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## **APPOINTMENT OF DISTRICT LICENSING COMMITTEE/S**

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### **1. Purpose of report**

This report:

- Informs Councillors of changes, effective 18 December 2013, in alcohol licensing decision making bodies and authorities, including the required establishment of District Licensing Committees (DLCs);
- Provides background on the structure and functions of DLCs including the chairperson options for DLCs;
- Presents a timetable for the appointment of DLC chairpersons and members.

### **2. Executive summary**

DLCs are required to be appointed by Council, under the Sale and Supply of Alcohol Act 2012 (Act), by 18 December 2013.

DLCs will replace District Licensing Agencies (DLAs) and are to consider and determine:

- New, and the renewal of existing, licenses and managers' certificates.
- Variation, suspension or cancellation of special licences
- Variation of other licenses with some exceptions.

To meet the 18 December requirement officers propose to commence the recruitment and short listing of potential DLC Commissioners and members. These appointments will be forwarded for the Council's consideration and appointment post election. Post election the Council will need to consider Councillors' expressions of interest in chairing DLCs, and determine the number of DLCs that will be required for licensing decision-making.

Interim Terms of Reference for the District Licensing Committee will inform prospective DLC members and chairs of the DLC's purpose.

Delegation from the Council is required for the Chief Executive to appoint Officers to perform the duties of the DLC Secretary.

### **3. Recommendations**

Officers recommend that the Strategy and Policy Committee:

1. *Receive the information.*

2. *Note that the Council is required to appoint, by 18 December 2013, District Licensing Committee/s.*
3. *Agree that officers commence the recruitment and short listing of District Licensing Committee list members and Commissioners.*
4. *Note that officers will present to the post election Council a short list of potential District Licensing Committee list members, with appointment recommendations.*
5. *Note that officers will present to the post election Council, a short list of potential District Licensing Committee Commissioners and that, after considering expressions of interest from Councillors and the shortlist of potential Commissioners, Council will need to appoint elected member/s and/or Commissioner/s to chair District Licensing Committee/s.*
6. *Note that the interim Terms of Reference will be presented to the post election Council for consideration and approval.*
7. *Agree to recommend to the Council that it approve the Chief Executive having authority to delegate his powers, functions and duties under the Sale and Supply of Alcohol Act 2012.*

#### **4. Background**

Currently licensing decisions are made by Councils through their role as District Licensing Agencies (DLAs) and by the Ministry of Justice as the Liquor Licensing Authority (LLA). DLAs decide unopposed licensing applications and opposed special licence applications. All other opposed applications are decided by the LLA. DLA's decision-making activities are currently undertaken by Council officers under delegated authority from the Chief Executive.

Under the Sale and Supply of Alcohol Act 2012 (Act), effective 18 December 2013, Council DLAs will cease to exist and will be replaced by a new Council committee/s operating as the District Licensing Committees (DLCs) and the LLA will become the Alcohol Regulatory and Licensing Authority (ARLA). DLCs will decide both unopposed and opposed licence applications and ARLA will be the appeal authority. ARLA will also consider applications for the variation, suspension or cancellation of licenses.

#### **5. Discussion**

##### **5.1 District Licensing Committee structure and membership**

The powers, functions and membership requirements of DLCs are determined by the Act. These are documented in a proposed interim Terms of Reference (Appendix 1) which officers would use to inform DLC applicants of the DLC's purpose. The interim Terms of Reference would be submitted for consideration and confirmation by the post election Council.

Each DLC comprises a Chairperson and 2 other members appointed from a Council approved member list. The Chairperson for each DLC must be either an elected member of the Council or a Commissioner. The Council may also

appoint a deputy Chairperson, to act in place of the Chairperson. The deputy Chairperson must be an elected member of the Council.

A Commissioner must be of good standing and have the necessary knowledge, skill and experience relating to DLC matters. DLC list members must have experience relevant to alcohol licensing matters. Local Government New Zealand has issued guidance (Appendix 2) on competency requirements and conflict of interest for DLC members.

A meeting quorum is 3 members, other than for unopposed applications which may be considered by the Chairperson alone.

DLCs cannot delegate their authority and members cannot be Council officers.

DLC member remuneration has been set by the Minister of Justice under the Cabinet approved Fees Framework. Approved remuneration rates are: Chairperson \$624 per day (\$78 per hour for part days) and other members \$408 per day (\$51 per hour for part days).

The Act specifies that the Chief Executive is the Secretary of DLCs. The Act also requires the Chief Executive to appoint 1 or more licensing Inspectors and, if more than 1 Inspector is appointed, appoint 1 of the Inspectors as Chief Inspector. The Act allows, with the Council's authority, the Chief Executive to delegate any of his functions, powers and duties under the Act provided the Council has given him authority to do so. It is recommended that this authority is provided.

## **5.2 Councillors' involvement in the alcohol licensing framework**

In developing and implementing the alcohol licensing framework for Wellington City it is suggested there are 3 potential opportunities for Councillors' involvement:

- a) Determining, within the provisions of the Act and general law, and through the Local Alcohol Policy and other relevant by-laws, local regulations for alcohol licensing.
- b) Objecting to licence applications.
- c) Administration of the licensing framework through membership of DLCs.

Councillors can be appointed members of DLCs either as a Chairperson or deputy Chairperson, in their capacity as an elected member of Council, or as a list member. Appointment as a list member would be independent of their status as an elected member of Council i.e. their appointment would not cease if they were no longer an elected member of the Council. Councillors would need to meet the Act's criteria for appointment as a list member.

In considering involvement opportunities and preferences it is suggested Councillors give due consideration to any conflict of interest considerations. Conflict of interest is clearly an important consideration both for entities making appointments to statutorily established decision making committees as well as potential members of those committees.

## **5.3 Time required of DLC Chairperson/s and list members**

In estimating the time required of DLC/s Chairperson/s and list members it is important to note that the Act provides for the Chairperson alone to consider unopposed applications. Clearly the Chairperson alone considering unopposed

applications is the most efficient and cost effective option for processing these applications and estimates have been made on this basis.

The time required of full DLCs (i.e. the Chairperson and two list members) and the time required of the Chairperson alone has been estimated based on historical information and advice from the tribunals unit of the Ministry of Justice. It is estimated that the average total time required of full DLCs is 60 hours per month with a peak month total of 72 hours. The Chairperson/s only require an additional total of approximately 40 hours per month, and a peak of approximately 46 hours per month, to consider and determine unopposed applications. The total Chairperson/s time required is therefore an estimated average of 106 hours per month.

It is officers' plan to initially establish a minimum of two DLCs. Establishing only 1 DLC would come with the potential risk of the DLC, and the Chairperson in particular, struggling with workload during peak months or when there was an unexpectedly large number of more time consuming opposed applications.

Having only one DLC would also risk the DLC not being able to meet in the event the Chairperson was unavailable. This risk could be mitigated by the appointment of a deputy Chairperson however, as a deputy must be an elected member of the Council, that would require the availability, for the time required, of a Councillor to chair all DLC meetings.

As remuneration of members is based on a daily / hourly fee the number DLCs is cost neutral.

A final decision on the number of DLCs can be taken once the number and availability of potential Chairpersons and list members is known following the short listing process.

#### **5.4 Timetable for establishment of DLCs**

DLCs are required to be established and operational by 18 December 2013.

Working back from 18 December 2013, and allowing for local body elections in early October, the planned timetable for the establishment of DLCs is:

- **By mid December 2013:** DLC Chairperson/s and list members have received LGNZ training and have been through WCC induction (e.g. outlet visits, record keeping, expense claims and time recording etc).
- **By mid November 2013:** Post election, the Council appoints DLC Chairperson/s and list members.
- **By mid October 2013:** DLC applicants shortlisted, interviewed and reference checked.
- **By mid September 2013:** Applications for DLC Commissioner and list members received.
- **By mid August 2013:** Recruitment of DLC Commissioner and list members commenced.

### **5.5 Consultation and Engagement**

Public consultation and engagement on the alcohol licensing framework is focused on the Local Alcohol Plan.

The appointment of DLCs is a statutory requirement of the Council. The structure of DLCs and appointments to DLCs are not considered matters for public consultation.

### **5.6 Financial considerations**

Provision for the operation of DLCs has been made as part of public health's operational expenditure in the Annual Plan.

Further options for cost recovery of District Licensing Committee activities will be possible following the introduction of licensing fee regulations by the Ministry of Justice.

### **5.7 Long-term plan considerations**

As noted the establishment of DLCs is a statutory requirement. The extent that licensing fees will cover costs is being worked through however, considering the current level of cost under recovery of 40% - 50%, it is likely the new fees regime will improve the level of the Council's cost recovery.

Contact Officers: *Alison Curtis, Manager, Public Health Group and Steve Kelly, Project Manager, Public Health Group.*

## SUPPORTING INFORMATION

### 1) Strategic fit / Strategic outcome

*The establishment of District Licensing Committees (DLCs) is a statutory requirement.*

*DLCs will be responsible for performing functions assigned under the Sale and Supply of Alcohol Act 2012 (Act) including giving effect to the Council's Local Alcohol Policy.*

### 2) LTP/Annual Plan reference and long term financial impact

*The financial impact of operating DLCs, and the new alcohol licensing framework, is currently being assessed. However, as the current cost of administering and monitoring the alcohol licensing framework is significantly under recovered, and the Act provides for full cost recovery, it is possible that the financial impact will be positive.*

### 3) Treaty of Waitangi considerations

*There are no Treaty of Waitangi considerations.*

### 4) Decision-making

*This paper recommends the Council agree that officers commence the recruitment of DLC members and potential Commissioner/s and short list applicants. This is not considered a significant decision.*

*It is however noted that the appointment of DLCs is a statutory requirement. DLCs are quasi-judicial committees with an important role in the alcohol licensing framework. The appointment of DLC members, when that is recommended, will therefore be considered a significant decision.*

### 5) Consultation

#### a) General consultation and b) Consultation with Maori

*This paper has been internally consulted on.*

*It has not been externally consulted on as the establishment of DLCs is a statutory requirement and not a matter of policy.*

### 6) Legal implications

*As the establishment of DLCs is a statutory requirement there are no legal implications related directly to their establishment.*

### 7) Consistency with existing policy

*This paper is consistent with existing policy.*

## District Licensing Committee/s Terms of Reference

### **Voting Membership:**

District Licensing Committee/s will have 3 members appointed by Council; a Chairperson and 2 other members selected from the Council's list of persons approved to be members of District Licensing Committee/s.

Each member of a Committee has 1 vote and matters are determined by a majority of votes.

### **Quorum:**

A quorum for opposed licence or manager's certificate applications is 3.

A quorum for unopposed licence or manager's certificate applications is 1 who must be the Chairperson.

### **Chair:**

The Chairperson is appointed by Council and must be either an elected member of Council or a Commissioner. A Deputy Chairperson, who must be an elected member of Council, may be appointed by Council to act in the absence of the Chairperson.

### **Secretary:**

The Chief Executive is the Secretary of the Committee/s. The Chief Executive may delegate this responsibility.

### **Frequency of Meetings:**

The Committee/s will meet on an as required basis.

### **General Purpose and Objectives:**

The Sale and Supply of Alcohol Act 2012 (Act) requires the Council to appoint 1 or more District Licensing Committees to deal with licensing matters.

District Licensing Committee/s are appointed to administer Council's alcohol licensing framework as determined by the Act and the Council's Local Alcohol Policy.

### **Terms of Reference:**

The functions of District Licensing Committees are specified by the Act and are:

- a) To consider and determine applications for licenses and manager's certificates; and
- b) To consider and determine applications for renewal of licences and manager's certificates; and
- c) To consider and determine applications for temporary authority to carry on the sale and supply of alcohol in accordance with section 136 of the Act; and

## APPENDIX 1

- d) To consider and determine applications for the variation, suspension, or cancellation of special licences; and
- e) To consider and determine applications for the variation of licences (other than special licences) unless the application is brought under section 280 of the Act (Note: section 280 relates to applications by constables or inspectors to the Alcohol Regulatory Licensing Authority (ARLA) for the variation, suspension or cancellation of a licence, other than a special licence); and
- f) With the leave of the Chairperson for the licensing authority (ARLA), to refer applications to the licensing authority; and
- g) To conduct inquiries and to make reports as may be required of it by the licensing authority under section 175 of the Act; and
- h) Any other functions conferred on licensing committees by or under the Act or any other enactment.

### ***Delegated Authority***

District Licensing Committees are appointed by Council and operate with statutory powers conferred by the Act.



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# **Competency Guidance for District Licensing Committee (DLC) Members**

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## 1. Recruitment And Selection Timeline For Establishment Of A District Licensing Committee (DLC)

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**Key dates** See below for a list of key dates and actions covering the period June 2013 to 18 December 2013.

Voting for local government elections closes on 12 October 2013 and territorial authorities need to progress DLC selection immediately. The following suggests a timeline for the recruitment and selection of DLC members.

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### June 2013

- Territorial authority decides:
  - the DLC chairperson (particularly, whether to have an elected member or commissioner serve as the DLC chairperson)
  - whether to pursue a joint list DLC member list with another territorial authority and, if so, how this will be agreed.
- Territorial authority develops job descriptions for all DLC members.

### July 2013

- Territorial authority notifies expression of interest for all DLC members.

### August 2013

- Run recruitment process including short-listing. A territorial authority may wish to produce two lists - a preliminary list of DLC members, and a preliminary chairperson/commissioner list

### September-October 2013

- NB: Local body elections.

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## 1. Recruitment And Selection Timeline For Establishment Of A District Licensing Committee (DLC), Continued

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### Key dates, cont.

<b>Late October 2013</b>
<ul style="list-style-type: none"> <li>• Territorial authority decides on all members and commissioner (if one will be appointed).</li> </ul>
<ul style="list-style-type: none"> <li>• Territorial authority decides which candidates to appoint as list members and commissioners (if applicable).</li> </ul>
<b>Late October-early December 2013</b>
<ul style="list-style-type: none"> <li>• Training for DLC members and support staff.</li> </ul>
<b>October/November 2013</b>
<ul style="list-style-type: none"> <li>• Territorial authority agrees to chairperson (following elections).</li> </ul>
<b>DLC effective 18 December 2013</b>
<ul style="list-style-type: none"> <li>• All members appointed to DLCs, effective 18 December 2013.</li> <li>• The following process is suggested for DLC appointments: <ul style="list-style-type: none"> <li>○ an approved list of DLC members is agreed to and appointed by the territorial authority;</li> <li>○ the territorial authority appoints the chairperson; OR</li> <li>○ the territorial authority makes a recommendation to the chief executive, or a committee of council that has the relevant delegation, for the appointment of the DLC commissioner; and</li> <li>○ a list of approved persons is published by the territorial authority.</li> </ul> </li> </ul>

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## 2. Purpose of the Competency Guidance

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This document provides guidance to territorial authorities on the competencies needed by members of District Licensing Committees (DLC). The guidance is high-level and is intended to:

- assist territorial authorities in the selection and appointment of DLC members thus allowing for a seamless and timely transition from DLAs to DLCs;
- assist all territorial authorities in establishing their DLCs, regardless of organisation size or the number of licensing applications anticipated; and
- enable territorial authorities to adapt the advice to fit local circumstances, and to tailor the DLC selection process accordingly.

As a result of the Sale and Supply of Alcohol Act 2012 (the Act), District Licensing Agencies (DLAs) will cease to exist on 18 December 2013. Decisions on all licences and managers' certificates (opposed and unopposed) will be made by DLCs. By 18 December 2013, every territorial authority must have established one or more DLCs, with members ready to fulfil their roles and functions under the Act. Territorial authorities may like to consider the steps that they could take now in order to prepare for the establishment of DLCs, such as identifying the number of DLCs needed for their area, the administrative support DLCs will require, whether to appoint an elected member or commissioner as the chairperson, and whether to establish a joint list with another territorial authority or territorial authorities<sup>1</sup>.

The change from DLAs to DLCs has created a new space in which territorial authorities are now required to operate. While a committee of council, DLCs operate with the powers of a commission of inquiry. DLCs will function under a new regulatory framework as a semi-judicial board of inquiry, making decisions that can be appealed.

The move to a DLC allows community members to be part of the DLC. Further detail on the implications of the new DLC structure and the associated powers is covered in sections 3 and 4 of this document.

This document is set out as follows:

- Section 3: Background
- Section 4: Functions and powers of the DLC
- Section 5: Roles and functions of DLC members
- Section 6: Competencies
- Section 7: Resourcing requirements.

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<sup>1</sup> Ministry of Justice Fact Sheet – Territorial Authorities: changes under the new Act.

### 3. Background

Establishment of DLCs, and the associated changes to the existing DLA structure, can be understood within the context of the object of the Act, which states that:

- (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
- (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised [section 4 refers].

The Sale of Liquor Act 1989 (the 1989 Act) focused on the sale and supply of liquor and provided a framework with which to liberalise liquor laws. It aimed 'to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means' [section 4 refers]. The new Act promotes a stricter regime aimed at reducing harm to the community.<sup>2</sup> It provides greater scope for DLCs and the Alcohol Regulatory and Licensing Authority (ARLA) to consider whether the granting of a licence is likely to increase alcohol-related harm, and whether it will negatively impact the community.

The key changes (discussed in further detail in sections 3 and 4 of this document) relating to the transition from a DLA to a DLC environment are included in table 1 below.

**Table 1**      ***Key changes from DLA to DLC***

District Licensing Agencies	District Licensing Committees
The chief executive was the secretary to the DLA and often delegated the decision-making responsibility to officers.	DLC membership can include community members, elected members and commissioners.
DLAs dealt with only unopposed applications and opposed special licence applications.	DLCs will deal with opposed and unopposed applications for new and renewed licences.
Generally, liquor matters received delegated attention under the 1989 Act.	The DLC decision-making role cannot be delegated.
Licensing inspectors may have previously completed a report and decided applications.	Under the DLC, reports are provided by inspectors to assist decision-making by the DLC. An inspector may not sit on a DLC.
DLAs varied in their role in decision-making across the country's territorial authorities.	The role of a DLC is prescribed in statute, promoting greater consistency in decision-making processes.
Liquor Licensing Authority considered all opposed applications and appeals (with the exceptions of opposed special licences)	Alcohol Regulatory Licensing Authority (ARLA) will consider enforcement applications and appeals, maintain a central register of decisions, and issue guidance to DLCs.

<sup>2</sup> Dormer, Alan. 2013. *Brookers Sale and Supply of Alcohol Act 2012 Handbook*. Wellington

## 4. Functions and Powers of a DLC

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The role and functions of a DLC are set out in s187 of the Act. A DLC is responsible for all licence (including special licence) and all managers' certificate applications, renewals and temporary authorities, regardless of whether these are opposed or unopposed. DLCs will also consider and determine applications for temporary licences and for the variation, suspension, or cancellation of special licences. With the permission of the ARLA chairperson, a DLC may refer applications to ARLA and may be required to conduct inquiries and make reports as requested by ARLA.

When considering the functions of a DLC, territorial authorities must understand the powers of the DLC and the implications that these powers may have on establishing a DLC. Section 200 of the Act notes that, 'every licensing committee is a committee of its territorial authority'<sup>3</sup>, but for the purposes of selecting DLC members, territorial authorities should note that a DLC has the powers of a Commission of Inquiry under the Commission of Inquiry Act 1908 [section 201 refers]. This means that a DLC can issue witness summonses<sup>4</sup> requiring the attendance of witnesses before it or the production of documents. It also has the power to rehear any matter that it has determined.

The implications of the Commission of Inquiry powers are that territorial authorities will need to consider the wide range of expertise and level of competencies required of DLC members and chairpersons or commissioners. DLCs will require members to have highly developed decision-making skills, investigative ability and excellent writing skills. These competencies are explored further in section 5 of this document.

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<sup>3</sup> A DLC does not need to comply with Part 7 of the Local Government Official Information and Meetings Act 1987 which relates to meetings. It must follow the procedure requirements set out in the Sale and Supply of Alcohol Act; however, it regulates its own proceedings by virtue of being a Commission of Inquiry.

<sup>4</sup> See s7 of the Commission of Inquiry Act 1908 for witnesses' allowances.

## 5. Roles and Functions of DLC Members

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### 5.1 DLC composition

A DLC is made up of three members:

- One member who must be appointed as the chairperson and who must be either an elected member of that territorial authority or a commissioner.
- A territorial authority can appoint a deputy chairperson to act in the absence of the chairperson and who must be an elected member of the territorial authority.
- List members who meet the eligibility standards and those that are not excluded under the Act, see s 192.

There are two distinct roles within a DLC: a chairperson and approved 'list members'. A chairperson of a DLC can either be an elected member of the territorial authority, or a commissioner appointed by the territorial authority. It is the territorial authority's decision to have a commissioner or an elected member as chairperson. Deciding the nature of the chairperson role should be the first step in determining a likely DLC structure.

It is important to note that a DLC chairperson or commissioner is appointed for all decisions considered by that DLC. The Act does not intend for a commissioner to replace a chairperson on an ad hoc basis. This also excludes the possibility of a territorial authority delegating the power to appoint a commissioner to the DLC chairperson, as the chairperson cannot step aside except for reasons outlined in s189(3) - principally illness and absence from New Zealand - when a deputy chairperson should be appointed.

A commissioner should have specialist skills and expertise in the hearing environment and may have a background in resource management hearings, for example. List members of a DLC include persons approved by the territorial authority to form part of the DLC. These can be community members or elected members of a territorial authority. A territorial authority may appoint multiple DLCs, depending on its requirements.

Territorial authorities should ensure that elected members of the DLC are aware that they hold a semi-judicial role and cannot allow electioneering or a political standpoint to influence decisions. The decisions need to be made according to what is legally correct, and cannot be influenced by concerns that the decision may be unpopular and affect re-election prospects.

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## 5. Roles and Functions of DLC Members, Continued

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### 5.2 Meetings and quorum

S191 of the Act notes that the quorum necessary at a DLC meeting is three members. The only exception relates to applications for new or renewed licences or manager's certificates where no objection has been filed and no matters of opposition have been raised. In this situation, the chairperson can consider and decide the application on his/her own. All decisions for a temporary authority, including those that are unopposed, must be heard by the full quorum. When the chairperson considers unopposed applications on his/her own (on the papers), this is considered to be a meeting of the DLC.

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### 5.3 DLC member list

DLC members (other than the chairperson) are to be selected from a list of potential DLC members, as described in s192 of the Act. The list ensures that DLC membership is flexible and can accommodate changes in the availability of members.

The list must be established, maintained and published by the territorial authority and can be a combined list with one or more territorial authorities. A combined list will ensure a greater pool of skills and expertise for the territorial authority to select from when appointing DLC list members.

Each territorial authority will need to decide a process for determining which list members will sit on each DLC for each of its hearings. Territorial authorities could adapt existing mechanisms used to select members for hearings (such as resource consent hearings).

DLC list members, and the chairperson or commissioner, are appointed for a period of up to five years (as decided by the territorial authority). They can be reappointed for one or more further periods of up to five years. The commissioner is appointed to a DLC by the chief executive, on the recommendation of the territorial authority.

Any DLC member can resign at any time and can be removed for inability to perform functions, neglect, bankruptcy or misconduct [s194 refers].

An elected member cannot continue as the chairperson of a DLC once s/he ceases to be an elected member of the territorial authority. The Act is otherwise silent on the term of elected territorial authority members appointed as chairs of DLCs.

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## 5. Roles and Functions of DLC Members, Continued

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### 5.3 continued DLC member list

#### *Persons on the DLC member list*

S192 (2) of the Act states that ‘a territorial authority must not approve a person to be included on the list unless that person has experience relevant to alcohol licensing matters.’

In determining what is required for appointment of a DLC member, careful consideration must also be given to s192(5)(a), which notes that a person must not be included on the DLC member list if that person has ‘directly or by virtue of his or her relationship with another person, such an involvement or appearance of involvement with the alcohol industry.’ For example, a territorial authority could consider whether the potential DLC member has, directly or indirectly, any pecuniary interest in the alcohol industry.<sup>5</sup> Table 2 (below) provides examples of who may or may not be included.

Experience ‘relevant to alcohol licensing matters’ is not a stated requirement for elected members of a territorial authority appointed to sit as the chairperson of a DLC; however, this does not prevent territorial authorities from appointing elected members with this type of experience as chairperson.

Under s192(5)(b) certain people cannot be included on the list, including constables, Medical Officers of Health, licensing inspectors and employees of the territorial authority.

Examples of who may or may not be included in the list are provided in Table 2 (below). This is not exhaustive but is designed to provide territorial authorities with an idea of who to consider in establishing a DLC member list.

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<sup>5</sup> Pecuniary interest similarly referred to in section 6 of the Local Authorities (Members’ Interests) Act 1968.

## 5. Roles and Functions of DLC Members, Continued

### 5.3 continued DLC member list

**Table 2** *Examples of inclusions and exclusions for DLC list members*

Examples of who could be included on the DLC member list (if they meet the criteria of the Act)	Examples of who should be excluded from the DLC member list
<ul style="list-style-type: none"> <li>• Former licensing inspector</li> <li>• Former Medical Officer of Health</li> <li>• Former council employees</li> <li>• Former licensee</li> <li>• Justice of the Peace</li> <li>• Retired district court judge</li> <li>• Former politicians</li> <li>• Former constable in the role of Alcohol Harm Reduction Officer</li> <li>• Former consultants in the alcohol industry</li> <li>• Trainer for licensing industry</li> <li>• Previous member of staff of Liquor Licensing Authority</li> </ul>	<ul style="list-style-type: none"> <li>• Involvement or appearance of involvement with the alcohol industry s192(5)(a) (consider pecuniary interests) – e.g.               <ul style="list-style-type: none"> <li>○ Owner/licensee/building owner of a restaurant, bar or café holding a licence</li> <li>○ Shareholder or director in the above</li> <li>○ Trustee on a charitable trust, e.g. Lions Foundation, Licensing Trust (can be a member of a charitable trust but not maintain a governance position by sitting on the board), due to funds obtained through gambling machines located in licensed premises.</li> </ul> </li> <li>• Alcohol industry representatives (s192(5)(a))</li> <li>• Lobbyist representatives (s192(5)(a))</li> <li>• Holder of a managers certificate (s192(5)(a))</li> <li>• Constable, Medical Officer of Health, an inspector or an employee of that territorial authority (s192(5)(b))</li> </ul>

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## 5. Roles and Functions of DLC Members, Continued

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### 5.3 continued DLC member list

#### ***Conflict of interest and bias***

In considering the appointment of any member of a DLC, a territorial authority must carefully consider any actual or perceived conflict of interests, as the decisions made must be made with no perception of bias. This will ensure that those affected by the decisions are more likely to have trust and confidence in the process, which reduces the risk of legal challenge.

Selection of DLC members should be made on a case-by-case basis, and seek to avoid biased decision-making or perceived biased decision-making by a DLC. Bias or predetermination is evident where a DLC member has a strong opinion, or is seen to be one-sided on an issue. This includes instances where a member has taken a public position on an issue they have been appointed to make a decision on, as well as instances where they have a 'known' position on an issue (due to previous involvement/interests/statements). For example, any person who has a strong view either opposed or in favour of increasing or decreasing licensed outlets should not be appointed to a DLC.

A conflict of interest will exist when a member's duties or responsibilities to the DLC could be affected by some other interest or duty that the member may have. Conflicts of interest can arise as a result of a number of reasons, including a DLC member having previously submitted on a licence application decision, or been a part of a community organisation that has submitted on a decision. This conflict may arise due to a member's own financial affairs or those of persons close to them, existing relationships that could be affected by decisions of the DLC, previous roles or something that has been said or done to suggest a conflict.

The onus is on those applying to the territorial authority to disclose this information (or at the time that the conflict arises), and again must be assessed by the territorial authority on a case-by-case basis.

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## 5. Roles and Functions of DLC Members, Continued

### 5.3 continued DLC member list

#### ***Conflict of interest and bias, continued***

The following questions can be used to alert or prompt potential DLC applicants to possible conflict of interests. It may be kept in mind for recruitment purposes and for consideration of applications on a case by case basis. Note that these are only prompts for discussion and not in themselves an indication of a potential DLC member actually having a conflict of interest:



It must also be made clear to potential DLC members that the role they are proposing to undertake is **not one** of advocacy.

**Any form of advocacy will be deemed a conflict of interest and places a decision in jeopardy.**

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## 5. Roles and Functions of DLC Members, Continued

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**5.4 Commissioner** As noted above, a territorial authority can choose to have an elected member as chairperson, or to recommend that the chief executive of the territorial authority appoint a commissioner. The Act does not intend for a commissioner to replace a chairperson (or vice versa) on an ad hoc basis.

S193(1) of the Act provides a DLC commissioner with all the functions, powers and duties of the chairperson. A commissioner must have 'good standing in the community and the necessary knowledge, skill and experience relating to matters that are likely to come before the committee' [S193(2) refers]. A territorial authority may consider good standing in the community to include those who are respected in the community and hold positions such as a Justice of the Peace, a lawyer, school teacher or other professionally qualified person.

**As for DLC list members, a commissioner must not be appointed if s/he meets any of the grounds for exclusion from the DLC member list [sections 193(3)(a) and 193(3)(b) refer].**

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### **5.5 Support and training for DLC members**

Support to DLCs in the form of technical guidance and training is important to ensure both a smooth transition to the DLC structure and the ongoing capability of a territorial authority's DLC. Training for DLC members and support staff will be delivered by LGNZ in late October-early December 2013. This will be a desirable prerequisite for all DLC members.

The ongoing technical support for DLC members will depend on the capacity and capability of a territorial authority. Support may come from territorial authority staff such as the committee secretary or members of the legal team (where appropriate). Territorial authorities may wish to engage an external advisor to provide guidance on specific matters such hearing procedures, the use of evidence, and the writing of decisions.

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## 6. Competencies

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The competencies described in table three (below) are intended to guide territorial authority staff in the development of job descriptions and the selection process of DLC members. The competencies are provided at a level so each territorial authority can interpret as appropriate to their local situation and those who are likely to be applying.

As discussed in section 4 of this document, the mandatory requirements of DLC members and chairperson/commissioner are clearly set out in the Act. The territorial authority must be satisfied that, overall, the candidates meet the legal test applicable to each type of applicant. The competencies listed below might help the territorial authority reach an overall view on this point.

For example, the essential competencies include the skills, knowledge and attributes that are necessary to the role. Competencies that are desirable are those qualities that may be exhibited, but are not necessary. Chairpersons and list members would demonstrate different levels of experience and expertise against the various competencies but collectively should demonstrate all competencies. It is important for territorial authorities to note that this is guidance only and not to be interpreted as a strict checklist. That is, candidates do not need to meet every requirement and can instead be actively supported in their role to develop a particular skillset.

The competencies are considered for the two roles that make up a DLC – chairperson\* (which will either be an elected member or a commissioner\*, and includes a deputy chairperson), or a DLC list member.

**\*NB:**

- A chairperson is an elected member.
- A commissioner is not an elected member. S193(2) of the Act states "*The chief executive may only appoint a person as a commissioner if that person is of good standing in the community and has the necessary knowledge, skill, and experience relating to matters that are likely to come before the committee*".
- However, a TA can appoint an elected member as a commissioner assuming they have the competencies necessary to fulfill their functions under the Sale and Supply of Alcohol Act 2012. Advice that MoJ has given before stated "*As a transitional measure around elections, an elected member who is a Chair can be appointed as a Commissioner either until a new elected member can take the position or he or she may remain as a Commissioner if the TA considers that desirable.*"

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## 6. Competencies, Continued

Table 3 *Competencies for DLC chairperson/Commissioner and DLC list members*

CHAIRPERSON/COMMISSIONER		
Competency descriptor	Essential for the role	Desirable for the role
<b>1: Experience relevant to alcohol licensing matters</b> – Demonstrates knowledge of alcohol licensing matters and demonstrates active interest and ability to build new knowledge in this area		
Knowledge of alcohol licensing		✓
Demonstrate experience of legal and regulatory alcohol environment	✓	
Knowledge of the Sale and Supply of Alcohol Act 2012	✓	
<b>2: Understanding of harm caused by the consumption of alcohol</b> – Demonstrates knowledge of the Act and alcohol related harm		
Knowledge of alcohol-related harm and its impact on communities		✓
<b>3: Community knowledge</b> - Demonstrates knowledge of the community for which DLC operates		
Awareness and understanding of the local alcohol policy (if relevant)	✓	
Understanding of community expectations around licensing		✓
<b>4: Quality decision making</b> – Utilises analysis, wisdom, experience, and logical methods to make good decisions and solve difficult problems with effective solutions. Probes beyond stated situation to identify underlying issues.		
Considers information from a variety of sources in an objective, unbiased way to reach a conclusion	✓	
Ability to sort fact from fiction	✓	
Operates independently with little direction	✓	
Applies pragmatic decision-making	✓	
Chairperson experience	✓	
Balanced assertiveness	✓	
<b>5: Hearing experience</b> – Demonstrates knowledge of the purposes of the hearing process and demonstrates knowledge of applying the legislation		
Understanding and application of the legislation	✓	
Understanding written decisions	✓	
Interpreting case law	✓	
Knowledge and understanding of hearings procedure	✓	
<b>6. Strong communication</b> – Demonstrates effective written and oral communication skills. Can write clearly and succinctly. Listens to others and asks questions to gain understanding. Facilitates good working relationships with other DLC members and offers constructive input.		
Strong verbal and written communication skills	✓	
Knowledge of and ability to operate under rules of confidentiality	✓	
Skills in questioning- ability to drill down to the issue	✓	
Writes clear and well thought-out decisions	✓	
<b>7. Professional integrity</b> – Upholds professional integrity at all times.		
Demonstrates behaviours that are consistent with standards for professional and ethical conduct	✓	
Refrains from behaviour that fosters the appearance of conflict of interest	✓	
Applies rules and regulations in a consistent, non-biased manner	✓	

## 6. Competencies, Continued

Table 3, *Competencies for DLC Chairperson/Commissioner and DLC list members cont.*

<b>DLC LIST MEMBERS</b>		
<b>Competency descriptor</b>	<b>Essential for the role</b>	<b>Desirable for the role</b>
<b>1: Experience relevant to alcohol licensing matters</b> – Demonstrates knowledge of alcohol licensing matters and demonstrates active interest and ability to build new knowledge in this area		
Knowledge of alcohol licensing	✓	
Demonstrate experience of legal and regulatory alcohol environment		✓
Knowledge of the Sale and Supply of Alcohol Act 2012		✓
<b>2: Understanding of harm caused by the consumption of alcohol</b> – Demonstrates knowledge of the Act and alcohol related harm		
Knowledge of alcohol-related harm and its impact on communities	✓	
<b>3: Community knowledge</b> - Demonstrates knowledge of the community for which DLC operates		
Awareness and understanding of the local alcohol policy (if relevant)	✓	
Understanding of community expectations around licensing	✓	
<b>4: Quality decision making</b> – Utilises analysis, wisdom, experience, and logical methods to make good decisions and solve difficult problems with effective solutions. Probes beyond stated situation to identify underlying issues.		
Considers information from a variety of sources in an objective, unbiased way to reach a conclusion	✓	
Ability to sort fact from fiction	✓	
Operates independently with little direction		✓
Applies pragmatic decision-making	✓	
Chairperson experience		✓
Balanced assertiveness		✓
<b>5: Hearing experience</b> – Demonstrates knowledge of the purposes of the hearing process and demonstrates knowledge of applying the legislation		
Understanding and application of the legislation	✓	
Understanding written decisions	✓	
Interpreting case law		✓
Knowledge and understanding of hearings procedure		✓
<b>6. Strong communication</b> – Demonstrates effective written and oral communication skills. Can write clearly and succinctly. Listens to others and asks questions to gain understanding. Facilitates good working relationships with other DLC members and offers constructive input.		
Strong verbal and written communication skills	✓	
Knowledge of and ability to operate under rules of confidentiality	✓	
Skills in questioning- ability to drill down to the issue	✓	
Writes clear and well thought-out decisions		✓
<b>7. Professional integrity</b> – Upholds professional integrity at all times.		
Demonstrates behaviours that are consistent with standards for professional and ethical conduct	✓	
Refrains from behaviour that fosters the appearance of conflict of interest	✓	
Applies rules and regulations in a consistent, non-biased manner	✓	

## 6. Competencies, Continued

Table 3, *Competencies for DLC Chairperson/Commissioner and DLC list members cont.*

SUMMARY FOR BOTH CHAIRPERSON/COMMISSIONER (C) & DLC LIST MEMBERS (DLC)		
Competency descriptor	Essential for the role	Desirable for the role
<b>1: Experience relevant to alcohol licensing matters</b> – Demonstrates knowledge of alcohol licensing matters and demonstrates active interest and ability to build new knowledge in this area		
Knowledge of alcohol licensing	DLC	C
Demonstrate experience of legal and regulatory alcohol environment	C	DLC
Knowledge of the Sale and Supply of Alcohol Act 2012	C	DLC
<b>2: Understanding of harm caused by the consumption of alcohol</b> – Demonstrates knowledge of the Act and alcohol related harm		
Knowledge of alcohol-related harm and its impact on communities	DLC	C
<b>3: Community knowledge</b> - Demonstrates knowledge of the community for which DLC operates		
Awareness and understanding of the local alcohol policy (if relevant)	C / DLC	
Understanding of community expectations around licensing	DLC	C
<b>4: Quality decision making</b> – Utilises analysis, wisdom, experience, and logical methods to make good decisions and solve difficult problems with effective solutions. Probes beyond stated situation to identify underlying issues.		
Considers information from a variety of sources in an objective, unbiased way to reach a conclusion	C / DLC	
Ability to sort fact from fiction	C / DLC	
Operates independently with little direction	C	DLC
Applies pragmatic decision-making	C / DLC	
Chairperson experience	C	DLC
Balanced assertiveness	C	DLC
<b>5: Hearing experience</b> – Demonstrates knowledge of the purposes of the hearing process and demonstrates knowledge of applying the legislation		
Understanding and application of the legislation	C / DLC	
Understanding written decisions	C / DLC	
Interpreting case law	C	DLC
Knowledge and understanding of hearings procedure	C	DLC
<b>6. Strong communication</b> – Demonstrates effective written and oral communication skills. Can write clearly and succinctly. Listens to others and asks questions to gain understanding. Facilitates good working relationships with other DLC members and offers constructive input.		
Strong verbal and written communication skills	C / DLC	
Knowledge of and ability to operate under rules of confidentiality	C / DLC	
Skills in questioning- ability to drill down to the issue	C / DLC	
Writes clear and well thought-out decisions	C	DLC
<b>7. Professional integrity</b> – Upholds professional integrity at all times.		
Demonstrates behaviours that are consistent with standards for professional and ethical conduct	C / DLC	
Refrains from behaviour that fosters the appearance of conflict of interest	C / DLC	
Applies rules and regulations in a consistent, non-biased manner	C / DLC	

## 6. Competencies, Continued

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**Key relationships**

**The key relationships that all DLC members must effectively maintain and manage include:**

*Internal Relationships*

- Territorial authority staff members including democracy staff, legal team
- DLC Secretary

*External Relationships*

- Police
  - Licence inspector
  - Medical Officers of Health
  - ARLA representatives.
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## 7. Resourcing Requirements

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Table 4 (below) provides a suggested percentage split of the types of applications that a territorial authority may receive. This split is based on a large city council and may need to be adjusted according to each territorial authority's situation and expectations. This process may be a useful starting point for a territorial authority to assess the numbers for each type of application.

The table also provides indicative sitting times for the different types of applications. This information is provided by the Ministry of Justice and is based on figures provided by 15 representative councils. The following assumptions have been made for the calculation of the estimated sitting times:

### *Unopposed applications:*

- It is expected that unopposed applications will generally be considered 'on the papers' (that is without a hearing) and, in many cases, will be decided by the chairperson of the DLC on their own.
- Special licences are assumed to take as long as unopposed manager's certificates and be considered by the DLC chairperson alone.

### *Opposed applications:*

- Considering opposed applications is more time-consuming than unopposed applications. Opposed applications must be considered by the full DLC and must be considered by way of a public hearing (unless the objector does not require a hearing, the objection is withdrawn, or it is considered vexatious or out of scope).
- Based on prior ARLA experience hearings for opposed licence applications typically take 3-6 hours and hearings of opposed manager's certificates typically take one hour.

Table four (below) brings the assumptions together to create an indicative estimate of the direct costs of DLCs. This does not include the cost of additional council support staff to service the DLC. The fees for DLC members are set according to Cabinet fees framework. The DLC Chairperson is entitled to \$624 per day (\$78 per hour for part days) and other members will receive \$408 per day (\$51 per hour for part days).

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## 7. Resourcing Requirements, Continued

**Table 4**      *Estimated percentage split by application type and estimated sitting time required for each*

<b>Application</b>	<b>Considered by</b>	<b><u>Estimated</u> % split of application type</b>	<b><u>Estimated</u> DLC members' time (sitting hours only)</b>
Unopposed manager's certificates	Chairperson or Commissioner DLC	95%	0.33
Opposed managers' certificates- hearing	Full DLC	5%	1.5
Temporary Authority	Full DLC	100%	0.5
Unopposed licences	Chairperson or Commissioner DLC	70%	0.5
Opposed licences – hearing	Full DLC	30%	5
Unopposed special licences	Chairperson or Commissioner DLC	99%	0.33
Opposed special licences	Full DLC	1%	2 (though will vary depending on circumstances)