

8.2 Policy (New) - Liquor Licence Applications.DOC

POLICY NAME: LIQUOR LICENCE APPLICATION

POLICY REF:

MEETING ADOPTED: Resolution No.

POLICY HISTORY:



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OBJECTIVES

To provide clear guidelines for the processing of a notification of a liquor licence application within Ballina Shire.

The objective of this policy is to establish a framework for the consideration of a notification of a liquor licence application when exercising Council's powers, functions and duties under the Liquor Act 2007 (NSW).

This policy applies to all notifications to Council of liquor licence applications that have been submitted to the Independent Liquor and Gaming Authority for an amendment, extension, or grant of a new liquor licence within Ballina Shire.

This policy:

- Provides an administrative framework to assist council in processing notifications of liquor licence applications.
- Provides information to applicants, licensees and other interested parties about Council's role and policy when dealing with notifications of liquor licence applications.
- Outlines how the liquor laws can be used to achieve positive outcomes for the community.

BACKGROUND

Legislative Requirements

This policy will assist in determining the likely requirements that will need to be met under the planning laws, Environmental Planning and Assessment Act 1979 (NSW) and the Liquor Act 2007 (NSW), for Liquor licensing proposals.

Applications for Liquor licences are made to the Independent Liquor and Gaming Authority (Authority). The Authority determines liquor licence application and disciplinary outcomes in NSW. There is a legal requirement for the applicant to also provide a copy of the application to the local Council and the NSW Police. The subsequent and ongoing enforcement and policing of a liquor licence is the responsibility of the NSW Police.

Community Impact Statement

A community impact statement (CIS) is prepared by a potential applicant for certain liquor licences or licence-related authorisations and is the first opportunity for the community to influence the outcome of a liquor licensing proposal. The CIS is prepared before the liquor licensing application is made. The intention of the CIS is to enable the Authority to consider the likely impact of the proposed licence or authorisation on the local community and gauge the level of community support for the proposal.

The liquor laws require potential applicants to consult with local Councils as part of the CIS process. Applicants must provide a notice to the Council for this purpose. See table 2.3.1 for types of licences that require a CIS.

Liquor Licence Applications

Local Councils and the NSW Police are required to be notified by the applicant within two working days of an application being lodged.

The notification of an application provides Council with an opportunity to comment on a liquor licensing proposal.

Submissions can be made by the Council (and any other person) to the Authority on these applications within 30 days of the application being lodged or 14 days in the case of an application for a limited licence. Any submissions that are made must be taken into account by the Authority.

Types of Liquor Licences

There are six categories of liquor licences. These are shown in table 2.3.1 below.

Table 2.3.1

Type of Licence	Type of Activity	Community Impact Statement (CIS) required
Hotel (including a general bar licence)	Hotel, bar, tavern	Yes
Club	A registered club selling liquor to members and their guests	Yes
On-Premises	Can be tailored for one or more types of business activities including a restaurant, public entertainment venue, motel, function centre and other venues where liquor is consumed on the premises	Yes, but only where the on-premises licence relates to a public entertainment venue (other than a cinema or theatre), or an application is made for a primary service authorisation for an on-premises licence
Packaged Liquor	Liquor stores, internet operators selling liquor to the public	Yes
Producer/wholesaler	Brewer, distiller winemaker, wholesaler	No
Limited	Functions held by non-profit organisations, as well as special events and trade fairs	No

RELATED DOCUMENTATION

Related documents, policies and legislation:

- *Liquor Act 2007* (NSW) and subordinate regulations.
- *Environmental Planning and Assessment Act 1979* (NSW) and subordinate regulations.

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- *Local Government Act 1993 (NSW)* and subordinate regulations.
 - *Crown Lands Act 1989 (NSW)* and subordinate regulations.
 - *Roads Act 1993 (NSW)* and subordinate regulations.
 - *A Guide to the liquor Laws for local Councils – Office of Liquor, Gaming and Racing (2009)*.
 - *Ballina Shire Council Alcohol Regulation on Public Land Policy*.
 - *Ballina Shire Council Commercial Use of Footpath Policy*.
 - *Ballina Shire Council Liquor Licence Procedure*.

SCOPE OF POLICY

This policy applies to:

- Council employees
- Community members
- Sporting organisations
- Commercial operators

DEFINITIONS

The following defined terms are used in the policy:

Alfresco Dining	The use of an outdoor area for the service and consumption of food and drink.
Applicant	In relation to a liquor licence, one who applies for or requests something under the <i>Liquor Act 2007 (NSW)</i>
Authority	Independent Liquor and Gaming Authority
CIS	Community Impact Statement
Council	Ballina Shire Council
Council Land	All land vested in Council – except roads or lands to which the Crown Lands Act 1989 applies.
Crown Land	Land vested in the Crown that is dedicated for public purpose.
EP& A	The <i>Environmental Planning and Assessment Act 1979 (NSW)</i> .
Footway	Means that part of a road as is set aside or formed as a path or way for pedestrian traffic (whether or not it may also be used by bicycle traffic).

Footway Restaurant	Afresco dining establishment on a public road for which approval is required under Section 125 of the Roads Act 1993 (NSW).
Functions	Any dinner, ball, convention, seminar, sporting event, race meeting, exhibition, performance, trade fair or other fair, fete or carnival, or any other event or activity, that is conducted for public amusement or entertainment or to raise funds for any charitable purpose
Licence	Means a licence under the <i>Liquor Act 2007</i> (NSW)
Licensed Premises	Means the premises to which a licence relates
Licensee	Means the holder of a licence under the <i>Liquor Act 2007</i> (NSW)
Liquor Accord	Means a local liquor accord, precinct liquor accord or community event liquor accord
Local Consent Authority	Ballina Shire Council.
Public Road	Means: (a) any road that is opened or dedicated as a public road, whether under this or any other Act or law, and (b) any road that is declared to be a public road for the purposes of this Act.

POLICY

The policy seeks to establish criteria for considering all notifications of applications relating to two broad categories:

1. Facilities on Council land. Whether Council owns the land or is the Trust manager of a Crown Reserve; and
2. Premises on private land, including but not limited to hotels, clubs, cafes or restaurant

Council's Role and Criteria for Processing Notifications of Liquor Licence Applications

The following criteria will assist Council's processing of notifications of liquor licensing applications.

All notifications of liquor licence applications within the Ballina Shire will be coordinated by Council's Compliance Section, Regulatory Services, in line with Council's Liquor Licence Procedure.

It is not Council's role to undertake social impact assessments of the underlying development once a liquor licence has been submitted, as this has already been done at the development application stage and/or within a CIS, if required.

Any further technical advice will be sought from other sections within Council, if required.

Planning Requirements

When processing a notification of a liquor licence, Council will consider the land use and there are generally three types of development consent status that will be looked at. These are:

- Development consent is required and in place.
- Development consent is required but not in place.
- Development consent is not required to permit the proposed activity.

Council will generally support an application if development consent is required and is in place and the application is consistent with the conditions of consent, such as hours of operation.

If development consent is required but not in place then Council may not support this application and will inform the Authority of this.

In some cases development consent is not required to permit the proposed activity and Council may support these applications based on merit.

Other factors that may be considered by Council include but are not limited to:

- The size, location and nature of the premises.
- Whether the proposal will involve extended trading hours (beyond the standard trading period) or an overall increase in the maximum capacity of the premises.
- Whether other planning or environmental approvals are required to operate the proposed licensed premises.
- The current use of the premises.
- If there is a potential for undue disturbance to the neighbourhood of the proposed licensed premises caused by the operation of the premises and/or the conduct of patrons;
- Increased social and recreational opportunities;
- Increased employment and economic activity.
- Alcohol-related anti-social behaviour or crime;
- Increases in pedestrian and motor traffic numbers;
- Litter and other pollution associated with the operation of the premises.

Additional criteria for assessing applications relating to land owned or managed by Council

- Leases or Licenses issued by Ballina Shire Council and the Crown specify that the permitted Liquor Licence Applications must be consistent with these licence provisions.
- If a Lease or Licence is not held by the organisation they are required to liaise with Council prior to lodging a liquor licence application.

- All applicants relating to a sporting club within Ballina Shire are to register their club with the Good Sports Program.
- All Liquor Licence applications that are on land owned or managed by Ballina Shire Council will be referred to Council's Open Spaces and Reserves Manager and Council's Commercial Services Section for comments and then will be assessed for inclusion in any submission to the authority.

Licence Conditions and Trading Hours**Table 3.2.1**

Type of Licence	Ballina Shire Council Licence Conditions	Liquor Act 2007 Standard Hours
Hotel (including a general bar licence)	<p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council.</p> <p>Where no trading hours have been regulated by the terms and conditions of development consent, the Council will check that the proposed hours are suitable given the particular circumstances of each application having regard to maintaining appropriate local amenity and will not exceed the Standard trading hours as set by the Liquor Act 2007 and any factors within the CIS.</p> <p>If a liquor licence, as applied, is within a public footway and considered to be Alfresco Dining or a Footway restaurant then the appropriate approval must be obtained in line with Council's Commercial Use of Footpath Policy.</p>	<p><i>Standard hotel trading hours are 5am to midnight Monday to Saturday, and 10am to 10pm on Sunday.</i></p> <p><i>Trading restrictions apply between midnight Sunday and 5am Monday, and on Good Friday and Christmas Day.</i></p>
Club	<p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council.</p> <p>Where no trading hours have been regulated by the terms and conditions of development consent, the Council will check that the proposed hours are suitable given the particular circumstances of each application having regard to maintaining appropriate local amenity and will not exceed the Standard trading hours as set by the Liquor Act 2007 and any factors within the CIS.</p> <p>If a liquor licence, as applied, is within a public footway and considered to be Alfresco Dining or a Footway restaurant then the appropriate approval must be obtained in line with Council's Commercial Use of Footpath Policy.</p>	<p><i>- Newly licensed registered clubs are subject to the standard trading period 5am to midnight Monday to Saturday, and 10am to 10pm on Sunday.</i></p>
On-Premises	<p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council.</p> <p>Where no trading hours have been regulated by the terms and conditions of development consent, the Council will check that the proposed hours are suitable given the particular circumstances of each application having regard to maintaining</p>	<p><i>Most on-premises licences are subject to the standard trading period 5am to midnight Monday to Saturday, and 10am to 10pm on Sunday.</i></p>

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	<p>appropriate local amenity and will not exceed the Standard trading hours as set by the Liquor Act 2007 and any factors within the CIS.</p> <p>If a liquor licence, as applied for, is within a public footway and considered to be Alfresco Dining or a Footway restaurant then the appropriate approval must be obtained in line with Council's Commercial Use of Footpath Policy.</p>	
Packaged Liquor	<p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council.</p> <p>Where no trading hours have been regulated by the terms and conditions of development consent, the Council will check that the proposed hours are suitable given the particular circumstances of each application having regard to maintaining appropriate local amenity and will not exceed the Standard trading hours as set by the Liquor Act 2007 and any factors within the CIS.</p>	<p><i>Standard liquor store trading hours are 5am to midnight Monday to Saturday, and 10am to 10pm on Sunday. Applications for extended trading hours on a Sunday are subject to a Community Impact Statement. Takeaway sales are not permitted on Good Friday and Christmas Day. Packaged liquor licences cannot trade between midnight and 5am on any day.</i></p>
Producer/ wholesaler	<p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council.</p> <p>Where no trading hours have been regulated by the terms and conditions of development consent, the Council will check that the proposed hours are suitable given the particular circumstances of each application having regard to maintaining appropriate local amenity and will not exceed the Standard trading hours as set by the Liquor Act 2007.</p>	<p><i>Tastings of the 'licensee's product' can be conducted at any time.</i></p> <p><i>Retail takeaway sales of the 'licensee's product' can be made to the public during the following hours:</i></p> <p><i>Monday – Saturday 5am – midnight</i></p> <p><i>Sunday – 10am – 10pm.</i></p>
Limited – Multi Function or Single Function	<p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council.</p> <p>Where no trading hours have been regulated by the terms and conditions of development consent, the Council will check that the proposed hours are suitable given the particular circumstances of each application having regard to maintaining appropriate local amenity and will not exceed the Standard trading hours as set by the Liquor Act 2007.</p> <p>If a liquor licence, as applied for, is within a public footway and considered to be Alfresco Dining or a Footway restaurant then the appropriate approval must be obtained in line with Council's Commercial Use of Footpath Policy.</p>	<p><i>Trading hours for a limited licence are determined by the Authority and will generally reflect the duration and nature of each function. Trading is not permitted between 3am-6am.</i></p> <p><i>In the case of Surf life saving clubs -club social functions, Liquor must not be made available at the function at any time before 12 noon or</i></p>

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		<i>after 10 pm on the day on which the function is held and liquor must not be made available at the function for a period of more than 4 hours</i>
Limited - Multi Function or Single Function - Sporting Clubs within Ballina Shire	<p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council.</p> <p>Trading hours are to comply with any Development Consent issued by Ballina Shire Council or if in the case that no Development Consent is in place and/or is not required or no trading hours are specified within the Development Consent then trading under any licence is to cease by 9pm unless a submission on the preferred trading hours has been made to the Authority by the Council having regard for the circumstances of each case.</p>	<i>Trading hours for a limited licence are determined by the Authority and will generally reflect the duration and nature of each function. Trading is not permitted between 3am-6am.</i>
	<p>In relation to sporting club match day events, all nominated days must be held on Club Game days only (including match final games) and approval can be sought for liquor to be sold at up to 52 functions in a 12-month period only.</p> <p>Any function that is not held on a Game day will need to be specified on the application with all of the function details including hours of trading or be submitted on a separate application to the Authority and be included in the 52 Functions.</p> <p>These additional functions will be considered individually on their merit and submissions may be made to the Authority by the Council detailing matters of local concern.</p>	
<p>General</p> <p>All liquor licences must comply with the requirements set by the Liquor Act 2007.</p> <p>Notes:</p> <p>For existing licences:</p> <ul style="list-style-type: none"> • Council acknowledges that many existing licences may be entitled to trade for longer than the above hours. • If no trading hours are specified within the Development Consent and the applicant is requesting to extend their trading hours outside their current Liquor Licence conditions then a Development Application may need to be submitted to Council. 		

Complaints Made Against Licensed Premises

Under the Liquor Act 2007, a disturbance complaint can be made by Councils, Police or three or more residents to the Director General of The New South Wales Department of Trade and Investment (NSW Trade & Investment), Regional Infrastructure and Services where the quiet and good order of a neighbourhood is unduly disturbed by the:

- Manner in which the business of the licensed premises is conducted; and/or
- The behaviour of patrons after leaving the licensed premises (such anti-social behaviour and alcohol related violence).

A disturbance complaint must be supported by a statutory declaration which is available from the NSW Office of Liquor, Gaming and Racing website.

After receiving a complaint, the Director General will consider the best way of addressing the issues raised by the complainant.

Where a complaint is determined under the disturbance complaint provisions of the Liquor Act, the Director-General can:

- Impose a condition on the liquor licence
- Vary or revoke an existing condition on the liquor licensee
- Adjourn a complaint conference (if held) to enable the licensee to implement any undertakings given to the Director-General to address the complainant's concerns and to enable the effectiveness of those undertakings to be reviewed.
- Issue a warning
- Take no further action.
- The types of conditions that can be imposed on a liquor licence include but are not limited to:
 - Noise emission restrictions
 - Trading restrictions including lockouts/curfews
 - Restrictions on the sale/supply of liquor
 - Requiring security, or additional security patrols, in and around a licensed premises venue
 - Requiring a licensee to participate in a local liquor accord.

In the event of a complaint from a member of the public relating to licensed premises within the Ballina Shire, these matters will be recorded to Richmond Local Area Command, Licensing Police.

Liquor Accord

In NSW Liquor Accords are voluntary industry-based partnerships working in local communities to introduce practical solutions to liquor-related problems. They reach agreements on ways to improve the operation of licensed venues so that entertainment venues and precincts are safe and enjoyable.

All new applicants will be encouraged to join the Ballina Liquor Accord.

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REVIEW

The Policy is to be reviewed every four years.