



Policy

Section 40 Certificate

[As amended: 3 August 2011]

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.

Purpose

The purpose of this Policy is to provide applicants and licensees with guidance on submitting an unconditional section 40 certificate (certificate of local planning authority).

Introduction

Section 40 of the *Liquor Control Act 1988* (“the Act”) requires a certificate from the local planning authority to be submitted for the grant or removal of a licence, or for a change in the use or condition of any premises, unless otherwise determined.

A section 40 certificate shall state that the proposed use of the premises –

- (a) will comply with the requirements of the written laws relating to planning specified;
- (b) would comply with the requirements specified if consent were to be given by a specified authority, 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; or
- (c) will not comply with the requirements specified for the reasons specified.

Application Process

Generally, the Director will not accept an application without a section 40 certificate, unless exceptional circumstances apply. If an application is accepted without an unconditional section 40 certificate, the Director may adjourn the application indefinitely or conditionally grant the licence.

Conditional Grant

Section 62A of the Act provides for conditional grants, pending certain approvals, consents and exemptions. Where an application is made for a licence or a removal of a licence; and the licensing authority is satisfied that it would grant the licence or removal if an unconditional section 40 certificate was produced, the licensing authority may grant the licence subject to the condition that the certificate be produced on or before a specified day.

Additionally section 62A(3) of the Act provides for the conditionally granted licence to be cancelled if the certificate is not produced on or before the specified day.

The specified day is two (2) years from the date of lodgement of the application.

The Director may seek updates in respect to section 40 certificates where the application has been adjourned or conditionally granted. Failure to provide the certificate on or before the expiration of two years will result in the conditional licence being cancelled or the adjourned application being refused by the Director.

Other Considerations

It is the responsibility of the applicant to be aware of the considerable time and uncertainties involved in rezoning applications and not make premature applications. The risk lies with the applicant not the Director. It is important to remember that if an application is deferred too long, circumstances can change and matters such as the public interest assessment can lose their currency. Additionally, under section 69(14) of the Act, an application that is not determined within 12 months of the lodgement date may be struck out by the Director.

Under section 16(4) of the Act, an application may be set aside at any stage of the process, if a requirement or order of the Director is contravened.

Further information

For further information, please contact the Department of Racing, Gaming and Liquor on (08) 9425 1888 (country callers please use our toll-free number: 1800 634 541 or by emailing: rql@rql.wa.gov.au)

DIRECTOR OF LIQUOR LICENSING

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