

# **SALE OF LIQUOR ACT 1989**

## **TIMARU DISTRICT LICENSING AGENCY**



**Policy Document, adopted 9 August 2005**  
(following further revision of the initial Agency Policy Document, adopted 6 June 2000)  
Version 3 is to reflect the Bylaw Review and personnel changes 2008.



# TIMARU DISTRICT LICENSING AGENCY

## SALE OF LIQUOR POLICY

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## **TIMARU DISTRICT LICENSING AGENCY POLICY**

### **INTRODUCTION**

This liquor policy has been developed to support the object of the Sale of Liquor Act 1989 which is “to establish a reasonable system of control over the sale and supply of liquor with the aim of contributing to the reduction of alcohol abuse as far as can be achieved by legislative means”.

The policy sets out a framework for consistent decision making in the local administration of the Act, gives some guidance to those who may be seeking to obtain a licence under the Act and also attempts to reflect the communities expectation with respect to liquor issues.

### **BACKGROUND**

The Sale of Liquor Act 1989 provides that each territorial authority must establish a District Licensing Agency to administer the Council’s responsibilities under this Act.

In 1999 amendments to the Sale of Liquor Act gave even greater autonomy to District Licensing Agencies and at that time the Liquor Licensing Authority increasingly gave encouragement to the Agencies to develop local liquor licensing policies.

The Timaru District Licensing Agency developed a policy in June 2000 and reviewed that document in November 2002.

This review and redraft has been prepared following a public meeting held in March 2004, after public consultation and after discussion with the Timaru Police and representatives of the liquor industry.

### **DUTIES AND FUNCTIONS**

#### **DISTRICT LICENSING AGENCY**

The Sale of Liquor Act 1989 allocates the role of District Licensing Agency (DLA) to the Council.

The DLA is charged with the following functions:

- Assessing and determining unopposed applications for liquor licences and managers certificates;
- Opposing applications where this is considered warranted;
- Inspecting and monitoring licensed premises;
- Monitoring the management of licensed premises;
- Assessing and determining applications for special licences and temporary authorities;
- Record keeping and maintenance of a register of licences and certificates.

## **LIQUOR LICENSING AUTHORITY**

The Liquor Licensing Authority (LLA) is a tribunal administered by the Ministry of Justice. The LLA comprises a judge and one or two appointed members with particular relevant knowledge or experience:

The LLA is charged with the following functions:

- Determining opposed liquor licence applications and renewals;
- Determining opposed applications for managers certificates and renewals;
- Determining applications for variation, suspension or cancellation of licences or certificates;
- Redefinition of licensed areas;
- Determining appeals against DLA decisions;
- The issuing of statements and directions with respect to administration and enforcement of the Sale of Liquor Act aimed at achieving the object of the Act.

## **REPORTING AUTHORITIES AND AGENCIES INVOLVED IN PROCESSING LIQUOR LICENCE APPLICATIONS**

The Sale of Liquor Act 1989 provides that, the DLA, in the processing of applications under the Act, shall obtain reports from the following authorities:

### Police

Concerned with the management of premises and the suitability of applicants to hold licences and certificates.

### Medical Officer of Health

Concerned with both specific and the wider impacts on public health associated with alcohol abuse within licensed premises and the community.

Locally, issues of food hygiene, cleanliness and building condition are assessed, on the Medical Officer of Health's behalf, by Council Environmental Health Officers.

### Licensing Inspector

Concerned with taking both an administrative and enforcement overview of sale of liquor issues on behalf of the DLA. Powers include, if considered necessary, requesting the LLA to vary, suspend or cancel any licence or certificate.

### Council

Provides a planning and building certificate confirming that the proposal satisfies planning requirements and that the building meets, or when completed, will meet the requirements of the Building Act 2004.

This certificate must accompany any application for a liquor licence other than a special licence.

### Community

This Policy and the Sale of Liquor Act 1989 encourages community input into liquor related issues. Society's standards and community expectations are constantly evolving and only by public input into the policy preparation process can the policies and requirements of the DLA reflect community expectations.

## LIQUOR BAN

Intended to support Council's Liquor Policy and aimed at reducing alcohol abuse and anti-social behaviour, Council have adopted a bylaw under the provisions of the Local Government Act 2002, banning the consumption of alcohol in certain public places.

A summary of the bylaw provisions follows (see Timaru District Consolidated Bylaw 2007 for full details):

The Local Government Act 2002 provides, under section 147 of the Act, that Councils may make bylaws prohibiting the consumption of liquor in public places.

The Timaru District Council has promulgated such a bylaw which prohibits the following in prescribed areas:

- (a) The consumption of liquor in a public place;
- (b) The bringing of liquor into a public place;
- (c) The possession of liquor in a public place.

The public places to which these provisions apply are:

### TIMARU

- Arthur Street (East of State Highway 1)
- Bank Street
- Barnard Street (from George Street to North Street)
- Bay Hill (including the Piazza)
- Bayview Place
- Beswick Street
- Butler Street
- Cains Terrace
- Canon Street
- Church Street (from State Highway 1 to Stafford Street)
- Cliff Street
- Elizabeth Place
- Elizabeth Street (from Sarah Street to State Highway 1)
- George Street
- Heritage Place
- Hewlings Street
- King George Place
- Latter Street (from George Street to North Street)
- North Street (from State Highway 1 to the railway line)
- Perth Street
- Royal Arcade
- Sarah Street
- Sefton Street between Sarah Street and Hewlings Street
- Sefton Street East
- Service Lane between George Street and Barnard Street
- Service Lane between George Street and Royal Arcade
- Service Lane off Church Street between Bank Street and Perth Street

- Service Lane off George Street between Stafford Street and Station St
- Sophia Street
- Stafford Street (from Sefton Street to North Street)
- State Highway One (Theodosia Street from Wai-iti Road to North Street)
- Station Street
- Strathallan Corner
- Strathallan Street
- The Terrace
- The Wreck Memorial (corner of Sophia and Perth Streets)
- Timaru Library and surrounds
- Turnbull Street
- Woolcombe Street

Including any service lanes, Footpaths and car parks within or adjoining the above areas.

### **TIMARU - CAROLINE BAY**

31 December (New Years Eve) 7.00pm to 1 January (New Years Day) 7.00am.

Caroline Bay is that area east of the main trunk railway line extending from the Benvenue Cliffs to Marine Parade.

### **TEMUKA**

- Temuka Town Square
- King Street (from Wood Street to Fraser Street)

Including any service lanes, Footpaths and car parks within or adjoining the above areas.

## DEFINITIONS

“Entertainment” in relation to any licensed premises, means any activity, dance, performance, exhibition, amusement, sport, game or event carried out on a regular and ongoing basis which is calculated to attract and entertain members of the public.

“Licensed premises” means any premises, or part of any premises, on which liquor may be sold pursuant to a licence, and includes any conveyance, or part of any conveyance, in which liquor may be sold pursuant to a licence.

“Restricted area”, in relation to any licensed premises, means any part of those premises so designated by the Licensing Authority or the District Agency to which persons under the age of eighteen years shall not be admitted.

“Supervised area”, in relation to any licensed premises, means any part of those premises so designated by the Licensing Authority or the District Licensing Agency to which a person under the age of eighteen years may not be admitted unless accompanied by the person’s parent or legal guardian.

“Undesignated area”, in relation to any licensed premises means any part of the licensed premises which is not designated restricted or supervised and into which persons under the age of eighteen years may be admitted but in which areas they may not purchase or consume liquor unless accompanied by their parent or legal guardian. These areas normally include restaurants or clubs. A coach or team leader is not a legal guardian and cannot supply liquor to team members under the age of eighteen years.

## DISTRICT LICENSING AGENCY MEMBERS AND PERSONNEL

The following Timaru District Council elected members and staff have specific roles under the provisions of the Sale of Liquor Act 1989:

### TIMARU DISTRICT LICENSING AGENCY

#### **Elected and Appointed Members**

Clr Richard Lyon (Chairman)  
Clr Ray Bennett  
Clr John Bradley  
Clr Jane Coughlan

#### **Secretary**

Mr Peter Thompson

Many of the agency's functions and duties have been delegated to the Secretary, acting in conjunction with elected members and appropriate staff.

#### **Staff Contacts**

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## POLICY PRINCIPLES

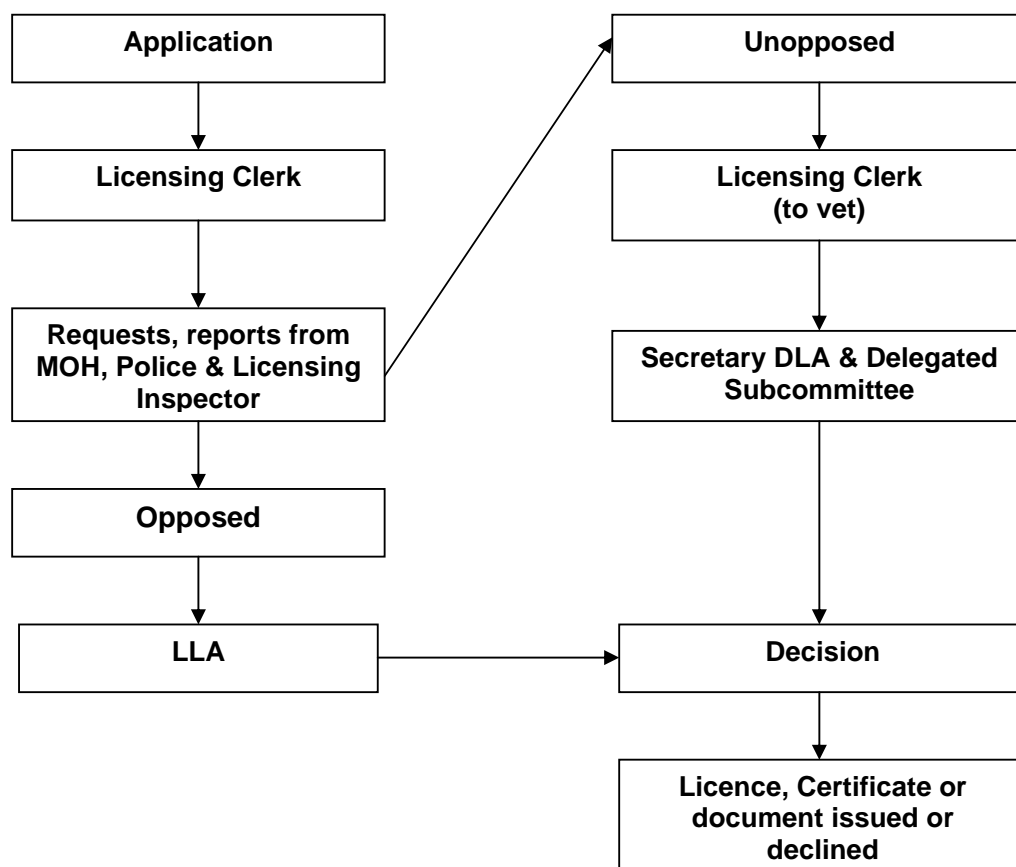
The following policy principles are intended to promote fairness, consistency, transparency and to give applicants for liquor licences and the community, some certainty with respect to the administration of the Sale of Liquor Act within the Timaru District.

Policy principles are marked “•” and appear in bold type.

### POLICY 1

- **That the Secretary of the District Licensing Agency together with the delegated sub-committee, be authorised to issue unopposed liquor licence applications, unopposed special licence applications, managers certificates and temporary authorities which comply with the requirements of the Sale of Liquor Act 1989 and which satisfy the provisions of this policy document.**

The below detailed diagram sets out the general process for the issue of licences, managers certificates and temporary authorities under the provisions of the Sale of Liquor Act 1989.



Appendix 1 suggests a procedure for obtaining a liquor licence.

## **POLICY 2**

- **That all applications are processed as quickly as possible. When all required reports and all documents comprising “the complete file” are to hand any unopposed licence or certificate will be issued without delay.**

Agency staff will advise and assist applicants as appropriate and will take all steps necessary to ensure that applications are not unnecessarily delayed.

## **POLICY 3**

- **That the “Timaru Herald” is nominated as the newspaper in which the public notices, provided for within the Sale of Liquor Act 1989, are required to be published.**

## **POLICY 4**

- **That all licensed premises are required to have a written and operative Host Responsibility Policy which is observed at all times.**

The policy is to be displayed in a public part of the licensed premises and a copy of the policy is to be submitted to the agency with all applications for liquor licences. A basic draft Host Responsibility Policy is attached as Appendix 2.

## **POLICY 5**

- **That the Timaru District Licensing Agency endorses the national protocol on alcohol promotions as circulated by ALAC on 29 May 2000 and as may be amended from time to time (see Appendix 3 attached).**

## **POLICY 6**

### **Hours of operation**

The Sale of Liquor Act gives wide discretion to District Licensing Agencies in determining the hours of operation within its district.

Extensive consultation has been undertaken by the Council with the Police, liquor industry and the community in an effort to establish hours of operation acceptable to those concerned.

The difficulty of providing for all circumstances and activities with which the sale of liquor is linked is acknowledged and this policy attempts to address the issue of diversity by prescribing “normal maximums” while retaining provision for true exceptions.

Attempt is made to give indication of what the agency may view as an “exception”.

## **POLICY 6 (continued)**

The option remains for applicants dissatisfied by this policy to pursue an issue before the agency or Liquor Licensing Authority as may be appropriate.

For “one off” unusual and exceptional circumstances there remains the option for licence holders to seek special licences for specific events.

The following are the hours of operation expected and supported by the agency within the Timaru District:

- **That there be a general policy in respect of tavern style on-licences permitting an opening time of 7.00am and requiring a closing time of 3.00am the following day.**

**Applicants seeking an on-licence for hours outside of the hours mentioned above will be required to provide evidence of the need for such hours.**

**In particular the onus is on those requesting longer hours for late night entertainment to convince the agency that the entertainment, as defined, will be greater than might be expected in tavern style premises. The provision of large screen television, pool tables or video machines is not considered to warrant extended late night hours.**

**The agency would expect that premises operating under this provision would exhibit most of the following characteristics:**

- (a) **The main source of revenue would not be the sale of liquor.**
  - (b) **Facilities for the sale of liquor would not dominate the licensed area.**
  - (c) **Live entertainment would be provided on a regular, frequent and ongoing basis.**
  - (d) **A stage, dance floor or similar facility would be available for entertainers and/or patrons use.**
  - (e) **A cover charge would regularly apply.**
  - (f) **Extensive provision would be made for the supply of substantial food, tea, coffee and other non-alcoholic drinks.**
- **That there be a general policy in respect of restaurant style on-licences permitting an opening time of 7.00am and requiring a closing time of 1.00am the following day.**
  - **That there be a general policy in respect of on-licence premises, of any type, in or adjacent to residential areas permitting an opening time of 9.00am and closing times as follows:**
    - Sunday to Thursday - 11.00pm**
    - Fridays and Saturdays - 1.00am the following day**
  - **That there be a general policy in respect of stand alone off-licences and bottle stores associated with hotels and taverns, permitting an opening time of 9.00am and closing time of 11.00pm.**

## **POLICY 6 (continued)**

- **That there be a general policy in respect of off-licences associated with supermarkets authorising sales during the normal operating hours of the supermarket but not later than 11.00pm on any day when the premises are authorised to sell liquor.**
- **That off-licence sales for hotels and taverns, across the bar, be granted for the same hours as authorised by the on-licence.**
- **That there be a general policy in respect of club licences that the hours of operation reflect the hours of operation of the principle club activity but generally with closing times not later than:**

**Sunday to Friday - 10.00pm**  
**Saturdays - 1.00am**

- **It is intended that these hours be “normal maximum” hours of operation. Applicants seeking more extensive hours should provide written justification for those hours. Their proposal may then be referred to the agency for consideration which may authorise the hours sought or request that the application be referred to the Liquor Licensing Authority for determination.**

## **POLICY 7**

### **Designations**

- **That there be a general policy that premises which are clearly restaurants, by their nature, be undesignated.**
- **That clubs be undesignated.**
- **That off-licence areas of hotels, taverns and stand alone bottle stores be designated as supervised areas.**
- **That “public bars” and “places of entertainment” be designated as supervised areas.**

Within the main commercial areas, throughout the district, Council has developed screened and landscaped on-street seating areas. Businesses are encouraged to utilise these areas where the area concerned is opposite and adjacent to their premises.

These areas are available, through a permit to occupy, by premises holding liquor licences but these areas must be included in the licensed area.

Where the street area to be included in the licence can appropriately be an undesignated area Council will generally enter into agreement with licensees to occupy those areas.

Where the intended use would more appropriately be designated supervised or restricted, then it is unlikely that a permit to occupy would be granted.

**Council do not consider it appropriate for tavern style drinking to be conducted in the street but encourages the use of these areas for dining.**

## **POLICY 8**

### **Special Licences**

Special licences authorise and control the sale and supply of liquor for events or social gatherings where a permanent on, off, or club licence is not appropriate.

Where an event or social gathering occurs on licensed premises but outside of the normal hours authorised by the licence, a special licence is required. A special licence should not be used as a tool to extend the authorised hours on a regular basis. The activity for which a special licence is sought must be outside of the premises regular activities.

The holders of club licences seeking to host events which will be attended by other than club members require a special licence. Examples of when a club might require a special licence are for wedding receptions, school reunions held on the premises, or simply when the club rooms are hired to another group and alcohol is to be sold or consumed on the premises.

A special licence is also required where liquor is to be sold or consumed on premises (other than at a private residential party) where the premises are not licensed and liquor is to be sold or supplied to those attending. Examples might be a wine and food festival, a one day cricket match, a ball, or other function where the alcohol provided appears to be “free” but the cost of which is actually included in the price of a ticket.

Special licences can cover any event or series of related events and can be issued for up to one year ahead.

- **Examples of where separate special licences are required are a school reunion one weekend followed by a fund raising ball the next weekend even though they may be in the same hall. Separate licences would be required.**
- **Premises used, say once a month for a service club or social club function, could be covered by one special licence issued for the whole year.**
- **Where an ongoing series of special licences is being sought then consideration should be given to seeking a full on-licence or club licence.**

Appendix 4 attached - Guidelines for Special Licence Applications.

## **POLICY 9**

### **Issue and Renewal of Managers Certificates**

#### Club Managers and General Managers

- **The agency expects that applicants for club and for general managers certificates will have successfully completed formal training in the management of licensed premises.**
- **Applicants for new general managers certificates must also be the holders of the Licence Controllers Qualification (LCQ) issued by the Hospitality Standards Institute.**

## **POLICY 9 (continued)**

- **In addition to formal training it is expected that applicants will have had at least six months experience working in licensed premises.**
- **Applicants for new managers certificates, where the applicant has or is purchasing licensed premises, will be issued with a temporary managers certificate provided that they can show evidence of having enrolled for a training course.**

This provision will only be exercised in respect of businesses where the sale of liquor is ancillary to the principle business. In other cases applicants intending to operate larger premises, in particular tavern style premises, will be expected to employ suitably qualified managers until such time as they gain qualification and experience.

Applications for new managers certificates satisfying the above criteria can anticipate issue of managers certificates where neither the police nor the licensing inspector oppose the application.

Applicants for renewal of managers certificates can anticipate three year renewal of their certificates where neither the police nor the licensing inspector oppose the application and where they are the holders of LCQ certificate. Applicants seeking renewal of their managers certificate, who do not hold the LCQ certificate, will have their managers certificate renewed for a two year period only.

## **POLICY 10**

- **The Timaru District Licensing Agency has a policy of sharing information with other agencies, with the Hospitality Association of New Zealand (HANZ) and with individual licensees.**
- **The agency supports staff attendance at agency meetings and at liquor licensing liaison group meetings.**

Care will be taken to ensure that any information provided or shared is of a general nature and which does not breach privacy legislation.

## **POLICY 11**

Agency staff will actively monitor licensed premises.

The agency routinely monitors all premises licensed under the Sale of Liquor Act 1989 at least once each year.

Additional monitoring and inspections also take place when licences fall due for renewal or when complaints are received about particular premises.

- **The agency supports the following forms of monitoring:**
  - (a) **Ongoing routine monitoring as described above.**

**POLICY 11 (continued)**

- (b) Controlled Purchase Operations (CPO) as conducted by the Police and Community and Public Health.**

(The agency will provide follow-up visits to premises which have been the subject of a CPO and will support the Police in any proceedings which may ensue).

- (c) Joint Police, Community and Public Health and Licence Inspector monitoring of licensed premises, including clubs, during the late afternoon and early evening for the purpose of educating licensees of their responsibilities.**

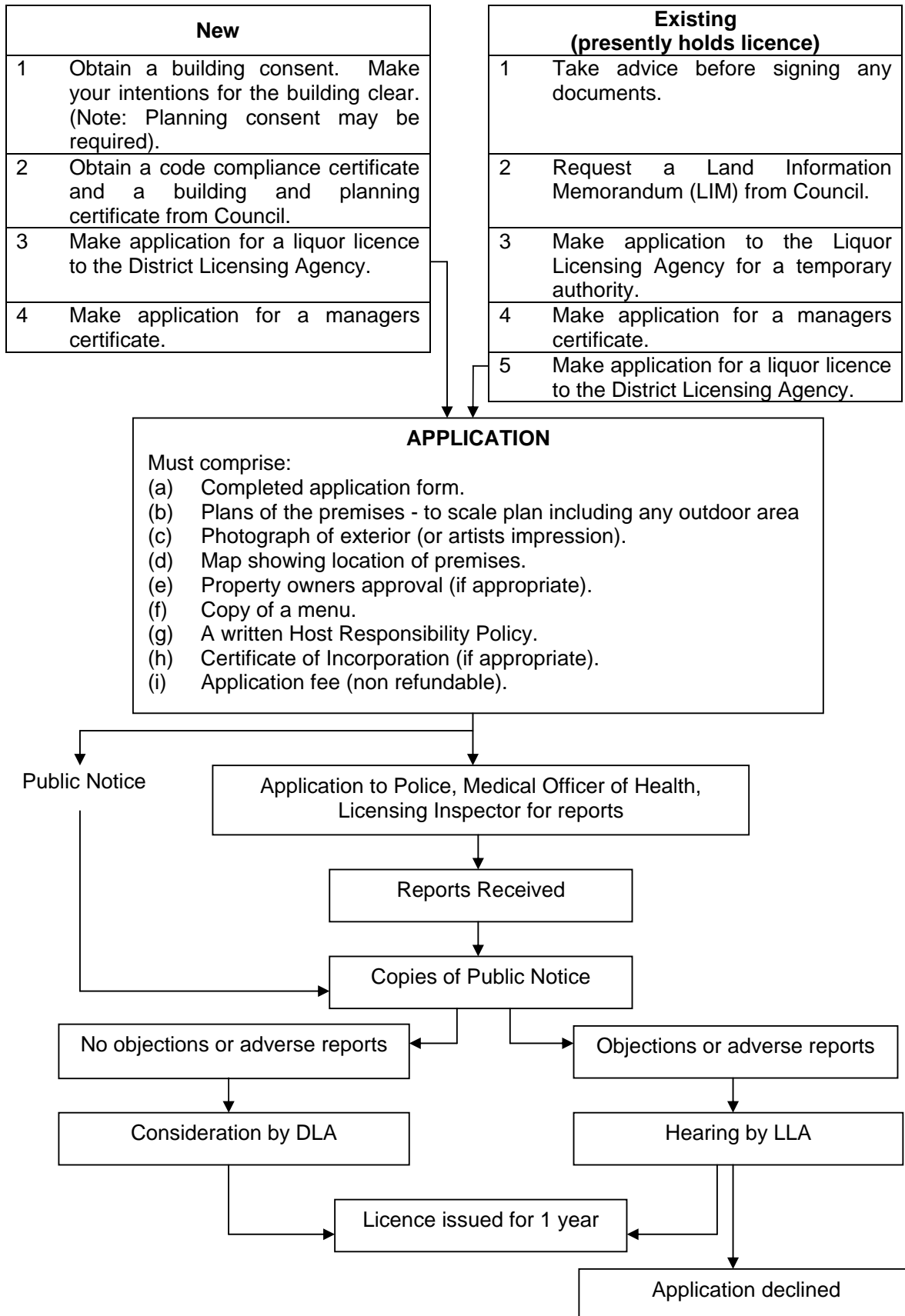
- (d) Occasional late night, but independent, covert monitoring of licensed premises, utilising either agency licensing inspectors or suitably experienced contractors.**

**POLICY 12**

- All statements, present and future, issued by the Liquor Licensing Authority under the provisions of section 96 of the Sale of Liquor Act 1989 will form part of this policy. Appendix 5 attached, sets out the statements issued by the Liquor Licensing Authority to date.**

## APPENDIX 1

### SUGGESTED PROCEDURE FOR ESTABLISHING A LICENSED PREMISE



*(Premises Name)*

## HOST RESPONSIBILITY POLICY

- ☞ **NON-ALCOHOLIC DRINKS** are always available to those who choose to **TAKE CARE OF THEIR FRIENDS** - these are **AVAILABLE FOR VEHICLE DRIVERS**.
- ☞ **HOT AND COLD FOOD, PLUS SNACKS** are available at all times.
- ☞ **LOW ALCOHOL BEVERAGES** are always available.
- ☞ **INTOXICATED PERSONS** cannot be served and must not remain on licensed premises. Your safety is however paramount and we will endeavour to ensure that you come to no harm.
- ☞ **TRANSPORT HOME** in a safe manner at the end of your evening is our wish for you. The bar staff are happy to arrange transport for you.
- ☞ **PROOF OF AGE** may be required from you. Please do not be offended by our staff asking for proof - this is part of their job.

**Your Hosts**

## APPENDIX 3



### National Protocol on Alcohol Promotions

The amendment to the Sale of Liquor Act 1989 includes a provision concerning the excessive consumption of alcohol during alcohol promotions.

The new section 154A of the Act is as follows:

“Every person commits an offence and is liable to a fine not exceeding \$5,000 who, being a licensee or manager of licensed premises, does anything in the promotion of the business conducted on the premises or in the promotion of any event or activity held or conducted on the premises that is intended or likely to encourage persons on the licensed premises to consume alcohol to an excessive extent.”

This Protocol is intended to assist District Licensing Agencies (DLA), Police, Medical Officers of Health and Licensees to understand the type of promotions and events which are likely to be considered acceptable and unacceptable in terms of the provision.

*The above agencies, the Alcohol Advisory Council (ALAC), and the Hospitality Association of New Zealand (HANZ) encourage licensees to establish a written House Policy which details how any promotion of alcohol is to be managed, whether the promotion is on-premise or at an off-sales premise, setting out responsible service of alcohol practices to be followed during promotions.*

Such a House Policy should deal with the Host Responsibility practices which are part of the conditions of the licence, such as the provision of food, non and low alcohol beverages and transport options, as well as specific guidelines for the management of promotions.

Some examples for such guidelines include a restriction on the number of drinks which can be served at any one time to each customer, and a limitation on the stockpiling of drinks.

*A commitment to staff training on House Policy procedures is required from licensees.*

THIS PROTOCOL IS ONLY A GUIDELINE and the determination of an acceptable promotion or event will always be decided on a case by case basis.

## APPENDIX 3 (continued)

### UNACCEPTABLE PRACTICES

- ✗ Promotions which offer alcohol in non-standard measures and/or by virtue of their descriptive titles, such as "laybacks" - "shooters" - "slammers" - "test tubes" - "blasters", and their method of consumption, encourage irresponsible drinking habits and are likely to result in rapid intoxication.
- ✗ Promotions or drink cards which provide a multiple of free drinks, extreme discounts or discounts of limited duration on a given day or night, which have the capacity to be readily stockpiled by patrons or transferred to other patrons. In other words the promotion or drink card must not, by design or potential create an incentive for patrons to consume liquor more rapidly than they otherwise might.
- ✗ Any labeling or titling of promotions that may encourage patrons to consume liquor irresponsibly and excessively.
- ✗ The refusal to serve single measures of spirits on request or provide reasonably priced non-alcoholic drinks.
- ✗ Any promotion that encourages a patron to consume liquor excessively - "all you can drink offers" - "free drinks for women" - "two for one" - and to consume it in an unreasonable time period.
- ✗ Any promotion that compromises patron safety or puts them at risk of harm.

### ACCEPTABLE PRACTICES

- ✓ The traditional "happy hour" during or immediately following normal daytime working hours.
- ✓ A complimentary standard drink upon arrival.
- ✓ Promotions involving low alcohol beer where it is clear from the advertising and promotional material that it is a low alcohol beer promotion.
- ✓ The advertising of a consistent price of a particular type or brand of liquor across the entire trading hours of a premises on a given day or night, providing the price is not so low that it will, in itself, encourage the excessive consumption of alcohol and intoxication.
- ✓ Promotion of particular brands of liquor that provide incentives to purchase that brand by virtue of a consistent discounted price, offer of a prize etc. but does not provide any particular incentive to consume that product more rapidly than a patron's normal drinking habit.
- ✓ Competitions with prizes of food, meal deals or other prizes consistent with Host Responsibility.
- ✓ Promotions involving food, meal and drink combos and other offers that reflect Host Responsibility.

FURTHER COPIES OF THIS PROTOCOL  
AND OTHER HOST RESPONSIBILITY MATERIAL ARE  
AVAILABLE FROM ALAC OR YOUR LOCAL DLA

## APPENDIX 4 - GUIDELINES FOR SPECIAL LICENCE APPLICATIONS

### TIMARU DISTRICT LICENSING AGENCY

#### SALE OF LIQUOR ACT 1989

#### SPECIAL LICENCES

#### INFORMATION FOR GUIDANCE OF APPLICANTS

- 1 Full details describing each individual event or function must accompany the application. Failure to supply sufficient information will result in the consideration of the application being delayed until further details are obtained.
- 2 Applications must be lodged a minimum of 20 working days prior to an event.
- 3 The application fee (currently \$63.00 including GST) must accompany the application.
- 4 Council will accept a single application form provided it is in heavy type or dark blue or black biro which can be photocopied.
- 5 Under normal circumstances licences for evening social functions will not be granted for later than 2.00am the following day except when the function starts late (eg following a theatre performance or at the conclusion of an evening sports tournament).
- 6 Special licences may be granted for "an event or series of occasions or events". This is interpreted as meaning related and similar functions.
- 7 Licences for a series of occasions or events over an extended period will only be granted to clubs or groups where there is a pre-planned programme of clearly specified, and related club (or group) events.
- 8 An application may not be lodged for a series of unrelated events, ie a list of events including perhaps a twenty-first, a wedding, and a fund raising evening will require separate licence applications for each event whereas a theatre group with an annual performance programme involving group members can apply for a single licence for the annual programme.
- 9 Applications should be posted to PO Box 522, Timaru or delivered to the Liquor Licensing Clerk, Timaru District Council, 2 King George Place, Timaru.
- 10 Applicants are welcome to discuss their requirements with our staff prior to or when lodging their application.
- 11 If a function involves a marquee over 30m<sup>2</sup> a building consent is required; contact Council's Building Officials.
- 12 It assists with the rapid processing of applications if you provide the following additional information over and above that which is requested on the application form:
  - (a) The number of people expected to attend?
  - (b) Who owns the alcohol to be sold?
  - (c) The number of the certificate held by any manager who will be selling the liquor.
  - (d) Full details of the substantial food to be made available.

Contacts: Sharon Adams  
Liquor Licensing Clerk  
687-7200

Barbara Ensor  
Licensing Inspector  
687-7200

## APPENDIX 5

### LIQUOR LICENSING AUTHORITY (SALE OF LIQUOR ACT 1989)

LIQ/ADM 1

Secretaries  
District Licensing Agencies

#### SECTION 96 STATEMENT

Section 96 of the Sale of Liquor Act 1989 provides:

**"96. Authority may send statements to Agencies --**

- (1) *The Licensing Authority may from time to time issue to District Licensing Agencies a statement setting out its views on the general administration of this Act or the policy to be followed in the administration of the Act or any provisions of it, or any information obtained by the Authority from any inquiry held by it or from any other source.*
- (2) *No such statement shall relate to any matter that may be a ground for appeal against a decision of a District Licensing Agency.*
- (3) *In the exercise of its functions under this Act, every District Licensing Agency must observe any statement issued under this section."*

This is the eighth such statement issued since the Act came into force on 1 April 1990.

The seven statements previously issued are now republished (with amendments as appropriate) to the extent that they are still relevant. Statements 4 and 5 have been transposed for the purposes of continuity of subject matter.

#### 1. SPECIAL LICENCES - (issued 19 October 1992)

- 1.1 The Authority confirms its view expressed in Decision No. 1813/92 dated 3 June 1992 New Zealand Police v Franklin District Licensing Agency, and earlier decisions, that a special licence should not be issued by a District Licensing Agency as a substitute for a "permanent" licence.
- 1.2 Special licences will often extend the trading hours permitted by the on, off or club licence in force. Agencies should ensure that the frequency of special licences for particular premises does not, in effect, give ongoing trading hours for premises, which the licensee has been unable to obtain when seeking the existing licence. Likewise, the Authority would not expect special licences to issue where a permanent licence had been refused.

- 1.3 This statement sets out the Authority's general views on the administration of the Act as it relates to special licences.
- 1.4 The Authority wishes to make clear that this statement should not be seen as --
  - 1.4.1 A desire to disturb or interfere with any Agency's exercise of its discretion to grant special licences in terms of sections 73 or 74;  
or
  - 1.4.2 Predetermining any appeals that may be lodged to the Authority against decisions of District Licensing Agencies granting or declining applications for a special licence.

**2. APPEARANCE AT PUBLIC HEARINGS** - (issued 10 December 1992)

The Authority will always welcome appearances being recorded on behalf of Local Authorities or Community Boards by Mayors, Councillors or members, but in any event expects that a District Licensing Agency Inspector will be present (and record an appearance) at any public sittings of the Authority.

**3. TEMPORARY AUTHORITY APPLICATIONS - INVOLVEMENT OF POLICE**  
(issued 12 August 1994)

- 3.1 The Authority is aware that the Police do not always have the opportunity to report or comment on an application for a temporary authority being considered by a District Licensing Agency in terms of ss.24 and 47 of the Act.
- 3.2 The consequences of an unsuitable person operating premises pursuant to a temporary authority could obviously be as equally undesirable as such a person holding an on-licence or an off-licence.
- 3.3 Sections 24 and 47 provide that an Agency may determine such an application ex parte or direct that notice of the application be served on such persons as the Agency may specify. In terms of s.107(8) an Agency, subject to the provisions of the Act and the Regulations, may regulate its procedure in such manner as it thinks fit.
- 3.4 In the Authority's view it is prudent for District Licensing Agencies to refer any application for a temporary authority to the Police for comment and/or report. Each Agency should settle procedures for the referral of such applications with the Police. Those procedures should be able to take account of situations where urgency or priority is required. Referral may involve less than a formal report.
- 3.5 Any Police report or comment which an Agency considers it may wish to have regard to in determining an application must be referred to the applicant before any decision is taken.

**4. DURATION OF TEMPORARY AUTHORITIES** - (issued 21 April 1998)

- 4.1 Sections 24 and 47 of the Act provide that upon application of any person who appears to have any right, title, estate or interest in any premises or conveyance, or any business conducted in any premises or conveyance, in respect of which an on or off-licence is in force, a District Licensing Agency may make an order authorising the applicant, or some suitable person nominated by the applicant, to carry on the sale, supply or delivery of liquor for such period not exceeding 3 months as the Agency may specify in the order (the emphasis is ours).
- 4.2 There have been instances of applications for on-licences being opposed and scheduled for public hearing before us, but pending a hearing the applicants have operated the business pursuant to temporary authorities issued in terms of s.24.
- 4.3 Having been satisfied by the evidence adduced at the hearings that, in each case, the applicant was unsuitable to hold the licence sought, we refused to grant the applications.
- 4.4 The temporary authorities current at the time of public hearing still had a significant portion of their three-month period to run. This has enabled a person, adjudged by us as unsuitable to hold a licence under the Act, to continue to trade for the remaining life of the temporary authority.
- 4.5 It is the Authority's view that it may be appropriate for District Licensing Agencies to consider the grant of any temporary authority on the basis that it carries a clear indication that it will expire on a specified date; or on such date as the holder's application for an on/off-licence has been determined, whichever is the sooner.

**5. RETENTION OF "COMPLETE FILES" BY DISTRICT LICENSING AGENCIES** - (issued 5 July 1996)

- 5.1 A Local Authority, in exercising its power as a District Licensing Agency, must comply with Part XVII of the Local Government Act 1974 as they apply to the custody of documents and local archives.
- 5.2 This statement, whilst setting out the Authority's general views as to the retention of "complete files" under the Sale of Liquor Act 1989, must not be read as detracting from those specific Local Government Act requirements, and it makes no comment as to the length of time a District Licensing Agency should retain "complete files".
- 5.3 "Complete files" are as described under ss.12, 34 and 58 of the Act and include such documents as specified in Regulations 5(3), 8(2) and 11(2) of the Sale of Liquor Regulations 1990.

- 5.4 The Authority's practice on determination of an on, off, club licence, or manager's certificate application, is to return the "complete file" to the District Licensing Agency. At public hearings some District Licensing Agencies have been unable, or have had difficulty, in making available the "complete file" for a previously processed application when called upon.
- 5.5 Issues can arise - including questions as to the extent of premises and the part or parts of premises in which liquor may be sold, supplied, consumed, or delivered in terms of the licence - which require the Authority to look at the formal record in respect of an existing licence. The formal record, including the plan referred to in the licence, is the "complete file" and that must be able to be made available to the Authority.
- 5.6 This matter is of sufficient concern to the Authority for it to indicate that it expects District Licensing Agencies to maintain a system for timely retrieval of "complete files" in respect of existing licences should they at any time be requested.

**6. REQUIREMENT FOR CERTAIN DOCUMENTS TO BE FORWARDED FROM AGENCIES TO THE AUTHORITY** - (issued 15 May 2000)

- 6.1 Section 98(1)(b) of the Act obliges the Authority to report to the Minister annually *"on the working of the Act and the desirability or otherwise of amending it"*.
- 6.2 Section 221(4) of the Act provides that *"The Secretary of each District Licensing Agency shall send to the Secretary of the Liquor Licensing Authority a copy of every application made to the District Licensing Agency, and a copy of every decision made by the District Licensing Agency."*
- 6.3 With the devolution to Agencies of decision making in respect of unopposed on, off, club licence, or managers' certificate applications, the Authority wishes to know how that is working in practise. With that in mind, and having regard to the requirements of s.221(4), the Authority seeks from each Agency:-

In respect of applications for the grant, renewal or variation of on, off or club licences:

- (a) a copy of each completed application form
- (b) a copy of the report of the District Licensing Agency Inspector
- (c) a copy of the decision made by the Agency
- (d) a copy of the licence and/or notice of renewal issued

In respect of applications for the grant or renewal of managers' certificates, the Authority seeks from each Agency:

- (a) a copy of each completed application form
- (b) a copy of the certificate or notice of renewal issued

- 6.4 The Authority also seeks copies of delegations pursuant to s.104 and the name and designation of the Secretary of the District Licensing Agency. When delegations are altered or a new District Licensing Agency Secretary is appointed, the Authority wishes to be advised.
- 6.5 Each Agency is asked to produce, as at 30 June annually, a list of licensed premises in its area detailing the licensee's name, premises name and address, type of licence held, licence number, date of licence issue and date of licence expiry. This continues previous practice enabling a comparison of the information held by each Agency with that held by the Authority, and will help to ensure the accuracy of the national register of licensed premises required to be maintained by the Authority.
- 6.6 Following devolution to Agencies of the bulk of the decision making and licence issue process, Agencies' annual reports to the Authority will assume greater significance in enabling the Authority to assess the overall working of the legislation, and have that reflected in its own annual report to Parliament. It is requested that each Agency submit to the Authority, as at 30 June annually (by 31 August), a statistical return detailing the workload undertaken during the year. This return should form part of each Agency's annual report to the Authority.
- 6.7 In summary the Authority seeks from all Agencies:
  - 6.7.1 Copies of all licences, notices of renewal, managers' certificates and Inspectors' reports, **in addition to the application and decision required by s.221(4). These documents should be sent within five working days of issue.**
  - 6.7.2 Copies of any written delegations in terms of s.104(3), and the name and position held of the Secretary of the District Licensing Agency.
  - 6.7.3 An annual list of all actively licensed premises in each Agency's district.
  - 6.7.4 A standard annual statistical return.

**7. REQUIREMENT TO DESCRIBE THE NATURE OF THE BUSINESS CARRIED ON UNDER CERTAIN TYPES OF ON-LICENCE**

(issued 24 October 2000)

Following enactment of the Sale of Liquor Amendment Act 1999, with effect from 1 April 2000, section 7(1) of the principal Act was repealed. In consequence the different categories of persons to whom liquor may be sold pursuant to an on-licence were no longer detailed in the authorisation clause of new on-licences. Irrespective of the nature of the business, under any on-licence issued after 1 April 2000, liquor may be sold to **any** person present on the premises.

However, pursuant to s.14(2) of the Act, on-licences granted in respect of hotels and taverns must still include a condition restricting the sale of liquor to lodgers or diners on Good Friday, Easter Sunday, Christmas Day, and on Anzac Day prior to 1.00 pm. The inclusion of such a condition identifies hotel and tavern businesses.

Other on-licences that relate to a specific business are those issued for conveyances and BYO restaurants.

In early 2000, District Licensing Agencies were provided by the Authority's secretariat with sample templates (subsequently updated as appropriate) of the various types of licences available for issue after 1 April 2000. The templates for on-licences, other than hotels, taverns, conveyances and BYOs, all have provision for a business description in the condition relating to trading days and hours authorised.

Given that the wording of the authority to sell, supply and consume liquor is standard on **all** on-licences issued after 1 April 2000, and bearing in mind that the trading name on any individual licence may give little or no indication of the business to be carried on under that licence, the Authority requires that for businesses other than hotels and taverns the condition of the licence covering the days and hours of sale include a description of the nature of the business; e.g.:-

*"Liquor may be sold only on the following days and during the following hours:*

*On such days and during such hours as the premises are being operated as a nightclub and entertainment venue but not other than on the following days and hours: ..."*

or

*"On such days as the premises are being operated as a restaurant but not other than on the following days and hours: ...."*

This requirement is to ensure that licensees who portray their business as **being other than that of a hotel or tavern** do not operate a business in which the sale and consumption of liquor predominates, particularly at a time when hotel and tavern premises are prevented by statute from so trading.

DATED at WELLINGTON this 10<sup>th</sup> day of February 2005



District Court Judge  
E. W. Unwin

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Judge E W Unwin  
Chairman  
Liquor Licensing Authority