(4) H 20/080/00022

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MUNICIPAL ASSOCIATION OF VICTORIA

Address all correspondence to the Secretary
RIGBY HOUSE, 15 QUEENS ROAD, MELBOURNE, VICTORIA, 3004 PHONE (03) 26 4421

Files 81/640, 82/629, 82/693 H. Cockayne:eb
Circular MAV192/82

23rd November, 1982.

The Municipal Clerk,
(as addressed)

26 NOV 1982

Dear Sir/Madam,

Re: (1) **Late Trading Hotels and Amendment No. 188 to MMPS;**

and

(2) **Proposed Legislation to Permit Sunday Trading by Hotels.**

Councils will recall the work done by the MAV last year in relation to some serious amenity problems which arose in connection with late trading licensed premises, especially hotels, located in or adjacent to residential areas.

Most of these problems followed closely on the heels of the extensive changes made in late 1980 to the Liquor Control Act by Act No. 9496 (refer to MAV Circular of 1st September, 1981, and its appendix entitled **"Policy and Action Statement on Hotels and Certain Other Premises in or Adjacent to Residential Areas, based on Planning Policy Committee Recommendations").**

As a result of the MAV's work (which also included representations to the then Premier and relevant Ministers) a number of metropolitan councils made representations to the Melbourne and Metropolitan Board of Works for MMPS Ordinance amendments expressly aimed at bringing intended proposals for late trading in licensed premises within the purview of town planning scheme jurisdiction as a requirement in addition to the licensing and permit jurisdiction of the Liquor Control Commission.

In consequence of those representations, the MMBW has prepared Amendment No. 188. The Amendment is currently on public exhibition and the period for comment expires on 15th December, 1982. No doubt, planning officers of councils within the MMPS area will already be familiar with the provisions of the Amendment.

The MAV's Planning Policy Committee re-convened its Hotels Working Party to consider both Amendment No. 188 and the Government's announced intention to legislate in the current Session of Parliament to permit Sunday trading by hotels.

The Hotels Working Party met on Tuesday, 16th November, 1982, and identified the areas of concern set out in the **attachment** to this Circular.

The Working Party recommended that the matters raised by it be conveyed to all metropolitan councils for their consideration and for use, if they think appropriate, in their representations to the MMBW in relation to Amendment No. 188.

I wish to add that the MAV's Executive Committee, at its meeting on Friday, 19th November, 1982, considered the following recommendation from the Metropolitan Sectional Council, namely:

"(a) That the MAV immediately clarify which interests are being represented on the State Government's Interim Advisory Panel on Liquor Control, whether local government has been included and, if not, that a request be made for inclusion of an MAV representative;

(b) That clarification be sought on the roles of the MMBW and the Interim Advisory Panel on Liquor Control as well as on the relationship between actions taken by each body;

(c) That an urgent meeting to discuss the issue be sought with the Premier, given the overlap of jurisdiction on this matter between the Ministries of Planning and Tourism and that members of the deputations be the Metropolitan Vice-President, Cr. G. Frecker; Cr. K. Dowling as a member of the MAV Planning Policy Committee; one member of the MAV Working Party on Amenity Problems associated with hotels and other licenced premises; and one representative from the City of Malvern."

The Executive Committee adopted the Metropolitan Sectional Council recommendation with the modification that in part (c) the urgent meeting referred to is to be sought with the Minister for Tourism, Mr. Landeryou, instead of the Premier, at this stage. Action is now being put into place with a view to bringing about the meeting with Mr. Landeryou.

The modification of the MSC recommendation came about largely as a result of a meeting between the Minister for Planning, Mr. Walker, and the MAV's Planning Policy Committee on Thursday, 18th November. The views of the Planning Policy Committee's Hotels Working Party were conveyed to Mr. Walker at that meeting. Mr. Walker reacted favourably to the views expressed by the Hotels Working Party and said that he had sympathy for the problems caused by late trading hotel premises in residential areas. Mr. Walker was informed that the MAV's Executive Committee at its meeting on Friday, 19th November, would be considering the MSC recommendation that certain action be taken in relation to amenity problems being created by hotels, including a deputation to the Premier on the subject matter. Mr. Walker suggested that perhaps a deputation to the Premier was not the right approach at this stage but that instead the Minister responsible for the Liquor Control Act, Mr. Landeryou, be approached first for his response to the MAV's case for changes in relation to the relationships between town planning and liquor licensing and liquor permit approvals.

If councils agree that the coming of Sunday hotel trading for hotels in or adjacent to residential areas could well cause amenity problems for residents, they may wish to make representations to their local Members of Parliament along the lines posited by the Hotels Working Party. It is quite feasible that with the coming of Sunday hotel trading, entertainment involving live entertainment (bands, disco's, etc.) could well extend into Sunday trading activities as it has done in the late night trading hotels, thereby attracting large numbers of patrons and their cars into residential streets during the day.

Although the bulk of complaints received by the MAV about residential neighbourhood amenity problems as a result of late trading hotels have come from metropolitan councils, there may be many problem areas in non-metropolitan municipalities as well; if that be the case the contents of this Circular will be informative for non-metropolitan councils. The residential amenity implications of Sunday trading in hotels may also be of concern in some municipalities outside of the metropolitan area.

The MAV will keep councils informed of progress on the matters addressed in this Circular.

Yours faithfully,

I.R. PAWSEY,
Secretary.

Attach.

ATTACHMENT TO MAV CIRCULAR 192/82

AREAS OF CONCERN IDENTIFIED BY THE MAV's HOTELS WORKING PARTY IN RELATION TO:

(1) Late Trading Hotels and Amendment No. 188 to MMPS;

and

(2) Proposed Legislation to Permit Sunday Trading by Hotels.

1. Existing Definitional Shortcomings in MMPS Ordinance

(a) The definitions of "hotel" and "cabaret" in the MMPS Ordinance are inadequate for town planning purposes in that the definitions are circuitous. The Working Party feels that it is not good enough for the MMPS Ordinance to merely say that an hotel or a cabaret is a building in respect of which the licensee holds a licence under the Liquor Control Act. The definitions should clearly state the types of activities envisaged in the operation of an hotel or cabaret. By using the referential approach, as at present, the activities of an hotel or cabaret can change as the matters which are permitted by the Liquor Control Act licence change.

(b) The present definitions of "hotel" and "cabaret" in the MMPS Ordinance require that a licence under the Liquor Control Act already exist before the council (as responsible authority) can process a town planning application for a proposed hotel or a proposed cabaret. This is the reverse to what should logically and practically happen. This state of affairs effectively relegates the town planning considerations associated with such a proposal to a poor second.

At present, in the cases of restaurants and cafes, town planning consent from the council is the first thing obtained under the existing Ordinance arrangements. It is only subsequently that the restaurant operator or the cafe operator goes to the Liquor Control Commission for a restaurant liquor licence or permit, or for a cafe permit (i.e. a B.Y.O. permit). This same order of events should apply to proposals for new hotels and new cabarets.

Where a proposed hotel or a proposed cabaret is concerned:

STEP 1 - should be to obtain town planning consent/clearance from the council;

STEP 2 - should be to then go to the Liquor Control Commission, armed with that town planning consent/clearance, with an application for the relevant licence under the Liquor Control Act; if no town planning consent/clearance has been granted no licence should issue.

Under the Amendment 188 provisions an existing hotel which is proposing to extend into late night trading pursuant to an "extended hours" permit obtainable under the Liquor Control Act will also have to first obtain that liquor permit (i.e. the applicant will already have to be a holder of the Liquor Control Act permit) before going to the council for town planning consent for the late trading. This is clearly illogical and totally unacceptable to municipal councils in their capacity of responsible authorities for the purposes of town planning implementation and administration.

The adoption of the order (suggested in Step 1 and Step 2 above) of submitting applications would eliminate the present position whereby the holder of a newly obtained "extended hours" permit from the Liquor Control Commission usually has an immediate and absolute expectation that nothing further is required before he can commence business. His being armed with the Liquor Control Act "extended hours" permit will encourage the belief that town planning consent for the late trading is either unnecessary or unimportant or both. A council's task in then trying to enforce town planning scheme requirements (including the obtaining of town planning consent for the late trading) before operations begin but after the Liquor Control Commission has already granted an "extended hours" permit, is seriously pre-empted and compromised.

The approach suggested in Step 1 and Step 2 should be extended not only to hotels and cabarets, but also to cover proposed cider taverns (i.e. "wine bars") and so-called "licensed clubs" proposed which will, for their conduct to be lawful, necessitate the obtaining of a licence in compliance with the Liquor Control Act 1968.

2. Legislative Backing Needed to Deem Late Trading Proposals for Existing Hotels to be a Change of Use for Town Planning Purposes

Nothwithstanding the fact that an existing hotel is "licensed premises" for the purposes of the Liquor Control Act, late trading (i.e. extended hours) hotel proposals in or adjacent to residential zones constitute a change of use in real and practical terms when considered in the context of neighbourhood and environmental impact and therefore should be treated as a new proposal for town planning purposes. It is therefore recommended that the Town and Country Planning Act and/or the Liquor Control Act be suitably amended to deem a proposal to extend the trading hours of an hotel beyond 10.00 o'clock at night in or adjacent to a residential zone to be a change of use for the purpose of assessing the effect of the proposed late trading on the amenity of the surrounding neighbourhood and for the purpose of generally assessing the conformity of the proposal with the planning scheme, local development scheme or interim development order (as the case may be). Even given a planning scheme requirement that a late trading proposal for an existing hotel first needs a town planning permit (as is proposed by Amendment No. 188) the hotelier might successfully argue (in the absence of a condition in the original town planning approval (if any) for the hotel limiting late trading) that town planning consent is not required because of either an existing use right (i.e. because it is already an hotel) or because of the Liquor Control Act's precedence (as a special Act) over the Town and Country Planning Act and the planning scheme provisions concerning late trading. The law is not certain in this area and needs to be made so.

3. **Definition of "Club" needed in MMPS Ordinance**

That the MMPS Ordinance be amended to include a specific definition of "club" and that a club development or use be a Column 4 designation (i.e. permitted at council's discretion) in all residential zones. The inclusion of a specific definition for "club" would add to the certainty aspect of the Ordinance and would enable responsible authorities to formulate standards and/or codes to apply to those clubs proposed in or adjacent to residential zones, especially in relation to those clubs which might ultimately wish to obtain the status of "licensed club" under the Liquor Control Act.

4. **Sunday Trading Proposals should also be Deemed to be a Change of Use where Hotels in or Adjacent to Residential Areas are Concerned**

In relation to the imminent Sunday hotel trading legislation, the Working Party believes that the potential for detrimental amenity loss in local residential neighbourhoods exists here also in relation to hotels which are located in or adjacent to residential areas. The Working Party therefore considers that hotels which propose to trade on Sundays in accordance with the forthcoming new legislation should be deemed to be changing their use for the purposes of town planning controls and should be obliged to first obtain a town planning permit before being allowed to operate under the new Sunday trading legislation.

5. **Residential Neighbourhood Amenity Questions Associated with Licensing Proposals under the Liquor Control Act should reside exclusively in the domain of Municipal Councils in their role as Responsible Authorities under the Town and Country Planning Act**

It is the Working Party's unequivocal view that:

(i) all town planning and residential neighbourhood amenity considerations associated with premises in respect of which Liquor Control Act licences and late trading permit applications are involved should reside exclusively in the domain of municipal councils in their role as responsible authorities under the Town and Country Planning Act and that likewise objections and appeals thereon should be dealt with respectively by the local council and/or the Planning Appeals Board (as the case may be);

(ii) the Liquor Control Commission's jurisdiction should be strictly limited to the non-town planning aspects of existing and proposed licensed premises and to the administration and enforcement of the "pure" licensing laws.

Ref. No.: 20/080/00022
Enquiries to: Mr. Boyle
Telephone No.: 524 3322

21st October 1981

Mr. I.R. Pawsey,
Secretary,
Municipal Association
of Victoria,
Rigby House,
15 Queens Road,
MELBOURNE. 3004.

Dear Sir,

The Council at its last meeting considered a Report from the Association regarding the effects of extended night trading hours of hotels and other premises, licensed or operating under permits granted under the Liquor Control Act 1968.

The Council resolved to advise the Association that the suggested amendments to the Melbourne Metropolitan Planning Scheme will only create confusion, due to resulting duplication of definitions, and appear to reduce existing control already afforded; and, that with the exception of the proposed revisions to the Town and Country Planning Act, which relates to the Appeals Tribunal, all other proposals are supported by this Council.

Yours sincerely,

G.K. CALDER,
CITY MANAGER.

File No 20/080/00022

CITY OF CAULFIELD

M I N U T E S H E E T

SUBJECT AMENITY PROBLEMS WITH HOTELS & CERTAIN LICENCED PREMISES.

Committee Meeting held on 5.10.1981

Council Meeting held on 20.10.1981

ITEM 30. MUNICIPAL ASSOCIATION POLICY AND ACTION ON AMENITY PROBLEMS ASSOCIATED WITH HOTELS AND CERTAIN OTHER LICENSED PREMISES IN OR ADJACENT TO RESIDENTIAL AREAS.

20/080/00022

The Manager Health and Legislation submitting for the Council's consideration a report regarding the effect of extended night trading hours of hotels and other premises licensed or operating under permits granted under the Liquor Control Act 1968.

The Municipal Association of Victoria has distributed a circular advising that a number of Councils have in recent times made representation to the Association concerning the effects of extended trading hours at these premises. The Association's Planning Policy Committee has examined the amenity problems associated with the licensed/permit premises and this has resulted in a number of specific recommendations which have been adopted by the Association, and have been forwarded for the Council's consideration.

Referred to	Date Referred	Date Actioned Actioning Officers Initials	ACTION REQUIRED AND TAKEN AFTER MEETING
MH&L	21-10-81	comm.c.	Nothing §.

COMMITTEE RECOMMENDATION

That the M.A.V. be advised:

(i) that the suggested amendments to M.M.P.S. will only create confusion due to resulting duplication of definitions and appear to reduce existing control already afforded;

(ii) that with the exception of the proposed provisions of the Town and Country Planning Act, which relates to the Appeals Tribunal, all other proposals are supported by this Council.

20/080/00022

Mr. Chairman, Gentlemen
EXECUTIVE SERVICES COMMITTEE

MUNICIPAL ASSOCIATION POLICY AND ACTION ON AMENITY PROBLEMS ASSOCIATED WITH HOTELS AND CERTAIN OTHER LICENSED PREMISES IN OR ADJACENT TO RESIDENTIAL AREAS

1. Introduction

A circular has been received from the Municipal Association of Victoria advising that a number of Councils have in recent times made representation to the Association concerning the effect of extended night trading hours of hotels and other premises licensed or operating under permits granted under the Liquor Control Act 1968.

The Association's Planning Policy Committee was given the task of examining the amenity problems associated with licensed/permit premises and to recommend action which the Association could pursue to facilitating a reduction in the amenity loss to local neighbourhoods as a result of the legislative changes and of decisions on licences and permits handed by the Liquor Control Commission.

This has resulted in a number of specific recommendations which have been adopted by the Association, and have been forwarded for the Council's consideration.

The Association will be pursuing the suggested legislative amendments with the exception of the suggested amendments to the Melbourne Metropolitan Planning Scheme Ordinance.

If a sufficient number of Councils indicate support for the proposed M.M.P.S. amendments, then further consideration could be given by the M.A.V. in respect of promoting these.

2. Melbourne Metropolitan Planning Scheme Amendments

2.1 The proposed amendments are to create three new categories for licensed premises operating between the hours of 10.30 p.m. and 7.00 a.m. the following day. These categories would then become a Column 3 use in a non-residential zone, provided that the site concerned is no closer than 40 metres from any adjacent dwelling. In any residential zone, these categories would be included as a Column 4 use.

2.2 At present, premises of this type are covered by such definitions as cabaret, restaurant, hotel, place of assembly and reception rooms. These categories are all Column 4 uses, requiring individual permits.

2.3 The proposals of the M.A.V. would appear to lessen the existing control in respect of those premises in a non-residential type zone, in that the only condition to be met, would be that of being 40 metres from any adjacent dwelling.

2.4 Furthermore, if these amendments were to be put, the existing definitions would need to be amended to eliminate the confusion that would result from having one definition of a premises as Column 3 use and another definition as a Column 4 use.

3. Liquor Control Act Amendments

3.1 The first amendment proposes that where any such premises is located in or within 40 metres of any residential zone or locality, no licence or permit should be granted unless prior consent of the Council concerned has been obtained.

This extends the current requirements of the Council being notified by the Liquor Control Commission of any application for a licence, and the need for the applicant to advertise in a local newspaper, his intent to apply, over a period of 28 days.

3.2 The Act has provision for objection to the annual renewal of any permit or licence. An amendment is proposed that on the written complaint of the Council, the Liquor Control Commission shall cause such operation to be reviewed and to furnish to the Council within 60 days details of any action (if any) to be taken by the Commission.

3.3 Another amendment is proposed whereby the Liquor Control Commission would have to take into account when considering any application or renewal of any licence or permit, any written views of the Council and the likely effect on the surrounding environment and amenity of the adjacent area, whether such views are submitted by way of objection or not.

3.4 It is also proposed that the Act be amended to require applications in respect of a premises outside of a residential zone or locality requiring a permit for late trading beyond 10.30 p.m., to be advertised locally on at least two occasions and the Council be supplied with details of the applications in advance of such advertising.

3.5 Another amendment proposed, is one which specifies that where a Town Planning Permit is required, no liquor licence or permit can come into operation until the Town Planning Permit has been issued and all appeal avenues exhausted.

3.6 Currently the Commission can regulate the extent and nature of entertainment in respect of a cabaret licence. It is proposed that this power should be widened to cover all licences and permits.

3.7 Further, it is proposed that in considering licences for premises providing entertainment, the Commission should have regard to any State Environment Protection Policies on Noise Control and where appropriate require the licensee to carry out specified acoustic treatment.

3.8 The final amendment proposed is that which would require the Commission to take into account the proximity and nature of surrounding properties, when considering applications relating to Clubs and Restricted Clubs trading on Sundays. This has resulted from problems to nearby residents caused through outdoor activities such as barbecues etc. on club premises.

4. Town and Country Planning Act

4.1 It is proposed that provision be made to preclude the Town Planning Appeals Tribunal from varying without the consent of the responsible authority, any refusal of permit or permit conditions in respect of which the granting of a permit by the responsible authority is discretionary and relates to land used in respect of a licence or permit issued under the Liquor Control Act.

4.2 It is also proposed to ask the Minister for Planning to initiate an investigation into a suitable legislative system which will provide adequate control over occasional functions such as rock concerts held at the Myer Music Bowl and other venues.

5. The Environment Protection Act

5.1 It is proposed to request the E.P.A. to liaise with the M.A.V. in the development of noise control standards for licensed premises, with particular emphasis on noise controls for such premises which are located in or within 40 metres of any residential zone or locality.

5.2 It is also proposed to amend the noise control provisions of the Environment Protection Act to cover unreasonable noise from licensed premises in or within 40 metres of a residential zone or locality.

6. The Supreme Court Act

6.1 The M.A.V. is proposing to have an amendment to the Act, so as to allow any Council to seek equitable remedies (such as injunctions) on its own behalf or on behalf of any resident or group of residents, or jointly with such resident or group.

7. M.H.&L. COMMENTS

7.1 The impetus of these proposals has no doubt been largely due to problems resulting from recent amendments to the Liquor Control Act, which will now allow for extended trading hours.

7.2 The amendments proposed, allow Councils to have a greater input into licence and permits issues and renewals, whilst at the same time placing more responsibility upon the Liquor Control Commission to ensure that adequate consideration is given to the applications in respect of the future implications and problems that may arise therefrom.

7.3 As indicated earlier, the M.A.V. does not propose to pursue the proposed amendments to the M.M.P.S.

7.4 With regard to the other proposals, it is agreed that benefits would be forthcoming in controlling the overall problem raised, however the proposal outlined in 4.1 seems neither fair nor feasible.

M.H.&L. RECOMMENDATION

That the M.A.V. be advised:

(i) that the suggested amendments to the M.M.P.S. will only create confusion due to the resulting duplicity of definitions and appear to reduce the existing control already afforded;

(ii) that with the exception of the proposed provisions of the Town and Country Planning Act, which relates to the Appeals Tribunal, all other proposals are supported by this Council.

B. Boyle
MANAGER HEALTH & LEGISLATION

MUNICIPAL ASSOCIATION OF VICTORIA

POLICY and ACTION STATEMENT

ON

HOTELS and CERTAIN OTHER PREMISES

IN OR ADJACENT TO

RESIDENTIAL AREAS,

BASED ON

PLANNING POLICY COMMITTEE

RECOMMENDATIONS

--oOo--

"Rigby House",
15 Queens Road,
Melbourne, 3004.

August, 1981.

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WORKING PARTY

ON

HOTELS AND CERTAIN OTHER PREMISES IN OR ADJACENT TO RESIDENTIAL AREAS

RECOMMENDATIONS

PART A - GENERAL

PART B - SUGGESTED AMENDMENTS TO LEGISLATION ETC.

PART A - GENERAL.

1. That the Municipal Association of Victoria acquaint councils with the rights of objection available to them and to their residents, in relation to the grant of new licences and permits, and to the renewal thereof, pursuant to the Liquor Control Act 1968, and draw attention to the nuisance provisions of Part III of the Health Act 1958;

2. That councils covered by the Melbourne Metropolitan Planning Scheme (M.M.P.S.) consider the relevance of those amendments to the M.M.P.S. as suggested in Part B, to their local circumstances and, if appropriate, initiate the necessary formalities to achieve the desired changes.

3. That councils not covered by the Melbourne Metropolitan Planning Scheme (M.M.P.S.) consider amending (if considered appropriate) their interim development orders and/or planning schemes in a similar manner as that suggested herein for the M.M.P.S. to provide for definitions of "Late-Night Food and Beverage Establishment", "Entertainment Establishment" and "Licensed Club", and for such uses to be discretionary ones which may or may not be permitted as the council (as the responsible authority) sees fit in any particular case.

PART B - SUGGESTED AMENDMENTS TO LEGISLATION ETC.

That amendment be sought (along the lines outlined herein) to the following:

1. The Melbourne Metropolitan Planning Scheme (the Ordinance).
2. The Liquor Control Act 1968.
3. The Town and Country Planning Act 1961.
4. The Environment Protection Act 1970.
5. The Supreme Court Act 1958.

Particulars of Suggested Amendments.

1. <u>The Melbourne Metropolitan Planning Scheme (the Ordinance)</u>

(a) That a new definition entitled "ENTERTAINMENT ESTABLISHMENT" be added into Clause 2, such definition to be along the following lines:

"ENTERTAINMENT ESTABLISHMENT" means any land in respect of which there is a licence or permit under the Liquor Control Act 1968, and which is used after 10.30 p.m. on any day and before 7 a.m. on the day following for the purpose of entertainment or on which entertainment is provided or made available between the said times.

(b) That a new definition entitled "LATE-NIGHT FOOD AND BEVERAGE ESTABLISHMENT" be added into Clause 2, such definition to be along the following lines:

"LATE-NIGHT FOOD AND BEVERAGE ESTABLISHMENT" means any premises in respect of which the trading hours thereof are carried on between 10.30 p.m. on any day and 7 a.m. on the day following, pursuant to a licence or permit under the Liquor Control Act 1968, and in or upon which premises provision is made for the purchase or free acquisition by patrons, of food or beverages, or both food and beverages, for consumption in or upon the premises.

(c) That a new definition entitled "Licensed Club" be added into Clause 2, such definition to be along the following lines:

"LICENSED CLUB" means any premises in respect of which there is a club licence (or both a club licence and permit) under the Liquor Control Act 1968.

(d) That "ENTERTAINMENT ESTABLISHMENT", "LATE-NIGHT FOOD AND BEVERAGE ESTABLISHMENT" and "LICENSED CLUB" be included in Column 4 of all sections of the Table to Clause 7 where such sections specify zones of a residential nature.

(e) That "LATE-NIGHT FOOD AND BEVERAGE ESTABLISHMENT" be included in Column 3 of all sections of the Table to Clause 7 where such sections specify zones of a non-residential nature and that such use be allowed under Column 3 subject to the following condition -

"Provided that no part of the site upon which the late-night food and beverage establishment is situated shall be closer than 40 metres from any dwelling (other than a dwelling used or occupied directly in connection with the operation of such establishment)",

But that such use be included under Column 4 where this condition cannot be met.

(f) That "ENTERTAINMENT ESTABLISHMENT" be included in Column 3 of all sections of the Table to Clause 7 where such sections specify zones of a non-residential nature and that such use be allowed under Column 3 subject to the following condition -

> "Provided that no part of the site upon which the entertainment establishment is situated shall be closer than 40 metres from any dwelling (other than a dwelling used or occupied directly in connection with the operation of such establishment)",

But that such use be included under Column 4 where this condition cannot be met.

(g) That "LICENSED CLUB" be included in Column 3 of all sections of the Table to Clause 7 where such sections specify zones of a non-residential nature and that such use be allowed under Column 3 subject to the following condition -

> "Provided that no part of the site upon which the entertainment establishment is situated shall be closer than 40 metres from any dwelling (other than a dwelling used or occupied directly in connection with the operation of such licensed club)",

But that such use be included under Column 4 where this condition cannot be met.

(h) That the definition of "FLOOR AREA" in Clause 2 be amended to include in the cases of "restaurant", "cafe" and "hotel" any courtyard or other outdoor areas capable of being used by patrons and/or the public whether or not seating provisions exist or are to be made.

2. **The Liquor Control Act 1968**

The Problems of Premises with Licences and/or Permits which allow for Late Trading beyond 10.30 p.m.

These premises are predominantly HOTELS, LICENSED RESTAURANTS, B.Y.O. RESTAURANTS and LICENSED CLUBS located in or adjacent to residential zones or residential localities.

In the case of hotels, the recent amendments to the Liquor Control Act by Act No. 9496 had the effect of automatically extending the trading hours of any hotel which already possessed a permit under section 26, from 11.30 p.m. (plus 30 minutes to finish drinks = 12 midnight) to 1.00 a.m. (plus 30 minutes to finish drinks = 1.30 a.m.).

Similarly, licensed restaurant trading hours were also automatically extended for late trading to 1.00 a.m. (plus 30 minutes to finish drinks = 1.30 a.m.) except on Sundays and Good Fridays, where the licence can only authorise trading to 10.00 p.m. (plus 30 minutes to finish drinks = 10.30 p.m.). Saturday night trading can extend into Sunday to the extent of 1 hour (plus 30 minutes to finish drinks = $1\frac{1}{2}$ hours).

B.Y.O. restaurant permits ("cafe permits") prior to the amendments, enabled late trading to midnight from Monday to Saturday and to 10.00 p.m. on Sundays and Good Fridays. The amendments did not automatically extend the existing midnight permits to 1.00 a.m.; this requires a new permit. Sundays and Good Fridays are still limited to 10.00 p.m. except on Sundays pursuant to a permit for a particular function or occasion.

The provisions as to LICENSED CLUBS have not really changed as a result of Act No. 9496, except that a 30 minutes drink-finishing time has been specified to apply in addition to the licence hours which are prescribed in section 38(1)(b) - (see section 38(1A)). The permit provisions existed prior to Act No. 9496.

The trading hours permitted by the Club Licence are:

Sundays and Good Fridays:
12 noon - 2.30 p.m. and 6 p.m. - 10 p.m. Sunday trading in liquor can be extended by permit to fill in the gap between the normal 2.30 p.m. restriction and the 6.30 p.m. opening time for evening trading. In addition, permits for "occasional" functions can be granted for times agreed to by the Liquor Control Commission. These times are not specified.

Christmas/Public Holidays:
10 p.m. - midnight. (The 30 minutes drink-finishing time is additional in these cases.)

Anzac Day: Trading can commence at 1 p.m.

However, the permitted "core" trading hours for a Licensed Club's members and guests are theoretically 24 hours a day on all days other than Sunday, Good Friday and Anzac Day.

Saturday night trading can be extended by permit from the normal licenced closing time of midnight to 1.30 a.m. Sunday plus 30 minutes finishing time = 2 a.m.

Suggested Amendments

(a) That the Liquor Control Act be amended to prohibit the grant of a licence or permit in respect of hotel premises, licensed restaurant premises, cafe premises (i.e. B.Y.O's) and licensed clubs, which authorises trading later than 10.00 p.m. (plus 30 minutes to finish drinks in the case of hotels and licensed restaurants = 10.30 p.m.) on any day where any such premises are located in or within 40 metres of a residential zone or residential locality unless the relevant municipal council has consented to the grant of such licence or permit or in the case where a permit under the Town and Country Planning Act 1961 is required for any such premises, unless such last-mentioned permit has been granted and appeal avenues thereon have been exhausted. However, such prohibition should not prevent the grant of permits for late trading on Christmas Eve, Christmas Day, New Years Eve and New Years Day.

(b) That the Act be amended to provide that where during the currency of any licence or permit granted under the Act the relevant municipal council is of the opinion that the environment and area surrounding the premises in respect of whch the licence or permit has been granted are being prejudiced by the operation of the licence or permit, the Liquor Control Commission shall, on the written complaint of the council, cause such operation to be reviewed and to furnish to the council within 60 days the details of the action (if any) taken or to be taken by the Commission in that regard.

(c) That the Liquor Control Commission be required to take into account when considering any application for a licence or a permit (or any renewal of any licence or permit) any prior written views submitted by the local municipal council in respect of the premises and the likely effect of the granting or renewal of such licence or permit on the surrounding environment and amenity of the adjacent area, whether such views are submitted by way of objection or not.

(d) That notwithstanding that the particular premises are not located in a residential zone or a residential locality, where application is lodged with the Liquor Control Commission for a permit for late trading beyond 10.30 a.m. then the Liquor Control Commission shall require the applicant to advertise notice of the application in a local newspaper on at least two occasions not less than five days apart and to supply the municipal clerk of the relevant council with a duplicate of the application and particulars in advance as to the dates of publication of the advertisements.

(e) That a new section be added to the Liquor Control Act to provide that where the use of premises under a licence or permit granted pursuant to that Act would constitute a use requiring a permit under the Town and Country Planning Act 1961, such licence or first-mentioned permit (or both as the case may be) shall not come into operation until such last-mentioned permit has been granted by the relevant responsible authority within the meaning of the Town and Country Planning Act 1961 and appeal avenues thereon have been exhausted.

(f) **Public Availability of Copies of Licences and Permits Needed**

Section 140 provides:

"(1) Every licensee or permit holder shall cause his licence together with any current permit he has been granted under this Act to be clearly displayed in some prominent part of the premises in respect of which the licence or permit is issued.

(2) Any person who fails to observe the provisions of this section shall be guilty of an offence against this Act - Penalty: $50.00."

There does not appear to be any statutory provision whereby any person may, subject to the payment of a prescribed fee, apply to the Liquor Control Commission for a true copy of the licence and/or permit issued in respect of any licensed or permit premises. Such a facility would enable a council (or anyone else for that matter) to obtain details of the terms, conditions, restrictions and limitations applicable in any particular case involving problem premises and thereby ascertain the degree of compliance. This information would be helpful in assessing any grounds of objection to a renewal.

(g) Entertainment in Licensed Premises/Permit Premises

(i) Section 29(3) of the Act provides that -

"A cabaret licence may be granted subject to such terms, conditions, restrictions and limitations as the Commission thinks fit including terms, conditions, restrictions and limitations prescribing the extent and nature of the refreshments and entertainment to be supplied."

The Commission therefore has powers to regulate the extent and nature of a cabaret's entertainment. This power should be widened to cover licences and permits of all of the types specified in the Act.

(ii) The Act should also be amended to provide that the Liquor Control Commission in approving any premises for entertainment, whether by live performers, electronically produced means or otherwise shall, in considering the terms, conditions, restrictions and limitations which might be applied in such approval, have regard to the State Environment Protection Policies on Noise Control as declared from time to time by the Governor in Council, pursuant to section 16 of the Environment Protection Act 1970, and where appropriate, require the licensee or permit holder to comply with specified noise levels and to carry out specified acoustic treatment of the premises to prevent the escape of noise from the premises.

(h) Sunday Trading in the Club Categories

That the Act be amended to require the Liquor Control Commission to take into account the proximity and nature of surrounding properties when considering applications for licences and/or permits (and renewals thereof) in respect of Clubs, Restricted Clubs and Unlicensed Clubs. Some serious problems are occurring in some instances on Sundays with nearby residents, due to outdoor as well as indoor club activities, such as drinking, barbecues, amplified music and in some cases, bands or pop groups.

3. The Town and Country Planning Act 1961

(a) That provision be made to preclude the Town Planning Appeals Tribunal from varying without the consent of the responsible authority any refusal of permit or permit conditions in respect of any use, erection, construction or works in respect of which

the grant of a permit by the responsible authority is discretionary and which involves any land upon which there are premises in respect of which a licence and/or a permit under the Liquor Control Act 1968 exists or in respect of which application for such licence and permit has been or is to be made.

(b) That the Minister for Planning be asked to initiate an investigation into a suitable legislative system to cater for occasional functions (such as rock concerts held at the Myer Music Bowl) which can cause severe disruption, damage and detriment to local neighbourhoods but which, at present, cannot be suitably controlled or regulated under the conventional town planning permit approach. A town planning licence system administered by the local council could be a suitable approach to consider.

4. **The Environment Protection Act 1970**

(i) That the Environment Protection Authority be requested to liaise with the Municipal Association of Victoria in the development of noise control standards for premises licensed under the Liquor Control Act or in respect of which there exists a permit under such Act, with particular emphasis on noise controls for such premises located in, or within 40 metres of any residential zone or residential locality.

(ii) That appropriate amendments be made to Part VIII - Control of Noise - of the Act, and in particular to section 48A and the Schedule therein referred to, to make it an offence to emit unreasonable noise from any premises whiich are located in or within 40 metres of a residential zone or a residential locality and which are licensed or have a permit granted in respect thereof pursuant to the Liquor Control Act 1968.

5. **The Supreme Court Act 1958**

That statutory provision be made for the council of any municipality to have the right to seek equitable remedies (such as injunctions) in its own behalf, on behalf of any resident or group of residents of the municipality or jointly with any such resident or group.

LIQUOR CONTROL ACT 1968

Quick Reference Table
Licences, Permits, etc.

Section 26	Hotel Licences and Permits
Section 26A	Residential Licences
Section 27	Booth Licences
Section 28	Restaurant Licences and Permits
Section 29	Cabaret Licences
Section 30	Theatre Licences and Permits
Section 35	Vigneron's Licences and Permits
Section 35A	Cider Tavern Licences ("Wine Bars")
Sections 38 & 51	Club Licences
Section 38A	Tourist Facility Licences
Section 38B	Exhibition Building Licences
Section 38C	Convention Facility Licences
Section 38D	Melbourne Food and Wine Festival Licences
Section 38E	Cultural Centre Licences
Section 40A	Tertiary Institution Licences
Section 41	Canteen Licences
Section 43A	Construction Works Licences
Section 44	*Side-walk Cafe Permits
Section 45A	Cafe Permits (B.Y.O's)
Section 45B	Unlicensed Club Permits (and Particular Function/Occasion Permits thereof)
Section 45C	Public Hall Permits
Section 45D	Restricted Club Permits
Section 46	Receptions, Balls, Dinner Dances, etc. Permits

* Liquor Control Commission cannot grant unless the local council has approved the grant of the permit.

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SUMMARY OF OBJECTION RIGHTS AVAILABLE TO MUNICIPALITIES AND RESIDENTS UNDER THE LIQUOR CONTROL ACT 1968

It is important that councils and their residents fully appreciate the rights of objection they have under the Liquor Control Act in relation to the granting and renewal of licences and permits under that Act.

A summary of the rights of objection provisions of the Act follows:

Section 52 - requires any person desiring to apply for a licence (except a brewer's licence, a ship's licence, a vigneron's licence, a works licence, a canteen licence, a booth licence or an exhibition licence) to give notice of his intention to make the application. This provision relates to applications for a licence for the first time in respect of the particular premises.

Councils should note that sub-section (3) of section 52 requires that a copy of the notice shall at least twenty-eight days before the date specified in the notice of application be given in the prescribed manner to the Secretary of the Liquor Control Commission, to the licensing inspector for the particular division, to the chief supervisor of the Liquor Control Commission and to the town clerk or secretary of the municipality in which the premises in respect of which the application is made are situate. (The requirement that the local municipality be notified was inserted into section 52 by the recent amendments to the Liquor Control Act by Act No. 9496.)

The applicant is, in the case of a new licence, required to advertise, at least twenty-eight days before the date specified for the application, in a newspaper circulating in the area in which the premises are or are proposed to be situated.

Section 54 - provides that an objection to the granting of any licence may be made (inter alia) by -

(c) the council of the municipality within which the premises or proposed premises in respect of which the application is made are situated;

(d) any three or more electors in the electoral district in which the premises or proposed premises in respect of which the application is made are situated at the date of the notice of the application.

Sub-section (4) provides that where any three or more electors desire to object to an application for a hotelkeeper's licence, a restaurant licence, a cabaret licence, a cider tavern licence or any annual permit granted under sections 26(1)(d), section 35(3B), section 44, section 45A, section 45B, section 45C, section 45D and section 46 they may not less than fourteen days before the date specified for the making of the application, notify the Liquor Control Commission and the applicant in writing that they desire the views of electors resident in the neighbourhood to be canvassed and if, on the date fixed for the hearing of the application, a petition containing the signatures of at least fifty electors who are resident in the relevant subdivision of the electoral district is produced to the Commission the Commission is required to fix the area in the neighbourhood of the premises in question and thereby such area is to be regarded as the "neighbourhood". Where this happens the Commission is required to adjourn the application for at least twenty-eight days. If it appears to the Commission that a majority of the electors in that "neighbourhood" object to the granting of the application the Commission shall refuse to grant the application.

Section 55 - sets out the grounds upon which objections may be taken to the granting of an application for a licence. In the case of applications for an hotelkeeper's licence the grounds of objection are under sub-section (1)(d):

(i) that licensed hotelkeeper's premises are not required in the neighbourhood; or

(ii) that the premises are in the immediate vicinity of a place of public worship hospital or school; or

(iii) that the quiet of the place in which such premises are situate will be unduly disturbed if a licence is granted.

In the case of an application for a club licence there are many grounds of objection and the two last-mentioned grounds applicable to an hotelkeeper's licence also apply to club licences.

The grant and renewal of annual permits - Sections 56A and 56B

Section 56B provides that an objection to the grant and/or renewal of an annual permit of the prescribed types may be made by any person or persons who would be entitled to object if it were an application for the grant of a licence. (Refer to section 54 comments above concerning a council's right to object and the rights of neighbourhood electors). Any intending objector is required to notify that intention to the Secretary of the Commission and to the applicant or permit holder within the prescribed time and the notice of intention to object must contain full particulars of the grounds upon which the objection will be based.

Sub-section (4) of section 56B provides that an objection to the grant or renewal of a permit may be based on any of the grounds applicable if it were the grant or renewal of a licence and sub-section (5) provides that the Commission shall have the same powers in considering any objection to the grant or renewal of a permit as it has in relation to the grant of a licence.

Renewal of Licences - Section 57 - provides that a licensee may apply to the Commission on or before 31st October in any year or within such further time as the Commission in any particular case determines, for the renewal of the licence.

Sub-section (2) provides that a notice of intention to object to the renewal of a licence shall be served on the Secretary of the Commission and the licensee before 30th November or within such further time as the Commission in any particular case determines.

Sub-section (5) provides that a licence and any permit renewable at the same time as a licence may be renewed subject to any terms, conditions, restrictions and limitations as the Commission thinks fit.

Section 58 - this section concerns objections to the renewal of any licence and such objection may be made by any person or persons who would be entitled to object if it were an application for the granting of a new licence.

Sub-section (2) sets out the grounds of objection to the renewal of any licence and these include objections on any of the grounds referred to in section 55(1). Here also, any objector must give notification to the Secretary of the Commission and to the licensee before 30th November or within such further time as the Commission in any particular case determines.

Sub-section (4) provides that the Commission shall have the same powers in considering any objection to the renewal of a licence as it has in relation to the grant of a licence.

Cancellation of Licences, Permits: - Disqualification

Division 4 of the Act makes provision in relation to the contents of the above heading. Sections 103 to sections 111 are the relevant sections.

Section 104 (4),(5) and (5A) provide:

"(4) In addition to any other powers conferred upon it the Commission may cancel or suspend the licence of any licensed person who has breached any term, condition, restriction or limitation of his licence or has been convicted of any offence under this Act and may declare the licensed person to be a person disqualified for a period of not more than one year from obtaining or holding any further or other licence.

(5) In addition to any other power conferred upon it the Commission may cancel or suspend the permit of any permit holder under this Act who has breached any term, condition, restriction or limitation of his permit or has been convicted of any offence under his Act or in any other circumstances where the Commission thinks the permitted activity should be terminated.

(5A) Where the Commission is given power under this Act to cancel or suspend a licence it may instead of cancelling or suspending the licence impose a penalty of not more than $10,000 upon the licensee."

Health Act Provisions

The attention of councils is also drawn to the nuisance provisions of Part III of the Health Act 1958.

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H.L.C.