

# Unlocking liquor licensing

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Resource 1: Planning permits for  
licensed premises

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INFORMATION FOR VICTORIAN COUNCILS ABOUT LIQUOR LICENSING

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# Acknowledgements

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## **Disclaimer**

This resource is for reference purposes only. It does not constitute legal advice and should not be relied upon as such. While VicHealth has taken all reasonable care in preparing this resource, it is the responsibility of individuals to be aware of the accuracy and currency of the information provided and to separately seek legal advice about their particular circumstances. The information provided in this resource was accurate at the time of publication, but may not account for legislative or regulatory changes that have taken place since publication.

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# Preface

To build upon our commitment to reduce harm from alcohol, VicHealth has created two resources for Victorian councils. The resources aim to improve knowledge and understanding of Victoria's liquor licensing system and help councils to address alcohol-related harm within their communities.

**Resource 1: Information for Victorian councils about liquor licensing: Planning permits for licensed premises** explains how councils can use their powers under Victoria's planning legislation to influence the establishment and operation of licensed premises.

**Resource 2: Information for Victorian councils about liquor licensing: Liquor licensing laws** provides an overview of Victoria's liquor licensing laws, focusing on how councils can make an objection in response to a liquor licence application.

This resource outlines the process involved for councils to make decisions regarding planning permits for licensed premises – from initial receipt of the permit application, to the matters that councils must consider when making a planning permit decision, and how such decisions can be reviewed.

The resource is set out in the order of this process:

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- SECTION 1:** Application for a planning permit
  - SECTION 2:** Objections to a planning permit
  - SECTION 3:** How councils assess permit planning permit applications
  - SECTION 4:** The council decision-making process
  - SECTION 5:** The VCAT review
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## INTRODUCTION

# An overview of Victoria's planning system

## The *Planning and Environment Act*

The key Victorian planning law is the *Planning and Environment Act 1987* (Vic) (referred to in this document as 'the Act').

The Act establishes a legislative framework for planning the use, development and protection of land in Victoria.

### THE OBJECTIVES OF PLANNING

The Act sets out the objectives of planning, which are used as the basis of all Victorian planning decisions. The objectives of planning in Victoria are to:

- provide for the fair, orderly, economic and sustainable use, and development of land
- provide for the protection of resources, the maintenance of ecological processes and genetic diversity
- secure a pleasant, efficient and safe working, living and recreational environment in Victoria
- conserve and enhance those buildings and places that are of scientific, aesthetic, architectural or historical interest, or of special cultural value
- protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community
- facilitate development in accordance with Victoria's planning objectives and to balance the present and future interests of all Victorians.<sup>1</sup>

## Planning schemes: the starting point for planning decisions

The Act also establishes 'planning schemes' which set out policies and provisions for the use, development and protection of land in Victoria.

Each municipality in Victoria has a planning scheme. Through planning policies and objectives, each council planning scheme indicates the types of land use:

- that are allowed
- that are prohibited
- for which a planning permit is required within a local government area.<sup>2</sup>

A planning scheme is the starting point for all planning decisions made by a council because it indicates:

- how particular kinds of land can be used or developed
- when a planning permit is required
- which policies are relevant to a council's decision about a planning application.

## THE STRUCTURE OF VICTORIAN PLANNING SCHEMES

To understand how councils make decisions about planning permits for licensed premises, it is important to be aware of the structure of Victorian planning schemes.

Each planning scheme contains the State Planning Policy Framework (SPPF) and the Local Planning Policy Framework (LPPF).

### State Planning Policy Framework (SPPF)

The SPPF gives effect to the State Government's land use policies for matters such as the environment, housing and economic development.

Councils must take the SPPF into account when making a decision concerning a planning permit application or an amendment to its planning scheme. Councils cannot change the SPPF.

### Local Planning Policy Framework (LPPF)

The LPPF comprises the Municipal Strategic Statement (MSS) and local planning policies.<sup>3</sup> Each council is responsible for preparing and implementing the LPPF. The LPPF sets out the council's vision for the municipality and the local policies it will apply to planning decisions. The LPPF must be consistent with the SPPF.

### Municipal Strategic Statement (MSS)

The MSS is a high-level statement of a council's planning objectives and strategies. It contains the strategic planning, land use and development objectives of council as well as the strategies for achieving those objectives.<sup>4</sup>

The MSS also provides a council with the basis for selecting zones and overlays that it will apply in its planning scheme.

### Zones and overlays

Zones in the planning scheme control the use and development of land and identify land for particular uses, for instance, residential, business and commercial. Each zone lists land use in three sections: uses that require a permit, uses that do not require a permit, and uses that are prohibited.

An overlay on land can require additional planning requirements for that piece of land; for instance, overlays may be used for design, development, environmental or heritage reasons.

## Local planning policies

Local planning policies are tools to implement the objectives and strategies set out in the MSS. They provide guidance for a council's day to day decision-making, stating what councils will do in a particular planning situation or the council's expectation of what should happen.

An example of a local planning policy is a Licensed Premises Policy. These policies enable councils to state their planning priorities for the use of land for licensed premises within their communities and then to make decisions about planning permits for licensed businesses in accordance with those policies.

### More information about the structure of planning schemes

More detailed information about the [structure of planning schemes](#) in Victoria is available on the Victorian Department of Planning, Transport and Local Infrastructure (DTPLI) website.

## The role of councils under Victorian planning legislation

Councils have two key roles under the Act. First, as a planning authority, councils set a strategic policy framework for their municipalities through their planning schemes. These planning schemes reflect the community's priorities and guide planning decisions about specific issues.

Second, as a responsible authority, councils must administer and enforce the planning schemes for their municipalities.<sup>5</sup> Councils make decisions on applications for planning permits within their municipality, assessing proposals for land use against their planning schemes and making decisions about whether to grant, amend or deny permits for those proposals.<sup>6</sup>

## SECTION 1

# Application for a planning permit

### KEY POINTS

- Anyone seeking to use land to sell or consume alcohol must obtain planning permission from their local council. Planning permission must be obtained before a person or business can apply for a liquor licence from the commission.
- Councils must provide notice of any planning permit applications for licensed businesses to:
  1. the owners of adjoining land
  2. anyone who may experience material detriment resulting from the permit grant
  3. anyone as required under their planning schemes.
- Councils must refer any planning permit applications for a hotel, tavern or nightclub that is to operate after 1am to the commission. Councils must also give notice of this kind of application to the Chief Commissioner of Victoria Police.

## Requirements for planning permits for licensed premises

Licensed premises are organisations or businesses that have a liquor licence from the Victorian Commission for Gambling and Liquor Regulation ('the commission') to supply or sell alcohol in Victoria.<sup>7</sup>

Licensed premises include pubs, restaurants, theatres, cinemas, nightclubs, bars and bottle shops.

Before obtaining a liquor licence in Victoria, anyone planning to use land to sell or consume alcohol must generally first obtain planning permission from their local council.<sup>8</sup> The commission will not grant or vary a liquor licence until this planning permission has been obtained.

### What does 'licensed premises' mean?

'Licensed premises' in this resource refers to either:

- a business which is seeking to obtain a liquor licence and therefore needs to obtain planning permission first
- a business that already has a liquor licence but is seeking to amend its liquor licence conditions (e.g. to increase patron numbers). In this case, businesses will also need to apply to their local councils to amend their planning permit conditions as the conditions in planning permits and liquor licences (for patron numbers, opening hours and space where alcohol can be served) must be consistent.

### What is land 'use'?

'Use' in relation to land includes use or proposed use for the purpose for which the land has been, is being or may be developed.

In this resource, 'use' refers to land that is used or being proposed to be used to sell liquor.

Liquor licence applicants must provide the appropriate form of planning permission along with their application to the commission. This planning permission could be a copy of a planning permit for the licensed premises, a copy of an application for a planning permit or evidence that planning permission is not required from the local council.

It is also a condition of every liquor licence that all licensed premises must meet appropriate planning requirements.<sup>9</sup> This requirement does not apply to a pre-retail licence, a limited licence or a major event licence.

(This resource focuses on a council's involvement in the planning permit process for licensed premises. For more information about liquor licensing, see *Resource 2: Liquor licensing laws*.)

## PLANNING PERMIT

A planning permit *is required* to use land to sell or consume liquor if any of the following are applicable:

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

A planning permit is *not required* if:

- the liquor licence is one of the following categories: pre-retail licence, BYO permit, limited licence and major event licence
- the permit applicant is seeking a licence variation that reduces the trading hours, patron numbers or area where liquor is allowed to be consumed/supplied under a liquor licence.

## Information to be provided to councils

People seeking a planning permit for a licensed premises must provide a range of information to their local councils. Many councils provide a Checklist for Planning Permits for Licensed Premises to assist with this process and identify the specific information that they require.

Generally, the following information is required:

- a completed and signed planning permit application form
- a recent (dated not more than 30 days prior) copy of title for the relevant land
- the prescribed application fee<sup>10</sup>
- plans of proposed or existing licenced premises
- written report (see below).

### Planning permit application forms

Planning permit application forms for all Victorian councils are available on the Department of Planning website.

## PLANS

Permit applicants are usually required to provide plans of the proposed/existing licensed premises, including three copies of fully dimensioned plans and elevations at scale of 1:100 and one copy of all plans at A3 size (for advertising purposes), showing the following (as appropriate).

### Location plan

- the proximity of the premises to other taverns, hotels and nightclubs
- the location of properties in direct line of sight and within 100 metres of the premises, including details of doors, windows and open space areas
- information about the public services and infrastructure in the immediate locality if the applicant is a tavern, hotel and nightclub holding more than 100 patrons (e.g. CCTV, public toilets, street lighting, taxi ranks and access to public transport services, pedestrian crossings, and traffic management measures).

### Site plan

- all areas to be used by patrons including areas outside the boundaries of the site (i.e. public spaces or footpaths)
- the licensed area marked within a red line
- the existing and proposed internal layout of the premises
- the total numbers of patrons to be accommodated on the premises and the allocation of these patrons to identified areas
- car parking and bicycle layout.

## WRITTEN REPORT

Permit applicants for the established or proposed liquor licence business are usually required to provide councils with a written report, describing in detail how the land will be used.

The following information is usually required (as appropriate):

- details of the type(s) of liquor licence sought
- existing and proposed hours of operation of the premises and details of any proposed special events
- maximum number of patrons permitted on the premises
- security arrangements including hours of operation and how management will minimise queues outside the venue
- entry and exit locations
- details of staff training in the management of patron behaviour
- details of any outdoor area management to minimise amenity impacts on nearby properties
- management of patrons who are smoking
- general waste (including bottle) storage and removal arrangements
- details of the provision of music including the frequency and hours of entertainment provided by live bands, DJs, and any other forms of entertainment
- number of seats required for the proposed use, if applicable
- lighting within the site and security lighting outside the premises
- noise attenuation measures (if applicable), including the recommendations of any acoustic report submitted in support of the proposal
- details of how the proposal meets the requirements of the council planning scheme, including Clause 52.27. [Section 3 of this resource provides more information about Clause 52.27.]

## Notice of planning permit application for licensed premises

Once councils receive a planning permit application for a licensed business, they have the responsibility of giving notice of that application to:

- the owners of land adjoining the land to which the application applies
- any person to whom the planning scheme requires it to give notice
- any other person that the council considers that grant of the permit may cause material detriment.<sup>11</sup>

Councils do not need to give notice of the permit if they are satisfied that the grant of a permit would not cause material detriment to any person or if their planning scheme contains a specific exemption from the notice requirements.

As the Act does not specify what matters councils can take into account in deciding whether or not a permit application may cause material detriment, each application must be considered on a case-by-case basis. As a general rule, it should be possible for councils to link detriment to specific matters such as restriction of access, visual intrusion, unreasonable noise, or overshadowing.<sup>12</sup>

A council can give notice of a permit application by:

- placing a sign on the land concerned
- publishing a notice in a local newspaper
- distributing the notice personally or by post, or in any other way the council considers appropriate.<sup>13</sup>

A council planning scheme may also specify a particular way that it should give notice for certain kinds of planning permits.

## THE PRESCRIBED FORM

Councils must provide the notice in the prescribed form<sup>14</sup> identifying:

- the address of the land that is subject to the application
- the permit applicant's name
- the council reference number for the application
- the nature of the permit sought
- where the application and plans can be inspected
- the address for lodging an objection
- the date by which objections should be lodged.

## Referring planning permit applications

### REFERRING TO THE COMMISSION

Councils must refer any planning permit application for a hotel, tavern or nightclub that is to operate after 1am to the commission for its consideration.<sup>15</sup>

The commission must consider any planning permit application referred to it and may provide the council with its written comments about the application.<sup>16</sup>

The commission may also inform the relevant council that it:

- does not object to the granting of the permit
- does not object to the granting of the permit subject to certain conditions specified by the commission
- objects to the permit on a particular ground.<sup>17</sup>

### REFERRING TO VICTORIA POLICE

Councils must also give notice of a planning permit application for a hotel, tavern or nightclub that is to operate after 1am to the Chief Commissioner of Victoria Police.<sup>18</sup>

## Making planning permit applications available to the public

Councils must make planning permit applications for licensed premises available for public inspection free of charge at their council offices.<sup>19</sup>

Many councils will also maintain online planning registers on their websites and make available current planning permit applications in their municipalities in this way.

## SECTION 2

# Objections to a planning permit

### KEY POINTS

- Anyone affected by the grant of a planning permit for a licensed business can make an objection to their council about that permit.
- Councils can receive, and must consider, all objections about a planning permit application up until the time they make a decision about that application.

### Receiving objections

Councils may receive objections to a planning permit application for a licensed business. Any person who may be affected by the grant of the permit can make an objection.<sup>20</sup>

Councils can refuse an objection if they consider the objection has been made primarily to obtain or maintain a commercial advantage for the objector.<sup>21</sup>

### THE FORM AND TIMING OF OBJECTIONS

Objections must be in writing, stating the reasons for the objection and how the objector would be affected by the grant of the permit.<sup>22</sup>

Councils can receive objections during the period a planning permit application is being advertised and at any time thereafter until it has made a decision about the application.

### MAKING OBJECTIONS AVAILABLE TO THE PUBLIC

Councils must make a copy of every objection to a planning permit available for public inspection at their offices, free of charge. Objections must be available for viewing until the end of the period that people can seek a review of the permit application.<sup>23</sup>

## SECTION 3

# How councils assess planning permit applications

### KEY POINTS

- Councils must take into account Clauses 65 (Council decision-making guidelines) and 52.27 (Licensed premises) when making decisions about a planning permit application for licensed businesses, particularly:
  - policy context
  - potential impact of the sale or consumption of alcohol, hours and patron numbers of the licensed business on the amenity of the surrounding area
  - cumulative impact of existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.
- When reviewing council planning decisions such as a refusal to grant a planning permit, VCAT gives greater weight to planning policies and documents that have been incorporated into the planning scheme than those that are not.

## Specific guidelines for councils

When making a decision about a planning permit application for a licensed business, councils must take into account specific guidelines in their planning schemes:

- Clause 65: decision guidelines for planning permits
- Clause 52.27: decision guidelines for planning permits for licensed premises.

## Clause 65: council decision-making guidelines for planning permits

Clause 65 of the Victorian Planning Provisions sets out guidelines for a council that is making decisions about planning permits in its role as a responsible authority.

Before deciding on a planning permit application, councils must consider, as appropriate:

1. the matters set out in Section 60 of the Act.

Councils *must* consider:

- the relevant planning scheme
- the objectives of planning in Victoria
- all objections and other submissions which it has received
- any decision and comments of a referral authority which it has received
- any significant social, economic or environmental effects which the council considers the proposed use or development of land may have on a planning permit proposal.<sup>24</sup>

Councils *may* consider:

- any other strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or council
  - any amendment to the planning scheme which has been adopted
  - any other relevant matter.<sup>25</sup>
2. the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies
  3. the purpose of the zone, overlay or other provision
  4. any matter required to be considered in the zone, overlay or other provision
  5. the orderly planning of the area
  6. the effect on the amenity of the area
  7. the proximity of the land to any public land.

## Clause 52.27: council decision-making guidelines for planning permits for licensed premises

Clause 52.27 of the Victorian Planning Provisions deals with planning permits specifically for licensed premises. Its purpose is to ensure that licensed businesses are situated in appropriate locations and that the impact of those premises on the amenity of the surrounding area is considered.

Councils must utilise Clause 52.27 for planning permit applications in situations where:

- a licence is required under Victoria's liquor licence legislation<sup>26</sup>
- a different licence, or class of licence is required from that which is in force
- the hours of trading allowed under any 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.

Councils can also include schedules to Clause 52.27 in their planning schemes to adapt it for the needs of their municipalities. Councils can list specific parcels of land for which a permit is not required under Clause 52.27 or list specific parcels of land for which a permit may not be granted in relation to certain types of liquor licences.

Under Clause 52.27, before making a decision about a planning permit application for a licensed business, councils must consider the following:

1. the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies
2. the impact on the amenity of the surrounding area, introduced by the sale or consumption of liquor permitted by the liquor licence
3. the impact of the hours of operation on the amenity of the surrounding area
4. the impact of the number of patrons on the amenity of the surrounding area
5. the cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.

### SCOPE OF CLAUSE 52.27

A 2013 VCAT decision in the case of *Hunt Club Commercial Pty Ltd v Casey City Council*<sup>28</sup> (Hunt Club case) examined the scope of Clause 52.27 and what factors councils could consider when making decisions under this Clause. In particular, VCAT considered whether councils could take into account *significant social and economic effects* arising from the use of land to sell or consume liquor (e.g. community-related harm caused from excessive alcohol use) or only *amenity impacts*, which affect the surrounding area.<sup>29</sup>

## SOCIAL AND ECONOMIC EFFECTS VS AMENITY IMPACTS

According to VCAT, when councils are considering planning decisions under Clause 52.27, they are not restricted to considering amenity issues that impact on the surrounding area. However, these effects must be relevant to:

- town planning
- the particular permit application
- the Clause's purpose and decision guidelines
- factors which councils must take into account under the Act<sup>30</sup>
- any other relevant matter, as decided by VCAT.

Concern about the social harm caused by alcohol, the accessibility of alcohol in the community, or the potential abuse and misuse of alcohol may be relevant in certain cases but will rarely (if ever) be a relevant consideration for councils regarding planning permits for licensed premises under Clause 52.27.

While concerns about the impact of excessive alcohol consumption are relevant concerns for Victorian society, they are not necessarily relevant planning considerations for a Victorian council making *planning* decisions at a local level. Instead, these matters are more relevant to Victoria's liquor licensing laws under the LCRA.<sup>31</sup>

Provided a land use (such as the right to use land to sell or consume alcohol) is not prohibited, council planning decisions should focus primarily on the appropriateness of that land use in a particular location.<sup>32</sup> According to VCAT, Clause 52.27 reinforces this idea because one of its stated purposes is to ensure that licensed premises are situated in appropriate locations.<sup>33</sup>

While councils can consider how alcohol consumption affects the amenity of the area under Clause 52.27, they generally cannot take into account community concerns about the social harms caused by alcohol, the general accessibility of alcohol in the community or the potential for the abuse or misuse of alcohol.

The only exception to this is if councils can demonstrate how these factors are relevant in a planning context. To achieve this, councils will need to show two things. First, that the piece of land that is, or will be, used to sell or consume alcohol will give rise to significant social and economic effects in the community such as increased alcohol availability. Second, councils will need to show that there is a spatial or locational connection between the community effect and the use, size or location of that particular land that is or will be used to sell or consume alcohol.

## Social and economic effects of packaged liquor venues

Based on the Hunt Club case, if councils wish to refuse a planning permit for a packaged liquor venue on the basis of community concern about alcohol, they must be able to demonstrate a connection between the use of the particular land to sell packaged liquor and its social and economic effects on the community.

However, as packaged liquor is consumed away from the place it is purchased, the 'point of sale' location and any alleged social harms caused by the availability of alcohol will be spatially disconnected, making it challenging to establish social or economic effects of packaged liquor venues as a relevant planning consideration under Clause 52.27.

There usually needs to be strong evidence, demonstrating a particular and significant social effect that is relevant in a planning context and that is linked to the particular location of the licensed premises in question.<sup>34</sup>

## The Hunt Case and Casey Council

In the Hunt case, Casey Council was proposing to introduce new planning permit requirements for future packaged liquor premises on land covered by its Cranbourne East Development Plan (CEDP).<sup>35</sup> These permit requirements, which focused on large packaged liquor stores, were in addition to the ones already set out in Clause 52.27.

Casey Council argued that these changes were needed because the Cranbourne community had particular issues associated with the sale and consumption of alcohol, which impacted on the community's public health, social and economic wellbeing and the area's amenity.

While VCAT agreed that the City of Casey had issues associated with alcohol consumption as parts of Cranbourne had higher levels of alcohol-related assaults than other areas of the municipality, VCAT found that – based on the evidence provided – the extent and nature of alcohol-related harm in Cranbourne did not justify the proposed CEDP changes.<sup>36</sup>

One issue was that the council's planning scheme did not provide any basis for the CEDP changes sought by the council. However, as VCAT noted, Casey Council attempted to establish a rationale for the proposed packaged liquor permit requirements through the CEDP on two grounds:<sup>37</sup>

1. The first ground was research evidence, indicating that there was an association between liquor outlet density and the impact on the community in terms of public health, social and economic influences and the amenity of the area.<sup>38</sup>
2. The second ground was research evidence that showed an association between large packaged liquor outlets and detrimental community impacts.<sup>39</sup>

To support this idea, the council argued that there was already a possible over-supply of packaged liquor floor space in Cranbourne, which led to price reduction and, over time, greater alcohol consumption and alcohol-related harm. Further, as larger packaged liquor stores could sell higher volumes of alcohol at lower prices, it consequently increased both alcohol availability and consumption at a greater rate than a smaller outlet. In turn, this would lead to higher levels of alcohol-related harm in the Cranbourne community.<sup>40</sup>

In response to the council's first ground, VCAT found that there was limited evidence to suggest that the density of packaged liquor outlets impacted on amenity. In any case, the proposed CEDP permit requirements did not seek to limit the number of packaged outlets but rather their size and form. Instead, the real issue was whether the location of a larger, stand-alone outlet created more potential for adverse social impacts that could exacerbate alcohol issues in Cranbourne.<sup>41</sup>

Regarding the council's second ground, VCAT stated that the evidence showed that the availability and price of alcohol is not proportional to the size of a store and the size and location of a store is not necessarily proportional to its effect on the community.

VCAT also determined that even if there was a link between large format packaged liquor operators and price, this needed to be addressed by managing such operators through other jurisdictions.

It was not the role of "town planning to address all issues of public health, nor to regulate the pricing or general availability of a product to manage the health and well being of a society".<sup>42</sup> Accordingly, VCAT directed Casey Council to remove the proposed packaged liquor permit requirements from its CEDP.

## ELEMENTS OF CLAUSE 52.27

The requirements that councils must consider under Clause 52.27 when making planning permit decisions for licensed premises can be summarised into three areas:

1. policy context
2. potential impact of sale or consumption of alcohol, hours and patron number on amenity
3. cumulative impact of existing licence premises and the proposed premises on amenity.<sup>43</sup>

Each element of Clause 52.27 must be considered in its own right by councils but a negative finding on one element – for instance, that a licensed business will have a negative cumulative impact – does not automatically mean that councils will deny a planning permit. A council's final decision will be based on its total assessment of each of the elements of Clause 52.27.

### 1. Policy context

'Policy context' refers to the State Government and local government planning policies that affect the land that is being used or is proposed to be used to sell liquor.

Issues for councils to consider include:

- where the land is located
- how it is zoned
- the relevant SPPF and LPPF, including whether there are any current local planning policies related to licensed premises or the sale or consumption of alcohol.<sup>44</sup>

Based on this information, councils can then make an assessment as to whether the use of the land to sell liquor is an appropriate response for the particular policy context.

### ***Municipal Strategic Statement (MSS)***

Three councils – City of Melbourne, City of Stonnington and City of Yarra – have included statements in their MSS that focus on their intention to reduce alcohol-related harm within their communities.<sup>45</sup> All councils have focused on striking a balance between the different needs within their community. These councils acknowledge the economic and social importance of licensed premises for the viability of their community but, at the same time, aim to minimise the potential amenity impacts on local residents and other community members.

## Stonnington Council's Municipal Strategic Statement

Stonnington Council's MSS states that its objective, in terms of economic development, is to enhance the economic viability and effectiveness of Stonnington's retail areas.

It recognises the importance of licensed premises in the area and how they contribute to its vibrancy and economic strength but also acknowledges that licensed premises and other entertainment uses can have a negative impact on retail viability due to their late hours of operation, noise, traffic and parking congestion.

For these reasons, Stonnington Council aims to encourage a mix of uses and activities in its principal and major activity centres, discourage a predominance of uses such as licensed premises and use the council's Licensed Premises Policy to manage licensed premises.<sup>46</sup>

### ***Licensed premises policies***

As part of their LPPFs, local governments can prepare a Licensed Premises Policy.

A Licensed Premises Policy:

- documents a council's policy on licensed premises
- states objectives that will guide its decision-making on planning applications for licensed premises
- identifies prescribed information that it requires from applicants
- specifies mechanisms by which licensed premises will be managed. This may include location and access, hours of operation, patron numbers, noise, car parking and mix of land uses.

## Victorian councils with a Licensed Premises Policy

Several Victorian councils – City of Bendigo, City of Stonnington, City of Melbourne and City of Yarra – have each developed a Licensed Premises Policy and included it in their LPPFs.<sup>47</sup>

Moonee Valley City Council and Hume City Council have also developed local planning policies for licensed premises and have commenced the process to amend their planning schemes to include these policies in their LPPFs.

Other councils such as Melton City Council have developed a Liquor Licence Assessment Policy and a Social and Amenity Impact Assessment Framework to help them assess planning permits for licensed premises within their municipalities but have not included them in their LPPFs.

The advantage of including a Licensed Premises Policy in the LPPF is that councils must take them and their policy principles into account when deciding whether to grant planning permit applications for licensed premises.<sup>48</sup>

When reviewing council planning decisions such as a refusal to grant a planning permit, VCAT must also take the Licensed Premises Policy into account. VCAT gives greater weight to planning policies and documents that have been incorporated into the planning scheme than those that are not.

The process of amending a council's planning scheme to include a Licensed Premises Policy is long and complex. While councils have the power to amend the local provisions of their planning schemes, they can only commence the amendment process if authorised to do so by the Minister for Planning.<sup>49</sup> The council's preparation of an amendment may be subject to any conditions the Minister for Planning wishes to impose and the final inclusion of planning policy into a council planning scheme also requires the Minister for Planning's approval.<sup>50</sup>

### The process to amend council planning schemes

More information about [the process to amend council planning schemes](#) is available on the Department of Planning website.

### Zones and overlays

Zones and overlays in council planning schemes also impact on a council's ability to use their planning powers to influence the location of licensed premises in its communities.

While councils can choose which zones to use and apply within their municipalities, they cannot use zones to control the density or location of licensed premises. This is because, generally, it is the Victorian Government rather than councils that decides how land will be zoned through the SPPF and, in particular, determines what land uses are permitted, prohibited and require a permit within a certain zone.

Councils, therefore, have limited statutory power to completely or partly prohibit a permitted land use (e.g. the use of land to sell or consume liquor) in their communities or to indicate that certain kinds of liquor licences are only permitted in certain land zones.<sup>51</sup>

Councils have also used planning scheme overlays in an attempt to reduce alcohol-related harm in their communities. One kind of overlay is a Development Plan Overlay (DPO). DPOs can impose conditions on the future use and development of land in a particular area or community, including conditions that applicants must meet before a planning permit can be granted.

## The Hunt Club case, Casey Council and its DPO

In the Hunt Club case, Casey Council intended to use its Cranbourne East Development Plan (CEDP) and a DPO to introduce planning permit conditions on the future use of land to sell packaged liquor in Cranbourne East, especially by large chain stores. Council's rationale for these changes was that the Cranbourne community had particular issues with alcohol that detrimentally affected the area, and that research evidence showed that there was an association between the density of liquor outlets, especially large packaged liquor outlets and negative impacts on the community.

Casey Council's existing planning scheme did not directly support the reasons it gave for its CEDP changes. As noted by VCAT, there was nothing in the DPO or the council's planning scheme to suggest that there was a

"need to specifically address packaged liquor sales in Cranbourne East in a manner that requires a different and more restrictive response than any other location across the municipality or...the State."<sup>52</sup>

As the council's planning scheme did not provide a basis for the CEDP changes, Casey Council sought to establish this rationale through the CEDP and by subsequently amending its planning scheme to include the CEDP as a schedule to an existing DPO.<sup>53</sup> However, in VCAT's view, the Council's rationale for the CEDP policy also did not have sufficient merit, leading VCAT to find that the Council should remove its proposed packaged liquor permit requirements from the CEDP.<sup>54</sup>

## 2. Impact of sale or consumption of alcohol, opening hours and patron numbers on amenity

The second element of Clause 52.27 that councils must consider is the impact of the following on the amenity of the surrounding area:

- the sale or consumption of liquor permitted by the liquor licence
- the hours of operation
- the number of patrons.

### Meaning of 'amenity'

'Amenity' is not defined in the Act but it has a broad meaning. Amenity is also very context specific. What it means will depend on a "particular location and its surroundings and the facts and circumstances of a particular matter".<sup>55</sup>

It is also important to distinguish between how amenity is used in Victorian liquor licensing legislation – the *Liquor Control Reform Act 1998* (LCRA) – and the Act. Under the LCRA, the "amenity of an area" is "the quality that the area has of being pleasant and agreeable".<sup>56</sup> As the LCRA and the Act have different purposes and objectives, courts are reluctant to utilise the definition of amenity in the LCRA for planning purposes.<sup>57</sup>

However, under Victoria's planning legislation, amenity goes beyond mere pleasantness and agreeableness. The amenity of a neighbourhood is made up of many attributes and embraces all the features, benefits and advantages inherent in the environment in question.<sup>58</sup> Amenity has also been equated with the planning objective "to secure a pleasant, efficient and safe working, living and recreational environment".<sup>59</sup>

### Evidence of amenity

For a planning permit application for an individual licensed business to have an impact on community amenity, there must be a direct link between the amenity of the surrounding area and the sale/consumption of liquor, operating hours or patron numbers of that particular licensed business.

The precise amenity impacts for councils to examine will depend on the nature of the licensed business under consideration. For instance, if a planning permit is being sought for a packaged liquor business, the most relevant potential amenity impact for councils to consider will be for the sale of liquor but, depending on the circumstances, could also include the amenity impacts of people purchasing liquor at the bottle shop and consuming it nearby.<sup>60</sup>

Once potential amenity impacts have been identified, the question becomes whether those impacts are reasonable or unreasonable in the circumstances.

Councils must also consider the amenity impacts on the surrounding area of a licensed business. What constitutes 'surrounding area' will need to be determined on a case-by-case basis but will generally cover amenity impacts, "on an area physically proximate to the proposed liquor licence, having regard to the scale and effects of a proposed use or development."<sup>61</sup> This could be the whole of a municipal area, the whole or part of a suburb, or a major activity centre.

## Mornington Peninsula Council and VCAT

The importance of having a direct link between the individual licensed premises and amenity impacts is reinforced by a 2012 VCAT decision where Mornington Peninsula Council refused to grant a planning permit for a large bottle shop.<sup>62</sup>

The council based its refusal, in part, on alcohol misuse and public health grounds. To support its case, it provided VCAT with research on the links between outlet density and alcohol-related harm and between the number of packaged liquor outlets and overall liquor consumption. The council also submitted family violence and reported crime incident data for the local area. The council further argued that the bottle shop would affect pre-existing public health issues of alcohol abuse in the municipality given that the area surrounding the proposed bottle shop was one of high socio-economic disadvantage.

However, VCAT found that the evidence relied on by the council in relation to outlet density was inconclusive, especially in relation to packaged liquor. Further, VCAT found that even if the evidence were conclusive, it still needed to have a direct relationship to amenity impacts. Here, according to VCAT, the council had made no such link.

The council did not give any evidence about how the bottle shop would impact on the amenity of the surrounding area given its location in an area of socio-economic disadvantage. Nor did the council make submissions about how the family violence and crime statistics were linked to the amenity of the land under consideration.<sup>63</sup> As the council did not persuade VCAT that the packaged liquor licence would have any unreasonable impacts on the amenity of the surrounding area, VCAT set the council's decision aside and granted a planning permit for the bottle shop.

Providing evidence of a connection between an individual licensed venue and the surrounding community amenity can be hard to demonstrate, however, especially if the licensed business has not yet opened. In these situations, councils must base their assessment on potential, future amenity impacts rather than actual, existing ones.

Packaged liquor businesses present another issue. Because alcohol purchased from a packaged liquor venue is generally consumed away from the outlet in private settings, it is challenging to provide evidence of a direct link between alcohol-related harm in the community and an individual packaged liquor venue. Any alcohol-related harm potentially caused through the excessive consumption of packaged liquor are more likely to occur away from public view rather than in the immediate vicinity of the packaged liquor outlet.

Finally, councils may also find it challenging to obtain the evidence they need to substantiate their arguments. For instance, it could be difficult for councils to obtain data about crime or anti-social behaviour within their municipality given that much of this kind of behaviour is unreported and that complaints made to councils can offer a limited, distorted view of incidents affecting local residents.<sup>64</sup>

### 3. Cumulative impact

The third element of Clause 52.27 for councils to consider is 'cumulative impact'. Councils must consider the cumulative impact of any existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.

#### *Practice Note 61*

To provide guidance about the concept of cumulative impact in relation to licensed premises, the Victorian Government released Practice Note 61 ('the practice note') entitled *Licensed premises: Assessing cumulative impact* in March 2011.<sup>65</sup>

Under the practice note, 'cumulative impact' refers to both the positive and negative impacts that can result from clustering a particular land use or type of land use, for instance, licensed premises.

Positive cumulative effects can be the enhanced vitality and economic benefits in an area. Negative cumulative effects can be increased violence and anti-social behaviour.

The practice note can be utilised for any proposal that may benefit from its use but it is particularly intended to be applied to any new or expanded licensed premises that:

- will be licensed and open after 11am
- is in an area where there is a cluster of licensed premises.<sup>66</sup>

A 'cluster' is when 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.

Potential cumulative impacts 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.

The practice note specifies the matters that councils must take into account when making decisions regarding cumulative impact. These include the planning policy context, surrounding land use mix and amenity, the mix of licensed premises, transport and dispersal and impact mitigation.

### **Planning for licensed premises: legislation, provisions and guidelines**

The Victorian Government has also issued [Planning for Licensed Premises: Legislation, provisions and guidelines](#), which provides more detail on cumulative impact issues.

### **The Swancom case**

The principal VCAT case on cumulative impact is *Swancom Pty Ltd v Yarra City Council* (Swancom case).<sup>67</sup> The list of matters that councils must take into account when making decisions about cumulative impact in the practice note is based on Swancom case. The Swancom case details the process of how VCAT considers the cumulative impact of licensed premises.

## **The Swancom case and VCAT**

The Swancom case was about the Corner Hotel in Swan Street, Richmond. The applicant sought to amend an existing planning permit to extend trading hours in its beer garden from 11.30pm to 3am and to increase patron numbers from 750 to 1300.

In particular, VCAT held that:

- The three key considerations for assessing cumulative impact 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 amenity's cumulative impact assessment should be proportionate to the level of concern raised by these considerations.

- For many applications, an initial review of these three considerations (see the first point just previous) will lead to a straightforward outcome that cumulative impact is not of significant concern. There will, though, 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.

In the Swancom case, VCAT found that the density, mix and type of licensed premises in the Swan Street precinct, combined with poor existing amenity levels in the immediately surrounding area, meant that this was a case requiring a detailed cumulative impact assessment.

To date, the Swancom case is the only example of where VCAT has refused to grant a planning permit on cumulative impact grounds.

There are many other VCAT cases on the issue of cumulative impact. In other cases, VCAT has either set aside a council's decision to refuse a planning permit for licensed premises, or granted the planning permit subject to conditions about noise, opening hours and patron numbers.

In each case, VCAT conducted a cumulative impact assessment to determine whether the relevant licensed premises site and the other activities in the area had imposed an unacceptable level of interference on the amenity of adjoining property owners.

Nonetheless, these cases offer mixed guidance on how councils may use cumulative impact arguments to reduce excessive alcohol consumption within their communities.

One discrepancy is that these cases are difficult to generalise. Each case is particular to the relevant licensee, the policy framework, zoning of the land as well as physical context and likely patron behaviour.<sup>68</sup>

VCAT is also inconsistent in its application of the criteria used to assess the cumulative impact of licensed venues – it has accorded different weight to identical cumulative impact criteria in separate cases and has alternatively expressed support for or uncertainty about the research that shows an association between outlet density and alcohol-related harm.<sup>69</sup>

Another variation on the issue is that the practice note requires councils undertaking a cumulative assessment to examine the particulars of the planning policy context, surrounding land use mix and amenity, the mix of licensed premises, transport and dispersal and impact mitigation. This process requires obtaining local data from multiple sources (such as the police, venue and community) and the final assessment requires councils to weigh up multiple descriptive factors and assess whether the negative impacts identified could be managed or mitigated in some way.<sup>70</sup>

To help address some of these issues, some councils have developed their own processes for considering planning permit applications for licensed premises that may result in cumulative impacts on the community.

## Melton City Council: a new Liquor Licence Assessment Policy

For instance, Melton City Council has recently developed a new Liquor Licence Assessment Policy for assessing planning permit applications for licensed premises.

As part of this process, the council utilised a Social and Amenity Impact Assessment Framework that aims to address the risk and negative impacts associated with the presence of licensed premises in the local community.

The Framework consists of three tools – a venue assessment tool, a licence and venue risk rating tool, and cumulative impact assessment tool. The combined application of these tools during the cumulative impact assessment process is intended to enable the council to conduct a rigorous assessment of the licensed business proposal, taking into account the various considerations that together are likely to result in a cumulative impact on amenity.

As the framework does not incorporate the tools to assess the potential benefits associated with a proposal, it is also intended to be used in conjunction with the practice note.

## City of Yarra: a methodology to assess risk

Another example is the City of Yarra Council, which has found that – depending on the nature of the application and the liquor licence – the Swancom methodology may not always be applicable. Therefore, it has developed its own methodology to assess risk consistently and transparently to determine whether a full cumulative impact assessment is necessary.

The risk assessment is based on a matrix where a risk rating is given for the type of premise, size of premise and closing hours of premise. The council carries out this risk assessment when it requires the permit applicant to provide more information before it can deal with the planning application.<sup>71</sup> The information required to carry out such an assessment is included in council's further information request to planning permit applicants.

A total score formula is calculated and will result in an application either being scored 'minimal risk' or 'potential risk'. Where an application is scored 'potential risk', then a full cumulative assessment will be undertaken in line with Swancom's case.<sup>72</sup>

### *Cumulative impact and packaged liquor licences*

Most cumulative impact VCAT cases to date are concerned with the cumulative impacts of on-premises licensed venues in places such as Swan Street, Richmond where there is a concentrated area of large bars and nightclubs. A feature of these areas is their 'walkability' with patrons moving between venues during the evening and night time period. However, this also leads to concerns about the anti-social behaviour and excessive drinking of people moving between venues in the immediate area of a licensed venue cluster.<sup>73</sup>

In this context, a proposed packaged liquor venue may be a concern to councils because it will provide immediate access to more alcohol and may further exacerbate existing amenity issues through the 'pre-loading' or 'side-loading' by patrons of existing venues.<sup>74</sup>

This approach is reflected in the practice note. The cumulative impact of packaged liquor venues is not a focus of the practice note. Instead, packaged liquor businesses are viewed as a factor that can affect the mix of licensed premises in a particular neighbourhood. In an area of large bars and nightclubs, the availability of alcohol offered through a packaged liquor venue could increase drinking opportunities for patrons entering and leaving licensed venues in the surrounding areas, leading to increased risk of excessive drinking and anti-social behaviour, potentially leading to negative cumulative impacts.

Packaged liquor venues that operate in an entertainment area or an area with a cluster of licensed premises are more likely to have a negative cumulative impact on the surrounding area.<sup>75</sup> VCAT recently found that the proposed introduction of a packaged liquor venue in an area – where there were already 56 licensed premises – would have a detrimental cumulative impact. VCAT determined that there would be genuine potential for undesirable amenity impacts caused by the introduction of a bottle shop into an entertainment area that was already experiencing issues regulating public order and where amenity was reduced as a result.<sup>76</sup>

Packaged liquor venues which are not located in an entertainment area or surrounded by a cluster of licensed premises raise different issues and are less likely to be seen by VCAT as having a negative cumulative impact.<sup>77</sup>

In part, this result could be attributed to the 500 metre radius that the practice note uses as the relevant area within which to assess the cumulative impacts of an existing or potential licensed business. The practice note uses this radius to reflect a practicable walking distance and to underpin its key concern of patrons moving on foot between different licensed premises late at night.

This radius can lead to challenges in assessing the cumulative impacts for many packaged liquor venues which are located away from entertainment areas. For these venues, packaged liquor store patrons are likely to drive to the store rather than travel on foot and to come from distances more than 500 metres away. Accordingly, any alcohol-related harm arising from the consumption of packaged liquor may be more widespread throughout the community than 500 metres.<sup>78</sup>

## Casey Council at VCAT: cumulative impact

Casey Council recently advocated at VCAT that the cumulative impact of a packaged liquor business should be assessed on a 2-3 kilometre catchment radius – the area in which people would normally shop and then consume alcohol – rather than the practice note’s 500 metre radius.

However, VCAT dismissed this argument. VCAT noted that Casey Council’s argument required “an acceptance that any store, but notably larger format stores, will lead to more consumption due to cheaper price and that the additional consumption then leads to more harm.”<sup>79</sup> VCAT found that there was limited evidence to suggest that density of packaged liquor outlets led to greater amenity impacts. There was also no evidence in the Council’s current planning scheme or practice note to suggest that the cumulative impact of packaged liquor outlets should be based on a different measure than the 500 metre radius set out in the practice note, such as a 2–3 kilometre catchment.

If a different approach was meant to be undertaken in relation to the cumulative impact of packaged liquor businesses under Clause 52.27, VCAT stated that this was a matter that should be addressed by policy makers.<sup>80</sup>

## SECTION 4

# The council decision-making process

### KEY POINTS

- Usually councils will not make a decision about a planning permit for a licensed business until 14 days after the planning permit application is first advertised.
- Depending on council policy, planning decisions may be made by the full council or a council officer with delegated authority.
- Councils can choose to grant the planning permit, grant the permit with conditions or refuse to grant the permit.

## The council decision-making process for planning permits

Section 3 identified what councils need to take into account when making a decision about a planning permit for licensed premises. Section 4 now outlines the process that councils utilise when reaching its decision.

### More information about decision-making

More detailed information is available at the DPTLI website in [A Short Guide to Planning and Using Victoria's Planning System: Planning Permits](#).

If the planning permit application is advertised, the council decision process will commence 14 days after the first date of notification or – if there is a notice on the land site – 14 days after the advertising sign is placed there.

A council planning officer will prepare a report on the permit application for licensed premises. The report will describe the proposal, the relevant policies and planning scheme requirements, the assessment process, any objections and referral comments, and the response to them. The report will conclude with a recommendation about whether or not the planning permit for the licensed premises should be granted based on the planner's professional assessment of the policies and planning scheme provisions that are relevant to the planning application.

Council will then make a decision about the planning permit application. This decision may be made by the full council or a council officer who has delegated authority. Most councils have a policy that identifies applications that will be decided under delegation. If the application is for a major project or there are a certain number of objections, the application will usually be decided at a committee of council or a full council meeting.

Councils (or the delegated officer) are not bound to accept the council planner's recommendation about a planning permit application. Councils must decide whether the proposal will produce acceptable planning outcomes in terms of the SPPF, LPPF, the purpose and decision guidelines of the zone and the decision guidelines in Clauses 65 and 52.27.<sup>81</sup> (The guidelines the council must consider are set out in more detail in Section 3.)

However, if the council (or delegate's) decision is contrary to the council planner's recommendation, then the council – in its role as a responsible authority – must be satisfied that the decision is soundly based on proper planning considerations.<sup>82</sup>

The council planner's report and recommendation is a public document. It is also provided to VCAT by the council if there is a subsequent review of a council's decision.

## **GRANTING THE PERMIT**

If councils decide to grant the permit, they must give the applicant and each objector a notice of this decision. The notice must also set out any permit conditions.<sup>83</sup>

If there are no objections to the permit application, councils can issue the permit immediately. If there are objections, councils can only issue a Notice of Decision to Grant a Permit.

All affected parties will receive a copy of the notice. The Notice of Decision to Grant a Permit does not have the same legal status as a permit but it signals council's decision to grant the permit and identifies any permit conditions.

However, councils cannot issue the final planning permit until the end of the period within which an objector may apply to VCAT for a review of council's decision to grant the permit or, if an application for review of the permit is made to VCAT within that period, until the application is determined by VCAT or withdrawn.<sup>84</sup>

## **REFUSAL TO GRANT THE PERMIT**

Councils may decide not to grant a planning permit for licensed premises and will issue a Notice of Refusal to Grant a Permit.

If a council denies the permit, it must give the permit applicant and each objector a notice of this decision, which includes the specific grounds on which the application is refused.<sup>85</sup>

If permit applicants or objectors are unhappy with the council's decision about the planning permit, they can apply to the Victorian Civil and Administrative Tribunal for a review of that decision. (More information about this is set out in Section 5.)

## SECTION 5

# The VCAT review

### KEY POINTS

- VCAT can review council decisions about granting a permit, refusing to grant a permit, a permit condition or failure to decide a permit application within the appropriate time.
- If involved in a VCAT hearing, councils must provide information about the permit application to the permit applicant and prepare a submission to VCAT.
- When reviewing a council decision, VCAT must take into account the same factors that the council was required to consider when making its original planning decision. However, VCAT will make its own assessment of the planning merits of the proposal.

## The role of VCAT

The Victorian Civil and Administrative Tribunal (VCAT) independently reviews decisions made by councils about planning permit applications and other planning matters.

Under the Act, VCAT can review council decisions regarding:

- granting a permit<sup>86</sup>
- refusing to grant a permit<sup>87</sup>
- failing to decide a permit application within the appropriate time<sup>88</sup>
- a permit condition.<sup>89</sup>

### More information about planning disputes

For more detailed information on how VCAT planning disputes work in practice, see [Taking it to VCAT: A guide to planning and environmental disputes at VCAT](#) and [DPTLI's A guide to the planning system: Chapter 5 reviews](#).

## Application to VCAT for review

An application made to VCAT to review a decision or planning matter is called an 'application for review'.

Objectors to a planning permit can apply to VCAT to review a council's decision to grant a planning permit.<sup>90</sup> Objectors must lodge an Application for Review form with VCAT within 21 days of the permit being approved.

Applicants for a planning permit can apply to VCAT to review a council's decision to refuse a planning permit or any condition included in the permit.

Permit applicants must lodge an Application for Review form with VCAT within 60 days of the council's decision.

### COUNCIL REQUIREMENTS BEFORE THE VCAT HEARING

If an applicant or objector makes an application to review a planning decision of council to VCAT, VCAT will then send out a Notice of Application to affected parties, including councils.

Within 10 business days of receiving a Notice of Application from VCAT, councils must provide VCAT with certain written documents and information about the permit application. Councils must then serve a copy of the completed table (with no attachments) to the applicant for review and/or the permit applicant.<sup>91</sup>

### What councils must provide to VCAT

There is a [table](#) on the VCAT website which identifies what document and information councils need to provide.

Councils must also prepare a submission to VCAT. The submission provides VCAT with a detailed background of the application, its planning context and the arguments in support of the council's planning submission. VCAT considers this submission to be of great importance as it may be the only professionally informed submission before VCAT at the time of making its judgement.<sup>92</sup>

### Guidelines for Submissions by Responsible Authorities

To assist councils in the preparation of their submissions, VCAT has prepared [Guidelines for Submissions by Responsible Authorities](#).

Generally, a council submission to VCAT must include information about the subject site, the planning proposal, the permit application process, the planning scheme and relevant policies and guidelines.

## THE VCAT HEARING

When a council decision is reviewed by VCAT, a hearing will be held by VCAT's Planning and Environmental List. The list hears and decides applications by individuals and organisations involving disputes over the use and/or development of land.

VCAT hearings are open to the public and councils may represent themselves or be represented by a lawyer.

At the hearing, the usual order of presentation is for the council to present its case first, then any referral authorities, then objectors and then the permit applicant. All parties will also be offered a right of reply.

The council representative will describe the planning proposal and then explain the policies and controls that are applicable to the assessment of the application, why a planning permit is required and the basis for the council decision.<sup>93</sup>

## VCAT'S DECISION

When reviewing a decision of a council, VCAT must take a number of matters into account, including the planning scheme, the objectives of planning in Victoria and the policies relevant to whether a permit should be granted, including both the SPPF and LPPF.<sup>94</sup>

VCAT must also consider the same planning factors that the council was required to consider when it made its original planning decision such as any objections, policy statements and guidelines relevant to the planning proposal for the licensed business.<sup>95</sup> However, VCAT will make its own assessment of the relevant planning considerations and the planning merits of the proposal.

After considering all the submissions, VCAT may agree with the council's assessment and conclusion, and affirm the council's decision. Alternatively, it may come to a different conclusion and overturn the council's original decision.<sup>96</sup>

After hearing an application for review, VCAT may:

- direct that a permit must not be granted
- grant the permit and direct the council to issue it
- grant the permit and direct the council to issue it with specified conditions.<sup>97</sup>

If a planning permit is granted, the council must issue that permit in accordance with VCAT's order. The council is also responsible for making sure that the permit requirements are met.

The applicant and any objectors will be advised of the outcome of the application in writing via a Notice of Decision or a Notice of Refusal.

## APPEALING A VCAT DECISION

VCAT decisions are final and binding on all parties to the application for review.

Councils can appeal decisions of VCAT but only on questions of law. A party can seek leave to appeal a VCAT decision to the Supreme Court of Victoria or, if VCAT was constituted by the President or Vice-President of VCAT, to the Victorian Court of Appeal.<sup>98</sup>

An application for leave to appeal must be made within 28 days after the day of the VCAT's decision and in accordance with the rules of the Supreme Court.<sup>99</sup>

### **More information about the Supreme Court**

Further information is available on the [Supreme Court website](#).

# Glossary

<b>The Act</b>	<i>Planning and Environment Act 1987</i> (Vic)
<b>Application for review</b>	An application made to VCAT to review a planning decision by a council (e.g. to grant a planning permit for a licensed business).
<b>CEDP</b>	Cranbourne East Development Plan
<b>The commission</b>	Victorian Commission for Gambling and Liquor Regulation
<b>Clause 52.27</b>	Clause 52.27 of the Victorian Planning Provisions – Licensed Premises
<b>Clause 65</b>	Clause 65 of the Victorian Planning Provisions – Decision Making Guidelines
<b>DPTLI</b>	Department of Planning, Transport and Local Infrastructure, Victorian Government
<b>DPO</b>	Development Plan Overlay
<b>Hunt Club case</b>	VCAT case of <i>Hunt Club Commercial Pty Ltd v Casey City Council</i> [2013] VCAT 725 and [2013] VCAT 726.
<b>LCRA</b>	<i>Liquor Control Reform Act 1998</i> (Vic)
<b>LPPF</b>	Local Planning Policy Framework
<b>MSS</b>	Municipal Strategic Statement
<b>PEA</b>	<i>Planning and Environment Act 1987</i> (Vic) (Abbreviation used in footnotes)
<b>practice note</b>	DPCD Practice Note 61 – Licensed premises: Assessing cumulative impact
<b>SPPF</b>	State Planning Policy Framework
<b>Swancom case</b>	<i>Swancom Pty Ltd v Yarra City Council</i> [2009] VCAT 923
<b>VCAT</b>	Victorian Civil and Administrative Tribunal

# Notes

## Introduction

1. Section 4(1) *Planning and Environment Act 1987* (Vic) (PEA).
2. A planning permit is a legal document that allows a certain land use or development to occur on a specified parcel of land.
3. Section 7(3)(a)(i) and (ii) – The LPPF may also comprise any other provision, which the Minister for Planning directs to be included in the planning scheme.
4. Sections 12A(3)(a) and (b) PEA.
5. Sections 13 and 14 PEA.
6. Part 1 and 1A, Division 4 PEA.

## Section 1

7. Part 2, *Liquor Control Reform Act 1998* (Vic) (LCRA).
8. Section 3(1) PEA.
9. Section 16(1) LCRA, section 16(2) LCRA.
10. Section 47 PEA.
11. Section 52 PEA.
12. Sections 52(1) and (4) PEA; Department of Planning and Community Development (n.d.), *Using Victoria's planning system*, Chapter 3, 3.3.5.
13. Section 52(2) PEA.
14. Schedule 1, Form 2 and 3, *Planning and Environment Regulations 2005*.
15. Section 55 PEA; Clause 66.03 *Victorian Planning Provisions*.
16. Section 56 PEA.
17. Section 56(1) PEA.
18. Section 52(1)(c) PEA; Clause 66.05 *Victorian Planning Provisions*.
19. Section 51 PEA.

## Section 2

20. Section 57(1) PEA.
21. Section 57(2A) PEA.
22. Section 57(2) PEA.
23. Section 57(5) PEA.

## Section 3

24. Section 60(1) PEA.
25. Section 60(1A) PEA.
26. Clause 52.27 does not apply to a limited licence or to a licence to manufacture liquor.
27. For instance, a planning permit is not required for any type of licence in relation to land within the City of Melbourne's Capital City Zone or land within the Docklands Zone.
28. *Hunt Club Commercial Pty Ltd v Casey City Council* (Red Dot) [2013] VCAT 725.
29. *Ibid*, para 3.
30. Section 60 PEA.
31. *Ibid*, para 14.
32. *Ibid*, para 17.
33. *Ibid*, para 18.
34. *Hunt Club*, n 28, para 20.
35. These requirements included that packaged liquor premises in Cranbourne East should: (a) be associated with the sale of food and groceries (e.g. as a supermarket annex) or be part of a group of shops that offered a balanced range of retail goods and services rather than a stand-alone outlet; (b) have a total retail floor area that did not exceed 300 square metres (in the case of a stand-alone outlet) or 10% of the retail floor area of the supermarket (in the case of the outlet being part of a supermarket); (c) have trading hours that are responsive to the need to minimise alcohol-related harm and associated amenity impacts in the Cranbourne community; (d) have a net community benefit for the Cranbourne community as demonstrated through a social and economic analysis of the proposed licensed premises.
36. *Hunt Club Commercial Pty Ltd v Casey City Council* [2013] VCAT 726, para 35.
37. See further: (i) Policy context below
38. *Hunt Club*, n 42, para 40.
39. *Ibid*.
40. *Hunt Club*, n 38, paras 57-58.

41. Hunt Club, n 38, para 55.
42. Hunt Club, n 28, para 15.
43. *Coles Group Property Developments Ltd v Mornington Peninsula SC* [2012] VCAT 600, para 28. For the analysis undertaken by VCAT see paras 30-44.
44. For instance, see Coles Group, n 43, paras 30-35.
45. Clause 21 of each council's planning scheme.
46. Clause 21.04-1, *Stonnington Planning Scheme*.
47. Clause 22.27, *Greater Bendigo Planning Scheme*; Clause 22.10, *Stonnington Planning Scheme*, Clause 22.22, *Melbourne Planning Scheme*; Clause 22.09, *City of Yarra Planning Scheme*.
48. Sections 12(2) PEA.
49. Sections 8A(1)(a) and (3) PEA; Section 8A(2) and (3) PEA.
50. Section 8A(6) PEA.
51. There are zones where councils can prohibit certain uses (e.g. Activity Centre Zone and Comprehensive Development Zone).
52. Hunt Club, n 38, para 25.
53. Casey Council proposed that the CEDP would become part of Schedule 1, Development Plan Overlay of the Casey Planning Scheme called 'Residential Areas'.
54. For further information, see page 19 of this resource: Scope of Clause 52.27 – Social and economic effects of packaged liquor venues.
55. *Swancom Pty Ltd v Yarra City Council* [2009] VCAT 923, para 78.
56. Section 3A LCRA.
57. Swancom, n 55, para 75.
58. *Zerbe v City of Doncaster and Templestowe* (1984) 2 PABR 101, 110.
59. Section 4(1)(c) PEA.
60. Coles Group, n 43, paras 38-40.
61. *Ibid*, para 37.
62. *Ibid*.
63. *Ibid*, para 62.
64. Brown, H 2012, *Decisions about licensed premises by the Victorian Civil and Administrative Tribunal: a review of selected findings*, City of Greater Dandenong Council, Victoria.
65. Department of Planning and Community Development 2011, *Licensed premises: assessing cumulative impact*, Department of Planning and Community Development, Melbourne, viewed 20 November 2013, [http://www.dpcd.vic.gov.au/\\_\\_data/assets/pdf\\_file/0005/60809/PN61-Cumulative-Impact-Assessments.pdf](http://www.dpcd.vic.gov.au/__data/assets/pdf_file/0005/60809/PN61-Cumulative-Impact-Assessments.pdf).
66. For instance, a cumulative impact assessment was deemed appropriate in a VCAT case not because of the density, mix or type of licensed premises in the area but because of existing amenity levels: see further Coles Group, n 43.
67. Swancom, n 55.
68. Notable cases include *Bambou Restaurant v Stonnington CC* [2010] VCAT 1758; *Get on the Good Food Pty Ltd v Stonnington CC* [2009] VCAT 2347; *Valanya Pty Ltd v Yarra CC* [2011] VCAT 440.
69. Swancom, n 68, paras 71 and 108; *Bambou Restaurant v Stonnington CC* [2010] VCAT 1758, paras 20-57.
70. Wilkinson, C 2012, 'Local government and cumulative impact: a tool to limit the concentration of liquor licences?', *DrugInfo: Newsletter of the Australian Drug Foundation's Drug Info Service*, vol. 10(3), pp. 7-8.
71. Section 54 PEA.
72. Inner Melbourne Action Plan, Attachment 11, *Final Report: Managing Conflicts in Activity Centres – Action 6.3*, 18 November 2011, 4.
73. Hunt Club, n 38, para 50.
74. For example see *Zaibatsu 1 Pty Ltd v Yarra CC & Ors* [2012] VCAT 1930, *Swancom PL v Yarra CC* [2009] VCAT 923; *Liodakis v Yarra CC & Anor* [2012] VCAT 1394.
75. *Sodhi v Moonee Valley City Council* [2012] VCAT 564.
76. *Ibid*, para 34. However, VCAT was still prepared to grant the planning permit for the bottle shop if the licensee reduced his proposed operating hours.
77. See further, Coles Group, n 52, paras 45-79 for an example of a cumulative impact analysis in relation to a large packaged liquor venue.
78. Maddocks 2011, *Amendment VC79 amending clause 52.27*, viewed 10 July 2013, <http://www.maddocks.com.au/reading-room/a/amendment-vc79-amending-clause-52-27>.
79. Hunt Club, n 38, para 48.
80. Hunt Club, n 38, paras 48-54.

## Section 4

81. Clause 31.02, *Victorian Planning Provisions*.
82. Municipal Association on Victoria (MAV) 2012, *Land Use Planning in Victoria: a guide for councillors*, viewed 10 July 2013, <http://www.mav.asn.au/policy-services/planning-building/related%20documents%20%20planning%20%20building/land%20use%20planning%20in%20victoria%20-%20a%20guide%20for%20councillors.docx>.
83. Section 64(1) and (2) PEA.
84. Section 64(3)(a) and (b) PEA.
85. Section 65(1) and (2) PEA.

## Section 5

86. Section 82 PEA.
87. Section 77 PEA.
88. Section 79 PEA.
89. Section 80 PEA.
90. Section 82 PEA.
91. VCAT 2013, *Practice Note – PNPE2: information from decision makers*, viewed 10 July 2013, <http://www.vcat.vic.gov.au/resources/document/pnpe2-information-decision-makers>.
92. VCAT 2013, *Planning and Environment List: guidelines for submissions by responsible authorities*, viewed 10 July 2013, [http://www.vcat.vic.gov.au/sites/default/files/planning\\_submissions-responsible\\_authority.pdf](http://www.vcat.vic.gov.au/sites/default/files/planning_submissions-responsible_authority.pdf).
93. MAV, n 82, 45.
94. Section 84B(2) PEA.
95. Section 60(1) PEA.
96. MAV, n 82, 47.
97. Section 85 PEA.
98. Section 148(1)(a) and (b) *Victorian Civil and Administrative Tribunal Act 1998* (Vic)
99. Section 148(2) *Victorian Civil and Administrative Tribunal Act 1998* (Vic).



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