

### ***Reforming the Victorian Planning Provisions***

The Alcohol Policy Coalition (APC) is a collaboration of health and allied agencies that share a concern about the level of alcohol misuse and the associated health and social consequences for the community.

Thank you for the opportunity to make a submission to the *Reforming the Victorian Planning Provisions* Review.

The APC makes this submission to emphasise the crucial role the planning system plays in regulating the use of land to supply liquor in Victoria, and to express our opposition to the proposal to make licensed premises in commercial zones exempt from the requirement for a planning permit.

#### **Proposals on licensed premises**

We support the proposal set out on page 60 of the *Reforming the Victorian Planning Provisions* Discussion Paper to explore opportunities to minimise conflict and overlap with the Victorian Commission for Gambling and Liquor Regulation licensing process. We note that the interaction of the two schemes is also currently being considered by the Government as part of the Review of the *Liquor Control Reform Act 1998*.

The focus of the *Reforming the Victorian Planning Provisions* Review in considering licensed premises should be to clarify the roles of the planning and licensing regimes in assessment of liquor applications and regulation of licensed premises, and better empower local government to minimise negative amenity and social impacts of licensed premises, and maximise amenity and economic benefits for local areas and communities.

In clarifying the roles and interaction of the schemes, we agree it is desirable to remove unnecessary duplication between the schemes. In particular, we note there is opportunity to streamline the assessment of amenity under the two schemes by removing or reducing the role of amenity in the *Liquor Control Reform Act 1998* and better ensuring the focus of liquor licensing is harm minimisation.

We believe it is important, however, to recognise the important and complementary objectives and strengths of both schemes in regulating the supply of liquor. The focus of the review should not be to exempt licensed premises from planning and make liquor applications a 'one stop shop'.

Through both the *Reforming the Victorian Planning Provisions* and *Liquor Control Reform Act 1998* reviews, the Government should consider how the planning and licensing processes could be effectively delineated, while ensuring that harm, health, amenity and social impacts of all liquor applications are given full consideration in the decision-making process.

#### **The important role of planning in regulating the use of land to supply liquor**

The APC strongly opposes the proposal on page 60 of the *Reforming the Victorian Planning Provisions* Discussion Paper to make licensed premises in commercial zones exempt from the need for a planning permit, relying entirely on the liquor licensing process.

The use of land to supply liquor is a unique category of land use that is highly likely to have significant negative amenity, public safety and social impacts. It should, therefore, be given particular attention in the planning process. For example, there is high quality, locally relevant evidence that the density of liquor outlets in a local area is associated with a range of negative amenity impacts and social effects.<sup>1</sup> We believe it would be inappropriate and incongruous for the use of land to supply liquor to be exempt from planning, irrespective of whether it is in a commercial zone.

The planning and licensing regimes have important and complementary roles in assessing liquor applications and regulating licensed premises. Relevant objects of planning (in section 4(1) of the *Planning and Environment Act 1987*) include:

- 'To provide for the fair, orderly, economic and sustainable use, and development of land', and
- 'To secure a pleasant, efficient and safe working, living and recreational environment for Victorians...'

In relation to licensed premises, the planning regime is concerned with the *use of land* to supply liquor. The objectives of planning in regulating licensed premises are, as set out in clause 52.27 of the VPPs, to ensure that licensed premises are situated in appropriate locations, and to ensure that the impact of licensed premises on the amenity of the surrounding area is considered.

The primary object of liquor licensing, on the other hand, (as set out in section 4(1) of the *Liquor Control Reform Act 1998*) is to minimise harm arising from the misuse or abuse of alcohol, including by providing adequate controls over the supply and consumption of alcohol.

A planning permit attaches to the land, whereas a liquor licence attaches to the licensee. Planning is primarily concerned with location and amenity, whereas liquor licensing is concerned with regulating liquor in order to minimise harm.

The roles and objectives of planning mean that it has a unique and crucial role in assessing and regulating licensed premises in terms of:

- strategic land use planning
- locational or spatial analyses and impacts,
- amenity and other local impacts, and
- community engagement.

For example, the planning process allows assessment of licensed premises in the context of the diversity of land uses in an area, including issues such as the amount of floor space dedicated to packaged liquor in activity centres. The focus of planning on the use of land and the location of licensed premises means that it allows more effective assessment of the cumulative impact of

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<sup>1</sup> Livingston M, Wilkinson C, Room R. Community impact of liquor licences: an Evidence Check rapid review brokered by the Sax Institute ([www.saxinstitute.org.au](http://www.saxinstitute.org.au)) for the NSW Ministry of Health, 2015.

licensed premises in local areas (based on the number, density, clustering, mix and types of licensed premises, and existing amenity levels), and the location of licensed premises near sensitive uses.

Planning is also the appropriate regime to address amenity and other local impacts of licensed premises. Planning better enables local assessment of existing amenity levels in a local area, the local impacts of licensed premises, and better facilitates engagement of the local community.

Local councils are experts in the existing amenity, social and economic conditions of their municipalities, and well placed to engage with the local community. They are also at the forefront of responding to a range of alcohol-related amenity and public nuisance impacts, such as vandalism, litter, graffiti and noise complaints, and damage to public infrastructure and amenities.

The requirement for planning approval for licensed premises empowers local councils to investigate and assess local impacts of licensed premises, including by conducting site visits and consulting with the local community. It allows local councils to control or mitigate these impacts by imposing appropriate permit conditions, and to have oversight of licensed premises in the local area.

### **Importance of requirement for planning approval for licensed premises in commercial zones**

The parameters of the proposal to exempt licensed premises in commercial zones from the requirement for a planning permit and the conditions that would apply are not set out in the Discussion Paper. However, in our view, engagement of planning is crucial in regulating the use of land to supply liquor in commercial zones, irrespective of the category of licensed premises and any conditions that may apply.

The requirement for planning permits for licensed premises in commercial zones is important to ensure diversity of land uses and avoid negative amenity impacts and cumulative impacts. Licensed premises in commercial zones may have significant amenity and cumulative impacts that affect residential uses in the area and nearby residential zones. Clustering or saturation of licensed premises in a commercial zone may affect the diversity and balance of land uses in the area and have significant amenity impacts. As noted above, there is high quality, locally relevant evidence that the density of liquor outlets in a local area is associated with a range of negative amenity impacts and social effects.<sup>2</sup>

For example, in *Swancom Pty Ltd v Yarra CC* (Red Dot) [2009] VCAT 923 ('Swancom'), VCAT affirmed the decision of the responsible authority to refuse to amend the planning permit for the Corner Hotel in Swan Street to extend its operating hours and increase its patron capacity based on the impacts on the amenity of the surrounding area, and the cumulative impacts of existing licences and the proposed variation on the amenity of the area. This was despite the fact that the Corner Hotel was in a Business 1 Zone (now a Commercial 1 Zone).

There was extensive evidence from residents, business occupiers, the police and Council indicating that the high density of licensed premises, predominantly late night hotel/bar venues, in the Swan Street precinct was already causing significant adverse amenity impacts.

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<sup>2</sup> Livingston M, Wilkinson C, Room R. Community impact of liquor licences: an Evidence Check rapid review brokered by the Sax Institute ([www.saxinstitute.org.au](http://www.saxinstitute.org.au)) for the NSW Ministry of Health, 2015.

VCAT agreed with evidence that thriving activity centres are generally characterised by a *diversity* of land uses and a large cluster of licensed venues can erode this, and noted that it is a valid planning objective to attempt to avoid the saturation or dominance of one type of activity to the detriment of others. VCAT held that ‘the cumulative and amenity impacts...have stereo-typed the Swan Street precinct as a late night entertainment precinct, and thus prevented the opportunity to achieve a genuine and balanced mixed use and activity centre precinct serving a variety of purposes, including retail, office, residential, community *and* entertainment uses’.<sup>3</sup>

All categories of licensed premises, including restaurants and cafes, in commercial zones may affect the diversity of land uses and contribute to amenity and cumulative impacts.

In particular, packaged liquor outlets in commercial zones may serve a broad retail catchment, and be associated with transferred amenity impacts and social effects that extend well beyond the local area. Large packaged liquor outlets in commercial zones may occupy significant floor space in activity centres, affecting diversity of activity types and preventing land use for other local services.

The requirement for planning permits for all licensed premises in commercial zones is crucial to avoid dominance of licensed premises as an activity types to the detriment of other activity types, and to avoid amenity and cumulative impacts associated with the clustering or saturation of licensed premises.

#### **Need for guidance on application of clause 52.27 of the VPPs to packaged liquor**

Following Amendment VC79 amending clause 52.27 of the Victorian Planning Provisions to require a planning permit to use land to sell packaged liquor, there has been an absence of appropriate tools and policy guidance to assist planning decision makers to assess permit applications for packaged liquor outlets in practice.

Practice Note 61 providing guidance on assessing the cumulative impact of licensed premises does not provide appropriate guidance for assessing packaged liquor. In particular, Practice Note 61 cites a 500 metre radius from the proposed venue as the appropriate distance to assess cumulative impact. This was based on the 500 metre radius adopted in *Swancom* for assessing cumulative impact, which was based on the distance patrons would be likely to be walk between on-premises licensed venues in the Swan Street precinct. This is not an appropriate radius for assessing the cumulative impacts of packaged liquor, as people would be likely to travel much greater distances by car to purchase packaged liquor.

Clause 52.27 and/or Practice Note 61 should be amended to provide effective guidance for local councils on assessing planning applications for the use of land to sell packaged liquor, including appropriate tools and guidance for assessing the amenity, cumulative impact and social effects of packaged liquor outlets. This should include adoption of a much broader radius for assessing the impacts of packaged liquor, based on the likely retail catchment of the packaged liquor outlet.

Thank you again for the opportunity to make this submission to the *Reforming the Victorian Planning Provisions* review.

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<sup>3</sup> *Swancom Pty Ltd v Yarra CC* (Red Dot) [2009] VCAT 923, 14.

## About the APC

The Alcohol Policy Coalition is a collaboration of health and allied agencies that share a concern about the level of alcohol misuse and the associated health and social consequences for the community. The Alcohol Policy Coalition develops and promotes evidence-based policy responses that are known to be effective in preventing and reducing alcohol related problems. The members of the Alcohol Policy Coalition are:

Alcohol and Drug Foundation	Royal Australasian College of Surgeons
Australasian College of Emergency Medicine	Salvation Army
Cancer Council Victoria	St Vincent's Health Australia
Centre for Alcohol Policy Research, School of Psychology & Public Health, La Trobe University	Turning Point
Foundation for Alcohol Research and Education	Uniting Church in Australia, Synod of Victoria and Tasmania
Jewish Community Council of Victoria	Victorian Alcohol and Drug Association
Public Health Association of Australia (Victoria)	Violence Prevention Group, School of Psychology, Deakin University

All the APC partners have a strong track record in tackling major health issues in the community.