Planning for Licensed Premises

Legislation, provisions and guidelines

Con Tsotsoros
Department of Planning and Community Development
Some context

Current legislation

Planning and Environment Act 1987
Victoria Planning Provisions

Liquor Control Reform Act 1998

Environmental Protection Act 1970
What is amenity?

- **Planning**: generally issues related to **noise**, **traffic**, **parking**, privacy, overshadowing…..

- **Liquor licensing**: Defined in Section 3A of the *Liquor Control Reform Act 1998* and includes the presence or absence of **parking** facilities; **traffic** movement and density; **noise** levels; the possibility of nuisance or vandalism; the harmony and coherence of the environment; any other prescribed matters.

There is overlap between the two
## Some context

### Changes to Licensed Premises

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
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<tbody>
<tr>
<td>Mar 2008</td>
<td>New purpose statements and decision guidelines to Clause 52.27 to address cumulative impact</td>
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<tr>
<td>Oct 2010</td>
<td>Permit exemption for variation of liquor licence prescribed under the Liquor Control Reform Regulations 2009.</td>
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<td>The Director of Liquor Licensing made a referral authority and the Victoria Police a notice authority for an application under Clause 52.27 in association with a hotel, tavern or nightclub that is to operate after 1am.</td>
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<tr>
<td>Apr 2011</td>
<td>New planning permit requirement to use land to sell packaged liquor.</td>
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<td></td>
<td>New practice note / guidelines on assessing cumulative impact.</td>
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Clause 52.27
What is the purpose of the provision?

• To ensure that licensed premises are situated in appropriate locations.

• To ensure that the impact of the licensed premises on the amenity of the surrounding area is considered.
Clause 52.27
When is a permit required?

A permit is required to use land to sell or consume liquor if any of the following apply:

- A licence is required under the Liquor Control Reform Act 1998.
- A different licence or category of licence is required from that which is in force.
- The hours of trading allowed under a licence are to be extended.
- The number of patrons allowed under a licence is to be increased.
- The area that liquor is allowed to be consumed or supplied under a licence is to be increased.

This does not apply:

- To a limited licence.
- To a licence to manufacture liquor.
- If the schedule to this clause specifies that a permit is not required to use land to sell or consume liquor under a particular type of licence.
- To a variation that reduces the hours of trading allowed under a licence.
- To a variation that reduces the number of patrons allowed under a licence.
- To a variation that reduces the area within which liquor is allowed to be consumed or supplied under a licence.
- To a variation of licence at the initiative of the Director, pursuant to Section 58 of the Liquor Control Reform Act 1998.
- To a variation of licence for a variation prescribed in Part 6, Regulation 31 of the Liquor Control Reform Regulations 2009.
- If a different licence or category of licence is required solely as a result of changes to licence categories.
Clause 52.27

Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The impact of the sale or consumption of liquor permitted by the liquor licence on the amenity of the surrounding area.
- The impact of the hours of operation on the amenity of the surrounding area.
- The impact of the number of patrons on the amenity of the surrounding area.
- The cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.
What is cumulative impact?

Both positive and negative impacts that can result from clustering a particular land use or type of land use.

Potential cumulative impact from a cluster of licensed premises will vary between locations, depending on the mix and number of venues and whether the area is a destination for activities associated with the supply of alcohol.
What is cumulative impact?

Cumulative impact is a product of the number and type of venues present, the way they are managed, and the capacity of the local area to accommodate those venues.
Positive cumulative impact
Positive cumulative impact

- the creation of a local ‘identity’ or status as an entertainment or tourism destination
- enhanced vitality of an area
- economic benefits
- increase in consumer choice
- increased ability to manage impacts, for example by concentrating venues around transport to aid dispersal of patrons.
Negative cumulative impact

- nuisance including noise and anti-social behaviour from intoxicated persons
- infrastructure capacity problems including limited availability of transport and car parking for patrons and local residents
- violence and perceived threats to safety
- crime including vandalism, trespass and property damage.
What is a cluster?

As a general guide, a cluster would occur where there are:

• three or more licensed premises (including the proposed premises) within a radius of 100 metres from the subject land; or

• 15 or more licensed premises (including the proposed premises) within a radius of 500 metres from the subject land.
Cumulative impact assessment area

1. Impassable physical barriers
2. Cumulative impact assessment area
3. Cluster

- Proposed licensed premises
- Existing licensed premises
- Cumulative impact assessment area boundary

NOT TO SCALE
When do you use the guidelines?

For applications for a new or expanded licensed premises that:

- will be licensed and open after 11pm; **and**
- is in an area where there is a cluster of licensed premises.
Assessing cumulative impact

Planning Policy Context

- What are the policy, zoning and other planning controls that are relevant to the surrounding area?
- What amenity, land use and other planning outcomes do these controls encourage?

Assessment

- Is the proposal consistent with the planning outcomes encouraged in the policy, zoning and other planning controls for the area?
Assessing cumulative impact

Surrounding land use mix and amenity

- Does the subject land adjoin sensitive uses?
- What is the relationship between licensed premises and other uses in the area?
- What are the local crime statistics related to licensed premises?
- Are there other premises open after 11pm?
- What is the existing level of amenity in the area?
- What are the reasonable amenity expectations in the area?
Assessing cumulative impact

Surrounding land use mix and amenity Assessment

• Will the proposal significantly increase the number of patrons near sensitive uses at any time?
• Given the location and planning policy context, will the proposal generate amenity impacts beyond what is reasonable?
Assessing cumulative impact

The mix of licensed premises

• What is the mix of licensed premises in the area?
• Do any licensed premises cater for more than 200 patrons?
• How many and what type of licensed premises (especially high capacity venues and packaged liquor outlets) operate after 11pm?
• Do licensed premises commonly operate at capacity and is queuing outside common?
• Do many licensed premises in the area show a high ratio of standing to seating?
Assessing cumulative impact

The mix of licensed premises

• Are there any local laws regulating consumption of liquor in public spaces?

• Is there any evidence of problems apparent in the area, such as property damage or littering, that may be attributed to alcohol related incidences?

• Are complaints (for example, to council or Victoria Police) about licensed premises already being generated in the area?

• Are there any known enforcement proceedings against licensed premises in the surrounding area?
Assessing cumulative impact

The mix of licensed premises

Assessment

- Does the proposal contribute to the diversity of activities and vibrancy in the area?
- Will the proposal reinforce any existing or create any new impacts arising from the mix of uses in the area?
Assessing cumulative impact

Transport and dispersal
Assessing cumulative impact

Transport and dispersal

• Do closing hours between venues coincide closely or is there a spread of closing hours?
• Is there a high number of patrons on the streets after 11pm?
• What public transport is available to patrons leaving the licensed premises at closing time?
• Are taxi ranks conveniently available to patrons leaving the licensed premises at closing time?
Assessing cumulative impact

Transport and dispersal

• Is there car parking available and where is it located?
• How do people disperse from the area after leaving a licensed premises?
• Is the movement of patrons through the area known to be an existing problem?
• Are there any identified issues with accessing public transport such as frequency or capacity of services?
Assessing cumulative impact

Transport and dispersal

Assessment

• Is the proposed licensed premises’ location or characteristics such as operating hours likely to contribute to any problems for patron dispersal?

• Will the proposal reinforce any existing or create any new impacts arising from licensed premises closing times and patron dispersal within the area?
Assessing cumulative impact

Impact mitigation

- Are there sufficient public amenities available for patron use, including toilets and rubbish disposal?
- Are there any relevant public safety or enforcement initiatives in the area?
- Has the area been developed according to principles of good urban design and safe design?
Assessing cumulative impact

Impact mitigation

Assessment

• Will the proposal provide mitigation measures to address any negative cumulative impacts?
• Can any identified negative cumulative impact be satisfactorily reduced by changes to the proposal?
Final cumulative impact assessment

QUESTION 1: Is the proposal likely to increase or create a cumulative impact in the area?

- **YES**
  - The proposal is likely to increase or create a **positive** cumulative impact. Council is likely to consider a positive cumulative impact favourably.

- **NO**
  - The proposal will not increase or create a cumulative impact

- **YES**
  - The proposal is likely to increase or create a **negative** cumulative impact

QUESTION 2: Is the likely negative cumulative impact reasonable or unreasonable?
Final cumulative impact assessment

**QUESTION 2:** Is the likely negative cumulative impact reasonable or unreasonable?

**REASONABLE**

Although the proposal creates a negative cumulative impact, the impact may still be reasonable if it is minor and balanced against:

- other planning considerations for the area, such as a local policy that identifies the area as a council’s preferred location for night-time entertainment uses, or
- other positive aspects of the proposal, such as exceptional building design, exceptional use of mitigation measures, or if the proposal also creates a positive cumulative impact that outweighs a negative cumulative impact.

**UNREASONABLE**

**QUESTION 3:** Can the negative cumulative impact be reduced and adequately managed through additional mitigation measures?
Final cumulative impact assessment

QUESTION 3: Can the negative cumulative impact be reduced and adequately managed through additional mitigation measures?

**YES**

If the negative cumulative impact is unreasonable and if adequate additional mitigation measures are included as part of the application, the proposal may still be considered to be acceptable.

**NO**

If satisfactory mitigation measures cannot be incorporated as part of the proposal, the negative cumulative impact is likely to be considered as unacceptable because the area will not adequately cope with an additional licensed premises of this type.
Other planning considerations

Cumulative impact is one of many planning matters that a council must consider when assessing a planning application. A positive or favourable cumulative impact does not guarantee that a planning permit will be issued.
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