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# Wellington District Licensing Committees Annual Report 2014/15

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# Annual Report to Alcohol Regulatory Licensing Authority

The following report is a summary of activities for the Wellington District Licensing Committees, pursuant to section 199(1) of the Sale and Supply of Alcohol Act 2012, for the financial year 1 July 2014 to 30 June 2015.

This report has been prepared by the Wellington District Licensing Committees and approved by the Wellington City Council for the Alcohol Regulatory Licensing Authority.



CR ANDY FOSTER AND CR IONA PANNETT  
Deputy Chairs, Wellington District Licensing Committees



KEVIN LAVERY  
Secretary, Wellington District Licensing Committees

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# 1

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## Overview

### 1.1 DISTRICT LICENSING COMMITTEE STRUCTURE

District Licensing Committees of Wellington City Council

#### Chairs

Commissioner Hon Sir Douglas Kidd  
Commissioner Rex Woodhouse  
Commissioner Murray Clearwater

#### Deputy Chairs

Cr Andy Foster  
Cr Iona Pannett

#### Members

Zoe Doole  
Mary Hubble  
Sandra Kirby  
Kiri Rikihana  
Kate Thomson  
Luke Tuffs  
Hon Sir Douglas Kidd

#### Secretariat and support staff

Kevin Lavery	Chief Executive Officer (Secretary of District Licensing Committee)
Jane Hill	Manager, Community Networks (Secretary of District Licensing Committee)
Julie Sleep	Team Leader Approvals & Process Innovation (Secretary of District Licensing Committee)
Clare Needham	Principal Advisor to the District Licensing Committee (Secretary of District Licensing Committee)
Karen Binnie	Approvals and Operations Officer
Aviashni Kumar	Approvals and Operations Officer
Ana Meehan	Approvals and Operations Officer
Jared Plummer	Approvals and Operations Officer
Andrew Reid	Approvals and Operations Officer
Andrew Buchanan	Governance Advisor (Committee Advisor to the DLC)
Antoinette Bliss	Governance Advisor (Committee Advisor to the DLC)

The Wellington District Licensing Committees (DLCs) were appointed by Wellington City Council from 18 December 2013 in accordance with the Sale and Supply of Alcohol Act 2012 (the Act) and with Council's *Terms of Reference and Delegations for the 2013/16 Triennium*, adopted on 14 November 2013. The DLCs are charged under the Act with dealing with alcohol licensing matters for Wellington City.

Three Wellington DLCs were appointed, chaired by Commissioners Hon Sir Douglas Kidd (District Licensing Commissioner A), Rex Woodhouse (District Licensing Commissioner B) and Murray Clearwater (District Licensing Commissioner C).

## **1.2 STAFF TRAINING RELATING TO THE SALE AND SUPPLY OF ALCOHOL ACT 2012**

DLC Members, Chairs and Principal Advisor attended the Wellington regional forum “One Year On” The Sale and Supply of Alcohol Act 2012” convened by the Health Promotion Agency. Commissioner Murray Clearwater gave a presentation at the Wellington and Rotorua fora on the role of the DLC.

DLC Secretariat and support staff, and DLC Members and Chairs, receive ongoing internal guidance and training on process and case law developments. This includes monthly newsletters referring to significant case law developments.

DLC Members, Chairs and support staff meet annually to discuss relevant matters including the process at DLC hearings, decision-making, legal developments, trends and issues in the sector.

## **1.3 DLC MEETINGS AND HEARINGS**

During this reporting period, the Wellington DLCs have convened the following meetings and hearings:

- 43 meetings to consider and determine 93 Temporary Authority applications; and
- 23 public hearings to consider and determine:
  - 2 on-site special licence applications
  - 4 new on-licence applications
  - 6 on-licence renewal applications
  - 4 new off-licence applications
  - 4 off-licence renewal applications
  - 8 manager’s certificates.

In the period from 1 July 2014 to 30 June 2015, the Wellington DLCs received a total of 1892 applications - 82 less than was received by the Wellington District Licensing Agency and Wellington DLCs in the previous financial year<sup>1</sup>.

## **1.4 TRENDS/ISSUES FACED BY THE DLC**

The Wellington DLC has noted a trend among the reporting agencies, in particular the Police and Medical Officer of Health, as regards new off-licence applications for bottle stores. These agencies seek to have applicants restrict trading hours by agreement, often to 9pm, although there appears to be some inconsistency in this practice.

There is also a trend towards off-licence bottle store premises styling themselves as “upmarket” or “craft” and agreeing to restrict their product ranges to products that tend to sell in smaller quantities at higher price points.

The Wellington DLC has noted a practice among some supermarket applicants to seek an extension of time under s115 not only to put their single alcohol areas in place, but also to prepare plans as required by sections 112-114. By way of preliminary directions, the Wellington DLC has been making it clear that time extensions for the latter purpose are not contemplated under the Act.

To our knowledge, applicant supermarkets have to date been compliant with DLC requirements to move alcohol areas away from the entrance to and exit from premises.

The DLC understands there is some uncertainty in the community as to whether it was intended by Parliament to exclude the sale and supply of alcohol in certain family entertainment style venues, such as cinemas, on the sacrosanct days found in the Act.

<sup>1</sup>During the period from 1 July 2013 to 17 December 2013 inclusive, licensing matters were dealt with by the former Wellington District Licensing Agency, which ceased operations from 18 December 2013 when the Wellington DLCs commenced operations.

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# 2

## New DLC initiatives

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Wellington DLC Member Luke Tuffs has been working with the Health Promotion Agency on a pilot Local Area Network for DLCs in the Central North Island area. Mr Tuffs developed and trialled an online forum tool for DLC Members, Chairs and support staff in the region. A full report on the pilot schemes prepared for the Health Promotion Agency can be found here:

<http://www.alcohol.org.nz/alcohol-management-laws/nz-alcohol-laws/sale-and-supply-of-alcohol-act-2012/ssaa-regional-forums>

The DLC's Principal Advisor contributed to the preparation of the Health Promotion Agency's "Guide to Hearings" for Applicants and Objectors, and also to the Local Government New Zealand Guide to Preparing a Local Alcohol Policy, which can be found here:

<http://www.lgnz.co.nz/assets/KnowHow-pdf-documents/LAP-KnowHow-Guidance-v11-FINAL-at-3.6.15.pdf>

The Council's DLC support staff are currently reviewing the application forms and supporting documentation for alcohol licence applicants. Their goal is to simplify and streamline these for customers and provide better guidance around the requirements of the Act.

A project is underway to launch an online public notice service whereby licence applicants will be able meet their public notice obligations under the Act and Regulations on the Council's website. This project is due for delivery later in 2015.

The Wellington DLC has developed a set of template licence conditions for various licence types based on the requirements of the Act. These are designed to remind licensees of their obligations under the Act. They will be made available for applicants, reporting agencies and others who may wish to refer to them.

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# 3

## Wellington's provisional Local Alcohol Policy

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**In accordance with Part 2, subpart 2 of the Sale and Supply of Alcohol Act 2012, Wellington City Council has developed a provisional Local Alcohol Policy (the PLAP).**

The PLAP was notified on 21 January 2014. Appeals were lodged by eight parties which were heard by the Authority over eight days between 20 October and 5 November 2014.

The Authority released its decision on 20 January 2015 which asked the Council to reconsider elements of its PLAP. The Council resolved on 18 March 2015 to receive a *“report to the February 2016 meeting of the Community, Sport, and Recreation Committee on the opportunities to resubmit an amended Provisional Local Alcohol Policy taking into account updated local data and the parameters for local alcohol policies arising from the decision on appeals”*.



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# 4

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## Current legislation

**The Sale and Supply of Alcohol Act 2012 has now been in full force for more than 18 months. The following is a list of issues with the Act that the Wellington DLC considers warrant clarification, guidance and/or legislative amendment.**

### 4.1. TEMPORARY AUTHORITIES

Temporary authority orders allow an applicant who has leased or purchased licensed premises to continue trading at the premises on the base licence held by the current licence holder. While most temporary authorities are granted for only one 3 month period, we have seen some premises trading for up to 9 months on temporary authority orders. Furthermore, once an applicant is trading on a temporary authority, there is some degree of expectation that they will be able to continue doing so.

The holders of temporary authorities must comply with the conditions of the base licence and with the Act. Nevertheless, we consider that there is potential for risk to arise to the community given the very limited range of factors a DLC may consider when assessing an application under s136. As currently drafted, the only express statutory consideration the Committee is required to make when assessing temporary authority applications is whether an applicant appears to have a “right, title, estate, or interest in any premises, or any business conducted in any premises for which an on-licence or off-licence is in force... . “ Section 136 does not authorise the DLC to consider the criteria in s105, for example the “suitability” of the applicant. Further, there is no requirement for reporting agencies to consider and report on a temporary authority application, although in practice inspectors do so and the Police are also asked their position.

The Wellington DLC would like to see section 136 expanded to provide Committees with the statutory power to consider a broader range of factors for temporary authority applications. It would also be of assistance if

there were reporting requirements and an express power for the DLC to consider any matters raised in reports.

Temporary authority order applications must be considered by a DLC Committee of three due to the provisions of s191. It is suggested that this is unnecessary for most such applications and we recommend that temporary authorities be added to the list in s191(3). Where a DLC Chair considers that a temporary authority application warrants a public hearing, this could be directed under s202(1) and a three person quorum convened.

### 4.2. CATERERS' LICENCES

We have written to the Authority seeking guidance on the correct process for converting caterers' off-licences issued under the Sale of Liquor Act 1989 to endorsed caterers' on-licences under the Sale and Supply of Alcohol Act 2012. It may be that this issue could be resolved by way of legislative amendment.

### 4.3. SPECIAL LICENCES FOR SUPPLY ONLY EVENTS

There continues to be difficulty in the lack of clarity around the issue of whether or not special licences are required for supply only events where alcohol is not included in ticket prices or “in the nature of a sale” situations. Legislative clarity on this point would be of great assistance.

### 4.4. NOTICE PERIOD FOR SPECIAL LICENCE HEARINGS

It would be of assistance if provision were made to enable the Secretary of the DLC to truncate the 10 working day

notice period for special licence hearings where such applications need to be dealt with urgently. In some instances there has been insufficient time for a special licence hearing after opposition has been raised.

#### **4.5. OBJECTIONS AND OPPOSITIONS TO NEW AND RENEWAL APPLICATIONS SHOULD TRIGGER A PUBLIC HEARING**

It is suggested that both reporting agency opposition and public objection for all premises applications (but not for specials, unless public notification is required) should trigger a public hearing. Natural justice requires this, in the view of the Wellington DLC, in any case. The current provisions are inconsistent and draw a distinction between new and renewal applications<sup>2</sup> that does not appear justified on any policy grounds.

#### **4.6. SPLIT DESIGNATIONS**

The current designation requirements for hotel style on licensed premises are not in line with modern reality. The vast majority of hotels, at least in urban centres such as Wellington, no longer include a separate “public bar” area in which patrons gather for the specific purpose of drinking. More common in such premises now are “lobby bar” areas, which are often not distinct from the reception/thoroughfare to the hotel rooms. These areas often are not used for the sale and supply of alcohol all day long. Designating such areas to exclude children can pose real practical problems for licensees.

Similarly, the requirement to designate a “tavern” causes difficulty for premises that trade more in the nature of a cafe during the day and a bar at night. Time split designations have been adopted for this purpose on the basis that the operation morphs from a restaurant to a tavern at a particular time of night, which section 118 appears to permit. It would be helpful to have clearer legislative support for such an approach.

#### **4.7. REGULATIONS/FORMS**

It is suggested that a review of the Forms in the Regulations could be of real benefit. The secretariat to the Wellington DLC finds that applicants who are able to submit an application that is complete and correct following the Regulatory forms on their first try is the exception rather than the rule. There is a significant workload for the administrative staff of the DLC in shepherding applicants through the process of completing the forms. In response to this, the Wellington secretariat is undertaking a complete review of its forms and intends amending these substantially to improve their readability

and to address such issues as information requested that is no longer legally relevant (eg the forms preserve a distinction between public and private companies that no longer exists under the Companies Act 1993 and request details of “nominal” and “paid up” capital, terminology which is no longer in use.) In addition, there are errors in the forms, including:

- forms 9 and 10 should include “Easter Sunday” in condition (a)
- form 11 should refer to from Part 6 to Subpart 7 of Part 2
- form 12 and 13 should refer to Subpart 6 to Subpart 7
- form 14 should refer to Section 120 not to Sections 280 and 283.

#### **4.8. MATTERS THAT COULD BE DEALT WITH BY A DLC CHAIR ALONE**

It is suggested that section 231(4) of the Act, ie notice of non-approval of appointment of temporary or acting manager, be added to the list in section 191(3) of matters than can be determined by a District Licensing Commissioner alone. Such applications need to be addressed quickly and DLC Chairs are, in our view, up to the task of addressing them.

<sup>2</sup>New licence applications that are the subject of reporting agency opposition are not automatically required to be considered at a public hearing, whereas renewal applications with such opposition are.

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# 5

## Other matters

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The DLCs and the Wellington City Council would welcome further coordinated, centralised promotion of best practice in the operation of the new Act and its Regulations and would like to see this made available to the alcohol sector nationwide. The Health Promotion Agency has undertaken some exemplary work in this regard.



# 6

## Statistics

**During the reporting period, the Wellington DLCs accepted 1892 applications, which is 82 less than were received by the DLA and DLC in the previous financial year.**

Below is a table showing a comparison of previous years. Please note that these figures include renewal and endorsed licence applications.

Number of applications received				
Application type	2011-2012	2012-2013	2013-2014	2014-2015
On-licences	231	215	197	252
Off-licences	70	65	52	61
Club licences	26	31	9	17
Temporary authority	62	55	81	88
Manager's certificates	1267	1376	1281	1178
Special licences	426	374	354	296
<b>TOTAL</b>	<b>2082</b>	<b>2116</b>	<b>1974</b>	<b>1892</b>

Licence fees during the period 1 July 2014 to 30 June 2015 compared with previous years are as follows.

Annual fees for alcohol licences (GST inclusive)	2011-2012	2012-2013	2013-2014	2014-2015
Fees paid to the Alcohol Regulatory and Licensing Authority	\$67,178	\$67,701	\$63,280	\$76,803

The liquor licences in force during the period 1 July 2014 to 30 June 2015 are shown in the table below, with a comparison from previous years.

Licences in force	2011-2012	2012-2013	2013-2014	2014-2015
On-licence	497	506	491	486
Off-licence	153	156	149	142
Club licence	70	68	65	60
<b>Total</b>	<b>720</b>	<b>728</b>	<b>705</b>	<b>688</b>

# A. Annual Report

## DLC annual return 18 December 2013 to 30 June 2014

TERRITORIAL AUTHORITY: Wellington City Council TA 49

ANNUAL RETURN FOR YEAR ENDING:30 June 2015

### ON-LICENCE, OFF-LICENCE AND CLUB LICENCE APPLICATIONS RECEIVED:

Application type	Number received in fee category: Very Low	Number received in fee category: Low	Number received in fee category: Medium	Number received in fee category: High	Number received in fee category: Very High
On-licence new	2	24	36	17	0
On-licence variation	0	2	7	13	0
On-licence renewal	4	51	66	27	3
Off-licence new	0	1	11	6	0
Off-licence variation	0	0	0	0	1
Off-licence renewal	1	9	20	12	0
Club licence new	1	0	0	0	0
Club licence variation	0	0	0	0	0
Club licence renewal	9	7	0	0	0
<b>Total number</b>	<b>17</b>	<b>94</b>	<b>140</b>	<b>75</b>	<b>4</b>
<b>"Total Fee paid to ARLA (GST incl)"</b>	<b>\$293.25</b>	<b>\$3,243.00</b>	<b>\$7,245.00</b>	<b>\$6,468.75</b>	<b>\$690.00</b>

### ANNUAL FEES FOR EXISTING LICENCES RECEIVED

Licence Type	Number received in fee category: Very Low	Number received in fee category: Low	Number received in fee category: Medium	Number received in fee category: High	Number received in fee category: Very High
On-licence	11	100	133	73	3
Off-licence	1	24	47	33	1
Club licence	33	23	0	0	0
<b>Total number</b>	<b>45</b>	<b>147</b>	<b>180</b>	<b>106</b>	<b>4</b>
<b>Total Fee paid to ARLA (GST incl)</b>	<b>\$776.25</b>	<b>\$5,071.50</b>	<b>\$9,315.00</b>	<b>\$9,142.50</b>	<b>\$690.00</b>

## MANAGER'S CERTIFICATE APPLICATIONS RECEIVED

	Number received
Manager's certificate new	642
Manager's certificate renewal	536
Total number	1178
<b>Total Fee paid to ARLA (GST incl)</b>	<b>\$33,867.50</b>

## SPECIAL LICENCE APPLICATIONS RECEIVED:

	Number received in category: Class 1	Number received in category: Class 2	Number received in category: Class 3
Special licence	34	190	89

## TEMPORARY AUTHORITY APPLICATIONS RECEIVED:

	Number received
Temporary authority	87

## PERMANENT CLUB CHARTER PAYMENTS RECEIVED:

	Number received
Permanent club charter payments	1

## TOTAL PAYABLE TO ARLA FOR PERIOD (GST INCL):

	Total
<b>Total</b>	<b>\$76,802.75</b>

*Julie Sleep  
Secretary  
District Licensing Committee  
Wellington City Council*

## LICENCES IN FORCE:

	30/06/14	30/06/15
On-licence	497	486
Off-licence	149	142
Club Licence	65	60
<b>Total</b>	<b>705</b>	<b>688</b>

## APPLICATIONS RECEIVED AND ISSUED

Applications received and issued 1 July 2014 to 30 June 2015	Received	Determined/Issued
On (new)	78	74
On Renewal/variation	173	188
Off (new)	18	12
Off Renewal/variation	43	45
Club (new)	1	2
Club renewal/variation	16	11
New Manager's Certificates received	642	671
Manager renewals received	536	581
Special	296	268
Temporary Authority	88	83
<b>Total</b>	<b>1892</b>	<b>1935</b>

	Received 2014/15	Received 2013/14	Issued 2014/15	Issued 2013/14
On (new)	79	64	74	67
On Renewal/variation	173	133	188	126
Off (new)	18	5	12	10
Off Renewal/variation	43	47	45	39
Club (new)	1	1	2	1
Club renewal/variation	16	8	11	9
New Manager's Certificates received	642	623	671	547
Manager renewals received	536	658	581	633
Special	296	354	268	330
Temporary Authority	88	81	83	77
<b>Total</b>	<b>1892</b>	<b>1974</b>	<b>1935</b>	<b>1839</b>



