

1 Purpose

The purpose of this planning bulletin is to advise of a planning response to changes to section 41 of the *Liquor Control Act 1988* (previously named the *Liquor Licensing Act 1988*) which came into effect on 7 May 2007. This bulletin sets out interim measures for local governments to consider applications for the use of premises as a small bar, subject to applicable planning requirements and invites comment on suggested definitions for the new regime of licensed premises under the *Liquor Control Act 1988*.

2 Background

The *Liquor Licensing Act 1988* provided for two forms of licence for premises to serve alcohol: a hotel licence and a tavern licence.

The definitions of hotel and tavern are included in appropriate zones in the current form of the Model Scheme Text (MST) in schedule 1 section 2 Land use definitions.

In 2006, amendments were made to the *Liquor Licensing Act 1988* which became the *Liquor Control Act 1988*.

The objectives of the changes included providing more choice for consumers (but not necessarily more licensed venues), greater levels of innovation within the liquor and hospitality industries, a boost to the small business sector and, among other things, creating a safer liquor environment that is not limited to large, beer-barn establishments.

The changes, which came into effect in May 2007, include an amendment to section 41 to include a small bar licence as a form of hotel licence that may be issued by a licensing authority.

There are now three forms of licence that may be issued under the *Liquor Control Act*:

- hotel licence
- tavern licence
- small bar licence

A small bar licence differs from hotel and tavern licences by the conditions imposed to restrict the scope of the licence. A small bar licence is a form of hotel licence with:

- a condition prohibiting the sale of packaged liquor; and
- a condition limiting the number of persons who may be on the licensed premises to a maximum of 120.

An application to a licensing authority for the grant of a small bar licence or for a related change in the use or condition of any premises must be accompanied by a certificate from the authority responsible for planning matters in the district where the small bar is proposed to be located, as provided for in section 40 of the *Liquor Control Act*.

3 Current situation

The current MST does not include the definition of small bar or reflect other changes brought about by the *Liquor Control Act*.

Local planning schemes, likewise, do not include such a definition nor expressly refer to a small bar as a use in their zoning tables.

Local governments have expressed concern that they are unable to issue a certificate under section 40 of the *Liquor Control Act* or permit the use of premises as a small bar on land within their scheme.

4 Interim measure (MST Part 4 Zones and the use of land, clause 4.4.2)

The Western Australian Planning Commission (WAPC) is of the view that, as an interim measure, local planning authorities may approve the use of premises as a small bar pursuant to the provisions set out in clause 4.4.2 of the MST (or similar clause intended to have the same effect) which has been included in their local planning scheme. Clause 4.4.2 provides:

If a person proposes to carry out on land any use that is not specifically mentioned in the zoning table and cannot reasonably be determined as falling within the type, class or genus of activity of any other use category the local government may:

- (a) determine that the use is consistent with the objectives of the particular zone and is therefore permitted;
- (b) determine that the use may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of clause 9.4 in considering an application for planning approval; or
- (c) determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.

If the zoning table in a scheme includes the categories of hotel and/or tavern, it may be reasonable to consider that the use of premises as a small bar is consistent with the objectives of the particular zone that permits a hotel or tavern. A certificate may then be issued under section 40 of the *Liquor Control Act* stating that the proposed use of the premises as a small bar is consistent with applicable planning requirements.

5 Right of review

There is a right of review to the State Administrative Tribunal under subsection 252(2) of the *Planning and Development Act 2005* if an applicant is aggrieved by the decision of a local government against the classification or permissibility of a use not listed under a planning scheme which would currently include small bars.

6 Amendments to the MST and local planning schemes

As part of its current review of the MST, the WAPC is proposing revised definitions to allow for the changes brought about by the 2007 amendments to the *Liquor Control Act 1988*, among other things.

These will include the revised definitions of hotel and tavern, and introduce a new definition for premises with a small bar licence.

The proposed definitions are:

Hotel: means premises providing accommodation the subject of a hotel licence under the Liquor Control Act and may include a betting agency on those premises.

Tavern: means premises licensed as a tavern under the Liquor Control Act and used to sell liquor for consumption on the premises.

Small bar: means premises licensed as a small bar under the Liquor Control Act and used to sell liquor for consumption on the premises, but not including the sale of packaged liquor; and with the number of persons who may be on the licensed premises limited to a maximum of 120.

7 Comment and further information

Comments on the proposed definitions set out in this bulletin are invited by the close of business on Friday 11 January 2008 and should be directed to:

Secretary
Western Australian Planning
Commission
Albert Facey House
469 Wellington Street
Perth WA 6000

quoting reference 156/1/1/24PV3 or by email to julia.horsley@dpi.wa.gov.au.

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website: www.wapc.wa.gov.au
email: corporate@wapc.wa.gov.au

tel: 08 9264 7777
fax: 08 9264 7566
TTY: 08 9264 7535
infoline: 1800 626 477

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