

# RED DOT DECISION SUMMARY

The practice of VCAT is to designate cases of interest as 'Red Dot Decisions'. A summary is published and the reasons why the decision is of interest or significance are identified. The full text of the decision follows. This Red Dot Summary does not form part of the decision or reasons for decision.

## VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

### ADMINISTRATIVE DIVISION

### PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1995/2008  
PERMIT APPLICATION NO. PL04/1136.01

### IN THE MATTER OF

Swancom Pty Ltd T/as Corner Hotel v Yarra  
City Council & Ors

### BEFORE

Mark Dwyer, Deputy President  
Elizabeth Bensch, Member

<b>NATURE OF CASE</b>	Assessment of cumulative impact of licensed premises on amenity of surrounding area
<b>POTENTIAL GUIDELINE DECISION</b>	Yes
<b>REASONS WHY DECISION IS OF INTEREST OR SIGNIFICANCE</b>	
<b>PLANNING SCHEME – interpretation or consideration of VPP provision</b>	Clause 52.27 (Licensed Premises) decision guidelines; application to extend hours and patron numbers at an existing hotel; consideration of impact on amenity of the surrounding area; consideration of cumulative impact of existing and proposed licensed premises, hours of operation and patron numbers on amenity of area.
<b>POLICY – interpretation or application of policy</b>	Consideration and application of existing and emerging state and local planning policy regime for considering external amenity impacts of licensed premises
<b>PRACTICE OR PROCEDURE – consideration of individual instance or systemic issues; exposition of how to assess an issue or matters to consider</b>	Outline of assessment methodology for considering cumulative impact of licensed premises. Consideration of limitations on use of site inspection to consider behavioural issues and external amenity impacts.
<b>CHANGE TO LEGISLATION OR VPPS - whether change to VPPs or statutory provisions is required or desirable</b>	If the decision guidelines in cl 52.27 are to be applied consistently, state and local government need to introduce benchmarks into planning schemes for the assessment of the impact of licensed premises on amenity, as recommended by the Inner City Entertainment Precinct Taskforce (2005) and Victoria's Alcohol Action Plan (2008)

## **Summary**

This application relates to the Corner Hotel in Swan Street, Richmond. Amongst other things, the application sought to amend an existing planning permit to extend trading hours in the beer garden from 11:30pm until 3am, and to increase patron numbers from 750 to 1300.

The application clearly triggers the still relatively new decision guidelines in cl 52.27 of all VPP-based planning schemes, introduced in 2008. These decision guidelines require a consideration, as appropriate, of the impact of the hours of operation or the number of patrons on the amenity of the surrounding area, and the cumulative impact of existing licences and the proposed licence on the amenity of the area. The Yarra Planning Scheme also contains a relevant local policy on licensed premises in cl 22.09.

The decision focuses in particular on the consideration of the ‘cumulative impact’ of licensed premises in an area or precinct, and outlines three key considerations – the density of licensed premises in an area, the mix and type of the licensed premises, and existing amenity levels. The level of detail of the assessment of cumulative impact on amenity should be proportionate to the level of concern raised by these considerations. The decision reviews background material and research, and proposes an assessment methodology to consider cumulative impact.

In this case, the Corner Hotel is located in the Swan Street precinct where there is a high density of licensed premises, predominantly late night bar/hotel venues. Extensive evidence from residents, business occupiers, the police and Council indicate that this is already causing significant adverse amenity impacts. It is also hampering attempts by the Council’s planning objectives for a more diversified activity centre. Although the Corner Hotel is well-managed, it is an attractor of patrons to the precinct and a contributor to these existing problems. After considering the evidence, the decision concludes that the likely additional external amenity impacts in the surrounding residential area would be unacceptable, and that the application should be refused in its current form.

The decision also discusses a number of related issues, including the limited use of a site inspection to consider behavioural issues, the application of the Charter of Human Rights, the disconnect between liquor licensing and planning applications, and broader government policy for licensed premises.

The decision perhaps highlights that the operators of licensed premises in an area where amenity problems already exist can no longer rely on an internally focussed noise and amenity plan in support of a planning application for late trading hours and significant patron numbers. The purpose of cl 52.27 and the decision guidelines is now to focus on external amenity issues and cumulative impacts, and operators of licensed premises must also address these broader amenity impacts beyond their immediate control.