The Liquor Control Bill does not acknowledge "entertainment" nor does the Metropolitan Planning Scheme make any allowances for a change of use. It was suggested that amendments be made accordingly.

c) Dry Areas (Section 173):

It was suggested that, a poll should be taken in dry areas to ascertain the current attitude of residents to the abolition of any 'dry area' requirements.

d) Objections (Section 71):

Local municipalities expressed concern regarding their formal ommission as objectors in the Liquor Control Bill. The Bill allows objection by the Chief Commissioner of Police to which councils have only the right to seek representation.

e) Noise Control:

The noise emanating from hotels is one of the major problems affecting residential amenity. The Liquor Control Bill does not acknowledge any responsibility for standards with the EPA. Noise matters could be addressed as part of the performance criteria to describe the nature of the premises. Noise can also be the subject of prosecution under the Health Act.

f) Enforcement Procedures:

The Liquor Control Bill does not solve existing problems. The enforcement of permit conditions by the Liquor Licensing Commission and local councils is a further weakness that needs to be addressed. It was generally agreed that some councils have found their planning conditions to be totally ineffectual and unenforceable. It was suggested that a clause be inserted to appropriate legislation to suspend a liquor/planning permit until compliance is regained and the problem is otherwise rectified.

Recommended Action:

1. Further discussion with the Ministry for Planning and Environment regarding the need for complementary planning controls, and further discussions on amendments to the Melbourne and Metropolitan Planning Scheme, and provisions for other planning schemes.

2. Preparation of a draft amendment to the MMPS (similar in format to the brothels amendment) taking into account performance criteria and variation in defining hotel establishments. The membership of the original Working Party set up by the MAV be requested to undertake this study and circulate a draft to councils wishing to participate.

3. A submission to the Department of Industry, Technology and Resources on the Liquor Control Bill.

4. A deputation with the Hon. R.C. Fordham, Deputy Premier and Minister of Industry, Technology and Resources.

Please find enclosed brochures for Public Forum on 30 July. Please distribute to interested groups.

MUNICIPAL ASSOCIATION OF VICTORIA

468 ST. KILDA ROAD, MELBOURNE, VICTORIA, 3004

With Compliments

Town & Country Planning Association

ESTABLISHED 1914

58 Errol St. Nth. Melbourne 3051

(03) 328 3278

T.C.P.A. - M.A.V. - CITY OF MELBOURNE

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PUBLIC FORUM

ON: THURSDAY 30TH JULY - 6.30PM - 9.30PM

AT: LOWER MELBOURNE TOWN HALL
Swanston Street, Melbourne

So that the public has a chance to participate in the proposed

LIQUOR CONTROL BILL 1987

SPEAKERS INCLUDE: STATE & LOCAL GOVERNMENT, PLANNERS, HOTELS, UNIONS and the GENERAL PUBLIC

RECOMMENDATIONS & RESOLUTIONS

WILL BE FORWARDED TO THE PARLIAMENT

REGISTRATION & ENQUIRIES:

328 3278

NO CHARGE

(see over)

LIQUOR CONTROL BILL 1987

STATEMENT BY PRESIDENT T.C.P.A.

Hundreds of ordinary people have their sleep disturbed, their gardens and verandahs violated and their lives made miserable because of the failure to control a few rotten customers from a few uncaring hotels.

The Councils have spent thousands of dollars and committed human & technical resources trying to maintain the peace and quiet of their citizens who have the misfortune to live near one of these troublesome pubs.

The New Liquor Control Bill can resolve many of these problems if the licensed premises are made to conform to the ordinary neighbourly standards of conduct, which form the basis of amenity. The Bill is worthy of YOUR close study, (copies can be obtained from the Government Printers or Parliament House).

The Town & Country Planning Association, the Municipal Association of Victoria and the City of Melbourne, are sponsoring a PUBLIC FORUM

THE PUBS, THE BOTHER & YOU !

Please vote with your feet on Thursday 30th July at 6.30pm (-9.30pm) in the Lower Melbourne Town Hall of the City of Melbourne, Swanston Street (near corner of Collins Street).

COME ALONG and listen to some expert and some good speakers and talk back.

With your help we can send a message to the Parliament in time for the Debate on the Liquor Control Bill 1987.

HARRY PARSONS
President T.C.P.A.

Enquiries:

Denise Moody
328 3278

City of Caulfield

ACTION SHEET

Precis of Subject Re: Repair of Act.

File Number 20/080/00022

PT A Folio 18

Acknowledge

For _____ Committee/Council

For Officer/Committee Action _____

Recorded by Committee Officer / /

Keywords

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Date 22/5/87

Action Officer [redacted] TP

ACTION TAKEN OR REQUIRED

AFTER ACTION

(RM5)

City of Sandringham

ALL COMMUNICATIONS TO BE
ADDRESSED TO THE TOWN CLERK
P.O. BOX 27, SANDRINGHAM, 3191
DX 34108 SANDRINGHAM
TELEPHONE: 598 8111
ENQUIRIES TO:
Mr. G. Dummett
TPO:TB:189

CITY OF CAULFIELD
22 MAY 1987
Officer File
Letter No.

Municipal Offices,
Royal Avenue,
Sandringham, 3191

ATTENTION: TOWN PLANNER

Dear Sir

19th May 1987

RE: REFORM OF LIQUOR CONTROL ACT
TOWN PLANNING CONTROLS

I refer to our previous correspondence in relation to the review of the Liquor Control Act.

I wish to thank you for your response and advise that some 36 mainly metropolitan Councils wrote supporting stronger amenity controls over licensed premises.

The Government Response to the Liquor review now recognizes the important complementary role of planning, and indeed the Commission will soon incorporate planning expertise.

However, the Bill either deliberately or inadvertently does not retain even our current rights particularly in relation to "Extended Trading Hours" and "Entertainment". The M.A.V. is urgently arranging meetings with the Department of Industry, Technology and Resources to rectify this situation, and your support is needed.

In 1983, the M.M.B.W. proposed an "Extended Hours" hotel definition, however this was abandoned after legal action by the Australia Hotels Association indicated that the Liquor Law takes precedence over the Planning Act. This was despite support by some 23 Council's.

Local Government must now ensure that effective planning controls are drafted to both encourage the extended hours entertainment facilities to locate away from residential areas and to provide effective planning protection for people who reside near licensed premises.

The new Liquor Act will constitute the Commission as a referral authority for planning permits to issue at the direction of the Liquor Control Commission. It envisages changes to the current Planning Scheme controls and definitions.

The Government response does not in any way address the problems associated with the provision of entertainment or the links with the E.P.A. controls and does not provide remedies for premises that currently cause problems.

The Bill only specifies maximum ordinary trading hours (7:00am to 11:00pm), otherwise any extended hours are possible for all licensed premises (apart from Packaged Bottle Sellers) at the discretion of the Commission.

Clearly, there is a need for detailed planning guidelines. An annotated copy of this Councils comments on the Governments response, a copy of the Planning Minister's prior response and extracts from the Liquor Control Bill 1987, together with the previous suggestions for amendments to the M.M.P.S. are enclosed.

The M.A.V. have also prepared a discussion paper and propose meetings with the M.P.E. and I.T.R. to rectify the problems. (refer Ms Judita Mieldazys and Mr Harry Parsons, phone 267-5266).

Yours faithfully

G C Barrow
CITY ENGINEER

As addressed

enc

CITY ENGINEER - 29/4/1987 — BASED ON GOVERNMENT RESPONSE DOCUMENT.

LIQUOR LAW REFORM — ANNOTATIONS - BASED ON BILL (15/5/87) BEFORE PARLIAMENT

The new liquor laws should achieve their objectives of enabling greater flexibility for licencees to provide liquor, food and entertainment under new licences that are easier to obtain and subject to fewer restrictions.

The reform provides welcome, if belated, recognition of the role of town planning in the orderly provision of licensed facilities, and that such premises should be subject to the same amenity and land use controls as other community activities, e.g. hospitals. REFER — RE. GOVT RESPONSE para 6.10.1.

ALSO BILL Sec 63 (5)(b) (i) & (ii), S. 62(2)f., S. 68, S.117 & S.118 & REVIEW Chap. 10.

However, despite ~~the proposal to now require planning permits prior to trading hours being extended~~, the residents who live near existing licensed premises may not be as well served by the proposals as is currently stated in the Government's "Response" document. NOT IN BILL — REFER. GOVT. RESPONSE 6.5.1. ~~AND BILL~~ NO PERMITS ~~REQUIRED~~ AND BILL S. 64 THE BILL ONLY REQUIRES CONSULTATION & WILL OVERRIDE T.C.P. ACT.

Firstly, despite the specific mention of residential amenity in the issues to be addressed, amenity concerns are neither included as part of the stated objectives in the Response, nor given as a ground for objection to the grant of a licence or permit. IN GOVT. RESPONSE, BUT NOT IN L.C. BILL — REFER BILL S. 71, 74, 75, (1) & (4), 76(2), 78 & 79.

Local Government and residents lose their current status of having specified rights of objection to the grant of licences and permits. NOT SPECIFIED ONLY RIGHT OF REPRESENTATION TO C.E.O., NOT COMMISSION: REFER BILL S 71, 74(1), 75(1), 76(1) & (2), 78 & 79.

In turn, it needs to be clearly stated that there are rights of appeal on substantive grounds as well as administrative procedures. NO RIGHTS OF APPEAL TO A.A.T. BY COUNCIL OR RESIDENTS. REFER BILL S. 105.

In this context, the objectives of the Act and the grounds of objections are deficient and do not appear to specifically allow the Commission to consider residential amenity issues despite the intention to include town planners on the Commission. BILL ALLOWS COUNCIL & RESIDENTS S. 74 TO MAKE REPRESENTATIONS TO C.E.O. S. 76, HEARINGS ~~OF~~ BY COMMISSION ONLY UNDER S. 78 & S. 79 — C.E.O. & POLICE ONLY

Given the financial implications of many of the matters argued before the Commission, the amenity considerations must be explicit. Residents, Councils and even freehold owners have previously had their rights to be heard contested by legal counsel at the Commission and Supreme Court. THE RELEVANT SECTIONS DO NOT MENTION COUNCILS SPECIFICALLY OR OWNERS OR RESIDENTS. REFER BILL S. 26(2), S. 66, (S 75, & S 76 — C.E.O. AND POLICE.

Whilst the intention is to conduct the Commission's hearings in a more informal manner, this will be difficult to achieve as the "compulsory conference" experience of the Planning Appeals Board has shown. REFER. BILL S. 25 (1) & (2). — N.B. NOT DETERMINATION HEARINGS.?

Whilst the report recognises the important nexus between liquor, food and entertainment, entertainment is not properly addressed. Provision of entertainment significantly affects residential amenity not only by the noise generated by the premises (possibly the easiest problem to remedy) but also by the overall patron behaviour patterns both inside and outside the premises, particularly later arrival and en masse departure times with serious effects on any residents who happen to live nearby.

ENTERTAINMENT NOT MENTIONED AT ALL. IN BILL, EXCEPT S. 50(2)(b)

N.B.

Whilst it is proposed therefore that extended hours will be the subject of consultation only, the Response makes no comment on arrangements for entertainment, which is now provided in existing premises regardless of location without planning consent. THE GOVT RESPONSE STATES — PERMITS ARE REQUIRED PARA 6.5.2. THEN LIQUOR LAW WILL DECIDE PARA 6.10.2. — QUITE SPECIFICALLY BILL S. 64(5).

Indeed the Bill specifically precludes planning law from "restricting or affecting the use of premises under extended hours permits". That is, there will only be consultation not planning controls over extended hours and entertainment. THE SYSTEM IN THE BILL CONTRADICTS ~~THE~~ FACTS OF THE GOVT. RESPONSE AND WAS REJECTED BY NIEUWENHUYSEN p. 554.

Indeed when it is considered that any premises trading after 11:00pm will have an extended hours permit, there is a clear loss of effective control.

INSERTED AFTER READING OF THE BILL 15/5/87.

NIEUWENHUYSEN SYSTEM IS BASED ON:-

- T.P. TO COVER AMENITY + PUBLIC CONSULTATION ASPECTS WITH LIQUOR CONTROL BEING POLICED ADMINISTRATIVE

BUT THIS BILL IS ADMINISTRATIVE + INDUSTRY BIASED WITHOUT EFFECTIVE T.P. / RESIDENT / COUNCIL INPUT.

IT ASSUMES THE M.P.E. WILL DECIDE? REFER M.P.E. LETTER.

There is no statement about where extended hours and entertainment should occur. — COUNCILS & M.P.E MUST THRASH IT UP ~~OR~~ TO AMEND M.M.P.S. OR IT WILL BE DONE BY LIQUOR INTERESTS — REVIEW REC. 144 + CHAPTER 10.

It has been the view of most Councils and the Municipal Association of Victoria, and indeed even the Nieuwenhuysen Report, that such activities do cause problems in or adjacent to residential areas, and as such they should be encouraged to locate in "venues" in commercial and industrial areas.
REFER REVIEW: CHAPTER 10. & PP. 554-558)

The Response states that existing premises will retain their current trading rights. Are existing problems to be perpetuated, rather than brought into conformity with appropriate Environment Protection Authority and proper planning guidelines within a specified period of time?

Hotels can and do run profitably on a civilised, licensed dining format, and after all, that is the image "The Age" and Dr Nieuwenhuysen have fostered.

RESPONSE STRESSES USE OF FINES

The removal of the need for licence renewal will weaken the enforcement provisions, particularly when coupled with the intention to fine rather than suspend or cancel licences. RESPONSE 5.4.3 Cf. BILL 101(4) ?

Sandringham Councils experience, with the Hampton Hotel and Josephines Discotheque investing some four licencees over an eight year period, has been that nearby residents have suffered unacceptable levels of disturbance and distress over eighteen (18) month periods on each occasion, despite pleas for help and action to the licencee, the E.P.A., the Police, the Commission Supervisors, the Council's Health Surveyor, the Council's Planning Officer, the Liquor Control Commission, the Planning Appeals Board and through the local State Members of Parliament to the Minister responsible for Liquor Matters and the Attorney General.

NO COMMISSION MAY NOW HEAR.

The ability to object (which needs to be specified) at any time will not be effective when the Commission is unable to hear a complaint on the basis of denial of natural justice to the licencee, ~~whilst any matter is outstanding before a magistrates court.~~ S.145 MAY OVERCOME THE PROBLEM. S 105

In turn, the fines that can be imposed by a Magistrate are unlikely to effectively deter a licencee from persisting with entertainment or extended hours of trading that causes detriment to nearby residents. GIVEN REPRESENTATION BY Q.C.'S AND COSTS OF $5,000 per day — SEC 101 + 145 ARE ESSENTIAL IF THEY WOULD.
The two most recent cases affecting this Council were resolved by the actions of licencees; in the first instance the licencee being unable to pay his rent and in the second instance by the licencee neglecting to pay his licencee fee for more than one month.

Where there are millions of dollars and livelihoods at stake simple fines will not be sufficient remedy.

PROVISION OF ENTERTAINMENT IS NOT MENTIONED IN BILL.
..3 IN RESPONSE 6.1.5 LIQUOR IS LINKED TO FOOD AND ENTERTAINMENT.
PROVISION OF ENTERTAINMENT MUST BE SPECIFIED CHANGE OF USE / VARIATION REQUIRING L.C.C AND T.P. PERMITS

The current law provides for suspension of a licence where there are three convictions in any one year.

ESPECIALLY IN RESIDENTIAL AREAS

In any case, the proper solution must be through the location of extended hours and entertainment premises in commercial and industrial areas with suitable parking and access. REFER NIEUWENHUYSEN RECOMMENDATIONS IN CHAPTER 10 ALSO PROVISIONS OF CURRENT ACT.
The twenty major district shopping centres are intended to be locations where activities such as extended hours entertainment centres can be located. Similarly larger community shopping centres and many accessible industrial areas can provide excellent "venues" for such operations complementing other social facilities without interference to residential amenity. — & THE REVIEW AIMS AT DEREGULATION AND FLEXIBILITY FOR LICENCEES, BUT THIS MUST BE WITHIN T.P. LOCATIONAL CRITERIA.
The smaller local hotels are rarely situated so that the provision of entertainment for extended hours does not cause some detriment to near-by residents.

In this context, the ~~requirement for planning permits for~~ CONSULTATION ONLY S. 64(5) extensions to trading hours of licenced premises, is welcomed, especially as it was precluded by the Australian Hotels Association's lobby and legal action in 1983. — AND IT APPEARS 1981 ATWELL. — CONTRADICTS RESPONSE 6.5.2.

MUST BE EMPHASISED

It is absurd that there have been no effective town planning controls over the hours and amenity impacts of existing licenced premises (with hundreds of people and entertainment in the late evenings) whilst stringent controls have been placed on corner milk-bars, convenience stores, offices, brothels and even such relatively benign uses as doctors surgeries and schools. INDEED THE M.P.E. LETTER WOULD INDICATE A MAJOR PROBLEM WITH ~~FROM~~ CURRENT T.P. PERMITS THAT LIMIT LICENCED TRADING HOURS.

N.B.

However, the proposed requirements for a permit must be extended to the provision of entertainment. Further, whilst the ability of the Commission to comment and object to a planning application as a referral authority is reasonable, even desirable, the proper prerogatives of the Council as the local responsible authority for town planning must not in any way be prejudiced or overridden by the need for the objectives of the Liquor Control Act to be consistent across the State or to allow for maximum flexibility for the operators of licensed premises. (ACCEPTED BY NIEUWENHUYSEN P. 554-556).
Just as the Commission cannot compel approval, it should not be able to insist on conditions that would result in detriment to nearby residents or interfere with the proper planning of the locality.

Guidelines for "Community Need" are required beyond the "lost tribe" of regulars and petitioners who appear at licence hearings to express a "need" for more of what they enjoy. A balance of interests must be struck based on local considerations.

There is a need for improved public notification of licensing procedures and rights, particularly if public rights and involvement in the process is intended.

There is a need for improved funding and fees to Councils, more than just a token registration or permit fee,if they are to assume the State Government's responsibilities for the building, health, and food supervision of premises.

Finally, this Council welcomes many of the provisions of the Nieuwenhuysen Review which will lead to improved social facilities for the community as a whole. It has no objection in principle to the extension of trading for licensed premises to 24 hours a day, seven days per week in suitable locations.It has no objection to entertainment as such.

However, it does have serious concerns that people who live near licensed premises, in most cases for many, many years, that they should not be forced to carry the burden by way of amenity impacts and personal distress, or even by way of loss of time and legal costs, to enable the rest of us to enjoy the improved licensed facilities.

Equally, local Councils who seek to protect the peace and quiet of their residents inside their homes of a late evening should not have this unnecessary cost when it can be prevented by proper planning.

We no longer locate factories, shops or even offices in residential areas, so too we must ensure that intrusive licensed facilities are properly located through planning controls, before problems occur.

In this context, it is a matter of regret that in his public consultation and discussions the Minister was unable either to find time to meet with the M.A.V. and Councils before the legislation was drafted to discuss these legitimate concerns, nor even time to substantively respond to a serious, constructive submission on the residential amenity issue by both the M.A.V. and some 36 Councils. THE COUNCIL & M.A.V. REPEATED SOUGHT THE SAME ~~[illegible]~~ ACCESS AS HOTELS & UNIONS — BUT WE ONLY GET OFFICERS. 29/4 + 25/5/8). *This Council and its residents has spent a great deal of time and money, in excess of $50,000 legal costs overall, in trying to resolve two serious amenity problems caused by inadequate amenity controls. The licencees and their financiers have spent and invested hundreds of thousands of dollars.* SAME FOR MANY COUNCILS. — ~~[illegible]~~ *The new legislation must ensure the problems do not recur.* IT DOES NOT PROVIDE ADEQUATE/EFFECTIVE AMENITY PROTECTION. *The Council would also support the issues raised by the M.A.V. discussion paper.*

We do not wish to hinder the reform, but rather work constructively to ensure it is effective.

M.A.V. MEETINGS 25/5/8). ◁ 29/4/8).

PLANNING PRECAUTIONS TO PREVENT ALCOHOL INDUCED DISTURBANCES AND STRESS.

NO.!! IT CAN ONLY WORK IF SECTION ~~64~~ 64(5) IS DELETED; THE L.C.C. IS NON DIRECTIVE, UNDER S. 177+1 RIGHTS OF OBJECTION AND APPEAL FOR COUNCILS MUST BE RETAINED QUITE SPECIFICALLY (AND RESIDENTS); AND M.P.E. + ~~A~~E:P.A. PROVIDE EFFECTIVE COMPLEMENTARY CONTROLS — PRIOR T.P. AMENITY CONTROLS.

Minister for Planning and Environment Victoria

500 Collins Street
Melbourne
Victoria 3000
PO Box 2240T
Melbourne 3001

Telephone (03) 617 021[illegible]

30 APR 1987

2348

29 APR 1987

The Town Clerk
City of Sandringham
P O Box 27
SANDRINGHAM 3191

Reference 86/2317

Dear Mr Sherman

CONTROL OF LICENSED PREMISES
Your Ref: TPO:TB:301

I refer to the City Engineer's letter of 19 March 1987 concerning the above matter.

The Government has under consideration the recommendations of the Nieuwenhuysen Report. The Department of Industry Technology and Resources is preparing the Government's response.

A number of the Report's recommendations are relevant to the matters of concern to your Council, in particular the amenity of residential areas in the vicinity of licensed premises which have permits to trade for extended hours. I do not intend to take any action, such as recommending amendments to the Melbourne Metropolitan Planning Scheme, prior to the Government's decision.

I should also add that legal advice to my Ministry is that, under present legislation, the regulation of the trading hours of licensed premises is a matter for the Liquor Control Act rather than the Town and Country Planning Act.

Yours sincerely

J. H. Kennan

JIM KENNAN
Minister for Planning and Environment

N.B. 1. DECISION 2914 — REQUIRES M.M.P.S. AMENDMENT.
2. LIQUOR CONTROL ACT PRECEDENCE COULD OVERRIDE CURRENT T.P. PERMITS TOO !!

1

M.P.E.

THE PRINCIPLES ARE STILL RIGHT.

SPECIFIC AMENDMENTS RECOMMENDED (Feb. 198)

1. MELBOURNE METROPOLITAN PLANNING SCHEME

1.1 Amend Clause 7(1)(d)(iii) - Development Control Clause

YES NEEDED.

To ensure that internal buildings and works that only affect part of a building still require a permit to overcome the problem caused by the ruling in the Wade case. (reference Forge 1986:108).

The ruling resulted in permits only being required for completely new buildings and extensions to floor areas.

THIS SHOULD BE DONE URGENTLY

1.2 Introduce Definition of "Late Trading or Entertainment Premises"

YES NEEDED

As previously proposed in the Nieuwenhuysen Report by the Council and in Amendment 188 to distinguish such premises from those with no entertainment (exclusion could be made for a single, unamplified instrument or background music below a specified volume level) or ordinary trading hours.

The definition should relate trading after 10:00pm as in Clause 25(8) and provision of entertainment by amplified music in particular over say 60-70 dba.

1.3 Amend land uses tables under Clause 7

YES NEEDED.

To enable "Late Trading or Entertainment Premises" establish as of right (Column 3) subject to the residential separation and other building, parking and amenity requirements in District Centres and otherwise suitable commercial and industrial zones, but otherwise require a permit or prohibit the use.

1.4 Amend Clause 25(8) to provide a requirement for a permit subject to criteria along the current provision for shops, petrol filling stations etc. Shops within 40 metres of a residential zone must obtain a permit if they wish to trade after 10:00pm of an evening.

YES NEEDED.

1.5 Review parking requirements under Clause 28 because lounges and entertainment areas now attract more people for longer periods that do most public bars.

UNDER REVIEW. M.P.E.

Hotels are using these provisions to effectively increase the maximum number patrons in hotels.

1.6 Require on-going operations of existing late trading/entertainment premises to comply within evening specified period or as may be varied by the Appeals Board.

YES. IN VIEW OF L.C.A 198)

This should only apply to premises within 40 metres of residential land.

/2...

1.6 (cont'd)

A provision similar to the brothels could apply over a period of some two years.

It is essential to overcome existing problems.

2. AMEND THE LIQUOR CONTROL ACT

2.1 Include a requirement for a planning appropriate permit approvals to be obtained as condition precedent to grant or permit or licence as an immediate interim proposal include in the Liquor Control Act a similar provision to the Building Controls Act that requires applicant to obtain planning permission prior to the grant of a permit, licence or variation.

YES NEEDED IN NEW S. 63, 64, 65 + Section 178/9. ESP. S. 64(5) N.B. will now tell us??

The Commission currently do this as a matter practice, but have been reviewed on the legal basis of this.

2.2 Include a provision to require applicants to notify specified neighbouring property for certain specified late trading, entertainment or new use permits.

PUT IN SECTION 72 OR REQUIRE UNDER T.P. Application ?

The current notification requirements are not satisfactory. Small inconspicuous notices in "Public Notices" columns and in buildings are inadequate.

MUST INCLUDE SPECIFICALLY IN S. 65 (1) (C) =

2.3 Specify the provision of entertainment to be a "variation" of premises or licence that requires Liquor Control Commission approval and notification if the premises are within 40 metres of residential premises.

provision of entertainment by amplified music or more than one person.

2.4 Include as a requirement that all entertainment premises satisfy E.P.A. requirements within one year or change format

NOT IN YET MUST INCLUDE

This policy selectively relates noise sources to noise sensitive areas.

2.5 Amend the Liquor Control Act to enable charges under Liquor Control Act to be brought before the Commission readily, rather than be deferred until after Magistrates Court actions and appeals are finalised.

PARTIAL UNDER S. 145

In a recent case, the licencee caused serious disturbances to nearby residents in clear breach of his licence.

When Council brought a Health Act nuisance action and the Police brought their actions in the Magistrates Court, the licencee was able to have the Commission restrained by the Supreme Courts from hearing the matter until the Magistrates Court action were decided which in turn could not proceed until a Planning Appeal was determined which in turn was threatened with review if an adverse decision was given.

BUT MORE/EASIER EMPHASIS ON S. 101 TO RATHER THAN FINES IN MAGISTRATES COURTS.

That is, rather than an injunction to prevent a nuisance, an injunction to enable continued trading and nuisance until heard was obtained.

/3...

3. *AMEND ENVIRONMENT PROTECTION ACT*

STILL NEEDED URGENTLY

3.1 *E.P.A. adopt entertainment noise D.N.2 Policy to enable enforcement of requirements by E.P.A., Police or L.C.C.*

Currently the E.P.A. have policy requirements on a wide range of noise sources from domestic air conditioners and cars to factories but not yet on entertainment noise. It is up to the L.C.C. to impose and enforce the "entertainment" noise requirements on the licence at present.

THAT'S WHAT WE ARE HERE FOR.

4. *LIQUOR REVIEW*

4.1 *Generally implement previous M.A.V., Council and E.P.A. submissions on this matter.*

4.2 *Make submission to Government now by residents, M.A.V. and Councils.*

RECOMMENDATIONS

A first and obvious need is to clarify legal definitions. There are apparent inconsistencies between the Liquor Control and the Town and Country Planning Acts. For example, these inconsistencies allow what is effectively a cabaret (such as a disco or live entertainment) to operate in an hotel in a residential zone, when a cabaret is prohibited in the zone. I recommend that 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, as now.

A more substantial and general need is that all land users should be subject to controls which reduce the level of incompatibility with neighbours. I recommend adoption of the principle that licensed premises be made subject to the same amenity controls as all other industry types; and that these controls be enforced in a manner which is as equitable, efficient and inexpensive as possible. In order to achieve this principle, I recommend the introduction of comprehensive amenity considerations into the licence/permit application, approval and any renewal system, whether at the Local Government or licensing authority level.

A difficult issue is the method for attaining these principles. There are at least two avenues, both of which are fraught with problems. Indeed one may liken them to Scylla and Charybdis.

(a) First, a licensing Act could specifically include amenity considerations, and a requirement that conditions are to be enforced, with non-compliance as a ground for temporary or permanent loss of licence. This might well mean including as part of a liquor licensing authority, people with expertise in town planning, environmental analysis, noise control or other relevant issues. If adopted, it should certainly imply a less legalistic and confrontational mode than at present. Preliminary conferences might enable complaint solving without resort to expensive semi-judicial hearings. But I do not go so far as to recommend this as a serious option. It goes against the grain of proposals for simplicity in the alternative administrative model proposed in Chapter 12. It also adds to the burden of a licensing authority in a field that should be part of town planning and residential zone control.

(b) Second, all licence and permit grants (and renewals, if any) and changes of operation of existing premises could be made subject to town planning permits. These would be issued by the Council, the alternative responsible authority or, on appeal, at the direction of the Planning Appeals Board.

NIEUWENHUYSEN'S REVIEW

...urcement must be faced. Councils do not have sufficient power to police the conditions contained in the permits, nor do they have the power to arbitrate in disputes between residents and licensees. Two alternatives to the policing functions are:

(a) A liquor licensing authority could be empowered to revoke or amend the conditions attaching to any licence at any time due to the licensee breaching any conditions imposed on the licence. The authority would then as a matter of course impose on licensees the conditions of any town planning permit as to noise, capacity, hours and residential amenity. Alleged breaches could be brought before the authority at any time by any interested party including a Council, and the authority would apply the same procedures as envisaged for any other application before it. These procedures would be an improvement on the present, but they should only be considered provided the procedures of a licensing authority are simplified as elsewhere proposed. Much of the complaint about the existing system includes unflattering reference by Councils and resident groups to the Commission's procedures, with a strong preference expressed for the informality of the Planning Appeals Board. Moreover (i) the structure of Councils is now under review by the new Local Government Commission, (ii) burdening a licensing authority with planning matters is not appropriate to the field or to the requirements of simplicity for liquor regulation.

(b) A Council could (as it now can) prosecute for a breach of the conditions in its permit in the Magistrates Court. These proceedings are really little different from those before the Commission. There is still a proliferation of QCs and formal proceedings requiring the calling of evidence and cross-examination.

A further difficulty in recommending that Councils exercise control is whether, even if they so desire, they have the ability to enforce controls. Councils already have some powers under the Town and Country Planning Act, and the Local Government Act. But it has been pointed out to me that the constraints on Councils regulating nuisances in their municipalities was highlighted by their inability to control massage parlours. The Government has sought to alleviate this problem with amending legislation. But it is not clear that Councils welcome this responsibility. Moreover, if they bow to ratepayer pressure, they can still be overturned by the Planning Appeals Board. Despite the informality of the Board, Councils find appearances before it expensive.

On the other hand, Councils are, I am informed, increasing their powers to secure enforcement. They already have power under the Town and Country Planning Act to prosecute for breaches of the Act or planning conditions, and to take out an injunction to restrain a person from contravening the Act or permit conditions. Moreover, Councils could delegate powers of enforcement, if necessary, and be given the capacity to revoke or modify town planning permits at any time without the need for any compensation.

Existing amenity problems have arisen mainly because of the inadequacy of town planning controls over licensed premises. There is no reason why licensed premises should be treated separately from other land uses. The preferred solution is to introduce town planning controls over the operation of all licensed premises. On balance, therefore, I recommend 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. This would help relieve present uncertainty and claims by residents and Councils that the system is unworkable.

IMPLEMENTING THE RECOMMENDATION

Amendment of Melbourne Metropolitan Planning Scheme

To implement this recommendation amendments of the MMPS and other planning controls thoughout Victoria would be necessary. Again, at least two options are open.

As noted, premises operating before 1968 have existing use rights which may continue and be extended subject to the provisions of Clause 7(1) of the MMPS. Clause 7(1)(d) provides that subject to the provisions of the Ordinance:

> '(land) may without the permission of the responsible authority . . . continue to be used . . . provided that
>
> (i) any condition or restriction which the use of the land for such purposes was subject at such date continued to be observed . . .
>
> (iii) where land is used for other than a detached house . . . the floor area of any building existing on the land at such date shall not be increased and no new building shall be constructed without the permission of the responsible authority.'

The current wording is defective as it applies only where there is a physical extension to premises. Similarly, changes of hours of operation have not required a permit. Clause 7(1)(d)(i) could be amended to read, 'any condition or restriction including hours of operation (and whether imposed pursuant to the Town and Country Planning Act or any other legislation affecting land use)'; and (d)(iii) to read 'at such date and devoted to the particular use concerned shall not be increased'. This would cover the situation where, for example, hotel bedroom areas are converted to a restaurant.

But amending Clause 7 would affect all premises in all areas, not just licensed premises. An alternative may be to introduce a special, more limited clause to cover licensed premises wishing to trade late in certain areas. This clause might read:

> 'Except where land was immediately before the approval date hereof lawfully used or was lawfully entitled to be used as a licensed premises open for business for any of the hours between 11p.m. and 7 a.m. and the hours of business of any particular premises are not extended beyond those in operation immediately before the approval date and no new building or works are constructed thereon from and after the said approval date, no land
>
> (i) in a Residential A, Residential B, Residential C, Reserved Living, Restricted Business or Local Business Zone; or
>
> (ii) in any other zone (within which a licensed premise is permitted by or pursuant to this ordinance) and located within 40 metres of any part of a Residential A, Residential B, Residential C or Reserved Living Zone
>
> shall be used for the purpose of a licensed premises open for business between such hours save with the permission of the responsible authority.'

This proposal would mean that a planning permit would be required by all licensed premises wishing to extend hours beyond ordinary hours as defined in a licensing Act, or to carry out any works in any of the areas mentioned above, apart from those already trading late (although the latter would require a permit for an extension of late trading hours).

When granting the relevant town planning permit, the responsible authority could attach certain conditions to the permit relating, for example, to capacity (i.e. numbers of

people), hours of operation, and the need to avoid nuisance in the neighbourhood. If any of these conditions were breached, prosecution by the council or licensing authority could follow. The MMPS could also require that car parking be taken into account when granting a town planning permit for any alterations or changes to licensed premises.

Another way to monitor operation of premises would be to leave the determination of hours outside ordinary trading hours and, possibly, of other conditions, to the licensing authority, so that the responsible authority would simply grant the permit. Any applications for variation of the hours or conditions (and complaints) would go to the licensing authority. However persuasive submissions to the Review argue that trading hours, and the general operation of licensed premises, should be decided by the local (planning) authority.

Chapter 9 contains recommendations on trading hours for licensed premises. For on-licences, standard or ordinary hours of 7 a.m. to 11 p.m. are recommended, with permits required for extension. Under the recommendations of this chapter, how would hours for a licence be determined? New premises (which would require a town planning permit) would have the basic core hours. For hours between 11 p.m. and 7 a.m. the consent of the responsible authority would be required. Thus a town planning permit would have as conditions endorsed on it trading hours (if any, between 11 p.m. and 7 a.m.), the maximum number of people permitted on the premises, and other appropriate conditions, for example on noise.

For existing premises, special attention would need to be paid to and provision made for the many hotels which by-passed the town planning system but which possess permits, and are part of the well documented problem of residential amenity.

Were it agreed that Councils should decide trading hours outside ordinary hours defined in a licensing Act, a problem would be amending the MMPS. This is an unwieldy and sometimes lengthy process, requiring advertising, submissions and hearings. And, as Dr Grant notes (p.16) this would clearly 'raise the same scene and style of opposition as appeared in relation to amendment 188'. But I am informed that changes could be implemented reasonably quickly, and that a more direct and swifter route would be by parliamentary legislation.

BUILDING STANDARDS

Following the Phillips Report and the 1968 Act, the Commission has in its own words (Annual Report 1969, p.3) 'determined certain standards which, broadly speaking, it considers should be observed in premises of a licensed hotelkeeper'. Various requirements were included, such as internal toilets for bar patrons, lounges for mixed drinking, carpeting of certain public areas, acoustic ceilings in drinking areas, provision of handbasins in bedrooms, and so on. Supervisors are appointed under the Act, and their duties are set out in Section 23. Licensing inspectors have related duties under Section 22 of the Act 'having regard to the objects' of Section 3.

The Act contains wide ranging provisions on the level and maintenance of standards in licensed premises. These are mostly monitored by the licensing supervisors. The Building Control Act and the Victoria Building Regulations also cover structural aspects of buildings, and these are enforced by the local building surveyors (with the exception of public buildings). Building surveyors are concerned mostly with new buildings and alterations to existing buildings. Fire Authority officers deal with safety requirements for new and existing buildings.

The relevant provisions of the various Acts are detailed below.

LIQUOR CONTROL ACT 1968

Section 48 stipulates a mandatory provision that:

> 'The Commission shall not grant a licence under this Act unless in the opinion of the Commission the premises specified in the application -
>
> (a) are in the case of an application for the grant of a hotelkeeper's licence adequate and suitable with regard to the supply of liquor for the needs of the public in the locality of the premises and include adequate facilities for the preparation and supply of meals;
>
> (b) comply with the prescribed standards if any.'

Section 81(1) gives the Commission power to require a variation in or the remedy of any inadequacies in licensed premises 'Where the Commission is of the opinion that it is in

EXTRACT

LEGISLATIVE ASSEMBLY

Read 1°

(Brought in by)

A BILL

relating to the sale, disposal and consumption of liquor and for other purposes.

Liquor Control Act 1987

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

1. The purpose of this Act is to make provision relating to the sale, disposal and consumption of liquor.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

Definitions.

3. In this Act—

"Assistant Commissioner" means Assistant Commissioner appointed under this Act.

"Authorised member of the police force" means a member of the police force authorised by the Chief Commissioner of Police to enforce the provisions of this Act.

"Authorised premises" in relation to a licensee or permittee, means premises (other than the licensed premises) on which

1—{78}—162/28.4.1987—2388/85—(Revision No. 3)

(vi) any amount paid or payable for duties or sales tax in respect of that liquor or as shipping, delivery or handling charges incurred by reason of the importation of the liquor from outside Australia; or

(*b*) if the Commission is of the opinion that any amount paid or payable for anything or for the doing of any thing referred to in paragraph (*a*) (i), (ii) , (iii), (iv) or (v) is less than the value of that thing or of the doing of that thing, as the case may be, to such amount as is determined by the Commission having regard to the circumstances in which that liquor was delivered to or purchased by or on behalf of that person.

(2) A reference in this Act to an amount paid or payable by or on behalf of a person for liquor includes an amount paid or payable by any other person for the acquisition of that liquor for sale, supply or disposal by the first-mentioned person.

(3) The Commission, in determining in accordance with this Act, the gross amount paid or payable for liquor or the sale price of liquor auctioned (as the case may be) may, if satisfied that any liquor—

(*a*) has been lost, stolen or damaged in transit; or

(*b*) has, under a licence, been sold or disposed of or auctioned (as the case may be) to a person licensed to sell liquor—

may disregard the gross amount paid or payable for that liquor or the sale price of that liquor (as the case may be).

Objects.

5. The objects of this Act are—

(*a*) to promote economic and social growth in Victoria by encouraging the proper development of the liquor, tourism, hospitality and related industries; and

(*b*) to contribute to the effective co-ordination of the efforts of government and non-government agencies in the control of alcohol abuse and misuse.

Co-ordinating Council.

6. (1) There shall be a Co-ordinating Council appointed by the Governor in Council to advise the Minister on problems of liquor abuse and on any other matters referred to the Council by the Minister.

(2) The members of the Co-ordinating Council shall include—

(*a*) a person nominated by the Minister;

(*b*) a person nominated by the Minister administering the *Police Regulation Act* 1958;

(*c*) a person nominated by the Minister administering the *Health Act* 1958;

(*c*) in the case of an Assistant Commissioner, must disclose the nature of the interest to the Commissioner.

Immunity.

22. No action or suit shall be brought against the Commission or a person who is or has been the Commissioner or an Assistant Commissioner for any non-feasance or mis-feasance in connection with the duties of the Commission or the Commissioner or Assistant Commissioner.

Division 3—Proceedings of the Commission

Commission to be constituted by one member.

23. For the purpose of the exercise of its powers, the Commission shall be constituted by the Commissioner or by an Assistant Commissioner.

Procedure of Commission.

24. In a proceeding before the Commission—

(*a*) the procedure of the Commission is, subject to this Act and the regulations and to any other enactment, within the discretion of the Commission; and

(*b*) the proceeding shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and of every other relevant enactment and a proper consideration of the matters before the Commission permit; and

(*c*) the Commission is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

Preliminary conferences.

25. (1) If—

(*a*) an application is made for a determination of the Commission under this Act; and

(*b*) the Commissioner thinks it desirable so to do after consideration of the application or notice—

the Commissioner may direct the holding of a conference of the parties presided over by the Commissioner or an Assistant Commissioner.

(2) If a notice of objection is given under section 66 or 75 or a recommendation is made under section 76 that the grant of an application would not be in the community interest, the Commissioner must direct the holding of a conference of the parties presided over by the Commissioner or an Assistant Commissioner.

(3) If a conference is held in accordance with sub-section (1) or (2) and—

(*a*) at or after the conference, agreement is reached between the parties as to the terms of a determination of the Commission in the proceeding that would be acceptable to the parties; and

(*b*) the terms of the agreement are reduced to writing, signed by the parties and lodged with the Commission; and

(*c*) the Commission is satisfied that a determination in those terms would be within the powers of the Commission—

the Commission, without holding a hearing, must make a determination in accordance with those terms.

(4) At the hearing of a proceeding before the Commission, unless the parties otherwise agree, evidence must not be given, and statements must not be made, concerning any word spoken or act done at a conference held in accordance with sub-section (1) or (2) if the words spoken or act done related to any question to be determined by the Commission in the proceeding.

(5) If a conference is held in accordance with sub-section (1) or (2) in respect of any proceedings and a party to the proceeding who was present at the conference notifies the Commission before, or at the commencement of, the hearing that the party objects to the Commissioner or a particular Assistant Commissioner participating in the hearing, the Commission shall not be constituted by the Commissioner or that Assistant Commissioner, as the case may be, for the purpose of the proceeding.

Hearings to be in public except in special circumstances.

26. (1) Subject to this section, the hearing of a proceeding before the Commission shall be in public.

(2) If the Commission is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Commission may, by order—

(*a*) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present; and

(*b*) give directions prohibiting or restricting the publication of evidence given before the Commission, whether in public or in private, or of matters contained in documents lodged with the Commission or received in evidence by the Commission; and

(*c*) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the Commission, or of the contents of a document lodged with the Commission or received in evidence by the Commission, in relation to the proceedings.

Limit on licences held by corporations.

61. (1) The Commission must not grant or transfer to a person a general licence or a packaged liquor licence if, at the time of the application for the grant or transfer—

(*a*) in the case of a natural person, the person holds more than eight per centum of all general licences or packaged liquor licences, as the case may be, granted and in force under this Act; or

(*b*) in the case of a corporation, the sum of the number of licences held by the corporation or a related corporation is more than eight per centum of all general licences or packaged liquor licences, as the case may be, granted and in force under this Act.

(2) A reference in sub-section (1) to a licence of a particular kind includes a reference to a licence issued under the *Liquor Control Act* 1968 and a licence so issued and renewed in accordance with Part 8, being a licence of a kind referred to in Column one of Schedule 3 having effect under that Part as a licence of the first-mentioned kind.

Second application not permitted within one year.

62. If—

(*a*) the Commission refuses an application for the grant of a licence or permit; or

(*b*) an applicant withdraws an application before the Commission has determined whether to grant it or refuse it—

the applicant is not entitled to make another application for the same type of licence or permit in respect of the same premises or subject-matter until the expiration of one year after the refusal or withdrawal, unless the Commission otherwise determines.

Division 5—Grant, Variation, Transfer and Removal of Licences and Permits

Application for grant of licence or BYO restaurant permit.

63. (1) A person who is—

(*a*) a natural person of or over the age of 18 years; or

(*b*) a body corporate—

and is not disqualified under this Act or a corresponding previous enactment from holding a licence or permit under this Act or that enactment may apply to the Commission for the grant of a licence or a BYO restaurant permit.

(2) An application must be in writing signed—

(*a*) if the application is made by a natural person, by that person; or

All Licences Applicable

(*b*) if the application is made by a body corporate, by not less than two directors of the body corporate or, if there is only one director, by that director.

(3) The application must specify—

(*a*) whether the application is for a licence or a BYO restaurant permit; and

(*b*) if the application is for a licence—the type of licence sought; and

(*c*) any terms or conditions sought in relation to the licence or permit; and

(*d*) the name, address and date and place of birth—

(i) if the application is made by a natural person—of that person; or

(ii) if the application is made by a body corporate—of each director, secretary, manager and executive officer of the body corporate; and

(*e*) if the applicant is a proprietary company—the name and address of, and the number of shares in the company held by, each member of the company; and

(*f*) if the applicant is a body corporate—the date and place of incorporation of the body corporate and the address of its registered office or, if it is not incorporated in Australia, the address of its chief office in Australia; and

(*g*) the address of the premises or proposed premises in respect of which the licence or permit is sought; and

(*h*) such other matters as are prescribed.

(4) If a change occurs in the particulars specified in the application in accordance with sub-section (3) (*d*) or (*e*) or in an address referred to in sub-section (3) (*f*), the applicant must, within 14 days after the change occurs, give to the Registrar notice in writing signed by the applicant or, if the applicant is a body corporate, by a director of the body corporate specifying particulars of the change.

(5) The application must be accompanied by—

(*a*) copies of plans of the premises to which the application relates showing the area or proposed area of the licensed premises, and complying with the prescribed requirements (if any); and

(*b*) either—

(i) a copy of a permit issued under the relevant planning law permitting the premises to which the application relates to be used as licensed premises; or

(ii) an application, in accordance with the relevant planning law, for such a permit, together with any fee payable in respect of the application; or

T.P. Permit

or application only — to be decided in 30 days ?? s.178?

N.B We are only consulted for Extended Hours Applications.

(iii) evidence to the satisfaction of the Commission that such a use is otherwise authorised under the relevant planning law; and

(*c*) a certificate from the Metropolitan Fire Brigade or the Country Fire Authority specifying its requirements if the premises to which the application relates were to be licensed premises; and

(*d*) either—

(i) copies of any relevant certificates of registration or reports required under the *Health Act* 1958 relating to the use of the premises to which the application relates as licensed premises; and

Health

(ii) applications in accordance with that Act for those certificates, together with any fees payable in respect of the applications; and

(*e*) if the applicant is not the owner of the premises to which the application relates—evidence to the satisfaction of the Commission of—

(i) the applicant's right to occupy the premises; and

(ii) the owner's consent to the granting of the licence or permit; and

(*f*) if any building work is proposed to be carried out on the premises to which the application relates—

(i) evidence to the satisfaction of the Commission that any necessary permits or authorities for that work are likely to be granted; or

Building

(ii) applications in accordance with the relevant planning law or any other law for those permits or authorities, together with any fees payable in respect of the applications; and

(*g*) if the applicant is a body corporate—a copy of the certificate of incorporation; and

(*h*) if the applicant proposes to carry on business under a business name—a copy of the certificate of registration of the business name; and

(*i*) if the application is for a club licence—evidence to the satisfaction of the Commission of the authority of the applicant to make the application on behalf of the members of the club; and

(*j*) particulars of any conviction of the applicant or, if the applicant is a body corporate, of any director, secretary, managing director or executive officer of the body corporate for an offence under this Act or any corresponding previous enactment or any law of any other place relating to liquor licensing; and

(*k*) the fee prescribed for applications of that kind; and

(*l*) a statement giving all available particulars to enable the Commission to estimate—

(i) in the case of an application for a producer's or distributor's licence (other than a licence for a vigneron)—the probable extent of the annual sales of liquor under the licence; and

(ii) in the case of an application for any other licence (except a producer's or distributor's licence granted to a vigneron)—the probable extent of the annual purchases of liquor for sale and disposal under the licence.

(6) If the Commission requests an applicant for a licence or permit to give any other information, the applicant must comply with the request.

Application for grant of extended hours permit.

64. (1) A person who—

(*a*) applies to the Commission under section 63 for a licence; or

(*b*) is a licensee—

may apply to the Commission for an extended hours permit in respect of the licensed premises or any authorised premises.

(2) The application must be in writing and must specify particulars of—

(*a*) the periods in respect of which the extended hours permit is sought; and

(*b*) the purposes for which the permit is sought; and

(*c*) the premises in respect of which the permit is sought; and

(*d*) any terms or conditions sought in relation to the permit; and

(*e*) such other matters as are prescribed.

(3) The application must be accompanied by—

(*a*) copies of plans of the premises to which the application relates, being plans complying with the prescribed requirements (if any); and

(*b*) the prescribed fee.

(4) If the Commission requests an applicant for an extended hours permit to give any other information, the applicant must comply with the request.

(5) Nothing in the relevant planning law restricts or affects the use of premises as licensed premises or authorised premises under an extended hours permit but, before an extended hours permit is granted, the Chief Executive Officer must consult with the Council of the

N.B.

(iii) the licensee or permittee has ceased to carry on business in the premises and has refused or neglected to concur in the application.

(2) An application under sub-section (1) must—

(*a*) be in writing; and

(*b*) be signed—

(i) by each applicant that is a natural person; and

(ii) if an applicant is a body corporate, by not less than two directors of the body corporate or if there is only one director, by that director; and

(*c*) state the name and address of the applicant; and

(*d*) give particulars of the licence (and any extended hours permit) or permit; and

(*e*) state the address of the premises to which the application relates.

(3) An application under sub-section (1) must be accompanied by—

(*a*) the prescribed fee; and

(*b*) unless—

(i) the Commission otherwise determines; or

(ii) the application is for the transfer of a producer's or distributor's licence granted to a vigneron—

a statutory declaration by the transferor in accordance with section 117 in respect of the period ended on the day before the application is made; and

(*c*) if the application is for the transfer of a residential licence, the residents' register, or a copy of the residents'register, kept by the transferor under section 108; and

(*d*) the liquor purchases register, or a copy of the liquor purchases register, and all documents, or copies of documents that, but for the transfer, the transferee would have been required to keep under section 109.

Copy of application to be given to police and to municipality.

70. (1) The Registrar, on receiving an application—

(*a*) for the grant of a licence, permit or extended hours permit; or

(*b*) from a licensee or permittee for the variation of a licence, permit or extended hours permit; or

(*c*) for the transfer or removal of a licence or permit—

must give a copy to—

(*d*) the Chief Commissioner of Police; and

(*e*) the Council of the municipality in which the licensed premises are, or are proposed to be, situated.

We get notice

Objection by police.

71. The Chief Commissioner of Police—

(*a*) must, within 21 days or such longer period as the Commission allows after a copy of an application is given to him or her under section 70, advise the Registrar whether or not he or she objects to the grant of the application; and

(*b*) if he or she objects, must, not later than 14 days before the holding of the preliminary conference, give to the applicant and the Commission a statement of the grounds of the objections.

Police only

Advertisement of application.

72. (1) An applicant for the grant, variation, transfer or removal of a licence, permit or extended hours permit must cause a copy of a notice of the application in accordance with section 73 to be advertised in a newspaper circulating in the area—

(*a*) in which the premises to which the application relates are or are to be situated; or

(*b*) to which the licensed premises are sought to be removed—

not later than 14 days after the day on which the application is made.

paper.

"Age" Fines for objection? public notices?

(2) An applicant for the grant, variation, transfer or removal of a licence, permit or extended hours permit must ensure that a copy of a notice of the application in accordance with section 73 is continuously displayed on the premises or site to which the application relates or premises to which the licence or permit is sought to be removed during the period of 28 days immediately after the application is made.

Size outside

(3) The notice must be displayed in a manner that invites public attention to the application.

(4) If it is not practicable to display the notice on the premises or site, it is sufficient compliance with sub-section (2) if the notice is conspicuously displayed in accordance with sub-section (3) on any adjoining premises.

(5) An applicant shall be deemed to have complied with sub-sections (2), (3) and (4) if the Commission is satisfied—

(*a*) that the applicant took all reasonable steps to ensure that the notice was continuously and conspicuously displayed as required under those sub-sections; and

(*b*) that any failure to keep the notice so displayed was not the fault of the applicant.

Contents of notice.

73. A notice under section 72 must contain—

(*a*) the name of the applicant; and

(*b*) the address of the premises to which the application relates or to which the licensed premises are sought to be removed; and

(*c*) if the application relates to a licence or permit, the type of licence or permit to which it relates or, if the application relates to an extended hours permit, a statement to that effect; and

(*d*) any terms or conditions sought in relation to the grant, variation, transfer or removal of the licence, permit or extended hours permit.

Representations as to community interest.

74. (1) A person who considers that the grant, variation, transfer or removal of a licence, permit or extended hours permit is not in the community interest—

(*a*) may, within 14 days after a notice of the application is published in a newspaper in accordance with section 72, give to the Chief Executive Officer notice that the person considers that the grant, variation, transfer or removal would not be in the community interest; and

(*b*) may, within 28 days after a notice is so published, give to the Chief Executive Officer particulars of the grounds on which the person considers the grant, variation, transfer or removal would not be in the community interest.

(2) The Chief Executive Officer may request a person who gives notice under sub-section (1) (*b*) to give further particulars of the matters to which the notice relates.

(3) Unless the Chief Executive Officer, within 21 days after receiving particulars of the grounds on which a person considers the grant, variation, transfer or removal of a licence, permit or extended hours permit would not be in the community interest, gives notice in writing to the person stating that the Chief Executive Officer has determined to refuse the application for the grant, variation, transfer or removal, the person may apply to the Commission for a determination that the grant, variation, transfer or removal would not be in the community interest.

(4) The Commission must, within 21 days after the Registrar receives an application under sub-section (3), determine the question and give notice to the applicant under that sub-section and to the Chief Executive Officer and the applicant for the grant, variation, transfer or removal of its determination.

(5) If, under this section, the Commission determines that the grant, variation, transfer or removal of a licence, permit or extended hours permit would not be in the community interest, the Commission must refuse the application.

Objection to grant or transfer of licence or permit.

75. (1) The Chief Executive Officer or a licensing inspector may give to the Commission notice in writing of an objection to the grant or transfer of a licence, permit or extended hours permit on the ground that the applicant is not a suitable person to hold the licence or permit or extended hours permit.

(2) A notice of objection under this section must be given to the Commission within 28 days after the lodging of the application for the grant or transfer of the licence, permit or extended hours permit.

(3) The Registrar must, at least 14 days before the holding of a preliminary conference, notify the applicant in writing of any notice of objection under this section.

(4) An objection under this section may specify as the ground for the objection—

(*a*) that—

(i) the applicant; or

(ii) if the applicant is a body corporate, a director of the body corporate or a person nominated to be the holder of the licence; or

(iii) if the application is for a club licence, an officer of the club—

has, within the preceding three years—

(iv) been convicted, whether in Victoria or elsewhere, of an offence of selling liquor without a licence or of selling adulterated liquor or of an offence against any law relating to customs or excise; or

(v) engaged in activities involving the trading in or marketing of liquor in a manner contrary to the provisions of this Act—

or is otherwise unsuitable to hold a licence or permit or extended hours permit having regard to the responsibilities of a licensee or permittee; or

(*b*) if the application is for a club licence—

(i) that the club is not conducted in good faith as a club; or

(ii) that the club is kept or habitually used for any unlawful purpose; or

(iii) that the club is used mainly for the supply of liquor; or

(iv) that liquor purchased by or belonging to the club has been sold illegally whether on the club premises or elsewhere; or

(v) that persons who are not members are admitted to the club for the purpose only of obtaining liquor; or

(vi) that the supply of liquor to the club is not under the control of the management committee of the club; or

(vii) that any of the rules of the club are habitually broken.

Recommendation as to community interest.

76. (1) The Chief Executive Officer, within 28 days after an application is made for the grant, variation or removal of a licence or permit or extended hours permit, must give to the Commission in writing his or her recommendation as to whether or not it would be in the community interest to grant, vary or remove the licence or permit or extended hours permit and the reasons for the recommendation.

(2) In making the recommendation, the Chief Executive Officer—

(*a*) must have regard to any representations made under section 74 to the Chief Executive Officer—

(i) by the Council of the municipality in which the premises to which the application relates are, or are to be, situated; or

(ii) by any other person; and

(*b*) must have regard to the extent to which businesses carried on under licences and permits in the area to which the application relates are satisfying the need intended to be satisfied by the applicant; and

(*c*) must determine whether the grant of the application is likely to have an adverse effect on the interests of the community in that area—

but must not have regard to—

(*d*) whether the business of any other licensee or permittee may be adversely affected by the grant of the application; or

(*e*) whether the business proposed to be carried on under the licence or permit or extended hours permit would be successful.

(3) If the Chief Executive Officer recommends that the grant, variation or removal of a licence or permit or extended hours permit would not be in the community interest, the Registrar must, at least 14 days before the holding of a preliminary conference, give the applicant a copy of the recommendation.

N.B. Objection to C.E.O. → referred to Commission
C.E.O. recommends grant
No right of hearing if C.E.O. recommends refusal

Grant of application where no objection.

77. If—

(*a*) the Commission is satisfied—

(i) that an application for the grant, variation, transfer or removal of a licence or permit or extended hours permit has been made under and in accordance with section 63, 64, 65, 67 or 69 and that the appropriate fee has been paid; and

(ii) that notice of objection has not been given under section 66 or 75; and

(*b*) the Chief Executive Officer has recommended that the grant of the application would be in the community interest—

the Commission must grant the application.

11. N.B. No appeal rights see S. 105

Procedure where objection made.

78. If—

(*a*) the Commission is satisfied that an application for the grant, variation, transfer or removal of a licence or permit or extended hours permit has been made under and in accordance with section 63, 64, 65, 67 or 69; and

(*b*) an objection is made under section 66 or 75 to the grant of the application or a recommendation is made under section 76 that the grant of the application would not be in the community interest—

the Commission must hold a preliminary conference and a hearing before determining whether or not to grant the application.

Hearing before Commission.

79. In proceedings before the Commission to determine whether or not a licence or permit or extended hours permit should be granted, varied, transferred or removed, the Commission must consider the grounds of objections made to it and the recommendation of the Chief Executive Officer and may, on its own motion, or, with the consent of the applicant, on the motion of a party, consider—

(*a*) any other grounds on which an objection could have been made under this Part; and

(*b*) any other recommendation that the Chief Executive Officer could have made.

Conditional licence or permit.

80. (1) If the construction or alteration of licensed premises to which an application for the grant, variation or removal of a licence or permit or extended hours permit relates is not completed, the Commission may grant, vary or remove the licence or permit or extended hours permit under this Part subject to the condition that if,

Sec 74 - 3 + 1(a) only rights !!! ?
or Sec 76 2(a) → but rights to hearing are under S. 77 etc. Ref 74.