IN THE MATTER of the Sale and Supply of Alcohol Act 2012("the Act")

AND

IN THE MATTER of Section 103 Reports.

PRACTICE NOTE OF THE SOUTH WAIKATO DISTRICT LICENSING COMMITTEE

BACKGROUND

This Practice Note sets out the legal requirements and **expectations** of the South Waikato District Licensing Committee (DLC) around agency reporting timelines, the minimum requirements to be contained in a report in opposition and the pre-hearing disclosure of documents.

We also give practical advice on facilitating the right for the public to view an application during the [25][1]-working period after the application is lodged with the DLC.

AGENCY REPORTS

Section 103 of the Act says:

> ***103 Police, Medical Officer of Health, and inspector must inquire into applications.***
> *(1) On receiving an application for a licence, the secretary of the licensing committee concerned must send a copy of it, and of each document filed with it, to—*
> *(a)the constable in charge of the police station nearest to—*
> *(i)the premises for which the licence is sought; or*
> *(ii)the secretary's office, where the licence is sought for a conveyance; and*
> *(b)an inspector; and*
> *(c)the Medical Officer of Health—*
> *(i)in whose district the premises are situated; or*

[1] Amended from 15 working days to 25 working days on 21 August 2023 by the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023

(ii)in whose district the applicant's principal place of business in New Zealand is situated, where the licence is sought for a conveyance.

(2) ***The inspector must inquire into, and file with the licensing committee a report on, the application****.*
(3) ***The Police and the Medical Officer of Health—***
*(a)****must each inquire into the application****; and*
*(b)****if either has any matters in opposition to it, must file with the licensing committee a report on it within 15 working days after receiving the copy of it****.*

(4) The licensing committee ***may assume*** *that, if* ***no report is received from the Police or Medical Officer of Health within 15 working days after them receiving a copy of the application****, the Police or Medical Officer of Health* ***does not oppose*** *the application.*

(5) ***The secretary must send to the applicant a copy of any report filed with the licensing committee under this section.***

THE REQUIREMENT TO ENQUIRE INTO AN APPLICATION

Clearly, Section 103 (3) says that the Police and MOoH **MUST** enquire into the application and **IF** either has any matters in opposition to it, they **MUST** file a report within 15 working days of **receiving** the application.

In practice, this requires both agencies to adequately resource the staff requirements to competently and efficiently perform this role and report fully on applications in a timely manner should the case demand it.

Although not required by the Act, a prompt report stating there are no matters in opposition is appreciated by the DLC and the admin team to expedite the processing of un-opposed applications.

CONTENTS OF THE REPORT

In an appeal against a DLC decision **KAPITI SUPERMARKET LIMITED** [2015] NZARLA PH 194 paragraph 15[2] ARLA has made it very clear as to the level of reporting expected of agencies:

> *In terms of s.103(3)(b) of the Act the Police (read MOoH as well) must decide within 15 working days after receiving a copy of the application whether or not they have any matters in opposition to it. Whether or not the Police have matters in opposition must be determined within the timeframe stated in the Act*

[2] KAPITI SUPERMARKET LIMITED [2015] NZARLA PH 194 paragraph 15

and the Police are bound by the indication that they give. There is nothing in the Act to prevent the Police altering their stance within the 15-day period. Likewise, it is permissible for the Police to withdraw their opposition at any time. ***If the Police do have matters in opposition to an application, they must state those matters within the 15 working day period****.* ***Merely to state that they oppose an application without setting out the matters in opposition is not adequate as this fails to tell an applicant the nature of the case it must answer at the subsequent hearing****;*

[b] If the Police fail to state that they have matters in opposition to an application within 15 working days after the copy of the application is sent to them, the DLC is entitled to assume that the Police do not oppose the application. (In this case), the Police are deemed not to oppose.

After the expiration of the 15-day period and at the hearing before the DLC, the Police were not entitled to alter their original stance. Further, the DLC should have assumed that the Police had no matters in opposition to the application – s.103(4) of the Act. In this case, the change of stance occurred approximately three weeks after the original indication of no opposition and arguably the respondent did have time to appreciate the nature of the Police opposition and answer it. ***However, it is important that District Licensing Committees and the Authority require compliance with the statutory obligations of the reporting agencies. Too often recently have reporting agencies failed in this regard and as a result breaches of natural justice have occurred. This must not be permitted to continue.*** *Finally, the waiver provisions contained in s.208 of the Act will seldom apply as the neglect or omission will usually be wilful.*

From this appeal decision we draw the following conclusions:

a) The agencies **MUST** provide a report within 15 working days of receiving a copy of the application if they have matters in opposition;
b) The report **MUST state the matters** that they have in opposition. They do not have to be comprehensive at this stage but must be sufficient for the applicant to understand the matters that they must answer at a subsequent hearing (and/or for negotiation with the inspector)
c) Failure to comply with these requirements will most likely be a breach of natural justice.
d) At any subsequent hearing, the reporting agencies will be confined to the matters raised in their reports filed in terms of s.103(3)(b) of the Act.

There is further authority for this stance.

In **PAULIN v SCOTT [2013] NZARLA 489**[3] "*the Authority accepted that the Police may not be able to express their grounds for opposition with adequate particularity within 15 working days….it would be permissible for the Police to state their grounds in opposition in more detail within a very short period of time. The Authority envisages that this would be within 15 working days of the initial report."*

INSPECTOR REPORTING TIMES

There is no time requirement on the Inspector to report but, it should be commenced promptly, and competently, and submitted to the DLC in a timely manner.

CONDITIONAL OPPOSITIONS

In our view, the Police and the Medical Officer of Health, and ultimately the Inspector, have three main response options:

1. No matters in opposition; (A short report to that effect is appreciated)

2. The Police/MOoH have matters in opposition to this application namely [*specify*] and wish to be heard on those matters;

3. The Police/MOoH have matters in opposition namely (e.g.) the proposed hours of operation. **HOWEVER,** our opposition would be satisfied if the hours of operation were to be reduced from 7am to 11pm to 7am to 9pm for the following reasons [*specify*];

4. A fourth option is also open to the reporting agencies and the Inspector. Their reports could conclude "Even though there are no formal matters raised in opposition the agency invites the DLC to determine, in their opinion, whether (e.g.) the Single Alcohol Area is compliant with sections 112-114.

As part of his/her report the Inspector can advise the DLC that the application does/does not meet the criteria for issue and (having discussed it with the applicant) the applicant does/does not accept the conditional terms sought by the Police/MOoH.

We do not recommend the practice of a 'two or three agency' visit to the applicant to 'discuss' the proposed conditions. This can generate complaints, or the impression of harassment, and/or intimidation. It can be seen as unprofessional and counter-productive to the licensing process.

[3] PAULIN v SCOTT [2013] NZARLA 489

Any ‘negotiation’ should be undertaken carefully and neutrally by the Inspector who ultimately is the only agency who must report to the DLC.

PRE-HEARING DISCLOSURE OF DOCUMENTS

A full report stating any matters in opposition and the evidential basis that the agency intends to rely on to support their position must be lodged with the DLC as soon as practicable after defining the matters in opposition and **no later** than the timelines prescribed below.

All Briefs of Evidence and any other documentary material that the agencies seek to adduce into evidence **MUST** be disclosed to the applicant, the other reporting agencies and the Secretary of the DLC **10 working days before any scheduled hearing.**

If exceptional circumstances exist, the DLC may allow an extension of time to file but it will be (subject to exceptional circumstances) **no later than 5 working days** before any hearing.

Final Submissions may be disclosed at this time, if the parties so wish, but they can also be presented when closing their cases to the DLC on the day of the hearing.

If more than a few paragraphs, submissions should be typewritten and handed up to all parties on the day of the hearing.

EVIDENCE IN PROCEEDINGS BEFORE THE COMMITTEE

Pursuant to Section 207 of the Act the Committee may receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectually with any matter before it.

This is a helpful section of the Act, but it must be respected, and all parties must conduct themselves fairly and responsibly. **Direct Evidence** should be the preferred method of delivery of evidence in most cases.

“NEW”

LICENSING COMMITTEES MUST ESTABLISH APPROPRIATE PROCEDURES[4]

[4] Section 203A: inserted, on 30 May 2024, by section 16 of the Sale and Supply of Alcohol (Community Participation) Amendment Act 2023

(1)A licensing committee must establish appropriate procedures to consider applications.
(2)When doing so, a licensing committee must ensure that those procedures—
(a)avoid unnecessary formality, including, for example (without limitation), by making appropriate provision about—
(i)the location and timing of the hearing
(ii)the layout of the venue of the hearing
(iii)the timetable for the hearing
(iv)the language and terminology to be used at the hearing; and

(b)do not permit parties, or their representatives, to question other parties or witnesses of other parties; and

(c)do not permit cross-examination; and

(d)allow for tikanga Māori to be incorporated into proceedings; and

(e)allow for persons to be heard, and to make submissions, in te reo Māori.

(3)….

This new section is self-explanatory and requires DLCs to establish appropriate procedures (if not already in place) to ensure that we allow tikanga Māori to be incorporated into hearings, where appropriate, and parties are to feel comfortable and supported to give their evidence and be heard.

THE PUBLIC'S RIGHT TO VIEW APPLICATIONS

It has long been enshrined in alcohol legislation that members of the public may view an application for a new, or a renewal of an, ON, OFF or CLUB Licence.

Any natural person, or other lawful entity, can object to a licence.[5] The 'greater interest than the public at large' test is no longer applicable.

The Act requires that applications are publicly notified within 20 working days of filing the application in either a nominated public newspaper circulated in the area, or on council's website.

Additionally, they are required to post a site notice on the proposed, or existing site, within 10 working days of filing the application.

[5] Sale and Supply of Alcohol (Community Participation) Amendment Act 2023

The intent of Parliament is that the alcohol application process is seen to be transparent and open to the scrutiny of the public.

As such, the Sale and Supply of Alcohol Regulations 2013 prescribes in Form 7 that "*The application may be inspected during ordinary office hours at the office of the [specify] District Licensing Committee*."

In practical terms this means that the application, as lodged, may be viewed and written notes can be made, by members of the public.

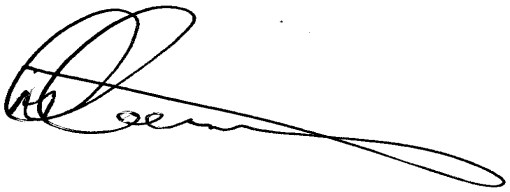
Obviously, such access will need to be supervised and the enquirer given reasonable time to affect their purpose. We suggest 15-20 minutes would be a reasonable time to allow the enquirer to view the application.

Copies of the application are not to be given out to enquirers and confidential/sensitive material, e.g. sale figures and lease costs are to be **redacted** before access is given.

N.B

For clarity, we do advise that Councils do have further obligations to provide copies of documents under LGOIMA, unless there are substantive reasons for withholding that official information. Information can be sought via a formal request under the Local Government Official Information and Meetings Act 1987 process.

UPDATED at TOKOROA this 15th day of February 2025



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Murray Clearwater
Chairperson/Commissioner
South Waikato District Licensing Committee