Part 1
Executive Summary

Local Government Town Planning Guideline for Alcohol Outlets
Disclaimer:

This Guideline does not replace legal advice, and Local Governments developing any planning mechanisms, local planning scheme provisions or local planning policies as suggested in this Guideline are encouraged to seek legal advice specific to their local circumstances.
Executive Summary

- This is Part 1 of a three-part Local Government Town Planning Guideline for Alcohol Outlets. This part is the Executive Summary being an overview of Part 2 and Part 3.
- The other parts of this Guideline are:
  - Part 2 – Guideline providing a model for consideration for how Local Governments can make a difference through town planning; and
  - Part 3 – Background and Processes providing an introduction and background to the project and covers the processes specifically relating to liquor licensing and planning.
- This Guideline has been developed in response to requests for alcohol management assistance from Local Government. It is a part of an ongoing collaborative Local Government Alcohol Project (LGAP) since 2005, between the Western Australian Local Government Association (WALGA) and the Drug and Alcohol Office (DAO) with the assistance of the planning consultancy, Planning Context.
- The LGAP is intended to assist Western Australian Local Governments by promoting a prevention and risk management approach to existing Local Government activities, responsibilities and approval processes regarding alcohol. Importantly it is acknowledged that all spheres of government have a role in alcohol management.

Introduction

- In a planning sense, alcohol outlets are often perceived as bringing vibrancy, however, Local Governments are increasingly seeking to reduce alcohol-related harm and problems in their community.
- Considerations of vibrancy need to be balanced with providing safe and community orientated places where there is a structured approach to alcohol management and mitigating alcohol-related harms.

Objective and Purpose

- The objective of this Local Government Town Planning Guideline for Alcohol Outlets is:
  
  **To provide Local Government with advice on the potential use of town planning instruments and processes to help control and manage alcohol-related development through appropriate strategic planning processes and more specific development mechanisms.**


A Resource Informed by Planners

- Quantitative research involving Local Government Planners throughout Western Australia in 2012 and workshops in 2013 has informed the development of this resource and provides a more formal evidence base from which to complement existing work in this area, and to develop future strategies for Local Governments and Planners in particular.

Alcohol Management: Not just a Local Government Responsibility

- Reducing alcohol-related harm is a whole of community responsibility including all levels of Government, law enforcement agencies, the health and welfare sector, local communities, families and individuals.
• Local Government alcohol management action occurs alongside a comprehensive range of targeted and whole-of-population approaches aimed at preventing and reducing alcohol-related problems in Western Australia.

Alcohol-related Issues and Local Government
• Managing and reducing the harms generated by alcohol occurs in the context of a complex society with a range of competing demands.
• Alcohol is not an ordinary commodity.
• Demand and supply factors influence drinking choices and related harm and ill-health.
• Local Government has some sphere of influence over supply factors through existing legislative and policy functions in planning.

Impact on Local Government Operations
• The problems associated with harmful alcohol use impact both directly and indirectly on Local Government operations in Western Australia. It is this level of government that is closest to its local community and sees many of the alcohol-related problems that are visible in the community. Some of the negative impacts can include:
  o Nuisance including noise and anti-social behaviour from intoxicated persons;
  o Infrastructure capacity problems including limited availability of transport and car parking for patrons and local residents;
  o Violence and perceived threats to safety;
  o Crime including vandalism, trespass and property damage;
  o Community ill-health; and
  o Costs of mitigation, management, reactive and responsive services.
• A reduction in alcohol-related problems (and thus long-term cost savings for Local Governments) is possible through the application of existing legislative and regulatory tools used by Local Governments in a manner that works to prevent the issues from recurring.

Planning and Alcohol Management
• There is a growing community demand for Local Government consideration of the impacts of planning decisions and bigger picture vision for future development relating to licensed premises.
• There is also debate in the Local Government and planning community regarding the role of planning in alcohol management and where the line of responsibility lies regarding the prevention and minimisation of alcohol-related problems.
• The focus of this Guideline is not the delegation of ‘responsibility’ but rather identifying proactive opportunity for those Local Governments seeking alcohol management planning options relevant to their community.
• This Guideline acknowledges the constraints of the planning system regarding alcohol management and seeks to support Local Governments within these constraints to be aware of available options to respond to alcohol-related matters, should they wish to.
• Through its connection with the local population, Local Governments create and action the vision for a community in terms of development which in turn helps to define a community in many ways. Where a liquor licence is located, its operational harmony with its surroundings and how many there are, all potentially impact on harm and ill-health outcomes for a community.
• While it is not the sole responsibility of Local Government to reduce alcohol-related problems in their community, there is merit in Local Government considering the aspects of its existing business that can be adapted to contribute to the prevention of alcohol-related issues in the community.
Planners: Part of a Whole-of-Organisation Approach

- A whole-of-organisation alcohol policy and management plan is one of the best ways for a Local Government to achieve a cost effective and positive approach to creating a safer, healthier community and town planning is an important sub-set of that approach.

The Role of Town Planning

- Planning and urban design is important in creating safe, healthy communities. Through understanding the needs and expectations of their community, Local Government has the ability to be influential in reducing the social, health, environmental and economic impacts of alcohol for the community.
- Drinking environments and the availability of alcohol are significant in shaping the way people drink and their associated behaviour. Use of planning policy and legislation to help prevent problems and encourage a more responsible drinking culture can be a cost effective strategy for Local Governments.

Key Alcohol Management Issues Relevant to Town Planning

- The main alcohol management issues identified for consideration in a planning context are:
  - cumulative impact;
  - trading hours and conditions;
  - existing and potential harm and antisocial behaviour; and
  - physical design.
- Each Local Government has a different planning scheme and other policies that are specific to their community. While Local Governments can influence whether or not a liquor licence type is permitted at a particular location, it is not always able to do so based on concerns regarding alcohol-related problems unless it has the appropriate scheme and policy provisions in place.
- The liquor outlet type, placement and the number that sell alcohol within a community are important planning considerations that have the potential to affect not only the general wellbeing and safety of a community, but also the future cost to a Local Government in managing and responding to resulting alcohol issues.
The Life of a Liquor Licence: Planning and Liquor Licence Approval Process

Planning Processes – Phase 1, Development Approval and Certification
• A liquor licence comes about through two different processes – the Local Government’s planning, building and health process (Phase 1) and the Department of Racing, Gaming and Liquor’s liquor licensing process (Phase 2). Each is governed by different legislation.
• Liquor licence applications cannot progress in Phase 2 without Section 39 and 40 certificates issued by Local Government (Phase 1).
• In addition to Phase 1, Local Governments have further opportunity in Phase 2 to influence a liquor licensing decision through objection, intervention and appeal.

Planning Framework
• Local Government planning involves a top down approach of applying State and regional planning strategy and policy to local situations. Local Government statutory planning is ultimately a regulatory function of its local strategies and is supported by local policies. Based on this foundation, it is recognised that both regulatory and non-regulatory facets of the local planning system can be used to play an important part in guiding, managing and controlling land use decisions involving alcohol-related development.
• There is no specific policy or guidance provided by the Western Australian Planning Commission or Department of Planning in relation to alcohol-related development in Western Australia, however, there are a number of State planning documents which have some relationship with this subject and should be considered (for example some reference in development control policies, planning bulletins and guidelines for designing out crime and anti-social behaviour).

Local Government Development Application and Approval Process
• Local planning schemes require development of land (including change in use) to first gain the approval of the Local Government (any exemptions to this are written into the scheme). There may be instances where a separate approval is also required under a region scheme. The major steps in the application and approval process start with the lodgement of an application and end with the possible review by the State Administrative Tribunal.
• Applications are assessed by planning staff considering the local planning scheme and policies, together with comments received during the consultation and referral process. Decisions are made on planning applications by Council, or an officer of Council under delegated authority, or by a Development Assessment Panel.

Determinations and State Administrative Tribunal
• Applicants may seek review of a planning decision (there is no third party right of appeal) by the State Administrative Tribunal (SAT) where:
  o Council’s discretion was used to make a decision;
  o Refusal and approval conditions are not satisfactory to the applicant; or
  o No decision has been made within the statutory period (60 days without an advertising requirement, 90 days with an advertising requirement).

Liquor Licensing Process – Phase 2
• The Liquor Control Act (1988) regulates the sale, supply and consumption of liquor in Western Australia, the use of premises on which liquor is sold and the services and facilities provided in conjunction with the sale of liquor. It also focuses on minimising harm or ill-health caused to people, or any group of people, due to the use of liquor.
• There are different categories of liquor licence available in Western Australia. Each vary in permitted trading hours and the manner in which liquor can be sold and supplied. Most operate
indefinitely once granted, with the exception of Occasional and some Special Facility licences which are granted for specific periods.

Stakeholders’ Roles and Responsibilities

- There are a number of stakeholders involved in the liquor licensing process in Phase 2 and some roles and responsibilities extend beyond the issue of a licence. Major stakeholders include the Department of Racing, Gaming and Liquor (DRGL); Local Governments; Western Australia Police; Executive Director of Public Health; Liquor Commission; general public; licensees and staff.
Assisting Alcohol Management through Local Government Town Planning - Models for Consideration

Figure 1: Process for Developing Local Government Planning Approach to Alcohol Management
Areas in Focus in Developing a Local Government Town Planning Approach

Figure 2: Town Planning and alcohol harm prevention risk management

**Strategic Land Use Planning**
- The importance of the strategic planning process to inform the development and interpretation of regulatory planning policies cannot be understated. In the absence of adequate levels of strategic planning, regulatory policies are developed without an understanding of the ‘bigger picture’ and the desired strategic direction of the organisation. Regulatory policy development then tends to be ad hoc and reactionary, rather than proactive and targeted at relevant issues.

**Plan for the Future**
- Developing a Plan for the Future (under S5.56 (1) of the Local Government Act 1995) is an opportunity to make specific statements relating to a Local Government’s approach to minimising alcohol-related harm, which can in turn inform the local planning strategy.

**Alcohol Management Plan**
- It is suggested that the starting point for the development of a town planning approach would be the framing up of an overall strategy or alcohol management plan. Aspects of the Alcohol Management Plan should be included in the preparation of local planning strategies.
- Research data collection and analysis are important steps in developing a community profile. This research process needs to be ongoing in order to build a solid database. This database should cover local evidence on what the impacts of existing licensed premises are having on those ‘at risk’ persons and on amenities.
- This database is important in considering a planning approval or a licence that gives rise to a conclusion that a proposal should or should not be approved. Evidence should help consider the risk of harm or ill-health or negatively impact the surrounding amenities.
Local Planning Strategies

- A local planning strategy should:
  o set out the long-term planning direction for the Local Government;
  o apply State and regional planning policies; and
  o provide the rationale for the zones and other provisions of the scheme.

- Although local planning strategies are stand-alone documents, their usefulness and strength is increased if they closely link to other strategic and operational policies and documentation of an organisation. In this instance, examples would include an Alcohol Management Plan and the Strategic Plan (Plan for the Future – Community Plan).

- The strategy sets out the Local Government’s objectives for future planning and development and includes a broad framework by which to pursue those objectives. The strategy needs to address the social, environmental, resource management and economic factors that affect, and are in turn affected by, land use and development.

- Decisions made under a local planning scheme must generally conform with the local planning strategy.

- Local planning strategies are an important opportunity to include the strategic intention of how a Local Government intends to deal with planning matters involving alcohol management and the outcomes it is aiming to achieve.

Place Planning and Development

- The Local Government Alcohol Management Package (2009) states that:
  “There are certain features of an environment (both physical and social) that can make it more or less likely that problems will occur there. Local Governments are in a unique position to influence the nature of many environments through building and planning approval processes. Through the thoughtful planning, design and maintenance of these different environments, a reduction in alcohol-related problems such as crime and antisocial behaviour can be achieved”.

- It is now common that Local Governments take a ‘place making’ approach to key locations, most notably for town centres, to maintain aesthetic appearance and arrange management of community activities.

- A Place Management approach involves:
  o Actively leading, facilitating and coordinating the delivery of actions and strategies;
  o Effectively communicating and championing the vision for the centre/place;
  o Generating a positive approach to the development of the centre, engendering interest, enthusiasm and excitement in the pursuit of the vision;
  o Making efficient use of available resources;
  o Integrating and prioritising all social, community, economic, marketing, physical and environmental initiatives;
  o Engaging all parties in the process and creating partnerships; and
  o Recognising and resolving the diverse and often competing views of stakeholders.

- There appears to be a global trend to create urban centres with an around-the-clock active environment with a focus on entertainment and services opportunities that operate during the day and night. This notion of night time economy can be challenging for Local Governments in managing a balanced mix of activity that does not principally involve alcohol.
Structure Plans, Planning Policies and Design Guidelines

- Having a good physical design of an activity centre or any other public space is not in itself enough to ensure that anti-social behaviour and crime do not occur. Good design must be supported by programs and activities that keep a centre or place alive and active.
- The Western Australian Planning Commission’s *Designing Out Crime Planning Guidelines (2006)*, *Local Government Alcohol Management Package (2009)* and publications provided by the Victorian Department of Planning and Community Development provide guidance in regard to designing safer environments and place making techniques.
- Support can be provided through a range of town planning considerations to address a number of matters, including: security; surveillance; landscape; sightlines and way finding; urban structure; building design; and road safety.

Statutory Planning and Policy Development

- To be effective in ensuring desired outcomes, regulatory approvals systems need to provide a clear, coordinated and defined interrelationship between policies, structures and processes that is intuitive to apply and readily legible to users. A lack of well understood and documented internal processes and procedures compounds problems of a system that is not intuitive or readily legible to users.
- There are a number of existing planning tools that can be applied in a Local Government planning situation to assist in the control of liquor outlet development.

Scheme Objectives

- The aims of a scheme differ between Local Governments and the *Model Scheme Text* allows for individual Local Governments to include aims and objectives specific to their unique situations. All schemes must include the aim of assisting the effective implementation of the State Planning Strategy and relevant regional plans and policies but in other respects, the aims will reflect the particular local circumstances.
- The statement of aims should be drawn from the local planning strategy (which may include the vision from the alcohol management plan) to set the context and provide a broad indication of what the scheme is trying to achieve and the general directions for land use and development in the area.
- More specific and detailed objectives can be identified and these may relate to particular policies or precincts, zones or special control areas and should be incorporated in the relevant part of the scheme text. The objectives will explain in a more precise way how the aims are to be achieved.

Adopt Policies

- A planning policy can provide a degree of flexibility in assessment and determination of development applications. It provides guidance for what is generally accepted or not accepted, however, it allows for exceptions. The process to develop or amend a local planning policy is also quicker and easier than amending a local planning scheme provision.
- Local Planning Policies are a way for Local Governments to incorporate provisions relating to the treatment of licensed premises.

Cumulative Impact Assessment

- Cumulative impact can be both positive and negative and is one of many planning matters to be considered when assessing an alcohol-related planning application.
- Factors affecting potential cumulative impact include location, mix and number of venues present, the manner in which they are managed and the capacity of the local area to accommodate those venues.
• The Victorian Department of Planning and Community Development developed Practice Note 61 (March 2011) Licensed premises: Assessing cumulative impact. This serves as a useful model for Local Government Planners when assessing alcohol-related development applications that will be licensed and open after 11pm and are in an area where there is a cluster of licensed premises.
• There is some debate that restrictive land use policy to restrain the number and type of licensed venues is anti-competitive in nature, which has some accord with the National Competition Policy. Local Government planning, therefore, needs to take a well-considered and evidence-based approach.

Define ‘Liquor Store’ as different from ‘Shop’ or ‘Retail’
• Differentiating between shops/retail and various types of liquor stores allows a Local Government to have greater control and flexibility when considering these uses in particular locations and circumstances.
• There may be opportunity for the Department of Planning to consider introduction of more definitions for liquor licensed premises as part of the Model Scheme Text Review.

Change ‘P’ Uses
• For greater management and control for a certain use involving a liquor licence in a particular zone, it is essential to ensure that the local planning scheme text reflects this in the zoning table by attributing it with a ‘D’, ‘A’ or ‘X’ use listing, rather than ‘P’.

Control of Size
• Controls could include the use of definitions and use of the zoning table in the local planning scheme (statutory) or through local planning policy (non-statutory).
• The growing trend to develop ‘big-box’ liquor stores has introduced planning (and possibly health) considerations for which many Local Governments may not be adequately prepared to address.
• A planning management solution could include the restriction of floorspace for liquor outlet uses to certain locations where they are more appropriate. This approach is similar to the way ‘shop’ and ‘showroom/warehouse’ uses are considered.

Development Requirements
• A local planning scheme can include a set of standards and development requirements designed for the individual Local Government and these could include specific requirements for alcohol-related development.

Development Control

Application Procedures – Access to Relevant Information
• More specific application requirements involving liquor-related development could be written into a local planning scheme text or stated in a policy to ensure that all the necessary information is available to those making assessments and decisions regarding applications.

Matters to be Considered
• Specific matters for consideration when dealing with alcohol-related development can be specified in a local planning scheme text (in addition to matters listed in the Model Scheme Text) or local planning policy.
• Consideration of ‘amenity’ can often present a challenge for Planners when assessing alcohol-related development proposals.
• Economic and moral considerations are not generally acceptable planning considerations.
Check Compliance
- Compliance is checked at application stage and also needs to be followed up at the operational stage.

Section 40 Certificates
- Section 40 certification is a requirement under liquor control legislation and does not constitute development approval under planning legislation. Therefore, planning approval is still required for development (including use) of land or premises in addition to the issue of a liquor licence, prior to operations commencing.
- The ability to recommend conditions for a liquor licence approval is greatly empowering to Local Government and should be used to its full potential. However, whilst Local Government can strongly influence a liquor licence application by recommending conditions via a Section 40 certificate, it must be acknowledged that Local Government has no decision-making powers in this process.
- Conditions may reflect what is already covered in a development approval thus providing further control, or may include conditions additional to such an approval.
- Conditions may also apply to a premise or use that has not yet received development approval. Conditions may be recommended at the initial assessment for a Section 40 certificate and further conditions or changes to previous conditions may be recommended based on submissions received during the advertising process for the liquor licence.
- It is important that Local Governments have a clear framework to support the recommendation of conditions that reflect the overarching policy of the organisation.

Public Interest Assessments
- Public Interest Assessments (required by the Department of Racing, Gaming and Liquor in any Liquor Licensing Application) will assist Local Government Planners to assess applications for a section 40 certificate and planning applications.

Use of conditions, management plans and scope of approvals
- Local Governments may apply conditions to Section 40 certificates and conditions of development approval to address liquor licence issues.
- Local Governments may apply scope and time limitations to development application approvals.
- Any conditions imposed need to be supported by the Local Government planning framework, including statutory controls and policy statements.

Quick Guide
- To assist each individual Local Government build a framework to suit their own local situation a ‘quick guide’ has been developed and is shown as Appendix F – Quick Guide to Alcohol-related Development Management in Part 2 of this Guideline. This Quick Guide gives a brief indication of the type of tools available to be employed to manage different aspects of alcohol-related development and can be used in conjunction with the process model.

Concluding Comments
- For those Local Governments seeking assistance to work towards the management of alcohol-related harm, there are a number of existing town planning tools available that may be employed more effectively through appropriate strategic planning processes and more specific development control mechanisms.
- This Guideline identifies these and presents models for consideration to assist in the strengthening or ‘firming up’ of existing Local Government town planning frameworks to ensure that alcohol-related development is part of the policy agenda.