

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