

1. Introduction

The purpose of this Policy is to provide guidance for the assessment and determination of Liquor License Applications and Development Applications within the City of Rockingham.

The Policy also aims to protect the safety and amenity of existing and future residents and business proprietors against alcohol related problems such as anti-social behaviour, violence, property damage, harm and promote the responsible sale and consumption of alcohol.

2. Policy Application

Under the Liquor Control Act 1988, Council approval is required for all new liquor license applications and any alterations to existing licensed premises.

In Town Planning Scheme No.2 (TPS2), clause 4.22 outlines the application requirements for a Licensed Premises and that the Council shall take into account the General and Specific Objectives of TPS2. Clause 67 of the deemed provisions require Council to have regard to any relevant Policy in determining an application for a Licensed Premises.

The Council will have regard to this Policy when assessing applications made for:-

- Section 39 and 40 Certificates under the Liquor Control Act 1988;
- Development Approval under TPS2 for development which may involve a liquor license;
- Assessment of Extended Trading Permit Applications under Section 60 of the Liquor Control Act 1988.

The Council will also have regard to this Policy when considering a request to intervene or raise objections to any licensed premises operating under the requirements of the Liquor Control Act 1988.

TPS2, Table No. 1 – Zoning Table identifies numerous forms of licensed premises as being discretionary uses or prohibited uses according to the relevant Zone. This Policy guides the exercise of the Council's discretion where the use is permissible, and also assists in identifying preferred locations for licensed premises.

The Council will examine each application for Development Approval in the light of the objectives of the Scheme and with particular reference to the character and amenity of the locality within which liquor is to be distributed and the amenity of adjacent areas that may be affected.

The types of Liquor Licenses and Extended Trading Permits issued by the Department of Racing, Gaming and Liquor, that the Council is concerned with and to which this Policy applies include:-

Type of Licenses:

Restaurant
Nightclub
Hotel
Hotel Restricted
Tavern
Tavern - Restricted
Producer
Liquor Store
Small Bar
Club

Club Restricted
Occasional
Special Facility
Casino (Only applicable to Burswood Casino)

Extended Trading Permits:

Extended Hours
Liquor Without a Meal (Restaurant)
Alfresco
Dining Area
Permits for One-Off Events

Definitions of each type of license and their permitted trading hours is outlined in Appendix 1.

This Policy should be read in conjunction with the following:

- Health Policy No. 6.6 – Outdoor Eating Facilities in Public Places;
- City of Rockingham - Outdoor Events Policy; and
- City of Rockingham – Local Government Property Local Law (in reference to liquor licenses on private marine vessels).

3. Policy Objectives

The objectives of this Policy are to:-

- (a) Provide a framework for the assessment and determination of Liquor License Applications, including the issuing Section 39 and 40 certificates under the Liquor Control Act 1988;
- (b) Assist the Council in its consideration of applications for Development Approval which involve a liquor license;
- (c) Identify appropriate locations for different types of licensed premises;
- (d) Protect the safety and amenity of existing and future residents and business proprietors against anti-social behaviour; and
- (e) Minimise personal harm or ill health caused to people, or any group, due to excessive consumption of liquor.

4. Policy Statement

4.1 Development Applications

4.1.1 Interpretation

Town Planning Scheme No.2 (TPS2), Table No. 1 – Zoning Table identifies the following licensed premises as discretionary uses in certain zones:-

- Club Premises;
- Hotel;
- Motel;
- Night Club;
- Restaurant;
- Bed & Breakfast;

- Reception Centre;
- Public Amusement;
- Cinema/Theatre;
- Exhibition Centre;
- Private Recreation
- Wildlife Park;
- Tavern; and
- Small Bar.

In accordance with clause 60 of the deemed provisions, Development Approval is required for the establishment, expansion, extension or change to any of the above uses.

Liquor Store falls within the definition of a “Shop” under TPS2. A “Shop” is a permitted use in the Commercial zone and a discretionary use in the Primary Centre City Centre, Primary Centre Waterfront Village and District Town Centre zones.

4.1.2 Application Requirements and Procedure

The requirement for Development Approval for a licensed premises is outlined under clause 60 of the deemed provisions.

Applications for Development Approval shall be made on the form prescribed by the Council, and shall be signed by the owner(s).

In accordance with clause 4.22 of TPS2, unless the Council waives any particular requirement, every application for premises to be licensed under the Liquor Control Act 1988, shall be accompanied by the following:-

- A full set of the liquor licensing application papers;
- A full set of the floor, site and elevation plans of the premises;
- Full details as to what conditions are sought to be imposed on the license;
- Details on how the proposed business to be licensed is to be managed; and
- Any other plan or information that the Council may reasonably require to enable the application to be determined.

Note: A Public Interest Assessment (PIA) is to be included in the information provided to the Council. Section 6 and Appendix 5 contain further information on PIA.

The Council also requires the following additional information:

- (a) A written submission describing the nature of the proposal (ie whether it is intended to be a club premises, hotel, motel, night club, small bar, restaurant or tavern, hours of operation, proposed number of patrons etc); and which includes confirmation that the requirements of this Policy can be achieved.
- (b) Any specialist studies that the Council may require the applicant to undertake in support of the application such as a noise report from a suitably qualified acoustic consultant.

The information referred to above is in addition to any information and plans required by TPS2.

The payment of an Administration Fee as detailed in the Scale of Fees for Planning Services is also required.

Applications for Development Approval should be lodged with the City's Planning Department.

4.1.3 Assessment Criteria

In assessing applications for Development Approval, the following matters are to be considered by the Council (in addition to any other relevant considerations under TPS2):

- (a) Location: Applications will generally not be supported if the proposal is likely to have a significant potential impact upon the amenity of an area or affected neighbouring properties. A significant potential impact includes circumstances in which if the application were granted:-
- (i) undue offence, annoyance, disturbance or inconvenience to persons who reside or work in the vicinity, or to persons in or travelling to or from an existing or proposed place of public worship, hospital, child care premises or school, would be likely to occur; or
 - (ii) the amenity, quiet or good order of the locality in which the premises or the proposed premises are, or are to be, situated would in some other manner be lessened.

Licensed premises should generally have an active street front.

Note: When assessing the location of a licensed premises, consideration will be given to the following specific objective of TPS 2:

- (b) *to secure the amenity, health and convenience of the Scheme Area and the inhabitants thereof;*

The Council will also take into consideration the following matters as identified under Clause 67 of the deemed provisions - 'Matters to be Considered by the Local Government':

- (n) *the amenity of the locality including the following -*
- (i) *environmental impacts of the development;*
 - (ii) *the character of the locality;*
 - (iii) *social impacts of the development;*
 - (x) *the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals; and*
 - (y) *any submissions received on the application.*

- (b) Number of Patrons: Premises are restricted to maximum patron numbers under the Health (Public Building) Regulations 1992, and those numbers are to be complied with at all times.

Note: This is particularly relevant to Hotel, Tavern and Nightclub licenses which can have a detrimental impact upon the amenity of a locality, when considering the long hours of operation.

- (c) Previous History: The City will generally review the history of complaints regarding an existing licensed premises when considering an Application for Development Approval for a "Change of Use" or an Extended Trading Permit. In this regard, the City is interested in past complaints regarding noise, vandalism, anti-social behaviour or traffic/parking issues. The City may request the applicant to supply full and complete details of any complaints regarding an existing licensed premises including details of any complaints or prosecutions commenced by the WA Police, the Department of Racing, Gaming and Liquor, the Health Department or Department of Fire and Emergency Services.
- (d) Noise: To address noise impacts from a proposed licensed premises, the City may require that an applicant submit an acoustic report, prepared by a suitably qualified acoustic consultant (as determined by the City), demonstrating that the noise likely to be emitted from the licensed premises will comply with the Environmental Protection (Noise) Regulations 1997. The report should indicate the likely noise nuisance and what sound

attenuation measures will be needed to control noise emissions from the premises in accordance with the requirements of the Environmental Protection (Noise) Regulations 1997.

Note: Where an application for a Hotel, Nightclub, Club Premises or Tavern is proposed within 100 metres of an existing or proposed residential property, the applicant will be required to demonstrate that the proposal complies with the Environmental Protection (Noise) Regulations 1997.

On receipt of the report, the City may require measures to be undertaken via construction, management or other means where necessary to ensure noise is managed in accordance with the Environmental Protection (Noise) Regulations 1997.

- (e) **Harm Minimisation:** The applicant will be required to demonstrate that the principles of harm minimisation have been addressed by the lodgement of a House Management Policy, Code of Conduct and Management Plan in accordance with the Department of Racing, Gaming and Liquor Guidelines.

Note: The applicant will be required to address public safety by providing information regarding crowd control, security personnel or security patrol services and external lighting for premises trading past midnight.

Section 5 and Appendix 3 contain further information on harm minimisation.

- (f) **Consultation:** Where the Manager, Statutory Planning considers that an Application for Development Approval for a 'Licensed Premises' is likely to have a significant potential impact upon the amenity of an area or affected neighbouring properties, the application will be the subject of a process of community consultation in accordance with clause 64 (3) of the deemed provisions and Planning Procedure No. 1.3 - Community Consultation.

Note: Such consultation will include consultation with neighbours, relevant community groups, local police, the Drug and Alcohol Office, Southern Metropolitan Health Services, at the discretion of the Manager, Statutory Planning.

The Council may also give notice or require the applicant to give notice of an application for Development Approval in one or more of the following ways:

- (a) Notice of the proposed use or development served on the nearby owners and occupiers who, in the opinion of the Council, are likely to be affected by the granting of Development Approval, stating that submissions may be made to the Council by a specified date being not less than fourteen (14) days from the date the notice is served;
- (b) Notice of the proposed use or development published in a newspaper circulating in the Scheme Area stating that submissions may be made to the Council by a specified day being not less than fourteen (14) days from the day the notice is published;
- (c) A sign or signs displaying notice of the proposed use or development to be erected in a conspicuous position on the land for a period of not less than fourteen (14) days from the date of publication of the notice referred to in paragraph (b) above.

4.1.4 Conditions of Approval

The Council may impose any relevant condition(s) on the Development Approval for a Licensed Premises as appropriate. See clause 68 of the deemed provisions.

4.1.5 Delegation

Where an application for Development Approval for a licensed premises has been the subject of a process of community consultation and substantiated objections are received, the application for Development Approval will be referred to the Council for determination.

Unless otherwise determined by the Manager, Statutory Planning, all other applications for Development Approval for licensed premises that comply in all respects with the objectives and provisions of this Policy will be determined under delegated authority, pursuant to clause 82 and 83 of the deemed provisions and Planning Procedure 1.1 – Delegated Authority.

Notwithstanding the above, applications for planning approval for the following licensed premises will be referred to the Council for determination:-

- Nightclub;
- Hotel; and
- Club Premises.

With the exception of within the Primary Centre City Centre, Primary Centre Waterfront Village and District Town Centre zones, all applications for Development Approval for a Tavern will also be referred to the Council for determination.

4.2 Section 40 Certificate

4.2.1 Interpretation

A Section 40 Certificate confirms that the proposed use of the premises:-

- Will comply with the requirements of the relevant planning laws (ie. Town Planning Scheme); or
- Would comply with the requirements specified if consent were to be given by a specific authority (ie. Council), if it is known whether that authority will give the consent and what specified conditions or specifications should be, or are likely to be, imposed;
- Cannot comply with the relevant planning laws for reasons specified.

Appendix 1 contains the definitions and permitted trading hours for each type of Liquor License under the Liquor Control Act 1988.

4.2.2 Application Requirements and Procedure

Section 40 of the Liquor Control Act 1988 requires that any applications made to the licensing authority (the Liquor Commission and the Director of Liquor Licensing) for:

- the grant or removal of a license;
- or for a change in the use or condition

of any premises must be accompanied by a certificate from the Local Government.

In accordance with clause 4.22 of TPS2, an application for a Section 40 Certificate must be accompanied by the following information:-

- A full set of the liquor licensing application papers;
- A full set of the floor, site and elevation plans of the premises;
- Full details as to what conditions are sought to be imposed on the license;
- Details on how the proposed business to be licensed is to be managed;

- Any other plan or information that the Council may reasonably require to enable the application to be determined; and
- The payment of an Administration Fee as detailed in the Scale of Fees for Planning Services.

Note: A Public Interest Assessment (PIA) is to be included in the information provided to the Council. Section 6 and Appendix 5 contain further information on PIA.

All Section 40 Certificate applications are required to be lodged with the City's Planning Services.

4.2.3 Assessment Criteria

In addition to the Assessment Criteria outlined in section 4.1.1 – 'Development Applications' of this Policy, the following will also be taken into consideration when assessing a Section 40 Certificate application:-

- (a) Consistency with Planning Approval: Ensure compliance with conditions that have been placed on a Planning Approval (if appropriate). Particular note should be made of the approved size of the license premises under the Development Approval and the proposed licensed area requested under the Section 40 Certificate.

In circumstances where a Liquor License is being sought for premises which have been issued with Development Approval but remain unconstructed, the Council has the ability to issue the Section 40 Certificate, whether it be conditional or unconditional.

- (b) Consultation: Where the Manager, Statutory Planning considers that an application for Section 40 Certificate for a 'Licensed Premises' is likely to have a significant potential impact upon the amenity of an area or affected neighbouring properties, the application will be the subject of a process of community consultation.

Note: Such consultation will include consultation with neighbours, relevant community groups, local police, the Drug and Alcohol Office, Southern Metropolitan Health Services, at the discretion of the Manager, Statutory Planning.

The Council may also give notice or require the applicant to give notice of an application for a Section 40 Certificate in one or more of the following ways:

- (a) Notice of the proposed use or development served on the nearby owners and occupiers who, in the opinion of the Council, are likely to be affected by the granting of the Section 40 Certificate, stating that submissions may be made to the Council by a specified date being not less than fourteen (14) days from the date the notice is served;
- (b) Notice of the proposed use or development published in a newspaper circulating in the Local Government Area stating that submissions may be made to the Council by a specified day being not less than fourteen (14) days from the day the notice is published;
- (c) A sign or signs displaying notice of the proposed use or development to be erected in a conspicuous position on the land for a period of not less than fourteen (14) days from the date of publication of the notice referred to in paragraph (b) above.

4.2.4 Conditions of Approval

The Liquor Control Act 1988 gives the Council the ability to oppose or seek conditions on a license by objecting or intervening in particular licensing matters.

Condition/s on the Section 40 Certificate may indicate that the Council's support of the Liquor License application is conditional upon certain requirements being complied with and/or

acknowledged. These conditions may or may not coincide with specific conditions of the Development Approval (if applicable) and will normally be structured such that the amenity of the surrounding area is respected.

The Department of Racing, Gaming and Liquor can impose any conditions on a license that are considered to be in the public interest. This can be done as a result of an application by a licensee, at the Director's own will, or at the request of a liquor accord.

A condition may include a limitation, restriction, prohibition or an authorisation on any license or permit. A condition can relate to any aspect of business carried out under the license, or any activity that takes place at the licensed premises.

Appendix 4 contains a list of issues that the Department of Racing, Gaming and Liquor can address through conditions. These conditions are a guide only. The Council may request other relevant conditions as it sees fit.

4.2.5 Delegation

Where an application for Section 40 Certificate for a licensed premises has been the subject of a process of community consultation and substantial objections are received, the Section 40 Certificate application will be referred to the Council for determination.

Where a Section 40 Certificate application is consistent with a Development Approval (where applicable), and/or complies in all respects with the objectives and provisions of this Policy, it will be determined under delegated authority by the Manager, Statutory Planning. Prior to doing so, legal advice on the content of the Section 40 Certificate may be sought.

In circumstances where a Liquor License is being sought for premises which has been issued with Development Approval but remains unconstructed, the Council has the ability to issue the Section 40 Certificate, whether it be conditional or unconditional.

4.3 Section 39 Certificate

4.3.1 Interpretation

A Section 39 Certificate confirms that the premises comply/s with all relevant requirements of:-

- the Health Act 1911;
- the Food Act 2008;
- any written law applying to the sewerage or drainage of those premises;
- the Local Government Act 1995; and
- the Building Act 2011.

The Section 39 Certificate can also state the manner in which a premises can be made to comply with the relevant requirements or that the premises could not reasonably be made to comply.

4.3.2 Application Requirements and Procedure

Section 39 of the Liquor Control Act 1988 requires that any applications made to the licensing authority (the Liquor Commission and the Department of Racing, Gaming and Liquor) for:

- the grant or removal of a license;
- or for a change in the use or condition

of any premises must be accompanied by a certificate from the Local Government.

Applicants are required to submit the application form and pay the prescribed fees to the City's Health Services.

4.3.3 Assessment Criteria

A Section 39 Certificate is issued when the premises complies or can be made to comply with the relevant Acts and legislation. If the premises has outstanding work to be completed, the Certificate may be withheld until the work is finished. If the premises cannot be made to comply with the legislation, the applicant will be given a written explanation.

4.3.4 Conditions of Approval

As with Section 40 Certificates, the Liquor Control Act gives the Council the ability to seek conditions be placed on the Section 39 Certificate that requirements be complied with and/or acknowledged.

Appendix 4 contains a list of conditions of approval that the Department of Racing, Gaming and Liquor can apply. These conditions are a guide only. The Council may request other relevant conditions as it sees fit.

4.3.5 Delegation

Upon the issue of a Section 40 Certificate, the Section 39 Certificate will be issued concurrently (if appropriate). All Section 39 Certificates will be issued by the Manager, Health Services under Delegated Authority.

A Section 39 Certificate cannot be issued if a premises has not been constructed (although Development Approval and a Section 40 Certificate have been issued) given that compliance with the various legislative requirements cannot be confirmed until construction of the premises is completed.

4.4 Extended Trading Permits

4.4.1 Interpretation

An Extended Trading Permit may be granted to licensees who hold an existing liquor license to enable them to operate outside of the normal constraints of their license conditions.

There are two types of Extended Trading Permits:-

- Short term or one off; and
- Ongoing or indefinite.

The following proposals require an Extended Trading Permit:-

- Extended hours;
- Liquor without a meal (restaurant);
- Alfresco;
- Dining Area; and
- Permits for one-off events.

A definition of each type of Extended Trading Permit and further information is contained in Appendix 2.

4.4.2 Application Requirements and Procedure

All applications for Extended Trading Permits are lodged with the Department of Racing, Gaming and Liquor who forwards a copy to the Council for consideration.

The Council's Planning Services will issue a Section 40 Certificate for all Extended Trading Permit applications.

A Section 39 Certificate is only required in certain circumstances in relation to Extended Trading Permit applications. For example, if there is an increase or change to the kitchen and for new alfresco dining areas.

4.4.3 Assessment Criteria

In addition to the Assessment Criteria outlined in section 4.1.1 – Development Applications of this Policy, the following will also be taken into consideration when assessing an Extended Trading Permit application:-

- (a) Hours of Operation: When considering an Extended Trading Permit, the Council is unlikely to support those premises which have the potential to cause undue offence, annoyance, disturbance or inconvenience to residents and/or business proprietors located in the vicinity of the licensed premises or where the amenity, quiet or good order of the locality in which the premises are situated would in some other manner be lessened.

Note: Late operating hours can contribute to irresponsible consumption of alcohol and lead to anti-social behaviour, particularly upon leaving licensed premises which in turn impacts on the amenity of others, including other patrons, residents and business operators and their customers.

- (b) Consultation: The Council may undertake consultation with the owners and occupiers of residential premises and businesses within a radius or a location of potential impact as determined by the Council. The Council may also undertake consultation with the local Police, the Drug and Alcohol Office and the Southern Metropolitan Health Services. A copy of all written submissions received in response to this consultation shall be forwarded to the Department of Racing, Gaming and Liquor

Note: Council may also give notice or require the applicant to give notice of an application for a Section 40 Certificate – Extended Trading Permit in one or more of the following ways:

- (a) Notice of the proposed use or development served on the nearby owners and occupiers who, in the opinion of the Council, are likely to be affected by the granting of the Section 40 Certificate, stating that submissions may be made to the Council by a specified date being not less than fourteen (14) days from the date the notice is served;
- (b) Notice of the proposed use or development published in a newspaper circulating in the Local Government Area stating that submissions may be made to the Council by a specified day being not less than fourteen (14) days from the day the notice is published;
- (c) A sign or signs displaying notice of the proposed use or development to be erected in a conspicuous position on the land for a period of not less than fourteen (14) days from the date of publication of the notice referred to in paragraph (b) above.

- (c) Alfresco: Where an Extended Trading Permit/s is sought for an alfresco dining area on the footpath, consideration is to be given to Health Policy No. 6.6 – Outdoor Eating Facilities in Public Places.

4.4.4 Conditions of Approval

The Liquor Control Act 1988 gives Council the ability to seek that conditions be placed on a Section 40 Certificate that requirements be complied with and/or acknowledged.

Appendix 4 contains a list of issues that the Department of Racing, Gaming and Liquor can address through conditions. These conditions are a guide only. The Council may request other relevant conditions as it sees fit.

4.4.5 Delegation

Where an application for Section 40 Certificate for a licensed premises has been the subject of a process of community consultation and substantial objections are received, the Section 40 Certificate application will be referred to the Council for determination.

Where a Section 40 Certificate application is consistent with a Development Approval (where applicable), and/or complies in all respects with the objectives and provisions of this Policy, it will be determined under delegated authority by the Manager, Statutory Planning. Prior to doing so, legal advice on the content of the Section 40 Certificate may be sought.

Unless otherwise determined by the Manager, Health Services, all responses relating to proposed Extending Trading Permits requiring Section 39 certificates will be referred to the Council for consideration.

4.5 Occasional Liquor Licenses for Events on Council Public Reserves, Beaches and Public Open Space

4.5.1 Interpretation

Events to be held on reserves, beaches or public open space that must be approved by the City.

An Occasional Liquor License may be required when a gathering, occasion or event, including a sporting contest, show, exhibition, trade or other fair or reception is proposed.

An Occasional Liquor License can be granted for a function being held over a few hours or a number of days. Each license, however, cannot cover a period of more than 21 days between the start of the first function and the end of the last function.

The City will generally not support having alcohol available for sale at public or private events or supplied or consumed on or around Council owned or managed property, such as:-

- Road reserves;
- Parks;
- Beach areas; or
- Designated open spaces;

except for occasions or events where approval has been granted by the Council and a license to serve alcohol has been obtained from the Department of Racing, Gaming and Liquor

4.5.2 Application Requirements and Procedure

All applications for Occasional Liquor Licenses are lodged with the Director of Racing, Gaming and Liquor or with the Managing Registrar at the local court.

A letter of consent from the City must accompany the Occasional Liquor Licence application.

The following information is required to be lodged with the City to receive a letter of consent:-

- A site plan indicating the size and location of the proposed licensed area;
- A House Management Policy, Code of Conduct and Management Plan (see Appendix 3);
- The event organiser shall have applied for a Public Building Approval, and have submitted an Emergency Evacuation Plan incorporating a Risk Management Plan.
- A copy of any conditions imposed or sought to be imposed by the WA Police in relation to the event.

An Outdoor Events Permit may also be required from the City. Please refer to City's Outdoor Events Policy for further information.

Note: The City's Outdoor Events Policy defines an event as any outdoor festival, concert or entertainment activity or any event defined as a public building under the Health Act 1911. These events require a Public Building Approval. It is the responsibility of the event organiser to ensure all relevant approvals have been obtained from the City and other approving agencies.

4.5.3 Assessment Criteria

In providing a letter of consent for an Occasional Liquor License application, the Council will consider the nature of the event, venue, social aspects, public safety and any other matters it feels are appropriate.

4.5.4 Conditions

The Liquor Control Act 1988 gives the Council the ability to seek conditions be placed on the Occasional Liquor License that requirements be complied with and/or acknowledged.

In addition to those issues listed in Appendix 4, the following requirements may be requested to apply to the Liquor License:-

- The availability of alcohol at the event should be ancillary to the event and not the main reason for it;
- The licensee will promote the consumption of non-alcoholic and low alcohol beverages. Coffee, tea and soft drinks should be available throughout the event. The bar shall be closed if for any reason low alcohol beverages and/or tea and coffee become unavailable;
- Water shall be available free of charge to all patrons within the licensed area;
- The pricing of alcoholic drinks should have a relationship to the alcohol content of the beverage;
- Competitions that involve the actual consumption of alcohol will not be permitted;
- The licensee and staff serving shall have a full understanding of their responsibilities and obligations when serving alcohol;
- The liquor license is to apply for the same or lesser period as the event. Applications for liquor licenses are likely to be opposed by the Council if they are greater than 10 hours duration or apply after the conclusion of the event. The Council may insist on a requirement for the licensee to incorporate a period where liquor sales are suspended to enable patrons to consume food or other refreshments.

4.5.5 Delegation

A letter of consent from the City will be provided by the Manager, Recreation and Cultural Services under Delegated Authority.

4.6 Special Facility Liquor Licenses on Private Marine Vessels

4.6.1 Interpretation

A Special Facility License may be granted for the purpose of allowing the sale of liquor to passengers and their guests on a private marine vessel.

4.6.2 Application Requirements and Procedure

A Section 40 Certificate is required (see section 4.1.2 – Section 40 Certificate of this Policy for requirements to obtain this Certificate).

4.6.3 Assessment Criteria

In addition to the Assessment Criteria for Section 40 Certificates outlined in 4.1.2, the following will also be taken into consideration when assessing a Special Facility Licence:-

- Consent may be required from the Council for the use of a jetty for the operation of any ferry/charter services. Consideration is to be given to Part 7 – Jetties of the City of Rockingham – Local Government Property Local Law;
- Consideration should be given to carparking for those who intended to board the vessel. This issue should be addressed at the time of considering the operation of any ferry/charter service.

Note: Moorings and jetties are located on a reservation for 'Waterways' under the Metropolitan Region Scheme; the mooring and jetty, however, lie outside the jurisdiction of the City's TPS. Notwithstanding, the Department of Racing, Gaming and Liquor has advised that if a vessel is docked at a jetty, licensed by the Council, a Section 40 Certificate is still required from the Council.

4.6.4 Conditions

The Liquor Control Act 1988 gives the Council the ability to seek that conditions be placed on the Section 40 Certificate that requirements be complied with and/or acknowledged.

4.6.5 Delegation

Where a Section 40 Certificate application is consistent with a Development Approval (where applicable), and/or complies in all respects with the objectives and provisions of this Policy, it will be determined under delegated authority by the Manager, Statutory Planning. Prior to doing so, legal advice on the content of the Section 40 Certificate may be sought.

5. **Harm Minimisation**

One of the primary objects under section 5(1) of the Liquor Control Act (the Act) is “to *minimise harm or ill health caused to people, or any group of people, due to the use of liquor*”.

Section 64(3) of the Act also empowers the licensing authority to impose conditions on a licence that are in the public interest and reflect local issues. Those conditions are primarily aimed at ensuring that liquor is sold and consumed in a responsible manner.

In view of these legislative requirements, there is a need for licensees to demonstrate a strong commitment to the way in which their premises are being managed. For this reason, applicants and licensees under the Act need to demonstrate to the licensing authority that:-

- Liquor will be sold and consumed in a responsible manner; and
- Harm or ill health caused to people or any group of people, due to the use of liquor will be minimised.

Accordingly, on the lodgement of any application under the Act (except where the application relates to wholesalers and occasional licences) the applicant will not only be required to meet the statutory requirements in respect of the application, but will also be required to address the principles of harm minimisation.

Applicants will be required to lodge with their application a copy of the premises' House Management Policy, Code of Conduct, and Management Plan.

Note: The Council is particularly interested in how the licensees addresses such issues as:

- How patrons are encourage to respect the rights of neighbours and not to disturb the amenity of the local area; and
- The procedures in place to respond to complaints about the premises.

Appendix 3 contains a copy of the Department of Racing, Gaming and Liquor – Harm Minimisation Policy.

6. Public Interest Assessment

Applications for new liquor licenses, the removal of existing licenses, and applications for permits such as “Liquor without a meal” permits and “on-going hours” (extended trading) permits, must be accompanied by a Public Interest Assessment (PIA).

The purpose of the PIA is based on the principle that all licensed premises operate within the “public interest” of the affected individual community/s.

To satisfy the PIA test, an applicant will need to consider and find solutions to any negative impact that may be suffered by sections of the community through the operation of their licensed premises.

The following factors are taken into consideration as part of the PIA:-

- The harm, or ill-health that may be caused to people from the use of liquor;
- The impact on the amenity of the locality where the licensed premises, or proposed licensed premises, is situated;
- Whether offence, annoyance, disturbance or inconvenience might be caused to people who live or work in the vicinity; and
- Any other matters stipulated in the Liquor Control Regulations 1988.

Applicants can complete their own PIA by following the guidelines provided within the Department of Racing, Gaming and Liquor – Public Interest Assessment Policy contained in Appendix 5.

7. Managing Complaints / Advocacy

7.1 Intervention

Section 69 of the Act allows the Commissioner of Police, Executive Director Public Health and Local Government Authorities the right to intervene in proceedings and make representations to the licensing authority on limited matters.

The Council may intervene in proceedings before the licensing authority and introduce evidence or make presentations to outline whether a premises is suitable for a liquor license; whether an alteration or redefinition of a premises should be approved; or whether people who work or live in the vicinity of a premises would be impacted upon negatively.

The Council can also intervene in proceedings to supply information relating to legislation and regulations within its jurisdiction.

Examples of grounds for intervention may include:-

- The building is not safe according to the Public Building Regulations or Building Code of Australia;
- The location of the building is not suitable according to zoning requirements under the Town Planning Scheme;
- The building is not equipped to cater for the license. For example, there is not adequate sound proofing to ensure that noise from the premises will be contained and that surrounding businesses or residents will not be adversely affected;
- Complaints or concerns have been raised by nearby residents, schools, hospitals, businesses and community groups;
- Submission letters of concern from residents or businesses in the affected area; and
- Data from community safety surveys that outline community concerns about the license or other licenses in the area.

Interventions are usually provided in the form of a report to the Licensing Authority.

7.2 Objections

Any person, including the Council, has the ability to object to any application for a license, as outlined in Section 73 (1) of the Act.

The general grounds for objection are:-

- The granting of the licenses would not be in the public interest;
- The granting of the license would cause undue harm or ill health to people, of any other group of people, due to the use of liquor;
- If the license was granted, undue offence, annoyance, disturbance or inconvenience would likely occur to people who reside or work in the vicinity, or to people in or travelling to an existing or proposed place of worship, hospital or school;
- That if the license was granted, the amenity, quiet or good order of the locality in which the premises is, or will be, would in some way be lessened; and
- That the granting of the license would contravene that Liquor Control Act.

The Department of Racing, Gaming and Liquor requires that objections are lodged using a Form 17 – Notice of Objection. The form requires that the objector documents the grounds for objection and the particulars in support of each ground.

7.3 Process for Dealing With Complaints

Should complaints be received or the Council otherwise become aware of issues, the Council will undertake an assessment of the situation and determine if intervention is required.

Intervention may include:-

- Conducting discussions with the licensee;
- Lodging an intervention or objection with the Department of Racing, Gaming and Liquor.

If a complaint is to be lodged with the Department of Racing, Gaming and Liquor, the following procedure shall be followed:-

- The objectors shall elect a committee of not more than six people which will include a minimum of one Councillor;
- This committee must elect a spokesperson to liaise with the Council;
- The Council will nominate an officer to deal with the matter;
- All contact between the Committee and City's solicitor (if a solicitor is instructed) must be via the nominated City Officer;
- If the City Officer is invited to attend a committee meeting, the City's solicitor can also be invited at the officer's discretion;
- If the Committee decides to proceed against the City Officer/solicitor's advice, the complaint will be referred back to the Council for resolution.

Residents or other license holders, are able to object to liquor license applications according to the grounds set out in Section 74 (1) of the Act.

8. **Authority**

This Planning Policy has been adopted by the Council and whilst it is not part of TPS2 and does not bind the Council in respect of any application for Development Approval, the Council is to have due regard to the provisions of the Policy and the objectives which the Policy is designed to achieve before making its determination.

Note: Those aspects of this Planning Policy requiring the planning approval of the Council have been adopted under clause 4 of the deemed provisions.

9. **Interpretations**

For the purposes of this Policy, the following terms shall have the same meaning as in the Liquor Control Act 1988 (as amended):

Liquor Control Act: Western Australia's liquor law which regulates the sale, supply and consumption of liquor, the use of premises on which liquor is sold, and the services and facilities provided in conjunction with the sale of liquor.

Section 39 Certificate: A Section 39 Certificate confirms that the premises comply/s with all relevant requirements of:-

- the Health Act 1911;
- the Food Act 2008;
- any written law applying to the sewerage or drainage of those premises;
- the Local Government Act 1995; and
- the Building Act 2011.

The Section 39 Certificate can also state the manner in which a premises can be made to comply with the relevant requirements or that the premises could not reasonably be made to comply.

Section 40 Certificate: A Section 40 Certificate confirms that the proposed use of the premises:-

- will comply with the requirements of the relevant planning laws (ie. Town Planning Scheme); or
- would comply with the requirements specified if consent were to be given by a specific authority (ie. the Council), if it is known whether that authority will give the consent and what specified conditions or specifications should be, or are likely to be, imposed.

The Section 40 Certificate can also state that the premises would not comply for reasons specified.

House Management Policy: A policy that comprises a generic statement of intent about the way in which the licensee wishes to operate the premises. It should be supported by the Code of Conduct and the more detailed Management Plan. See Appendix 3 – Department of Racing, Gaming and Liquor – Harm Minimisation Policy.

Public Interest: an interest in common to the public at large or a significant portion of the public which may, or may not involve the personal or proprietary rights of individual people.

For the purposes of this Policy, the following term shall have the following meaning as in Town Planning Scheme No.2:

Council: means the Council of the City of Rockingham.

For the purposes of this Policy, the following other term shall have the following meaning:

Deemed Provisions: means the Schedule 2 – Deemed Provisions for local planning schemes in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015.

10. Adoption

This Policy was adopted by the Council at its ordinary Meeting held on the 24th November 2009.

11. Amendment

This Planning Policy was amended by the Council at its ordinary Meeting held on the 26th April 2017.

12. Revocation

This Policy supersedes the Council's Alcohol Policy and the Council's Procedures for Assessing Applications for Liquor Licenses.

Appendices

1. Definitions and Permitted Trading Hours
2. Extended Trading Permits
3. Department of Racing, Gaming and Liquor – Harm Minimisation Policy
4. Conditions of Approval
5. Department of Racing, Gaming and Liquor – Public Interest Assessment

DEFINITIONS AND PERMITTED TRADING HOURS

Club

A club licence allows liquor to be supplied to a member, or guest in the company of a member of the club, for consumption on and off the premises.

Trading Hours

Day	When		General Conditions
	Open	Close	
Monday to Friday	6.00am	Midnight	
Monday to Friday	6.00am	12.30am Saturday	(ancillary to a meal only)
Saturday	6.00am	1.00am Sunday	
Sunday	10.00am	10.00pm	
New Year's Eve (Monday - Saturday)	6.00am	2.00am	
New Year's Eve (Sunday)	Until 12.30am New Years Eve morning; then,		
	10.00am	2.00am New Years Day	
Good Friday	No permitted trading hours after 12.30am Good Friday morning		
Christmas Day	Until 12.30am Christmas morning; then,		(ancillary to a meal only)
	12 noon	10.00pm	(ancillary to a meal only)
ANZAC Day (Monday to Saturday)	12 noon	12 midnight	
ANZAC Day (Sunday)	Until 1.00am ANZAC Day morning; then,		
	12 noon	12 midnight	

Club Restricted

Club restricted licences only differ from a club licence in that a club restricted licence doesn't permit the sale of packaged liquor; and the licensee only has access to the premises during certain hours of the day.

Trading Hours

Day	When	
	Open	Close
The trading hours for each club restricted licence is determined individually by the Director of Liquor Licensing.		

Hotel

A hotel licence authorises:

- the sale and supply of liquor for consumption on the premises;
- the sale and supply of packaged liquor to patrons for consumption off the licensed premises.

Accommodation must be provided to any person.

Hotel Restricted

A hotel restricted licence authorises:

- the sale and supply of liquor for consumption on the premises only;
- packaged liquor sales can only be made to a guest of the accommodation services.

Accommodation must be provided to any person.

Tavern

A tavern licence authorises:

- the sale and supply of liquor for consumption on the premises;
- the sale and supply of packaged liquor to patrons for consumption off the licensed premises.

Small Bar

A small bar licence authorises:

- the sale and supply of liquor for consumption on the premises only;
- a maximum capacity of no more than 120 people at any one time.

Trading Hours

The permitted trading hours for hotel, hotel-restricted, tavern and small bar licences are:

Day	When		General Conditions
	Open	Close	
Monday to Saturday	6.00am	Midnight	
Sunday	10.00am	10.00pm	
New Year's Eve (Monday - Saturday)	6.00am	2.00am New Year's Day	
New Year's Eve (Sunday)	10.00am	2.00am New Year's Day	
Good Friday	12.00pm	10.00pm	(ancillary to a meal only)
Christmas Day	12.00pm	10.00pm	(ancillary to a meal only)
ANZAC Day	12.00pm	midnight	

Liquor Store

A liquor store licence authorises the sale of packaged liquor for consumption off premises only.

A condition imposed on liquor store license may allow the licensee to supply a sample of liquor free-of-charge for consumption on the premises. This is called a tasting.

Trading Hours

Day	When	
	Open	Close
Monday - Saturday	8.00am	10.00pm
Sunday	10.00am	10.00pm
Good Friday	No permitted trading hours.	
Christmas Day	No permitted trading hours.	
ANZAC Day	12 noon	10.00pm

Nightclub

A nightclub licence authorises the sale and supply of liquor for consumption on the premises only.

Liquor can only being supplied ancillary to continuous entertainment performed by one or more artists live at the venue, or presented by a DJ.

Trading Hours

Day	When	
	Open	Close
Monday - Thursday	6.00pm	5.00am the following day
Friday - Saturday	6.00pm	6.00am the following day
Sunday	8.00pm	Midnight
New Year's Eve (Monday - Thursday)	6.00pm	5.00am New Year's Day
New Year's Eve (Friday - Saturday)	6.00pm	6.00am New Year's Day
New Year's Eve (Sunday)	8.00pm	6.00am New Year's Day
Good Friday	No permitted trading hours after 3.00am	
Christmas Day (Monday - Sunday)	No permitted trading hours after 3.00am	
Christmas Day (Monday)	No permitted trading hours	
ANZAC Day	Nightclubs must close at 3.00am on ANZAC Day, then reopen in accordance with normal trading hours.	

Occasional Licence

An occasional licence is granted for an event that can not be covered under another type of licence. An occasional licence allows an individual, a group of people, a company or an incorporated association the ability to supply and sell liquor to people attending an event.

Trading Hours

Day	When	
	Open	Close
There are no specific trading hours set out under the Act for occasional licences. However, when assessing an application the commencement and cessation times, as well as the duration of the period in which liquor will be consumed are considered to ensure harm minimisation principles are adhered to.		

Producer

A producer's licence authorises the sale of a type of liquor that is produced by the licensee.

A producer's licence can only be granted to an applicant who is a producer of liquor, or has the intention of becoming a genuine producer of liquor.

Examples of the types of liquor that can be supplied under a producer's licence are

- wine or spirits made from grapes for consumption on the premises, and in sealed containers for consumption off the premises;

- spirits not made from grapes, in sealed containers for consumption off the premises;
- beer in sealed containers for consumption off the premises.

Trading Hours

Day	When	
	Open	Close
Generally, at any time, however restricted trading hours apply on Good Friday, Christmas Day and ANZAC Day.		

Restaurant

The main focus of a restaurant is for the supply and sale of meals prepared on the premises for people to consume on at the restaurant.

A restaurant licence authorises:

- the sale and supply of liquor ancillary to a meal to a patron seated at a dining table.

For a restaurant licence to be considered, a venue must have a kitchen equipped to provide meals, sufficient toilet facilities and a dining area must always be set up with tables and chairs for dining.

Trading Hours

Day	When		General Conditions
	Open	Close	
Monday to Sunday	At any time		(ancillary to a meal only)
New Year's Eve	At any time		(ancillary to a meal only)
Good Friday	At any time		(ancillary to a meal only)
Christmas Day	At any time		(ancillary to a meal only)
ANZAC Day	Until 3.00am ANZAC Day morning; then,		(ancillary to a meal only)
	Any time after 12 noon ANZAC Day.		(ancillary to a meal only)

Liquor Without a Meal Permit

A restaurateur may supply liquor without a meal to 100 per cent of their customers **provided** they apply for, and are granted an extended trading permit to do so.

A restaurant licensee's ability to serve liquor without a meal **is not** an automatic right. 'Liquor without a meal permits' are subject to the public interest test.

Strict conditions **may** apply to 'liquor without a meal permits' including, but not restricted to:

- the restaurant must always be set up and presented for dining;
- tables can't be removed or shifted in order to create dance floors;
- the kitchen must be open and operating at all times liquor is available and the restaurant's regular full menu must be available at all times;
- liquor may only be consumed by patrons seated at a dining table;
- table service only by restaurant staff, no bar service;
- the venue can't be advertised as anything but a restaurant;
- the permit does not apply to any area currently trading under an 'al fresco' extended trading permit.

If a licensee is found in breach of the conditions of their permit, or if it is determined that the permit is no longer in the best interest of the public, the permit can be cancelled immediately.

Special Facility

A special facility licence can only be granted for a premises that can not be covered under another form of licence, and can only be granted for a purpose specifically outlined in regulation 9 of the *Liquor Control Regulations*.

There are 14 different sub-classifications of venues that qualify for special facility consideration. The sale and supply of liquor under a special facility licence must take place within the terms and conditions set out within the licence.

A special facility licence will not be granted if:

- granting or varying a licence of another class;
 - imposing, varying or cancelling a condition on a licence of another class; or
 - issuing an extended trading permit;
- meets the requirements of the applicant.

The 14 different special facility sub-classifications are:

1. Amusement Venue
2. Auction
3. Bed and Breakfast Facility
4. Catering
5. Foodhall
6. Reception or Function Centre
7. Room Service Restaurant
8. Sports Arena
9. Theatre or Cinema
10. Tourism
11. Transport
12. Vocational and Education Training Course
13. Vocational Education and Training Institutions
14. Works Canteen

Trading Hours

Day	When	
	Open	Close
The trading hours for each special facility licence are determined individually by the Director of Liquor Licensing.		

Wholesaler

A wholesaler's licence authorises the licensee to sell packaged liquor for consumption off a particular premises subject to the following conditions -

- the primary and predominate purpose of the business, and at least 90 per cent of gross turnover from the sale of liquor, must consist of sales to liquor merchants;
- packaged liquor sold must be in a quantity of no less than nine litres per person.

Trading Hours

Day	When	
	Open	Close
Monday to Sunday	At any time	
Good Friday	No permitted trading hours.	
Christmas Day	No permitted trading hours.	
ANZAC Day	Any time after 12 noon ANZAC Day	

EXTENDED TRADING PERMITS

What is an Extended Trading Permit?

An extended trading permit may be granted to licensees who hold an existing liquor licence to enable them to operate outside of the normal constraints of their licence conditions.

There are two types of extended trading permits

- a) short term or one off;
- b) ongoing or indefinite.

Short Term or one off

A licensee may obtain an extended trading permit to extend the conditions of their licence for a specific period, whether it is for one day or several days. Generally, short term permits are granted for an individual special occasion or function.

Examples of these are –

- to allow trading to take place on the licensed premises past the normal trading hours for a special occasion or function;
- to allow the licensee to sell liquor at a function organised by the licensee on a part of the premises which is not licensed;
- to authorise the licensee to sell liquor at a function, event or occasion organised by somebody else away from the licensed premises. For example; at a race meeting, concert or agricultural show. The licensee would need to be in control of the area where liquor was being sold and consumed and responsible for the sale, supply and consumption of liquor. For the purposes of the Act the premises under an extended trading permit becomes part of the licensed premises;
- to authorise the licensee to sell liquor on a special occasion or function, at such times, or during a period not exceeding 3 weeks, at places as may be specified; subject to the terms or conditions as may be imposed on the permit; or
- to authorise the licensee of a club licence (*excluding a club restricted licence*) to sell liquor at a function (up to approximately twelve functions per year), to persons who are not members or guests for the purpose of attracting and recruiting new members, awards and presentation nights etc. A non-member permit may be issued to cover several special occasions.

Ongoing or Indefinite

A licensee may obtain an extended trading permit to extend the conditions of their licence for an ongoing period of time. For example:

- to allow the licensee to extend the trading hours of the premises for an ongoing period. For example, a licensee may apply to have the trading hours of the premises extended so that trading may continue on a Friday and Saturday night until 1.00 am the following morning. If granted, the permit may be effective for up to five years.
- the licensee of a club licence (*excluding a club restricted licence*) may apply for an extended trading permit, for a specified period, to authorise the sale of liquor in the club premises to a person who is a member, or the guest of a member, or an association of persons attending that venue for reason of common interest. This would apply, for example to Rotary clubs or Lions clubs, which meet regularly at licensed club premises. Each member of the visiting association may bring up to 5 guests.
- the licensee of a restaurant may apply to have an area, adjacent to the premises included as part of the licensed premises. For example, an alfresco dining area on the footpath.

APPENDIX 2

- the licensee of a restaurant may apply to sell liquor for consumption on the licensed premises without a meal.

Extended trading permits may also be granted for an indefinite period. Examples include:

- where a restaurant licence is situated within guest accommodation, which is operated and occupied by the licensee, a permit may be granted to authorise the licensee to sell liquor at any time to a lodger of that guest accommodation. The permit will apply provided that the predominant purpose of the premises remains the provision of guest accommodation for the travelling public. The permit would apply to the private rooms of a guest as well as any other place (for example, around a swimming pool) reserved for the private use of guests, whether or not ancillary to a meal;
- the holder of a hotel licence, nightclub licence or producers licence that has as part of the licensed premises a specific dining area, may apply for a permit to authorise trading outside of the normal permitted trading hours. During the hours covered by the permit, liquor may only be sold ancillary to a meal supplied there by the licensee. This effectively allows hotels, nightclubs and producers to operate in the same way as a licensed restaurant outside of the normal permitted trading hours. The area must however be operated by the licensee, not a third party. The extent of the additional hours will depend on the interests of the public; and
- the licensee of a liquor store licence may apply for a permit to authorise the delivery of liquor to a purchaser up until 12 midnight, in circumstances where that liquor was sold or agreed to be sold during the permitted trading hours.

**DEPARTMENT OF RACING, GAMING AND LIQUOR –
HARM MINIMISATION POLICY**



Policy

Harm Minimisation

[as amended on 7 May 2007]

Disclaimer

This Policy Guideline is designed to provide accurate and authoritative information in regard to the subject matter covered, and with the understanding that the Director of Liquor Licensing is not passing legal opinion or interpretation or other professional advice. The information is provided on the understanding that all persons undertake responsibility for assessing the relevance and accuracy of its contents.

Introduction

Alcohol is no ordinary substance. It has the potential to cause harm if served or consumed in an irresponsible manner. As such, it is as a consequence of this that the sale, supply and consumption of liquor need to be carefully regulated.

In this context, one of the primary objects under section 5(1) of the *Liquor Control Act 1988* ('the Act') is -

“to minimise harm or ill health caused to people, or any group of people, due to the use of liquor”

Section 64(3) of the Act also empowers the licensing authority to impose conditions on a licence that are in the public interest and reflect local issues. Those conditions are primarily aimed at ensuring that liquor is sold and consumed in a responsible manner.

In view of these legislative requirements, there is a need for licensees to demonstrate a strong commitment to the way in which their premises are being managed. For this reason, applicants and licensees under the Act need to demonstrate to the licensing authority that:

- liquor will be sold and consumed in a responsible manner; and
- harm or ill health caused to people or any group of people, due to the use of liquor will be minimised.

Accordingly, on the lodgement of any application under the Act (except where the application relates to wholesalers and occasional licences) the applicant will not only be required to meet the statutory requirements in respect of the application, but will also be required to address the principles of harm minimisation.

Lodging an application

Applicants will be required to lodge with their application a copy of the premises' House Management Policy, Code of Conduct, and Management Plan.

- House Management Policy

This policy is to comprise a generic statement of intent about the way in which the licensee wishes to operate the premises. It should be supported by the Code of Conduct and the more detailed Management Plan.

- Code of Conduct

This Code should be a concise document which identifies the licensees' commitment to:

- controlling intoxicated persons;
- controlling access to the premises and liquor by juveniles;
- resolving complaints from customers and residents;
- patron care (harm minimisation strategies which encourage the availability of food, non-alcoholic products, staff training, effective transport of patrons, and discourage disorderly behaviour);
- respect the neighbours (the statement should encourage patrons to respect the rights of neighbours and not to disturb the amenity of the local area); and
- responsible server practices.

- Management Plan

This document should identify, in detail, how the House Management Policy and the Code of Conduct will be implemented at the licensed premises. For example, the Management Plan should confirm that the licensee and approved manager/s have successfully completed the approved Short Course in Liquor Licensing. The Plan should also provide details on:

- staff training;
- how and what responsible server practices will be adopted;
- the display of responsible service posters on the licensed premises;
- the manner in which licensed crowd controllers (if applicable) are expected to undertake their duties;
- the practices adopted to control juveniles on the licensed premises;
- the manner in which intoxicated patrons are refused service and managed; and
- the procedures in place to respond to complaints and protect the amenity of the area.

These Management Plan strategies are not an exhaustive list as the Management Plan should be a working document that responds to changes in the manner of trade and changes in patron needs and behaviours over time.

It should be noted that where the licensing authority determines that the grant of the application is in the public interest, it has discretion to formulate and impose conditions on the licence or permit that have regard to these documents.

It is understood that the complexity of the above documents will vary substantially according to the licence type, the nature of business conducted under the licence and it's location.

Conditions of licence relating to harm minimization documents

As part of the approval of applications, it will be a condition of licence that the House Management Policy and the Code of Conduct are displayed in a prominent position on the licensed premises.

All three documents must, however, be made available at the licensed premises to an authorised officer if requested to do so.

DIRECTOR OF LIQUOR LICENSING

Effective Date: 28 August 2000
Reviewed: 7 May 2007

CONDITIONS OF APPROVAL

The Director of Liquor Licensing can impose any conditions on a licence that are considered to be in the public interest. This can be done as a result of an application by a licensee, at the Director's own will, or at the request of a liquor accord.

A condition may include a limitation, restriction, prohibition or an authorisation on any licence or permit.

A condition can relate to any aspect of business carried out under the licence, or any activity that takes place at the licensed premises.

Conditions can be imposed on any individual licence for reasons including, but not limited to:

- minimising harm or ill-health caused to people due to the consumption of liquor;
- limiting the noise emanating from a licensed venue;
- minimising the offence, annoyance, disturbance or inconvenience that may be caused to people who live or work in the vicinity of a licensed venue;
- ensuring the local laws of an Aboriginal Community are complied with;
- ensuring that the safety and health of people within the venue isn't at risk;
- ensuring that liquor is sold and consumed in a responsible way;
- ensuring that all staff receive adequate training;
- restricting or prohibiting liquor sold on credit;
- ensuring public order and safety;
- prohibiting or limiting the number of people who can be present on any part of the licensed area;
- prohibiting entry after a specified time;
- restricting or prohibiting the type of entertainment that can be provided by a licensee;
- limiting or prohibiting drink promotions;
- prohibiting any practices that promote irresponsible drinking;
- ensuring that sufficient lighting is provided outside the premises;
- ensuring that litter is managed in an appropriate manner;
- limiting;
 - the kinds of liquor that may be sold;
 - the manner in which, or the containers and numbers of containers in which liquor may be sold;
 - the days and times when liquor can be sold.

**DEPARTMENT OF RACING, GAMING AND LIQUOR –
PUBLIC INTEREST ASSESSMENT**



Public Interest Assessment

Pursuant to section 38 of the *Liquor Control Act 1988*

[as amended: 27 October 2008]

Disclaimer

This Policy is designed to provide information in regard to the subject matter covered, and with the understanding that the Director of Liquor Licensing is not passing legal opinion or interpretation or other professional advice. The information is provided on the understanding that all persons undertake responsibility for assessing the relevance and accuracy of its contents.

Introduction

Section 38 of the *Liquor Control Act 1988* ("the Act") provides for a public interest test that applies to the granting of certain applications under the Act.

The public interest test will apply to applications for the grant or removal of licences; to applications for permits of a kind prescribed; and to any other application the Director deems appropriate. Applicants in each case will need to satisfy the licensing authority that the granting of the application is in the public interest. Applicants will be expected to do so through a public interest assessment ("PIA") by lodging submissions with the application.

The purpose of this Policy is to provide some guidance on the *possible* content of those submissions and the issues that an applicant should consider and includes the reports that decision makers may have regard to in forming their decisions. (Attachment 1)

Matters which the licensing authority *may* take into account in considering a PIA include those provided in section 38(4) of the Act, to be discussed below. Particular issues relevant to these matters will differ depending upon the circumstances of the proposed licensed premises. Therefore, the specific nature of the documentation and evidence to be submitted in respect of these matters is likely to be different in each case.

In addition, the public interest issues associated with premises such as hotel/taverns, nightclubs, liquor stores and some special facility licences are often more complex than, for example, small bars, restaurants, clubs, producers, wholesalers or a bed and breakfast facility since the former types of premises typically have a greater impact on the surrounding community. Applicants for the former types of licences will be expected to address those issues in detail.

Applicants should note that the licensing authority may request additional information should it consider it necessary to do so. Furthermore, the licensing authority has discretion to impose conditions on the licence or permit that has regard to the public interest, the objects of the Act, and the information provided in the PIA submissions.

In considering the public interest, the licensing authority will take into account the purpose and objects of the Act as provided in section 5. The primary objects of the Act are:

- a) to regulate the sale, supply and consumption of liquor; and
- b) to minimize harm or ill-health caused to people, or any group of people, due to the use of liquor; and

- c) to cater for the requirements of consumers for liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

The secondary objects of the Act are:

- (i) to facilitate the use and development of licensed facilities, including their use and development for the performance of live original music, reflecting the diversity of the requirements of consumers in the State; and
- (ii) to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
- (iii) to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of this Act.

Section 38(4) of the Act

Section 38(4) of the Act provides that the matters the licensing authority may have regard to in determining whether the granting of an application is in the public interest include -

- (a) the harm or ill-health that might be caused to people, or any group of people, due to the use of liquor; and
- (b) the impact on the amenity of the locality in which the licensed premises, or proposed licensed premises are, or are to be, situated; and
- (c) whether offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the licensed premises or proposed licensed premises; and
- (d) Any other prescribed matter. *(Please note: there are no prescribed requirements at this time).*

Applicants will be expected to lodge PIA submissions and, where appropriate, given the nature of the proposed premises, the type of licence and its locality, provide information in relation to the following matters:

Section 38(4) (a) - harm or ill-health

- Are there any 'at risk' groups (as identified by the *Western Australia Drug and Alcohol Strategy 2005-2009*) and sub-communities situated within the locality in which the proposed premises is to be located? Are there any 'at risk' groups or potential 'at risk' groups who may travel through or resort to the locality of the proposed premises and who may be affected by its operation, regardless of whether those persons reside within the boundaries of the town or suburb in which the proposed premises is to be located? If yes, the applicant should identify these groups or sub-communities.

The, 'at risk' groups or sub-communities may, for example, include:

- children and young people;
- Aboriginal people and communities;
- people from regional, rural and remote communities;
- families;
- migrant groups from non-English speaking countries;
- people in low socio-economic areas;
- mining communities or communities with a high number of itinerant workers; and/or
- communities that experience high tourist numbers.

- Where available - social health indicators for the locality in which the proposed premises is to be located should be considered. Where the proposed premises are near the border of another suburb, then regard should also be given to the bordering suburb/s. These indicators *may* include:
 - the incidence of alcohol-related crime in the area (as *may* be reported by local Police; the Australian Institute of Criminology; or as *may* be provided by the Office of Crime Prevention), and
 - the rates of, and general trends in, alcohol-related hospital presentations/admissions (which *may* be available from country local area health services, metropolitan health service and the Drug & Alcohol Office).

Section 38(4) (b) - impact on amenity

- Provide a map depicting the locality of the proposed premises, and a description of the physical and geographic nature of the area.
- What is the nature and type of facilities to be provided at the proposed premises (including floor plan and premises layout information) and what aspects of the proposal distinguish it from others in the locality?

In this respect, when contemplating premises design, consideration *should* be given to the principles of *Crime Prevention through Environmental Design* (CPTED). Information on CPTED can be obtained from the WA Planning Commission, the WA Office of Crime Prevention, and from the Australian Institute of Criminology.

- What are the locations of all existing licensed premises within the locality of the proposed premises (i.e. outlet density information)? What is the nature of those existing services provided by other licensed premises? What is the level of access to, and diversity of those services?
- What consultation has been undertaken with local government about the proposed premises and the impact on amenity? How has that consultation been taken into account in establishing a business plan?
- What is the nature and character of the local community? This is the community's social profile in terms of:
 - its identity;
 - quality of life;
 - the type of people who live and work in the community;
 - the average age, income, and employment status of people living in the community;
 - the total population numbers and population projections; and
 - whether there any plans for community change/development.

Information in this regard *may* be obtained from the Australian Bureau of Statistics (ABS) and the relevant local government authority.

- Are there any positive recreational, cultural, employment or tourism benefits for the community?
- What other amenity issues, both positive and negative, in respect of the locality of the proposed premises are relevant, such as:
 - access to, and diversity of, other services and facilities in the area;

- the public transport facilities (including taxi services) that would be available to patrons or of any transport facilities proposed to be provided by the applicant for patrons transport;
- parking facilities in the locality;
- contribution to the streetscape and atmosphere of the area;
- noise and anti-social activities in the locality; and
- the impact of the premises on potential vandalism, litter, criminal acts (especially violent crimes including domestic violence), which may include improvements in the passive and active security of the area.

Section 38(4) (c) - offence, annoyance, disturbance or inconvenience

- What offence, annoyance, disturbance or inconvenience might be caused to people who reside or work in the vicinity of the proposed licensed premises?
- Provide a Business Management Plan detailing the proposed business to be conducted and identifying any proposals and strategies that the applicant intends to implement in order to address high-risk factors, potential harms, and any offence, annoyance or disturbance associated with the grant of the application.

Some examples of the strategies that may be implemented include:

- engagement of licensed crowd controllers and installation of a CCTV camera system;
- the provision of food;
- liquor to be provided by table service only;
- limitation on the types of liquor available and the types of containers;
- restricted advertising of liquor promotions;
- installation of noise limiters on all amplification equipment;
- types of entertainment being provided;
- furniture and premises layout design;
- lighting in and around the proposed premises;
- noise attenuation of the building; and
- maximum accommodation numbers.

Locality

The term “locality” used above refers to the area surrounding the proposed licensed premises. This locality will be the area most likely to be affected by the granting of an application. Guidance can be obtained on identifying the appropriate locality in the policy on “*Specification of Locality*”.

The specified locality will, in many cases, incorporate all or part of the local government area in which the premises are proposed to be situated. In the case of premises that will be situated near the boundary of other local government areas, the applicant must also have regard to the other local government areas that would be affected by the granting of the application.

Applicants should note that the licensing authority may determine the locality for an application. Where the applicant considers that the licensing authority's determination of the locality is wrong, the applicant may make submissions as to the appropriate locality.

Additional requirements and procedures

In lodging an application, in addition to submitting the PIA submission and supporting documentation specified in the relevant Department lodgement guide, the applicant will also be required to:

1. Undertake a letter drop to residents and businesses within a 200 metre radius of the proposed premises, giving notice of the application and the intended manner of trade. (A template notice will be provided by the Department). This notice must be delivered on the first day of the advertising period and clearly identify the last date by which objections may be lodged with the licensing authority.

In the case of hotels, taverns, small bars, nightclubs, liquor stores, restaurants, clubs, producers and some special facility licences the advertising period will be 28 days.

For applications relating to club restricted licences, wholesalers and some special facility licences (such as a bed and breakfast facility), a 14 day advertising period (or such other period as determined by the licensing authority) will apply.

2. Serve notice of the application and intended manner of trade on all: schools and educational institutions; hospitals; hospices; aged care facilities; any drug and alcohol treatment centres; any short term accommodation or refuges for young people; child care centres; churches; any local government authority; any local police stations, which may be situated in the specified locality of the proposed premises; and any other such places at the Director's discretion. (A template notice will be provided by the Department). This notice must be served on the first day of the advertising period, clearly identify the last date by which objections may be lodged with the licensing authority and specify an address, within the locality, at which the applicant's PIA submissions may be inspected by interested persons.
3. a) Applications in respect of hotels, taverns, nightclubs, liquor stores, small bars, restaurants, clubs, producers and some special facility licences are to be advertised in *The West Australian* newspaper and on the site of the premises for a 28 day period. (Forms in this regard will be provided by the Department).

b) Applications in respect of club restricted licences, wholesalers and some special facility licences are to be advertised on the site of the premises for a 14 day period or such other period as determined by the licensing authority. (Forms in this regard will be provided by the Department).
4. Make a copy of the PIA submission available for public inspection at the address that has been identified in the letter drop and notice served to the parties in point 2 and 3 above.
5. Lodge a copy of the House Management Policy, Code of Conduct, and Management Plan, with the application. (*For further information on these documents, refer to the Director's policy on Harm Minimisation.*)
6. Provide a written declaration that these requirements have been met and that all information contained in the PIA submission is accurate and valid as at the date of application.

It should be noted that applications in respect of variations of licence conditions and extended trading permits may also be subject to a PIA and, therefore, those applications may be required to be advertised and be supported by various submissions and information.

References and Information Sources

To assist applicants in preparing their submissions, the following sources of information including Attachment 1 may be useful:

- Details of licensed premises in the locality can be obtained from the Department of Racing, Gaming and Liquor – fees may apply. The Department’s website address is www.rgl.wa.gov.au or on telephone (08) 9425 1888.
- Australian Bureau of Statistics – some statistics may be accessed through the State library or via the ABS website at www.abs.gov.au or on telephone 1300 135 070.
- Local Government Authority – contact details for each local government authority in Western Australia and other statistical information can be obtained from the Department of Local Government and Regional Development at www.dlgrd.wa.gov.au or on telephone (08) 9217 1500.
- WA Police Service – contact details for each local police station and other information relating to policing issues in Western Australia can be obtained from the Police website at www.police.wa.gov.au.
- Australian Institute of Criminology – information relating to crime and the links between criminal activity and alcohol may be obtained via the Institute’s website at www.aic.gov.au.
- WA Office of Crime Prevention – information on crime prevention strategies, as well as CPTED principles, may be obtained from the Office of Crime Prevention website at www.crimeprevention.wa.gov.au. Information relating to local community and local crime statistics may also be obtained from either the relevant local government or from the Office of Crime Prevention.
- National Drug Strategy - information about the National Drug Strategy and key research and data components supporting the Strategy can be obtained at the NDS website at www.nationaldrugstrategy.gov.au or on telephone (02) 6289 1555.
- Drug & Alcohol Office – information relating to harm reduction and research on drug and alcohol use in Western Australia can be obtained from the Drug & Alcohol Office website at www.dao.health.wa.gov.au.
- Department of Health – information relating to health data on the State, regional and local level may, in some cases, be available from the local area health services. Contact details for local area health services can be obtained from www.health.wa.gov.au.
- Office of Road Safety – information relating to the issues that affect road safety and research on road crash statistics etc, may be obtained from the Office of Road Safety website at www.officeofroadsafety.wa.gov.au.
- WA Planning Commission – information on *Crime Prevention through Environmental Design* (CPTED) and guidelines on ways of reducing the opportunities for crime can be obtained from the Planning Commission’s website at www.wapc.wa.gov.au.

DIRECTOR OF LIQUOR LICENSING

Effective: 27 October 2008.

Reviewed: 7 May 2008; 11 June 2007; 22 January 2008



Attachment 1: Reports that decision makers may have regard to.

This table shows the current version of the various reports however, the Director will access updated amendments and editions as they are published.

1.	<p>DRUG AND ALCOHOL OFFICE. Health Department of Western Australia. http://www.dao.health.wa.gov.au</p> <p>A. <i>Alcohol Prevalence, Western Australia 2004.</i></p> <p>B. <i>Broad Strategic Directions of West Australian Drug and Alcohol Strategy 2005-2009.</i></p> <p>C. <i>Western Australian Drug and Alcohol Strategy 2005-2009.</i></p> <p>D. <i>Western Australian Alcohol Plan. 2005.</i></p> <p>E. <i>Strong Spirit Strong Mind: Western Australian Aboriginal Alcohol and Other Drugs Plan. 2005-2009.</i></p>	<p>A study of the alcohol drinking status of West Australians 14 years and over and the trends in alcohol drinking status for West Australians 14 years and older over the NDSHS from 1995-2004.</p> <p>Directions of the department in responding to alcohol and other drug problems in Western Australia.</p> <p>Provides drug and action plans for the associated government departments to follow.</p> <p>Displays 5 strategic directions and the implementation plan.</p> <p>The AAOD Plan is aligned to the overarching WA Drug and Alcohol Strategy 2005-2009. Identifies and sets out recommended directions and activity particular to the needs and circumstances of the Aboriginal people.</p>
2.	<p>NATIONAL DRUG RESEARCH INSTITUTE. Curtin University of Technology, Perth WA. http://www.ndri.curtin.edu</p> <p>A. Preventing Harmful Drug Use in Australia. Prepared with assistance from the Combined Universities Centre for Rural Health. <i>An Evaluation of Liquor Licensing restrictions in the Western Australian Community Of Port Hedland. August 2005.</i></p> <p>B. <i>Restrictions on the sale and supply of alcohol: Evidence and Outcomes. (2007).</i> Dr T. Chikritzhs, Prof. D. Gray, Z. Lyons, Prof. S. Siggers.</p>	<p>Evaluates the community impact of the mandatory restrictions imposed by the Director of Liquor Licensing and mandated from 1st January 2004 in the town of Port Hedland.</p> <p>Identifies and describes a range of informal and formal, published and unpublished studies with evaluations and reviews on the impact of alcohol restrictions on consumption and related harms. Includes international, national and local studies on alcohol restrictions.</p>

2.	<p>C. Study of Extended Trading Permits (May 1997). Dr. T. Chikritzhs.</p> <p>D. Drinking after Driving in Western Australia.(2002) Catalano, P and Stockwell, T.R.</p> <p>E. Predicting Alcohol-related harms from licensed outlet density: A Feasibility Study. 2007 Monograph Series No. 28. T Chikritzhs, I Catalano, R Pascal and N Henrickson from DAO.</p> <p>F. National Alcohol Indicators- Bulletin No. 5 (April 2002). Trends in alcohol-related violence in Australia. 1991/92 – 1999/00. S Matthews, T Chikritzhs, P Catalano, T Stockwell, S Donath.</p> <p>G. National Alcohol Indicators- Bulletin No. 6. (November 2004). Trends in Youth Alcohol Consumption and Related Harms in Australia Jurisdiction, 1990- 2002.</p>	<p>Provides national and international experience with extended trading hours. Their impacts on public opinion regarding extended trading hours, reports on ETP's in WA on levels of alcohol purchases, assaults in and around licensed premises, drink driving offences and road crashes involving persons who last drank on licensed premises.</p> <p>Funded by the Road Safety Council of WA to evaluate a system for monitoring the last place of drinking of drink driving offenders.</p> <p>29 tables with significant correlations between alcohol attributable situations and types of licensed outlets for 140 Western Australian Local Government Areas (LGA's) 2000/2001 and 15 maps showing geographic distribution by LGA's 2000/2001.</p> <p>Presents indicators of alcohol-related violence for Australia. Health data compiled from hospital admission records and police data of serious assaults reported to police.</p> <p>Documents the trends in alcohol attributed harms due to risky and high risk drinking for young people across Australia. Comparisons between Indigenous and non-Indigenous youth and metropolitan and non-metropolitan regions. Rates shown are age specific to the 15-24 year old residential population.</p>
3.	<p>EPIDEMIOLOGY BRANCH, DEPARTMENT OF HEALTH. Government of Western Australia.</p> <p>http://www.health.wa.gov.au</p> <p>A. Impact of Alcohol on the population of Western Australia. (January 2008). Xiao J, Rowe T, Somerford P, Draper G, Martin J.</p> <p>B. Impact of Alcohol on the Population of Western Australia.(2008) (with the Drug and Alcohol Office WA) Regional Profiles: Kimberley, Pilbara, Goldfields, Mid West, Wheatbelt, Great Southern, South West, North Metro., & South Metro.</p>	<p>Proportions of the population aged 14 years and over at risk/high risk of harm due to alcohol consumption in the short and long term. The residents in each region were based on the data from the National Drug Strategy Household Survey by the AIHW (2005).</p> <p>These regional reports quantify the effects of alcohol consumption on the WA population in different health regions and monitor the trends in alcohol use and harm.</p>

4.	<p>CORONER HOPE <i>Coroner's Report into 22 deaths in the Kimberley Region. February 2008.</i></p> <p><i>Coroner's Report on 5 deaths in the Oombulgurri Community. July 2008.</i></p>	<p>Full findings from Coroner Hope in particular; Recommendation 20 relating to alcohol abuse and, Recommendations 26 and 27 that relate to police matters in relation to alcohol. Full findings of the Coroner.</p>
5.	<p>DEPARTMENT OF INDIGENOUS AFFAIRS <i>State Government response to the Hope Report. 7 April 2008.</i></p> <p><i>Gordon Inquiry – Putting People First. July 2002.</i></p>	<p>Section 3 refers specifically to Drug and Alcohol Management.</p> <p>See government response of December 2003, on future direction of government responses to addressing family violence and child abuse in indigenous communities in WA. Progress report 2005.</p>
6.	<p>FITZROY VALLEY LIQUOR RESTRICTION REPORT 2008. Henderson-Yates L, Wagner s, Parker H & Yates D of Notre Dame University for the Executive Director of the Allied Drug and Alcohol Office.</p>	<p>An evaluation of the effects of a six month restriction on take-away alcohol relating to measurable health and social benefits and community perceptions and behaviours. From December 2007-March 2008.</p>
7.	<p>ALICE SPRINGS LIQUOR TRIAL By Ian Cundall and Chris Moon for Northern Territory Government. Department of Health and Community Services. May 2003.</p>	<p>From 1st March 2002 a 12 month trial in Alice Springs township on the strength of alcohol sold, opening hours of liquor outlets and the size of the takeaway containers sold. This report is an evaluation of the trial.</p>
8.	<p>NATIONAL ALCOHOL STRATEGY 2006-2009. http://www.nationaldrugstrategy.gov.au <i>Towards Safer Drinking Cultures</i></p>	<p>Have 4 priority areas of intoxication, public safety and amenity, health impacts and cultural place availability.</p>
9.	<p>AUSTRALIAN BUREAU OF STATISTICS AND AUSTRALIAN INSTITUTE OF HEALTH AND WELFARE. AIHW cat. No. IHW14; ABS cat. no. 4704.0 <i>The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples.</i></p>	<p>One of the content categories is health risk factors, which includes alcohol consumption. The latest issue was released on 29/4/08. Back issues from 1997, 1999, 2001, 2003 and 2005.</p>
10.	<p>AUSTRALIAN GOVERNMENT DEPARTMENT OF HEALTH AND AGEING. Australian Government Implementation Plan 2003-2008. <i>National Strategic Framework for Aboriginal and Torres Strait Islander Health.</i></p>	<p>Effective interventions that have shown to have positive impacts on selected social and environmental factors and are relevant to Aboriginal and Torres Strait Islander people and communities.</p>