

Far North District Licensing Committee

Practice Note 1

DLC Composition and Hearing Procedure

Pursuant to the Sale and Supply of Alcohol Act 2012



Date: 20 August 2024

Introduction

The Far North 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. We also consider temporary authorities and temporary licences. The Far North has two DLCs.

The DLC comprises of five approved members, DLC A is chaired by a Commissioner and DLC B is chaired by an Elected Member.¹

The DLC makes decisions by majority vote, with three members hearing each application.²

The current people approved to be members of the two Far North DLCs are:

DLC A Chairperson:	Commissioner Murray Clearwater
DLC B Chairperson:	Cr Ann Court
Deputy Chairperson:	Vacant
List Members:	Commissioner John Thorne, Graeme Wright, Lisa McNab and Martin Macpherson

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 certificate³
- An application for a temporary authority.⁴

Alternatively, the Chair can decide to convene a public hearing even if unopposed.

If a valid public objection is lodged the Committee must convene a public hearing unless the application is withdrawn, the objection is deemed vexatious or outside the scope of the Act, or the objector does not require a public hearing.

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

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.

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

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

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

⁴ Sale and Supply of Alcohol Act 2012 s136(1)(4A).

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

Notice can be waived by parties on their own cognizance.

Preparation

Parties to a DLC hearing should be well prepared to assist the DLC understand the issues that need to be considered and determined.

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, a renewal, or a certificate.

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

Discovery of documents

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 ten (10) working days prior to the hearing date. Contact details for parties and reporting agencies may be obtained from the Secretary.

The applicant is expected to lodge their evidence in chief at least 5 working days before the hearing.

Leave may be granted by the DLC for exceptions to these timelines on a case-by-case basis.

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

- Email:** dlc.admin@fndc.govt.nz
- Post:** Far North District Licensing Committee
Attention: DLC Secretary
Private Bag 752, Memorial Ave
Kaikohe 0440
- Delivery:** Far North District Licensing Committee
Attention: DLC Secretary
Any Far North District Council Office or Service Centre

Parties to the hearing

The applicant for a licence is expected to appear in support of their application and any objector is entitled to **appear and be heard at the hearing**. Once the 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** at the hearing:

- 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 authorized to undertake fire safety inspections

- A person authorized 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
- Any party or other person that wishes to be represented at the hearing by an advocate or other representation or a colleague who is not a lawyer

NOTE

These 204(2) parties may appear and be heard only to assist the DLC in its decision making. They cannot 'oppose or object' to the application.

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 recognizes 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 contain commercially sensitive and confidential proprietary information. The DLC therefore expects to receive sensitive and confidential information from time to time.

All parties that intend on supplying sensitive or confidential information to the DLC must inform the DLC about the information's sensitive or confidential nature and ask for an order to protect that information prior to the exchange.

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 redacted before being supplied to third parties. 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 from hearing or reporting 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 five 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. (Also subject to disclosure requirements above)

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 by 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.

However, this may raise objections from other parties who will seek time to consider and respond to the new information. The DLC will have to rule on whether the new evidence can be received, or the hearing adjourned to allow parties to respond to the new information.

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 documents 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

The Chairperson may summon witnesses to appear before the DLC and/or to produce documents for 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.⁹

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:

Email: dlc.admin@fndc.govt.nz

Post: Far North District Licensing Committee
Attention: DLC Secretary
Private Bag 752, Memorial Ave
Kaikohe 0440

Delivery: Far North District Licensing Committee
Attention: DLC Secretary
Any Far North District Council Office or Service Centre

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.

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 if they wish to do so.

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 led 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 produce the best evidence available to support 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, or, 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 senior 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.

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 or the applicants' counsel 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 any DLC questions.

Reporting Agencies

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

- Police
- Medical Officer of Health
- Licensing Inspector

The DLC will cross examine any of the agencies following that witness's evidence in chief. The DLC will ascertain whether the reporting agencies believe that the application meets the prescribed criteria or that they oppose the granting of the application or seek specific conditions for any licence; or are neutral and present simply to assist the Committee.

Objectors

Objectors may present their case personally or led by 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 ask the witness questions. When the DLC questions a witness the purpose of these questions will be to fully understand the evidence.

The objector or his/her counsel will be given the opportunity to re-examine his or her witness after cross examination and 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 desired. 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 will not allow the 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 usual order for closing submissions is reporting authorities, objectors, followed by the applicant in reply.

Adjournments

Generally speaking, once the case has stated 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 witness becoming unavailable at short notice;
- A shortage of time;
- To allow for the collection and presentation 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).¹⁰

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.

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

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

A written decision and the reasons for that decision will be sent to the applicant, reporting agencies, and objectors.¹¹

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 Alcohol Regulatory Licensing Authority (ARLA).¹² All decisions of the DLC are to be publicly available on council's website.

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.¹³

Appeals are dealt with by way of rehearing by the Alcohol Regulatory and Licensing Authority (ARLA).¹⁴

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

¹¹ Sale and Supply of Alcohol Act s211.

¹³ Sale and Supply of Alcohol Act s155.

¹² Sale and Supply of Alcohol Act s66.

¹⁴ Sale and Supply of Alcohol Act s157.



Ann Court
Chairperson – Far North DLC A
Far North District Licensing Committee



Murray Clearwater
Chairperson – Far North DLC B
Far North District Licensing Committee

Disclaimer: The information in this practice and guidance note is, according to Council's best efforts, accurate at the time of publication. Council makes every reasonable effort to keep it current and accurate. However, users of the practice notes are advised that:

- the information provided does not alter the Sale and Supply of Alcohol Act 2012 ('the Act') or other laws of New Zealand and other official guidelines and requirements;
- this document sets out general principles which may be used as guidance for matters relating to the interpretation and application of "the Act" and other statutory instruments; it is not intended to interfere with, or fetter, the professional views and opinions of council officers when they are performing any function or exercising any power under "the Act". Each consent application will be considered on a case-by-case basis and on its own merits;
- Users should take specific advice from qualified professional people before undertaking any action as a result of information obtained in this practice note;
- Council does not accept any responsibility or liability whatsoever whether in contract, tort, equity or otherwise for any action taken as a result of reading or reliance placed on Council because of having read any part, or all, of the information in this practice note or for any error, or inadequacy, deficiency, flaw in or omission from the information provided in this publication.

Flow Chart for DLC Applications

