

Inner Melbourne Action Plan

Final Report

Action 6.3 Managing Conflicts in Activity Centres

Purpose

1. To provide a final update to the IMAP Implementation Committee on work undertaken since the last report on this action in August 2009 and the presentation given by a representative of the Department of Justice (Sarah Kaushik) on this matter in November 2009.

Background

2. A full Discussion Paper was received by the IMAP Implementation Committee in August 2009 which summarised all the work undertaken by the IMAP Working Group to date. The IMAP Working Group recommended their approach be tested by the IMAP partner councils to determine the usefulness of the proposed approach, with a reporting back period on action taken.
3. In the August 2009 Discussion Paper, the IMAP Committee received details on Cumulative Effects of Licensed Premises which included planning tools for assessment of those effects. The IMAP Committee resolved to;
 - a. Reaffirm its **support** for the Cumulative Impact Assessment tools and approach outlined in the attachments to the Discussion Paper.
 - b. Continue to **support** the individual councils to test and review the Cumulative Impact Assessment Tools outlined.
 - c. **Request** the Action 6.3 Working Group report back to the Implementation Committee with an update on testing and refinement of the Cumulative Impact Assessment Tools in November 2009.
 - d. **Note** the initial analysis regarding the issue of 'definitions' and **note** the possible definitions' brought forward for discussion.
 - e. **Support** the circulation of the 'possible definitions' to the wider Action 6.3 Working Group to provide the Councils and State Government with an opportunity to comment.
 - f. **Request** the Action 6.3 Working Group collate the comments and report back to the Implementation Committee with a suggested position on definitions in November 2009.
4. In the interim, state government initiatives, research and a greater awareness of issues have sought to contain the growing problems. Late night violence and incidents continue to make headlines, albeit less frequently.

Discussion

5. The four IMAP Councils have made considerable progress since August 2009. In testing and refining the work of the IMAP Working Group, the Councils have each modified their approaches to assessing the accumulated effect of licensed premises and those approaches are reported here.

6. City of Melbourne

- 6.1. The City of Melbourne had its *Policy for Licensed Premises that Require a Planning Permit* approved by the Minister in November 2010.

- 6.2. Amendment C141 inserted Clause 22.22 *Policy for Licensed Premises that Require a Planning Permit* into the Melbourne Planning Scheme. The policy applied where a permit is triggered under Clause 52.27 or where a permit for a tavern, hotel or nightclub in the Capital City and Docklands Zones is required.
- 6.3. The policy includes:
 - a. Guidelines to limit noise emissions associated with licensed venues, and noise impacts associated with waste collection;
 - b. Guidelines for the appropriate operating hours for each planning scheme zone i.e. 1am in the Capital City and Docklands Zones with the proviso that no drinks be consumed in outdoor areas after 11pm;
 - c. Consideration of the proximity of licensed venues to sensitive uses, including residences; and
 - d. Consideration of the cumulative impact of a licensed premise on the amenity of the area.
- 6.4. The Panel report stated that:
 "The City of Melbourne demonstrated the extent to which residential uses have dispersed throughout the Central City in recent years and submitted that this makes it difficult to identify precincts for concentrations of 'high risk' premises - the horse has already bolted. City of Melbourne officers expressed concern that the emphasis on 'precincts' in the IMAP tool may be impractical and not be appropriate for application in the CBD because it ignores the appropriate diversity of uses in a 24 hour city.
- 6.5. The consideration of cumulative impacts in the Central City will be quite different to elsewhere. Unlike other parts of Melbourne with more limited functions, planning policy intends the Central City to operate on a 24 hour basis and identifies it as an entertainment hub of state significance. The LPPF also makes reference to the City's entertainment precincts. Concentrations of entertainment opportunities, including licensed premises, which in other areas may compromise primary functions, should not necessarily be discouraged as a matter of principle as they form part of the vision for the Central City"
- 6.6. The link to the policy is as follows:
http://planningschemes.dpcd.vic.gov.au/melbourne/ordinance/22_lpp22_melb.pdf
- 6.7. One of the objectives at Clause 22.22-2 is, "To ensure that the cumulative impacts of licensed premises are assessed where venues are clustered in the one location"
- 6.8. Also, Clause 22.22-5 directs the Responsible Authority to consider when assessing an application, "The cumulative impact of any existing and the proposed liquor license, the hours of operation and number of patrons, on the amenity of the area", which mirrors the clause 52.27 requirement.
- 6.9. City of Melbourne consider that Practice Note 61 (March 2011) "*Licensed Premises: assessing cumulative impact*", is also a big step forward in that there is a planning process/definition, from the state government, on how to assess cumulative impacts.
- 6.10. The policy that City of Melbourne put together directs that cumulative impacts must be considered as part of a planning application. This practice note complements the policy, and hopefully makes the consideration of cumulative impacts easier for planners and more transparent for applicants.

7. City of Stonnington

- 7.1. On 3 May 2011, Council adopted as policy the key findings of its Research Paper "*Late night liquor licence trading in the Chapel Street Precinct: Measuring the*

saturation levels". The Research Paper defines licensed premises that are most likely to be associated with 'alcohol related harms' as Source of Potential Harm Venues (SPH). Source of Potential Harm Venues are licensed hotels, taverns and nightclubs operating after 12am. The Research Paper identifies the Chapel Street Precinct as at saturation point in terms of SPH venues. A finding of the Research Paper is that 50 SPH venues operating after 1am in the Chapel Street Precinct is the saturation limit for this area.

- 7.2. The Research Paper states that there are a range of factors, both internal and external to licensed premises that influence the nature and extent of alcohol-related harms. These factors can multiply and intersect to contribute to the level of alcohol-related harm.
- 7.3. The Research Paper identifies as Council's policy position that there be no more planning permits issued for premises operating after 1am nor for new premises and existing premises proposing more than 200 patrons.
- 7.4. Amendment C129 makes changes to existing Clause 22.10 Licensed Premises Policy in order to introduce Council's policy position as stated in the Research Paper. The amendment proposes to introduce policy and requirements relating to licensed hours of operation and patron capacity for Source of Potential Harm Venues in the Chapel Street Precinct Study Area. It is considered that the revised policy will assist in addressing the negative social impacts of these uses on the community, and will help manage alcohol related harm associated with particular types of licensed premises.
- 7.5. During the exhibition of Amendment C129, Council received a number of supporting submissions as well as one objecting submission. In light of receiving an objecting submission, Council resolved to request that the Minister for Planning appoint an Independent Panel to consider the amendment and submissions received. No 'request to be heard' forms were received from submitters and as such, a Panel Hearing was not required. Instead, the Panel Member prepared a report for Council on the materials before it.
- 7.6. The Panel Report was received by Council on 24 June 2011. At its meeting on 4 July 2011, Council resolved to adopt Amendment C129 with changes. Council was willing to support some of changes recommended by the Panel however Council does not support two of the Panel's recommendations.
- 7.7. The City of Stonnington has lodged the adopted documents with the Minister for Planning and awaits his approval.
- 7.8. This work is in addition to the ongoing work of the Liquor Accord, binge drinking initiatives and youth education programs etc which are just a few of the many other Council initiatives undertaken in this area.

8. City of Port Phillip

- 8.1. Over the past 18 months, the City of Port Phillip has been collecting data on the number, type and impacts of licensed premises on amenity, the community and the physical environment in four of Port Phillip's major activity centres. The activity centres include St Kilda (Fitzroy and Acland Streets), Bay Street, Clarendon Street and Carlisle Street.
- 8.2. The data is based on the indicators identified by the IMAP Working Group and some additional data requirements identified from the Corner Hotel decision. At present, the data is being finalised and collated.

- 8.3. Building on this work, in this financial year, Council is planning to develop precinct-based guidelines to support local planning policy in the Municipal Strategic Statement and decision-making around the cumulative impacts / management of licensed premises in activity centres.
- 8.4. The project will develop guidelines that:
 - a. Outline the relevant Council policy for the precinct
 - b. Provide an analysis of the licensed premises environment (eg hours and location of premises, public transport) using work undertaken to date
 - c. Augment the data where gaps are identified
 - d. Identify specific issues for precinct eg location of social housing, sensitive interfaces
 - e. Potentially identify non-planning matters for improvement (eg public transport advocacy)
 - f. Identify any application requirements for planning permits.

9. City of Yarra

- 9.1. The City of Yarra Council in 2009 mounted a successful case at VCAT regarding a proposed expansion of The Corner Hotel in Richmond. Council's case was based around the cumulative impact of venues. The case is referenced as *Swancom Pty Ltd v Yarra CC* (Red Dot) [2009] VCAT 923. This decision has been central to the cumulative impact thinking and analysis of Councils and other agencies in seeking to best manage the level of liquor licences in an area.
- 9.2. In *Swancom*, the Tribunal formulated a potential assessment methodology for considering applications that may result in cumulative impacts. Depending on the nature of the application and specifics of the liquor licence being sought, Yarra Council has found that the Tribunal's assessment methodology is not always warranted (eg. a 50 seat licensed café closing at 5pm).
- 9.3. City of Yarra Council has therefore developed a risk assessment methodology to enable consistent and transparent assessment of whether a full cumulative impact assessment is warranted or not for a particular application. This risk assessment is carried out when the application is assessed for further information under section 54 of the Act.
- 9.4. The risk assessment is based on a matrix whereby a risk rating is given against the following criteria:
 - type of premise,
 - size of premise, and
 - closing hours of premise.
- 9.5. A total score formula is calculated and will result in an application either being scored 'minimal risk' or 'potential risk'. Where an application is scored 'potential risk', then a full cumulative assessment in line with the *Swancom* methodology (but presented in an excel spreadsheet and graphs for easier interpretation) will be undertaken by Council.
- 9.6. The information required to carry out such an assessment is included in Council's further information request to Applicants. In addition to information provided by Applicant's, Council's GIS system is now linked with Consumer Affairs liquor licence database so licensed premises, closing hours and patron numbers can be mapped.

Further supplementary information:

From a social planning perspective City of Yarra Council is also undertaking a number of other actions relating to the consumption of alcohol in the community.

- 9.7. Council has been reviewing its Local Law (No 8) relating to restriction of drinking in public places. A second review has been completed earlier in 2011. This found that it had a minimal negative or positive impact on the extent of drinking in public. Generally, this minimal impact was found to be due to Victoria Police having limited resources, not prioritising the enforcement of the Local Law and where appropriate making use of the Summary Offences Act instead
- 9.8. The Yarra Licensees Forum is being revisited to enable a closer working relationship with traders to better understand the local issues associated with alcohol and the role Licensees can play in addressing these. It is hoped that this group will take a more holistic view of the positive and negative role of alcohol in the community and not just focus on regulatory control. In this regard, the Yarra Drug & Health Forum, the University of Melbourne and a few licensees in Swan Street are seeking funding to undertake research into issues associated with alcohol in the Swan Street precinct.
- 9.9. Continued collaboration is occurring between local services, Council and State Government agencies to engage people with long-term alcohol addiction, particularly around a group of Aboriginal drinkers in the Smith Street area known as the 'Parkies'. Community-building activities are continuing (e.g. positive involvement of the Parkies in telling the history of the Aboriginal community around Fitzroy), seeking renewed funding for outreach workers to support this community and further engaging the Parkies through the outreach programs (including a mix of health and community services) with many now participating in regular recreational activities.

10. Department of Justice and DPCD response

- 10.1. In 2009, the state government progressed issues relating to the regulation of alcohol, including cumulative impact and other planning and licensing issues, through an Interdepartmental Committee (IDC). Issues identified by the IDC have continued to be implemented under the new Government that came into power in November 2010.

The Coalition Government's policy positions in relation to liquor licensing are set out in its election policy statement Victorian Liberal Nationals Coalition Plan for Liquor Licensing (available at <http://www.vicnats.com/policies/CoalitionPlan/LiquorLicensing.pdf>)

The key reforms that have been implemented are outlined below.

10.2. Cumulative Impact Statement of Policy

On 5 October 2010, a Statement of Policy on the assessment of the cumulative impact of licensed premises was published in the Government Gazette. The Statement enables the Director of Liquor Licensing (the Director) to consider the cumulative impact of a licensed premises when determining whether to grant a new liquor licence or vary an existing licence.

Local councils are required to consider cumulative impact when assessing planning permit applications for licensed premises. However, at the time that the Statement of Policy was published, packaged liquor outlets were exempt from the requirement to obtain a planning permit, and therefore did not undergo a cumulative impact assessment at the planning stage. The Statement was introduced partly to enable the

Director to consider the cumulative impact of packaged liquor outlets at the licensing stage.

On 8 April 2011, the Government removed the packaged liquor planning permit exemption, which means that packaged liquor outlets now undergo a cumulative impact assessment at the planning stage. This reduces the need for and impact of the Statement of Policy (which was amended to reflect the changes to planning permit requirements on 4 August 2011).

However, the Cumulative Impact Statement of Policy may still be of use in circumstances where the Director considers that a local council has not undertaken a sufficiently thorough cumulative impact assessment at the planning stage. In addition, licensed premises within the Capital City Zone and Docklands Zone of the City of Melbourne are not required to obtain a planning permit under the local planning scheme, and therefore do not undergo a cumulative impact assessment by local councils. The Cumulative Impact Statement of Policy gives the Director the ability to undertake a cumulative impact assessment in these circumstances.

10.3. *Practice Note 61: Licensed Premises: Assessing Cumulative Impact*

Local government and local communities are best placed to determine both the positive and negative impacts of establishing appropriate land use in entertainment precincts. Consequently, the responsibility for cumulative impact and outlet density issues lies with local councils. Part of the cumulative impact assessment process is for councils to consider the diversity of land uses within these precincts, and approve planning permission in line with community expectations.

On 1 April 2011, the Department of Planning and Community Development (DPCD) released a Practice Note to assist councils responsible for assessing cumulative impact as part of a planning permit application. The Practice Note is not compulsory and a council may select another method to assess cumulative impact if desired and appropriate.

Practice Note 61 is available at:

http://www.dpcd.vic.gov.au/_data/assets/pdf_file/0005/60809/PN61-Licensed-premises_Assessing-cumulative-impact.pdf

10.4. *Removal of the packaged liquor planning permit exemption*

On 8 April 2011, the Government removed the packaged liquor planning permit exemption through an amendment to Clause 52.27 Victorian Planning Provisions.

This provides further opportunity for Councils and the community to have their say in the appropriate location of packaged liquor outlets. This brings packaged liquor stores in line with other types of licensed premises in the planning scheme.

10.5. *Extension of the freeze on new late night liquor licences*

On 18 March 2011, the Government announced that the freeze on new late night liquor licences in the IMAP area has been extended until 30 June 2013. The freeze on the issue of liquor licences (General; On-premises without restaurant conditions; and Limited, including renewable limited) authorised to trade past 1am is in place unless the applicant can demonstrate exceptional circumstances. This policy is in place to stop the growth in late night venues in inner Melbourne and surrounding municipalities.

10.6. Referral and notification powers of the Director and Victoria Police

The VPPs now require that planning permit applications for a hotel, tavern or nightclub operating after 1.00am must be referred to the Director. Notice of the application must also be sent to the Chief Commissioner of Victoria Police. These requirements apply across all of Victoria.

The referral and notification provisions give the Director and Victoria Police a formal opportunity to provide input into applications for high-risk licensed premises at the initial planning stage, rather than waiting until lodgement of the liquor licence application. This ensures that high-risk venues are identified and land-use risks are mitigated as early as possible in the application process.

Although these provisions have been used infrequently to date, they provide an important opportunity to identify and raise any issues prior to councils making a final planning decision.

10.7. Liquor licences and applications online

On 8 August 2011, the Government launched a new online database that enables the public to look up new licence applications in their local area. The database provides greater transparency to the public in relation to licensing applications, gives them a chance to have their say within the 30 day objection period (if applicable), and increases confidence in the liquor licensing system.

The database is accessible through the Responsible Alcohol Victoria website at www.justice.vic.gov.au/alcohol under "find a current licence or application" or through this link:

https://liquor.justice.vic.gov.au/alarm_internet/alarm_internet.asp?wci=start_alarm_internet

10.8. Victorian Commission for Gambling and Liquor Regulation

The Victorian Commission for Gambling and Liquor Regulation (VCGLR), a new independent statutory authority responsible for the governance and decision-making in relation to liquor and gambling regulation will commence operations in early 2012.

The creation of this integrated gambling and liquor regulator will provide a more unified regulatory scheme for liquor. This will enable the implementation of an integrated and consistent approach to liquor licensing, compliance and enforcement and enhance the timeliness and effectiveness of the regulator's response to breaches of liquor laws.

The VCGLR will comprise the current functions of the Director of Liquor Licensing, the Civilian Compliance Directorate and the liquor licence monitoring and enforcement functions currently located in Responsible Alcohol Victoria in the Department of Justice.

10.9. New laws to combat public drunkenness

New laws and increased penalties designed to help police and licensees tackle public drunkenness commenced on 1 August 2011. These reforms are intended in part to address the amenity issues associated with premises with a liquor licence, and to send a message to the community that drunkenness and anti-social behaviour are not tolerated.

The penalty for revellers who fail to leave a venue when drunk, violent or quarrelsome has doubled from \$2,442 to more than \$5,900, while drunk and disorderly behaviour will now result in an increased fine of \$590 for a first offence, and more than \$1,100 for a second and subsequent offence.

Barring orders under the new laws also give licensees and police officers the power to bar patrons who are acting in an antisocial or threatening manner from entering or remaining in the venue for a set period of time.

It is now an offence to remain around a licensed venue when you have been refused entry or have been ejected. The ejected person will be breaking the law if they try to re-enter the venue within 24 hours.

Summary Conclusion

11. The IMAP Working Group made certain progression on this topic in 2008 - 2009 which was reported to the IMAP committee in November 2009. Since that time the 4 Councils have further developed their thinking having specific regard to the local issues and circumstances. The work has become dissipated from the IMAP Working Group due to particular work occurring in each municipality that suits their needs and issues.
12. The work undertaken out of the IMAP Action 6.3 was a good base for the Councils' further thinking and progression of the aspects which have been important to their local circumstances. The Interdepartmental Committee process in 2009 led by State Government and sponsored out of the Premier's office was a very useful approach by the State Government and that Committee via its consultants and officers involved liaised with the IMAP Working Group. It was understood that the consultants used considerable work from the IMAP group in its reference to the Interdepartmental Committee.

Recommendation

That the IMAP Implementation Committee resolve to:

- i. note the ongoing work being undertaken by the IMAP Councils and the Department of Justice to address conflicts in Activity Centres; and
- ii. note this final report on Action 6.3.