

Inner Melbourne Action Plan

Briefing Paper

Action 6.3 Managing Conflict in Activity Centres

Purpose

1. To advise the IMAP Implementation Committee of the progress of Action 6.3 – specifically implementation of the Inner City Entertainment Precinct (ICEP) Taskforce recommendations, 5 and 6.
 - Recommendation 5 - *‘develop planning tools to enable councils to effectively manage cumulative impact’*
 - Recommendation 6 – *‘review of definitions in planning scheme and liquor licensing regulatory frameworks’*
2. A Discussion Paper is presented which outlines a number of aspects regarding the two topics.

Background

3. The task of the working group has been to develop a consistent approach to the consideration of **cumulative impact** in planning permit applications for licensed premises and also articulate what the issues are regarding **definitions** and some possible solutions. This commenced consideration in early 2008.
4. The State Government in April 2008 amended Clause 52:27 of the Victorian Planning Provisions to introduce the required consideration of **‘cumulative impact’** when assessing planning permit applications that involved selling liquor.
5. A number of meetings have been held initially by the working group and then a sub group of the working group to advance the exploration of the topics in the terms of reference. Presentations were provided to the IMAP Implementation Committee in October 2008 and then February 2009. In March, the Committee determined to:
 - *endorse the proposed set of indicators*
 - *support the individual Councils in the operational implementation of the indicators and the Cumulative Impacts Assessment Tool*
 - *request the Action 6.3 Working Group report back to the Implementation Committee on the refinement and finalisation of the indicators and tool in May 2009.*
6. While working on these topics, three other key events have occurred:
 - The Victorian Alcohol Action Plan (VAAP) was introduced by the State Government in 2008, reaffirming the need to develop management strategies to minimise the negative impacts of alcohol-related activities.
 - The City of Yarra has won a very significant case at VCAT regarding the Corner Hotel in Swan Street, Richmond. This provides a *red dot* decision regarding the matter of **cumulative impact** and how to go about an assessment of this ‘decision guideline’ in the Planning Scheme. The key components of this decision are outlined in the Discussion Paper.
 - Further, the State Government has set up an Interdepartmental Committee (IDC) regarding a number of aspects regarding the liquor industry and how the planning and liquor system and enforcement need to be improved – this also includes the topic of how to assess

cumulative impact and also the matter of **definitions** as raised by the ICEPT report. Consultants for the IDC have met with members of the sub working group.

7. The IMAP sub working group has been continuing with its work and has sought to pull together a number of aspects in a Discussion Paper (attached) that enables the IMAP Implementation Committee to brief itself on the status of these various threads regarding planning and liquor licence matters. The document provides:
- background and context
 - outlines the work to date
 - provides the methodology supported by the IMAP Implementation Committee at its March 2009 meeting regarding cumulative impact, and
 - puts forward some analysis and some ideas regarding definitions.

In essence, the Discussion Paper is a synthesis of the sub committee work to date.

The next step in the process for the cumulative impact methodology is to thoroughly workshop it with the practicing statutory planners at the various Councils. Some discussions have occurred but more rigour now needs to be applied to road test the approach.

The analysis of definitions by the sub committee has not yet been discussed with the broader working group and this is still required. However, it gives a flavour of some of the issues and offers some suggestions and options as improvements to the statutory systems.

Discussion

8. IMAP's work has been acknowledged by the Department of Justice and Department of Planning and Community Development in relation to the Interdepartmental Committee recently created. IMAP will continue to collaborate with this Committee as per the Terms of Reference where the opportunity is presented.

Cumulative Impact assessment

9. As previously agreed in principle by the IMAP Implementation Committee in February 2009, a three part approach is seen as the preferred model. This includes:
- A Precinct Approach recognising that different precincts exist and that each contains opportunities, constraints and issues. This includes baseline data (key indicators) on the precinct to assist the Applicant in preparing the application and planners in assessing it.
 - A Pre-application Approach that would articulate the documentation and other material required to enable a thorough assessment of the proposal. This includes a Checklist for Applicants outlining the information to be provided.
 - A Cumulative Impact Assessment form that provides a tool to assist Council Statutory Planners and decision makers to reflect on the proposal against issues, constraints and opportunities.

The cumulative impact checklist will be refined by the sub committee having regard to the Corner Hotel decision and then provided to Statutory Planners for road testing.

Definitions

10. The sub working group provides some analysis for initial consideration by the IMAP Committee. These thoughts will shortly be provided to the broader working group for discussion, debate and then the formation of a working group opinion.

11. In summary, the concern with definitions is the confusion / disconnect between different terms used in the Planning Scheme compared to those used in the Liquor Licensing system. The proposition put in the initial analysis is that terms should ideally be consistent and based on the primary intent of the use with some regard to any secondary intent of the use. In this manner, the definitions may be more easily understood, more transparent and simpler for all (refer Discussion Paper)

Conclusion

12. The IMAP collaboration has been very useful to date and has also provided a unified way forward on the topic of cumulative impact and the safety of public places where a collection of licensed premises exist.
13. The **cumulative impact** approach can now be tested by practicing statutory planners. Some tidy up may be useful now that the Corner Hotel decision has been released. The sub working group will attend to this matter.
14. The **definitions** 'analysis / possible options to improve' now needs to be discussed at the broader working group – that will be arranged.
15. A further progress report can be made to the IMAP Implementation Committee later this year. This will also provide an opportunity for further updates on the progress of the Interdepartmental Committee (IDC) and any actions necessary from that report.

Recommendations

16. That the IMAP Implementation Committee resolves as follows:

Cumulative impacts

- 16.1 Reaffirm its support for the Cumulative Impact Assessment tools and approach outlined in the Attachments to the Discussion Paper
- 16.2 Continue to support the individual Councils to test and review the Cumulative Impacts Assessment Tools outlined
- 16.3 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.

Definitions

- 16.4 Note the initial analysis regarding the issue of 'definitions' and note the '*possible definitions*' brought forward for discussion.
- 16.5 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.
- 16.6 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.

Attachments:

Discussion Paper on Cumulative Impact & Definitions of Licensed Premises (8a)

Attachment 1 - Precinct Profile Template (8b)

Attachment 2 - Pre application Template (8c)

Attachment 3 - Cumulative Impact Assessment Template (8d)

Attachment 4 - Summary of the VCAT Corner Hotel decision (8e)

Attachment 5 - Liquor Licence Definitions (8f)

Attachment 6 - Extracts from the Department of Justice website (8g)

Attachment 7 - Planning Scheme Definitions (8h)

IMAP Working Group

Discussion Paper on Cumulative Impact and Definitions of Licensed Premises

August 2009

EXECUTIVE SUMMARY

This discussion paper provides background on the terms of reference for the working group asked to provide a way forward regarding Action 6.3 of the Inner Melbourne Action Plan.

The two main topics relate to **cumulative impact** assessment of proposals and also regarding **definitions** in the Planning Scheme and under the Liquor Control Reform Act.

Cumulative Impact

The discussion paper recommends an approach for assessing cumulative impact and provides three tools for advancing this. It is concluded that once a certain level of activity is in an area and / or as a result of the size and nature of a proposal, a cumulative impact assessment should occur.

These three tools relate to the following:

- a precinct strategic statement
- a Pre Application checklist
- a Cumulative Impact Assessment form

The three tools are shown in attachments 1, 2 and 3. They are draft templates that should now be vetted / verified by the statutory planners in the four municipal areas of the IMAP Councils.

It is recommended that the methodology put forward is now road tested by the statutory planning sections of the four IMAP Councils.

Definitions

Altering the planning scheme definitions and the liquor licensing framework is not a “cure-all” for the problems with licensed premises. However, clearly it would assist with clarity and also the interaction of the planning and the liquor licensing processes.

It would also assist laypeople in understanding the definitions and make it clearer to operators what is required of them in their businesses.

The sub-working group concludes that there is a mismatch between the definitions in the Planning Schemes and those in the Liquor Control Reform Act and that it would be preferable to have definitions based on similar principles.

In this context, some changes to the planning system and liquor licensing frameworks have been developed for further consideration. (These changes, however, need to be undertaken by the State Government.)

At present, the planning scheme definitions mention liquor, food and dancing. They do not provide a hierarchy of primary, secondary and ancillary activities. It should be clear from the definition that the primary focus is either alcohol or food. Further, there should also be a distinction based on whether or not the secondary activity is food (if a

bar/nightclub/hotel) or in the case of restaurants, the secondary activity is consumption of alcohol. It should also be clear which uses typically do not have music/dancing.

The restaurant definition in particular needs attention. As long as restaurants can have alcohol, dancing and food as part of their definition, there will always be confusion about when a restaurant becomes a bar.

'Vertical drinking', as distinct from seated food and beverage, is a further consideration that should distinguish landuse due to potential impact on amenity and crowd control and hence activity in the street during and after closing times.

Further, the terms "on-premises" and "general" for liquor licences are largely irrelevant – the main difference being that a "general" licence enables liquor to be sold for consumption off site. In the past, it was generally clear that an "on-premises" was a restaurant and a "general" was a pub. But bars/taverns and nightclubs currently can have an "on-premises" licence if no alcohol is bought to take off the premises. Some nightclubs have also been given a "general" licence which allows them to sell alcohol to be consumed off the premises.

In this regard, the distinction should be made between the focus on food or alcohol/dancing. Liquor licenses should be called a "restaurant" licence or "bar" licence etc rather than "on-premises" and "general".

The suggested changes to planning and liquor licensing frameworks in this paper are a draft for consideration and will require further consultation with the four IMAP Councils and State Government Departments before being finalised.

In summary, it is recommended that:

- the four IMAP Councils road test the suggested Cumulative Impact approach and report back via the working group in mid October with refinements;

and
- the wider IMAP Working Group provide comments on the suggested changes to the licence and planning scheme definitions (as outlined in the summary of this document), refine them and report back to the Implementation Committee. .

1. PREAMBLE

The Inner Melbourne Action Plan (IMAP) is a collaborative project between the Cities of Melbourne, Yarra, Port Phillip and Stonnington to strengthen the liveability, attraction and prosperity of the inner Melbourne region. Adopted in December 2005, the Plan sets out 11 regional strategies and 57 actions.

Action 6.3 broadly relates to the **cumulative Impact** of licensed premises and **definitions** that relate to licensed premises under both the planning legislation and the licensing legislation.

This discussion paper provides some background, analysis and a way forward regarding action 6.3 in the IMAP Action Plan. Action 6.3 states:

“6.3 Managing conflicts in Activity Centres

Manage the night time economy and residential development to minimise conflicts between residential, entertainment and commercial uses in and around Activity Centres, by:

- *developing a common approach to managing mixed use and the night time economy*
- *implementing the findings of the Inner City Entertainment Precinct Taskforce (ICEPT)*
- *working with ICEPT to address the key issues, such as improved coordination between liquor licensing and planning objectives, policies and enforcement protocols*
- *introducing schedules into Business 1 zones to require a permit for all food and drink premises, including restaurants and cafes*
- *developing a new business zone and other tools to manage issues of local and regional roles in Activity Centres*
- *developing standards for noise protection in new dwellings”.*

2. BACKGROUND

Working Group

A working group was established to progress investigations and analysis regarding the matters contained in Action 6.3.

This comprised the following agencies:

- Staff from the four Councils
- Department of Justice (Consumer Affairs)
- Department of Planning and Community Development

A sub working group was established amongst the four Councils – this has met on numerous occasions and comprised a mix of strategic planners, social planners and some enforcement officers.

The sub working group reported works in progress to the IMAP Committee in October 2008 and also February 2009.

These presentations provided an overview of the methodology to consider cumulative impact in relation to planning applications for licensed premises. This included possible 'tools' to facilitate consideration and assessment of cumulative impacts by decision makers at the planning application stage.

The two principal matters to be addressed by the working group have been:

- assessment approach including tools for consideration of cumulative impact,
- whether there are issues with the definitions and correlation of the definitions under the Planning and Environment Act 1987 and the Liquor Control Act 1998.

Other significant inputs

Two other noteworthy matters relate to these matters.

The City of Yarra has had a planning appeal hearing at VCAT regarding the Corner Hotel in Swan Street, Richmond. This related to a Refusal of Permit regarding a proposal to substantially increase the patronage numbers. Council was concerned about the further cumulative impact this will have on the location due to the number of premises in the general area.

The decision was handed down in June and is a 'red dot' decision on the matter of cumulative impact – the determination sets some planning case law that will be able to be applied in other assessments in Victoria.

Secondly, due to the concern of the Government regarding public safety and liquor outlets the Office of the Premier and Cabinet has set up an Interdepartmental Committee.

The three main areas of work of the IDC includes:

1. Producing an appropriate tool or mechanism for local government to assess Cumulative Impacts (this work will be sourced out to a consultant and will take a scientific approach to Cumulative Impacts. It will also include consideration of the positive elements of cumulative impact, why some areas work well when you clump venues together. Outlet density will be considered as one component of Cumulative Impact).
2. Reviewing the Liquor Licensing framework and the Planning Permit Framework and reconcile the two where possible, exploring and defining the issues.
3. Addressing a recommendation in the Packaged Liquor Review which is to review the exemption of Packaged Liquor Outlets from requiring a planning permit.

It is noted that the Interdepartmental Committee is likely to report in late 2009 on the matters that relate to its Terms of Reference.

3. CUMULATIVE IMPACT ASSESSMENT - THE WORKING PARTY DELIBERATIONS

This discussion paper provides an overview of the work undertaken and pulls together commentary and conclusions on how cumulative impact can be best assessed by Local Government and VCAT on appeal.

The Working Group considered a number of aspects.

As outlined to the IMAP Committee in October 2008, the sub working group formed an early opinion that a cumulative impact assessment tool should adopt a performance based approach as distinct from an arithmetic formulae approach. This was to maintain a robust approach and would help to ensure that the assessment tool is not simply dismissed at VCAT.

As a consequence, particular thought was given to how a performance based approach could be set up and what type of indicators could be central to an assessment. It was also recognised by the working group, and reaffirmed by the IMAP Committee in October 2008, that some 'metrics' in the assessment would be both desirable and useful to ensure that the assessment was not based simply on a subjective judgment.

The work undertaken has sought to provide a balance by providing **key indicators** that:

1. are relevant to the assessment
2. are meaningful to the assessment
3. provide a means of assessing the various subcomponents of cumulative impact – so that collectively the indicators paint a 'picture'
4. are based on information that is reasonably available
5. are based on information that is reasonably easy to update.

The key indicators collectively will provide a significant part of the input for decision makers for a planning application that proposes a significant liquor licensing land use.

4. OVERVIEW OF THE RECOMMENDED APPROACH

The approach, reaffirmed by the IMAP Committee in October 2008, comprises the following three components:

- A Precinct approach – that is, an approach that recognises that different precincts exist and that each particular precinct contains opportunities, constraints and issues. In each Precinct, a **Precinct Profile** would be written which would articulate:
 - an introduction that contains overall commentary about the precinct
 - any issues, constraints and opportunities in the precinct
 - the overall Council strategic intent for the precinct – this would be a precinct strategic statement.

- A Pre Application checklist – this would identify the documentation and other material that is required by the local authority to enable a thorough assessment of the proposal
- A Cumulative Impact Assessment form – this would be a ‘tool’ to assist planners and decision makers to reflect on the proposal against the:
 - issues
 - constraints, and
 - opportunities

as expressed in the Precinct Strategic Statement

5. THREE THREADS OF THOUGHT

There have been three processes occurring relevant to the cumulative impact topic – these are:

1. IMAP Action 6.3 and the working group deliberations
2. VCAT appeal determination on the Corner Hotel in Swan Street, Richmond, and
3. The Interdepartmental Committee

The recent VCAT decision provides some case-based principles, following extensive examination of issues, that can be applied more generally. These principles are broadly consistent with the thoughts of the working group. Further, the Interdepartmental Committee approach also seems to be heading in a similar direction.

The consultants (two different firms) working for the Interdepartmental Committee have also interviewed some of the working group members as part of their deliberations.

The VCAT decision on cumulative impact

The VCAT determination provides commentary on its assessment and also expresses what the relevant criteria are for an assessment on cumulative impact.

In summary, it highlights the elements that should be considered in determining the cumulative impact of a proposal, where a proposal is beyond a certain threshold. That is, that a cumulative impact assessment is required once a certain ‘trigger’ point is activated.

The Tribunal stated:

- 1 *“In our view, we consider an assessment of cumulative impact of licensed premises on the amenity of the area should address and / or have regard to the following issues, the outcomes of which will differ from case to case:*

1. What is the relevant area?

- (a) *What is the specific precinct or area within which the licensed premises is located? Is the area a dedicated entertainment precinct?*
- (b) *What is the extent of the nearby or surrounding area within which the amenity impacts should be considered, have regard to the pattern of settlement and development (existing and proposed) and the extent of any sensitive uses?*

2. What is the density of licensed premises within the area?

- (a) Are there more than 22 licensed premises per 10,000 head of population?*
 - (b) Are there more than 10 licensed premises within 500 metres?*
- (Note: There may be other possible benchmarks for considering density. Note also that density is not in itself a determinant of 'saturation'.)*

3. What is the mix and type of existing licensed premises in the relevant area?

- (a) Does the Council or responsible authority already have particular benchmarks or data for licensed premises in the relevant area?*
- (b) What are the trading hours for existing licensed premises? What proportion are late-night venues? Do the closing hours coincide, or is there a spread of closing hours?*
- (c) What is the size of existing licensed premises?*
- (d) What are the patron numbers for individual premises, and overall within the relevant area?*
- (e) Is the area characterised by larger venues, or a large number of smaller venues?*
- (f) Is queuing outside the licensed premises common? Is it common for venues to be full or crowded?*
- (g) Does the licensed premises, or the area generally, cater to a specific clientele or demographic? Do the licensed premises, or the area generally, serve a predominantly local population, or is it a regional attraction?*
- (h) What is the ratio of seating to standing? Are the premises predominantly for 'vertical' drinking, or are other services/activities available?*
- (i) Does the licensed premises offer drink promotions?*
- (j) Is entertainment offered? What type of entertainment – live bands, amplified, rock, jazz, dancing etc? What time does it start/finish?*
- (k) Are meals served or is food available? What time does it start finish?*
- (l) What form of transportation is available? For public transport, what time does it finish? For taxis, is there a dedicated taxi rank?*

(Note: There may be other possible benchmarks for considering the mix and type of premises relevant to a particular area.)

4. What is the existing level of amenity in the relevant area?

- (a) What is the zoning of the relevant area? What uses are encouraged or discouraged? Are there any relevant overlays or other planning scheme provisions?*
- (b) Are there sensitive uses (e.g. residential) within or adjacent to the relevant area? What is the level or density of these sensitive uses? Are they encouraged or discouraged uses in the relevant area?*
- (c) Are there any special attributes of the area that are relevant (e.g. in or nearby to a tourist precinct, proximate to major sporting venues etc).*

- (d) *Having regard to the above, what is the reasonable expectation for amenity in the relevant area given existing and proposed patterns of zoning, development and use?*
- (e) *What are the patron movement and dispersal patterns relevant to the sensitive uses nearby?*
- (f) *What form of transportation is available? Does access to transport require patrons from licensed to move into or through adjacent areas?*
- (g) *Are complaints already being generated about the amenity impacts of licensed premises? What is the nature and extent of these?*
- (h) *Is there cogent evidence of particular issues of concern – e.g. anti-social behaviour, noise, property damage etc?*
- (i) *Is there cogent evidence that these concerns arise from any specific licensed premises, or occur at times attributable to patrons departing or moving between licensed premises (i.e. relevant to trading hours) or arise from overall numbers of people being in the area (i.e. relevant to patron numbers?)*
- (j) *What are the local crime statistics related to licensed premises?*
- (k) *What enforcement resources are available?*
- (l) *What other public safety initiatives (if any) exist?*
- (m) *What other options exist to address/improve local amenity? Are these being used effectively?*

(Note: There may be other possible benchmarks for considering the existing level of amenity relevant to a particular area.)

5. If any of the three 'primary' considerations of density of licensed premises, mix and type of licensed premises and/or existing amenity levels, is triggered as being of concern in the relevant area, the proposed new or amended licensed premises should then be assessed against the existing 'status quo' situation to determine whether the impacts of the proposal are acceptable, or whether the proposal will adversely impact on the existing situation to an unacceptable level. This will necessarily be an objectively based and qualitative exercise, involving the balancing of relevant factors. Without limiting these factors, the factors will commonly include the following:

- (a) *Has the relevant area reached a saturation level (or near saturation level) for a particular type of licensed premises, having regard to the mix and type of premises, the existing level of amenity, and known existing impacts?*
- (b) *Is the proposal adding to existing licensed premises, or introducing new licensed premises?*
- (c) *How will the proposed or amended licensed premises fit within the existing mix and type of licensed premises, and the existing level of amenity?*
- (d) *What are the likely impacts of the proposal, having regard to the mix and type of premises, the existing level of amenity, and known existing*

impacts? Specifically, what are the impacts of trading hours? What are the impacts of any additional patron numbers?

- (e) Will the proposal add to the existing mix and type of licensed premises in a manner more likely to improve or worsen the existing level of amenity?*
- (f) Will the proposal add something new or different to diversify the offer in licensed premises in the relevant area? (e.g. depending on the area and circumstances, a small seated licensed restaurant may have very different impacts to a large 'vertical drinking' bar)*
- (g) Does the proposal offer any benefits in amenity terms, to counter-balance against any adverse impacts?*

As is evident from this assessment methodology, the three key considerations are the density of licensed premises in an area, the mix and type of licensed premises, and existing amenity levels.

The level of detail of the assessment of cumulative impact on amenity should be proportionate to the level of concern raised by these considerations. For many applications, an initial review of these three considerations will lead to a straightforward outcome that cumulative impact is not of significant concern for that application.

There will however be other cases where the location of the licensed premises, by reference to these three considerations, clearly triggers the need for a more detailed assessment. The density, mix and type of licensed premises in the Swan Street precinct, combined with poor existing amenity levels in the immediately surrounding area, means that this is a case deserving of a detailed assessment of cumulative impact."

Further, it is noted that the Tribunal is critical of government in that

"It appears that the government has introduced express decision guidelines via clause 52.27, requiring a consideration of the impacts of licensed premises, hours of operation and patron numbers on the amenity of the surrounding area, but has failed to provide the recommended benchmarks governing how these guidelines should be applied in practice. Victoria's Alcohol Action Plan 2008-2013 states that the ICEPT recommendations "will continue to be implemented"¹. That in our view is a priority task if planning decision makers (including this Tribunal) are to be expected to properly apply the decision guidelines consistently and to their intended effect, and if there is also to be a reasonable level of certainty for the operators of licensed premises and the community".

Clearly, the Tribunal see an initial threshold as being related to the degree of:

1. *what is in the area now (how many licensed premises exist now)*
2. *the density of licensed premises in an area,*
3. *the mix and type of licensed premises, and*
4. *existing amenity levels.*

These fundamentals provide a basis for what the threshold is when a cumulative impact assessment is required.

This broadly aligns with the logic of the IMAP working group. The IMAP approach, however, also compares the existing conditions and the anticipated conditions against a prepared strategic statement for the precinct.

It could be said that the Tribunal is urging:

- an outline of the precinct and any issues / desired outcomes
- relevant information by data and statistics of the precinct, and
- assessors to use the questions posed as prompts to decision making

This is very similar to the methodology adopted by the IMAP working group.

The work of the Interdepartmental Committee on cumulative impact

The work of the Interdepartmental Committee is proceeding. This brings a cross government perspective to the issue and should ensure a comprehensive action plan approach regarding liquor licensing, planning, enforcement and policing aspects.

The Committee will report in the last quarter of 2009.

Consultants are working on the cumulative impact approach and have met with members of the IMAP working party.

It is interesting that there is a similarity of thinking by the consultants with the IMAP working group. (This is from independent processes).

The similarities are:

- a performance based approach is required
- key indicators are necessary to use to assist in judging the application
- indicators requires harm statistics, and
- the use of a threshold question on when a cumulative impact assessment is necessary and when it is not.

It is understood that the consultants are reporting to the Interdepartmental Committee in August.

Sub Working Group conclusion on methodology

By reviewing the work of the IMAP working group and the independent consultants and the VCAT decision, the following can be summarised:

1. A simple prescriptive approach or formulaic approach (eg not more than X premises within a 100 m radius) is not appropriate as the sole determinant.
2. A performance based approach (primarily) is the way forward – this needs to be broad based to cover various aspects of the topic.
3. It is useful to look at the topic from an observers / residents / businesses point of view – what do they currently experience and will the proposal adversely impact the area?

4. Some 'metrics' are useful and important to 'get a handle' on some base attributes (such as liquor outlet density in the area, Police and or ambulance statistics ideally and also complaint data / information).
5. A threshold point occurs where some proposals, due to their nature or limited scale, do not need to be assessed in relation to cumulative impact.
6. Beyond the threshold point, a cumulative impact assessment is needed.
7. It is useful to have a desired state (a precinct strategic statement) expressed by the planning authority for the shopping centre or precinct – this then provides a basis on which to compare the existing and anticipated situation in the judgement (a reference point) as to whether or not the proposal should be approved (or what conditions are appropriate).
8. The approach should not be too sophisticated as to render it too difficult to use or too difficult to keep relevant statistics – statistics used must be reasonably readily available and updateable.
9. It is useful to continue to seek to have an agreed approach amongst the four inner City Councils.
10. The assessment tool can be a combination of statistics and prompt questions for the assessor / decision maker to tease out the issues and to isolate the key determinants for a decision or conditions of approval.

The recommended approach to the cumulative impact assessment is a three part process:

- precinct strategic statements for various precincts
- a Pre Application checklist for applicants
- a Cumulative Impact Assessment form for assessors of applications

The three 'tools' are outlined in Attachments 1, 2 and 3.

6. DEFINITIONS

The IMAP Action 6.3 also refers to the matter of definitions.

Recommendation 6 of the Inner City Entertainment Precinct Report (ICEP) (dated February 2006) was to "*Review definitions in planning scheme and liquor licensing regulatory framework.*"

More specifically it recommended that "*Uniform and consistent definitions should be developed and applied to licensed premises under - the VPP's and the Liquor Control Reform Act 1998 to ensure consistency.*"

(NB - The Planning and Environment Act 1987 enables Councils to issue permits for land use, development (buildings and works) and subdivision. Land uses are defined in the Victorian Planning Provisions - VPP's. Liquor Licences are defined in the Liquor Control Reform Act. Any changes to definitions will require changes to these regulatory frameworks.)

The ICEP report offers little concrete explanation about what the specific problems are – it simply stated:

The Taskforce identified some a number of opportunities for achieving improved coordination and consistency, which in turn could result in further minimising associated safety and amenity impacts. These opportunities include a need for a review of definitions in planning scheme and liquor licensing regulatory frameworks.

Definitions of the same type of activity incorporated in planning legislation and Victoria's liquor laws are inconsistent which in some cases, results in aspects of the licensed premises not being addressed. Planning schemes, for example, define licensed premises, that is, restaurant, tavern or nightclub. In contrast, the Liquor Control Reform Act 1998 identifies different types of licenses, that is, on-premises and general licenses."

7. THE PLANNING AND LIQUOR LICENCE PROCESSES

The role of a municipal Council

Local councils have a role in the approval and administration of liquor. A local council may:

- consider and issue planning permits for licensed premises
- stipulate trading hours
- object to licence applications on amenity grounds
- participate in local liquor licensing forums
- pass by-laws governing the consumption of liquor in public places, and
- initiate disciplinary proceedings against licensees who trade in breach of their licence conditions.

Issuing planning permits

There are various types of land use definitions for licensed premises in the planning scheme. They include:

Use	Definition in Planning Scheme
Hotel (Included in food and drink premises)	Land used to sell liquor for consumption on and off the premises. It may include accommodation, food for consumption on the premises, entertainment, dancing, amusement machines, and gambling.
Nightclub (Included in Place of assembly)	A building used to provide entertainment and dancing. It may include the provision of food and drink for consumption on the premises. It does not include the sale of packaged liquor, or gaming.
Restaurant (Included in Food and drink premises)	Land used to prepare and sell food and drink, for consumption on the premises. It may include: <ul style="list-style-type: none"> a) entertainment and dancing; and b) the supply of liquor other than in association with the serving of meals, provided that tables and chairs are set out for at least 75% of patrons present on the premises at any one time. It does not include the sale of packaged liquor.

Tavern (Included in Food and drink premises)	Land used to sell liquor for consumption on the premises. It may include accommodation, food for consumption on the premises, entertainment, dancing, amusement machines, and gambling.
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(NB – This paper focuses on premises where alcohol is served for consumption on-site. It does not address the sale of packaged liquor.)

If a planning permit is required, the planning permit must be obtained before a liquor licence can be issued.

A planning permit may be triggered by the zone and Clause 52.27 – Licensed Premises.

In the Capital City Zone, Business 1 Zone and the Mixed Use Zones, taverns, nightclubs and hotels require a planning permit for the land use. A restaurant does not require a planning permit for the land use. (In the Docklands Zone, the permit trigger varies with the precinct.)

The Business 1 Zone contains an ability to require a permit for restaurant in its Schedule, (however in Metropolitan Melbourne, only Bayside in the Beaumaris Activity Centre has utilised this option).

A permit is also triggered by Clause 52.27 – Licensed premises. A permit is required to use land or sell or consume liquor. This means that even though a restaurant does not need a permit to set up, it will need a planning permit if it is to be licensed. Clause 52.27 does not apply in the Capital City Zone and Docklands Zone. (This means that restaurants do not require a planning permit in the Capital City and Docklands Zone.)

Clause 52.27 requires the consideration of the amenity impacts of licensed premises on the surrounding area. The consideration of cumulative impacts was added in 2008.

To provide further guidance in assessing a planning application for a licensed premise, Yarra and Stonnington also have specific planning policies. The City of Melbourne has a policy that has been exhibited and forwarded to a planning panel. The policies generally spell out trading hours and application requirements such as noise and amenity plans.

To address the amenity impacts of a licensed premise, the planning permit will often impose conditions on:

- patron numbers
- hours of operation
- noise
- queues
- smoking and outdoor areas
- collection of waste and bottle crushing.

Liquor licensing

The sale and supply of alcohol is regulated through the *Liquor Control Reform Act 1998* (the Act). The Act aims to:

- contribute to minimising the harm arising from the misuse and abuse of alcohol by

- providing adequate controls over the supply and consumption of liquor, and
 - ensuring as far as practicable that the supply of liquor contributes to, rather than detracting from the amenity of community life
- facilitate the development of a diversity of licensed facilities reflecting community expectations
 - contribute to the responsible development of the liquor and licensed hospitality industries.

Types of liquor licences

Type of licence	Business intention	For these types of businesses or events
On premises licence	Supply liquor to customers for drinking on the premises.	Restaurants, bars and cafes.
Packaged liquor	Supply liquor to customers to take away.	Retail liquor stores and supermarkets.
General licence	Supply liquor to customers: <ul style="list-style-type: none"> ▪ for drinking on the premises, and ▪ to take away. 	Pubs, hotels and taverns.
Full club licence	Supply liquor to members, guests and gaming visitors for drinking on the premises, and members to take away.	

NB – The Act provides for seven types of licences including limited and temporary licences.

The conditions on a liquor licence vary depending on type of premise and, in some cases, can seem minimal when compared to the detailed planning permit conditions:

- All liquor licences have conditions to ensure that the operation of the business does not cause undue detriment to the amenity of the area.
- On-premises (restaurant) licences are subject to special conditions. The predominant activity must be the preparation and serving of meals for consumption on the premises. Tables and chairs must also be provided for at least 75% of the patrons attending the premises at any one time. The licensee must not permit live or recorded music at higher than background level to be played at any time outside ordinary trading hours, except for pre-booked functions.
- Specific conditions are applied to venues operating after 1am and providing live bands/DJ's utilising amplified music (as they are considered to have a higher potential for amenity impacts and anti-social behaviour). Conditions include:
 - video surveillance of main entrances, bars and dance areas,
 - specified numbers of crowd controllers/ security staff, and
 - specification of the maximum number of customers permitted on the premises.

NB. No new applications for bar, pub and nightclub licences to operate after 1am in Melbourne (including Docklands), Port Phillip, Stonnington and Yarra will be granted by the Director of Liquor Licensing under the current moratorium.

It is important to note that the Director of Liquor Licensing will not grant or vary a licence until satisfied that adequate planning permission has been obtained. Liquor trading hours approved on a liquor licence will not exceed trading hours specified in the relevant planning permission.

Potential changes to liquor licensing

The State Government's alcohol action plan "*Restoring the Balance — Victoria's Alcohol Action Plan 2008-2013*" (the VAAP). The VAAP refers to various issues relevant to liquor licensing, the administration of the Act and the Government's alcohol policy framework. The VAAP identified that the State Government would review the Victorian planning and liquor licensing regulatory frameworks.

As part of this review, the Victorian Government introduced new legislation to Parliament on 12 August 2009 which includes proposed changes to the current liquor licence categories.

Three new licence categories will be created:

- a new late night licence category for licences that authorise the supply of liquor after 1am
- a new restaurant and cafe licence category for businesses whose predominant activity at all times is the preparation and serving of meals for consumption on the premises
- a new major events licence category for large events that attract a high number of patrons and have greater potential safety risk and amenity impacts.

The State Government has also released a proposal to review the fees for licensed premises. They propose a risk based fee structure, taking hours of operation, compliance and patrons numbers into account. The State Government is requesting feedback on these proposals and other changes to the legislation.

8. PROBLEMS WITH THE PLANNING DEFINITIONS AND LICENSING FRAMEWORK

The following gives an overview of the current problems seen by planners in the IMAP Councils.

Problems with the planning definitions

- Planning definitions overlap and there is little difference between a tavern, hotel and nightclub. All of the planning scheme definitions mention liquor, food and dancing and do not clearly identify the predominant activity (ie food or alcohol).
- Some of the terminology is out of date. (eg use of the term tavern instead of a bar.)
- Planning definitions allow a wide range of sizes of venues under the same definition. (eg a tavern can range from a small bar in a lane to a large premise accommodating 500 patrons.)
- The definitions do not address where a venue with a mix of uses (eg the venue is a restaurant and bar or restaurant and nightclub).
- The restaurant definition allows a premise to act as a bar so long as the kitchen is open and there is 75% seating.

Problems with the planning process

- Licensed premises with existing use rights can, in some cases, create more problems than newly established uses. Newly established venues often have detailed conditions whereas a hotel or other venue with existing use rights may not have a planning permit or may have very broad conditions that are difficult to enforce.
- There can be difficulties in getting input from key bodies eg Consumer Affairs – Liquor Licensing and Police at planning permit phase. These parties are not referral authorities. It should be noted that more recently greater levels of co-operation are occurring eg the Police gave advice at the Corner Hotel case. The City of Melbourne also conducts regular meetings with CAV-LL and Victoria Police where planning applications are discussed. Councils also liaise regularly with local police and licensing enforcement in terms of licencees accords and public safety.
- In the past, the consideration of public safety and anti-social behaviour has been limited in planning decisions (especially by VCAT) as they were not considered planning issues. However the recent decision on the Corner Hotel has elevated this consideration.
- Conditions on a planning permit cover a broad range of issues and overlap with many issues addressed by the liquor licence eg crowd controllers, hours of operation.
- Clause 52.27 which triggers a planning permit for a licensed premise is unclear. The clause triggers a permit where trading hours are changed but is less clear where an increase in floor area or patron numbers is proposed. Similarly the clause is not clear that it applies when a liquor licence is being amended. While these issues have been addressed in case law, the application of the clause could be made clearer.

Problems with the liquor licensing framework or types of licences

- The difference between a general licence and on-premises licence is minimal. The main difference being the ability to take liquor away. The two licence types appear to be used almost interchangeably.
- Liquor licences do not identify the use ie whether the premise is a restaurant or bar. This makes monitoring the types of licenses more difficult.
- Many of conditions for the licence are contained in the Liquor Control Reform Act and are not included on the liquor licence.

Problems with the interaction of planning and licensing

- The definitions used in planning do directly link to specific liquor licences (Eg there is no specific restaurant licence.)
- Activities on the street such as people noise and anti-social behaviour are difficult to address through either the planning or liquor licence processes.
- The two step process of planning and then liquor licensing can be confusing to the applicant and means many of the same issues are being considered twice. Eg amenity is considered by both the planning permit and liquor licensing process.

9. OPTIONS

Five different options regarding definitions have been developed. These options are not mutually exclusive. They include:

- Do nothing
- Change the planning definitions
- Change other planning mechanisms
- Change the liquor licensing framework
- Change other mechanisms

Explanation of options

Do nothing

- No change to the planning definitions. (Address the issues through planning policy and permit conditions)
- Wait for the State Government Interdepartmental Committee to release its recommendations and then comment.

Change the planning definitions

- Tighten up the current definitions. Rewrite to provide a hierarchy of primary, secondary and ancillary activities and make it clear that the focus is either alcohol or food and that the secondary activity is food (if a bar/nightclub/hotel) or in the case of restaurants, the secondary activity is consumption of alcohol.
- Make the planning definitions more specific. (One approach could be to include a definition of a small bar – “a premise for the consumption of alcohol for 120 or less patrons”. The figure of 120 patrons has been used in Sydney and Western Australia.)
- Make the planning definitions more general. Combine bars and restaurants into one definition to recognise the blurring of the lines between these uses. (Eg “*Food and beverage premises - means places where people can buy prepared and cooked food and drink either to take away or to consume on the premises.*”)
- Link the planning definitions to the liquor licence definitions. (To be effective this option would require the liquor licence types to be use related eg a restaurant licence or a bar licence as in other States.)
- Tighten up the definition of a restaurant to prevent it changing to a bar. (Eg link the serving of alcohol to receiving a meal.)
- Change the term tavern to bar.

Change other planning mechanisms

- Make Victoria Police and Consumer Affairs – Liquor Licensing, referral authorities. They would then provide conditions as Melbourne Water or VicRoads do. (NB – Consumer Affairs currently does not support this option and wishes to maintain a separate process.)
- Clarify the provisions of Clause 52.27 – Licensed premises, including:
 - Make an “increase in patrons” a permit trigger.

- Make it clearer that the clause applies to amended licences as well as new licences including changes to patron numbers, licensed floor area (eg deck or rooftop garden).
- Amend the clause to remove the exemption (from the requirement to obtain a planning permit) for a packaged liquor licence.
- Schedule could exempt specific uses from needing a permit (eg restaurants) rather than types of liquor licences
- Alter the Schedule to Business 1 Zone
 - As well as the ability to require a permit for a restaurant, the Schedule could allow Councils to require a permit for premises operating after a specific time eg 11pm.
- Require new dwellings in a Business or Mixed Use Zone to include acoustic attenuation. (NB – This should to be accompanied by a change to the Building Act to capture new dwellings which do not require a planning permit.)
- Require a Community Impact Statement with planning applications for licensed premises of a specific size.

Change the liquor licensing framework

- Change the system to a “one-stop shop” permit process ie a permit that considers both planning and liquor licensing issues.
- Include a use in the liquor licence eg bar, restaurant. (This has been partially addressed in the proposed changes to liquor licence categories.)
- Include the conditions (eg restaurant conditions) in the liquor licence. Currently these conditions are in the Liquor Control Reform Act.
- Require a more rigorous assessment of licence renewals – it should not be an automatic process. The venue and licensee’s compliance and enforcement record should be taken into account.
- Require a Community Impact Statement for specific types of premises (eg based on risk).
- Require a specific permit for venues that wish to take up late night trading hours. This may be addressed in the proposed changes to liquor licence categories.)

Change other mechanisms

- Change the Building Act to require acoustic attenuation in dwellings in specific zones. (see above).

10. CONCLUSIONS

Cumulative Impact

Once a certain level of activity is in an area and or a proposal is of a given size and nature, a cumulative impact assessment should be undertaken.

The working group recommend three tools to assist the inner city Councils – these are:

- Precinct strategic statement
- Pre Application checklist
- Cumulative Impact Assessment form

The three tools are shown in Attachments 1, 2 and 3. They are draft templates that should now be vetted / verified by practicing statutory planners in the four municipal areas of the IMAP Councils.

Definitions

Altering the planning scheme definitions and the liquor licensing framework is not a “cure-all” for the problems with licensed premises. However, clearly it would improve clarity and also the interaction of the planning and the liquor licensing processes.

It would also assist laypeople to understand the definitions and clarify the requirements for business operators.

In this context, some changes to the planning system and liquor licensing frameworks have been developed for further consideration. (These changes, however need to be undertaken by the State Government.)

It is proposed that suggestions below are reviewed by the four IMAP Councils and relevant State Government Departments before a position is finalised.

Planning scheme definitions

All of the planning scheme definitions mention liquor, food and dancing. They do not provide a hierarchy of primary, secondary and ancillary activities. It should be clear from the definition that the focus is either alcohol or food and that the secondary activity is food (if a bar/nightclub/hotel) or in the case of restaurants, the secondary activity is consumption of alcohol. It should be clear that which uses typically do not have music/dancing.

The restaurant definition in particular needs attention. As long as restaurants can have alcohol, dancing and food as part of their definition, there will always be confusion about when a restaurant becomes a bar.

The matrix and conditions below could be converted into planning scheme definitions.

Elements of the definition	Restaurant	Hotel	Bar	Nightclub
Predominant Activity	Food *	Alcohol	Alcohol	Alcohol
Minor ancillary use	Alcohol	Food	Food	Food
Live or Amplified Music	Yes **	Yes	Yes**	Yes
Dancing as part of dominant activity	No	No	No	Yes
Sale of packaged liquor	No	Yes	No	No
Sexually explicit adult entertainment	No	No	No	No

* Meals to be available at all times during trading hours. Tables and chairs must be provided and set out at all times for at least 75% of the patrons attending the premises.

- ** All music is to be kept to background music levels ie played at a level that enables patrons to conduct a conversation at a distance of 600 millimetres without having to raise their voice to a substantial degree.

Clause 52.27 – Licensed Premises

Further, the Victoria Planning Provisions should be modified to:

- make an increase in patrons a planning permit trigger
- make the clause clearer that it applies to amended licences as well as new licences eg patron numbers, licensed floor area (eg deck or rooftop garden)
- schedule could exempt specific uses from needing a permit (eg restaurants) rather than types of liquor licences
- amend the clause to remove the exemption (from the requirement to obtain a planning permit) for a packaged liquor licence.

Planning policy

- Require a Community Impact Statement with planning applications of a specific size.

Liquor licence types

The terms “on-premises” and “general” for liquor licences are largely irrelevant – the main difference being that a “general” licence enables liquor to be sold for consumption off site. In the past, it was generally clear that an “on-premises” was a restaurant and a “general” was a pub. But bars/taverns and nightclubs can have an “on-premises” licence if no alcohol is bought to take off the premises. Some nightclubs have also been given a “general” licence which allows them to sell alcohol to be consumed off the premises.

The distinction should be made between the focus on food or alcohol/dancing. Liquor licenses should be called “restaurant” licence or “bar” licence etc rather than “on-premises” and “general”.

As highlighted above, the Victorian Government is proposing to change the current liquor licence categories. There has not been opportunity for these new proposals to be thoroughly reviewed, however in principle, the addition of the new restaurant and café licence is welcomed.

However, further refinements could be made. It is suggested that licences where the supply and consumption of alcohol is the predominant activity could be broken down further to link with the proposed planning definitions.

Suggested Licence type	Current licence type	Description
Restaurant	On-premises	Applies to a restaurant or café.
Bar	On-premises General	Applies to a bar.
Nightclub	On-premises General	Applies to a nightclub.
Hotel	General	Applies to a hotel. Would have specific conditions to operate gaming machines.

On-premises	On-premises	Allows alcohol to be sold with, or ancillary to, another product or service that is sold, supplied or provided to people on the premises (eg hairdressers, bed and breakfasts.)
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Other liquor licensing matters

- Include the conditions (eg restaurant conditions) in the liquor licence. Currently these conditions are in the Act.
- Require a more rigorous assessment of licence renewals – it should not be an automatic process. The venue and licensee's compliance and enforcement record should be taken into account. (NB – As highlighted above the State Government is proposing a risk based fee structure, taking hours of operation, compliance and patrons numbers into account. It is not clear whether a more rigorous assessment of the renewal will take place.)
- Require a Community Impact Statement for specific types of premises (eg base on risk)
- Request clarity from the State Government whether the moratorium on the approval of new liquor licences after 1am will continue after November 2009.
- Consider an interim control in the Planning Scheme to prevent the issue of a planning permit for new licensed premises seeking to trade after 1am to align the planning scheme with the 1am licence moratorium. At present, Councils have little basis to refuse these permits except where there are cumulative impacts.

Precinct Profile:

John Street Activity Centre

Precinct description:

John Street Activity Centre is a vibrant area with a mix of commercial and residential premises. Residential properties abut at the rear of the activity centre. The Centre has a substantial number of late night liquor outlets and a significant number of premises with large patronage. Disturbance to residential properties has become more pronounced in recent times. The perception of safety has become a concern for the community.

Precinct Strategic Statement:

Council seeks to address the balance of commercial premises so that the day time activity is vibrant and that late night activity better blends with the many residential properties in close proximity.

Written description or map:

- Type of licensed premises
- Hours of operation
- Patron numbers and access / egress
- Venue Size
- Visitor numbers
- Type and use of public spaces are in close proximity to the site.

Precinct Indicators:

- Live music / noise
- Street litter
- Waste collection
- Vandalism / graffiti
- Police / local laws attendance
- Ambulance attendances
- Alcohol-related crime data
- Property damage
- Municipal health

Economic 'health' of precinct :

- Commercial occupancy numbers
- Employment
- Tourism industry contribution
- Community cost indicators



Licence Type

- Licence Listing General
- Licence Listing On premises
- Licence Listing Renewable

Economic 'health' of precinct :

- Commercial occupancy numbers
- Employment
- Tourism industry contribution
- Community cost indicators

Precinct Complaint history:

- Noise from premises
- Public realm behaviour
- Source of complaints
- Congregation of people in streets
- Nature of issues

Precinct Transport and Parking:

- Car parking
- Traffic flows
- Public transport options
- Pedestrian movements
- Taxi options

Supporting documents

Inner Melbourne Action Plan (IMAP) –
 Action 6.3 Managing Conflict in Activity
 Centres
 Council Plan
 Municipal Strategic Statement
 Local Planning Policy
 Framework

**Closing Hours**

5pm	1am
6pm	1.30am
7pm	2am
10pm	2.3am
10.3pm	3am
11pm	3.3am
12pm	4am
24hrs	5am
U	7am

Pre-Application Checklist: Liquor Licensee's Cumulative Impact

The Local Precinct provides economic and cultural benefits to the community. Liquor License premises can cause some issues such as amenity, crime, anti-social behaviour, which lead to poor perceptions of safety. This Applicant Checklist is designed for applicants to 'self assess' the possible impact of their proposal and what mitigating measures they need to undertake to manage the alcohol environment and minimise conflict around uses.

Provided below is a checklist of the information that must be submitted with an application. A Precinct Profile is attached to assist with the assessment.

Also accompanying this form is a Liquor Accord Introduction Kit. If you would like to join the Liquor Accord, please contact Council on _____

<i>Required Documentation</i>	<i>Provided?</i>
1. Safe Venue Management Plan (<i>inside and outside the premises</i>) including:	<input type="checkbox"/>
Proposed Floor Plan	<input type="checkbox"/>
Operating hours	<input type="checkbox"/>
Kitchen operating hours	<input type="checkbox"/>
Staff numbers and positions (e.g. Security, Responsible Serving of Alcohol officer)	<input type="checkbox"/>
Patron numbers	<input type="checkbox"/>
Patron behaviour management protocols (inside and outside premises)	<input type="checkbox"/>
Entry and pass out policy	<input type="checkbox"/>
Harm minimisation strategies (e.g. transport information inside the premises, promotion of responsible consumption of alcohol)	<input type="checkbox"/>
Footpath use (e.g. patron queuing arrangements, tables and chairs)	<input type="checkbox"/>
Smoking arrangements	<input type="checkbox"/>
Security arrangements (e.g. CCTV, staff visibility through the venue, lighting in the toilets, lighting outside the venue)	<input type="checkbox"/>
Emergency management/ evacuation arrangements	<input type="checkbox"/>
Noise management/ Acoustic Treatments	<input type="checkbox"/>
Complaint response procedure	<input type="checkbox"/>
Waste collection plan	<input type="checkbox"/>
Street litter, vandalism and graffiti reduction strategy	<input type="checkbox"/>

2. Economic Analysis <i>including</i>:	<input type="checkbox"/>
Contribution to area (including estimated wholesale of alcohol data)	<input type="checkbox"/>
3. Transport Management Plan <i>including</i>:	<input type="checkbox"/>
Car parking	<input type="checkbox"/>
Traffic flows	<input type="checkbox"/>
Pedestrian movement	<input type="checkbox"/>
Transport options (e.g. location of public transport and taxi ranks)	<input type="checkbox"/>

Cumulative Impact Assessment: Impacts on amenity checklist

This Cumulative Impact Assessment checklist is designed to assist decision-makers in ensuring licensed premises are situated in appropriate locations and that detrimental impact of licensed premises on the amenity of the area is minimised.

Decision-makers to review individual *Applicant Checklist* against *Precinct Profile* and identified indicators.

<i>Review Questions</i>	<i>Response</i>
How does the proposal 'fit' with the precinct strategic statement/ intent for the precinct? Will it be consistent with this intention? Will the proposal add to any issues in this locality? If so, what in what way?	
Does the application comply with the local planning scheme and land zoning?	
How does the proposal fit with State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies?	
How would the sale or consumption of liquor permitted by the liquor licence impact on the amenity of the surrounding area?	
How would the hours of operation impact on the amenity of the surrounding area?	
How would the number of patrons impact on the amenity of surrounding area?	
What would be the cumulative impact of any existing and the proposed liquor licence, the hours of operation and number of patrons, impact on the amenity of the area?	
Would the proposal create a 'cluster' of licensed premises- if so, would the proposed operations detrimentally impact on the residential and commercial amenity of the area?	
Does the <i>Precinct Profile</i> identify existing undue disturbance or detriment to amenity within the precinct? How is this manifested and what actions are identified through the <i>Applicant Checklist</i> to minimise these issues?	

Does the applicant provide for security provisions, including number of security staff, whether they will monitor the local vicinity around the venue, length of time employed after venue closes, whether CCTV is in place, and mapping of emergency access routes?	
Would the venue have any sound-proofings or other noise minimisation features?	
What is the maximum capacity of the proposed venue? What is the closing time for the venue? How does this correspond to the operation of other premises within the precinct?	
What is the current situation regarding park at this locality? Is the precinct connected to any major areas of public transport access including safe taxi ranks?	
Does the application present any new issues (such as significant increased volume of patronage into the area, etc)?	
Is the proposal likely to cause harm, create undue disturbance or amenity issues?	
Comment	

Discussion Paper on Cumulative Impact and Definitions of Licensed Premises

Attachment 4 - Summary of the VCAT Corner Hotel Decision

RED DOT DECISION SUMMARY

The practice of VCAT is to designate cases of interest as 'Red Dot Decisions'. A summary is published and the reasons why the decision is of interest or significance are identified. The full text of the decision follows. This Red Dot Summary does not form part of the decision or reasons for decision.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**ADMINISTRATIVE DIVISION****PLANNING AND ENVIRONMENT LIST****VCAT REFERENCE NO. P1995/2008****PERMIT APPLICATION NO.
PL04/1136.01****IN THE MATTER OF**

Swancom Pty Ltd T/as Corner Hotel v Yarra City Council & Ors

BEFOREMark Dwyer, Deputy President
Elizabeth Bensz, Member

NATURE OF CASE	Assessment of cumulative impact of licensed premises on amenity of surrounding area
POTENTIAL GUIDELINE DECISION	Yes
REASONS WHY DECISION IS OF INTEREST OR SIGNIFICANCE	
PLANNING SCHEME – interpretation or consideration of VPP provision	Clause 52.27 (Licensed Premises) decision guidelines; application to extend hours and patron numbers at an existing hotel; consideration of impact on amenity of the surrounding area; consideration of cumulative impact of existing and proposed licensed premises, hours of operation and patron numbers on amenity of area.
POLICY – interpretation or application of policy	Consideration and application of existing and emerging state and local planning policy regime for considering external amenity impacts of licensed premises
PRACTICE OR PROCEDURE – consideration of individual instance or systemic issues; exposition of how to assess an issue or matters to consider	Outline of assessment methodology for considering cumulative impact of licensed premises. Consideration of limitations on use of site inspection to consider behavioural issues and external amenity impacts.
CHANGE TO LEGISLATION OR VPPs - whether change to VPPs or statutory provisions is required or desirable	If the decision guidelines in cl 52.27 are to be applied consistently, state and local government need to introduce benchmarks into planning schemes for the assessment of the impact of licensed premises on amenity, as recommended by the Inner City Entertainment Precinct Taskforce (2005) and Victoria's Alcohol Action Plan (2008)

Discussion Paper on Cumulative Impact and Definitions of Licensed Premises***Summary***

This application relates to the Corner Hotel in Swan Street, Richmond. Amongst other things, the application sought to amend an existing planning permit to extend trading hours in the beer garden from 11:30pm until 3am, and to increase patron numbers from 750 to 1300.

The application clearly triggers the still relatively new decision guidelines in cl 52.27 of all VPP-based planning schemes, introduced in 2008. These decision guidelines require a consideration, as appropriate, of the impact of the hours of operation or the number of patrons on the amenity of the surrounding area, and the cumulative impact of existing licences and the proposed licence on the amenity of the area. The Yarra Planning Scheme also contains a relevant local policy on licensed premises in cl 22.09.

The decision focuses in particular on the consideration of the 'cumulative impact' of licensed premises in an area or precinct, and outlines three key considerations – the density of licensed premises in an area, the mix and type of the licensed premises, and existing amenity levels. The level of detail of the assessment of cumulative impact on amenity should be proportionate to the level of concern raised by these considerations. The decision reviews background material and research, and proposes an assessment methodology to consider cumulative impact.

In this case, the Corner Hotel is located in the Swan Street precinct where there is a high density of licensed premises, predominantly late night bar/hotel venues. Extensive evidence from residents, business occupiers, the police and Council indicate that this is already causing significant adverse amenity impacts. It is also hampering attempts by the Council's planning objectives for a more diversified activity centre. Although the Corner Hotel is well-managed, it is an attractor of patrons to the precinct and a contributor to these existing problems. After considering the evidence, the decision concludes that the likely additional external amenity impacts in the surrounding residential area would be unacceptable, and that the application should be refused in its current form.

The decision also discusses a number of related issues, including the limited use of a site inspection to consider behavioural issues, the application of the Charter of Human Rights, the disconnect between liquor licensing and planning applications, and broader government policy for licensed premises.

The decision perhaps highlights that the operators of licensed premises in an area where amenity problems already exist can no longer rely on an internally focussed noise and amenity plan in support of a planning application for late trading hours and significant patron numbers. The purpose of CL 52.27 and the decision guidelines is now to focus on external amenity issues and cumulative impacts, and operators of licensed premises must also address these broader amenity impacts beyond their immediate control.

Discussion Paper on Cumulative Impact and Definitions of Licensed Premises

Attachment 5

Liquor Licence definitions

Current licence definitions (summary)

General licence

Permits the supply of alcohol to customers for drinking on the premises, and to take away. For example, pubs, hotels and taverns.

On-premises licence

Permits the supply of alcohol to customers for drinking on the premises in restaurants, bars, cafes and nightclubs. Sixty per cent of on-premises licences are attached to restaurants.

Full club licence

Permits the supply of alcohol to members, guests and gaming visitors for drinking on the premises, and for members to take away.

Restricted club licence

Permits the supply of alcohol to members and guests for drinking on club premises.

Packaged liquor licence

Permits the supply of alcohol to customers to take away from supermarkets and bottle shops.

Vignerons' licence

Permits the production of liquor from fruit grown on the premises, and then supply of the liquor from the premises for drinking or taking away; or elsewhere to other liquor licence holders. For example, winemakers who sell their wine at the cellar door or to retailers.

Pre-retail licence

Permits the supply of liquor to other liquor licensees to on-sell to their customers such as wholesalers, producers, brewers and liquor importers.

Limited licence

Temporary or short-term supply of alcohol to customers or club members for drinking on the premises
For individuals or organisations holding one-off events such as a ball or presentation night; a one-off event requiring an extension of trading hours such as ANZAC Day functions; or a series of events over a limited season, such as a theatre production or racing carnival.

Discussion Paper on Cumulative Impact and Definitions of Licensed Premises

Attachment 6

Extracts from the Department of Justice web site (Aug 08)

Risk-Based Fee Structure

On 2 May 2008, the Premier announced the five-year \$37.2 million 'Restoring the Balance' – Victoria's Alcohol Action Plan 2008 – 2013 (the VAAP). The VAAP details both specific, immediate actions to be undertaken and establishes a long-term framework for change to prevent and reduce harm associated with alcohol misuse in Victoria.

The VAAP includes a commitment to review liquor licence fees and types with consideration given to a differentiated, risk-based fee structure that also operates as a mechanism to ensure licensees associated with the most harm pay a commensurate fee.

Licence fees enable the State to recover, from liquor licensees, the costs incurred in regulating the liquor industry. This includes costs associated with administering the liquor licensing system and undertaking compliance and enforcement activities related to liquor licensing.

The proposed new fees include application fees and annual risk-based renewal fees. The risk-based fee model has been developed drawing on a report prepared by the Allen Consulting Group into alcohol-related harm and the operation of licensed premises. A copy of this report can be found in related publications on the right.

Compliance Directorate

A new liquor licensing Compliance Directorate will become operational mid-2009. At least 30 new compliance inspectors will inspect and monitor licensed premises to ensure licensees are complying with liquor laws and the conditions of their licence, with a particular focus on ensuring the responsible service of alcohol.

This work will allow police to concentrate on serious breaches of liquor licensing laws and other public safety issues in and around licensed venues

Banning Notices

Victoria Police have new powers to ban people from licensed premises and designated areas for up to 24 hours for offences including drunkenness, physical assault, destroying or damaging property and failure to leave licensed premises.

Police also have new powers to seek a court order to ban repeat offenders from designated entertainment precincts for up to 12 months.

Discussion Paper on Cumulative Impact and Definitions of Licensed Premises**Designated Areas**

The Director of Liquor Licensing can declare entertainment precincts where alcohol-related violence and anti-social behaviour have occurred to be “designated areas”. This gives police the power to issue 24-hour banning notices or seek a court order for a 12-month ban.

Licence Freeze

This page outlines the freeze on new post-1am liquor licences in the inner city.

A freeze on the issuing of new post 1am liquor licences in the City of Melbourne, Stonnington, Port Phillip and the City of Yarra has been extended by the State Government to the end of 2009. This freeze does not apply to licences with restaurant conditions, club and restricted club licences or applications lodged prior to 2 May 2008.

Patron Numbers

A review of how to set patron numbers in licensed venues is underway.

Policing

Increased police numbers, initiatives and powers are provided under the Liquor Control Reform Act 1998. An \$11 million funding boost for Victoria Police includes funding to fast-track the recruitment of 50 extra permanent police and support the Safer Streets Taskforce, established to crack down on alcohol-related violence in Melbourne on Friday and Saturday nights.

Victoria Police deployed five high-visibility hummers and a CCTV van to be stationed in the CBD. Operation Razon, a squad of police officers tasked with carrying out undercover operations in licensed venues, was established in April 2008.

More than 1,000 Victorian venues were visited during Operation Summer Blitz, which aimed to combat alcohol and public order related offences in and around licensed premises in the summer of 2008-09.

Targeted Lockouts

Targeted lockouts have been introduced in suburban and regional entertainment precincts to minimise the number of people milling in the street and moving between venues in order to reduce opportunities for late-night alcohol-related violence. In metropolitan areas, lockouts apply in Frankston and Knox-Ozone. Lockouts also apply in regional centres including Ballarat, Bendigo, Shepparton, Traralgon and Warrnambool.

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Fee and Category Review

A review of liquor licensing fees and categories is underway. The review will consider a risk-based fee system to ensure those who contribute the most to the risk of alcohol-related harm pay a commensurate fee.

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Enforcement Activity Data

Statistics related to liquor licensing enforcement action:

VCAT (January 2009 - 20 June 2009)

- There are 10 disciplinary proceedings against licensees before VCAT.
- 12 licensees have been disqualified from the industry for periods of between one to 15 years.
- There are 29 current applicants or objectors seeking a review of the Director of Liquor Licensing's licence determination.

Banning Notices

- Since their introduction, 1475 banning notices have been issued (until 23 June 2009).

Infringement Notices

July 2008 - 1 June 2009

- 1281 infringements have been issued to licensees.
- 309 infringements have been issued to patrons (excluding underage persons).
- 2465 infringements have been issued to underage persons.
- 5 infringements have been issued to employees.

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Attachment 7

Planning Scheme definitions

The key ones relative to land uses where drinking is allowed are:

Planning Scheme definition	General intent (summarised)	Definition
Restaurant	Where people eat, may consume alcohol and can involve entertainment	Land used to prepare and sell food and drink, for consumption on the premises. It may include: a) entertainment and dancing; and b) the supply of liquor other than in association with the serving of meals, provided that tables and chairs are set out for at least 75% of patrons present on the premises at any one time. It does not include the sale of packaged liquor
Place of assembly	Where people assemble for functions	Land where people congregate for religious or cultural activities, entertainment, or meetings
Tavern	Where people go to drink alcohol / socialise	Land used to sell liquor for consumption on the premises. It may include accommodation, food for consumption on the premises, entertainment, dancing, amusement machines, and gambling
Nightclub	Where people go to dance, be entertained and likely to consume alcohol	A building used to provide entertainment and dancing. It may include the provision of food and drink for consumption on the premises. It does not include the sale of packaged liquor, or gaming

The Liquor Control (Reform) Act 19 ?? has the specific objectives of:

- liquor liberalisation
- harm minimisation

The Consumer Affairs (Liquor Licensing Commission) are the assessment authority for liquor licences.

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The definitions used by the Liquor Licensing arrangements are different to the landuse definitions under the Victorian Planning Provisions

The Liquor licensing definitions are:

Liquor Licensing definitions	General Intent (summarised)	Definition
General Licence	Where people go to consume alcohol or to purchase alcohol to consume on site or to take away	<p>1. A general licence authorises the licensee:</p> <ul style="list-style-type: none"> a) to supply liquor on the licensed premises <ul style="list-style-type: none"> (i) during ordinary trading hours; and (ii) at any other times determined by the Director and specified in the licence for consumption on and off the licensed premises; and b) to supply liquor on the licensed premises at any time to a resident of the licensed premises or a guest of such a resident for consumption on the licensed premises; and c) if the licensee resides on the licensed premises, to supply liquor on that part of the licensed premises set aside for the licensee's private residence at any time to a guest of the licensee for consumption on that part of the licensed premises. <p>2. A general licence is subject to:</p> <ul style="list-style-type: none"> a) the condition set out in section 16 (compliance with planning scheme); and b) if the licence authorises the licensee to supply liquor outside ordinary trading hours (except as provided in subsection 1.b) or c)), the condition set out in section 17(1); and c) if the licensee is a body corporate, the condition set out in section 18 (approval of directors); and d) any other conditions determined by the Director and specified in the licence.
On Premises Licence		<p>1. An on-premises licence authorises the licensee:</p> <ul style="list-style-type: none"> a) to supply liquor on the licensed premises <ul style="list-style-type: none"> (i) during ordinary trading hours; and (ii) at any other times determined by the Director and specified in the licence for consumption on the licensed premises; b) to supply liquor on any other premises authorised by the Director and specified in the licence, during ordinary trading hours or at the times referred to in paragraph a)(ii) or at any other times determined by the Director and specified in the licence, for consumption on those premises; and c) if specifically authorised by the Director, to supply liquor in an open container for consumption in a food court next to, or near, the licensed premises. <p>2. An on-premises licence is subject to:</p> <ul style="list-style-type: none"> a) the conditions set out in subsection (3), if applicable; and b) the condition set out in section 16 (compliance with planning scheme); and c) if the licence authorises the licensee to supply liquor

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		<p>outside ordinary trading hours, the condition set out in section 17(1); and</p> <p>d) if the licensee is a body corporate, the condition set out in section 18 (approval of directors); and</p> <p>e) any other conditions determined by the Director and specified in the licence.</p> <p>3. If the permitted use of the licensed premises under the Planning and Environment Act 1987 is that of a restaurant, the on-premises licence is subject to the following conditions:</p> <p>a) the predominant activity carried on the licensed premises must be the preparation and serving of meals for consumption on the licensed premises; and</p> <p>b) tables and chairs must be placed in position on the licensed premises so as to be available for at least 75% of the patrons attending the premises at any one time; and</p> <p>c) the licensee must not permit:</p> <p style="padding-left: 40px;">(i) the live performance of any musical works; or</p> <p style="padding-left: 40px;">(ii) the playing of any recorded musical Works on the premises at higher than background music level at any time outside ordinary trading hours.</p> <p>4. The condition in subsection (3)(c) does not apply to music performed or played on licensed premises outside ordinary trading hours as part of a function that is:</p> <p>a) held in an area of those premises that is set aside for the exclusive use of persons who have booked a table in that area and their guests; and</p> <p>b) attended only by those persons and guests.</p> <p>5. In this section background music level, in relation to premises, means a level that enables patrons to conduct a conversation at a distance of 600 millimetres without having to raise their voices to a substantial degree.</p>
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Clearly, the definitions are quite different and this creates difficulty for planners, presumably the licensing commission and also the public and applicants.

It is noted that the Tribunal in the Swancom matter says:

"We consider that the clear policy shift now embodied in clause 52.27 means that the planning considerations related to amenity impacts are now intended to better consider the impacts of anti-social behaviour created by patrons from licensed premises on the amenity of the surrounding area, where it is appropriate to do so. There is an attempt, at least in part, to address the disconnect between liquor licensing and planning applications where this issue has sometimes 'fallen between the cracks', and the new planning approach may lead to some overlap and better coordination between liquor licensing and planning applications in the future. Despite this closer relationship, we consider the planning considerations remain somewhat different to those raised by harm

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minimisation (in a liquor-licensing context) and/or the availability theory generally. We do not need to decide the merits of the 'availability theory' here."