

Practice Notice for Hurunui District Licensing Committee

Hurunui District Licensing Committee

Introduction

The Hurunui District Licensing Committee ("DLC") is a statutory body responsible for hearing and deciding applications under the Sale and Supply of Alcohol Act 2012 ("Act") and its Regulations. The applications include managers' certificates, on-licences, off-licences, club licences, special licences and renewals of all of those.

The DLC comprises four approved members, one of whom is appointed as the chairperson.¹ The DLC makes decisions by majority vote, with three members hearing each application.² The current people approved to be members of the DLC are:

- Cr Marie Black (Chairperson)
- Mayor Winton Dalley
- Cr Dick Davison
- Cr Michael Ward

If at any time a quorum cannot be reached from these members due to sickness or absence, the Council has approved the Waimakariri DLC list members to the Hurunui DLC list.

Where no objections have been filed, and no matters of opposition have been raised, the chairperson alone may decide any of the following applications:

- An application for a licence;
- An application for a manager's certificate; or
- An application for renewal of a licence or manager's certificate.³

The DLC may decide to consider an application which is unopposed either on the papers or at a public hearing.⁴

DLC hearings are open to the public and the media.⁵

This practice notice is a guide. The purpose of this practice notice is to try to ensure that all hearings are conducted efficiently and fairly and in accordance with the principles of natural justice⁶. In any situation where a party to an application is in doubt over the procedure to be used at a hearing, assistance can be obtained from the DLC Secretary.

A flow chart is attached to this practice notice as an outline guide to the sequence of events for applications to the DLC.

¹ Sale and Supply of Alcohol Act 2012 s189.

² Sale and Supply of Alcohol Act 2012 s190(2) and s191(1).

³ Sale and Supply of Alcohol Act 2012 s191(2)(3).

⁴ Sale and Supply of Alcohol Act 2012 s202(1).

⁵ Sale and Supply of Alcohol Act 2012 s203(1).

⁶ NZ Bill of Rights Act 1990 s27.

PRIOR TO THE HEARING

The DLC will give the applicant, each objector, and each reporting agency, at least 10 working days' notice of the hearing.⁷

Preparation

Parties to a DLC hearing should be well prepared before the hearing. A well prepared case will be presented efficiently and will help the DLC understand the issues that need to be decided.

Sections 105,106, 131, 222, 142 of the Act set out the criteria that the DLC must have regard to when deciding to issue a licence, renewal or certificate.

Preparing the case in writing using the criteria in the Act will assist with identifying what needs to be included in the case.

The DLC will read all materials filed as part of an application and all evidence filed before a hearing. Providing a case in writing will allow the DLC an early opportunity to become familiar with the issues and to understand what is being argued.

Exchange

To conduct the hearing efficiently, the DLC recommends an exchange of evidence and supporting materials (including exhibits) between the parties and the reporting agencies at least three working days prior to the hearing date. Contact details for parties and reporting agencies may be obtained from the Secretary.

It will assist the DLC if an outline of submissions or arguments to be presented is also filed with the Committee at least three working days prior to the hearing.

Documents can be filed with the DLC in the following ways:

- By email: alcohol@hurunui.govt.nz
- By posted to: Hurunui District Licensing Committee
PO Box 13
Amberley 7441
North Canterbury
- By delivery to: Hurunui District Licensing Committee
66 Carters Rd (SH1)
Amberley 7410

Parties to the hearing

The applicant for a licence is expected to appear in support of the application and any objector is entitled to appear and be heard at the hearing. Once a hearing commences, the Committee will proceed to consider and determine the application based on the evidence before it. The following reporting agencies also have a right to appear and be heard:

⁷ Sale and Supply of Alcohol Act 2012 s202(4).

- A constable;
- An inspector; and
- A Medical Officer of Health.

The Chairperson of the DLC may grant permission for any of the following to appear and be heard at a hearing:

- A member of the fire service authorised to undertake fire safety inspections;
- A person authorised in that behalf by any territorial authority;
- Any other person who satisfies the DLC that he or she has an interest in the proceedings, apart from any interest in common with the public.

The reports from the reporting agencies are to be provided to the applicant by the reporting agencies prior to the hearing to ensure the applicant is not surprised by those agencies at the hearing. The applicant should contact the DLC Secretary if he or she has not received these reports.

Evidence

The DLC may receive evidence that, in its opinion, may assist it to deal effectively with the subject of the application, whether or not that evidence would be admissible in a court of law.⁸ The key requirement is relevancy. Evidence that is not relevant to an application will not assist the Committee.

Every person has the same privileges before the DLC they would have in a court of law. These privileges include:

- Giving any information that would incriminate that person for an offence punishable by a fine or imprisonment (as limited by section 63 of the Evidence Act 2006);
- Legal professional privilege (What is said to legal advisers);
- Litigation privilege;
- Privilege for settlement negotiations or mediation (The outcome of mediation if intended to be confidential); and
- Privilege for communications with ministers of religion.(What is said to a minister if said in confidence)

The DLC will not receive any evidence contravening these privileges unless it is satisfied that, in the particular case, the privilege has been waived.

Sensitive and confidential information

The DLC must base its decision solely on the evidence and submissions presented to it. The DLC recognises the applicant may wish to rely upon information that is sensitive or confidential. Sensitivity and confidentiality might arise in relation to the privacy of some person or might concern commercially sensitive and confidential proprietary information. The DLC therefore expects to receive sensitive and confidential information from time to time.

⁸ Commissions of Inquiry Act 1908 s4B(1).

If a party intends to supply the DLC with sensitive or confidential information, that party should tell the DLC about the information's sensitive or confidential nature and ask for an order to protect that information prior to the exchange.⁹

Among the steps the DLC can take is that it may make an order that the sensitive or confidential information does not need to be supplied as part of the document exchange, or may order that certain aspects of the document can be edited before being supplied to third parties.¹⁰ The DLC may also order parties or media not to copy the information, not to remove it from the hearing, not to publish the information, or not to use that information for any other purpose than the hearing.

If necessary, the DLC can make provisions to exclude the public or media for the hearing of any sensitive evidence.

Briefs of evidence

A brief of evidence is a written statement by a witness that sets out what the witness will say at the hearing. Written briefs of evidence should be filed with the DLC three working days before the hearing, although supplementary or additional evidence can be filed after this time if necessary, or further relevant evidence can be given at the hearing.

Written briefs of evidence should contain numbered paragraphs and pages to make reference to that evidence easier during the hearing. The DLC will be assisted by briefs of evidence from witnesses that are concise and confined to relevant matters about which the witness has first-hand knowledge or experience.

The witness's evidence is what he or she says under oath (or affirmation) during the hearing. The witness is not bound to his or her brief of evidence and may depart from it, make any changes, or corrections or amendments as may be necessary to ensure the evidence is accurate and complete.

Any exhibits or supporting materials should be clearly identified or described as being part of the application, or a witness's evidence, to allow easy cross-referencing. The DLC welcomes diagrams, photographs, policies or other similar materials as part of the evidence. Where exhibits are to be produced, they should be individually numbered, labelled, or clearly described, and, if collated together, paginated.

All witnesses will be required to give evidence on oath or by affirmation.

Summons

Witnesses may be summoned by the Chairperson to appear before the DLC or to produce documents to the DLC.

Any party may apply to the DLC for the issue of a summons requiring a person to give evidence, and to produce any papers, documents, records, or things in that person's possession or under that person's control that are relevant to the subject of the inquiry.¹¹

⁹ Commissions of Inquiry Act 1908 s4C(3).

¹⁰ Commissions of Inquiry Act 1908 s4C.

¹¹ Sale and Supply of Alcohol Act 2012 s201(3); Sale and Supply of Alcohol Act 2012 s2.

Applications for summons should be made to the DLC as soon as possible after you have identified the need to summons a witness. Applications for summons can be made in writing to:

- By email: alcohol@hurunui.govt.nz
- By posted to: Hurunui District Licensing Committee
PO Box 13
Amberley 7441
North Canterbury
- By delivery to: Hurunui District Licensing Committee
66 Carters Rd (SH1)
Amberley 7410

If the summons is to be served on the witness personally, the witness must receive that summon at least 24 hours before the time the witness is summoned to appear. If the summons is to be served on the witness by registered post to the witness's usual place of abode, the summons must be served at least 10 working days prior to the time the witness is summoned to appear.¹²

AT THE HEARING

Format of the hearing

Parties to a hearing should arrive early to get ready to present their case. The secretary will record attendances and contact details.

The DLC may use any procedure at a hearing that is fair. Generally, the applicant will be required to present his or her or its case first, followed by the reporting agencies, and then followed by any objectors. The applicant will have a right of reply once all other parties have concluded their cases, should that be necessary.

Once a hearing has started the DLC's usual practice will be to hear the case to its conclusion.

The Applicant's case

The applicant will be asked to present his or her case first. This presentation may be done personally or by a representative.

The applicant is expected to outline the application and may call a witness or witnesses in support of it. While the DLC will have read the application and all relevant materials, the applicant will still be expected to prove his or her case at the hearing and bring all matters he or she considers important to the attention of the DLC. An individual applicant is expected to appear and give evidence. For a company applicant, the DLC will expect to hear from a Director, and, where the Director is not intending to be involved on a day to day operational basis in the business, the DLC will expect to see and hear from the Manager.

The applicant's witnesses are expected to read out their evidence and to answer any further questions from the applicant or applicant's representative to explain the evidence the witness has given.

¹² Commissions of Inquiry Act 1908 s5.

The DLC will invite relevant questions from the reporting agencies (Police, Licensing Inspector, and Medical Officer) and any objectors (referred to as "*cross-examination*").

The DLC members may ask the witness questions. When the DLC questions a witness the purpose of these questions will be to better understand the application or the evidence, or to clarify something which may not have been adequately covered.

The applicant will be given the opportunity to re-examine his or her witness after cross examination and any DLC questions. Re-examination is limited to issues arising from cross examination and DLC questions.

Reporting Agencies

The reporting agencies will present their reports and any supplementary evidence to the DLC after all of the applicant's evidence has been presented. Evidence will be on oath or by affirmation. Where all reporting agencies are present at the hearing, the order for the reporting agencies will usually be:

- Licensing Inspector;
- Police;
- Inspector of Health/Medical Officer of Health.

The applicant, followed by objectors, may cross examine any witness following that witness's evidence in chief. The DLC may also ask questions of the reporting agencies. The DLC will ascertain whether the reporting agencies support the application; oppose the application; seek specific conditions for any licence; or are neutral and present simply to assist the Committee.

Objectors

Objectors may present their case personally or through a representative. Objectors will usually be heard after the reporting agencies. Objectors and their witnesses will be required to take an oath or affirmation prior to presenting their evidence. Objectors are limited by the law as to what grounds they can object on. The DLC will not consider any evidence which is not related to the statutory grounds of objection. See sections 105/106 for new licences and section 131 for renewals.

Objector's witnesses are expected to read out their evidence and to answer any further questions from the objector to explain the evidence the witness has given.

The DLC may invite relevant questions from the applicant and the reporting agencies (cross examination).

The DLC may ask the witness questions. When the DLC questions a witness the purpose of these questions will be to understand the evidence.

The objector will be given the opportunity to re-examine his or her witness after cross examination and also after any DLC questions. Re-examination should be limited to issues arising from cross examination and DLC questions.

Applicant's response

The applicant has the opportunity to reply after the conclusion of the cases for the reporting agencies and the objectors, if necessary. The purpose of a right of reply is to allow the applicant an opportunity to comment on the evidence or arguments presented by the reporting agencies or objectors. The DLC does not expect this right of reply to be used to repeat evidence already given by or on behalf of the applicant. The applicant may comment on any matters raised by the reporting agencies or objectors and may also give a closing address.

The reporting agencies and objectors do not have a right of reply, although in more complex matters the DLC may invite closing submissions from all parties. The usual order for closing submissions is applicant, reporting authorities, objectors, followed by the applicant in reply.

Adjournments

Generally speaking, once the case has started it will run until concluded. However, the DLC may adjourn the proceedings if it considers it is necessary and appropriate to do so. Examples of when the DLC may adjourn the proceeding include:

- A witnesses becoming unavailable at short notice;
- A shortage of time;
- To allow for the collection of further evidence.

If the hearing is adjourned, the DLC will set a time for the hearing to reconvene and may impose restrictions until it reconvenes (such as the witnesses not being permitted to discuss the case between them if they are mid-way through that party's evidence).¹³

Site visits

Site visits are a valuable tool the DLC may use to become more familiar with the application. A site visit is not intended as a substitute for evidence. The DLC may make a site visit before, during or after the hearing and prior to delivering its decision. Generally, the DLC will try to conduct a site visit at a time convenient to all parties and, ideally, after the applicant has started its case.

The DLC will discuss with the parties its intention to conduct a site visit and will indicate who will be attending, and when the visit is expected to occur. Parties may be given the opportunity to identify for the DLC relevant site features to be inspected during their visit.

The DLC will not receive representations from any party to the hearing during the site visit. Usually the DLC site visit will not involve any parties or witnesses.

While the purpose of a site visit is to familiarise the DLC with the application, if any material matter arises during the visit the DLC will raise that matter with the parties.

Conclusion

The Chairperson will close the hearing and the DLC will retire to consider its decision. All DLC deliberations will be conducted in private. The DLC will not receive or consider representations made to

¹³ Commissions of Inquiry Act 1908 s4; Sale and Supply of Alcohol Act 2012 s203(9).

it after the hearing has concluded, unless a proper application (in writing and served on all other parties) is made seeking to introduce new evidence.

A written decision and the reasons for that decision will be sent to the applicant, reporting agencies, and objectors.¹⁴

The DLC will send a copy of the original application, DLC's decision, and a copy of any licence, certificate or renewal issued, to the Licensing Authority.¹⁵

All decisions of the DLC are publically notified.

Appeals

Any party to a DLC hearing may appeal the decision of the DLC within 10 working days of the date of the decision being notified to that party.¹⁶

Appeals are dealt with by way of rehearing by the Alcohol Regulatory and Licensing Authority.¹⁷

You are referred to ARLA website <http://www.justice.govt.nz/policy/sale-and-supply-of-alcohol> for further information.

¹⁴ Sale and Supply of Alcohol Act s211.

¹⁵ Sale and Supply of Alcohol Act s66.

¹⁶ Sale and Supply of Alcohol Act s155.

¹⁷ Sale and Supply of Alcohol Act s157.

Flow chart for DLC applications

