

**Report to the Future Melbourne Committee****Agenda item 6.2****Review of Licensed Premises local planning policy****21 March 2023****Presenter:** Sophie Handley, Director City Strategy**Purpose and background**

1. On 13 December 2022, Council resolved to seek a report from management providing an opinion on whether the Melbourne Planning Scheme requires an amendment in relation to planning permissions for licensed premises. The Notice of Motion is at Attachment 2 and a table of responses to matters raised in the motion is at Attachment 5.
2. The Victorian Government will remove the 'freeze' on granting new liquor licence applications to trade after 1am on 30 June 2023. The former Victorian Commission for Gambling and Liquor Regulation has issued exemptions to allow some premises to trade after 1am in line with the decision making guidelines at Attachment 3.
3. Clause 13.07-1L-04 Licensed premises (formerly located at Clause 22.22) was introduced into the Melbourne Planning Scheme through Amendment C141 in 2010 (Attachment 4). It is applied in the assessment of planning applications for licensed premises under Clause 52.27 Licensed Premises or the use of land for a bar, hotel or nightclub in the Capital City Zone and for some precincts in the Docklands Zone. The policy outlines matters that should be addressed including noise, patron numbers and hours of operation and provides guidance specific to various zones.

**Key issues**

4. Council's current policy has resulted in licensed premises in the City of Melbourne positively contributing to the activity and character of the area without unreasonable impacts on amenity. To test whether the policy achieves other objectives of the State and Council in relation to the night time economy, support for medium sized music venues and other cultural pursuits, further research and analysis is required.
5. However, some changes should be requested before the removal of the liquor licence applications freeze and implemented by the Victorian Government who is the agent of change to the regulatory framework. The changes will provide immediate improvements in implementing the current scheme provisions without seeking to change Council's policy position. The changes to be pursued are:
  - 5.1. Introducing a definition of noise sensitive areas to provide certainty and clarity to applicants and the community. The definition will be based on current statutory practices and Environment Protection Authority guidance.
  - 5.2. Renaming 'Tavern' to 'Bar' in the schedules to the Capital City Zone and Docklands Zone to reflect the updated land use terms implemented through Ministerial Planning Scheme Amendment VC159 in August 2019.
  - 5.3. Including Bar and Nightclub as permit required uses in all Docklands Zone schedules to align with the provisions that apply in the Capital City Zone.
  - 5.4. Updating the Licensed Premises clause (13.07-1L-04) to expand its application to the Mixed Use Zone and Special Use Zone (as appropriate) and to alterations and additions to existing licensed premises, to ensure the policy applies wherever new or expanded licensed premises are proposed across the municipality.
  - 5.5. Retaining the decision making guidelines that are currently used by Liquor Control Victoria when assessing applications for premises to trade later than 1am by making these part of the Melbourne Planning Scheme.
  - 5.6. Reintroducing the application requirements and decision guidelines as they were in the Melbourne Planning Scheme prior to gazettal on 21 September 2022 of Amendment C409 (Planning Policy Framework). The most appropriate location for the provisions to be determined in consultation with the Department Transport and Planning.

## Recommendation from management

6. That the Future Melbourne Committee:
  - 6.1. Directs management to request the Minister for Planning make the following changes to the Melbourne Planning Scheme:
    - 6.1.1. Reintroduce application requirements and decision guidelines into the Melbourne Planning Scheme.
    - 6.1.2. Introduce a definition of noise sensitive areas.
    - 6.1.3. Rename 'Tavern' to 'Bar' in the schedules to the Capital City Zone and Docklands Zone.
    - 6.1.4. Include Bar and Nightclub as permit required uses in all Docklands Zone schedules.
    - 6.1.5. Amend the Licensed Premises clause (13.07-1L-04) to expand its application to the Mixed Use Zone and Special Use Zone (as appropriate) and to alterations and additions to existing licensed premises.
  - 6.2. Directs management to monitor the impact of the cessation of the freeze on late night liquor licences, on the volume of applications, impact on amenity and performance of Council's policy.
  - 6.3. Authorises the General Manager Strategy, Planning and Climate Change to write to the Department of Transport and Planning and Liquor Control Victoria requesting information regarding reasons for the removal of the freeze and their consideration of any possible changes to the regulatory framework, including the planning framework, in response to the lifting of the freeze.

### Attachments:

1. Supporting Attachment (Page 3 of 17)
2. Notice of Motion 13 December 2022 (Page 5 of 17)
3. Decision-Making Guidelines (Victorian Commission for Gambling and Liquor Regulation Act 2011) (Page 8 of 17)
4. Melbourne Planning Scheme Clause 13.07-1L Licensed premises (Page 12 of 17)
5. Response to Notice of Motion (Page 14 of 17)

## Supporting Attachment

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### Legal

1. Licensed premises are regulated under two separate Acts:
  - 1.1. The *Planning and Environment Act 1987* requires a planning permit for some types of licensed premises depending on location. A planning permit is tied with a property address and has the capacity to manage hours of operation, patron numbers, noise emissions and location. This assessment is the responsibility of Council.
  - 1.2. A liquor licence application is assessed under the *Liquor Control Reform Act 1998* by Liquor Control Victoria. A liquor licence sits with a licensee and deals with liquor consumption and venue management. Council has the opportunity to provide advice on applications for liquor licences.

### Finance

2. There are no financial implications should the recommendation be endorsed by the Future Melbourne Committee.

### Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

### Health and Safety

4. There may be implications for community health and safety when licencing provisions are relaxed. Council will continue to work with licensees, regulators and Victoria Police to maintain and improve safety for our communities following the change. Should issues arise more focused action will be pursued.

### Stakeholder consultation

5. No external stakeholder consultation is proposed or has been undertaken at this stage. Due to its administrative nature, an amendment to update the land use terms will be made through an exemption from the giving notice request to under section 20 of the *Planning and Environment Act 1987*. Should any further, more detailed changes to the Melbourne Planning Scheme be an outcome once research is undertaken, consultation will occur through that process.

### Relation to Council policy

6. State which Council policies the recommendation is consistent with:
  - 6.1. Annual Plan 2022–23
 

MI1: “Continue to strengthen Melbourne’s economic recovery, including through precinct and shopfront activation, delivery of an enhanced business concierge service and support for the night-time economy.

Q4 milestone: “Council consideration of a report on delivery of night time economy activation initiatives.”
  - 6.2. Economic Development Strategy
 

Action 10: “Draw on advice from the Night Time Economy Advisory Committee to ensure that the central city economy responds to the impacts of COVID-19.”

Action 12: “Continue to collaborate with the music industry to support and protect all aspects of the city’s music ecosystem through industry development and regulation.”

6.3. Music Plan 2018–21

Priority 15: “Support Melbourne’s late night economy by continuing to deliver core programs and forums that benefit local music venue operators and licensees such as Melbourne Venues Day, Melbourne Licensees Forums and the Safe Nights Out for Women Project.”

Priority 16: “As a new member of the Live Music Roundtable, contribute to industry and State Government regulatory discussions, including about the ongoing review of the EPA’s State Environment Protection Policy No. N-2, and the application and review of State Planning Provision 52.43 (agent of change).”

**Environmental sustainability**

7. Environmental sustainability issues and opportunities are not directly related to the subject matter of this report.

**Melbourne City Council****Agenda item 7.1****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**

**Seconded: 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.



# Victoria Government Gazette

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## Victorian Commission for Gambling and Liquor Regulation Act 2011

### DECISION-MAKING GUIDELINES

Pursuant to Section 5 of the

## Victorian Commission for Gambling and Liquor Regulation Act 2011

Applications for liquor licences to trade after 1.00 am

I, Melissa Horne, Minister for Consumer Affairs, Gaming and Liquor Regulation and the Minister responsible for the **Liquor Control Reform Act 1998**, publish these guidelines representing the policy of the Victorian Government concerning applications to the Victorian Commission for Gambling and Liquor Regulation (commission) for liquor licences to trade after 1.00 am in the municipalities of Melbourne (including the area known as Docklands), Stonnington, Yarra and Port Phillip (inner Melbourne municipalities).

These guidelines revoke and replace the guidelines dated 29 June 2019. The guidelines apply to applications made to the commission after 30 June 2021 and before midnight on 30 June 2023.

### Background

The inner Melbourne municipalities attract large numbers of patrons to their entertainment precincts, many of whom will consume alcohol in, or purchase alcohol from, licensed premises. The harms caused by increased access, over-supply and the irresponsible consumption of alcohol include alcohol-fuelled violence and anti-social behaviour. On the evidence available to the Victorian Government, there has been correlation between anti-social behaviour in the early hours of the morning and the operation of licensed premises that supply liquor after 1.00 am.

Section 9(1)(g) of the **Victorian Commission for Gambling and Regulation Act 2011** establishes that it is a function of the commission to ensure that Government policy in relation to gambling and liquor is implemented. In order to restrict late-night liquor licences in the inner Melbourne municipalities, it is the intention of the Victorian Government that the commission have regard to these guidelines when considering whether the grant of an application would detract from or be detrimental to the amenity of the area in which premises to which the application relates are situated, or that the granting of the application would be conducive to or encourage the misuse or abuse of alcohol.

The guidelines apply to an application for the grant, relocation or variation of a general, on-premises, packaged liquor, late night (general, on-premises and packaged liquor), limited (temporary and renewable) and major event licence, and a BYO permit.

### Applications to which these guidelines do not apply

The guidelines do not apply to:

- (1) an application for a pre-retail, producer's, full club, restricted club, or restaurant and cafe licence to supply liquor after 1.00 am in the inner Melbourne municipalities
- (2) an application for a liquor licence for a premises or venture deemed by the Minister, by notice published in the Government Gazette, to be of major cultural importance or major economic significance to the State
- (3) an application for a major event licence where the appropriate local government has approved all relevant permits for that event
- (4) an application for a limited licence (temporary and renewable), temporary variation to an existing liquor licence or BYO permit, or major event licence to allow the supply of liquor after 1.00 am in the inner Melbourne municipalities where the application seeks approval to supply alcohol for New Year's Eve.

Nothing in the guidelines should be read as requiring the commission to grant, relocate or vary a liquor licence or BYO permit, or prevent the commission imposing a condition on the grant,

**SPECIAL**



relocation or variation of a licence or permit, where the commission forms the view that granting, relocating or varying a liquor licence or BYO permit is inconsistent with the objects set out in section 4(1)(a) of the **Liquor Control Reform Act 1998**.

#### **Accommodation and licences allowing consumption on the premises**

- A. It is the policy of the Victorian Government that no new liquor licence or BYO permit shall be granted, or existing liquor licence or BYO permit relocated or varied by the commission to allow the supply of liquor after 1.00 am in the inner Melbourne municipalities, except where the commission is satisfied that:
- (1) the premises is, or will be, used as:
    - (a) an accommodation hotel, being a hotel whose primary purpose is providing accommodation and where the supply of alcohol is ancillary to that purpose; or
    - (b) a venue that supplies liquor for consumption on the premises provided that food is available at the venue at all times when alcohol can be supplied; and
  - (2) the applicant can satisfy the commission that:
    - (a) it has in place, or will put in place, a Venue Management Plan in the form required by the commission; and
    - (b) the economic and social benefit of granting the licence or permit will outweigh the impact of the licence or permit on alcohol misuse and abuse and community amenity; and
    - (c) the patron capacity of the premises or proposed premises does not, or will not, exceed 200 persons.

#### **Live music entertainment**

- B. It is the policy of the Victorian Government that no new liquor licence or BYO permit shall be granted or existing liquor licence or BYO permit relocated or varied by the commission to allow the supply of liquor after 1.00 am in the inner Melbourne municipalities, except where the commission is satisfied that:
- (1) the premises is, or will be, used as a venue that regularly provides live music entertainment; and
  - (2) the applicant can satisfy the commission that:
    - (a) it has in place, or will put in place, a Venue Management Plan in the form required by the commission; and
    - (b) the economic and social benefit of granting the licence or permit will outweigh the impact of the licence or permit on alcohol misuse and abuse and community amenity; and
    - (c) the patron capacity of the premises or proposed premises does not, or will not, exceed 1000 persons at any time; and
    - (d) the impact of the venue on harm and amenity is low.

In determining the impact of the venue on harm and amenity, the commission shall consider<sup>1</sup>:

- (1) the layout of the venue, including the potential for overcrowding; and
- (2) for current licensees seeking to vary their licence to trade after 1.00 am, the compliance history of the licensee, including the payment of infringement penalties, a finding of guilt of any offence under the **Liquor Control Reform Act 1998** and any instances where the commission has taken disciplinary action against the licensee.

<sup>1</sup> The commission may also consider applying conditions on the licence to minimise potential harm and amenity impacts, including, for example: the requirement to install and maintain electronic surveillance equipment; the use of crowd controllers; restrictions on alcohol service such as the use of glassware or the sale of certain drinks.

**Special events**

C. It is the policy of the Victorian Government that no limited licence (temporary and renewable), temporary variation to an existing liquor licence or BYO permit shall be made or granted by the commission to allow the supply of liquor after 1.00 am in the inner Melbourne municipalities, except where the commission is satisfied that:

- (1) the application seeks approval to supply alcohol for:
  - (a) a cultural festival; or
  - (b) a tourist event; or
  - (c) a live music event; or
  - (d) a charity event; or
  - (e) the broadcasting in any medium of a live major international sporting event; and
- (2) the applicant can satisfy the commission that:
  - (a) it has in place, or will put in place, a Venue Management Plan in the form required by the commission; and
  - (b) it will comply with any food service conditions on the licence until alcohol service ceases.

Dated 23 June 2021

MELISSA HORNE MP  
Minister for Consumer Affairs, Gaming and Liquor Regulation

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## 13.07-1L- Licensed premises

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### 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.



# Review of licensed premises local planning policy: response to observations identified in the notice of motion

## Resolution (13 December 2022)

“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.”

## Observations identified in the Notice of Motion

Observations identified in the Notice of Motion	Comments / response
<p>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’.</p>	<p>The current liquor licence policy (13.07-1L-04) limits the hours of bars, hotels and nightclubs within the Capital City Zone and Docklands Zone to 1am, unless the proposal will not unreasonably impact on the amenity of the surrounding area.</p> <p>Council has both supported and refused applications since the introduction of the liquor freeze which have been exempt. Council has also successfully relied upon the current policy in defending limiting of hours, including in 2021 where the tribunal stated:</p> <p><i>‘Because one, or more, hotels within the CBD may operate until 3am or beyond, that does not mean it is an acceptable outcome in all situations. In other words, adding to the vitality of the Central City as a 24 hour city, does not mean in all locations.’</i></p> <p>However, with potential for an increase in the number of applications when the freeze is removed, an updated licenced premises policy would provide greater clarity and better manage expectations of reasonable amenity to the community and future businesses.</p>

<p>2. The local planning policy refers to 'noise sensitive areas' without defining them. This has given rise to frequent dispute, including before the Tribunal.</p>	<p>To provide greater clarity to the community and businesses, the liquor licence policy should be updated to include a definition. It is recommended that the definition reflects the EPA regulations, which define noise sensitive areas as within 10m of a wall of an accommodation use.</p>
<p>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.</p>	<p>Docklands is now a well established neighbourhood and considered in many respects as an extension of the CBD. Therefore it would be appropriate to align the planning considerations for bars and nightclubs by also requiring permits for these uses in Docklands.</p>
<p>4. Some urban renewal areas have been rezoned to Special Use Zone, taking these areas outside the scope of the local planning policy.</p>	<p>Since the introduction of clause 13.07-1L-04, the Special Use Zone (SUZ) has been applied to a number of areas within the municipality (West Melbourne and Arden). Clause 13.07-1L-04 currently does not provide policy guidance on hours of operation and patron numbers for land in the SUZ. Many of the areas zoned SUZ are different in character and have a specific purpose whether it be residential or commercial in nature.</p> <p>This is considered to align with the existing policy guidelines for the Mixed Use Zone. Therefore, the policy should be updated to include 'Mixed Use Zone and Special Use Zone' (as appropriate).</p>
<p>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</p>	<p>The most common entertainment uses which require a planning permit are bars (tavern) and nightclub in the Capital City Zone and Docklands Zone.</p> <p>An updated liquor policy would provide clear expectations for new licensees and the community of the reasonable</p>

<p>City Zone and Docklands Zone as well as the policy objective to offer a diverse range of entertainment uses in the Central City.</p>	<p>management of noise and amenity in the Capital City Zone and Docklands Zone.</p>
<p>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.</p>	<p>The update would reintroduce the application requirements and decision guidelines as they were in the Melbourne Planning Scheme prior to gazettal on 21 September 2022 of Amendment C409 (Planning Policy Framework). The most appropriate location for the provisions to be determined in consultation with the Department Transport and Planning.</p>
<p>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.</p>	<p>Appropriate guidance is provided in the Planning Scheme for the assessment and control of Live Music Venues, and it is noted that two live music venues were approved in 2022.</p> <p>Correct, Councils standard planning permit conditions have been updated to reflect the updated legislation. Management has also undertaken training for relevant staff on how to apply the new legislation, from an independent acoustic engineer.</p>
<p>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.</p>	<p>Management will liaise with the DTP to pursue an administrative amendment updating these provisions to rectify this anomaly.</p>



# Review of licensed premises local planning policy: response to observations identified in the notice of motion

<p>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.</p>	<p>One identified gap in the application of the policy is where alterations and additions are proposed to existing licenced premises. External alterations including roof top bars, can have amenity impacts on nearby sensitive uses and allowing consideration of the local policy's amenity provisions would be beneficial.</p>
<p>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.</p>	<p>Management will advocate for State Government to undertake ongoing review and discussions with Council of the impact of the removal of the late night freeze.</p>
<p>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.</p>	<p>Noted.</p>