

# **Preparing comments on liquor licence applications: A guide for local governments**

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## Executive summary

### Introduction

The Office of Liquor and Gaming Regulation (OLGR) seeks comment from the relevant local government authority (council) on a range of liquor licensing applications under the *Liquor Act 1992* (Liquor Act). Comments provided by council assist the Commissioner for Liquor and Gaming (Commissioner) in making an informed decision on applications.

It is a legislative requirement for the Commissioner to tell the local government for the relevant locality about applications received for new liquor licences, adult entertainment permits, variation of licences or conditions (if a community impact statement is required) and extended trading hours approvals. However, as a matter of practice the Commissioner also seeks council comment on certain other applications, including variations of liquor licences or conditions (if a community impact statement is not required), detached bottle shops and all applications relating to restricted areas (see page 10 for a full list of applications).

Council may also be requested by applicants to endorse certain applications (for example, to provide consent in circumstances where council is the owner of the premises or for temporary permit applications relating to public areas). However, the main focus of this guide is the provision of council comment which is sought to inform the Commissioner on the merits of higher risk permanent liquor licence applications.

### Adult entertainment permits

Under section 105B of the Liquor Act, an application for an adult entertainment permit may be made only with the consent of the local government for the area in which the relevant premises are located. A development approval for the relevant premises does not constitute consent to the application.

### Role of town planning

There is no discretion in the Liquor Act for the Commissioner to determine an application without evidence of town planning approval. The request for council comment on applications is separate to the legislative requirement that an application must be accompanied by evidence of town planning approval. However, town planning issues may also form part of council's response to requests for comment.

### Timeframes for comment

- *Temporary applications and permits*

The applicant should ensure the endorsement of the authorised council officer is on the application form at the time of lodgement with the OLGR. Applications are required to be lodged with the OLGR 21 days prior to the event or 28 days in the case of a Commercial Public Event Permit.

- *Permanent applications*

Advertised applications – on or before the last day for filing objections (usually 28 days) or  
Non-advertised applications – within 14 days of receiving OLGR's advice about the application.

## Comments and objections

While the Liquor Act outlines the grounds for an objection to an advertised application (**Point 5.1**), the vast majority of liquor applications are not advertised. However, as part of his consideration of the impact of the application on the *amenity of the community*, the Commissioner seeks the advice of council on the majority of applications lodged (**Point 5.2**).

The concept of amenity is outlined in **Point 5.2** and effectively means *the atmosphere, ambience character and pleasantness of ...a locality ...and the health and safety of persons living working or visiting the area and the enjoyment they derive from the locality*.

“Amenity” is the substance or grounds upon which council comments should be made.

More recent legislative amendments, outlined in sections 128 A, B and C of the Liquor Act, also allow the Commissioner to consider more tangible impacts on amenity and public safety (**Point 5.3**). These impacts include transport availability, patron dispersal and noise. It also provides examples of amenity impacts that have or may occur in the future. These include but are not limited to:

- violence
- public urination / defecation/ vomiting
- disorderly behaviour and
- vandalism.

Section 128C of the Liquor Act provides the Commissioner with guidance as to what types of conditions may be endorsed on the licence to ensure the above risks are mitigated. In particular these include the adoption of security arrangements, noise abatement and responsible service practices.

## Standard of evidence

When commenting on an application it is important that such comments are accompanied by documentation that is both substantiated and relevant to the application.

Comments that contain documented evidence directly linked to the operation of a premises are given considerable weight by the Commissioner (**Point 6.1**). For example, CCTV footage of anti-social behaviour of patrons in and around certain licensed premises or evidence of breaches of development approval conditions contributing to adverse incidents.

In situations where non-punitive actions have been taken (**Point 6.2**), the Commissioner will consider whether a course of conduct, or inaction, by the licensee is contributing to the concern. Evidence that does not establish a direct nexus between the licensee and the identified concern cannot be given maximum weight by the Commissioner.

In situations where comments are sought on new licences without a trading history (**point 6.3**), the assessment of council comments is more challenging. Tribunal decisions have consistently ruled that licensees must be given an opportunity to operate in accordance with the Liquor Act. Also, in situations where council has provided town planning approval and then objects to a subsequent liquor application, it becomes problematic for the Commissioner and lesser weight is usually given to the objection. However council comments may influence the Commissioner in imposing conditions on the licence.

## Tribunal decisions

Decisions of the Commissioner are subject to review by courts or the Queensland Civil and Administrative Tribunal (QCAT). Previous court and tribunal decisions are also useful in guiding future decision making.

The Commissioner adheres to the reasoning and findings of previous QCAT and court decisions as these decisions form a precedent for similar future matters.

The decisions of QCAT are more likely to seek the minimisation of potential harm through the imposition of sustainable conditions on a licence rather than outright refusal of the application.

Provided in the guide are some relevant QCAT decisions that represent the views of the tribunal on key elements including amenity, alcohol related harm, trial periods, evidence and resources. While the substance of these decisions are outlined in **Point 7** of the guide, a brief summary is provided below:

- *Amenity*

The tribunal held that a community has a right to access liquor from a premises and that the presumption is in favour of granting such a licence unless the harm/community impacts could not be minimised. The Liquor Act does not contemplate that there will be no adverse impacts on the community (**Point 7.1**).

- *Alcohol-related harm*

The tribunal determined to overturn a decision of the Commissioner to refuse a late trading application, despite numerous incidents (documented by police) in and around a particular licensed premises. The tribunal held that the incidents alone were not sufficient to determine the operation of the premises was creating a disproportionate impact in the locality (**Point 7.2**).

In another matter QCAT determined that the Commissioner could not impose certain harm minimisation conditions based on state wide statistics. Such matters should consider the individual circumstances of the premises.

- *Trial periods*

The tribunal found that the Commissioner could not impose conditions on a trial basis (**Point 7.3**).

- *Evidence*

The tribunal overturned a decision of the Commissioner to refuse a liquor permit to an outlaw motor cycle club (**Point 7.4**). The tribunal found that the evidence of the police had not been tested in a court of law and the applicant had no documented compliance history under the Liquor Act.

## Conditions

In all instances, consideration will be given to imposing conditions to mitigate the potential for alcohol related disturbances or public disorder.

Council may recommend conditions but must justify their imposition. The Commissioner cannot impose conditions outside of OLGR's jurisdiction, trial periods or non-enforceable or onerous requirements.

## **Format of advice**

The format in which comment is provided to the Commissioner is a matter for the council. However, the report should include the grounds upon which any objection is made and the facts, evidence or reasons upon which the recommendation is based as outlined in **section 5** of this guide.

The guide includes a suggested format which may assist in preparing council reports to the Commissioner.

# 1. Introduction

*The Office of Liquor and Gaming Regulation seeks comment from the local government authority for the majority of liquor licensing applications.*

*Council comment assists the Commissioner for Liquor and Gaming to identify public amenity issues in the community and provide local knowledge and information that forms a valuable part of the decision making process.*

The OLGR has an important regulatory role in balancing the competing interests of harm minimisation, maintaining amenity and in facilitating industry growth objectives. Administrative decisions of the Commissioner, or his delegates, are a critical aspect of the licensing process.

Liquor licensing and town planning considerations are two separate statutory systems with their own statutory rules, criteria, policies and guidance, looking at different aspects of similar proposals. Planning considers the principle of the use in the light of the approved planning policies and the effect of the development on matters such as amenity, visual appearance, character of the locality, need, outlook and privacy, road safety, noise, disturbance, smells, fumes or other harmful effects. The OLGR must carry out its functions with a view to promoting the six (6) main purposes of the Liquor Act (see below) and will involve consideration of different (albeit related) matters.

The main purposes of the Liquor Act include regulating the liquor industry in a way compatible with:

- minimising harm (and the potential for harm) from alcohol abuse, misuse and associated violence
- minimising adverse effects on the health or safety of the public
- minimising adverse effects on the amenity of the community
- facilitating and regulating the optimum development of the tourism, liquor and hospitality industries
- providing for a flexible, practical system for regulation of the liquor industry with minimal formality, technicality or intervention
- providing revenue for the state to enable the attainment of the Liquor Act's main purposes and for the other purposes of government.

To assist the Commissioner, the OLGR is required under the Liquor Act to seek comment from the council in relation to applications for new liquor licences, adult entertainment permits, variation of licences or conditions (if a community impact statement is required) and extended trading hours approvals.

The Commissioner, however, recognises the expertise of council officers in identifying local issues in their community. In this regard the Commissioner also requests council comment on other applications despite not being legislatively required to do so. These include applications for variations of liquor licences and conditions (if a community impact statement is not required), applications for detached bottle shops and all applications relating to a restricted areas (see page 10 for a full list of applications).

The prescribed application forms for many applications of a temporary nature, such as commercial public event permits and applicable community liquor permits provide for council endorsement in its capacity as custodian of public places where events are proposed to be held (for example, parks or community centres).

Council comments are afforded considerable weight, both by the Commissioner when a decision is made and by the Queensland Civil and Administrative Tribunal (QCAT) if a decision is subsequently subject to review.

Comments provided by the council may include:

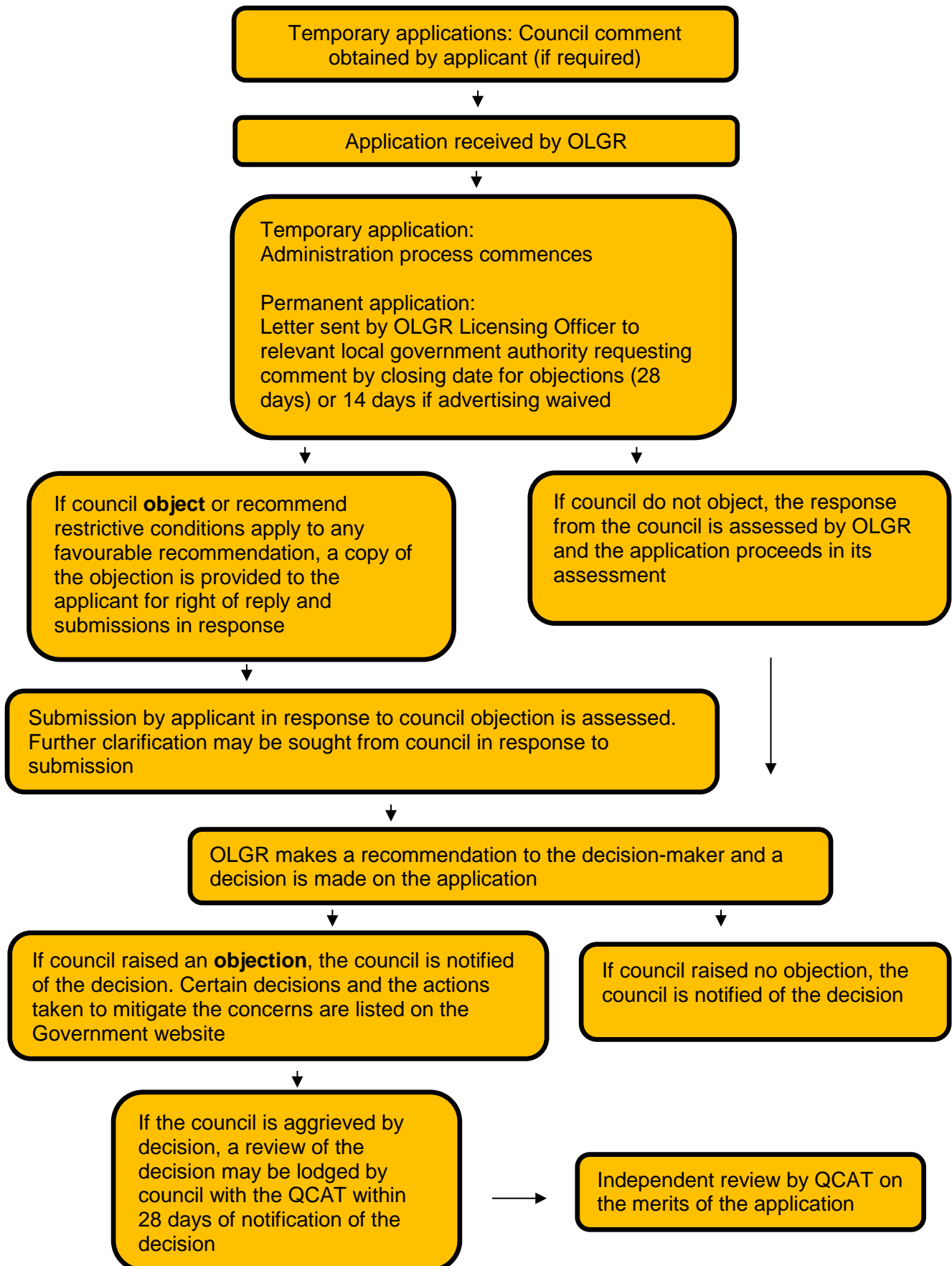
- favourable advice, indicating positive support of the council for the application
- no objection to the application
- statement of concern where it might be suspected that adverse matters may arise but there is insufficient evidence to warrant refusal of the application or imposition of conditions
- relevant evidence based recommendation that the application only be favourably considered by the Commissioner if nominated conditions are imposed on the licence or permit mitigating perceived adverse impacts
- relevant evidence based recommendation to refuse the application.

This guide will provide council officers with:

- information to assist in the recognition of community concerns relating to these applications
- examples of the type of evidence that council can use to support its recommendations and assist in ensuring that such recommendations are given full weight during the application process, and
- tribunal decisions of note which highlight the high level of evidence necessary to restrict or refuse an application.



Flow Chart showing council involvement in typical application process



- Note that written council consent for an AEP must be received before the application can progress

## 2. Relevant legislation

*The Liquor Act provides for the types of applications that council may comment on, the grounds for making objections as well as the timeframes for comments and rights to review.*

The sections relevant for council comment are as follows:

### **Liquor Act 1992**

- 105B - Application for adult entertainment permit requires local government consent
- 107D - Restriction on grant of adult entertainment permit
- 117 - Advice about application etc.
- 117A - Comments about particular applications
- 121 - Matters the commissioner must have regard to
- 128A - Application of div 1A
- 128B - Particular matters the commissioner may consider
- 128C - Conditions relating to public safety or amenity.

### **Liquor Regulation 2002**

- 4 - Particulars to accompany applications relating to licences
- 5 - Timing for making applications

For detailed wording of the applicable sections, please refer to *Appendix 1: Relevant Legislation* on page 29.

## **Role of town planning**

The legislative provisions regarding liquor licence applications are contained in Part 4, Divisions 1 to 6A of the Liquor Act (sections 58 to 83D). Additionally, regulation 4 of the *Liquor Regulation 2002* (Liquor Regulations) outlines the requirements relating to various applications, including, as previously mentioned, the provision that each application must be accompanied by evidence of town planning approval (regulation 4(1)(d) of the Liquor Regulations).

In determining whether to grant a liquor licence application, the Commissioner must have regard to a range of matters. These matters include the aforementioned local government comment, the impact on the amenity of the community concerned and any relevant conditions imposed on a development approval, given by a local government under the *Sustainable Planning Act 2009* that relates to premises the subject of the application.

Each application for a liquor licence must be accompanied by evidence, satisfactory to the Commissioner, that using the premises for which the application refers is permitted under the planning scheme of the relevant local government for the premises.

All planning permissions, consents and certificates must be obtained **before** any application is made with OLGR. It will assist the licensing process if the planning position is clear and certain before an application is made with the OLGR and there is no doubt that the premises can be lawfully used for the purposes covered by the application. It will mean that it is less likely that the local planning authority as a responsible authority will make representations in relation to the liquor licence application. Members of the public will also be less likely to be confused about the two separate issues and so less likely to make representations on planning matters to OLGR.

The request for council comment on applications is separate to the legislative requirement that an application must be accompanied by evidence of town planning approval. However, town planning issues may also form part of council's response to requests for comment.

### **Restricted Areas**

There are alcohol restrictions in 19 communities across Queensland (a list of the communities can be accessed at [www.datsip.qld.gov.au/programs-initiatives/community-alcohol-limits](http://www.datsip.qld.gov.au/programs-initiatives/community-alcohol-limits)). These restrictions ban or limit the amount and type of alcohol people can take into a community. In some communities, alcohol is completely banned.

The legislation was introduced with the objective of regulating the sale and supply of liquor in particular areas to minimise the harm caused by alcohol abuse and misuse and resolve alcohol problems in Indigenous communities. Although section 117A of the Liquor Act states the Commissioner *may* ask the local council for their comment, the Commissioner requests council comment on all applications relating to restricted areas.

## **3. Methods of request**

*OLGR seeks comments in either of the following ways -*

- 1. Temporary applications and permits – council endorsement on the application form (see Table 2) and*
- 2. Permanent applications - in writing to the chief executive officer of the council for the locality for which the application relates.*

Council comment is requested through one (1) of two (2) methods, either by completing the 'council endorsement' section on 'temporary' application forms or by responding to written correspondence from the Commissioner regarding 'permanent' applications.

Table 1: Application for which council comment is sought and method of request

Application	Method of Request	
	Application form	Written correspondence
Community Liquor Permit	<ul style="list-style-type: none"> <li>(if council controlled land)</li> </ul>	
Transfer of a Liquor Licence	<ul style="list-style-type: none"> <li>(if premises is owned by Council)</li> </ul>	
Craft Beer Permit	<ul style="list-style-type: none"> <li>(if council controlled land)</li> </ul>	
New or Renewal of Restricted Liquor Permit	<ul style="list-style-type: none"> <li></li> </ul>	
Adult Entertainment Permit*		<ul style="list-style-type: none"> <li></li> </ul>
Commercial Public Event Permit (one-off)	<ul style="list-style-type: none"> <li>(if council controlled land)</li> </ul>	
Commercial Public Event Permit (regular)	<ul style="list-style-type: none"> <li>(if council controlled land)</li> </ul>	
Temporary Change in Licensed Area**	<ul style="list-style-type: none"> <li>(if council controlled land)</li> </ul>	
Temporary Authority under Section 125	<ul style="list-style-type: none"> <li></li> </ul>	
New Liquor Licence		<ul style="list-style-type: none"> <li></li> </ul>
Detached Bottle Shop		<ul style="list-style-type: none"> <li></li> </ul>
Variation of Licence		<ul style="list-style-type: none"> <li></li> </ul>
Approved Extended Trading Hours		<ul style="list-style-type: none"> <li></li> </ul>

\* The application process for a one-off Adult Entertainment Permit is identical to the process for a 3-year Adult Entertainment Permit.

\*\* Council comment is not required for temporary decrease of licensed area applications.

<p><b>Section 20</b></p> <p><b>Additional area controlled by local council</b></p>	<p>Is the proposed additional area a public place, such as a park, or an area controlled by your local council?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes – you must obtain the endorsement of the local authority at <b>Section 22</b></p>
<p><b>Section 22</b></p> <p><b>Council endorsement</b></p> <p><small>Council consent is only required if you ticked 'Yes' at Section 20.</small></p>	<p>I, ..... of ..... station received this application on <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/></p> <p><input type="checkbox"/> I object – please send a written report outlining your reasons</p> <p><input type="checkbox"/> I do not object to this application for a commercial public one-off event permit</p> <p>Name ..... Position .....</p> <p>Signature..... Date <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/></p>

Table 2: Example of council endorsement section on an OLGR form for temporary application

If council objects to the application and recommends refusal of the application or conditions be imposed, the “I object” box is to be ticked, the application form noted by the council officer that a submission will be submitted directly to OLGR and the application returned to the applicant to submit to OLGR.

This allows for the applicant to submit the application without delay and allows OLGR to commence processing the application whilst council finalise their report. Council should make a copy of the application and attach it to the report forwarded to OLGR.

The council report must state the basis for the objection or if the application be refused or if conditions are recommended to be imposed, the evidence for the recommended refusal or the recommended conditions (which if imposed would dispose of the objection). Once the council report has been completed, it should be forwarded independently to OLGR along with the copy of the application.

Generally OLGR will not process an application without council comment if it is required. If an application that requires council comment is received without council comment, the applicant is advised they must obtain council comment before the application is considered.

If, on the other hand, the council does not object to the application, the “I do not object” box should be ticked, the application form dated, signed and returned to the applicant to enable the applicant to then lodge the council endorsed application form with OLGR.

The OLGR recognises that from time to time there may be circumstances in which council has a specific or general apprehension regarding the approval of an application, however no evidence is available to substantiate the concerns. In these instances, it is suggested that, in collaboration with the local OLGR office, the council arrange a meeting with the applicant/licensee to discuss their concerns and develop strategies in partnership with the licensee to alleviate any existing or potential issues.

## 4. Timeframes

*Legislated timeframes for council comments/objections are -*

*1. Temporary applications and permits -*

- a. Endorsement of the authorised council officer on the application form should be provided at the time of lodgement of the application.*

*2. Permanent applications -*

- a. Advertised applications – on or before the last day for filing objections (generally 28 days) or*  
*b. Non-advertised applications – within 14 days of receiving OLGR's advice about the application.*

### 4.1 Temporary applications

Applications that come under the temporary category are required to be submitted to the Commissioner 21 days prior to the event or 28 days in the case of a Commercial Public Event Permit in accordance with Regulation 5 of the Liquor Regulation (Timing for making applications)s. However, whilst the timeframes for lodgement are legislated, the Commissioner does accept applications which are lodged contrary to the prescribed timeframe in accordance with a previous tribunal mediation conference and OLGR's Service Charter.

In the early to mid-2000s, the then Liquor Licensing Division refused an application made by a Sunshine Coast state school's P & F Association for a community liquor permit as the application was submitted only five (5) days prior to the event. The refusal decision was appealed and a mediation conference was held wherein the tribunal stated regardless of the legislated timeframes, if the Liquor Licensing Division were in a position to process the application, then they should do so. Since that time, the decision-maker has adopted the administrative process of accepting applications submitted under the legislated timeframe if OLGR has sufficient time to process the application.

### 4.2 Permanent applications

The Liquor Act seeks to give voice to community concerns through a formal community consultation process by requiring certain applications to be advertised for a period of 28 days (or in limited cases, a lesser period).

This process is designed so the public, police and local council can have their say on certain liquor licence applications that may impact the local area and affect the lives of people living and working around the premises.

In some cases the requirement to advertise may be waived on the grounds of the remote location of the premises; or if advertising has already taken place for another purpose that substantially complies with the requirements (for example, advertising for a development approval); or under other special circumstances, such as the low risk nature of certain applications.

If the advertising requirement is waived, the period to submit council comment is reduced from 28 days to 14 days. However, comment can still be received outside the advertising period and given full consideration. In such cases review rights against any decision made are removed.

As part of the Government's policy to address red tape in the liquor and gaming industries, applications for low risk premises (restaurants, cafes and bottle shops) are exempt from having to advertise for public objections if they are not applying to trade outside ordinary trading hours (10:00am to 12 midnight for restaurants and cafes and 10:00am to 10:00pm for bottle shops) and no amplified entertainment is provided at the venue. However, the Commissioner is still able to require advertising if it is considered there is a potential for harm or adverse impact on the local community, such as in primarily residential areas or areas where a high level of alcohol related disturbances are known to occur.

## 5. Comments and grounds for objection

### *Comments*

*Council may comment on the reasonable requirements of the public in the locality.*

### *Objections*

*The relevant grounds for objections are confined to the extent that the grant of the relevant application would lessen the amenity, quiet or good order of the locality:*

***Amenity***, of a community or locality, means the —

- (a) atmosphere, ambience, character and pleasantness of the community or locality and*
- (b) health and safety of persons who live in, work in or visit the community or locality and the comfort or enjoyment they derive from the community or locality.*

*In line with some of the objects of the Liquor Act, the presumption is in favour of, rather than against, granting a licence/permit unless the community impacts cannot be minimised.*

The Liquor Act prescribes a range of matters for which an objection or comment may be lodged to an application. In addition to those matters stated in section 121 of the Liquor Act (see *Appendix 1* on page 29 for wording of section 121), recent legislative amendments have strengthened the public safety and amenity provisions by expanding the matters the Commissioner may take into consideration when making a decision.

### 5.1 Applications that are advertised

If an application is advertised under Section 119 of the Liquor Act, the council may object to the application as a member of the public. The Liquor Act defines a member of the public as any adult individual or body of persons that in the Commissioner's opinion has a proper interest in the locality concerned and is likely to be affected by the grant of the application. Section 119 of the Liquor Act states the grounds on which an objection may be made:

- a) undue offence, annoyance, disturbance or inconvenience to persons who reside, work or do business in the locality concerned, or to persons in, or travelling to or from, an existing or proposed place of public worship, hospital or school
- b) harm from alcohol abuse and misuse and associated violence
- c) an adverse effect on the health or safety of members of the public
- d) an adverse effect on the amenity of the community.

With regard to applications for Adult Entertainment Permits that are advertised, the grounds to submit an objection are the same with the exception that “*undue offence*” is removed but “*or other facility or place regularly frequented by children for cultural or recreation activities*” is included.

As previously noted, an application for an adult entertainment permit may be made only with the consent of the local government for the area in which the relevant premises are located. A development approval for the relevant premises does not constitute consent to the application.

## **5.2 Applications that are not advertised**

If an application is not advertised and is an application other than an extended trading hours approval or adult entertainment permit, the council may lodge a submission objecting to the application. Under these circumstances, the Commissioner writes to the council seeking its advice as part of his consideration of the impact of the application on the *amenity of the community*.

In accordance with Section 121(f) of the Liquor Act, the Commissioner, in deciding whether to grant an application, must have regard to the **impact on the amenity of the community concerned**.

The grounds on which a submission may be made objecting to applications that are not advertised is limited to the impact on the amenity of the community concerned if the applications were granted. Amenity of a community or locality is defined in the Liquor Act as the:

- a) *atmosphere, ambience, character and pleasantness of the community or locality and*
- b) *health and safety of persons who live in, work in or visit the community or locality and the comfort or enjoyment they derive from the community or locality.*

In this regard council should use the above as a basis for comment.

## **5.3 Public safety and amenity**

More recently enacted sections of the Liquor Act (sections 128A, 128B & 128C) place greater emphasis on the amenity of the locality and the health and safety of members of the public in and around licensed premises. When considering any application, the Commissioner may consider a broad range of matters under section 128A and B of the Liquor Act, to minimise the effects on the health and safety of the public and the amenity of the community or locality. These matters include, but are not limited to, the disbursement of persons leaving the premises, the availability of public transport and the nature and level of noise from the premises. The Commissioner may also consider whether the following concerns have occurred or are likely to occur in or near the premises:

- violence
- vandalism



- nuisance
- public urination, vomiting or defecation
- drunkenness and
- other disorderly, riotous or offensive behaviour.

The Liquor Act recognises that if there are identified risks or concerns, the Commissioner can impose conditions on licences or permits to minimise or mitigate these concerns. Such conditions can include the requirement for security, transport arrangements, CCTV, temporary fencing or restrictive liquor service practices.

However, when assessing the level of risk associated with an application and the likelihood of a particular outcome occurring, the conclusion must be based on evidence, such as the previous conduct of the licensee in discharging any duties under the Liquor Act, the licensee's previous ability to control noise, the suitability of the premises and its facilities for the purpose for which the application is sought, etc.

## 6. Standard of evidence

*Ordinarily the Commissioner would prefer to rely on evidence that justifies in specific, concrete terms, the likely effects of the proposed application. Subjective comments or opinions are not necessarily disregarded from the Commissioner's considerations when considering an application, however this evidence may be accorded lesser weight and may not be considered proper grounds for the refusal of an application.*

*Evidence which does not draw a direct nexus to the conduct of the licensee (such as CCTV footage of anti-social behaviour in the streets near licensed premises), cannot be afforded maximum weight unless it can be directly attributed to a failure of the licensee.*

It is essential that comments/objections on applications be accompanied by sufficiently documented evidence which is both substantiated and relevant to ensure that a decision, based on those comments/objections, can be adequately supported upon appeal.

Detailed evidence and past issues at the premises in question (which serves to support any decision to refuse or impose conditions) are crucial in building an accurate picture of the compliance history of premises.

The appropriate weight to be given to comments or objections related to an application for a new premises is particularly challenging, as QCAT has consistently ruled that licensees must be given an opportunity to operate in accordance with the legislation and licence conditions (see tribunal decisions).

### 6.1 Evidence linked directly to licensee/premises

Comments/objections on applications should contain documentary evidence on the specific trading history of the premises within the last 12 month period and include incidents **directly linked** to the operation of the premises and the conduct of the licensee and their management. In this regard, CCTV footage directly linked to the conduct of a venue or evidence of breaches of

development approval conditions which contribute to adverse conduct, are particularly valuable and are given considerable weight.

## **6.2 Evidence linked indirectly to licensee/premises**

In situations where no formal action has been taken against the licensee, evidence can be considered by the Commissioner that shows a course of conduct (or inaction) by the licensee that is significantly contributing to issues as outlined in sections 128A, B and C of the Liquor Act.

Documented activities conducted by the OLGR and/or the council to bring relevant issues to the attention of the licensee e.g. through intervention meetings, which have not resulted in appropriate action by the licensee may also be of assistance to the Commissioner in this regard.

Evidence which does not draw a direct nexus to the licensee (such as CCTV footage of anti-social behaviour of persons in the streets surrounding a licensed premises), cannot be afforded maximum weight as the licensee may have refused entry to such persons and therefore not have contributed substantially to the issue.

## **6.3 Evidence with no link to licensee/premises (green site)**

Comments/objections on applications for new licences which have no history of trading is more challenging. In this regard council is encouraged to base their comments/objections on anecdotal evidence, particularly in relation to the reasonable requirements of the public. General information about the local community profile in terms of demographics and the existence of vulnerable sub-communities derived from local knowledge and trends are acceptable but cannot be given maximum weight in the decision-making process.

Tribunal decisions have consistently ruled that a licensee must be given the opportunity to operate in accordance with the Liquor Act and liquor licence. However, this information may assist in imposing conditions on the licence, but in some cases, unless the applicant agrees to the imposition of the conditions, it is difficult to impose them without verifiable evidence of harm or wrongdoing.

The Commissioner cannot rely on subjective, opinion based comments/objections as to the appropriateness or otherwise of an application.

Councils are encouraged to provide relevant evidence of perceived health, social and amenity impacts and any factors relating to the ability of the applicant/licensee to comply with the Liquor Act. Evidence can be in the form of documentary or anecdotal material. The following are examples of documentary evidence, which have in the past been used to justify council recommendations:

- incidents which can be linked to patrons of the premises that may happen in the vicinity of the premises, such as disorderly behaviour, assaults or fights in neighbouring parks, on the adjacent streets or in the car park of the premises
- vandalism in the vicinity that can be linked to patrons of the premises
- substantiated complaints about the premises (unsubstantiated complaints may be listed as background information)
- video footage from Council CCTV or similar
- Queensland Ambulance Service data

- unsuccessful intervention meetings with the Licensee to remediate or prevent issues.

Please be aware that the above documented evidence can only be given maximum weight if the incidents and offences can be proven that the licensed premises is contributing to these outcomes.

Anecdotal evidence can also be important as it provides the background information that allows the Commissioner to gain some idea of the nature of the premises, the locality and the concerns of the local community.

A large percentage of applications are for new premises or for trading hours not previously permitted in the locality and in these circumstances, anecdotal evidence may be the only means of imposing conditions. Anecdotal evidence relating to the locality could include the following:

- impressions by local council officers of the character of the area
- existing social problems
- general attitudes expressed by members of the community and key community advisers
- the perceived impact on vulnerable groups
- the perceived impact on traffic flow and other obstructions
- the perceived impact on the health and safety of members of the public.

## 7. Tribunal decisions

*Decisions may be subject to review by Queensland courts and tribunals.*

*Previous court and tribunal decisions provide useful guidance for future decision making. Previous decisions can be accessed at [www.sclqld.org.au/caselaw/QCAT](http://www.sclqld.org.au/caselaw/QCAT) or [www.austlii.edu.au/au/qld/](http://www.austlii.edu.au/au/qld/)*

The Queensland Civil and Administrative Tribunal (QCAT) is an independent statutory body tasked to review administrative actions of the Queensland Government. Decision making on administrative matters affecting private rights should not be made in secret, without reason or without opportunity for review on the merits of the decision.

In each review, QCAT exercises all the powers and discretions that are conferred on the original decision-maker. Since QCAT is often remaking decisions of government, the decisions as remade are to be implemented unless the decision is further challenged on the grounds that it is making involved error of law.

The legislation governing the decisions of QCAT requires the tribunal to give written reasons for decisions, which include the tribunal's findings of fact together with reference to the evidence or other material on which the findings are based. However, if a result is achieved through the mediation process, the decision is generally not published.

The Commissioner is strongly influenced by the reasoning and decisions of QCAT as the Commissioner knows that upon review, the tribunal will follow its own precedent on similar matters.

It has been the Commissioner's experience that any licensed premises may result in increased potential for public drinking, litter, noise, adverse behaviour and social and health factors to occur in the area. However, there have been very few applications that have been successfully refused on these grounds, and moreover, the tribunal is more likely to seek the minimisation of potential harm through the imposition of sustainable conditions on a licence instead of outright refusal of the application.

Below are some relevant decisions (linked to the original decision) made by QCAT that portray the views of the tribunal on key elements including amenity, alcohol related harm, trial periods, evidence and resources.

## **7.1 Amenity**

### **Staddon and Ors v Chief Executive, Department of Employment, Economic Development and Innovation and Anor (2011) QCAT 258**

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/qld/QCAT/2011/258.html?stem=0&synonyms=0&query=staddon>

The concepts of amenity and community impact were discussed by the tribunal in 2011 as part of their decision to uphold the grant of a hotel licence in Bellbowrie. The tribunal observed that the main purpose of the Liquor Act is to regulate the liquor industry, and areas in the vicinity of licensed premises, in a way that is compatible with minimising harm, etc. QCAT's view was the decision-making process starts from the proposition that a community of the size of Bellbowrie is entitled to access a premises having a general licence (now Commercial Hotel Licence) which is within the locality. The presumption is in favour of, rather than against, a licence unless the community impacts cannot be minimised. The Liquor Act does not contemplate that the grant of a licence will have no adverse impact on amenity as suggested by one of the objectors, it is a question of balance with amenity impacts to be minimised.

### **Consul Management Pty Ltd v Chief Executive, Liquor Licensing Division (2008) QCCTL 4**

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/qld/QCCTL/2008/4.html?stem=0&synonyms=0&query=coochiemudlo>

In deciding an application for a general licence on Coochiemudlo Island (that OLGR refused in 2007), the tribunal noted the possible amenity impacts must be balanced against the benefit to the tourism and liquor industries and the general public of having a small scale facility for drinking and socialising in pleasant surroundings, as well as the convenience of a local facility for the purchase of takeaway liquor.

The tribunal gave due weight to the objections received, but determined it was necessary to also have regard to the validity of those concerns.

The purpose of the objection process is to identify matters which are genuine issues and not intended to be a form of referendum where the numbers of objections are conclusive. It is the substance of those objections which must be examined.

The tribunal recognised that even with the most stringent measures adopted by management, where security monitoring is provided, etc, it is not possible to control the behaviour of patrons once they leave the premises.

There may be occasions when patrons engage in loutish and anti-social behaviour, but even patrons who have simply enjoyed a pleasant evening without excessive consumption of alcohol may talk loudly, depart noisily and cause a large degree of disturbance, especially in a locality with extremely low ambient noise levels. In those circumstances it seemed inevitable that there would be some adverse impact on amenity caused by patrons departing the premises.

Ultimately the tribunal concluded that while there would be an impact on the amenity of the locality, it would not be “undue” and that, on balance, with the imposition of appropriate trading conditions, the benefits outweighed the disadvantages. OLGR’s decision was set aside and the general licence granted subject to conditions.

## **7.2 Alcohol-related harm**

### **Surfers Paradise Rock & Roll Cafe Pty Ltd and Meshlawn Pty Ltd v Chief Executive, Liquor Licensing Division, DTFTWID and Assistant Commissioner Melville (2004) QCCTL 6**

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/qld/QCCTL/2004/6.html?stem=0&synonyms=0&query=crazy%20horse>

In 2004 the tribunal overturned OLGR’s decision to refuse extended trading hours permits to allow trading until 5:00am for premises trading as Crazy Horse and Cocktails and Dreams situated in Surfers Paradise. Both nightclubs were located in the midst of an entertainment precinct in and around Orchid Avenue, which at the time consisted of 27 licensed premises, 15 of which traded beyond 3:00am. Police supplied substantial evidence of incidents connected to the subject premises’, 41 involving Cocktails and Dreams and 34 involving Crazy Horse. A small number of these incidents were confined within the premises, some began inside but continued outside and some occurred when patrons were refused entry to or ejected from the premises. Other incidents, to which little weight was afforded, occurred at a distance from the premises in circumstances where persons stated to the police officers that they had consumed their last drink at one of the premises at various times up to 90 minutes earlier.

The tribunal acknowledged that the superior resources of the police and the greater number of their operational officers on patrol meant that their evidence gave a more accurate and comprehensive picture of the conduct of the licensees in relation to their extended hours permits. Nevertheless, the tribunal considered that the police evidence alone was not sufficient, in light of the applicants’ compliance history over a long period of time, to conclude there were major deficiencies in management or a culture which consistently allowed problems to develop and make a disproportionate contribution to the disturbances evident in the locality.

### **The Club of Mt Isa Hotel Pty Ltd v Commissioner for Liquor and Gaming (2015) QCAT 384**

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/qld/QCAT/2015/384.html?stem=0&synonyms=0&query=hagan>

In 2015 the tribunal overturned the decision to refuse an adult entertainment permit for The Club of Mt Isa Pty Ltd.

In overturning the decision, QCAT noted that the police reported there had been 66 different calls for service to incidents pertaining to the Club in the period 1 July 2012 to 15 September 2013. However, a number of those incidents occurred outside the Club and did not occur as a result of action (or inaction) by the licensee, but rather resulted from patrons leaving other venues, being locked out of the Club and causing problems at the taxi rank outside the Club. In the

circumstances QCAT agreed with the sentiments of the former Commercial and Consumer Tribunal that incidents outside the Club should not be taken into account in assessing the level of disturbance caused by the patrons of the Club, unless the problem originated inside the Club premises or directly involved members of its patrons and staff.

### **Australian Leisure and Hospitality Group Pty Ltd v Commissioner for Liquor and Gaming (2016) QCAT**

<http://www.austlii.edu.au/au/cases/qld/QCAT/2016/90.html>

In 2016 the Commissioner approved two (2) applications for approved extended trading hours application (Mission Beach Hotel-Motel and Vale Hotel) and imposed conditions requiring security to be at the premises and for security to monitor the vicinity of the immediate area after the sale of liquor had concluded. Such conditions were imposed state-wide for any premises that operated beyond 1am or 3am. QCAT found that relying on state-wide statistics alone, the Liquor Act's main purposes, or that crowd controller conditions were applied as standard under the legislation for post 1am trading hours in the Brisbane City Council area ignored the merits of an extended trading hour application. The licensee's compliance history and whether any site specific incidents had occurred must be taken into account when deciding whether crowd controller conditions should be imposed.

Based on the premises-specific statistics for Mission Beach Hotel-Motel, QCAT was satisfied the future risk to health and safety of members of the public and amenity of the community as a consequence of granting 3am trading was extremely low and did not support the imposition of any crowd controller conditions.

However, in respect to Vale Hotel, Aitkenvale it was reasonable to infer some increased risk to health and safety and amenity in this more heavily populated area as a consequence of later trading on Saturday morning to 3am. QCAT's view was the correct decision should have been to impose modified conditions, such that crowd controller requirements should apply when the premises-specific statistics suggested that the greatest prevalence of past incidents had occurred, that is, on Fridays from 11pm until closing in the early hours of Saturday mornings.

### **Commissioner of Police v Commissioner for Liquor and Gaming and Australian Crawl Pty Limited (2016) GAR106-16**

*Decision available from OLGR in audio or transcribed format.*

QCAT acknowledged the café premises operated in a parkland area that included swimming pools and lagoons, the closest being the sculpture pool located at 6 metres that was predominantly used by children due to its shallow depth (0.6 metre deep).

QCAT acknowledged police and council objections to the grant of the licence due to the risk that intoxicated persons may swim, interfere with children playing in the lagoon unsupervised, utilising the shared toilet facilities or crossing the road. QCAT found there are risks involved in everyday life whether from rivers, oceans, busy roads, railway lines and all manner of things and life is not free of risk. That of course is not to say that a liquor license should therefore be granted regardless of risk as the objects of the Liquor Act indicate otherwise. But if the grant of a liquor licence does not add appreciably to such risks, then there are no obvious reasons for refusing the application. There would be more grounds for concern if the venue was for example a nightclub, **but it is a café, and its primary purpose and function is the provision of refreshments other than alcohol.** Licensed holders are expected to ensure that patrons drink responsibly and they should be reasonably trusted to do so.

## 7.3 Trial periods

### David Peters Loganholme Pty Ltd v Chief Executive Liquor Licensing Division (2005) QCCTL 18

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/qld/QCCTL/2005/18.html?stem=0&synonyms=0&query=loganholme>

Trial periods were discussed in 2005 and the tribunal found there are no powers under the Liquor Act to impose as a condition a trial period which has the effect of cancelling an extended trading hours permit (the equivalent of an extended hours approval) upon expiry of the trial period.

## 7.4 Evidence

### Rebels Motor Cycle Club Rockhampton Inc v Chief Executive Liquor Licensing Division (2005) QCCTL 17

<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/qld/QCCTL/2005/17.html?stem=0&synonyms=0&query=Rebels>

In 2005 the tribunal overturned a decision of the Chief Executive to refuse an application to renew a Restricted Club Permit (now Restricted Liquor Permit) on the grounds the applicant was an organisation that was not considered to be a fit and proper organisation to hold a liquor permit. In a report, OLGR stated that the applicant had committed several breaches of the Liquor Act and the police provided a detailed report, including an affidavit from a police officer attached to the Organised Crime Investigations Group, advising a joint investigation had been undertaken by the police and the Australian Crime Commission which focused on the criminal activities of the applicant.

The applicant responded by stating that the matters raised by the detective had not been determined or tested and would be defended when they came for trial in the Supreme Court. Regardless, the Chief Executive made the decision to refuse the application prior to the Supreme Court ruling.

The tribunal agreed with the applicant that the presence of intoxicated persons near licensed premises can be expected to occur from time to time despite the best efforts of competent management to prevent it. The tribunal found that, despite the fact that for a number of years the club had demonstrated an apparent awareness of its obligations under the Liquor Act, the incidents outlined by the police did, collectively, point to an attitude of non-compliance among at least a proportion of the club members. However, the tribunal noted that no warnings, cautions or other disciplinary action had been taken by the Division in respect of any of the matters, some of the police evidence was hearsay and unsubstantiated and there was no direct evidence of the connection between the club and the adverse activities.

### Out of the Valley Pty Ltd v Chief Executive Liquor Licensing Division (2003) QCCTL 3

<http://www.austlii.edu.au/au/cases/qld/QCCTL/2003/3.html>

In 2003 the Chief Executive of the Liquor Licensing Division refused an application to extend trading hours to 5am, Monday to Sunday for premises trading as Baja Nightclub located at Coolangatta.

In reaching its decision to set aside the Chief Executive's decision and grant the application, the Queensland Commercial and Consumer Tribunal considered that a new licensee should be given the opportunity to prove that it can control the numbers of patrons likely to be drawn to the vicinity during the extended hours. The test for the applicant will lie in the behaviour of the large groups who may seek entry at 3am and the large groups who will leave the premises between 5 and 5.30am. The applicant would be well aware that 5am trading is a privilege and not a right, and if undue disturbance is caused by its patrons then the permit is unlikely to be renewed.

## 8. Imposition of conditions

*To minimise alcohol related disturbances or public disorder in a locality, council may recommend conditions to be placed on the liquor licence, but must justify the imposition of the conditions.*

*The Commissioner cannot condition matters outside OLGR's jurisdiction, trial periods or non-enforceable or overly burdensome requirements.*

In situations where there is insufficient evidence to refuse the grant of a licence or approval, the Commissioner has the authority under the Liquor Act to impose conditions which are designed to mitigate highlighted concerns. In such scenarios, the council may outline the problems so that OLGR can formulate appropriate conditions **or** the council may recommend certain conditions when making comment.

Conditions which place unjustifiable and disproportionate financial burden on an applicant will fail the test of reasonableness. Further, conditions requiring compliance with other regulatory regimes are not relevant (e.g. adherence to the fire safety legislation).

If the council recommend conditions, such conditions must be justified and:

- be relevant to the Liquor Act
- be targeted to address identified issues or reasonably foreseeable concerns
- be capable of practical application
- be worded in a manner that would be easily understood by the licensee
- permit enforcement of the condition by police and OLGR officers
- should not place an unreasonable burden on the applicant.

Generally, the Commissioner can only impose conditions that are relevant to the Liquor Act. These often include conditions relating to trading hours, management practices, security, noise limits, signage etc. In circumstances where liquor related development approval conditions have been imposed (for example, restrictions on use of outdoor areas after a particular time), such conditions may be replicated on the liquor licence.

Conditions must also target an identified deficiency at the premises. If there are no concerns raised about the premises, and there is no adverse history, the Commissioner is unlikely to contemplate the imposition of premises specific conditions.

All recommended conditions must be reasonable and capable of practical implementation. Conditions cannot be so complex that to follow them to the letter is impractical or in effect,



prevents a licensee from trading according to its principal activity. Plain language is essential, with a minimum of technical terms.

While conditions recommended by the council are carefully considered by the OLGR, they are a recommendation. The Commissioner respectfully reserves the right to modify or not adopt such recommendations, in accordance with the Commissioner's discretion and as required by law.

## 9. Council report format

*The format for council comment is up to the individual local authority, however, the report should include the grounds upon which any objection is made and the facts, evidence or reasons upon which the recommendation is based.*

As previously outlined, council comment is important for the Commissioner in identifying concerns in relation to applications under the Liquor Act and to ensure informed and defensible decisions are made.

In considering your comments, including the likelihood of adverse health, public safety and amenity issues, the Commissioner may consider a range of matters under sections 128A and B of the Liquor Act, including the:

- disbursement of persons leaving the premises
- availability of public transport before, during and after the hours of operation
- nature and level of noise from the premises
- likelihood of violence, vandalism, drunkenness, disorderly or offensive behaviour.

Further, the Commissioner may consider the imposition of conditions under section 128C of the Liquor Act including:

- security arrangements
- noise abatement measures
- responsible practices related to the service, supply or promotion of liquor.

It is suggested that the following format be utilised as a template for a police report to OLGR:

### Amenity

- Consider the location of the premises, including describing the site and surrounding area;
- Are the surrounding premises of a similar nature?
- Identify sensitive facilities such as residential dwellings, drug and alcohol centres, schools, places of worship, etc that are in the immediate area and any likely sources of objection to this application;
- Identify impact on nearby facilities/residents involving:
  - entertainment/patron noise:

- Will patrons congregate in or around premises that would cause disturbance to neighbours?
    - Any footpath dining issues and outdoor areas?
  - patron dispersal issues:
    - What's the likely path of people leaving the premises?
    - Patrons loitering in the neighbourhood
    - Vandalism and destruction of property
    - Will roads, footpaths or other thoroughfares be affected by the dispersal of patrons?
  - transport:
    - Location of nearest taxi rank, bus stop, train station, etc.
    - Car parking issues
  - safety issues:
    - lighting – internal and external
    - external security
    - proximity of parks
    - surveillance cameras
    - staff communication systems/inter venues
    - roaming security to ensure roads, footpaths or other thoroughfares are not obstructed.
- Is the premises in the Brisbane City Council (BCC) area and have different requirements? If it is an existing premises, does it have BCC related conditions?
- Is the premises in a Safe Night Precinct (SNP) area?
- Consider if the above amenity issues will be impacted any further due to the trading hours that have been requested (if applicable). Whilst it may be considered that the premises can sustain the type of venue and associated patronage during normal trading hours, the adverse impact on the nearby area may become excessive if trading hours past midnight are requested.
- Identify any actions that could be taken to remedy any identified issues. This can include:
  - restricting certain areas of the premises later in the evening; restricting the availability of liquor on and from the premises, including the type or quantity of liquor that may be sold on the premises;
  - lockout, etc;
  - specific conditioning of a licence to include or require –
    - responsible practices about the service, supply and/or the promotion of liquor
    - security to roam the proximity of the premises to discourage public urination, obstruction of roads and footpaths, vandalism, etc.
    - closed-circuit television equipment to be used at stated places on the licensed premises or a stated number of security staff by reference to the number of patrons at the premises
    - the use of courtesy buses

- Photographs, maps and any other details that you consider may be appropriate.

### **Problems associated with existing licensed premises in the locality**

(including the applicant premises, if it is already existing)

- Issues concerning 'precinct wide' impacts on the local community
- Include adverse patron behaviour outside the premises, such as disorderly, riotous, threatening, indecent, offensive or insulting behaviour occurring in the locality and which particular premises the behaviour is directly associated with
- Is there a history of public urination, vomiting or defecation in the immediate area from patrons of the existing premises?
- Is it likely that the granting of this application will exacerbate existing problems?

### **Objection**

If recommending the refusal of the application, state the justification for such a recommendation, for example:

*"Based on the evidence listed in this report, I object to the granting of this application on the grounds that the amenity, quiet or good order of the locality will be lessened and there are no suitable conditions that can be imposed to nullify these grounds".*

If recommending the imposition of conditions, state the justification for such a recommendation, for example:

*"Based on the evidence listed in this report, I object to the granting of this application on the grounds that the amenity, quiet or good order of the locality will be lessened if the above conditions are not imposed to nullify these grounds".*

### **Attachments**

- Statements by officers
- Court documents (for example, breaches of development approvals)
- CCTV footage
- Any other evidence contained in this document or otherwise.

## **10. Contacting OLGR**

If you require any assistance or have concerns about applications received, please contact either the Brisbane office or the relevant regional office.

All permanent applications are processed at the Brisbane office and temporary (one-off) applications are processed by both the Brisbane office and regional offices depending on the location of the applicant premises.

For confirmation of which OLGR offices process temporary (one-off) applications received throughout the state, please refer to Appendix 2: OLGR Regional Boundaries on page 35.

### **Regional offices**

Location and contact details are available at:

[www.justice.qld.gov.au/corporate/about-us/liquor-gaming/contact-us/regional](http://www.justice.qld.gov.au/corporate/about-us/liquor-gaming/contact-us/regional)

**Brisbane**

Telephone: (07) 3224 7131  
Facsimile: (07) 3227 7047  
E-mail: [liquorandgaminglicensing@justice.qld.gov.au](mailto:liquorandgaminglicensing@justice.qld.gov.au)  
Mail: Locked Bag 180, City East, Qld 4002  
Managers: Manager Licensing (temporary applications); and  
Manager Licensing (permanent applications)  
Senior Managers: Director Licensing  
General Manager Licensing

## 11. Additional information

### Inside Liquor and Gaming Newsletter

An ideal way for council to keep informed of changes and happenings in the liquor and gaming area is to subscribe to *Inside Liquor and Gaming Newsletter*, a monthly newsletter published by OLG that contains the latest information relevant to Queensland's liquor and gaming industries. Council officers can subscribe to the newsletter at:

<https://www.business.qld.gov.au/industries/hospitality-tourism-sport/liquor-gaming/liquor/newsletter>

When a new edition of the newsletter is published, an alert will be sent to your email address notifying you of the update.

Council officers may also wish to download a copy of the *Towards Best Practice for Safety in Licensed Venues* publication. This document is a comprehensive guide for licensees that outlines risk management practices and procedures. It includes information about legislative obligations and suggestions for adopting best safety practices, and highlights what licensees should be doing to help mitigate any risk or concern identified by police or council.

Council officers can download the document at:

<https://www.business.qld.gov.au/industry/liquor-gaming/liquor/compliance-licensees/patron-staff-safety>

Council are also strongly encouraged to regularly attend (when available) LIAG's (Liquor Industry Action Group) and SNP meetings. These meetings are usually held at regular intervals and allow for face to face contact with representatives from the liquor industry and OLG officers.

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## Appendix 1: Relevant Legislation

### *Liquor Act 1992*

#### **105B Application for adult entertainment permit requires local government consent**

- (1) An application for an adult entertainment permit may be made only with the consent of the local government for the area in which the relevant premises are located.
- (2) The application must include, or be accompanied by, the written consent or written evidence of the consent.
- (3) However, subsection (1) does not apply to an application for an adult entertainment permit if—
  - (a) an adult entertainment permit (the *previous permit*) was previously granted for the relevant premises; and
  - (b) the application is made before, or no later than 30 days after, the previous permit expires.
- (4) Also, subsection (1) does not apply if the local government abstains, in writing, from consenting to the application.
- (5) In this section—

*consent*, of a local government to an application for an adult entertainment permit, does not include a development approval for the relevant premises given by the local government under the *Sustainable Planning Act 2009*.

*relevant premises* means the premises in relation to which the adult entertainment permit is sought.

**107D Restriction on grant of adult entertainment permit**

- (1) The commissioner may grant an application for an adult entertainment permit only if the commissioner is satisfied that—
  - (a) the applicant is a suitable person to provide adult entertainment in licensed premises (the *relevant premises*) or premises to which a community liquor permit or restricted liquor permit relates (also the *relevant premises*); and
  - (b) after considering that, if the application were granted, the combined total of licensed brothels and premises permitted to provide adult entertainment in the locality in which the relevant premises are situated would not substantially affect the character of the locality; and  
*Example of character of locality being substantially affected—*  
locality becoming a 'red light district'
  - (c) the proposed approved area for the entertainment conforms with the requirements of section 103Q; and
  - (d) the applicant has submitted a proposed management plan in the approved form that provides for any matters prescribed under a regulation.
- (2) Without limiting subsection (1), the commissioner must have regard to any comments of the relevant local government or police district officer received under section 117(2)(a).  
  
been, the subject of a control order or registered corresponding control order; and

**117 Advice about application etc.**

- (1) As soon as practicable after the commissioner receives a relevant application, the commissioner must tell the following about the application—
  - (a) the local government for the relevant locality;
  - (b) if the application is for an extended trading hours approval or an adult entertainment permit—the police district officer for the locality.
- (2) The local government or police district officer may—
  - (a) comment on the reasonable requirements of the public in the locality; or
  - (b) object to the grant of the relevant application on the grounds that the amenity, quiet or good order of the locality would be lessened.
- (3) The comment or objection must be given to the commissioner—
  - (a) if the relevant application was required to be advertised—on or before the last day for filing objections to the application; or
  - (b) in any other case—within 14 days of receiving advice about the application, or within a longer time stated by the commissioner in the advice.
- (4) In this section—

*relevant application* means—

  - (a) an application for which a community impact statement must be given under section 116; or
  - (b) an application for a community club licence; or
  - (c) an application for an adult entertainment permit; or
  - (d) another application the commissioner reasonably considers may adversely affect the amenity, quiet or good order of a locality.

**117A Comments about particular applications**

- (1) As soon as practicable after the commissioner receives an application relating to a restricted area, the commissioner may ask any 1 or more of the following to give the commissioner comments about the application—
  - (a) the local government that may exercise jurisdiction in the area;
  - (b) the police district officer for the locality to which the application relates;
  - (c) if the area is or is in a community area—the community justice group for the area;
  - (d) the chief executive of the department that administers the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.
- (2) In deciding the application, the commissioner must have regard to comments received from the entities mentioned in subsection (1).

*Note—*

Also, see section 121 (Matters the commissioner must have regard to).

**121 Matters the commissioner must have regard to**

- (1) In deciding whether to grant the application, the commissioner must have regard to—
  - (a) if a community impact statement is required to be given for the application under section 116—
    - (i) the matters mentioned in section 116(8); and
    - (ii) the public interest in so far as it relates to the main purpose of this Act mentioned in section 3(a) or the impact on the amenity of the community; and
  - (b) objections made to the grant of the application; and
  - (c) comments from the local government for the area to which the application relates; and
  - (d) for an application for an extended trading hours approval mentioned in section 86(1), an application for an adult entertainment permit or an application relating to a restricted area—comments from the police district officer for the locality to which the application relates; and
  - (e) if the application relates to a community area—comments from the community justice group for the area and the chief executive of the department that administers the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*; and



- (f) the impact on the amenity of the community concerned; and
  - (g) for an application for an extended trading hours approval mentioned in section 86(1)—
    - (i) the previous conduct of the applicant in discharging any duties under this Act previously placed on the applicant, especially for the premises for which the extension is sought; and
    - (ii) the applicant's ability to control the noise and behaviour of the number of persons that could reasonably be expected to be on and in the vicinity of the premises if the extension were granted; and
    - (iii) the suitability of the premises and its facilities for the purpose for which the extension is sought; and
  - (h) any relevant conditions imposed on a development approval, given by a local government under the *Sustainable Planning Act 2009*, that relates to premises the subject of the application.
- (2) In this section—  
*objection* includes an objection made by the Minister under section 119A.

#### **128A Application of div 1A**

- (1) This division applies to the commissioner for the purpose of making a decision under this Act, in relation to relevant premises, about the effects of a thing on—
  - (a) the health and safety of members of the public; or
  - (b) the amenity of a community or locality.
- (2) This division does not limit the matters the commissioner may consider in making the decision.
- (3) In this section—  
*relevant premises* means —
  - (a) licensed premises; or
  - (b) premises to which a permit relates; or
  - (c) premises for which an application for a licence or permit has been made.

**128B Particular matters the commissioner may consider**

- (1) The matters that the commissioner may consider include—
  - (a) the disbursement of persons leaving the relevant premises; and
  - (b) the availability of public transport during, and immediately before or after, the hours of operation of the relevant premises; and
  - (c) the nature and level of noise from the relevant premises.
- (2) The commissioner may consider whether any of the following has happened, and the likelihood of any of the following happening, in relation to the behaviour of persons in or near the relevant premises—
  - (a) violence;
  - (b) vandalism;
  - (c) nuisance;
  - (d) drunkenness;
  - (e) public urination, vomiting or defecation;
  - (f) disorderly, riotous, threatening, indecent, offensive or insulting behaviour;
  - (g) noisiness;
  - (h) obstruction of a road, footpath or other thoroughfare.

**128C Conditions relating to public safety or amenity**

The conditions that the commissioner may impose on a licence or permit under part 5 to give effect to the main purpose of this Act mentioned in section 3(a) include a condition about any of the following—

- (a) the days on which, or times during which, liquor may be sold on the relevant premises;
- (b) the availability of liquor from the relevant premises, including the type or quantity of liquor that may be sold on the relevant premises;
- (c) the adoption of stated responsible practices about service, supply or promotion of liquor;
- (d) the adoption of stated noise abatement measures;

*Examples—*

- a condition relating to the structure of the premises
- a condition about the conduct of the business at the premises

- (e) the adoption of stated security arrangements.

*Examples—*

- a condition requiring a stated number of security staff by reference to the number of patrons in the relevant premises
- a condition requiring closed-circuit television equipment to be used at stated places on the licensed premises

## *Liquor Regulation 2002*

### **4 Particulars to accompany applications relating to licences—Act, s 105(1)(c)**

- (1) Each application for a licence must be accompanied by the following particulars—
- (a) a plan of the premises to which the application relates drawn to a scale of 1:100 showing the general layout of the premises;
  - (b) a plan showing the location of the premises to which the application relates in relation to adjacent premises;
  - (c) for an applicant who is an individual, evidence, satisfactory to the commissioner, of the applicant's identity;
  - (d) evidence, satisfactory to the commissioner, that using the premises for the licence to which the application refers is permitted under the planning scheme of the relevant local government for the premises;
  - (e) evidence, satisfactory to the commissioner, that sanitary conveniences at the premises comply with the provisions of the Building Code of Australia relating to sanitary premises.
- (2) Each of the following applications must be accompanied by the particulars stated for the application—
- (a) for an application for a commercial hotel licence, or a subsidiary on-premises licence, for which the principal activity of the business conducted under the licence is the provision of meals prepared, and served to be eaten, on the licensed premises—a typical menu of the meals;
  - (b) for an application for a licence other than a community club licence, a community other licence or a producer/wholesaler licence—a description of the general nature and character of the premises to which the application relates;
  - (c) for an application for a licence relating to premises on land—

- (i) a copy of the registered plan of survey for the land; and
  - (ii) a copy of the certificate of title for the land or other reasonable evidence, satisfactory to the commissioner, of the description of the land and identity of the registered owner or lessor of the land; and
  - (iii) a description of each proposed licensed area on the premises;
  - (d) for an application for a licence relating to premises where entertainment is to be provided—
    - (i) details of the type and nature of the entertainment; and
    - (ii) a written assessment about the expected acoustic qualities of the proposed premises;
  - (e) for an application for a transfer of a licence if the transferee is an individual—evidence, satisfactory to the commissioner, of the transferee’s identity;
  - (f) for an application for a transfer of a producer/wholesaler licence—a copy of the licensee’s transactions record for the period from the immediately preceding 1 July, or the day the licensee obtained the licence, whichever is later, to the day on which the application is made.
- (3) Despite subsection (2)(d), the commissioner may require an applicant for a licence to give the commissioner a report about the acoustic qualities of premises when the premises are completed if noise from any source is, or is likely to be made, at a level in excess of 75dB(C) fast response when measured about 3m from the source.
- (4) An assessment or report about the expected acoustic qualities, or acoustic qualities, of premises must—
- (a) be made by a person who has qualifications, training or experience in providing assessments or reports about the acoustic qualities of premises; and
  - (b) state the person’s qualifications, training or experience.
- (5) In this section—
- Building Code of Australia*** see the *Building Act 1975*, section 12.

**5 Timing for making applications**

- (1) An application for any of the following must be made at least 21 days before the day stated in the application as the day on which the approval, permit or variation is proposed to take effect—
  - (a) a car park approval;
  - (b) a community liquor permit;
  - (c) a craft beer producer permit;
  - (d) an extended hours permit;
  - (e) a restricted liquor permit;
  - (f) a temporary variation of trading hours or licence conditions for 1 occasion or event.
- (2) An application for a commercial public event permit must be made at least 28 days before the day stated in the application as the day on which the permit is proposed to take effect.
- (3) An application for an adult entertainment permit for 1 occasion must be made at least 8 weeks before the day stated in the application as the day on which the permit is proposed to take effect.

The current version of the Liquor Act 1992, Liquor Regulation 2002 and Liquor (Approval of Adult Entertainment Code) Regulation 2002 can be accessed at –

[www.legislation.qld.gov.au/ACTS\\_SLs/Acts\\_SL\\_L.htm](http://www.legislation.qld.gov.au/ACTS_SLs/Acts_SL_L.htm)

The current version of the Wine Industry Act 1994 and Wine Industry Regulation 2009 can be accessed at –

[www.legislation.qld.gov.au/ACTS\\_SLs/Acts\\_SL\\_W.htm](http://www.legislation.qld.gov.au/ACTS_SLs/Acts_SL_W.htm)

## Appendix 2: OLGR regional boundaries

Office	Postcode
Brisbane Head Office	4000 - 4125 4127 - 4133 4151 - 4174 4178 - 4179 4183 - 4207 4231 - 4269 4276 - 4284 4286 4288 - 4308 4311 - 4349 4500 - 4516 4520 - 4549
Cairns Regional Office	4849 4851 - 4999
Hervey Bay Regional Office	4570 - 4571 4580 - 4613 4615 4619 - 4676
Mackay Regional Office	4737 - 4805
Maroochydore Regional Office	4517 - 4519 4550 - 4569 4572 - 4579
Mount Isa Regional Office	4482 4823 - 4834
Rockhampton Regional Office	4472 - 4478 4481 4677 - 4736
Southport Regional Office	4208 - 4230 4270 - 4275 4285 4287 4309 - 4310
Toowoomba Regional Office	4350 - 4471 4479 - 4480 4483 - 4499 4614 4616 - 4618
Townsville Regional Office	4806 - 4822 4835 - 4848 4850