Councils should be the responsible authorities for extended hours and entertainment with appeals going to the Administrative Appeals Tribunal. The need to obtain a planning permit should be structured in the Liquor Control Bill.

The letter from Mallesons Steven Jacques is attached for information.

6. Deputation to the Minister for Industry, Technology and Resources

A deputation is shortly proposed with the Minister, The Hon. R. Fordham to officially present him with MAV Liquor Control Working Party submission. It was also suggested that the MAV seek a deputation to the Opposition and the National Party. In the meantime, the MAV submissions will go to the MAV General Purposes Committee for endorsement on 7th August, 1987.

7. Next Meeting

The next meeting will be arranged following the outcome of the public forum and when required.

MUNICIPAL ASSOCIATION OF VICTORIA

DISCUSSION PAPER:

LIQUOR CONTROL BILL

by

MALLESONS STEVEN JACQUES, Solicitors for
Melbourne City Council.

CONFIDENTIAL

Please ensure that the enclosed document
is not circulated or distributed to any
party other than those representatives of the
Liquor Control Working Party and the
MAV General Purposes Committee

J. Meildazys,
General Projects.

Minutes 27th July 1987

MALLESONS STEPHEN JAQUES

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24th July, 1987.

BY HAND

Manager, City Development,
Council House,
200 Little Collins Street,
MELBOURNE VIC 3000

Attention: Mr. J. McInerney

Dear Sir,

Liquor Control Bill

I refer to the above matter and to the conference which I attended as the Council's legal representative at the offices of the Municipal Association of Victoria on 15th July, 1987.

The purpose of this conference was to further discuss the required amendments to the Liquor Control Bill ("the Bill"), (these have been set out in general terms in a previous letter of advice), and also to gauge the response to my suggestion of, inter alia, the various members of parliament attending the conference. As you may be aware, those present included Mr. A. Hunt M.P., Mr. R. Cooper M.P., Mr. D. Hayward M.P. and Mr. Hefferman M.P.

It seems clear that there is general agreement as to the common areas of concern expressed by the various municipalities, namely the need for the Council to exercise appropriate controls over the conduct of licensed premises. In particular, of course, the need for such controls is seen to be essential in the case of licensed premises which trade beyond the ordinary trading hours and which also provide entertainment during those hours. It was thus accepted that the authority most appropriate to exercise the necessary controls - (which controls essentially involve planning and environmental

considerations), is the Council rather than, as is provided in the Bill, the Liquor Control Commission.

In other words, it was generally accepted that all applications by licensees for extended hours permits should be made to and determined by the Council. In conjunction with that power, it was also accepted that there should be a requirement for entertainment permits to be obtained by licensees, which permits would also be controlled by the Council. It is foreseen that both extended hours and entertainment could be covered in one permit issued for those purposes. Clearly, the one permit process seemed to be more acceptable to those present at the meeting, if only so as not to create unnecessary delays and duplication. The procedure to be adopted for this purpose should follow that which will apply (on the proclamation of the Planning and Environment Act 1987 ("the PEA"), to planning permits.

Notwithstanding that general consensus, there remained the unresolved issue arising from the notion that existing hotels which currently provide entertainment ("lawfully" - in terms of either unrestricted planning permits or conforming or non-conforming use rights), should not be prejudiced by any such provisions. It was made abundantly clear that no political party would indorse provisions containing any element of retrospectivity, in that existing lawful rights will be respected. Whilst there is an argument which can be properly made showing that not all such hotels, in providing entertainment, do so by virtue of existing use rights, this argument will not, it seems, be supported by parliament so as to require all such hotels to obtain entertainment permits from any authority. A different approach to the problem will therefore be necessary.

In addressing that issue, it was conceded that, whilst existing use rights should not be retrospectively removed, it was appropriate that the Council be given an element of control and powers of enforcement over the conduct of those uses. To that end, Mr. Hunt M.P. suggested that a provision could be made in the Bill whereby those licensed premises, which currently provide entertainment on the premises in conjunction with extended hours permits, are deemed to hold a permit (to be appropriately named) under the PEA. Such a permit would be subject to a standard set of appropriate conditions (to be prescribed), the breach of which would bring into play all relevant enforcement provisions under the PEA.

This suggestion, if implemented correctly, would appear to me to provide a satisfactory though not perfect compromise from the Council's viewpoint, albeit by a process which is perhaps somewhat novel. Nevertheless, I consider that the system of changes proposed to be made to the Bill are a worthwhile compromise which should be seriously considered, particularly in view of the fact that the suggested amendments seemed to be accepted by the parliamentarians present.

Only the general concepts of the proposed scheme of changes have, at this stage, been canvassed. There are several matters and difficulties which arise from this proposal. These were not discussed at the meeting and will need to be carefully addressed. Prior to outlining my suggestions, it is appropriate to set out compendiously the proposed substantive amendments to the Bill, as seemed to be agreed by those present at the meeting.

THE SUGGESTED AMENDMENTS TO THE BILL

1. All provisions relating to "extended hours permits" in the Bill and, in particular s.64 thereof should be deleted and substituted by provisions granting the control

over these permits to the Council, as a responsible authority.

Express provisions relating to "entertainment" (which term should be defined) should be made in the Bill. Licensed premises, which do not enjoy existing entertainment use rights, will be required to obtain a permit from the Council for both or either the right to sell and supply liquor beyond the ordinary trading hours and to provide entertainment (whether under a liquor licence generally or in conjunction with a permit for extended hours).

It is proposed that only one permit covering both these aspects should be required.

2. In order to, inter alia, facilitate the implementation of the powers to be given to the Council both to grant the required permits for extended hours and/or entertainment and to enforce the permits and related matters, the Bill should, for this purpose, incorporate by reference and with such adaptations as may be necessary, both the provisions of Part 4 and Part 6 of the PEA (headed "PERMITS" and "ENFORCEMENT AND LEGAL PROCEEDINGS" respectively).

Thus, the required permits will be obtained from the Council, as the responsible authority, under and in the manner set out in the PEA and any Regulations made thereunder...

The effect (it is suggested) of incorporating those provisions into the Bill will be that:

(a) the same procedures (including the requirements as to applications, consideration of objections, refusal of permits, granting of permits subject to conditions etc.) as are applicable to planning permits under planning schemes, will apply;

(b) the permit enforcement controls set out in Part 6 of the PEA will apply, enabling the Council to take similar proceedings in relation to permits granted by it under the Bill;

(c) the liquor control permits may be cancelled or amended pursuant to Division 3 of Part 4 of the PEA;

(d) the appeal provisions set out in Division 2 of Part 4 of the PEA would apply, so as to enable appeals relating to the liquor control permits (or conditions attaching to them) to be determined by the Administrative Appeals Tribunal (Planning Division) ("the AAT") rather than by the Liquor Control Commission or some other less appropriate division of the AAT.

3. In addition, the Bill should contain specific provisions which:

(a) expressly recognize that licensed premises may enjoy existing rights (in terms of the permit required under the Bill) for the provision of entertainment on the premises during extended hours;

(b) provide that all licensed premises enjoying an existing right to provide entertainment and which continue to provide that or other entertainment on the premises during extended hours shall be deemed to have a permit under the PEA. (I will refer to this as the "deemed permit");

(c) provide that any deemed permit shall be subject to a standard set of appropriate conditions, pertaining to the conduct of the licensed premises in the provision of entertainment, and other related amenity issues (for example, noise, car parking etc). These conditions would need to be prescribed either in the Bill or Regulations made under it.

The effect of the deemed permit will be such as to:

(a) preserve the existing use rights of licenced premises to continue to provide entertainment;

(b) impose relevant conditions on that use;

(c) enable the Council to take appropriate enforcement proceedings for the breach of any such conditions under the provisions of the PEA.

4. Naturally, new licensed premises will be required to obtain the necessary extended hours and entertainment permit, as is proposed under the procedures set out in Part 4 of the PEA as incorporated into the Bill.

It will be appreciated of course, that newly licensed premises will, prior to that stage, be required to obtain a planning permit under the relevant planning scheme and that, accordingly, appropriate conditions may be provided for in such planning permit.

5. Notwithstanding the power proposed to be conferred on the Council, the Liquor Control Commission only, and not the former, should be concerned with other matters such as the character or suitability of licensees to hold licences and permits generally.

6. The Liquor Control Commission, would be a referral authority, for the purposes of the granting of extended hours and entertainment permits.

In summary therefore, it is proposed that:

(a) a permit be obtained from the Council under the provisions of the PEA, as incorporated into the Bill, in any case where a new extended hours entertainment use is sought; and

(b) a permit be deemed to exist (subject to standard prescribed conditions) where continuing entertainment rights are shown to exist.

It is important to stress at this point that, my references to existing or continuing rights relate solely to the right to provide <u>entertainment</u> on premises. Such rights, as it is argued, exist by virtue of the absence of relevant planning restrictions attaching to the current uses of some licensed premises. Whilst the right to continue that (entertainment) use may (in planning terms) extend beyond the ordinary trading hours under the present Liquor Control Act 1967 that Act nonetheless prohibits any licensed premises from selling or supplying liquor beyond these hours unless an extended hours permit is obtained

and renewed annually. The Bill, as currently drawn, provides for similar controls (with the exception that the term of the extended hours permits is left to the discretion of the Commission in each case, rather than specifying that they run for the term of one year across the board).

Accordingly, there can be no existing right to sell or supply liquor beyond the ordinary trading hours, except in the manner and pursuant to the controls prevailing in the liquor legislation. It follows that, if as I assume, this tradition is to be continued, the giving of powers to the Council as proposed, would not alter this state of affairs. Essentially, irrespective of the existence of rights to provide entertainment, all licensed premises desirous of selling or supplying liquor beyond ordinary trading hours, will continue to be required to obtain extended hours permits.

GENERAL COMMENTS

I accept that the proposal set out above is somewhat novel, if not also initially complicated, in that what is proposed to be introduced is a hybrid type of a permit which would be granted under the Bill via a mechanism established for the granting of permits under planning schemes. The suggested permit although not being a planning permit as such, would necessarily have planning overtones and involve planning concepts.

One queries whether, notwithstanding the general acceptance of this concept by the parliamentarians present at the meeting, such a novel approach to the problem would command general acceptance elsewhere.

OTHER MATTERS ARISING OUT OF THE PROPOSAL

The Deemed Permit

1. The provisions relating to the deemed permit, necessarily involve a distinction between those licensed premises which currently provide entertainment under lawful pre-existing rights and those which do not. The amending provisions will therefore require a system by which such a distinction can be drawn and evidence to support any claim to such existing rights can be obtained and considered. Such a process, as can be imagined, could create significant administrative as well as legal difficulties.

   I suggest that perhaps the most suitable and least cumbersome method would be to place the onus of proof in this regard on licensees to show that their premises fall under the deemed permit position, as distinct from being required to obtain a fresh permit from the Council. In other words, the licensee will need to establish a pre-existing use and therefore the entitlement to a deemed permit.

2. Further difficulties will undoubtedly be encountered if the Council does not accept the claim of a licensee to a deemed permit entitlement. Procedures for resolving these potential difficulties will need to be provided for. Perhaps, an appeal to the AAT under the relevant provisions of the PEA (as incorporated into the Bill), would be in order.

3. In addition, it seems to me essential that whenever a deemed permit situation exists, an <u>actual</u> permit should be directed to issue to the licensee. The deemed permit would, I propose, issue pursuant to the powers invested in the Council

under the Bill (notwithstanding that the deemed permit will be a permit deemed to be issued under the PEA). Procedures for this exercise will need to be set out accordingly. These procedures should be set out in the Bill.

Clearly therefore, those licensees who have established an entitlement to a deemed permit, will, if they also wish to trade beyond the ordinary trading hours, hold two permits issued by the Council: the deemed permit (for the purposes of entertainment) on the one hand, and an extended hours permit on the other. In other circumstances, only an extended hours/entertainment permit issued under the incorporated PEA provisions would need to be held by a licensee.

4. Whilst the proposed extended hours and/or entertainment permit (other than in the deemed permit situation) to be issued by the Council, can be annual permits or otherwise periodically reviewable, it seems to me to be contrary to the general nature of permits granted under the planning law that the same (at least so far as it applies to entertainment) should be applicable for a specified time only.

Generally, of course, a planning permit issued under a planning scheme and/or interim development order (as the case may be) enables the land to which it pertains to be used for the specified purpose. That right of use, is a right which runs with the land, and unless cancelled (i.e. revoked) or amended on any relevant grounds specified in the legislation, continues in force until such time as the existing use is abandoned or lawfully replaced by some other use.

In the circumstances, I query whether the suggested deemed permits can be limited as to time, or required to be renewable generally. It seems that to require such permits to be renewed, essentially involves a contradiction in that the reason for setting up the deemed permit system stems from the recognition of an existing use right in the first instance.

It may be that such permits could be specified to attach to premises for, say, a period of five years, rather than only one. This would not overcome the fundamental difficulty I have already expressed. The longer period would, however, have the effect of not bringing this issue into sharp focus.

5. Similarly, I query whether the deemed permits may, in all the circumstances, be revoked (as might other permits under the Bill) or cancelled or amended under the PEA provisions to be incorporated. Again, it seems to me to be in a sense contrary to the notion of a deemed permit, having been issued essentially because of pre-existing use rights, for such a permit to be subject to revocation proceedings.

Notwithstanding that, I accept that the deemed permit system, whilst it preserves pre-existing rights to provide entertainment on premises, would operate so as to regulate that previously existing and unregulated use; the permit effectively would subject that use to conditions, such that a breach of any condition should properly jeopardize the right to continue that use. It follows from this analysis that I am on balance inclined to think that such a permit should be subject to potential revocation.

Extended hours and/or entertainment permit (other than in the deemed permit situation): Incorporating Part 4 of the PEA into the Bill

I have perused the provisions of the PEA, in particular Part 4 thereof. My comments in this regard are as follows:

1. Division 1. of Part 4 is headed "Permits required by Planning Schemes", and throughout that Part, there are several references to planning schemes (see for example, Sections 47, 55(1), 62(1), & 86).

   In incorporating that Part of the PEA into the Bill, it seems to me that the simplest method by which that part could be expressly related to the Bill is to provide that in its application to the Bill, wherever the words "planning scheme" appear in the PEA, those words shall be followed by the words "or Liquor Control Act 1987".

   It is understood that, in processing applications for permits under the Bill, the Council should retain the power to take into account all considerations which, under the planning scheme, would be relevant in the case of an application for a planning permit for licensed premises. Accordingly, references to the "planning scheme" should remain in the provisions to be incorporated in the Bill.

2. In addition, the word "permit", for this purpose, should be defined to mean - an extended hours and/or entertainment permit under the Liquor Control Act 1987 (as eventually defined in the Bill).

3. The words "use or development" wherever appearing, should be read as "the extended hours or entertainment" sought by or to be provided on licensed premises (in accordance with the definition of these terms in the Bill).

4. The Liquor Control Commission will, naturally, be a referral authority under the PEA as incorporated into the Bill.

5. It seems to me that, at least one of the matters which a responsible authority, if the circumstances appear to so require, may consider (in planning applications) under s.60(b)(i) of the PEA, namely:

   > "any significant social or <u>economic</u> effects of the use or development for which the application is made"

   may not be considered appropriate for incorporation into the Bill. From recollection, debates on this issue were resolved on the understanding that the <u>economic effects</u> of any licence or permit application should not be a matter which a licensing authority should properly take into account.

6. In my opinion, (with the exception of the deemed permit situation) it does not necessarily follow that by virtue of the incorporation into the Bill of Part 4 of the PEA, the enforcement provisions contained in Part 6 of the PEA will automatically apply to permits granted under the Bill.

   That Part should therefore, as I have already indicated, also be expressly incorporated for that purpose.

7. I have expressed my opinion above as to what would be an acceptable term for a

deemed permit to provide entertainment. It seems to me that whatever period is finally agreed upon for that purpose, should also apply to entertainment permits (or rather the authorization by the Council to provide entertainment during extended hours) issued under the incorporated provisions of the PEA. I make this suggestion purely in the interests of consistency and to streamline procedures for renewal of all permits for entertainment (whether deemed or otherwise).

Extended hours permits on the other hand, should (unless I am instructed otherwise) continue to be renewable annually.

Thus, a permit which authorizes both the right to trade during extended hours and to provide entertainment, would, I foresee contain two parts, one for each of these purposes. The part dealing with extended hours would stipulate that authorization to be renewable on or after the 31st December in each year; the part relating to entertainment would stipulate such period as the parliament may eventually determine to be appropriate.

Miscellaneous

Apart from the matters set out above, there are of course other deficiencies in the Bill, which should be addressed. 'These have been discussed on other occasions and they may be summarized as follows:

(a) The Council should be given the right to apply for variations of licences and permits generally in ss.65 and 66 of the Bill;

(b) An express right to make objections (as distinct from only representations as to community interest) should be given to the Council in s.71 of the Bill;

(c) The Council should have the right to apply to the Commission under s.101 of the Bill for the cancellation or suspension of a licence, on the grounds stipulated in that provision;

(d) A right of appeal under s.105 of the Bill should be given to the Council. Query whether other objectors generally should not also be given this right;

(e) The Bill should clarify whether the provisions relating to objections, representations and appeals also relate to the renewal of licences and permits generally, and if not, renewals should be subject to similar provisions.

I have attempted in this advice to set out the general proposal for amendments to the Bill, as agreed, in the abovementioned meeting. In so doing, I have also outlined some of the more specific matters which will need to be addressed.

The proposed amendments are, as I have indicated, somewhat novel, and apparently complicated. However, in my view, the ultimate effect of changes, if implemented, would be relatively simple, in that the Council would be given an element of control over the conduct of licensed premises, within which control, relevant planning principles and procedures would apply. It would seem that the suggested approach encompasses a

reasonable compromise in all the circumstances.

Please do not hesitate to contact me if you would like to discuss the matters raised prior to the next meeting, which I understand is to be held at the offices of the Municipal Association of Victoria on 27th July, 1987.

Yours truly,

CITY SOLICITOR

MUNICIPAL ASSOCIATION OF VICTORIA

1028P

LIQUOR CONTROL BILL 1987

THURSDAY 30TH JULY, 1987 AT 6.30 p.m.
LOWER MELBOURNE, TOWN HALL

Liquor Forum Recommendtions

The following recommendations were overwhelming supported:

1. That this meeting request the Ministers for Industry Technology & Resources, and Planning & Environment to amend the Liquor Control Bill to ensure that the amenity problems created by licensed premises are resolved under the Planning and Environment Act, with the municipalities as responsible authorities.

2. That this meeting of the general public including resident action groups, aggrieved residents, councillors and other interested persons condemn the proposed arrangement in the Liquor Control Bill which suggests that the Liquor Control Commission will be the responsible authority for extended hours and entertainment for licensed premises.

3. That representatives at this meeting advise the Minister for Industry, Technology and Resources that residents and community groups and councils should have the formal right to object to the granting of a liquor licence, and be heard at appeals.

4. That this meeting call on the Government and Opposition to support our justified concern over the failure of the Liquor Control Bill to resolve the problems that some licensed premises create against local amenity.

5. That meeting endorse the submission prepared by the MAV to the Minister for Industry Technology and Resources which requires that the control of entertainment and extended hours are included under the provisions of the Planning and Environment Act, 1987.

6. That the liquor industry be subject to the same planning controls as all other establishments as described is the planning scheme.

7. That this meeting of vitally concerned residents who are affected by licensed premises endorse Paul Dahan, Ian Murray, Harry Parsons and other appropriate persons as the spokespersons as meetings to be arranged with the Government and Opposition parliamentarians on the substance of our worries over the proposed Liquor Control Bill.

RESOLUTIONS ADOPTED AS A RESULT OF A SPEECH MADE BY CR. C WATSON(SANDRINGHAM)

WHAT DO WE WANT

1. THE OBJECTIVES OF THE ACT TO INCLUDE AMENITY CONSIDERATIONS.

2. THAT THERE IS TO BE LOCAL GOVERNMENT REPRESENTATION ON THE LIQUOR CONSULTATIVE COUNCIL.

3. THAT PLANNING PERMITS BE REQUIRED BEFORE THE GRANTING OF ANY NEW LIQUOR LICENCE FOR NEW PREMISES (ACCEPTED BY THE GOVERNMENT).

4. THAT PLANNING PERMITS BE REQUIRED FOR THE GRANTING OF VARIATIONS NEW EXTENDED HOURS PERMITS. (ACCEPTED BY THE MINISTER IN RESPONSE BUT NOT IN THE BILL BEFORE PARLIAMENT).

5. THE PROVISION OF ENTERTAINMENT IN ALL LICENSED PREMISES BE SPECIF IN THE BILL AS A MATTER THAT REQUIRED CONSENT AND PLANNING PERMISSION AND NOT BE APPROVED UNLESS THERE IS COMPLIANCE WITH TH ENVIRONMENT PROTECTION AUTHORITY REQUIREMENTS.

6. THAT INTERNAL AND EXTERNAL ALTERATIONS TO BUILDINGS INVOLVING CONVERSION OR EXTENSIONS TO EXISTING PUBLIC FLOOR AREAS BE THE SUBJECT OF PRIOR PLANTING, BUILDING, HEALTH AND LIQUOR APPROVAL.

7. THAT MATTERS TO BE CONSIDERED BY THE CHIEF EXECUTIVE OFFICER, THE COMMISSION AND THE ADMINISTRATIVE APPEALS TRIBUNAL IN APPLICATION AND ENFORCEMENT PROCEDURES INCLUDE THE AMENITY OR PEACE AND QUIET THE LOCALITY.

8. THAT RESIDENT AND COUNCILS RIGHTS OF OBJECTIONS AND TO BE HEARD B THE COMMISSION BE RETAINED WHERE THE APPLICATION IS FOR AN EXTEND HOURS PERMIT, OR ENTERTAINMENT IN RESIDENTIAL AREAS.

9. THE MELBOURNE METROPOLITAN PLANNING SCHEME BE AMENDED ALONG THE LINES RECOMMENDED BY DR NIEWENHUYSEN

I.E. - TO MAKE THE LAND USE DEFINITIONS REFLECT THE ACTUAL USE RATHER THAN THE LICENCE HELD

- TO BE SUBJECT TO THE SAME AMENITY CONDITIONS AS OTHER LAN USES

- INTRODUCE PROVISIONS ALONG THE LINES RECOMMENDED BY THE REVIEW AND ADOPTED BY THE GOVERNMENT TO REQUIRE TOWN PLANNING PERMITS FOR EXISTING LICENSED PREMISES WITH EXTENDED HOURS OR ENTERTAINMENT.

- TO ENCOURAGE LATE TRADING AND ENTERTAINMENT AWAY FROM RESIDENTIAL AREAS.

10. TO ENSURE IT HAPPENS THE M.M.P.S. BE AMENDED BY THE LEGISLATION BEFORE PARLIAMENT.

(WE MUST NOT GET THE CURRENT CHANGES WITHOUT THE AMENITY CONTROLS UPON WHICH THE REVIEW AND THE BILL WAS PROMISED)

11. THERE BE NO OBJECTION TO THE TOWN PLANNING APPLICATIONS REFERRED T THE LIQUOR CONTROL COMMISSION FOR COMMENT BUT NOT DETERMINATION.

12. THAT WHERE THERE ARE NO CURRENT TOWN PLANNING PERMIT OR CONTROLS - THE CURRENT LIQUOR LICENCE AND PERMITS OF EXISTING LICENSED PREMISES BE DEEMED TO HAVE A TOWN PLANNING PERMIT, FOR THE PURPOSE OF ESTABLISHING CONTINUING USE RIGHTS AT THE COMMENCEMENT OF THE NEW LAW.

13. IN THE EVENT THE GOVERNMENT IS NOT PREPARED TO IMPLEMENT THE PLANNING CONTROL BY LEGISLATION (AND IT IS CERTAIN THEY WILL BE OPPOSED BY THE AUSTRALIAN HOTELIERS ASSOCIATION) THEN THE CURRENT LIQUOR CONTROL BILL BE AMENDED TO INCLUDE THE REQUIRED DEFINITIONS AND PROCEDURES TO ENABLE A PRIOR TOWN PLANNING PERMIT DETERMINATION BY COUNCIL AS THE LOCAL RESPONSIBLE AUTHORITY BEFORE ANY PERMIT ISSUES, WITH RIGHTS OF OBJECTION, APPEAL AND ENFORCEMENT UNDER THE TOWN & COUNTRY PLANNING ACT (OR THE NEW PLANNING & ENVIRONMENT ACT).

14. THAT THE MINISTRY FOR PLANNING & ENVIRONMENT PREPARE PROPER PLANNING GUIDELINES FOR THE ESTABLISHMENT AND LOCATION OF LICENSED LATE TRADING AND ENTERTAINMENT PREMISES FOR THE GUIDANCE OF LOCAL GOVERNMENT AND THE INDUSTRY.

15. AT THE VERY LEAST THE E.P.A. ENTERTAINMENT NOISE POLICY BE ADOPTED TO ENSURE THAT THE MOST INTRUSIVE YET EASIEST TO REMEDY ASPECTS OF THE CURRENT PROBLEMS CAN BE IMMEDIATELY OVERCOME.

16. THAT "DRY AREAS" BE ALLOWED TO RETAIN THEIR STATUS IF THEY WISH TO.

17. THAT THE BILL NOT PROCEED IN ITS PRESENT FORM.

MHL

CITY OF CAULFIELD
22 JUL 1987
Office
Ltr

MUNICIPAL ASSOCIATION OF VICTORIA

0996P

LIQUOR CONTROL WORKING PARTY MEETING

Monday 27th July 1987, at 12.30 pm
at 468 St. Kilda Road,
Melbourne.

(luncheon provided)

A G E N D A

Reg attending

1. Apologies - Mr. A. Hunt

2. Minutes of previous meeting 15th July, 1987

3. Amendments to the Liquor Control Bill 1987
   - Mallesons Steven Jaques

4. Submission to the Department of Industry Technology and Resources - finalization

5. Deputation to the Minister for Industry Technology and Resources

6. Public Forum Thursday 30th July, 1987

MUNICIPAL ASSOCIATION OF VICTORIA

Address all correspondence to the Secretary
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J. Mieldazys:ab 0996P

LIQUOR CONTROL WORKING PARTY

Minutes of Meeting - 15th July, 1987, at 12.30 p.m.

* persons in attendance

1. Apologies:

Mr. Eric Hopkinson	-	Liquor Control Commission (Department of Industry Technology Resources)
Mr. R. Holland	-	Moorabbin
Mr. J. McInerney	-	Melbourne
Mr. G. Code	-	M.P.E.

2. Meeting at Melbourne City Council with Mallesons Steven Jaques, 3rd July, 1987.

Mr. J. Murray (Mallesons Steven Jaques) stated that the Liquor Control Bill provided control powers to the Liquor Commission for extended hours and entertainment. The proposed amendments to the MMPS were discounted as feasible options due to:

a) objection, as a result of existing non-conforming use rights and therefore no need for a planning permit

b) problems with exhibition period and appeals on points of law to the Supreme Court (refer to Amendment No. 188)

The preferred alternative was an amendment to the Planning and Environment Bill or the Liquor Control Bill.

Mr. Murray emphasized that entertainment was a new creature in the industry needs to be carefully considered, and that it was not an appropriate are for the commission to be dealing with it.

Thus, it was concluded that a planning permit was required for both extended hours and entertainment, the issue of one permit for extended hours and entertainment was also a possibility.

Mr. A. Hunt raised the problem of retrospectivity indicating that existing use of rights should continue and any control would be objected.

Mr. V. Heffernan stated that applicants would need to obtain a licence from both the Liquor Control Commission and the Council which would conflict with Government policy for deregulating controls in the hotel industry.

Mr. O. Lennie stated that the costs to control problems with licenced premises are expensive especially as councils do not have the right to determine extended hours in the first place. Local government must be assured that the land use for which a permit has been obtained will not have increased hours at a later date.

Cr. Habicht stressed that local government spends thousands of dollars on planning appeals.

Cr. Dahan (Chairman) summarized a debate regard retrospectivity by stating that the Members of Parliament are opposed that retrospective legislation should be further controlled.

Mr. G. Dummett stated that EPA noise levels were not considered in the Liquor Control Bill and that its consideration would remove at least one amenity problem.

At the meeting it was stated that hours and entertainment were important components that ought to be integrated.

Mr. Murray described that certain activities should be specifically defined in a permit and, that there would be an appropriate appeal provision for the applicant.

Mr. Cooper stated that this could be targetting hotels in residential areas and there is a need to have this control over the whole industry. Furthermore, there were problems in obtaining permits and enforcing conditions.

Mr. O. Lennie outlined that the proposed Planning and Environment Act contains an enforcement order and that it would be an offence to contravene this order.

After considerable debate regarding the control of licensed premises, enforcement of conditions, the respective rights of existing uses and the need for planning controls over entertainment and extended hours, the following matters as suggested by Mr. Hunt were generally recommended:

a) A planning permit for the development and use of licensed premises (erection and extensions) should include conditions relating to the control of entertainment and extended hours of operations.

b) In the case of existing establishments, persons with existing entertainment and late hours "shall be deemed to have a planning permit after 11.00 p.m." In this instance, the conditions specified in the existing liquor licence will provide the operational guidelines for the licenced establishment.

J. MIELDAZYS

DISCUSSION WITH MR. E. HOPKINSON

17th July, 1987

Mr. Hopkinson was briefed regarding the meeting on 15th July, 1987, and in response, he made the following comments.

(a) Councils should identify specific activities they want avoided on new planning permits. For example the City of Sandringham have drafted a planning permit which includes trading conditions relating to noise and amenity.

(db readings EPA standards effects on adjoining houses). These conditions will avoid the need for planning authorities to control and enforce hours of operation.

(b) In the case of councils providing a planning permit which specifies the hours of operation Mr. Hopkinson considered that it was more appropriate for councils to idenfity the activities which become problems at certain hours in preference to the hours themselves.

(c) The term 'hotel' has been deliberately avoided in the legislation as the term has been applied to describe a range of establishments from a local tavern to the 'Hilton'. Instead, it was considered more appropriate to describe the actual licence for the premises, rather than the establishment itself.

(d) It was never the intention of the Department of Industry Technology and Resources that revenue from lisences go to local councils. Rather recommendation No. 148 stated that "all licensed premises be required to be registered with councils and the registration fees paid to councils."

The purpose of this recommendation was to tidy up any existing loopholes by requiring that all licensed premises be registered.

MHL

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File 84/449 J. Mieldazys:sc 0969P

7th July, 1987.

10 JUL 1987
Officer
Letter No

Dear Sir/Madam,

LIQUOR CONTROL BILL

I refer to previous meetings with the MAV on the Liquor Control Bill. In view of the amendments required to the Liquor Control Bill and subsequent amendments to the Melbourne and Metropolitan Planning Scheme it is necessary to hold a further meeting with representatives of the Liquor Control Working Party, other councils, Members of Parliament, the Ministry for Planning and Environment and the Department of Industry, Technology and Resources.

The meeting will be held at the MAV on Wednesday 15th July at 12.30 p.m. A light luncheon will be served.

The purpose of the meeting is to formally acknowledge the amendments required to the Liquor Control Bill in finalisation of the submission to the Minister for Industry, Technology and Resources.

In addition, the principle of extended hours and/or late entertainment being a council responsibility rather than the responsibility of the Liquor Control Commission should be further discussed. In this regard, consideration will be given to hotel activities having a detrimental impact on residential amenity as a consequence of late trading hours.

It should be noted that a public meeting on the Liquor Control Bill will be held on Thursday, 30th July, 1987 commencing at 6.30 p.m. at the Melbourne Town Hall. This meeting has been organised by the MAV in consultation with the Town and Country Planning Association.

For the information of new participants please find enclosed a copy of the relevant material on the Liquor Control Bill 1987.

We look forward to seeing you at the meeting. Please advise Ms. Judita Mieldazys or Mr. Harry Parsons of your availability by 13th July, 1987.

Yours faithfully,

ROB BARFUS,
Chief Executive/Secretary.

LIQUOR CONTROL BILL 1987

Problems of Liquor Control at the Local Government Level

The Liquor Control Act 1968 is the sole authority within Victoria for the granting, renewal, removing, transferring and altering of licences and permits for the sale, disposal and consumption of alcoholic liquor. The Act provides that the Liquor Control Commission must notify the relevant council of all applications received for new licences (section 56A(3)) and variations to existing licences (section 56C(4)). However, the Liquor Control Commission is the ultimate decision maker.

The Melbourne and Metropolitan Planning Scheme (M.M.P.S.) is the principal means available for direct control of licensed premises by local government. However, the MMPS only relates to the establishment of new hotels and has no mechanisms of control over legally established premises. The problem has become particularly acute with the introduction of late trading hours in conjunction with entertainment. Although amendments to the Liquor Control Act (March 1985) ensured that councils receive notification of all new licences and variations to permits, there is no stipulation in the Act that the Commission must have regard to residential amenity considerations.

The problem becomes more apparant at the local government level when the council, which has no control over the granting of extended liquor licences, is required to investigate complaints relating to the adverse impact of hotels in or near residential areas. The types of complaints include:

- noise emanating from premises, (music, air conditioning, refrigeration, bottle stacking, patrons)
- noise from outside premises (cars leaving, horns, shouting, patrons)
- trespassing and vandalism (damage to property and cars)
- inadequate on-site parking

- Councils are limited in their ability to control the problem unless it relates to the initial erection and establishment and extensions constructed thereafter, and where there is a breach of permit conditions. Furthermore, it should be noted that there is no formal requirement for hotels to advertise their intention to extend trading hours and councils usually find out after the event.

Other concerns expressed by councils related to the expertise of the Commission to determine applications which principally were dependent on local town planning issues; the high cost to councils in arguing a case before the Planning Appeals Board and the Liquor Control Commission; and that residents likely to be affected by extended trading hours are not notified.

The Nieuwenhuysen Recommendations

Local government is concerned with the inability of existing planning controls to cover the actual operations of existing hotels and the inability of councils to determine applications for extended trading hours.

The recommendations include:-

1. That the definitions of licensed premises in planning schemes be amended so that they describe the use of premises rather than being tied to definitions contained in the Liquor Control Act.

2. That licensed premises be made subject to the same amenity controls as all other industry types.

3. The introduction of comprehensive amenity considerations for licence/permit application, approval and renewal system whether at the local government or licensing authority level.

4. That a town planning permit be required for all new licensed premises and for all changes of use or operation of existing premises; and that a licensing Act provide that a town planning permit be a condition precedent to the grant of a licence or permit.

5. All building matters should be the concern of local government and, where appropriate the Fire Authority and Historic Buildings Council.

6. The Health Department Victoria and councils have sole jurisdiction over health matters pertaining to licensed premises.

7. That all licensed premises be required to be negotiated with councils, and the registration fees paid to councils.

8. The production of a certificate of registration from the council should be a necessary requirement in the granting or transferrring of a licence.

9. Hotels should be subject to the Food Act, as for all other food premises.

The implementation of the recommendations, outlined above, by the Victorian Government would lead to a significant improvement in the operations of the Act.

On 24th April 1987, the State Government publicly indicated the scope of changes to the liquor laws and released the "Government's Response to the Recommendations and Community Submissions on the Review of the Liquor Control Act (1968)". In the media release, Mr. Fordham stated that the Government had accepted Dr. Niewenhuysen's basic conclusion, that the liquor industry was grossly over-regulated to the detriment of both the industry itself and the public at large. In addition, Mr. Fordham stated that:
"Licences and permits for extended trading hours will only be granted after a planning permit has been issued. The views of local councils and the impact on the community will influence the granting of a planning permit."

The MAV together with the City of Sandringham met with representatives from the Department of Industry Technology and Resources on 29th April 1987 and presented a submission by the MAV to the Government's response on the Review of the Liquor Control Act. It was generally agreed that the amendments to the proposed legislation will simplify the existing licensing system, allow greater flexibility for licensees to operate, create a competitive atmosphere in the industry, and maintain control over the number of licensed premises. It was stated that the Government's general acceptance of Dr. Niewenhuysen's recommendations will have a significant impact on the hotel industry and the community.

- In it's submission the MAV indicated that local government is mainly concerned that it has no direct control over existing establishments, and the granting extensions to liquor licenses, nor has it the ability to control problems created as a direct result of the activities of hotel patrons. Although it appears that the major Niewenhuysen recommendations as contained in Chapter 10, are recommended for affirmative inclusion to the legislation, there are serious concerns regarding their implementation.

Some of the weaknesses of the Government's response in relation to local government's recommendations include:

a) confusion over the role of the Liquor Licensing Commission as the 'referral authority' and/or 'responsible authority' under the Planning and Environment Bill;

b) lack of understanding about the limitations placed on Councils in relation to planning permits for existing hotels wishing to alter their passive use areas for entertainment purposes;

c) the lack of proposals for resolving nuisances and amenity problems with existing hotels;

d) problems with the enforcement of permit conditions;

e) no acknowledgement of the relationship between the EPA and Liquor Licensing Commission regarding noise control;

f) duplication of effort with the Liquor Licensing Commission being the 'responsible authority' and determining (hours) conditions for planning permits.

The responses to the above weaknesses have become apparent in the proposed Bill.

On 30th April 1987, the City of Sandringham received a letter from the Minister for Planning and Environment in response to proposed amendments for licensed premises to the Melbourne Metropolitan Planning Scheme. The Minister's legal advice indicated that under present legislation, the regulation of trading hours of licensed premises is a matter for the Liquor Control Act rather than the Town and Country Planning Act.

- On the same day, the Liquor Control Bill 1987 was introduced into the Legislative Assembly and was held over for debate until the next session of Parliament commencing in August.

A copy of the Government's Response to the Recommendation and Community Submissions on Liquor Control was distributed to metropolitan councils and selected non-metropolitan municipalities on 5th May 1987. The letter also advised that arrangements will be made to discuss the Bill with councils experiencing problems with liquor establishments.

The areas of concern include:

a) Extended Hours:

According to the Bill a new planning permit is not required for extended hours beyond 11.00 pm. However, extended trading hours (beyond ordinary trading hours) is a landuse concern as it can significantly affect the amenity of an area. A new planning permit should be granted for extended hours. The planning scheme needs to be amended to recognize extended hours. Also, the Liquor Control Bill will require an appropriate amendment.

It was suggested that an hotel in the Planning Scheme be described in several terms that are more realistic and responsive to the needs of the hotel industry. The assessment of and control by performance standards was considered as a method to measure the impact of hotels. It should be noted that conditions on a permit which restrict the operation hours of a hotel can be overruled if extended hours remain a matter for the Liquor Licence Commission.

b) Entertainment:

Most hotels built prior to the Planning Scheme can operate to whatever terms allowed by the Liquor Control Commission without the need for a planning permit. The internal transformation of a local hotel into a major entertainment venue does not require a planning permit. The town planning system can often be bypassed when part of a residential portion of a hotel establishment is remodelled to become part of the bar/lounge area.