not be located in areas:

- Where any ABS statistical areas within 400 metres walking distance of the proposed venue is in the 20% most disadvantaged statistical areas in Murrindindi Shire as set out in the latest SEIFA Index of relative socio-economic disadvantage.
- Gaming machines should not be located within 400 metres walking distance of a concentration of social housing comprising more than 25 dwellings or within a clear line of sight of a social support agency and or gamblers help centre.

8 PRINCIPLE 3 – THE PROVISION OF GAMING MACHINES SHOULD BE CAPPED, DENSITIES CONTROLLED AND NUMBER OF VENUES MINIMISED

8.1 Principle

- 166 The State government has introduced a limit or cap to the number of EGMs that can be established in a particular municipality on the basis of a perceived threat posed by too many machines in a particular locality. The cap is expressed as a relationship between the number of machines and the adult population in a municipality and operates at 10 machines per 1,000 persons over the age of 18.
- 167 An allied consideration is whether the growth in machines in an area will take the form of additional machines in an existing venue, or a new venue with new machines.
- 168 As a general guide a new venue has the potential to have a greater impact, making gaming more convenient to a greater number of potential patrons, and at the same time diminishes the proportion of premises not offering gaming. As a harm minimisation strategy more machines in existing venues will not be as evident to the community as more venues.
- 169 The more pragmatic expression of the consequences for this gaming principle is the question of whether every additional machine adds equal benefit/dis-benefit to Murrindindi Shire – that is, would an additional machine at a particular location produce a greater dis-benefit than an additional machine at an existing venue.
- 170 In *Mount Alexander Shire Council v Victorian Commission for Gambling and Liquor Regulation and others* [2013] VCAT 101, the Tribunal addressed the issue of the relevance of a margin of change to the ‘net detriment test’.

An increase in gaming machines at an existing venue (a ‘top-up’) will likely have a lesser net impact than the introduction of machines at a new venue, and the social and economic impact evidence in support is likely to be more straight forward.

However the introduction of 50 gaming machines into a community will likely have a different impact if that community already has say, 200 machines rather than 20 or none at all.

- 171 Each application will present its own unique set of circumstances. However as noted earlier in the above case both the creation of a new venue and a tripling of the number of machines within the community was viewed as a significant impact with detrimental implications for the character and perception of the community.
- 172 This principle seeks to ensure the establishment of new gaming facilities does not notably change the balance of a narrow choice and offer of entertainment options towards more gambling.

8.2 Application to Murrindindi Shire

173 Electronic Gaming Machines (EGMs) have been operating in Victoria since 1991.

174 At the 30 June 2012 the following statistics applied:

- 26,778 EGMs in Victoria with total losses of over \$2.7 billion for 2011-2012.
 - Average number of EGMs per 1000 adults was 6.1.
 - Average net losses per adult were \$613.

175 While the cumulative loss since the introduction of EGMs in Victoria is more than \$46 billion, annual losses have plateaued in recent years at around \$2.7 billion.

176 As with Wagering and Lotteries, the VCGLR regulates EGM gambling in Victoria. The *Gambling Regulation Act 2003* provides the legislative framework for gambling in Victoria.

177 The Act stipulates that a maximum of 30,000 EGMs may operate in Victoria. This includes 2,500 in the Melbourne Casino and 26,682 EGMs in clubs and hotels in Victoria.

178 The Act also states that at least 20 per cent of machines must be situated outside Melbourne and that a maximum of 105 may be permitted within a single venue.

- 179 EGM gambling in Victoria is also subject to Local Government control. The Victorian Government introduced amendments to the Victorian Planning Provisions in 2006 in response to its commitment to improve the input of local councils into the location of EGMs.
- 180 A planning permit is now required to install all EGMs, replacing the previous as-of-right provisions for gaming machines if the area covered by the EGMs was less than 25 per cent of the gross floor area where liquor may be consumed.
- 181 A further complication is that existing uses rights (Clause 63) are established and apply where a gaming room has been lawfully established and any increase in gaming machines can be accommodated within the established gaming room. These provisions of the planning scheme might be relied upon to establish additional EGMs in an existing venue.
- 182 EGMs remain prohibited in strip shopping centres and specified shopping centres, with the exemption for hotels in clubs in strip shopping centres being removed.

8.2.1 Electronic Gaming in Murrindindi Shire and Surrounds

- 183 The Victorian Commission for Gambling and Liquor Regulation records data for Murrindindi Shire as an accumulated figure that also includes the Shires of Gannawarra, Mount Alexander and Strathbogie.
- 184 The following analysis is confined to a commentary upon the Rubicon Hotel as expenditure and other data can be extrapolated from the returns for the hotel.
- 185 EGMs are a significant source of revenue for the Rubicon Hotel at Thornton. Approximately \$1,231,369 was the net loss by players at EGMs in the Shire in the year to 30 June 2014⁵.
- 186 The expenditure on EGMs in the Shire has progressively declined over the last 5 years from \$1,394,772 to \$1,231,369. During that period there was a constant 25 EGMs available for use in the municipality.

⁵ <http://www.vcgr.vic.gov.au/CA256F800017E8D4/VCGLR/D6FBF3C7D7FC7E86CA257B3200786F30?OpenDocument>

- 187 Unlike most municipalities with EGMs the VCGLR has no recorded Community Benefit Statements associated with gaming activity in Murrindindi.
- 188 Save for a select few municipalities without any gaming venues and machines Murrindindi along with Boroondara are the only municipalities with an approximate EGM density of one machine per 1,000 adult residents. The Victorian average is 6.00 EGMs per 1,000 residents.
- 189 The EGM density per 1000 adults (18+) in neighbouring municipalities is Whittlesea 5, Mitchell 8, Mansfield 6, Strathbogie 4 and Yarra Ranges 4.
- 190 While Murrindindi Shire has a lower spend - measured as loss per resident adult per annum - of \$104.23, compared to the Victorian average of \$543.68, the average spend per machine is high.

8.2.2 Maximum permissible number of machines

- 191 The *Gambling Regulations Act* 2003 provides for the VCGLR to set a maximum permissible number of gaming machine entitlements for specified regions and municipalities.
- 192 The latest specification of those limits was issued on 15th August 2012. Murrindindi Shire's limit was set at 111 machines.
- 193 There are 25 active EGM entitlements issued in the municipality leaving a theoretical capacity of 86 EGM entitlements.
- 194 The Tribunal has appropriately and correctly observed⁶:

A cap is not an aspirational level of gaming machines for an area. The fact that a region or municipality may be below or even well below, a cap does not imply that further gaming machines can or should be approved.

- 195 The 1999 Productivity Commission report on gambling found there is a positive relationship between increases in EGM density and increases in gambling and subsequent research has demonstrated a linear relationship between gaming machine density and prevalence of problem gambling.

⁶ *Murrindindi Shire Council v Victorian Commission for Gambling and Liquor Regulation and others* [2013] VCAT 101

8.3 Recommendations

Having particular regard to:

- the Shire's tourism role,
- economic development objectives,
- the relative absence of more severe pockets of disadvantage,
- The low density of machines
- The absence of choice of venues offering gaming

It is recommended that the appropriate strategic approach to additional gaming venues and EGMs would be one of being open to but careful in the siting of a one or a couple of additional venues with EGM offering no more than 25-30 machines per venue.

The relevant local gaming policy provisions should include the following:

Appropriate Areas

Additional gaming venues and machines should be located in or proximate to townships identified for business development and which are principal foci for visitors and tourism.

Appropriate Venues

In settlements with a gaming venue preference will be given to additional gaming machines being consolidated within existing venues.

Preference will be given to venues that offer no more than approximately 25-30 EGMs in which gaming is a complement to a broader recreational and entertainment offer.

9 PRINCIPLE 4 – A CHOICE AND DIVERSITY OF ENTERTAINMENT FACILITIES AND ATTRACTIONS SHOULD BE AVAILABLE

9.1 Principle

- 196 Gaming is a form of recreation and entertainment enjoyed by many without harm.
- 197 For a small but significant few (problem gamblers), it is an obsession and becomes a major problem with serious potential personal, financial, employment and relationship consequences.
- 198 An important, location based, harm minimisation strategy is to present the gambler with choice and a series of alternative entertainment attractions, other than gaming, in the immediate locality of a venue or within the venue.
- 199 Some suggest choice and diversity can be satisfied within a venue, by the provision of other attractions. The decision guideline of Clause 52.28 calling for consideration of the presence of a full range of hotel facilities is motivated by this expectation.
- 200 Similar merit rests with other attractions and opportunities, close by and entirely independent of the gaming venue, where a person can go and not be exposed to gaming.
- 201 It is equally relevant to have regard to the concentration of venues in a locality. If there is a narrow, or no choice of hotel and clubs and other entertainment in a locality without gaming the potential for harm is enhanced rather than minimised.
- 202 A further consideration in matters of choice and diversity is the implications of time. Ensuring that gaming venues operate at times when other sources of recreation and attraction are also operating assists harm minimisation. It is desirable to avoid circumstances in which the only recreation being offered at any time during the day or night is gaming.
- 203 Gamblers Help sites reinforce the importance of having the option of a range of activities available to the problem gambler within the broader community context.

- 204 While the higher order activity centres, as a general rule, offer the stronger choice and diversity of attraction, other sources indicate volunteering and meditation as examples of what will be a wide range of non-gaming activities to refocus the attentions of problem gamblers away from gaming.

9.2 Local conditions impacting upon the choice and diversity of entertainment facilities and attractions

- 205 Murrindindi offers a significant range of formal and informal recreational and entertainment opportunities. It is not necessary in this report record all of the available choices but rather to recognise that the continual encouragement to diversify and develop additional attractions is a strong and positive counter point to the impulse to gamble.
- 206 These opportunities may be formal, structured and always available or informal community based and occasional.

9.3 Recommendations

- 207 It is recommended that as a strategic initiative Council examine and facilitate opportunities to further develop non-gaming based recreation and entertainment facilities in the municipality.
- 208 The following provisions are recommended for inclusion in a local gaming policy:

Appropriate Areas

Gaming machines should be located in areas;

Where the community has a choice of non-gaming entertainment and recreation activities and established social infrastructure, some of which operate during the times that the proposed gaming machines will operate in the local area.

Appropriate venues

Electronic gaming machines should be located in venues:

That offer a range of other forms of recreation and entertainment other than gambling based activities and which are located in spaces completely divorced from the presence of EGMs.

10 PRINCIPLE 5 – VENUES SHOULD BE DESIGNED AND OPERATED TO MINIMISE HARM AND AMENITY IMPACTS

10.1 Principle

- 209 The impact of a proposal upon the amenity of an area is a typical and relevant consideration of land use planning. The decision guidelines of Clause 52.28 call for consideration to be given to the compatibility with nearby and adjoining uses and the capability of the site to accommodate the use.
- 210 The objectives of the local policy on gaming seek to protect the operation and amenity of existing uses surrounding gaming venues.
- 211 In most instances where gaming is being added to an established hotel or club the off site amenity implications of the gaming will be minimal or negligible unless the accommodation of the gaming facility necessitates a substantial restructure of the premises or additions which in some way impact upon the amenity of adjoining sensitive uses, particularly by virtue of noise, disturbance, changes in traffic patterns and the adequacy of car parking.
- 212 The composition, layout and design of venue are also relevant considerations with particular attention being drawn to this by the provisions of Clause 52.28. The reference to the provision of a full range of hotel or club facilities and services in the decision guidelines is associated with research that suggests that certain types of venue are more likely to have characteristics of low risk venues in terms of the use and consumption of EGMs. The more diverse the social and recreation offer, other than gaming, so risk / harm presented by gaming is diluted.
- 213 Other features with relevance to the current matter are the hours of operation, management policies and the siting of the gaming machines and their relative exposure to patrons and the public. The discrete siting of EGMs within a building, or removed from public viewing areas, contributes positively to harm minimisation.
- 214 Gambling venue design and activities can contribute to EGM problem gambling by creating an environment that increases the sense of escapism. The placement of machines near other facilities such as toilets, bars or next to eating areas can allow gamblers to continue with other activities

while using the machines. A lack of natural light in a gambling area can also contribute to the sense of escapism that some gamblers feel when playing EGMs.

- 215 In addition, the placement of ATMs and EFTPOS facilities in prominent places in gaming venues further increases the risk for problem and moderate gamblers.
- 216 Apart from this, venues also provide other inducements to gamble such as raffles, free tickets, free alcohol, free food and giveaways. These often encourage people to stay in a venue for a longer period. Other inducements are linked directly to gambling include:
- Awarding gifts to gamblers who reach a certain number of points on their loyalty cards; and
 - Jackpot nights where the first person who gains a certain number of points on their loyalty card receives a cash prize, raffle tickets or coupons that can be converted into credits for EGMs.
- 217 In research by Hing and Haw (2010)⁷ on the influence of venue characteristics on a player's decision to attend a gambling venue, they found the following potential risk factors for the problem gamblers who most frequented a hotel, club or casino.
- Extended opening hours – (also identified as a risk factor for the general population of gambler)
 - Prioritising convenient physical access to the venue
 - Easy access to an ATM in the venue.

Various specific features of gaming machines, including:

- Linked jackpots,
- Bonus features,
- Favourite machines,
- A large choice of machines,

⁷ Hing, N. and Haw, J. (2010) *The Influence of Venue Characteristics on a Player's Decision to Attend a Gambling Venue*. Centre for Gambling Education and Research School of Tourism and Hospitality Management Southern Cross University Lismore NSW 2480

- Low denomination machines,
- Types of gaming machines on offer.

Gaming room design risk factors:

- A layout that allows privacy.
- An atmosphere that reflects the glitz and glamour associated with Las Vegas.
- Not waiting to get on a machine or to be interrupted while gambling.
- Easy access to facility.

10.2 Application to Murrindindi Shire

10.2.1 The composition and design of the venue and amenity

218 The design and operation of venues has been the subject of a new ‘Venue Manual’ (Manual) prepared by the VCGLR as an online and hardcopy resource that is required to be complied with by EGM entitlement holders and is a useful set of guidelines for Council to have regard to in reviewing the design and proposed operation of a gaming venue.

219 The Manual addresses a broad range of topics including:

- Venue Operator’s Licences,
- Gaming Machine Entitlements,
- Responsible Gaming, Accounting and Auditing,
- Investigations,
- Venue operational requirements.

220 Factors associated with venue design and development addressed by the Manual include:

- Approved gaming venues,
- Gaming machine Area – size layout and facilities,
- Gaming hours,
- Patrons,
- Cashier stations,
- Security arrangements,

- Display and inspection of Notices, signs and rules,
 - Supervision of gaming machine areas / CCTV requirements,
 - Credit / cash facilities,
 - Advertising.
- 221 Each of the above factors is examined in greater detail in the Manual. For example the section on the size, layout and facilities addresses topics that include:
- Location relative to other facilities,
 - Lighting,
 - Windows not to be removed or obscured,
 - Perimeter barriers surrounding the gaming room,
 - Gaming machine interfaces,
 - Venue environmental limits.
- 222 No useful purpose would be served in drafting a similar Council based document as many of the requirements are statutorily required by the *Gambling Regulations Act*. However the local policy should rely upon and emphasise compliance with the Manual.
- 223 The land use and development context of planning has a broader perspective and some additional considerations are reviewed below.
- 224 **Hours of operation** are a relevant consideration. While the *Gambling Regulations* 2003 require there to be a minimum break of 4 hours and no more than 20 hours of continuous play these hours should be treated as an absolute maximum. It is preferable that any approval for a venue limit the hours of play to those of other premises in the locality that offer alternative forms of entertainment. This avoids a situation where the only choice is a hotel with gaming being the only attraction at various times of the night.
- 225 **Courtyards** should be capable of being able to be accessed without going through the gaming room.
- 226 **Bistros** should be able to be accessed without going through the gaming room; and dining in the bistro should be able to occur without an awareness of the gaming room.

- 227 It is extremely peculiar that the inclusion of children's facilities is often included in Social and Economic Impact Assessments for EGMs as a positive element of the application.
- 228 There is no evidence to suggest bringing children along to a gaming facility is in any way a positive experience and it is recommended that inclusion of children's rooms in EGM venues will not be regarded as positive contributing aspect of the proposed application.

10.3 Recommendations

- 229 The local gaming policy should note that the inclusion of a children's facility in a venue will not be accredited as a positive contribution if the facility is added as part of application for EGM machines.
- 230 The relevant local provisions that should be included in a local policy include:

Appropriate venues

- Gaming machines should be located in venues that:
 - Are designed to comply with best practice and the full ambit of the VCGLR Venue Manual.
 - Promote non-gaming activities that increase the choice of activities and attractions available to patrons.
 - Offer social, entertainment and recreational opportunities other than gaming as the primary purpose of the venue.
 - Limit play by condition of approval to times when alternative entertainment and recreation is also operating and available.
- Gaming machines should not be located in venues that:
 - Have gaming floor area of more than 25% of the total floor area of the venue.
 - Have 24-hour operations.
 - Are located within a prohibited areas identified in Clause 52.28 or a discouraged area as defined by this policy.

11 STRATEGIC DIRECTION AND LOCAL POLICY

11.1 Overview

- 231 The following strategic conclusions and directions can be framed.
- 232 The Murrindindi community and visitors to the Shire have access to a gaming venue and 25 machines in Thornton, a location that is central and accessible to only part of the community.
- 233 The density of electronic machines and choice of venues offering gaming is low for the regional and expenditure is similarly relatively low.
- 234 The community is able to access additional venues and machines that are not as convenient but are accessible within the broader region.
- 235 The planning policy framework provides a rationale for enabling a limited expansion of gaming venues and facilities in the Shire in locations where visitation and tourism are concentrated and economic development is sought.
- 236 The underlying social and economic characteristics of the community warrant care and caution in identifying suitable locations. Yea, Marysville and Eildon would be among possible candidates subject to suitable and detailed site selection
- 237 The Schedule 4 to Clause 52.28 prohibits gaming machines in the 'strip shopping centre' in and adjacent to the retail core of main town centres. It is desirable that gaming is also strongly discouraged in areas immediately adjacent venues and prohibited areas.
- 238 Similarly gaming venues in small settlements with convenient services but no other forms of recreation and entertainment should form discouraged areas.
- 239 A direction of positive leadership would be by identification and facilitation of new and alternative recreation and entertainment choices for residents and visitors. This would have a secondary benefit in minimising the harmful effects of gaming.

- 240 Through the careful identification of appropriate areas and sites for the location of gaming venues by way of a local gaming policy and by the application of the VCGLR Venue Manual to secure best practice in venue design and operation, Council can practically contribute to a safer living and recreation environment and minimising harm in the context of gaming.
- 241 The following strategic direction and local polices are recommended for inclusion in the Municipal Strategic Statement at Clauses 21 and 22.
- 242 Given the current structure of the Municipal Strategic Statement a strategy statement regarding gaming is most appropriately included at Clause 21.04.

11.2 Planning Scheme Implementation

11.2.1 Proposed inclusions in the Municipal Strategic Statement

- 243 In Clause 21.07 – The Serviced Towns Strategy is probably the most appropriate location to place a policy on gaming but the current structure of the planning scheme is not well suited to effectively integrating a sectorial subject such as gaming:

21.XX-X Gaming

22/03/2007

Overview

- Gaming is part of the Shire’s recreation and entertainment offer, but for a significant few it causes serious personal, financial and social effects.
- Murrindindi Shire’s current density of electronic machines and choice of gaming venues is low in the regional context: extra venues and machines might be established within the region.
- The strategic context and demographic characteristics of the Shire reveal that it is sensitive to unacceptable social costs arising from increases in gaming.

Objectives: What do we want to achieve?

- A safe living, working and recreation environment where unacceptable social, economic and cultural harm from gaming is minimised.

Strategies: How do we achieve it?

- Use the following Principles to minimise the potential harm from new gaming venues or increases in electronic gaming machine densities:
 1. *Gaming machines should be accessible but not convenient.*

2. *Protect problem gamblers and vulnerable communities from opportunities for impulse gambling.*
3. *The provision of gaming machines should be capped, densities controlled and the number of new venues minimised.*
4. *A choice and diversity of other entertainment facilities and attractions should be available.*
5. *Venues should be designed and operated to minimise harm and amenity impacts.*

Implementation

- Apply the local Gaming Policy at Clause 22.XX with reference to the Murrindindi Shire Gaming Policy 2014.

11.3 Proposed Local Policy

244 Include the following new local planning policy in Clause 22 of the Local Planning Policy Framework:

22.XX GAMING

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This policy applies to all applications to install or use a gaming machine or use of land for gaming.

22.XX -1 Policy Basis

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Clause 52.28 requires a planning permit to be granted to install or use electronic gaming machines. This policy will guide decision-making by implementing the findings of the *Murrindindi Shire Gaming Policy (2015)*.

This policy:

Provides additional details to assist in the application of Clause 52.28 at the local level.

Implements the provisions of Clause 21.XX-X as it relates to gaming applications.

Taking into account specific characteristics of the local community that make it vulnerable to the negative impacts of gaming this policy guides the location of gaming machines to appropriate areas, sites and venues.

For the purposes of this policy social (community and public) housing means housing for people on lower incomes that is owned and leased by the Department of Housing, registered housing associations or not for profit housing organisations. A concentration of social (community and public) housing will generally be said to exist if there are 25 or more dwellings of that type within a circle with a 150 metre radius.

22.XX-2 Objectives

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- To minimise harm from gaming and the incidence of problem gambling.

- To discourage the location of gaming machines in and proximate to disadvantaged and vulnerable communities.
- To minimise opportunities for convenience and impulse gaming.
- To protect the amenity of surrounding uses from venues containing gaming machines.

22.XX-3 Policy

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It is policy to locate gaming machines in accordance with the following criteria:

Appropriate areas

Gaming machines should be located in areas:

- In townships where tourism is strongly evident and supported in policy and where large numbers of persons pass through the region and are inclined to stop.
- Where the population is growing or expected to grow. In these areas gaming machines should not be established ahead of the provision of non-gambling entertainment, recreation facilities and social infrastructure.
- In townships where commercial and business development is encouraged and a choice of recreation and entertainment facilities is offered.
- Where they will make a positive contribution to the redistribution of gaming machines away from relatively disadvantaged areas, as defined by the latest ABS SEIFA index of relative socio-economic disadvantage.
- Where there is a choice of non-gaming entertainment and recreation facilities operating in the vicinity at the times that the proposed gaming venue will operate including hotels, clubs, cinemas, restaurants, bars and indoor recreation facilities.
- Where the community has a choice of non-gaming entertainment and recreation activities and established social infrastructure, some of which operate during the times that proposed gaming machines will operate in the local area.

Gaming machines should not be located in areas:

- Specified in the 4th Schedule to Clause 52.28 and will be strongly discouraged in areas that abut, or are adjacent, opposite or in such close proximity to prohibited areas that a proposed venue would reasonably be considered particularly convenient to users of the strip shopping centre.
- In proximity to areas within townships and small centres where convenience services are provided and where no or limited alternative attractions are offered.
- Where any ABS statistical areas within 400 metres walking distance of the proposed venue is in the 20% most disadvantaged statistical areas in Murrindindi Shire, as set out in the latest SEIFA Index of relative socio-economic disadvantage.
- Within 400 metres walking distance of a concentration of social (public and community) housing.
- Within line of sight of a social support agency or gamblers help centre.

Appropriate sites

Gaming machines should be located on sites:

- That minimise the likelihood of impulse gaming by people passing the venue in the course of their usual business or every day activities.
- At the periphery of activity centres and removed from land zoned for a commercial purpose or at a sports or recreation club or course.
- Where the location could reasonably be perceived as a destination in its own right. This would be achieved by separation from strip shopping centres, shopping complexes, railway stations and community facilities involving a high concentration of people undertaking daily activities.

Gaming machines should not be located on sites:

- Specified in the 4th Schedule to Clause 52.28 and will be strongly discouraged in areas that abut, or are adjacent, opposite or in such close proximity to prohibited areas that a facility in such location would be reasonably considered particularly convenient to users of the strip shopping centre.
- In townships and small centres where local convenience services are provided and where no or limited alternative attractions are offered.
- Convenient to concentrations of shops, major community facilities or key public transport nodes where large numbers of pedestrians are likely to pass in the course of their daily activities.
- On sites that abut, are adjacent to, are opposite or are in the direct line of sight of a strip shopping centre.

Appropriate venues

Gaming machines should not be located in venues:

- That operates 24 hours a day.
- With a gaming floor area of more than 25% of the total floor area accessible by the public.
- That are located within prohibited areas identified in Clause 52.28 or in a discouraged area as defined by this policy.

Gaming machines should be located in venues:

- That have a range of entertainment and leisure options and offer social and recreational opportunities other than gaming as the primary purpose of the venue.
- That are designed to comply with best practice and the full ambit of the VCGLR Venue Manual or any regulatory successor.
- Where the premises and associated uses are compatible with the predominant surrounding land uses.
- That already have gaming machines (in preference to the establishment of a new gaming venue).
- Where the design and operating hours will not detrimentally affect the amenity of the surrounding area.
- That limit play by condition of approval to times when alternative entertainment and recreation is also operating and available

22.XX-4 Application Requirements

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All applications must include the following information to the satisfaction of the responsible authority:

- How the application is consistent with the broader State and Local Planning Policy Framework including policies on recreation and entertainment, economic development, tourism and town development.
- A venue management plan identifying mitigating strategies to manage patron behavior and minimise problem gambling through the design and management of the venue, including the applicant's responsible gaming practices.
- Detailed plans of the design and layout of the premises including the location of all existing and proposed gaming machines, signage, external lighting, and evidence of compliance with any relevant gaming regulations for premises layout, design and operation of the gaming venue.
- Social and economic impact assessment prepared by suitably qualified and experienced persons that provides a robust assessment of the social, and economic impacts (positive and negative) of the proposed EGMs.

The social and economic impact assessment should address but not necessarily be limited to the following:

- Details on the proposed number of gaming machines and associated forecast gaming expenditure (player losses).
- Details about the existing and proposed distribution and density of gaming machines in the municipality and local area, any proposed reallocation of gaming machines in the municipality, and the proposal's expected impact on patronage.
- If the applicant contends that gaming expenditure is likely to be transferred from other venues, the applicant is to provide:
 - Particulars as to how the level of transfer has been calculated (including, but not limited to comparison per machine expenditure at the venue prior to and then after the additional machines, current usage levels of machines at the venue, and projected usage of machines at the venue after the additional machines); and
 - The amount of transfer expenditure anticipated.
- Details of the nature and extent of community benefits expected from the proposal and how the benefits are to be secured and distributed to the broader local community.
- A detailed social profile of the population within the catchment area of the venue including:
 - The relative socio-economic disadvantage of the local neighbourhood and suburb and broader 5km catchment of the venue;
 - The latest ABS SEIFA index of relative socio-economic disadvantage; and
 - The projected growth, housing affordability and housing stress, income levels, unemployment rates, educational retention and attainment levels, and the percentage of social security recipients.

- Details of existing and proposed gambling and non-gambling entertainment and recreation facilities at the venue and within a 5km radius of the venue including existing and proposed electronic gaming machine density and location of other gambling venues.
- Details of the venue's distance to shopping complexes, strip shopping centres, major areas of community congregation, proximity to areas of normal daily activity such as public transport, shops, community facilities, schools, early childhood centres, health services, and proximity to welfare and counselling services.
- Details of currently available social support services including specific problem gambling services, financial counselling services, and material and financial aid services; the location of these services in relation to both the revenue and patron catchment area; and the level of current demand for these services.
- Pedestrian counts for venues which are within close proximity to places where large numbers of pedestrians are likely to pass in the course of their daily activities. Pedestrian counts should be taken on different days and at a variety of times.
- A detailed overall assessment, which shows and summarises the economic and social impacts of the proposal and their effect on community wellbeing and health.

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Decision Guidelines

Before deciding on an application the Responsible Authority will consider, as appropriate:

- Whether the proposal will positively respond to harm minimisation.
- Whether the proposal will be proximate to areas of socio-economic disadvantage.
- Whether the proposal will facilitate convenience and impulse gambling.
- Whether there is to be a net community benefit derived from the application, aside from any community contribution scheme.
- Whether users of the gaming venue will have a genuine choice of gaming and non-gaming entertainment in the local area and in the venue itself.

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Policy References

Murrindindi Shire Gaming Policy Review 2015, 10 Consulting Group Pty Ltd



Expert Evidence | Strategic Advice | Development Approvals