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Director of Liquor Licensing's policies (s40 certificates)

In a snapshot last October we stated the importance of keeping abreast of changes to policies of the Director. All Director's policies are introduced with the disclaimer that they are designed to provide information. In reality, however, they are in effect binding on the industry although in some circumstances it is possible to demonstrate why they should not necessarily be applied rigidly to the facts and circumstances of an individual case.

Effective from 7 April 2010, a new policy was issued in regard to section 40 planning certificates. Section 40 certificates are required for many types of applications to the licensing authority.

The latest policy reflects a hardening of attitudes to the production of these certificates. Despite the fact that the Liquor Control Act 1988 (WA) gives some flexibility as to s40 certificates and planning compliance, from now on the licensing authority will only process applications that are certified to be fully compliant. The new policy states 'the Director, in determining an application under the Act which has been lodged without an unconditional Section 40 Certificate, may adjourn the application indefinitely or conditionally grant the licence'. Experience in the weeks since the promulgation of the policy has shown that applications will not even be accepted at the point of lodgement and cannot be advertised without production of an unconditional certificate.

From the viewpoint of prospective licensees, existing licensees who wish to make changes and developers, this new approach to dealing with applications without unconditional section 40 certificates is most unfortunate. It means that in effect one is required to address all of a local council's formalities first before the licensing authority will give any consideration to a proposal. Rather than have both processes run in tandem, which will save a considerable amount of time and money for applicants, there will now be much greater deferments and delays.

The way forward is to prioritise the approach to the local authority, treat any planning requirement as a matter of urgency and hope for a flexible and helpful approach at local government level.

If you have any queries about new regulatory measures in Western Australia please do not hesitate to contact Dan Mossenson, Partner, on (08) 9288 6769 / dan.mossenson@lavanlegal.com.au or Jessica Patterson, Senior Associate, on (08) 9288 6946 / jessica.patterson@lavanlegal.com.au.