

13 December 2022

Notice of Motion, Cr Leppert: review of Licensed Premises local planning policy

Motion

That Council seeks a report from management, to be presented to the Future Melbourne Committee by the end of March 2023, providing an opinion on whether the Melbourne Planning Scheme requires amendment in relation to planning permission for licensed premises. The report should consider:

1. The function of Clause 13.07-1L-04 (Licensed Premises), the land use terms and table of uses in the Schedules to the Capital City Zone and Docklands Zone, and related provisions;
2. The extent to which the above planning provisions are facilitating state and local planning policies and their objectives to offer entertainment uses in the Central City (while limiting unreasonable amenity impacts);
3. Whether the cessation of the 'freeze' for new late night Liquor Licence applications from 1 July 2023 might create or exacerbate issues with the operation of the above planning provisions; and
4. If the opinion is that the above planning provisions require amendment, what options there are to partner with the State Government (as the agent of change to the regulatory framework) to co-fund and fast-track a formal study and any resultant planning scheme amendment.

Background

At the 26 November 2022 Victorian election the Labor Party won a third term of Government. It did so with an election promise to remove the 'freeze' on late night Liquor Licence applications, by not replacing the current Ministerial Guidelines when they expire on 30 June 2023.

In Victoria, licensed premises are regulated under two separate Acts:

1. Under the *Planning and Environment Act 1987* a planning permit is required for some types of licensed premises depending on their location. The planning permit runs with the land and has the capacity to manage hours of operation, patron numbers, noise control and location.
2. Under the *Liquor Control Reform Act 1998* a Liquor Licence is required to sell liquor. The Liquor Licence runs with the licensee and Victoria Police is the enforcement arm of this Act which deals with liquor consumption and venue management. Unlike with the planning permit process, Liquor Control Victoria assesses the probity of the person applying for a Liquor Licence. Council has the opportunity to provide advice to Liquor Control Victoria on whether or not a Liquor Licence should be issued and often relies on the local planning policy to inform its advice.

The current local policy in the Melbourne Planning Scheme relating to Licensed Premises is found at clause 13.07-1L-04 (Attachment 1). It was introduced to the Scheme in 2010 by Amendment C141 ("Licensed Premises Policy") and relocated to its current position in 2022 as part of Amendment C409 ("Planning Policy Framework Translation"). It disproportionately focuses on the Capital City and Docklands Zones, given the primary functions of the Central City produce a range of noise-emitting uses, and a higher tolerance of noise is assumed of residents in the Central City than in residential zones.

Since 2008, before the introduction of the local planning policy in 2010, the State Government's Liquor Licence policy has been to 'freeze' the issuing of late night (post 1am) Liquor Licences throughout the inner city (the municipalities of Melbourne, Yarra, Port Phillip and Stonnington). The 'freeze' is applied by Ministerial Guidelines that have been regularly renewed. The Guidelines bind Liquor Control Victoria in the issuing of new Liquor Licences. In recent years, the types of applications that are exempt from the 'freeze' have increased. These now include small and medium live music venues, temporary variations for special events, and applications that the Minister deems to be "of major cultural importance or major economic significance to the State."

Since 2010, the municipality's demographics, planning policies and controls have changed significantly. I make the following observations:

1. The current local planning policy has never operated without the late night 'freeze' on Liquor Licences also being in place. It remains untested in its handling of new planning applications for venues that seek to serve alcohol after 1am, other than those exempt from the 'freeze'.
2. The local planning policy refers to 'noise sensitive areas' without defining them. This has given rise to frequent dispute, including before the Tribunal.
3. There is no strong rationale as to why bars and nightclubs require a planning permit in the Capital City Zone but not in most precincts in the Docklands Zone. The 'as of right' uses in most precincts in the Docklands Zone limit the ability of Council to apply the local planning policy.
4. Some urban renewal areas have been rezoned to Special Use Zone, taking these areas outside the scope of the local planning policy.
5. In the 10 years to 2021, the residential population of the CBD and Docklands more than doubled (28,011 to 59,765 per estimates by .id). The pressure on Government to refuse planning and liquor applications for late night venues has increased with that population growth, challenging the purposes of the Capital City Zone and Docklands Zone as well as the policy objective to offer a diverse range of entertainment uses in the Central City.
6. Neither COVID-19 nor Government Policy has inhibited the introduction of new small bars in the Central City. However, the city's medium and large live music venues in particular are being lost, and not replaced, with consequences for the Central City economy and culture. While this is due more to financial pressures on landowners than planning barriers, it remains imperative to ensure that planning policies and controls provide clarity and certainty to all parties.
7. The primary and secondary Environmental Protection legislation as it relates to unreasonable noise has been replaced. The new laws, and reference documents within the regulatory framework (especially the *Noise limit and assessment protocol for the control of noise from commercial, industrial and trade premises and entertainment venues*), are directly relevant to the enforcement of planning permits for licensed venues.
8. The land use definitions in all planning schemes were replaced by Amendment VC159 in 2019, replacing the term 'tavern' with 'bar'. The Schedules to the Capital City Zone retain references to 'tavern', making these clauses difficult to understand, especially for the non-planner.
9. Occasional attempts have been made since 2010 to apply the local policy on Licensed Premises to planning applications outside the scope of that policy so as to avoid unreasonable amenity impacts. This suggests gaps in the presence of permit triggers or the scope of the local policy or both.
10. The State Government has effectively given 7 months' notice of its intention to cease the late night Liquor Licence 'freeze'. As instigator to this major change in the regulatory framework, it is hoped that the Minister and the Department will be open to working with the Council to ensure that the regulatory framework as a whole is performing as intended.
11. The relationship between Council and the then Planning Department in the State Government in 2009, when the planning scheme amendment to introduce the current Licensed Premises local policy was before Planning Panels Victoria, was not cooperative. There is an opportunity now to pursue a more genuine partnership as both levels of Government seek to balance competing land use objectives while serving the same constituency.

Mover: Cr Rohan Leppert

Seconder: Lord Mayor Sally Capp

13.07

AMENITY, HUMAN HEALTH AND SAFETY

13.07-1L-04

Licensed premises**Policy application**

This policy applies to applications for licensed premises under Clause 52.27 or for the use of land for a bar, hotel or nightclub in the Capital City Zone and Docklands Zone.

Objectives

To identify appropriate locations and trading hours for licensed premises.

To minimise adverse impacts from licensed premises on the amenity of the area.

To maintain the positive character, image and function of the City.

To ensure that the cumulative impacts of licensed premises are assessed where venues are clustered.

Strategy

Ensure licensed premises will not have an unreasonable impact on the amenity of the surrounding area, including through noise, patron numbers and hours of operation.

Policy guidelines

Consider as relevant:

- Ensuring uses that regulate and monitor their noise, and that make use of noise limiters.
- Minimising noise impacts associated with waste management and bottle crushing by incorporating measures such as:
 - On site storage of waste.
 - The use of on-site bottle crushers within noise proof enclosures.
 - Avoiding waste collection before 7am and after 9pm or earlier when the licensed premises is closed.
- Discouraging licensed premises in the Residential Zones.
- Discouraging licensed premises in the Mixed Use Zone where the predominant surrounding land use is residential.
- Limiting the number of patrons permitted in a licensed premise to:
 - Manage any unreasonable impact on the amenity of the surrounding uses.
 - The maximum occupancy capacity of the premises, as determined by the *Building Act 1993*.
- Encouraging bars, hotels and nightclubs in the Capital City Zone and Docklands Zone that:
 - Accommodate less than 100 patrons.
 - Have appropriate noise attenuation.
- Limiting hours of operation of bars, hotels and nightclubs in the Capital City Zone and Docklands Zone to 1am.
- Limiting hour of operation of licensed premises:
 - In the General Residential Zone to 9am – 6pm.
 - In the Mixed Use Zone to 11pm.
 - In the commercial zones to 11pm if the licensed premise is within 30 metres of a residential zone, or 1am elsewhere.
- In the Capital City Zone and Docklands Zone, limiting the use of outdoor areas (including smoking areas, rooftops and open courtyards): to 1am; and in noise sensitive areas, limiting alcohol consumption in outdoor areas to 11pm.
- Limiting the number of patrons permitted in a licensed premise to manage any unreasonable impact on the amenity of the surrounding uses and the maximum occupancy capacity of the premises, as determined by the *Building Act 1993*.
- Applications to extend operating hours beyond the hours otherwise specified for indoor and outdoor areas within this policy will only be supported where the further extension of hours will not unreasonably impact on the amenity of the surrounding area.