

Planning and Environment Act 1987

Panel Report

Maribyrnong Planning Scheme Amendment C141

Managing the Impacts of Licensed Premises

22 May 2017

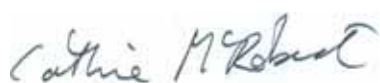
Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Maribyrnong Planning Scheme Amendment C141

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Cathie McRobert, Chair

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List of Abbreviations

Design Guidelines	<i>Design Guidelines for Licensed Venues</i> , Department of Justice 2015
Discussion Paper	Managing the Impact of Licensed Premises Discussion Paper 2012
Highpoint	GPT Group, the manager of Highpoint Shopping Centre
Hunt Club decision	<i>Hunt Club Commercial Pty Ltd v Casey City Council [2013] VCAT 726</i>
LCR Act	<i>Liquor Control Reform Act 1998</i>
Managing Impacts Report	Managing the Impacts of Licensed Premises September 2015
MSS	Municipal Strategic Statement
PE Act	<i>Planning and Environment Act 1987</i>
PPN61	Planning Practice Note 61 - Licensed Premises: Assessing Cumulative Impact 2015
SPPF	State Planning Policy Framework
VAAP	Restoring the Balance – Victoria’s Alcohol Action Plan 2008-2013)
VCGLR	Victorian Commission for Gambling and Liquor Regulation

Overview

Amendment summary

The Amendment	Maribyrnong Planning Scheme Amendment C141
Common name	Managing the Impacts of Licensed Premises
Brief description	<p>The Amendment proposes to:</p> <ul style="list-style-type: none"> - introduce a new local policy for licensed premises at Clause 22.08. - change Clause 21.08 of the Municipal Strategic Statement (MSS) to include a snapshot of existing licensed premises in the municipality, an overview of the issues, and new objectives and strategies for licensed premises. - include <i>Maribyrnong City Council Managing the Impacts of Licensed Premises 2015</i> (the Managing Impacts Report) as a reference document in Clause 21.12.
Planning Authority	Maribyrnong City Council
Authorisation	12 July 2016, the authorisation was not subject to any conditions
Exhibition	17 November to 19 December 2016
Submissions	<p>Number of submissions: 2 Opposed: 2</p> <ul style="list-style-type: none"> - The Alcohol Policy Coalition which is an alliance of the Australasian College of Emergency Medicine, Alcohol and Drug Foundation, Cancer Council Victoria, Centre for Alcohol Policy Research at LaTrobe University, Foundation for Alcohol Research and Education, Jewish Community Council of Victoria, Public Health Association of Australia (Victoria), Royal Australasian College of Surgeons, Salvation Army, Turning Point, Uniting Church, Synod of Victoria and Tasmania, and the Victorian Alcohol and Drug Association. - GPT Group, the manager of Highpoint Shopping Centre (Highpoint)

Panel Process

The Panel	Cathie McRobert, Chair
Directions Hearing	6 March 2017, Planning Panels Victoria
Panel Hearing	30 March 2017, Planning Panels Victoria
Site Inspections	Not Applicable
Appearances	<p>Maribyrnong City Council represented by Mimi Marcus of Maddocks Lawyers who called expert evidence from:</p> <ul style="list-style-type: none"> - Colleen Peterson of Ratio Consultants in Planning <p>Centre for Alcohol Policy Research, on behalf of The Alcohol Policy Coalition, represented by Claire Wilkinson</p>
Date of this Report	22 May 2017

Executive summary

(i) Summary

Maribyrnong Planning Scheme Amendment C141 (the Amendment) applies to applications under Clause 52.27 (Licensed premises) throughout the City of Maribyrnong. It seeks to implement the findings of the report *Managing the Impacts of Licensed Premises September 2015* (the Managing Impacts Report). The Amendment proposes to introduce a new local policy for licensed premises at Clause 22.08 (the proposed policy), update the MSS and include the Managing Impacts Report as a reference document.

The key issues raised in the submissions are summarised as follows:

- The Alcohol Policy Coalition requested recognition of health and social impacts of alcohol consumption in the MSS and the proposed policy.
- Highpoint requested changes relating to:
 - matters to be considered for packaged liquor outlets
 - the types of licensed premises to be encouraged or discouraged
 - application and management plan requirements.

The Panel concludes:

- The key strategic direction of the proposed policy to direct licensed premises to appropriate activity centres supports planning policy and is a sound approach to optimise potential benefits and minimise adverse impacts.
- The proposed policy, with some recommended refinements, provides reasonable scope to consider social impacts from licensed premises. However, the justification necessary to support changes to manage the density of licensed premises and associated social effects was not presented to the Panel.
- Explicit reference in the policy basis to the focus on the types of licenced premises that pose the highest risk of adverse effects (larger, late night venues and clusters of venues, particularly in or near residential areas, rather than ‘food-based’ cafes and restaurants or packaged liquor outlets) would support decision making by articulating the rationale for policy provisions.

The Panel sees merit in the development of a model local planning policy for licensed premises, as recommended by the Victorian Auditor-General, or further state-wide guidance in Clause 52.27 to provide a consistent framework for planning decisions, but such a task is clearly beyond the scope of this process.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that Maribyrnong Planning Scheme Amendment C141 be adopted as exhibited subject to the following:

1. **Revise Clause 22.08 as shown in Appendix B to clarify the policy intent and improve its useability.**

1 Introduction

1.1 The Amendment

The Amendment applies to applications under Clause 52.27 (Licensed premises) throughout the City of Maribyrnong. It seeks to implement the findings of the Managing Impacts Report. In summary, the Amendment proposes to:

- introduce a new local policy for licensed premises at Clause 22.08 (the proposed policy)
- include new objectives and strategies for licensed premises at Clause 21.08 of the MSS
- include the Managing Impacts Report as a reference document in Clause 21.12 of the MSS.

The Amendment establishes licensed premises as its own policy area (it is currently grouped with gaming policy) and sets out the following new objectives and strategies:

Objectives

- *to encourage new licensed premises to locate within activity centres which are consistent with the role of the centre;*
- *to encourage new licensed premises and changes to existing licensed premises to result in positive amenity impacts; and*
- *to encourage new licensed premises and changes to existing licensed premises to result in minimal negative amenity impacts.*

Strategies

- *ensure the location, design and operation of licensed premises maximises the opportunity for streetscape activation, passive surveillance, and enhanced vitality of an area;*
- *ensure the location, design and operation of licensed premises minimises the potential for negative amenity impacts on the surrounding area; and*
- *ensure the licensed premises will not result in an adverse cumulative impact on the surrounding area.*

The proposed policy recognises and seeks to manage negative impacts of licenced premises on the amenity of the surrounding area. It proposes to direct licensed premises to activity centres and discourage new licensed premises trading after 11pm from locating in residential zones. The proposed policy addresses noise impacts, operating hours, patron numbers and access arrangements. It sets out application requirements, which include:

- site context and site layout plans
- a written description of the proposed uses, site context, public transport and car parking in the locality, assessment of all potential off-site impacts and how they will be managed/mitigated, and details of proposed management of premises
- a noise impact assessment
- a management plan (for venues with a capacity of more than 200 patrons, late night venues or other premises as considered necessary by the responsible authority).

The decision guidelines in the proposed policy relate to:

- policy objectives
- the role of the activity centre (set out in the policy)

- proximity to residential zones and uses and associated reasonable amenity expectations
- whether the application addresses the Design Guidelines for Licenced Venues¹ (the Design Guidelines) and Planning Practice Note 61 Licensed Premises: Assessing Cumulative Impact 2015 (PPN61)
- the availability of public transport during licensed premises operating times.

1.2 Background to the proposal

Council advised that the proposed policy was informed by background reference documents² identifying an increasing number of licensed premises operating in the City of Maribyrnong. The number, range and diversity of licensed premises in the municipality to grow as the resident population continues to increase.

Between 2012 and April 2015, the number of licensed premises in the City increased from approximately 218 to 256. In April 2015, 256 licensed premises were operating in the City of Maribyrnong, with 77 per cent concentrated in the suburbs of Footscray, West Footscray, Maribyrnong and Yarraville (see Figure 1). The majority of licenses (35.9 per cent) were restaurant or cafes, 7.8 per cent were club licenses, and 13.3 per cent were packaged liquor licenses. The remaining 43 per cent were on-premises venues, general and limited licences and pre-retail licenses.

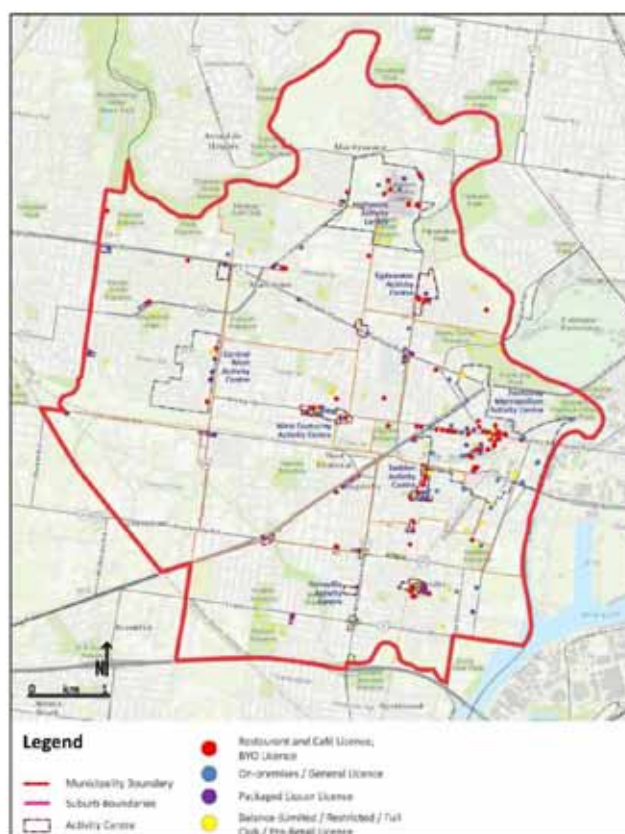


Figure 1 Existing licensed premises in the City of Maribyrnong (source: Managing Impacts Report)

¹ *Design Guidelines for Licensed Venues* Department of Justice 2015.

² Page 5 Managing Impacts Report.

1.3 Summary of issues raised in submissions

The key issues raised in the submissions are briefly summarised as follows:

- Alcohol Policy Coalition (APC) requested recognition of health and social impacts of alcohol consumption in Clauses 22.08 and 21.08.
- Highpoint requested changes relating to:
 - recognise the particular characteristics of packaged liquor outlets
 - the types of licensed premises to be encouraged or discouraged
 - clearer application requirements
 - the requirement for a management plan at the application for permit stage.

1.4 Issues dealt with in this report

The Panel considered all written submissions made in response to the exhibition of the Amendment; as well as further submissions, evidence and other material presented to it during the Hearing, and observations from its site visits. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the report.

This report deals with the issues under the following headings:

- Does the Amendment have a sound strategic basis?
- Social and health impacts
- Packaged liquor outlets
- Policy requirements and Amendment drafting.

2 The issues

2.1 Does the Amendment have a sound strategic basis?

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report. The Panel has briefly reviewed the regulatory framework for licensed premises, the policy context of the Amendment and supporting strategic planning analysis.

(i) The Regulatory Framework

Licensed premises are regulated through a combination of the liquor licensing and planning legislation, which have distinct, but sometimes overlapping purposes.

Liquor Control Reform Act 1998

The *Liquor Control Reform Act 1998* (LCR Act) regulates the supply and consumption of liquor in Victoria and is administered by the Victorian Commission for Gambling and Liquor Regulation (VCGLR). The most common liquor licence types in the City of Maribyrnong are on-premises licence, packaged liquor licence, restaurant/cafe licence and club licences. The VCGLR generally only determines liquor licence applications after a planning permit has been granted. Council may object to the granting, variation or relocation of a liquor licence³.

Consideration of amenity is a key objective under the LCR Act, which for the purpose of the LCR Act *'is the quality that the area has of being pleasant and agreeable'*. Amenity includes but is not limited to:

- the presence or absence of parking facilities
- traffic movement and density
- noise levels
- the possibility of nuisance or vandalism
- the harmony and coherence of the environment.

Minimising harm arising from the misuse and abuse of alcohol is another key objective of the LCR Act⁴, which states:

It is the intention of Parliament that every power, authority, discretion, jurisdiction and duty conferred or imposed by this Act must be exercised and performed with due regard to harm minimisation and the risks associated with the misuse and abuse of alcohol.

This can be encouraged by restricting the supply of alcohol, encouraging a culture of responsible consumption, and facilitating the development of a diversity of licensed premises.

Planning and Environment Act 1987

The *Planning and Environment Act 1987* (the PE Act) objectives⁵ of the planning include:

³ Section 40 of the LCR Act.

⁴ Section 4 (2) LCR Act

⁵ Section 4(2)(c) and (d) of the PE Act.

- (c) *to enable land use and development planning and policy to be easily integrated with environmental, social, economic, conservation and resource management at State, regional and municipal levels;*
- (d) *to ensure that the effect on the environment are considered and provide for explicit consideration of social and economic effects when decisions are made about the use and development of land*

The PE Act requires Council:

- as the planning authority, in preparing a planning scheme or amendment:
 - (c) *must take into account its social effects and economic effects⁶.*
- as the responsible authority when determining an application to consider:
 - *'any significant social effects and economic effects which the responsible authority considers the use or development may have⁷.'*

Clause 52.27 Licensed Premises

Clause 52.27 (Licensed premises) of all Victorian planning schemes requires a permit to use land to sell or consume liquor if a licence is required under the LCR Act. The purposes and decision guidelines of this clause focus on ensuring that licensed premises are located in appropriate locations and the impact (including cumulative impact) of licensed premises on the amenity of the surrounding area is considered. The decision guidelines require consideration of the following matters in determining whether a permit should be granted:

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

Zones in planning schemes

The zoning of land establishes permit requirements for use and development. Table 1 illustrates the permit requirements for land uses under common zones. Development requires a permit for licensed premises in the zones listed in the table.

⁶ Section 12(2) of the PE Act.

⁷ Section 60(1)(f) of the PE Act.

Table 1 Licensed premises permit requirements for land use

Zone	Land Use	Licensed premises permit requirements for use
Commercial 1	Food and drink premises ⁸	No permit required
	Place of assembly ⁹	Permit required
	Packaged Liquor outlet ¹⁰	No permit required
	Residential Hotel ¹¹	No permit required (if frontage at ground floor level does not exceed 2 metres)
Mixed Use	Food and drink premises	Permit required (if floor area is greater than 150 m ²)
	Place of assembly	Permit required
	Packaged Liquor outlet	Permit required (if floor area is greater than 150 m ²)
	Residential Hotel	Permit required (unspecified use)
Other Residential	Food and drink premises	Permit required
	Place of assembly (other than Nightclub)	Permit required
	Nightclub	Prohibited
	Packaged Liquor outlet	Prohibited
	Residential Hotel	Permit required (unspecified use)

Local Law

In Maribyrnong, the *General Purposes Local Law 2015* states that a person must not consume alcohol or possess alcohol in an unsealed container within an alcohol restriction area (including any public place, a road, Council land or in a stationary vehicle).

(ii) Policy context

Planning Policy

Although the State Planning Policy Framework does not explicitly address licensed premises, relevant broader objectives and strategies include:

- **Clause 15.01-2 (Urban Design Principles)** seeks to *'achieve architectural and urban design outcomes that contribute positively to local urban character and enhance the public realm while minimising detrimental impact on neighbouring properties'*.
- **Clause 15.01-4 (Design for Safety)** has an objective *'To improve community safety and encourage neighbourhood design that makes people feel safe'* with a strategy *'Ensure the design of buildings, public spaces and the mix of activities contribute to safety and perceptions of safety.'*

⁸ Defined as 'Land used to prepare and sell food and drink for immediate consumption on, or off, the premises.' Includes Hotel, Restaurant, Tavern.

⁹ Includes Function Centre and nightclub.

¹⁰ Bottle shop is included in 'Shop'.

¹¹ Residential hotel is defined as "Land used to provide accommodation in serviced rooms for persons away from their normal place of residence. If it has at least 20 bedrooms, it may include the sale of liquor for consumption on, or off, the premises, function or conference rooms, entertainment, dancing, amusement machines, and gambling.

- **Clause 15.01-4** includes the strategy *‘Ensure the design of buildings, public spaces and the mix of activities contribute to safety and perceptions of safety.’*
- **Clause 15.01-5 (Cultural identity and neighbourhood character)** seeks to *‘recognise and protect cultural identity, neighbourhood character and sense of place’.*
- **Clause 17.01-1 (Commercial)** encourages development meeting the communities needs for retail, entertainment and other commercial services, with an objective *‘to ensure net community benefit is achieved in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities’.*
- **Clause 19.02-3 (Cultural facilities):** aims to *‘develop a strong cultural environment and increase access to arts, recreation and other cultural facilities’* and includes a strategy to:

Encourage a wider range of arts, cultural and entertainment facilities including cinemas, restaurants, nightclubs and live theatres, at Principal and Major Activity Centres.

Relevant local planning policy includes:

- **Clause 21.02 (Municipal profile)** recognises that the size, functions and roles of activity centres allows resident access to a wide range of retail and business services and states activity centres are key locations for *‘employment, transport, retailing, businesses, community services and increasingly are locations for higher density forms of housing’.*
- **Clause 21.06-1 (Urban Design)** seeks to support a sense of place and community in activity centres, and create activity centres with a high quality public realm.
- **Clause 21.08-1 (Retail)** discourages retail development outside of Activity Centres.
- **Clause 21.08-5 (Licensed Premises and Gambling)** recognises that *‘Licensed premises can not only affect the amenity of locations but also the health and wellbeing of the community’* and states:

Council wants to avoid a concentration of licensed premises which can disturb amenity and contribute to negative health and social impacts.

This clause seeks to minimise adverse social impacts from licensed premises through the strategies:

Assess the social and amenity impacts of licensed premises on the surrounding areas.

Discourage the concentration of late trading licensed venues.

- **Clause 21.11 (Local areas)** sets out the vision, objectives and strategies in relation to each of the main activity centres in the municipality and encourages development consistent with the role of the centre.

(iii) Ministerial Directions, Practice Notes and Guidelines

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

- Ministerial Direction 11 (Strategic Assessment of Amendments) and the associated Planning Practice Note 46 (Strategic Assessment Guidelines).
- the Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the PE Act.

Planning Practice Note 61 – Licenced Premises: Assessing Cumulative Impact 2015 (PPN61)

PPN61 provides guidelines that support permit applicants and Councils to address potential impacts of clustering of licensed premises. It indicates that:

- a cumulative impact assessment should address all land within a 500 metre radius of the proposed venue (unless there is another logical boundary that takes into account features such as a physical barrier or another nearby cluster of licensed premises).
- a 'cluster' of licensed premises occurs where there are: three or more licensed venues within a radius of 100 metres, or 15 or more licensed venues within a radius of 500 metres from the subject land.

PPN61 sets out matters that should be considered when assessing the cumulative impact of licensed premises, including: planning policy context; surrounding land use mix and amenity; the mix of licensed premises; transport and dispersal; and impact mitigation.

Information that should be submitted with an application for a planning permit includes seating ratios, meals, management, music, capacity and hours, transport and car parking. PPN61 lists questions to be addressed in cumulative impact assessment.

Design Guidelines for Licensed Venues (Department of Justice, 2009)

The *Design Guidelines for Licensed Venues* (Design Guidelines) aim to facilitate improved safety for patrons and staff of licensed premises by '*designing-in*' elements that encourage safe practices and minimise opportunity for anti-social behaviour and negative amenity impacts. The Design Guidelines highlight that:

The design of a venue can be an important contributor to anti-social behaviour, violence and amenity impacts ... Well designed spaces can reinforce positive behaviours, reduce congestion and overcrowding and maximise opportunities for surveillance.

The Design Guidelines set out a number of guiding principles and recommended responses that seek to:

- design spaces that reinforce positive behaviours
- maintain clear lines of sight to maximise opportunities for passive surveillance of spaces
- reduce congestion and crowding inside venues and at entrance points
- ensure all areas of a venue are designed and managed for their purpose
- promote better communication between staff and patrons
- ensure safety in public spaces and reduce amenity impacts on adjacent properties.

The principles and design responses in the Design Guidelines relate to:

- external issues: entries, exits, queuing, footpaths, laneways, car parks and public space
- internal issues: patron activity area, toilets, outdoor drinking, dining and smoking areas, and common areas.

The proposed policy does not seek to duplicate this consistent guidance. It includes the Design Guidelines as a reference document and objectives make explicit reference to them:

Encourage licensed premises to incorporate safe design principles as outlined in the Design Guidelines for Licensed Premises

Encourage the design of licensed premises to result in an active street frontage and provide opportunity for surveillance of patrons as they enter and leave the premises.

(iv) Analysis underpinning the Amendment

The Amendment was underpinned by a staged approach to analysis of the planning implications of licensed premises, with a discussion paper preceding the Managing Impacts Report.

Managing the Impact of Licensed Premises – Discussion Paper 2012 (the Discussion Paper)

The Discussion Paper was prepared in partnership with the Australian Drug Foundation. It recognised the role of local government in managing the availability of alcohol and creating safer drinking environments through design and planning. The Discussion Paper:

- reviewed relevant national, state and local government legislation and policy documents.
- provided statistics for licensed venues in the City of Maribyrnong.
- presented preliminary analysis of evidence relating to the health and economic impacts of alcohol consumption for adverse outcomes relating to violence, binge drinking, and amenity. The implications of demographics, the availability of alcohol, outlet density, late trading, public events and public holidays, venue design and alcohol pricing were addressed.

Maribyrnong City Council - Managing the Impacts of Licensed Premises – Final Report 2015

Council engaged ERM Pty Ltd to advise on a licensed premises local planning policy to be included in the Scheme. The analysis indicated:

- the number, range and diversity of licensed premises in the municipality is expected to grow as the resident population continues to increase, particularly in and around activity centres and strategic redevelopment sites where more intensive development will be concentrated.
- activity centres should be a primary focus for a broad range of licensed premises. This is consistent with the role of the centres, particularly higher order centres, to provide a broad range of retail and community services, entertainment, and recreation facilities.
- the Commercial 1 Zone facilitates licensed premises as food premises and bottle shops are 'as-of-right' uses.
- both positive and negative amenity impacts of licensed premises affect the surrounding neighbourhoods in which they operate. In a town planning context, positive amenity impacts resulting from licensed premises include the enhanced vitality of an area, streetscape activation, passive surveillance, and the creation of a local 'identity' as an entertainment or tourism destination; while negative amenity impacts relate to violence, street disturbance, noise, anti-social behaviour, litter, and vandalism.
- 'Clusters' of licensed premises, in particular on-premises outlets such as hotels and bars, have potential for additional negative amenity impacts in terms of noise, anti-social behaviour, infrastructure capacity problems, threats to safety, and property damage.

Key VCAT decisions were reviewed (see discussion in Chapter 2.2):

Restoring the Balance – Victoria’s Alcohol Action Plan 2008-2013 (VAAP)

The VAAP targeted alcohol-related violence through measures that included:

- a freeze on new late-night liquor licences in inner-city, local government areas of Melbourne (including Docklands), Stonnington, Yarra and Port Phillip.
- a specified maximum number of patrons in ‘designated’ high-risk venues.
- new security cameras in a range of licensed premises that trade after 1am and have live or amplified music.

As part of VAAP implementation, new amenity-based decision guidelines for assessing planning permit applications were included in Clause 52.27 of the Victorian planning schemes to:

- ensure the cumulative impact of existing and proposed licensed premises is a valid consideration for planning permit applications.
- clarify that consideration of amenity factors includes hours of operation and patron numbers.

Effectiveness of Justice Strategies in Preventing and Reducing Alcohol-Related Harm 2012

The Victorian Auditor-General (VAG) report *‘Effectiveness of Justice Strategies in Preventing and Reducing Alcohol-Related Harm 2012’*¹² addressed Department of Justice, Victoria Police and the VCGLR initiatives and actions in enforcing controls on the sale and marketing of alcohol and reducing the impact of short-term alcohol-related harm on the community. It recommended, amongst other things, that the Department of Planning and Community Development should:

- create a model local planning policy for licensed premises
- require councils to adopt a local planning policy for licensed premises where there is a particular need or concern.

(v) Submissions and evidence

Submissions from Council and evidence from Ms Peterson highlighted that the Amendment is underpinned by policy, guidelines and analysis specific to Maribyrnong, including:

- the Managing the Impacts Report and the supporting Discussion Paper
- Planning Practice Notes: PPN04 Writing a Municipal Strategic Statement, PPN08 Writing a Local Planning Policy and PPN61
- the Design Guidelines
- relevant VCAT decisions.

Council and Ms Peterson expressed the view that the Amendment is consistent with and supports State planning policies by providing local policy guidance that, in summary, recognises community needs for retail and entertainment uses and policy to focus these uses in activity centres by:

¹² Four councils were consulted during the audit: City of Casey, City of Greater Geelong, City of Melbourne and Swan Hill Rural City Council.

- encouraging licensed premises that complement the status and role of activity centres. For example, the policy suggests that larger licensed venues should locate in larger activity centres and this supports activity centre objectives in State planning policy (Clause 17.01-1).
- seeking to create safer environments through appropriate licensed premises design.
- managing amenity conflicts between licensed premises and other uses, such as residential uses.

Council highlighted that the Amendment maintains much of the strategic direction of existing local policy but proposes refinements, such as, explicitly directing new licensed premises to activity centres consistent with the role of the centre, and discouraging new licensed premises (trading after 11pm) from locating in residential zones.

In its written submission, Highpoint endorsed the policy to encourage a variety of entertainment uses, including licensed premises, and extended opening hours in higher order activity centres such as Highpoint, which limited sensitive interfaces. However, Highpoint submitted the proposed policy should:

- recognise the very different amenity impacts which may result from the range of licenced premises, for example, from an accumulation of:
 - café and restaurant licences compared to an accumulation of bars and taverns;
or
 - packaged liquor outlets compared to other licensed premises.
- provide guidance on the types of premises to be encouraged or discouraged.

(vi) Discussion

The policy development process involved a cooperative approach with stakeholders, which extended to partnership with the Australian Drug Foundation in the preparation of the initial discussion paper. It was informed by useful analysis that anticipates continued growth in licensed premises proposals. In addition to the potential for land use conflict and amenity impacts, the supporting analysis addressed potential harm to health and wellbeing (see discussion in Chapter 2.2).

The key strategic direction of the proposed policy to direct licensed premises to activity centres according to their intended function was not challenged in submissions and is endorsed as sound. The Panel agrees with submissions from Council and evidence from Ms Peterson that the policy supports multiple activity centre objectives for the different types of centres in Maribyrnong, while minimising potential adverse effects by focusing licensed premises in locations with supporting infrastructure and where amenity expectations are not derived from a quiet residential character. As Ms Peterson stated:

2.4.4 Spatial planning within Victoria generally seeks to encourage the location of retail, entertainment, office and other commercial services within concentrated areas such as activity centres. This is a sound planning principle that will ensure the greatest net community benefit can be achieved in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.

... This co-location (when appropriately balanced) can also result in reduced adverse amenity impacts given community expectation for entertainment related uses to take place within activity centres.

The proposed policy highlights the need to consider the implications of proposed premises on the activity centre through references to managing conflicts between licensed premises and other uses, encouraging an appropriate mix of licensed premises relative to other uses, and encouraging active street frontages. It also, appropriately, indicates that licensed premises in neighbourhood centres should not threaten local convenience role or the amenity of the surrounding residential areas.

Further, late night premises have the greatest risk of adverse impacts. It is good planning to direct this type of venue to higher order centres to align with the scale and intended roles of centres where associated infrastructure will generally provide greater capacity to manage impacts. The Panel considers explicit reference in the policy basis to the focus on the types of licenced premises that pose the highest risk of adverse effects would support decision making by articulating the rationale for policy provisions.

A number of current Amendments to planning schemes propose local policies for licensed premises. While the existing and proposed local policies adopt similar approaches to a range of issues, various differences are also evident. The Panel sees merit in terms of efficiency and consistency in the development of a model local planning policy for licensed premises, as recommended by the Victorian Auditor-General, or further state-wide guidance in Clause 52.27. However, the current task is to consider submissions relating to the Amendment. Further, the Panel is not in a position to form a view on the need for either a model policy or additional State-wide provisions or the appropriate content. Any change would need to be informed by sound analysis and input from engagement with stakeholders.

(vii) Panel conclusions

- The key strategic direction of the proposed policy to direct licensed premises to appropriate activity centres supports planning policy and is a sound approach to optimise potential benefits and minimise adverse impacts.
- Explicit reference in the policy basis to the focus on the types of licenced premises that pose the highest risk of adverse effects (larger, late night venues and clusters of venues, particularly in or near residential areas, rather than ‘food-based’ cafes and restaurants or packaged liquor outlets) would support decision making by articulating the rationale for policy provisions.

(viii) The Panel sees merit in the development of a model local planning policy for licensed premises, as recommended by the Victorian Auditor-General, or further state-wide guidance in Clause 52.27 to provide a consistent framework for planning decisions, but such a task is clearly beyond the scope of this process. Recommendation

Indicate in the policy basis that the proposed policy has a focus on the types of licenced premises that pose the highest risk of adverse effects by including additional text to the following effect:

This policy has a focus on larger, late night venues and clusters of venues, particularly in or near residential areas, as they pose a greater risk of adverse impacts than smaller premises, 'food-based' cafes and restaurants or packaged liquor outlets. Consideration of impacts of packaged liquor outlets will focus on cumulative impacts where outlets operate at night near 'higher risk' venues.

2.2 Social and health impacts

(i) Background analysis – social and health effects

The Discussion Paper that informed the preparation of the proposed policy suggested that local government has a significant role in mitigating adverse impacts of licensed premises. It acknowledged local government responsibilities to manage health, social and amenity impacts of licensed premises and highlighted the absence of clear policy to address the relationship between outlet density, trading hours and adverse impacts. The Discussion Paper stated:

In many of our major cities and regional centres, the link between high densities of alcohol outlets and alcohol-related violence, and negative amenity issues has been the focus of significant public attention and concern. There is also strong evidence that extending the trading hours of alcohol outlets results in increases in alcohol-related problems (Babor et al. 2010), and conversely that a reduction in trading hours can contribute to a reduction in these same problems (Kypri et al. 2010).

Despite this, there remains a lack of cohesive policy guidance among liquor licensing agencies, planning departments and local government over the relationship between alcohol outlet density, trading hours and alcohol-related problems and on how this relationship should inform decision-making¹³.

and

Managing licensed premises and the associated impacts (health, social and amenity) is a key responsibility of local governments. As the arm of government that is directly responsible for the regulatory administration of licences, local government has an important role to play in managing the impacts of alcohol issues in licensed premises and in ensuring responses to alcohol and other drug-related problems are inclusive of the broader community. Local government has a significant role in mitigating the impacts of the misuse of alcohol within its precincts on the social costs, reductions in public amenity, community safety and perceptions of safety. Local governments can contribute to the management of the physical availability of alcohol and the creation of safer drinking settings through engagement in environmental design and planning.¹⁴.

¹³ Page 3

¹⁴ Page 4

The Managing Impacts Report, which is proposed as a reference document, addressed health, social and economic impacts of licensed premises in the following terms:

3.1 Health Impacts

There is considerable evidence to demonstrate that alcohol's impact on the health and wellbeing of Australians is profound (Babor et al. 2010).

In Victoria, alcohol is estimated to directly account for 4.9 per cent of the total burden of disease (DHS 2005), and it is related to the causes of more than 60 different medical conditions (Rehm et al. 2003). The most common cause of death due to intoxication is road crash injury, and among the chronic conditions, alcohol-related liver cirrhosis accounted for the majority of deaths (Chikritzhs et al. 2003).

Almost 75 per cent of adult Australians have been adversely affected by someone else's drinking (Laslett et al. 2010).

In the City of Maribyrnong, 9.1 per cent of the community are at risk of short term harm from alcohol consumption which is the same as the State average (Department of Health, 2013).

3.2 Social Impacts

Licensed premises are popular venues for entertainment, the consumption of alcohol, and an important location for socialising, particularly among young people. However, strong links have been identified between alcohol consumption and negative social impacts.

Licensed premises are a high-risk setting for alcohol related violence and injury, particularly in close proximity to hotels and nightclubs. Patrons and staff of licensed premises are at an increased risk of becoming involved in a violent incident by comparison with other locations (AIC 2011).

High concentrations of licensed premises have been linked to higher levels of violence inside and outside the premises as patrons move between venues and congregate together (Livingston 2008a). Research demonstrates a strong correlation between liquor outlet density and incidence of multiple forms of social disruption, including assault, injury and drink driving (AIC 2011).

Research conducted between 1996 and 2005 found that bars, nightclubs and restaurants were associated with violence in the inner city suburban areas, while packaged liquor outlets are associated with violence in suburban areas (Livingston 2008a). Packaged liquor premises influence violence primarily through higher levels of alcohol availability.

Late trading also contributes to increased alcohol consumption and increased violence. A Perth study by Chikritzhs and Stockwell (2002; 2006) found a general increase in monthly assaults rates in and around hotels with late trading. A study in NSW also found that assaults at

licensed premises were more likely to occur during extended trading hours, most frequently between midnight and 3am.

3.3 Economic

Licensed premises can lead to positive economic impacts in terms of increasing visitor spend, employment generation, and tax revenue. Positive economic impacts can increase an area's amenity and attractiveness, which then begins a virtuous cycle that adds to a city's economic vitality. However, the financial cost of alcohol-related harms to Australian society, including harms experienced by drinkers and 'victims' of other peoples' drinking, is substantial (Laslett et al. 2010; National Preventative Health Taskforce 2009). An estimated total financial cost is in excess of \$15.3 billion per annum (Collins & Lapsley 2008).

The indirect cost of alcohol-related harm in Victoria in 2007-08 was estimated to be \$1.1 billion. Indirect costs come about from reduced labour in the workforce (paid work), reduced labour in the household through sickness or death (estimated value of unpaid work in the home) and government investment in education, promotion and research programs. For the same period, intangible alcohol-related costs are estimated at \$1.2 billion. These costs include the valuation of loss of life and the pain and suffering attributed to alcohol-related harm.

The Design Guidelines also refer to the relationships between:

- venue size and patron intoxication (Graham 1985; Roche 2001), with the presence of larger crowds potentially complicating Responsible Service of Alcohol, crowd control and general management (Graham 2008).
- crowdedness of licensed premises, as distinct from capacity, and patron aggression (Quigley et al. 2003).
- aggressive and violent confrontations in high-movement areas such as around pool-tables and dance floors.
- 'vertical drinking' (without the accompaniment of food) with increased alcohol consumption and alcohol-fuelled violence.

The background analysis reviewed key VCAT decisions. In *Zerbe v City of Doncaster and Templestowe* it was stated that amenity '*goes much further than mere "pleasantness" and "agreeableness" found in the LCR Act 1998 definition of amenity; it embraces all the features, benefits and advantages inherent in the environment in question.* However, the Hunt Club decision commented that '*Town planning is not a panacea for all perceived social ills, nor is planning decision-making a forum for addressing all issues or community concern.*' In this decision, the Tribunal commented that it is not the role of town planning to:

- involve itself in moral judgements
- address all issues of public health or the broader impact of the use, abuse or misuse of alcohol in a society
- regulate the pricing or general availability of a product in a competitive market economy to manage the well-being of a society

- pioneer its own standards about the accessibility to alcohol generally in the community.

The Tribunal acknowledged that significant social effects of a planning decision may conceivably be a relevant in a given case. However, it observed:

... a broad concern about the social harm caused by alcohol, the accessibility of alcohol in the community generally, or the potential for the abuse and misuse of alcohol, will rarely (if ever) be a relevant consideration in the exercise of discretion for a particular licensed premises under Clause 52.27. These matters are more commonly relevant to the complementary regulatory framework under the Liquor Control Reform Act 1998, albeit that there is some overlap between the liquor licensing and town planning frameworks."

... planning is about the use, development and protection of land. It has a spatial context that is primarily concerned with the fair, orderly, economic and sustainable use and development of land.

(ii) Evidence and submissions

The Alcohol Policy Coalition commended Council for committing to a licensed premises policy development process. In its original written submission the Alcohol Policy Coalition emphasised the role of planning and Councils in reducing the substantial health and social harm associated with alcohol, including harm to other than the drinker:

While many of the problems caused by alcohol fall upon the health system and law enforcement, preventing and reducing these harms is not solely the role of those sectors. Planning the environment in which alcohol consumption and alcohol related harm occurs can play a major part in preventing and reducing the problems. For example, planning can influence the location and density of places where people buy and consume alcohol, the public spaces they occupy and move through, the social interactions drinkers have, and the transport options they use before and after drinking. The ways in which these environments are planned has the potential to either mitigate or increase alcohol-related harm.

The Alcohol Policy Coalition referred the Panel to research papers regarding the relationship of changes in the number of venues that sell alcohol and alcohol-related harms and a very large body of research internationally on the relationship of changes in outlets and alcohol-related harms¹⁵.

Research by Dr Michael Livingston (Livingston, 2008 and 2011) using longitudinal data from Victoria at the postcode level found changes in the number of alcohol outlets in a community is linked to changes in the amount of violence the community experiences. This relationship varied across the clusters of suburbs examined, with packaged liquor outlets consistently associated with violence in suburban areas, and general (hotel) and on-premise (nightclubs, restaurants, and bars) licenses associated with violence in inner-city and inner-suburban areas. Dr Livingston found that in Melbourne, the density of liquor licences

¹⁵ The Panel was referred to a systematic summary and overview of over 150 studies conducted between 2005-2015 at <https://www.saxinstitute.org.au/publications/community-impact-of-liquor-licenses/>.

(particularly large for packaged liquor outlets) is positively associated with rates of domestic violence over time, suggesting a need for licensing policies that pay more attention to off-premise alcohol availability. Further, a recent study by Morrison et al. 2016 using data from Melbourne also found greater off-premises outlet density is related to greater incidence of traumatic injury (ambulance attendances), and chain outlets appear to contribute most substantially to traumatic injury risk.

In its initial written submission the Alcohol Policy Coalition sought additions to the new MSS licensed premises provisions and the proposed policy to recognise the strong risk of social and health problems for the drinker and for others. The proposed additions are underlined in Appendix A. However, in recognition of the purview of planning policy and the particular focus on harm minimisation in the liquor licencing process, their oral submissions at the Hearing retreated from its request in the original written submission for references to harm to health.

The Panel has summarised the oral submissions put by the Alcohol Policy Coalition at the Hearing as follows:

- Planning schemes are oriented toward reducing the high levels of adverse social impacts from electronic gaming machines and parallel provisions for the impacts from licensed premises should be spelled out. It was noted that the licensed premises policy in the Stonnington Planning scheme (Clause 22.10) refers to alcohol related harm and violence.
- The focus on a specific property in the liquor licensing process makes it very hard to object based on social effects or the effect of the density of outlets. This makes the planning system, which takes a broader view of a locality, the only and best way process to consider social effects.
- Clause 52.27 does not limit consideration to amenity impacts; one of its two purposes is to ensure that licensed premises are situated in appropriate locations.
- Melbourne specific longitudinal research by Dr Livingston, which was provided to the Panel, demonstrates strong causality between the density of licensed venues and packaged liquor outlets and the incidence of harms. It was noted the harms have different spatial expression, with increased domestic violence being linked to the density of packaged liquor outlets and street violence being associated with the density of on-premises licenses.

Council's reply emphasised that drinking alcohol is lawful and the liquor licensing process has a clear focus on minimising associated harm. While the PE Act does require consideration of social effects, the primary responsibility does not rest with the local planning authority. It has not been demonstrated that social effects have not been addressed. Although the proposed policy does not directly call for consideration of assaults or violence, amenity considerations are broad enough to encompass these social effects¹⁶ and it is through this prism that social effects are considered. In any event, no persuasive evidence is available to justify changes to the Amendment to make more explicit reference to social (or health) effects. Council highlighted that, in contrast, the reference in the Licensed Premises Local Policy at Clause 22.10 of the Stonnington Planning Scheme to

¹⁶ Swancom Pty Ltd v Yarra CC (includes Summary) (Red Dot) VCAT 923 (10 June 2009).

alcohol fuelled anti-social behaviour and violence had been justified by area-specific research.

(iii) Discussion

The Discussion Paper that informed the preparation of the proposed policy suggested that local government has a significant role to manage health, social and amenity impacts of licensed premises, and highlighted the absence of clear policy to address the relationship between outlet density, trading hours and adverse impacts. The Amendment proposes a more restricted scope of consideration. It deletes the explicit recognition in the current Clause 21.08-5 (Licensed Premises and Gambling) policy that *'Licensed premises can not only affect the amenity of locations but also the health and wellbeing of the community'*. However, the proposed policy (under policy basis) does refer to violence and anti-social behaviour as negative amenity impacts.

As noted in Chapter 2.1, the PE Act objectives for the planning framework require consideration of social effects in an integrated approach to planning decisions¹⁷ and this intent is reinforced by matters a planning authority and responsible authority must take into account when preparing a planning scheme or amendment¹⁸ and before deciding on an application¹⁹.

It is clear that social effects are relevant. While what constitutes a social effect is not defined, the assessment of Amendments and applications for permits dealing with licensed premises legitimately extends beyond a narrow interpretation of amenity implications²⁰. VCAT decisions indicate that the concept of amenity in town planning terms broad enough to encompass the effect of assaults or violence on safety. Further, Clause 52.27 includes a broad purpose relating to *'appropriate'* locations.

The Panel agrees with submissions from Council, evidence from Ms Peterson and the view in the Hunt Club decision that essential elements of the planning system are its focus on use and development and the consideration of spatial implications.

As the Alcohol Policy Coalition did not argue at the Hearing that proposed policy should address harm to health, the key issue they raised related to what the Swancom decision referred to as *'the 'availability theory' – i.e. that the increased availability of alcohol through increased outlets, hours or patron numbers will automatically exacerbate anti-social behaviour and alcohol-related harm.'* In the Swancom decision the Tribunal observed:

It was submitted that no court or tribunal in Australia had yet formally accepted that theory based on probative evidence, nor made a determination based on such a theory. We do not know if that is correct or not, but we think

¹⁷ S4(c) Planning and Environment Act 1987.

¹⁸ S12(2) Planning and Environment Act 1987.

¹⁹ S60 (1) Planning and Environment Act 1987.

²⁰ Whereas, VCAT has taken into account the implications of proposals on rates of violence and antisocial behaviour in considering amenity, the Stonnington 'Chapel Street Saturation report' refers to the International Association for Impact Assessment (Vanclay, F. 2003) summary of social impacts which extend to changes to how they live, work, play and interact with one another, culture, the environment, physical safety, health and wellbeing, personal and property rights, civil liberties, fears and aspirations.

the argument misconceives the nature of this case, and is perhaps more of a liquor licensing matter where harm minimisation is a core issue. We must have regard to the decision guidelines in cl 52.27 that require us to consider the impacts (including cumulative impacts) on the amenity of the surrounding area.

106. We consider that the clear policy shift now embodied in cl 52.27 means that the planning considerations related to amenity impacts are now intended to better consider the impacts of anti-social behaviour created by patrons from licensed premises on the amenity of the surrounding area, where it is appropriate to do so. There is an attempt, at least in part, to address the disconnect between liquor licensing and planning applications where this issue has sometimes 'fallen between the cracks', and the new planning approach may lead to some overlap and better coordination between liquor licensing and planning applications in the future. Despite this closer relationship, we consider the planning considerations remain somewhat different to those raised by harm minimisation (in a liquor-licensing context) and/or the availability theory generally. We do not need to decide the merits of the 'availability theory' here.'

The Panel notes that, while the Hunt Club decision held that social harm caused by alcohol or the potential for the abuse and misuse of alcohol, will rarely (if ever) be a relevant consideration in the exercise of discretion for a particular licensed premises, it drew a distinction between the consideration of social effects of individual applications and more strategic consideration, as occurs through policy and Amendment processes:

Broader environmental, social and economic factors may be more relevant at a strategic planning level, in the application of planning controls that group compatible uses together in a spatial context (i.e. through zones and overlays) or in the setting of particular policies and provisions to achieve particular planning objectives – e.g. an adequate provision of community facilities or services in a particular area. Once the strategic planning direction has been set, certain uses and developments become permissible in certain areas, and some of these broader social and economic factors may become less relevant to planning decision making at a statutory planning level. Provided a use is not prohibited, the statutory planning decision is not so much concerned with the appropriateness of a use per se (which has already been determined strategically through the setting of the zone or overlay), but rather with the appropriateness of that use in a particular location.'

The Panel concurs that it is more appropriate to consider broader effects at Amendment stage when the planning and policy framework are established. It is at this strategic planning stage when preferred locations may be identified to manage the effects, including social effects, of licensed premises. The Panel considers the appropriateness of permissible uses in particular locations is not necessarily established through zoning or overlays and policy can have a role to guide how discretion will be exercised. However, provisions in planning schemes need to have a sound basis, and where provisions are specific to a locality,

the justification will generally need to establish why state-wide provisions are not adequate to meet relevant planning objectives and/or local circumstances.

While the Stonnington Clause 22.10 does refer to alcohol fuelled anti-social behaviour and violence, that local policy was informed by a specific study of the impacts in the Chapel Street Precinct²¹ and operates in conjunction with Schedule 3 to the Incorporated Plan Overlay which sets out conditions and requirements for licensed premises applications to address the negative social impacts and help manage alcohol-related harm in that Precinct²². In this case, submissions from the Alcohol Policy Coalition referred to research suggesting the density of venues and outlets can have social effects but no persuasive Maribyrnong-specific research is available to justify changes to this proposed policy. Further, it is not clear how broad statements relating to harm that were sought by the Alcohol Policy Coalition would be implemented in planning decisions.

The Panel considers the proposed policy, with some recommended refinements, provides reasonable scope to address social impacts from licensed premises.

(iv) Panel conclusions

- Directing licensed premises to preferred locations to manage their broader effects, including social effects, may be appropriate but the necessary justification and understanding of how potential policy changes would be implemented in Maribyrnong through planning decisions were not presented to the Panel.
- The proposed policy, with some recommended refinements, provides reasonable scope to consider social impacts from licensed premises.

2.3 Packaged liquor outlets

(i) Evidence and submissions

Highpoint submitted that the proposed policy basis, objectives and application requirements all fail to recognise the differing characteristics of packaged liquor outlets. Highpoint submitted:

Packaged liquor outlets sell liquor for consumption off-site – in this regard they operate primarily as would another retail shop. The potential for negative impacts arising from the operation of a packaged liquor outlet are more likely to occur at the point where the liquor is consumed. As a consequence, the policy statements regarding noise emissions, patron numbers and access are less relevant in this context.

²¹ <https://studylib.net/doc/9245254/late-night-liquor-licence-trading-in-the-chapel-street-pr...>

²² The Stonnington C159 Explanatory Report indicated that the Stonnington Licensed Premises Policy (Clause 22.10):

- was informed by a specific study the *Chapel Street Late night liquor licence trading in the Chapel Street Precinct: measuring the saturation levels Research Paper* (April 2010).
- operates in conjunction with Schedule 3 to the Incorporated Plan Overlay which is intended to address the negative social impacts and alcohol-related harm associated with licensed venues and sets out conditions and requirements for licensed premises applications in the Chapel Street Precinct.

Highpoint sought changes to the proposed policy to either detail the range of planning matters of direct consequence in the approval of packaged liquor outlets or expressly exclude packaged liquor outlets from the scope of the proposed policy.

Council acknowledged that packaged liquor outlets have different attributes to other types of licensed premises (as the alcohol purchased is consumed off premises). Accordingly, there is some basis to treat them differently. However, Council highlighted the potential for 'pre-loading' or 'side-loading' to occur where patrons are travelling to or between venues and, as recognised in PPN61, this can influence the likelihood of anti-social behaviour and cumulative impacts. Council submitted that, while various policies are not relevant to these outlets, the objectives are relevant and discretion will be exercised where policy or requirements are not relevant or appropriate to the particular circumstances of an application. Ms Petersen noted that packaged liquor outlets may include ancillary activities such as wine tasting which can affect the nature of potential impact.

(i) Discussion

Despite the conspicuously different considerations that apply to packaged liquor outlets, the proposed policy makes no reference them.

Retail uses, such as packaged liquor outlets, are entirely consistent with the function of activity centres and this is reflected in the 'as of right' status of shops in the Commercial 1 Zone.

As noted in Chapter 2.2, while research suggests there are broad associations with the density of outlets and domestic violence, research specific to this locality that would justify a particular planning response has not been presented.

The Panel anticipates consideration of issues relating to packaged liquor outlets under the proposed policy will be limited and is likely to relate cumulative impacts where outlets operate at night near 'higher risk' venues. This applies even if packaged liquor outlets include ancillary activities such as wine tasting. Few of the application requirements will be relevant to outlets that are not open later at night. This should be articulated in the proposed policy.

(ii) Panel conclusion

The Panel concludes:

- The proposed policy should indicate that issues relating to packaged liquor outlets are likely to relate cumulative impacts where outlets operate at night near 'higher risk' venues and this should be reflected in the application requirements.

(iii) Recommendation

- 1. Amend Clause 22.08 to specify relevant application requirements that are necessary to assess package liquor outlets (under 22.08-4 of the proposed policy).**

2.4 Policy requirements and Amendment drafting

(i) Evidence and submissions

Evidence from Ms Peterson expressed concern that the language used is inconsistent with the language used generally within the Planning Scheme and more specifically Clause 52.27 (Licensed Premises). To ensure that references to a 'negative' impact do not unreasonably prejudice the balancing of policy in decision making, she suggested the following changes:

Clause 21.08-6:

- Revise the fourth paragraph in the overview to state:

Licensed premises have the potential to impact on the amenity of a streetscape in a variety of ways. Positive amenity outcomes can include enhanced vitality and streetscape activation, passive surveillance and the creation of a local 'identity' as an entertainment and tourism destination. However, adverse amenity impacts can include a lack of activation of the streetscape, particularly during the day, violence, street disturbance, noise, anti-social behaviour, litter and vandalism.

- Replace the second and third objectives in 'Objective 8' with the following (or similar):

To encourage new licensed premises and changes to existing licensed premises to minimise adverse amenity impacts and to facilitate positive outcomes such as streetscape activation, passive surveillance and enhanced vitality of the area.

- Replace the word 'negative' with 'adverse' in the second bullet point under 'strategies'.

Clause 22.08-3:

- Under 'Operating Hours', the first bullet point should read:

Encourage licensed premises operating beyond 11pm to locate in Activity Centres where the use is consistent with the role of the centre'.

Ms Peterson generally endorsed a number of potential further changes that were canvassed at the Hearing, such as structuring the policy to move from the general to the specific and relocating the locations where licensed premises would be encouraged from the policy basis.

Highpoint submitted that:

- It may be more appropriate for tavern, hotel or nightclub applications to fulfil the full set of requirements and to specify a smaller sub-set of application requirements for restaurants, cafes and bars as planning officers may not have the specific expertise on licensed premises matters to agree to reduced requirements for lower risk venues.
- Business owners may not be in a position to fulfil all application requirements before a proposed licence is issued.
- The requirement for written information on Responsible Service of Alcohol should be removed as it duplicates VCGLR's requirements, the liquor regulator is far better placed to these issues, and there is nothing to assist Council to determine the appropriateness of the information provided.

- Management Plans are appropriate mechanisms but are premature at the application stage and should be addressed through permit conditions.
- All applications should not be required to provide details of doors, windows and open space areas to residential properties adjacent to the site; for example licensed premises within Highpoint Shopping Centre have minimal potential for impact on the amenity of the surrounding area. A site plan should only include specific details of doors, windows and open space areas within 30m of the location of the proposed licenced premises.
- The supporting reference document (Maribyrnong City Council Managing the Impact of Licensed Premises, 2015) could be revise to provide typical planning permit conditions for licensed premises, which would include a condition relating to Management Plans.

Council emphasised that the proposed policy provides appropriate discretion to ensure policy and application requirements are implemented in a way that is relevant to a specific proposal. Council acknowledged that information supporting an application for permit may be refined, for example as the licensing process progresses. However, Council maintained that measures such as Management Plans and RSA should be considered by applicants from the outset and they indicate at the planning application stage how it is proposed to mitigate potential impacts.

(ii) Discussion

The Panel agrees with Council that the implementation of policies inevitably requires the exercise for discretion to take account of the nature of specific proposals and their context. It is also appropriate for applicants to be cognisant of likely requirements from the outset and for Council to have regard to the range of mechanisms available to mitigate potential adverse impacts, even if the proposal is subsequently refined. However, the Panel is sympathetic to concerns that information requested should relate to the sensitivity of the context and agrees with Highpoint that it is reasonable to require the site plan to only include specific details of doors, windows and open space areas within 30 metres of the location of the proposed licenced premises. It is noted that this distance is consistent with the Commercial 1 Zone '30 metre' threshold from residential zones where applications are not required to be advertised.

The Panel's review of the drafting of the Amendment identified a number of potential improvements, which are illustrated in Appendix B.

There is scope to edit Clause 21.08-6 of the MSS to adopt more succinct drafting, reduce repetition between the introduction and the clause objectives and relocate the identification of activity centre roles from the Clause 22.08-1 Policy basis to 22.08-3 Policy.

In the proposed policy the suggested changes include:

- In the policy basis:
 - explain that the policy has a focus on larger, late night venues and clusters of venues as they pose a greater risk of adverse impacts than smaller premises and 'food-based' cafes and restaurants.
 - include enhanced recreation opportunities as a positive contribution of licensed premises.

- Restructure the policy to start with more strategic locational policy and progress to more detailed design expectations.
- Distinguish and group policy relating to:
 - higher risk venues, which include: large, late night premises; venues in clusters, and proposals in or near residential zones
 - packaged liquor outlets
- Explicitly refer in the decision guidelines to amenity, particularly in the public realm and for residential uses.

(iii) Conclusion

The Panel concludes that some refinement of the policy would clarify that the policy intent and improve its useability.

2.5 Recommendation

The Panel makes the following recommendations:

Revise Clause 22.08 as shown in Appendix B to clarify the policy intent and improve its useability.

Appendix A Changes to the Amendment sought in the original Alcohol Policy Coalition submission

MSS Clause 21.08-6	
Add to the introduction	<u>'On the other hand, the City recognises that substantial social and health harms result after the consumption of alcoholic beverages, and is concerned to discourage overconsumption.'</u> <u>'Council's desire is for new licensed premises and changes to existing licensed premises to result in positive amenity impacts while minimising negative amenity impacts, and social and health harms from alcohol consumption.'</u>
Add to Objective 8 (3rd bullet)	<u>To encourage new licensed premises and changes to existing licensed premises to result in minimal negative amenity impacts, and reductions of social and health harms associated with alcohol consumption.</u>
Under strategies (3 rd bullet)	<u>Ensure the licensed premises will not result in an adverse cumulative impact on the surrounding area, and on social and health harms associated with alcohol consumption.</u>
Proposed policy	
Policy basis add	<u>Council also recognises that alcohol sales from licensed premises can negatively affect the health and wellbeing of the community, through negative health and social impacts on drinkers and others.</u>
Add the objective	<u>To limit the negative health and social impacts of the alcoholic beverages served or sold.</u>
Add under 'Design'	<u>Encourage the design and operation of licensed premises to discourage overconsumption of alcoholic beverages</u>
Add to application requirements	<u>Details of proposed management of the premises including emergency procedures, crowd control, provisions and training to avoid service to the intoxicated,'</u>

Appendix B Recommended changes to the proposed policy

<p>Changes recommended by the Panel are tracked as follows:</p> <p><u>Added</u></p> <p>Deleted</p>

22.08 LICENSED PREMISES POLICY

--/--/20-- This policy applies to all planning permit applications ~~for a new licensed premises or existing licensed premises that require a permit under~~ pursuant to clause 52.27.

22.08-1 Policy Basis

The City of Maribyrnong has an increasing number of licensed premises. Many of these premises are located in commercial zones in activity centres, with the largest concentration in the Footscray, Seddon, Highpoint and Yarraville activity centres. Some of licensed premises have developed in clusters. A number of licensed premises are also located in, or close to, residential zones.

The MSS encourages licensed premises to be located in activity centres where the use is consistent with their role.

~~The Municipal Strategic Statement (MSS) recognises~~ Licensed premises contribute to the vitality of an area, streetscape activation, passive surveillance, entertainment opportunities and the creation of a local 'identity' as an entertainment and tourism destination. However, ~~it further recognises that licensed premises they~~ can have ~~a negative~~ an adverse impact on the amenity of the surrounding area such as impacts relating to street disturbance, noise, anti-social behaviour, violence, litter, and vandalism.

A range of factors ~~that~~ can influence the effect of licenced premises on the local community. These factors include ~~unreasonable amenity impacts may include the following:~~

- Venue type
- Internal and external venue design
- Noise
- Operating hours
- Patron numbers
- Location and access
- Clustering of licensed premises

This policy has a focus on larger, late night venues and clusters of venues, particularly in or near residential areas, as they pose a greater risk of adverse impacts than smaller premises, 'food-based' cafes and restaurants or packaged liquor outlets. Consideration of impacts of packaged liquor outlets will focus on cumulative impacts where outlets operate at night near 'higher risk' venues. ~~This policy provides guidance on assessing amenity impacts taking into account existing amenity conditions and the role of licensed premises in the City's activity centres.~~

22.08-2 Objectives

- To effectively manage amenity conflicts between licensed premises and other uses.
- To ensure licensed premises are located in appropriate locations.
- To ensure licensed premises located in activity centres are appropriate to the role and vision of the centre.
- To encourage an appropriate mix of licensed premises relative to other commercial, retail, residential and community uses.
- To ensure licensed premises will not generate unreasonable noise impacts on the surrounding area.
- To ensure the operating hours and patron numbers of licensed premises will not unreasonably impact on the amenity of the surrounding area.

- To ensure good venue design providing a high level of public safety and surveillance.
- To support reasonable commercial opportunities for licensed premises to trade.

22.08-3 Policy

--/--/20-- It is policy to:

Location

- Encourage licensed premises that complement the following activity centre roles:
 - Footscray: Encourage a diversity of licensed premises to provide extended operating hours of activity and further opportunities for entertainment, unless the safety and attractiveness of the area will be unreasonably compromised.
 - Highpoint: Encourage licensed premises to provide a variety of entertainment uses and extended operating hours unless there is an unreasonable impact on the amenity of the surrounding area.
 - Central West: Ensure licensed premises respond to the predominant role of the centre as a business and employment based activity centre.
 - Yarraville: Encourage licensed premises that contribute to building up the cultural and social role of the centre, while ensuring the cumulative effects of licensed premises do not threaten its local convenience role or the amenity of the surrounding residential areas.
 - Seddon: Encourage licensed premises respond to the predominant local retail and service role of centre and increase the activity and diversity within the centre and provide for street level activation.
 - West Footscray: Encourage licensed premises to provide for a mix of businesses that create an active streetscape during the day and night.
 - Edgewater: Encourage licensed premises to strengthen the café and outdoor eating culture to create places to socialise and complement the convenience retailing role of the centre.
- Consider the proximity of licensed premises to residential uses and the need for noise attenuation and other design or management measures.
- In locations in or near residential zones, discourage any expansion of an existing licensed premises, extension of operating hours or increase in patron numbers unless the responsible authority is satisfied the use will not unreasonably impact the amenity of the surrounding area. Encourage licensed premises to be located in areas where parking, public transport and availability of taxis adequately service patronage of the premises.

Clustering and Late Night Premises

- [Only](#) allow licensed premises trading beyond 11pm where the responsible authority is satisfied that:
 - the use will not unreasonably impact on the amenity of the surrounding area
 - the cumulative adverse impacts of clusters of late night premises will not have unreasonable impacts on the area.
- Encourage licensed premises operating beyond 11pm to locate in Activity Centres where the use is consistent with role of the centre.
- [In locations in or near to residential zones:](#)
 - Discourage new licensed premises trading after 11pm
 - Ensure outdoor areas of licensed premises do not trade beyond 11pm, unless the responsible authority is satisfied the use will not unreasonably affect the amenity of the surrounding area.

Design

- Incorporate safe design principles as outlined in the *Design Guidelines for Licensed Venues*.
- Encourage the design of licensed premises to result in an active street frontage and provide opportunity for surveillance of patrons as they enter and leave the premises.

Noise

- Consider the need for noise attenuation or other design measures having regard to the site context.
- Ensure noise emissions from licensed premises (music noise, patron noise and noise from outdoor areas):
 - do not unreasonably impact on the amenity on the surrounding area, taking into account the surrounding context and zoning.
 - comply with the standards specified in the State Environmental Protection Policy.
- Ensure on-site attenuation measures are implemented where noise emissions are likely to unreasonably impact on the surrounding area.

Patron Numbers

- Ensure the number of patrons does not unreasonably affect the amenity of the surrounding area.
- Encourage venue size and patron numbers that appropriately respond to the role of the Activity Centre or zone .

22.08-4 Application Requirements

--/--/20--

All applications for licensed premises under Clause 52.27, [except package liquor outlets](#), should include the following information, unless the responsible authority waives or reduces a requirement it considers is not relevant to determining the application:

- A site context plan detailing:
 - the location, nature and hours of operation of uses surrounding the site
 - details of doors, windows and open space areas on ~~adjacent~~ residential properties [within 30 metres of the proposed licensed premises](#).
- ‘Clustering’ of licensed premises, being:
 - 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.
- A site and licenced premise layout plan detailing:
 - all areas to be used by patrons of the premises, including outdoor seating, public spaces, footpaths and car parking areas
 - waste storage areas
 - non patron areas
 - outdoor smoking or uncovered patron areas
- A written submission detailing:
 - The proposed uses on the site including type of uses, type of liquor license, hours of operation, provision and hours of food service and type of music/entertainment,
 - The site context.

- Public transport and car parking in the locality during operating hours of the licensed premises.
- All potential off-site impacts and how impacts will be managed and effectively mitigated.
- Proposed management of the premises including emergency procedures, crowd control, responsible service of alcohol, waste management, external smoking/dining areas and queuing areas.

Large and late night venues

Applications for venues with a capacity of more than 200 patrons or operating after 11pm should include:

- A Noise Impact Assessment which details:
 - All noise sources associated with the licensed premises (e.g. music noise, outdoor areas, queuing areas, congregation areas and entries and exits to the premises)
 - On and off-site noise measures to effectively mitigate impacts from noise sources on the amenity of the surrounding area. Attenuation measures may include noise limiters, airlocks and acoustic screens.
- A Management Plan which details:
 - the style of operation of the venue, hours of operation for all parts of the premises and staffing arrangements including the number and working hours of security staff.
 - proposed management of the premises including emergency procedures, crowd control, waste management, external smoking/dining areas and queuing areas.
 - A contact person in the event of a complaint and provision for a register of complaints.
 - Any other measures to ensure no unreasonable amenity impacts from the licensed premises on the surrounding area.

Package liquor outlets

Council to specify relevant application requirements

22.08-5 Decision Guidelines

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Before deciding on an application and in addition to the requirements of Clauses 52.27 and 65, the responsible authority must consider as appropriate:

- The objectives and policies in this clause.
- [Effects on the amenity of the area, in particular the public realm and residential uses.](#)
- The role of the Activity Centre set out in this policy.
- The proximity of the licensed premises to surrounding residential zones and residential uses and the reasonable amenity expectations of these uses.
- Whether the application addresses the *Design Guidelines for Licensed Venues and Practice Note 61 – Licensed Premises: Assessing Cumulative Impact*.
- The availability of public transport during operating times of the licensed premises.

22.08-6 Policy Reference

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Maribyrnong City Council Managing the Impact of Licensed Premises, 2015

Design Guidelines for Licensed Venues, Department of Justice, 2009

Practice Note 61 – Licensed Premises: Assessing Cumulative Impact