

SOUTH WAIRARAPA DISTRICT COUNCIL

14 OCTOBER 2020

AGENDA ITEM C4

APPOINTMENT OF DISTRICT LICENSING COMMITTEE CHAIR OR COMMISSIONER

Purpose of Report

The purpose of the report is to seek Council's direction on the appointment of a replacement of a Chair or instruction to pursue an appointment of a commissioner for the South Wairarapa District Licensing Committee.

Recommendations

Officers recommend that the Council:

1. *Receive the report "Appointment of District Licensing Committee Chair or Commissioner".*
2. *Advise the appointment of a Councillor to the District Licensing Committee list and then appoint as a Chairperson in accordance with section 189 of the Sale and Supply of Alcohol Act 2012; or*
3. *Advise the appointment of an existing Councillor District Licensing Committee list member as a Chairperson in accordance with section 189 of the Sale and Supply of Alcohol Act 2012; or*
4. *Instruct the Chief Executive to pursue an expressions of interest process to appoint a commissioner to the South Wairarapa District Licensing Committee.*

1. Background

The Sale and Supply of Alcohol Act 2012 (the Act) requires Territorial Authorities to establish 1 or more licencing committees, as, in its opinion, are required to deal with licensing matters for its district. A territorial authority must appoint 1 member as the chairperson and that person must be a member of that territorial authority or a commissioner appointed to the licensing committee.

The Act embodies a shift from a liberal policy on licensing of alcohol outlets to a stricter regime aimed to reduce the harm to the community from excessive consumption of alcohol. The key features of the Act include

- Local communities having more say about where and when alcohol can be sold, and there are broader criteria for objecting to alcohol licence applications through local area plans.

- Alcohol licences are harder to get and easier to lose by virtue of the introduction of local alcohol policies and broader criteria for objecting to licence applications.

The purpose of the Act is for the benefit of the community as a whole to, “put in place a new system of control over the sale and supply of alcohol”. With the object being that “the sale and supply and consumption of alcohol should be undertaken safely and responsibly” and “the harm caused by the excessive or inappropriate consumption of alcohol should be minimised”.

A District Licensing Committee (DLC) and therefore a Chair or commissioner has a very important role in considering whether the granting of a licence is likely to increase alcohol related harm and whether it will negatively impact on the local communities.

2. Discussion

Commissioner Julie Riddell has resigned from her role on the South Wairarapa District Council’s DLC. Mrs Riddell has been on the DLC since 2012. Mrs Riddell was an elected member of SWDC and elected as a member of the DLC to which she chaired. When Mrs Riddell stood down from Council, she was appointed as a commissioner in 2018.

Now that Mrs Riddell has resigned from her position the Council must now appoint either an elected member from the Council to the DLC list and then appoint as Chair, or appoint an existing Council list member as the Chairperson of the District Licensing Committee (DLC) or instruct the Chief Executive to appoint a commissioner. Councillor West is the only existing elected member on the Council list.

2.1 District Licensing Committees

Section 186 of the Act states that “each territorial authority must appoint 1 or more licensing committees as, in its opinion, are required to deal with licensing matters for its district.”

A licensing committee’s functions are:

- (a) To consider and determine applications for new and renewal of licences and manager’s certificates; and
- (b) 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
- (c) To consider and determine applications for the variation, suspension, or cancellation of licences, specials unless the application is brought under section 280; and
- (d) With the leave of Alcohol Licensing Regulatory Authority (ARLA) to refer applications to the licensing authority; and
- (e) To conduct inquiries and to make reports as may be required by ARLA.

2.2 Section 189 Composition of licensing committees

Each licensing committee consists of 3 members appointed by the territorial authority for that territorial authority's district. A territorial authority must appoint 1 member as the chairperson and that person must be a member of that territorial authority (meaning an elected member on Council) or a commissioner appointed to the licensing committee.

The other two members of each licensing committee must be appointed from the territorial authority's list maintained under section 192.

A territorial authority must not approve a person to be included on the list unless that person has experience relevant to alcohol licensing matters.

2.2.1. Chairperson

A Chair who is a member of the territorial authority must meet the criteria set out in the Act. A member must have relevant experience relevant to alcohol licensing matters.

Members of a DLC hold a semi-judicial role and must make fair and legally correct decisions. They must not be influenced by concerns that a decision may be unpopular or have political implications.

A person must be excluded if a territorial authority believes that person has, directly or indirectly or by virtue of his or her relationship with another person, such an involvement or appearance of involvement with the alcohol industry that he or she could not perform his or her duties without actual bias or the appearance of bias.

The term would be for a period of up to five years, as long as they remain a Councillor for that time.

2.2.2. Commissioner

The Chief Executive of a territorial authority may, on the recommendation of the territorial authority, appoint a commissioner or commissioners to any of the territorial authority's licensing committees and any person and any person so appointed has all the functions, powers, and duties of the chairperson of the licensing committee.

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.

A person must not be appointed as a commissioner if-

- (a) The territorial believes that person has, directly or indirectly or by virtue of his or her relationship with another person, such an involvement or appearance of involvement with the alcohol industry that he or she could not perform his or her duties without actual bias or the appearance of bias.
- (b) The person is a constable, a Medical Officer of Health, an inspector, or an employee of the territorial authority.

A commissioner appointed under section 193 of the Act holds office for a term, stated when the commissioner is appointed, of up to 5 years and may be reappointed for 1 or more further periods of up to 5 years.

2.3 Legal Implications

As outlined in this report the Territorial Authority must adhere to the criteria as outlined in the Sale and Supply of Alcohol Act 2012.

2.4 Financial Considerations

As determined by the Minister of Justice and in accordance with the Cabinet Fees Framework, District Licensing Committee Members will receive the following remuneration:

- Chairperson: \$624 per day (\$78 per hour for part days)
- Other members: \$408 per day (\$51 per hour for part days)

District Licensing Committee members will also be reimbursed for reasonable expenses.

In the South Wairarapa, an experienced chair can expect 10-20 hours of work per month.

2.5 Treaty of Waitangi

The proposal of this paper is not inconsistent with the principles of the Treaty of Waitangi.

3. Conclusion

Council to agree and advise officers one of the following options:

3.1 Option 1

That Council appoints Councillor West as the Chair of the District Licensing Committee.

3.2 Option 2

That Council appoints a Council member onto the DLC list and then appoint them as Chair.

3.3 Option 3

That Council instructs the chief executive officer for South Wairarapa District Council to seek expressions of interest for the appointment of a Commissioner in accordance with section 193 of the Sale and Supply of Alcohol Act 2012.

4. Appendices

Appendix 1 – Relevant section of the Sale and Supply of Alcohol Act 2012

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Appendix 1 – Relevant section of the Sale and Supply of Alcohol Act 2012

Attachment 1- relevant sections from Sale and Supply of Alcohol Act 2012**186 Territorial authorities to appoint district licensing committees**

Each territorial authority must appoint 1 or more licensing committees as, in its opinion, are required to deal with licensing matters for its district.

187 Functions of licensing committees

A licensing committee's functions are—

- a) to consider and determine applications for licences 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; and
- 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; and
- f) with the leave of the chairperson for the licensing authority, 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; and
- h) any other functions conferred on licensing committees by or under this Act or any other enactment.

188 Powers of licensing committees

A licensing committee has all the powers conferred on it by or under this Act or any other Act, and all powers as may be reasonably necessary to enable it to carry out its functions.

189 Composition of licensing committees

- (1) Each licensing committee consists of 3 members appointed by the territorial authority for that territorial authority's district.
- (2) A territorial authority must appoint 1 member as the chairperson and that person must be a member of that territorial authority or a commissioner appointed to the licensing committee.
- (3) A territorial authority may appoint a member of that territorial authority to be deputy chairperson, and act in place of the chairperson if the chairperson is unable to act because of illness or absence from New Zealand, or for other sufficient reason.
- (4) While acting in place of the chairperson, the deputy chairperson is a member of the committee and has all the powers and duties of the chairperson.
- (5) No act done by the deputy chairperson serving as acting chairperson in the chairperson's absence, and no acts done by the committee while the deputy chairperson is so serving, can in any proceedings be questioned on the ground that the occasion for his or her so serving had not arisen or had ceased.
- (6) The other 2 members of each licensing committee must be appointed from the territorial authority's list maintained under section 192.

- (7) For the purposes of subsection (2), a member of a territorial authority means an elected member of a territorial authority and, in relation to the Auckland Council, includes a member of the governing body (as defined in section 4 of the Local Government (Auckland Council) Act 2009) or a member of a local board established under section 10 of that Act.

190 Meetings of licensing committees

- (1) Meetings of a licensing committee may be held at any time and place it or its chairperson decides.
- (2) At a meeting where 3 members are present, the decision of a licensing committee on any matter is determined by a majority of the valid votes recorded on it.

191 Quorum

- (1) Except as provided in subsection (2), at any meeting of a licensing committee, the quorum necessary is 3 members.
- (2) At a meeting to consider and determine an application of a kind listed in subsection (3) where no objection has been filed and no matters of opposition have been raised under section 103, 129, or 141, the quorum necessary is 1 member who must be the chairperson.
- (3) The applications are:
- a) an application for a licence;
 - b) an application for a manager's certificate;
 - c) an application for renewal of a licence or manager's certificate.

192 Territorial authority to establish and maintain list of licensing committee's members

- (1) A territorial authority must either—
- a) establish, maintain, and publish its own list of persons approved to be members of the territorial authority's licensing committee or committees; or
 - b) together with 1 or more other territorial authorities, establish, maintain, and publish a combined list of persons jointly approved by those authorities to be members of the territorial authorities' licensing committees.
- (2) A territorial authority must not approve a person to be included on the list unless that person has experience relevant to alcohol licensing matters.
- (3) A person may be approved for inclusion on the list for a period of up to 5 years and may be approved for any 1 or more further periods of up to 5 years.
- (4) The name of a person must be removed from the list—
- a) when 5 years have elapsed since the territorial authority approved the person's name on the list unless the approval is renewed under subsection (3); or
 - b) if the person resigns or is removed under section 194.
- (5) A person must not be included on the list if—
- (a) the territorial authority believes 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 that he or she could not perform his or her duties without actual bias or the appearance of bias; or
 - (b) the person is a constable, a Medical Officer of Health, an inspector, or an employee of the territorial authority.

193 Appointment of commissioners

- (1) The chief executive of a territorial authority may, on the recommendation of the territorial authority, appoint a commissioner or commissioners to any of the territorial authority's licensing committees and any person so appointed has all the functions, powers, and duties of the chairperson of the licensing committee.
- (2) 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.
- (3) A person must not be appointed as a commissioner if—
 - (a) the territorial authority believes 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 that he or she could not perform his or her duties without actual bias or the appearance of bias; or
 - (b) the person is a constable, a Medical Officer of Health, an inspector, or an employee of the territorial authority.
- (4) A commissioner appointed under this section holds office for a term, stated when the commissioner is appointed, of up to 5 years and may be reappointed for 1 or more further periods of up to 5 years.

194 Resignation or removal

- (1) A member of a licensing committee or a commissioner appointed to a licensing committee may resign from office at any time by written notice to the relevant territorial authority.
- (2) A chairperson of a licensing committee ceases to be a chairperson if he or she ceases to be a member of the licensing committee's territorial authority.
- (3) The territorial authority may at any time remove a member of a licensing committee or a commissioner appointed to a licensing committee for inability to perform the functions of office, bankruptcy, neglect of duty, or misconduct, proved to the territorial authority's satisfaction.

195 Fees and allowances for members

- (1) A member of a licensing committee is entitled to receive remuneration not within subsection (2) for services as a member at a rate and of a kind determined by the Minister in accordance with the fees framework.
- (2) A member of the licensing committee is entitled, in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member.
- (3) For the purposes of this section, fees framework means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.
- (4) A commissioner is to be treated as a member of a licensing committee for the purposes of this section.