

HEALTH

Councils are responsible for ensuring that all licensed premises are:

- . registered under the provisions of the Food Act 1986
- . structurally fitted out and maintained in compliance with the Eating House and Food Premises Regulations 1984 and the Cleanliness (Foods, Drugs and Substances) Regulations 1984
- . operated in compliance with the sanitation and cleanliness requirements of the Cleanliness Regulations 1984
- . providing food which is safe, wholesome and complies with standards laid down in the NHMRC Food Standards Code 1987
- . conducted in an orderly and responsible manner, so as to ensure that no public nuisance is committed either within or outside the premises
- . operated in compliance with any licence conditions in respect of the maximum number of persons allowed upon the premises at any one time.

You are requested to complete a food premises application form and lodge it with the municipal health surveyor, together with the appropriate fee. This registration lasts until 31st December and is renewed annually. In the event that there is a transfer of proprietorship, an application for transfer of the existing registration must be made.

All floor, wall and ceiling finishes in any area where food and liquor is stored, prepared or displayed shall comply with the regulations. This also includes the finish of shelving benches and any other food contact surfaces. Regulations also control equipment including mechanical exhaust systems and appliances e.g. dishwashers which are to be of an approved type.

The health surveyor is responsible for carrying out regular inspections so it is important that the premises be kept clean and in a proper state of repair. He/she also observes staff practices to ensure personal cleanliness and hygienic food preparation.

As well as inspections, the health surveyor will also purchase samples of food and liquor for technical analysis to ensure standards are met. With respect to waste beer, regulations require denaturing with an approved denaturent.

The regulations specify a minimum of three inspections each year. If you have breached a regulation the health surveyor will consult with you and may issue a notice of order requiring compliance within a specified time. If legal proceedings are instituted and a licensee is found guilty of an offence the council will advise the Liquor Licensing Commission.

The Eating House and Food Premises Regulations provide control over the number of diners who may be seated at any one time which is calculated as one person per square metre of clear floor space (includes area to be occupied by tables and chairs). The health surveyor is required to ensure that dining accommodation is not exceeded.

BUILDING

Your council's building surveyors will be pleased to discuss and provide professional advice regarding your proposed development plans and alterations which, in most cases, will require a building permit to be obtained. Building approval for a development will not be issued to you until the necessary planning permit is issued. That planning permit must represent the same development as that proposed for building approval.

If you intend to undertake alterations to a building irrespective of its magnitude, you must consult with the building surveyor who will probably advise you that an application under Part 8 of the Victorian Building Regulations 1983 must be made for the issue of building approval.

This means that you may be required to provide three copies of drawings showing the plan at each floor level, elevations, sections and dimension of the proposed building, to a scale not less than 1:100 with required details at 1:20.

- . Three copies of specifications describing materials to be used in the construction information showing that the building is in accordance with regulations
- . Three copies of an allotment plan to scale of not less than 1:500 showing boundaries, dimensions, easements, location near streets and drainage
- . One copy of computations and reports as well as other matters as requested by the building surveyor

If you propose to create a change of use, an application for the issue of a Certificate of Occupancy under Regulation 6.6 of the Victoria Building Regulations 1983 should be made in writing to the council's building surveyor. It may be that some alterations to the building will be required to be completed before a certificate can be issued.

Where it is proposed to change the occupier only and the existing use is to continue, a copy of the Certificate of Occupancy current for this use or a letter of confirmation should be obtained from the building surveyor of the relevant council.

Your council is there to provide you with professional advice and assistance.

Its role is to ensure that the development and use of licensed premises are constructed, maintained and operated to high standards which are also in your best interests. You are obligated to meet these requirements and ensure that the proposed use is undertaken in a manner which is harmonious to the surrounding neighbourhood.

GUIDANCE NOTES ON THE NEW LIQUOR CONTROL ACT 1987 FOR LOCAL GOVERNMENT

- Section 1 Summary of the new Act.
No responsibility is accepted for the use of this information. The specific provisions of the Act should be consulted and if necessary further legal advice sought.
- Section 2 Flow diagram.
- Section 3 Consideration of Applications by local government and procedural arrangements.
- Section 4 Health Requirements.
- Section 5 Building Requirements.
- Section 6 Town Planning Requirements.
- Section 7 Enforcement under the Liquor Control Act 1987.

IMPLICATIONS OF THE NEW LIQUOR CONTROL ACT 1987
(TO BE PROCLAIMED IN APRIL).

1. BACKGROUND

The new Act completely replaces the previous 1968 legislation and considerably varies the Liquor Control Commission and Local Government responsibilities and functions - particularly trying to integrate the land use planning aspects concerning licensed premises i.e. planning, building and health requirements. The Government's rationale for promoting the new Act has previously been discussed.

A summary of the main provisions of the Act follows with assessment of its implications for Council.

The M.A.V. Liquor Control Working Party is continuing to meet to prepare a manual to the Act for guidance to applicants and the various practitioners within local government.

2. OBJECT OF THE ACT (S.5 L.C. Act)

"The Object of this Act is to respond to community interest by -

- a) promoting economic and social growth in Victoria by encouraging the proper development of the liquor, hospitality and related industries; and
- b) facilitating the development of a diversity of licensed facilities reflecting consumer demand; and
- c) providing adequate controls over the sale, disposal and consumption of liquor; and
- d) contributing to the effective co-ordination of the efforts of government and non-government agencies in the prevention and control of alcohol abuse and misuse."

3. LIQUOR CONTROL ADMINISTRATION UNDER THE NEW ACT

3.1 Co-ordination Council

The Act creates a Ministerial Co-ordinating Council appointed by the Government to advise the Minister on problems of liquor abuse and any other matter referred to it by the Minister (S.6 L.C. Act).

There is no direct representation of local government other than possibly through representatives of "community interests" and/or 'special expertise in the matters affecting residential amenities'.

3.2 Liquor Licensing Commission

The existing Liquor Control Commission is replaced with a four member Liquor Licensing Commission consisting of a Commissioner, Deputy Commissioner and two Assistant Commissioners (S.8 L.C. Act).

The Commissioner is full time and must be a legal practitioner, as must be the Deputy Commissioner. The other members can be full or part time (S.10 L.C. Act).

The Commission is to be conducted in public without formality and technicality (S.26 & S.24 L.C. Act). It can consist of one member whilst the Full Commission consists of 3 members.

The L.L.C. must ensure each party is given reasonable opportunity to present their case, inspect any documents and make submissions in relation to them. (S.27 L.C. Act).

A Commission may strike out proceedings, if it considers them frivolous or vexatious or if a party does not attend a preliminary conference. It may refuse to allow a party to participate further in the hearings. (S.32 L.C. Act).

3.2.1 Function of the Commission (S.8 L.C. Act)

The primary function of the Commission is to consider and determine applications for liquor licences and permits.

It is given general powers to carry out its functions under the Act.

The Commission may also compile statistics and carry out its own promotions.

3.3 Chief Executive Officer

The Commission will have a Chief Executive Officer (C.E.O.) appointed by the Government for up to 5 years (S.35 L.C. Act).

The C.E.O. has wide ranging functions and responsibilities under the Act, particularly for objections and "community interest".

The Commission will have a Registrar and other officers and staff.

3.4 Licensing Inspectors

Police officers will also be appointed within each police district as "Licensing Inspectors" (S.44 L.C. Act) primarily for enforcement functions and to assess the suitability of the permit/licence holder.

Although it should be noted that they can report to the C.E.O. on any matter affecting the attainment of the objects of the Act (S.44(4) L.C. Act).

In the past Council has enjoyed close liaison with the local Licensing Inspector which greatly assisted Council's efforts with the Hampton Hotel. Liaison and co-operation with the liquor Licensing Inspector is essential in matters of enforcement.

The current local Licensing Inspector is Peter Nancarrow, a local resident Senior Council officers and Cr Reynolds (Mayor) and Cr Watson held an informal meeting with him on Wednesday 2/3/1988.

4. TYPES OF LIQUOR LICENCES & PERMITS

4.1 Background

The Act rationalizes the licensing system and reduces the current 2.9 licences to 7 licences; plus tow types of permits.

All current licences will be re-classified so current holders of liquor licences will automatically hold one of the new licences and permits.

4.2 General Licence (replaces Hotelkeepers' Licence) Provides for sale, disposal and consumption on or off premises during "ordinary trading hours" 7:00am - 11:00pm Monday-Saturday; 12 noon - 8:00pm Sunday, Good Friday or Anzac Day (S.47 L.C. Act).

Hours beyond these times are subject to applying for an "extended hours permit".

A resident or guest of a resident (e.g. of a hotel) can be served at anytime.

The Commission can specify additional terms and conditions on the licence or extended hours permit.

Each hotel within the municipality will therefore automatically have their current licences changed to this type, and where applicable also obtain an extending hours permit presumably subject to all existing licence/permit terms and conditions.

4.3 Residential Licence (replaces Residential Licence) (S.46 L.C.Act).

Applies to premises primarily providing accommodation with at least 20 bedrooms e.g. hotel, motels, hostels.

A residential licence enables sale and disposal to residents at any time. The Commission can approve trading to "any persons" Monday-Saturday 7:00am-11:00pm; Sundays G.F. & A.D. 12 noon-8:00pm (ordinary trading) and beyond these hours by an "extended hours permit".

Within Sandringham this would affect Beaumaris Motel.

4.4 Club Licence (replaces Full Club Licences and Restricted Club Licences) (S.48 L.C. Act).

4.4.1 Full Club Licence

Applies to any Clubs e.g. sporting clubs where the primary purpose of the licensed premises is the business of a club. Provides for a Full Club Licence which enables sale for consumption on or off premises to a club member and to a member's guest (only for consumption on the premises) at any time (except Sundays, Good Friday and Anzac Day 12 noon - 8:00pm) or any other hours under an "extended hours permit".

4.4.2 Restricted Club Licence

A "Restricted Club Licence" enables the sale and disposal and consumption on the premises to a member or guest. Times will be specified on each licence with no standard hours.

The Act stipulates conditions on Club Licences affecting Club rules and membership.

Liquor sold, disposed and consumed under club licences must be obtained from a hotel or retail liquor outlet.

This affects all clubs with licences on Council reserves as well as the fully licensed clubs such as R.S.L., Beaumaris Lawn Tennis Club. Refer to Schedule 3.

4.5 Producers' or Distributors' Licence (replaces Wholesale Liquor Merchants' Licence, Ships Providores' Licence, Vignerons' Licence, Head Producers' Licence and Brewers' Licence). (S.49 L.C. Act).

A business producing and distributing liquor can sell and dispose for consumption off the premises Monday-Saturday 7:00am-11:00pm, Sunday G.F. & A.D. noon-8:00pm or any hours subject to an extended hours permit.

A vigneron can sell and dispose for consumption on or off premises Monday-Saturday 7:00am - 11:00pm Sunday G.F. & A.D. 10:00am - 8:00pm any other hours by an "extended hours permit".

Distributors can sell and dispose for consumption off premises Monday-Saturday 7:00am - 11:00pm, Sunday G.F. & A.D. noon-8:00pm any other hours by an "extended hours permit".

There are no properties with this type of licence however it would apply to wholesale liquor merchants.

- 4.6 On Premises Licence (replaces Caterers' Licence, Restaurant Licence, Cabaret Licence, Convention Facility Licence, Cultural Centre Licence, Victorian Arts Centre Licence, Canteen Licence and Works' Licence). (S.50 L.C. Act).

Applies to licensed premises for fully licensed restaurants and cafes, receptions, canteens, cabarets, live entertainment, convention/conferences, sporting or cultural activities, tourist facilities. In the main within Sandringham our restaurants and cafes.

It enables sale for consumption on premises Monday-Saturday 7:00am - 11:00pm, Sundays G.F. & A.D. noon-8:00pm hours and beyond these hours by way of an "extended hours permit".

The Commission can allow restaurants, cafes and other licensed premises where meals are prepared and served to use up to 25% of the total area of the licensed premises for consumption of liquor without a meal i.e. as a bar area.

This change will affect all existing fully licensed and B.Y.O. (cafe permits) restaurants and cafes. It is presumed that an application for variation (S.65 & 66) to provide for the 25% bar area will be needed from the Commission and/or approval of any alterations to licensed premises will need L.L.C. approval (with proof of planning, building and health approvals S.112). This aspect needs clarification from the Commission to ensure this is not obtained automatically as part of the reclassification of licences under the new Act.

However if approved many restaurants may breach their town planning permits by varying building layouts and/or patron numbers.

Licensed premises under an "on premises licence" can allow liquor to be bought and consumed on the premises i.e. BYO as well as licensed. (S.57 L.C. Act).

4.7 Packaged Liquor Licence (replaces Retail Bottled Liquor Licences and Australian Wine Licence) (S.51 L.C. Act).

This affects free standing bottleshops and licensed supermarkets. Bottleshops attached to hotels will trade under their 'general licence' hours.

Enables sale for consumption off premises Monday-Friday 9:00am - 9:00pm; Saturday 9:00am - 5:00pm not at all on Sundays (any other hours by way of an extended hours permit). These trading hours are tied to the "normal" trading hours under the Shop Trading Act, i.e. hours will vary if changed under this Act.

Any trading of a retail shop beyond 10:00pm requires a town planning permit under the planning scheme unless existing rights exist.

4.8 Limited Licence (replaces Theatre Licence, Auctioneers Licence, Exhibition Licence, Victorian Food and Wine Festival Licence, Rutherglen Wine Festival Licence, Public Hall Permit, Supply of Meal and Inclusive Charge Permit and Giftmaker's Liquor Permit). (S.52 L.C. Act).

Enables sale and disposal subject to times and conditions determined by the Commission. These are licences for a limited purpose such as one-off occasions e.g. 21st party in public halls etc. It is comparable to the particular occasion and public hall permits that currently exist.

A notable change is that a club with a club licence cannot obtain extended hours by obtaining a limited licence but would have to obtain an extended hours permit with more stringent procedural arrangements and "community interest" considerations.

Limited licences can be exempt from some of the application requires (S.73 L.C. Act).

4.9 Extended hours permit (S.53 L.C. Act)

Most licences under the new Act have specified "as of right" (ordinary trading) hours. If a licence holder wants longer trading hours they must apply to the Commission for an extended hours permit.

Any permit which currently allows trading outside ordinary hours will be automatically deemed an extended hours permit with the same terms and conditions of the existing licence or permit. Any variations to these would need a separate application under the new Act.

By virtue of the trading hours incorporated in the Act a licensee may operate until 11:00pm without an extended hours permit and liquor may be consumed for a further 30 minutes (S.55) without the use of an extended hours permit. Therefore patrons, as-of-right can leave the premises for a substantial period after 11:30pm.

Any extended hours permit is automatically subject to the following conditions specified in the Act:-

- "a) a condition that the licensee does not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the permit relates during or immediately after the house to which the permit relates; and
- b) such other terms and conditions, including conditions relating to entertainment, as the Commission determines and specifies in the permit."

These requirements were a result of Council and M.A.V. representations and are intended to prevent the detriment residents experienced with the Hampton Hotel.

Contravention of an extended hours permit and conditions is deemed to be a contravention under the Planning & Environment Act which is intended to strengthen Council's ability to initiate action to enforce the permit conditions, to encompass existing premises with late trading rights and ensure effective injunctive enforcement.

Further this enables conditions to be attached relating to late night entertainment in licensed premises.

4.10 B.Y.O. Restaurant permit (S.54 L.C. Act)

There are no fixed trading times for a B.Y.O. permit which will be determined for each application. A B.Y.O. permit replaces the existing cafe permits.

Every B.Y.O. permit will be subject to -

- "a) a condition that the permittee does not cause or permit undue detriment to the amenity of the area to arise out of or in connection with the use of the premises to which the permit relates during or immediately after the hours to which the permit relates; and
- b) such other terms and conditions, including conditions relating to entertainment, as the Commission determines and specifies in the permit."

This enables conditions relating to entertainment and has specific regard to the amenity of the area. Contravention of a permit condition is also subject to the enforcement of the Planning & Environment Act.

5. MAKING APPLICATIONS FOR LIQUOR LICENCES & PERMITS

The Act makes a distinction in the application procedure for the seven licences and B.Y.O. restaurant permit and the procedure for obtaining an extended hours permit (S.63 L.C. Act).

All applications are lodged with the Commission or at a Magistrates Court (S.146 L.C. Act) accompanied by prescribed information required in the Act.

It is noteworthy that this includes the consent of the owner and proof of town planning, building and health approvals (or applications for permits). Presumably without these a license or B.Y.O. permit will not be approved.

Applications are required for licences and permits for all new licensed premises and for variations and transfers of licences and permits.

A Council will be notified of all liquor applications for licences and permits (including extended hours); transfers; removal of a licence or permit and applications by the licensee or permittee for the variation of a licence or permit. The Police are also advised but only have 21 days to object, (S.71 L.C.C. Act) and provide grounds of objections.

However where a variation to a licence or permit is sought by the licensing inspector or C.E.O. a Council is not notified. It is unclear why this is so.

Advertising of applications, variations, transfers and removals of licences and permit is required in a newspaper (usually "The Age") within fourteen days of applying and on-site for 28 days (S.72 L.C. Act).

5.1 APPLICATIONS FOR EXTENDED HOURS PERMITS (S.64 L.C. Act)

Firstly an applicant must have (or applied for) a licence or B.Y.O permit. Formal application and prescribed accompanying information must be provided.

Under S.64(5) before an extended hours permit is granted the C.E.O. must consult with the Council.

Under S.64(1) in considering an application the Commission must have regard to any matter raised by the Council and the impact on the amenity of the community.

5.2 APPLICATIONS FOR VARIATION OF LICENCES OR PERMITS
(S.65 & 66 L.C. Act)

The licensee, permittee, licensing inspector or C.E.O. may apply to the Commission for a variation by the amendment, revocation or addition of a term or conditions. The Council cannot directly apply; although this could be achieved through negotiating with the licensee, permittee or through the local licensing inspector and C.E.O.

Proof that the variation has town planning, building and health is also required.

Licensees or permittees, can apply to remove licences and permits from premises (S.67 L.C. Act) e.g. if the use was to change such as Josephines disco.

Alterations to licensed premises (S.112 L.C. Act) must be advised to the Commission with evidence of town planning and other approvals. These would not be subject to notification and other procedures.

5.3 APPLICATIONS FOR THE TRANSFER OF LICENCE OR PERMIT (S.69 L.C. Act)

A licence or permit can be transferred by application to the Commission and its determination.

A Council will be advised of such an application.

6. TOWN PLANNING APPLICATIONS UNDER THE NEW ACT

Further the new Act enables the L.L.C. and Magistrates Court to receive town planning, building and health applications for referral to respective Councils. It requires Councils to consider all town planning applications relating to licensed premises within 30 days (S.68 L.C. Act and proposed S.55A P & E Act) unless the L.L.C. gives an extension in time which is totally unrealistic given the Planning & Environment Act requirement to advertise applications and Council's meeting cycle. The Commission should be urged to give extensions to accord with Planning and Environment Act statutory period for determination of applications.

6.1 LIQUOR LICENSING COMMISSION - A REFERRAL AUTHORITY UNDER THE PLANNING & ENVIRONMENT ACT (S.176 L.C. Act)

On proclamation of the Liquor Control Act the Planning & Environment Act will also be amended to specify the Liquor Licensing Commission as a referral authority with respect to any question that arises under a planning scheme relating to the use of premises for which a licence or permit may be sought under the Liquor Control Act 1987.

Council, as the responsible authority must give the Commission a copy of each application for a town planning permit for a use that may require a liquor licence or permit. As a referral authority the L.L.C. will have 28 days to reply to Councils.

All applications related to licensed premises must be referred unless the L.L.C. has considered the proposal within the last 3 months or has formally advised it has no objection to the application.

The Liquor Licensing Commission has rights to appeal to the AAT against the decision of a responsible authority.

It is suggested the E.P.A. also be consulted on all applications involving entertainment in or near residential areas.

7. "COMMUNITY INTEREST" CONSIDERATIONS UNDER THE ACT (S.74 L.C. Act)

An important element in the amendments sought by Council and the MAV were provisions to protect the amenity of residential areas from the impact of licensed premises and especially those trading in late evening with entertainment. The Act introduces provisions relating to the "community interest" as a specific matter of objection to be considered by the Commission and C.E.O. This is in addition to the amenity conditions for extended hours and B.Y.O. permits.

Once an application is advertised in a newspaper any person i.e. a neighbouring resident, including a Council has 14 days to give notice to the C.E.O. that they consider the grant, variation, transfer or removal would not be in interest of the community. All new applications will be advertised under the Act. The person must then within 14 days give the C.E.O. their grounds of objection. The C.E.O. has 28 days to advise the Commission whether the granting of the application will not be in the community interest (S.76 L.C. Act). The C.E.O. must have regard to representations made by Council in making a recommendation.

A person can also apply to the Commission for a determination that approval would not be in the community interest (S.74(3) L.C. Act). The Commission must determine a request within 21 days and give notice to the person, applicant and C.E.O. of its determination. If the C.E.O. recommends that granting is not in the community interest there must be a preliminary conference.

The Commission must have regard to the need and the likely adverse effect on the "interest of the community" in that area and S.74 (6(b) L.C. Act).

Further it must have regard to the opinion of the municipality on any matter relating to the amenity of an area under its control.

If the Commission determines that approval would not be in "the interest of the Community" the Commission must refuse the application.

Further the Act enables the C.E.O., employer/ee unions or a licensing inspector to object if the applicant is unsuitable. This includes clubs which strengthens Council's enforcement ability (S.75 L.C. Act).

8. CONSIDERATION OF APPLICATIONS BY THE COMMISSION

Where there are no objections to an application and the C.E.O. recommends that the grant of an application is in the community interest the Commission must grant the application for a licence or permit (S.77 L.C. Act).

If there are objections, an adverse recommendation by the C.E.O., or community interest representation (under S.66,75,76 or 74) the Commission must hold a preliminary conference and hearing before determining the application (S.78 L.C. Act).

A preliminary conference reviews material lodged by parties and the objections and is presided over by one member of the Commission (S.25 L.C. Act).

At a hearing the Commission must consider the grounds of objection and recommendation of the C.E.O.

If the L.L.C. determines that granting would not be in the community interest it must refuse the application.

9. LICENCES AND PERMITS CONDITIONS

The Commission can place conditions requiring the completion of construction or alterations of licensed premises (S.80 L.C. Act).

A transfer of a licence or permit may be subject to conditions (S.81 L.C. Act).

Fees for the licence or permit must be paid (S.82 L.C. Act).

A licence or permit has effect until the 31st December of the year it is granted.

10. APPEAL PROVISIONS (S.105 L.C. Act)

Only decisions of a single member Commission can be appealed against to the Full Commission with 28 days of the decision by any party to the determination.

11. RENEWAL OF LICENCES AND PERMITS (S.89 L.C. Act)

Renewal of licences and permits is required within 21 days of the expiry date, however can occur for up to three months (and more) after the date.

Renewals are automatic and not subject to objections or representations on the issue of "community interest".

12. SURRENDER OF A LICENCE OR PERMIT (S.98 L.C. Act)

The licensee or permittee may request the Commission to accept the surrender of a licence or permit.

13. OBLIGATIONS OF LICENSEES AND PERMITTEES (SS.106-112 L.C. Act)

The Act specifies the obligations of parties. Details of all alterations to the licensed premises must be lodged with the Registrar with plans and evidence of town planning, building and health approvals.

14. FEES FOR APPLICATIONS (SS.113-119 L.C. Act)

Procedures for calculation and collection of fees are specified in the Act.

15. ENFORCEMENT PROVISIONS UNDER THE ACT

15.1 CANCELLATION AND SUSPENSION OF A LICENCE OR PERMIT (S.101 L.C. Act)

The C.E.O. can at any time apply to the Commission for cancellation or suspension if satisfied that the licensee or permittee is an unsuitable person, the licence and permit is not in the community interest or it has not been used in the past 12 months.

A Council can also apply if it considers the continuation of the licence or the permit is not in the "community interest".

A hearing must be held by the Commission which may decide to cancel or suspend the licence or permit, fine the licensee or permittee or vary a term or condition on the licence or permit.

15.2 PLANNING & ENVIRONMENT ACT

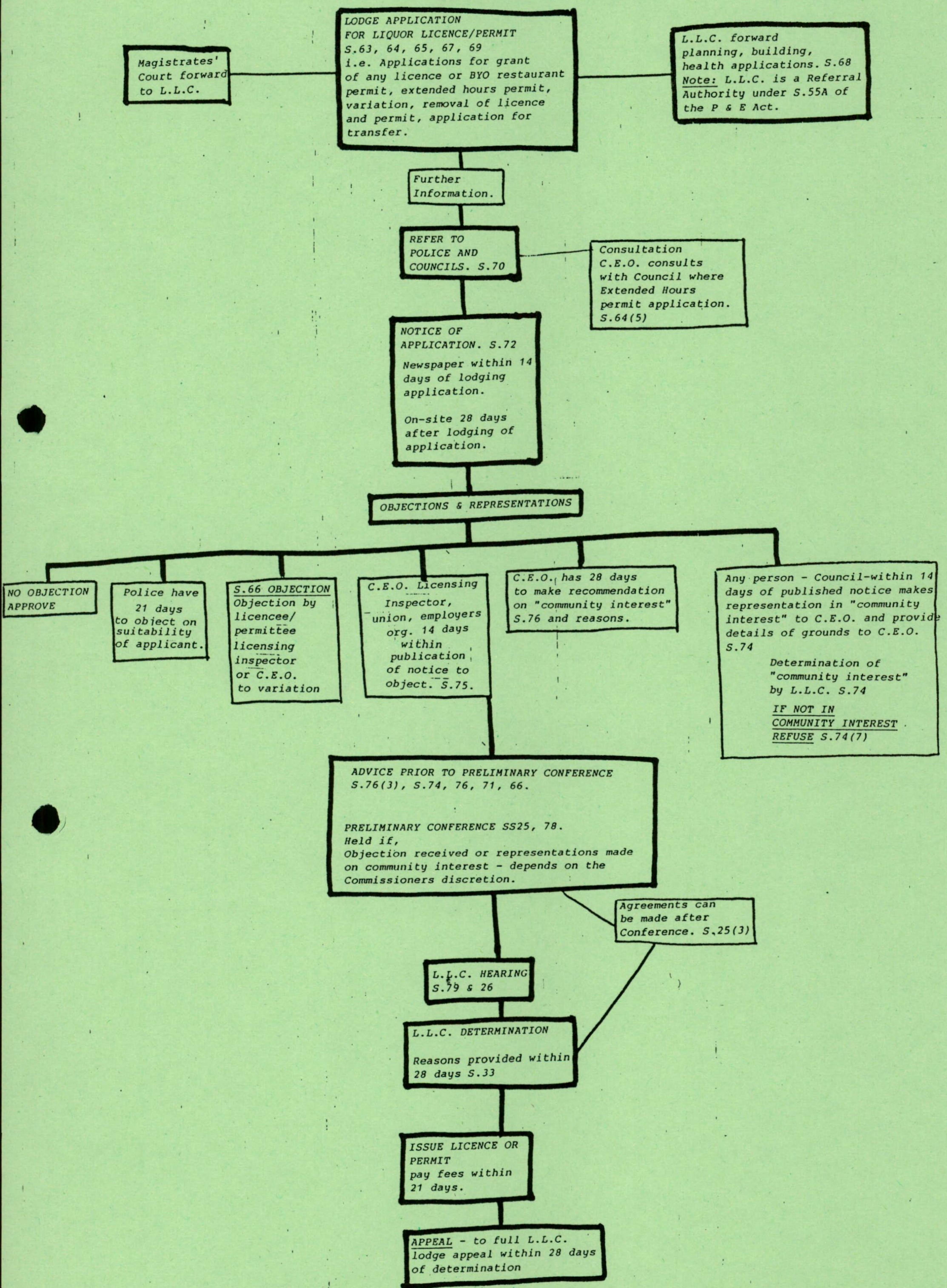
Breaches of extended hours permit and B.Y.O. restaurant permit and conditions are considered to be breaches of the Planning & Environment Act (S.53 & 54 L.C. Act).

15.3 OFFENCES AND LEGAL ENFORCEMENT (SS.120-160 L.C. Act)

The Act specifies a large number of offences generally relating to licensing aspects of the premises.

The main matters considered in this report are the offences relating to the use of the premises which may contravene town planning controls or affect the amenity of residents.

CONSIDERATION OF LIQUOR APPLICATIONS - LIQUOR CONTROL ACT 1987.



SCHEDULE

c:act1988.rep

PROCEDURE FOR LODGING AND CONSIDERATION OF APPLICATIONS FOR LIQUOR
LICENCES AND PERMITS i.e. new licensed premises and changes to existing.

1. LODGE APPLICATION

Applications lodged with Commission S.70 or with Magistrates Court. Must be accompanied with full details including planning and other approvals.

(N.B. May include Town Planning, Health, Fire, Building, Historic Building Council, M.P.E. and any other applications for referral to respective organisations (S.68 L.C. Act)).

2. FURTHER INFORMATION

L.L.C. can require additional information (S.63, 64, 65 L.C. Act).

3. REFERRAL OF LIQUOR APPLICATIONS

Registrar of L.C.C. (S.71) advises Police and Council of the application.

Police must respond within 21 days (S.71).

4. ADVERTISING OF APPLICATIONS

Notice of the application must be given in a newspaper that circulates in the area within 14 days, and on the site (or adjoining premises) in a manner to attract public attention for 28 days after application is lodged. The Commission can deem compliance.

A notice must give, name, address of applicant and premises and details of licensee or permit sought (S.73).

5. EXTENDED HOURS APPLICATION AND CONSULTATION WITH COUNCILS

In the case of E.H. applications the C.E.O. must consult with the Council before a permit is granted (S.64(57)).

6. OBJECTIONS TO APPLICATIONS

6.1 Suitability of applicant

The C.E.O., Licensing Inspector or employer/ee union may give notice of objection to the grant or transfer of a licence or permit on the suitability of an applicant (S.75(1)).

The Commission must receive the objection within 14 days of publication of the notice (S.75(2)).

In this situation there are no grounds of objection based on amenity (S.75(4)).

6.1 Suitability of applicant (cont'd)

Once an objection is received the Commission must hold a preliminary conference (S.25(2) L.C.Act).

An applicant must receive notice of the objection under this section at least 14 days prior to the holding of a preliminary conference (S.25(3) L.C. Act).

6.2 Objection on "community interest" grounds (S.74 L.C. Act)

Any person including a Council S.74(1) who considers the granting of a licence or permit not to be in public interest:-

- may within 14 days of newspaper notice give notice of objection to the C.E.O.
- may within 14 days give to C.E.O. details of objection
- the C.E.O. S.74(2) may request further particulars of objections.

Unless the objector receives advice from the C.E.O. within 21 days that the C.E.O. has determined to refuse the application (S.74(4) L.C.Act) the objector may apply to the Commission for a determination that the grant of the application would not be in the "community interest" (S.74(3)).

In the event an objector applies for a determination on community interest the Commission may hold a preliminary conference (S.25(1) L.C. Act). In other words there is no guarantee a conference will be held; this will be at the discretion of the Commissioner.

6.3 Determination of "community interest"

The Commission must determine an objectors application within 21 days and give notice of its determination (S.74(5)) to the objector, C.E.O. and applicant.

In determining the application the Commission must have regard to

- the extent to which existing business cater for the need and
 - if the grant is likely to have an adverse effect on the "interests of the community"
- but not the effect on other businesses or whether it will be viable (S.74(6) L.C. Act).

The Commission must have regard to the opinion of the municipality on any matter relating to the amenity of an area under its control (S.74(6) (b) L.C. Act).

Community Interest has been defined (S.74(6)) to include the amenity of the area in which the premises are situated.

If the Commission determines that approval would not be in "the interest of the Community" the Commission must refuse the application (S.74(7) L.C. Act).

6.3 Determination of "community interest" (cont'd)

In other words a Council does not have the right to object but only to make "representations" as to "community interest" to the Commissioner (S.74) and to the C.E.O. when he is determining his recommendation to the Commission.

6.4 C.E.O. Recommendation as to Community Interest (S.76)

The C.E.O. has 28 days after notice is given to give the Commission a written recommendation with reasons to approve whether approval is in the community interest or not (S.76(1) L.C. Act).

In making the recommendation the C.E.O. must have regard to representations under S.74 by a Council and any person, and to the extent to which need is satisfied and any adverse impact on community interest, but not private business interests or viability.

If the C.E.O. recommends against the application then the Commission must give the applicant and persons who made representations a copy of the recommendation at least 14 days prior to a preliminary conference.

7. DETERMINATION WHERE NO OBJECTION

If no objection to application and no representations as to community interest (S.74) and C.E.O. recommends the Commission must grant.

8. DETERMINATION WHERE OBJECTIONS

If Commission is satisfied there are objections, an adverse recommendation or representations that the approval would not be in the Community interest, the Commission must hold a preliminary conference (S.78 L.C. Act).

9. PRELIMINARY CONFERENCES HEARINGS (S.25 L.C. Act)

The Conference shall be presided over by a Commissioner, Deputy or Assistant Commissioner.

If agreement is reached then the Commission shall determine the application in accordance with the agreement.

The proceedings of a Conference may not be used in proceedings before the Commission unless agreed between parties.

A person can object to the person who presided over the Conference hearing the case before the Commission.

10. HEARINGS BEFORE THE COMMISSION (S.79 L.C. Act)

The Commission must consider the grounds of objection made to it, the recommendation of the C.E.O., and any other ground of objection that could have been made and any other recommendation that the C.E.O. could have made. The Commission may inform itself on matters and is not bound by rules of evidence.

Hearings of the Commission shall be conducted normally in public and in the following manner:-

- with as little formality and technicality and expedition as enables a proper consideration of matters under the Act.
- it must ensure each party is given reasonable opportunity to present their case, inspect any documents and make submissions in relation to them.
- the Commission has wide powers under S.28 of the Act regarding the proceedings of hearings including the power to amend any notice, application or other documents, power to summons.
- a witness must attend, must answer questions and shall not commit contempt of the Commission.

The Commission may strike out proceedings if it considers them frivolous or vexatious or if a party does not attend a preliminary conference. It may refuse to allow a party to participate further in the hearings.

10.1 Determinations of the Commission (S.33)

The Commission must give reasons for its determination either orally or in writing.

A party may request reasons within 28 days of the determination which must be provided by the Commission within 28 days.

10.2 Appeals against determination

Decisions by the Commission may be reviewed by the full Commission (S.105 L.C. Act).

10.3 Conditional Licences and Permits

If construction or alteration of premises is not completed within specified period, then L.C.C. may cancel the licence or permit, or extend time for completion. (S.80 L.C. Act).

Transfers of licences may be subject to conditions as the L.C.C. sees fit. (S.81 L.C. Act).

Fees must be paid before the issue of licences and permits and they remain in force until December 31st following, in accordance with its terms. (S.82, 83 & 84 L.C. Act).

10.4 Permits are endorsed on licences (S.90 L.C. Act)

Licence/permit fees must be paid within 21 days of expiry date, otherwise C.E.O. must notify owner and affected parties who may apply to L.L.C. for extended time and for renewal in their name.

10.5 Withdrawal of applications

An applicant cannot make a second application within a year for the same premises and subject matter unless the Commission consents to such applications (S.62).

11. CANCELLATION AND SUSPENSION (S.101(1))

If as a result of representations to C.E.O., the C.E.O. is satisfied.

- the licensee is not a fit person to hold licence
 - it is not in Community interest that the licence/permit continue in force
 - that licence/permit was not used for 12 months
- the C.E.O. may apply to L.C.C. for cancellation and suspension.

A Council may apply to the Commission for cancellation or suspension if it considers it is not in the community interest that the licence or permit continue in force at anytime. (S.101(2))

The Union, A.H.A. and License Inspector may also apply,

If the Commission is satisfied

- a term or condition of the licence has been contravened
- or the licence has been convicted, etc. after holding a hearing it may
- cancel or suspend licence
- fine

or vary a term or conditions of licence.

It must cancel if licensee convicted of a 3 year offence.

An owner may carry on business where licence is cancelled. (S.102)

LOCAL GOVERNMENT HEALTH REQUIREMENTS

FOOD AND HEALTH

INTRODUCTION

Municipal Councils are responsible through their health surveyors and under the Health Act (1958) for ensuring that all licensed premises are:

- . Registered under the provisions of the Food Act 1986.
- . Structurally fitted out and maintained in compliance with the Eating House and Food Premises Regulations 1984 and the Cleanliness (Food, Drugs and Substances) Regulations 1984.
- . Operated in compliance with the sanitation and cleanliness requirements of the Cleanliness Regulations 1984.
- . Providing food which is safe, wholesome and complies with standards laid down in the N.H.M.R.C. Food Standards Code 1987.
- . Conducted in an orderly and responsible manner, so as to ensure that no public nuisance is committed either within or outside the premises.
- . Operated in compliance with any licence conditions in respect of the maximum number of persons allowed upon the premises at any one time. (See note attached.)

The following information provides a more detailed explanation of the relevant provisions of the abovementioned legislative requirements, as enforced by municipal health surveyors.

REGISTRATION

With the exception of premises having a residential licence or general licence (which become eligible for registration in two years time) all licensed premises are required to be registered with municipal councils.

Application forms (together with the relevant fee) are to be completed by the licensee and forwarded to the municipal health surveyor. In the event that there is a transfer of proprietorship, an application for transfer of the existing registration must be made.

Registrations are renewable prior to each calendar year and can be issued with or without requirements for compliance in respect of outstanding repair or cleanliness orders.

STRUCTURAL FITTINGS AND EQUIPMENT

All floor, wall and ceiling finishes in any area where food (including liquor) is stored, prepared or displayed shall comply with the provisions of the Eating House and Food Premises Regulations and Cleanliness Regulations.

Similarly, there are requirements in relation to the finish of shelving benches and any other food contact surfaces.

The regulations also control the placement of fittings, fixtures and appliances, including the installation of mechanical exhaust systems over cooking appliances.

There are also specific requirements relating to the temperature control of certain foods during storage and display.

Glass washing and/or dish washing machines are required to be of an approved type, details of which are maintained by the health surveyor.

CLEANLINESS AND SANITATION

All parts of the premises which relate to the food production process (including all fittings and appliances used) are required to be kept in a clean and proper state of repair, with the health surveyor being responsible for carrying out regular inspections to ensure that this is complied with.

This includes any staff facilities provided, public toilets and garbage storage areas.

Another important part of the health surveyor's inspection is to observe staff practices so as to ensure that personal cleanliness is maintained and that hygienic methods of food preparation and production are carried out.

FOOD

All food (including liquor) is required at all times to be handled in such a manner that it does not become contaminated in any way.

Regulations refer to such protective measures which include methods of storage, temperature control, hygiene of staff, cross contamination and proper methods of display and serving.

Most foods are required to meet standards under the Food Standards Code and formal samples will be purchased by health surveyor from time to time, for the purpose of analysis so as to determine that these standards are met.

These standards also apply to liquor.

With respect to waste beer, regulations require denaturing with an approved denaturent.