

Unlocking liquor licensing

Resource 1: Planning permits for
licensed premises

INFORMATION FOR THE VICTORIAN COMMUNITY ABOUT LIQUOR LICENSING

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Disclaimer

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Preface

VicHealth’s Unlocking Liquor Licensing project aims to increase Victorians’ knowledge and understanding of Victoria’s liquor licensing system and help reduce the harmful impact of alcohol within Victorian communities.

To help achieve this, VicHealth has created two resources targeted at Victorian communities. These resources, which cover both Victoria’s planning and liquor licensing laws, are intended to provide the community with useful, relevant information about how these laws work in relation to licensed premises.

Resource 1: Information for the Victorian community about liquor licensing: Planning permits for licensed premises provides information about the planning permit process for licensed premises, including how community members can make objections to planning proposals.

Resource 2: Information for the Victorian community about liquor licensing: Liquor licensing laws provides an overview of Victoria’s liquor licensing laws, including how community members can make an objection in response to a liquor licence application.

These resources consider different matters. If you are objecting to a proposal, you should consider which process is most relevant to you and your concerns.

This table summarises the matters relevant to the planning process and the liquor licensing process.

Planning	Liquor licensing
<ul style="list-style-type: none">• amenity• land use• noise• building design• character• operating hours• cumulative impact.	<ul style="list-style-type: none">• amenity• safety• health• management of premises.

Resource 1 outlines the process involved for planning permits for licensed premises including the initial permit application, how community members make an objection, how councils make planning permit decisions and the way those decisions are reviewed.

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

-
- SECTION 1:** The planning permit application process
 - SECTION 2:** Objecting to a planning permit
 - SECTION 3:** How councils assess planning permit applications
 - SECTION 4:** The decision-making process
 - SECTION 5:** The VCAT review
-

INTRODUCTION

The use and development of land in Victoria

Introducing the *Planning and Environment Act 1987* (Vic)

The use, development and protection of land in Victoria is primarily regulated by the *Planning and Environment Act 1987* (Vic) (referred to in this document as 'the Act').

The Act establishes the objectives of planning in Victoria. These are used as the basis for 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.¹

Want to know more about the Act?

Visit the [Australasian Legal Information Institute \(Austlii\)](#) website to read more about the *Planning and Environment Act 1987* (Vic).

Introducing planning schemes and planning permits

Under the Act, each council administers a 'planning scheme' that sets out objectives, policies and controls for the use, development and protection of land in Victoria.

Each municipality in Victoria has a planning scheme. The 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.

A 'planning permit' is a legal document that allows a certain land use or development to occur on a specified parcel of land.

A planning permit is generally required if people wish to use land to sell and supply alcohol in Victoria. (There is more information about this in the next section.)

Want more information about planning schemes?

More [information about the structure of planning schemes in Victoria](#) is available on the Victorian Department of Planning and Community Development's (DPCD) website.

A responsible authority – usually your local council – administers and enforces the planning scheme for its municipality. The responsible authority assesses proposals for land use against the planning scheme and makes decisions about whether to grant, amend or deny those proposals.²

If you are affected by a planning proposal, you can make an objection about it to your local council before a decision is made.

If you are unhappy with the outcome after council has made its decision, you can seek a review of that decision at the Victorian Civil and Administrative Tribunal (VCAT).

SECTION 1

The planning permit application process

KEY POINTS

- Anyone seeking to use land to sell or consume alcohol must generally 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 Victorian Commission of Gambling and Liquor Regulation.
- 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 grant of the permit
 3. anyone as required under their planning schemes.

Applying for a planning permit for licensed premises

Licensed premises are organisations or businesses that have or are seeking to obtain a liquor licence from the Victorian Commission for Gambling and Liquor Regulation ('the commission') to supply or sell alcohol in Victoria.³

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

GETTING PLANNING PERMISSION AND MEETING PLANNING REQUIREMENTS

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.⁴ The commission will not grant a new liquor licence or change an existing one until this planning permission has been obtained.

Does the premises have planning permission?

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.⁵

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 any 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 in under a licence is to be increased.

Want more information about liquor licensing?

For more information about liquor licences, see *Resource 2: Information for the Victorian community about liquor licensing: Liquor licensing laws*.

You can find out about [different kinds of liquor licences](#) on the Victorian Commission for Gambling and Liquor Regulation website.

When is a planning permit *not* required?

A planning permit is not required if a person does not need to obtain a liquor licence under the LCRA. A planning permit is also not required where permit applicants are seeking to alter their liquor licence to reduce their trading hours, patron numbers or the area where liquor can be consumed or supplied.

WHAT INFORMATION DO PERMIT APPLICANTS NEED TO PROVIDE?

Permit applicants must provide a range of information to their local council. Many councils provide a Checklist for Planning Permits for Licensed Premises to help with this process.

People or businesses applying for planning permits for licensed premises are called 'permit applicants'.

Generally, councils require detailed information such as:

- a completed and signed planning permit application form and the prescribed application fee⁶
- a recent copy of title for the relevant land
- location plans of the proposed/existing licensed premises including information such as any nearby licensed premises, existing public services and infrastructure
- site plans including information such as areas to be used by patrons, the existing and proposed internal layout, the total numbers of patrons to be accommodated and car parking
- a written report detailing how the land will be used, including opening hours, security, staff training, management of patrons who are smoking and noise attenuation measures.

Trying to find a planning permit application form?

[Planning permit application forms for all Victorian councils](#) are available from your local council's website or from the Department of Planning and Community Development (DPCD) website.

Finding out about planning permit applications

You can view any planning permit application for licensed premises at your local council office. Councils must make these applications available for public inspection free of charge.⁷

Want to know about current planning permit applications?

Many councils also have online planning registers on their websites, which provide the details of current planning permit applications. You can [find the website for your local council](#) on the Department of Planning and Community Development (DPCD) website.

NOTICE AND ADVERTISING OF PLANNING PERMIT APPLICATIONS

Most planning applications for licensed premises are advertised. Planning applications for licensed premises do not need to be advertised if:

- the council is satisfied that granting a permit will not cause material detriment to any person
- the local council planning scheme says that advertising is not required.

While 'material detriment' is not defined in the Act, it generally refers to a real and identifiable loss, damage or injury that would occur as a result of the granting of a planning permit.

It should be possible to link detriment caused by a planning permit to specific planning issues such as access restrictions, visual intrusions or unreasonable noise or some other specific reason.

General concerns about 'nuisance', for instance, are not specific enough to lead to a finding of material detriment. Community concern about a controversial planning permit is also not enough on its own to conclude that a person may suffer material detriment if the permit is granted.⁸

Once councils receive a planning permit application for a licensed business, they must give notice to:

1. the owners/occupiers of land adjoining the land to which the application applies
2. any person to whom the planning scheme requires it to give notice
3. any other person to whom the council considers that grant of the permit may cause material detriment – a real and identifiable loss, damage or injury that would occur as a result of the granting of the permit.⁹

Who gives notice of a permit application?

The permit applicant must give notice of a permit application if directed by the council. Otherwise, notice will usually be given by the council itself.

To try and ensure that adequate notice is given to people who are entitled to object to a planning proposal, a council may give notice of a permit application in a range of ways; for instance:

- 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.¹⁰

A council planning scheme may also state that councils must give notice of planning permits for licensed premises in a particular way.

WHAT WILL THE NOTICE SAY?

A notice of a planning permit application will tell you:

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

WHAT IF YOU HAVEN'T RECEIVED FORMAL NOTICE?

If you do not receive formal notice about a planning permit application for licensed premises from your council and you believe that you should have, you can still make an objection about that permit.

However, a council must receive your objection before it has made a decision about the planning permit to be able to take it into account.

If the council has already decided to grant a permit, you can apply to VCAT to be joined as a party to an appeal (if there is one) or for leave to seek review of any decision of the council to grant the permit.

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.

This section sets out the process of making an objection to a planning permit for licensed premises.

Can you make an objection?

If you may be affected by the grant of a permit for a licensed business, you can make an objection to your local council.¹¹

You do not need to have been given notice of the permit application to make an objection.

WHAT IF YOU ARE *NOT*AFFECTED?

A council is not required to take your objection into account if you are not affected by the proposal or if it considers that you made the objection primarily for commercial reasons.¹²

VCAT may also refuse to consider your objection if you are not affected by the proposal or if your objection is not based on planning concerns.¹³

GROUP OBJECTIONS

A group of people can make an objection together in response to a planning permit for licensed premises. Councils will designate one person on the objection as the contact for the objection – generally, the first person named on the objection. This person will be notified in writing of council's decision in response to the objection.

Alternatively, you can inform council whom you wish to be notified about the council's decision.¹⁴

Can you prepare a petition?

A group of people can also make an objection by signing a petition.

Again, only one person on the petition will be notified in writing of council's decision in response to the petition because councils view a petition with multiple signatories as one objection. In the case of a multiple-page petition, the first name on the petition will be registered as the contact person.

The petition must explain the reasons for the objection and how the proposed use or development will affect the people who have signed the petition, just like other objections.

While a large number of people may sign a petition or objection, councils cannot reject a planning permit application solely based on the number of people opposed to it or because the planning proposal may be controversial in the local community.

How does a council process a planning application?

Once a council has received a planning application for licensed premises, it must process that application in accordance with the Act and its planning scheme, basing its decision on policy and planning grounds.

How to prepare an objection

Most Victorian councils will have a Planning Permit Objection Form on their website.

If you do not use a form, your objection must be in writing and include this information:

- the planning application number as shown on the public notice
- address of the site on which the development or use of land to sell/supply liquor is proposed
- your name, address, telephone number and email address
- your reasons for objecting and how you believe you will be affected by the grant of the permit for licensed premises.¹⁵

Where should you lodge your objection?

You should lodge the Planning Permit Objection Form with your local council. You can [find the website for your local council](#) on the Department of Planning and Community Development (DPCD) website.

Once you have lodged your objection with the council, you will receive a letter from the council acknowledging its receipt. You will also be notified in writing of council's decision in response to your objection.

THE GROUNDS OF YOUR OBJECTION

The most important part of your objection is your grounds for objecting to the planning permit for licensed premises.

The 'grounds of your objection' are your reasons for objecting to the planning permit for licensed premises.

To be effective, your objection should state exactly how you are affected by the proposal. You should address any relevant planning considerations applicable to the proposed use of land to sell or supply alcohol.

These may include:

- negative changes to the amenity of your property or the area
- detrimental impacts on the features, benefits or advantages of the local environment that people in your community currently enjoy
- negative effects on views, noise, traffic or the general atmosphere of an area
- the way the proposal is non-compliant with the council planning scheme and (where possible) how that has led to an unreasonable loss of amenity.

You can make a general objection as a community resident who has concerns about how the amenity impacts of the proposed licensed business will be felt in the immediate area, in the neighbourhood or in the wider community; for example, regarding:

- traffic
- parking
- noise
- disturbance.

If you live in or own property near where the proposed licensed premises will be located, you can make an objection that also specifically focuses on your concerns about the direct impact that the licensed premises will have on your property; for example, regarding:

- traffic
- car parking
- noise
- hours of operation.

A useful way to frame your objection is in terms of the matters that councils must take into account when making a decision about the permit application for licensed premises. (This is set out in more detail in Section 3.)

What do councils take into account?

When considering planning permits for licensed premises, councils must take into account the council's planning scheme, the objectives of planning in Victoria and all objections that they have received.

WHAT IS NOT VALID IN AN OBJECTION?

It is also important to realise that, while councils can take many factors into account when making planning permit decisions about licensed premises, there are also boundaries imposed by the Act and council planning schemes.

For instance, councils can consider any objections based on legitimate planning grounds.

By contrast, arguments based on concerns about property values or commercial competition are not valid reasons for making an objection under the Act.

WHAT IS RELEVANT TO A COUNCIL?

In relation to licensed premises, councils must consider the way particular things impact on the amenity of the surrounding area when it is making a planning permit decision for licensed premises; for instance:

- patron numbers
- sale of liquor
- trading hours
- the cumulative impact of existing licensed premises.

What about broad concerns about social harm?

While the proposed establishment of licensed premises often raises community concerns about the increase of alcohol-related harms in the community, councils cannot generally take into account the harms caused by alcohol when making decisions about planning permits for licensed premises.

This was confirmed by a recent VCAT case, which found that broad concerns about the social harms caused by alcohol, the accessibility of alcohol in the community, and the potential abuse and misuse of alcohol will rarely (if ever) be relevant for councils when they are making decisions about planning permits for licensed premises.

Instead, these issues are more appropriate when decisions are being made to grant liquor licences under the *Liquor Control Reform Act 1988* (Vic).¹⁶

According to VCAT, it is not a council's role to consider the broader impacts of the misuse of alcohol in society or to develop standards about alcohol accessibility.

While all these are relevant societal concerns, they are not necessarily relevant planning considerations for a council making planning decisions at a local level.¹⁷

Council planning decisions should, therefore, focus on whether it is appropriate to use land to sell/consume alcohol in a particular location in their municipality.

It is not a council's role to consider the broader question of whether it is appropriate for land in Victoria to be used to sell or consume alcohol.¹⁸ This kind of land use is permitted under Victorian planning laws and is in accordance with long-standing Government policy to encourage the diversified, responsible development of the liquor, licensing hospitality and live music industries in Victoria.

Want more information about making an effective objection?

The Department of Planning and Community Development (DPCD) website also has [information on preparing an effective objection](#).

Timing of your objection

Councils may decide to grant or refuse a permit within after giving notice (usually 14 days) of the permit application.¹⁹ However, you can lodge an objection up until the time that the council makes a decision about the planning permit, which may be longer than 14 days. You should contact your council to confirm what timeframes apply.

How can the public view objections?

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.²⁰

SECTION 3

How councils assess planning permit applications

KEY POINTS

- When making a decision about a planning permit application for licensed businesses, councils must consider:
 1. Clauses 65 (council decision-making guidelines)
 2. Clause 52.27 (licensed premises).
- Under Clause 52.27, when considering a planning permit proposal for a licensed business, councils must consider the:
 1. policy context
 2. potential impact of the sale or consumption of alcohol, hours and patron numbers of the licensed business on the amenity of the surrounding area
 3. cumulative impact of existing licensed premises and the proposed licensed premises on the amenity of the surrounding area.

It is useful for you to understand what councils can and cannot take into account when making decisions about planning permits for licensed premises; these planning considerations will form the basis of your objection.

Specific guidelines for councils

'Clause' refers to the relevant section of a planning scheme.

When making a decision about a planning permit application for a licensed business, councils must consider the following guidelines in their planning schemes:

1. Clause 65: council decision-making guidelines for planning permits
2. Clause 52.27: council decision-making guidelines for planning permits for licensed premises.

CLAUSE 65: COUNCIL DECISION-MAKING GUIDELINES FOR PLANNING PERMITS

Clause 65 sets out guidelines for councils when they are making decisions about planning permits in their role as a responsible authority.

Before deciding on a planning permit application, councils must consider, as appropriate, the matters set out in section 60 of the Act.

Councils *must* consider:

1. the relevant planning scheme
2. the objectives of planning in Victoria
3. all objections and other submissions which it has received
4. any decision and comments of a referral authority which it has received
5. any significant social, economic and environmental effects of the land use.²¹

Councils *may* consider:

1. any other strategic plan, policy statement, code or guideline which has been adopted by a minister, government department, public authority or council
2. any amendment to the planning scheme which has been adopted
3. any other relevant matter.²²

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

- the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies
- the purpose of the zone, overlay or other provision
- any matter required to be considered in the zone, overlay or other provision
- the orderly planning of the area
- the effect on the amenity of the area
- 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 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 also consider Clause 52.27 for planning permit applications in situations where:

- a licence is required under Victoria's liquor licence legislation – the LCRA²³
- a different licence or class of liquor 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 where liquor is allowed to be consumed or supplied is to be increased.

ELEMENTS OF CLAUSE 52.27

Under Clause 52.27, councils must consider:

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

The planning framework

Councils must consider where the land is located and how it is zoned and the relevant planning framework in its planning scheme, including how their planning scheme deals with licensed premises.

For instance, the council's Municipal Strategic Statement (MSS), which is the high-level statement of a council's planning objectives and strategies, may state a council's overall approach or vision for licensed premises in its municipality.

A council may also have a planning policy for licensed premises in its planning scheme, usually called a Licensed Premises Policy.

A 'Licensed Premises Policy' is a council guideline for how it will deal with planning permit applications for licensed premises and how it envisages land should be used to sell/supply alcohol in its municipality.

Based on this information, councils will make an assessment whether granting a planning permit for the use of a particular piece of land to sell or supply liquor is an appropriate planning decision for its municipality.

Amenity

Councils must consider these things that affect the amenity of the surrounding area:

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

'Amenity' is a broad term, which is not defined in the Act but, in practice, it generally encompasses all the many attributes, features, benefits and advantages of a particular neighbourhood.²⁴

Amenity has also been equated with the planning objective: "to secure a pleasant, efficient and safe working, living and recreational environment."²⁵

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.

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

The challenge of proving evidence

Providing evidence of a connection between an individual licensed venue and the surrounding community amenity can be hard to demonstrate, 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 provide a similar problem. As alcohol purchased from a packaged liquor venue is generally consumed away from the outlet in private settings such as homes, it is hard to provide evidence of a direct link between alcohol-related harms in the community and an individual packaged liquor venue. Any alcohol-related harms 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.

Cumulative impact

Councils must also 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') *Licensed premises: Assessing cumulative impact* in March 2011.

In *Practice Note 61*, 'cumulative impact' refers to both the positive and negative impacts that can result from clustering a particular land use or type of land use together, 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 about cumulative impact is particularly intended to be applied to any new or expanded licensed premises that:

1. will be licensed and open after 11am
2. is in an area where there is a cluster of licensed premises.

A 'cluster' is 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.

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 (the availability of nearby transport and transport infrastructure, such as public transport, taxi ranks and car parks, can affect the dispersal patterns and behaviour of patrons of nearby licensed premises)
- impact mitigation (which reduces potential negative cumulative impacts of licensed premises, such as providing patron transport, layout and design of buildings, and providing rubbish facilities).

Want more information about cumulative impact?

More information about cumulative impact can be found in the Department of Planning and Community Development document *Planning for Licensed Premises: Legislation, provisions and guidelines*.

SECTION 4

The decision-making process

KEY POINTS

1. Councils will only make a decision about a planning permit for a licensed business after advertising of the application has concluded, this is usually 14 days after the application is first advertised.
2. Depending on council policy, the full council or a council officer with delegated authority will make planning decisions.
3. Councils can choose to grant a planning permit, grant a permit with conditions or refuse to grant a permit.

Section 3 identified what a council needs to take into account when making a decision about a planning permit for licensed premises. This section outlines how a council reaches its decision about that planning permit.

Want more detailed information about planning permits?

More detailed information is available in the Department of Planning and Community Development document [Planning: A Short Guide](#).

The consultation and assessment process

Timing

Once notice of an application for a planning permit has been completed, councils will begin their decision-making process in response to the planning permit application. Generally, this will occur a minimum of 14 days after people were first notified of the planning application.

When objections have been received, council planning staff will often conduct an informal consultation process with objectors to discuss their concerns.

This may be in one-on-one meetings, telephone conversations or a meeting between planning staff, the permit applicant and you, the objector.

The purpose of a consultation meeting is to understand conflicting views, identify issues and to potentially agree on solutions. However, consultation is a voluntary process and it is up to you if you wish to participate.

After the consultation process, the council will determine whether any or all of the issues have been resolved and what further action is required.

If agreement is unable to be reached, then the planning permit application will proceed.

WITHDRAWING YOUR OBJECTION

If an agreement or resolution has been reached or, if you no longer have any concerns about the planning permit application, you can withdraw your objection to the council in writing.

However, if you withdraw your objection at this stage, you will not be informed of the council's decision. You will also lose your right to apply to VCAT for a review if you subsequently disagree with the council's decision to grant or deny the planning permit.

CONDUCTING A DETAILED ASSESSMENT

A council planning officer will prepare a report on the permit application for licensed premises. The report will describe:

- the proposal
- the relevant 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. This is based on the planner's professional assessment of the policies and planning scheme provisions that are relevant to the planning application.

Making a decision

The 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.

'Delegation' means handing down, granting or assigning certain powers and duties from council to another person or body to implement a specific tasks.

A 'delegated officer' is a senior council employee that the council has delegated the power/responsibility to make certain planning decisions.

DOES A COUNCIL HAVE TO ACCEPT THE COUNCIL PLANNER'S RECOMMENDATION?

The council (or the delegated officer) *is not bound* to accept the council planner's recommendation about a planning permit application.

The council must decide whether the proposal will produce acceptable planning outcomes. (The guidelines that councils must consider when making planning decisions for licensed premises are set out in Section 3.)

However, if the council (or delegate's) decision is contrary to the council planner's recommendation, then the council, as a responsible authority, must be satisfied that the decision is soundly based on proper planning considerations.²⁶

After the decision

Once a council (or the delegated officer) has made a decision about a planning permit for licensed premises, the council planner's report and recommendation becomes a public document.

The council planner's report is also provided to VCAT by the council if someone seeks a review of the council's decision.

How to view the council planner's report and recommendation

You can view the council planning report and its recommendation about the planning permit at your council's offices, free of charge. The planning report will be part of the planning file about the relevant planning permit for licensed premises.

Because different councils have different procedures for accessing these files, contact your local council to tell them in advance that you wish to look at the file and find out what the procedure is.

If the full council considered the planning permit application, the council's planning report will also be included as part of the council minutes. These minutes will be available on the council's website.

GRANTING THE PERMIT

If the council decides to grant the permit, it must give the applicant and each objector a notice of this decision. The notice must also set out any permit conditions.²⁷

Issuing a Notice of Decision to Grant a Permit

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

All affected parties will receive a copy of the Notice of Decision to Grant a Permit. It 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.

The Notice must also advise objectors of their right to appeal the grant of the permit or any of its conditions to VCAT within 21 days.

However, the council cannot issue the final planning permit until the expiry of the 21-day appeal period or, if an appeal has been made, until VCAT makes a determination.²⁸

Refusing to grant the permit

A council may decide not to grant a planning permit for licensed premises and will issue a Notice of Refusal to Grant a Permit. If 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.²⁹

APPEALING TO VCAT

If you are unhappy with the council's decision about the planning permit, you 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 on page 29.)

SECTION 5

The VCAT review

KEY POINTS

1. You can apply to the Victorian Civil and Administrative Tribunal (VCAT) to review a council decision to grant a permit, refuse to grant a permit, to grant a permit with conditions or its failure to decide a permit application within the prescribed time.
2. 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 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 permit³⁰
- refusing to grant a permit³¹
- failing to decide a permit application within the appropriate time³²
- a permit condition.³³

The following information is a summary of VCAT procedures for planning disputes.

Want more information about VCAT?

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](#).

Applying for a review

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

If you objected to a planning permit for licensed premises, you can apply to VCAT for it to review council's decision to grant that planning permit.³⁴

Lodging an Application for Review form

You must lodge an [Application for Review](#) form with VCAT within 21 days of the council issuing a Notice of Decision to Grant a Permit together with the appropriate filing fee.

WHAT IF YOU DID NOT OBJECT?

What if you did not object to the original planning permit application but you are affected by the decision to grant a planning permit for licensed premises? You can only lodge an application for review against council's decision if there was at least one written objection to the original permit application and VCAT permits you to lodge the application.³⁵

GROUND OF APPLICATION

The grounds of application are the reasons why you believe that VCAT should review the council's decision about the planning permit for licensed premises.

Like making an objection, it is useful to frame your grounds of application around the issues that VCAT must consider when reviewing council's decision. (For more information about what VCAT must consider, see page 29.)

However, your grounds of application cannot include arguments based on:

- loss of property values
- economic competition
- the personality or character of any person
- any issues that do not relate to planning.

The 'grounds of application' are the reasons why you believe that VCAT should review the council's decision.

What happens at a 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. You may represent yourself or have someone represent you, for example a lawyer or a planning specialist.

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.³⁶

WHAT MUST VCAT TAKE INTO ACCOUNT TO REVIEW A DECISION?

When reviewing a decision of a council, VCAT must consider the same planning matters as council did, including the:

- local council planning scheme
- objectives of planning in Victoria
- policies relevant to whether a permit should be granted.³⁷

However, VCAT will make its own assessment of the relevant planning considerations and the planning merits of the proposal.

MAKING A DECISION

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.³⁸

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.³⁹

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.

You 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 and everyone affected by the decision (objectors, councils) must follow it. The only exception to this is if a VCAT order is set aside by the Supreme Court of Victoria on a question of law.

You can appeal a decision of VCAT to the Supreme Court of Victoria but only on a question of law. A 'question of law' is where you believe that VCAT has made a decision that is legally wrong.

This could be if you believe that VCAT has applied the wrong law to the facts of the case or misinterpreted the meaning of the Act. It is not when you believe that VCAT has misinterpreted the evidence or made a wrong finding about the facts of the case.

You are strongly advised to obtain legal advice if you are considering appealing a decision of VCAT to the Supreme Court.

Making an application to the Supreme Court

An application for leave to appeal must be made within 28 days of VCAT's decision and in accordance with the rules of the Supreme Court.⁴⁰ More information is available on [the Supreme Court website](#).

Glossary

The Act	<i>Planning and Environment Act 1987 (Vic)</i>
Application for review	An application made to VCAT to review a planning decision by a council (e.g. to grant a planning permit for a licensed business).
The commission	Victorian Commission for Gambling and Liquor Regulation
Clause 52.27	Clause 52.27 of the Victorian Planning Provisions – Licensed Premises
Clause 65	Clause 65 of the Victorian Planning Provisions – Decision Making Guidelines
DPCD	Department of Planning and Community Development, Victorian Government
Hunt Club case	VCAT case of <i>Hunt Club Commercial Pty Ltd v Casey City Council [2013] VCAT 725 and [2013] VCAT 726</i> .
LCRA	<i>Liquor Control Reform Act 1998 (Vic)</i> – Victoria’s liquor licensing law
MSS	Municipal Strategic Statement
PEA	<i>Planning and Environment Act 1987 (Vic)</i>
Permit applicants	People/businesses applying for a planning permit for licensed premises
Practice note	DPCD Practice Note 61 – Licensed premises: Assessing cumulative impact
Responsible authority	Body that makes decisions about planning permits under the Act, usually the local council
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victorian Planning Provisions

Notes

Introduction

1. Section 4(1), *Planning and Environment Act 1987* (Vic) (PEA).
2. Sections 13 and 14 PEA.

Section 1

3. Part 2, *Liquor Control Reform Act 1998* (Vic) (LCRA).
4. Section 3(1) PEA.
5. Section 16(1) LCRA. This requirement does not apply to a pre-retail licence, a limited licence or a major event licence: section 16(2) LCRA.
6. Section 47 PEA.
7. Section 51 PEA.
8. Department of Planning and Community Development, 'Chapter 3: Planning Permits', *Using Victoria's planning system*, DPCP, Victoria.
9. Section 52 PEA.
10. Section 52(2) PEA.

Section 2

11. Section 57(1) PEA.
12. Section 57(2A) PEA.
13. Section 60(3) PEA.
14. Section 57(3) PEA.
15. Section 57(2) PEA.
16. *Hunt Club Commercial Pty Ltd v Casey City Council* [2013] VCAT 725, para 14.
17. *Ibid*, para 16.
18. *Ibid*, para 17.
19. Section 59 PEA.
20. Section 57(5) PEA.

Section 3

21. Section 60(1) PEA.
22. Section 60(1A) PEA.
23. Clause 52.27 does not apply to a limited licence or to a licence to manufacture liquor.
24. *Zerbe v City of Doncaster and Templestowe* [1984] 2 PABR 101, 110.
25. Section 4(1)(c) PEA.

Section 4

26. Municipal Association of Victoria 2012, *Land use planning in Victoria: a guide for councillors*, MAV, Victoria, 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>.
27. Section 64(1) and (2) PEA.
28. Section 64(3)(a) and (b) PEA.
29. Section 65(1) and (2) PEA.

Section 5

30. Section 82 PEA.
31. Section 77 PEA.
32. Section 79 PEA.
33. Section 80 PEA.
34. Section 82 PEA.
35. Section 82B PEA.
36. Municipal Association of Victoria 2012, *Land use planning in Victoria: a guide for councillors*, MAV, Victoria, p. 45.
37. Section 84B(2) PEA.
38. Municipal Association of Victoria 2012, *Land use planning in Victoria: a guide for councillors*, MAV Victoria, p. 47.
39. Section 85 PEA.
40. Section 148(2), *Victorian Civil and Administrative Tribunal Act 1998* (Vic).



Victorian Health Promotion Foundation
PO Box 154 Carlton South, VIC 3053, Australia
T. +61 3 9667 1333 F. +61 3 9667 1375
vichealth@vichealth.vic.gov.au
www.vichealth.vic.gov.au
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