

MEETING
– **AGENDA** –

Ngā Take



**REGULATORY
HEARINGS
COMMITTEE**

Komiti Whakariterite Kōrero

RH21-1
Thursday, 23 September 2021
Council Chambers
Barkes Corner, Tauranga
1.00pm



***Western Bay of Plenty
District Council***

Regulatory Hearings Committee

Membership

Chairperson	Deputy Mayor John Scrimgeour
Deputy Chairperson	Cr Mark Dean
Members	Cr Grant Dally Cr James Denyer Cr Murray Grainger Cr Monique Gray Cr Anne Henry Cr Margaret Murray-Benge
Quorum	2
Frequency	As required

Role:

- To conduct hearings and make decisions of a quasi-judicial nature on statutory and regulatory matters that fall within the scope of the Committee.

Scope:

- To conduct hearings and make decisions of a quasi-judicial nature on any statutory and regulatory matters that Council is legally:
 - empowered or obligated to hear and determine;
 - permitted to delegate to this Committee under the Local Government Act 2002; and
- To exercise this function in accordance with:
 - the applicable legislation;
 - the Council's strategies, policies and plans; and
 - the principles of administrative law and natural justice.
- Regulatory matters include (but are not limited to) dog control matters and matters arising from the exercise of Council's enforcement functions.

Power to Act:

- All powers, duties and discretions necessary to conduct hearings and make decisions of a quasi-judicial nature on behalf of the Council on any statutory and regulatory matters that are within the scope of the Committee, and that the Council is legally empowered or obligated to hear and determine, including but not limited to:
 - all powers, duties, and discretions necessary to hear and make decisions on behalf of the Council in respect of any matter that the Council is empowered or obligated to hear and determine under the Dog Control Act 1996, Gambling Act 2002, Food Act 2014, Litter Act 1979, Local Government Act 1974, Local Government Act 2002 or any other Act, or under any bylaw, as required.
- The power to establish and amend hearings protocols relating to the general conduct of hearings and hearings-related matters in accordance with the applicable legislation and the principles of administrative law and natural justice.
- The power to co-opt expert advice on an 'as required' basis.

- The power to consider, hear and make decisions on any matter relating to temporary road closures under the Transport (Vehicular Traffic Road Closure) Regulations 1965 and clause 11 Schedule 10 Local Government Act 1974.

Chairpersons Delegations:

- Pursuant to the provisions of the Sale and Supply of Alcohol Act 2012, the power to appoint from the District Licensing Committee list of members, a quorum of appropriately qualified members to hear and decide on specific applications.

For the avoidance of doubt, the Regulatory Committee does not have the power to hear matters relating to the Sale and Supply of Alcohol Act 2012 or Resource Management Act 1991 (including plan changes, private plan changes or notified resource consent applications).

Notice is hereby given that a Regulatory Hearings Committee Meeting will be held in the Council Chambers, Barks Corner, Tauranga on:
Thursday, 23 September 2021 at 1.00pm

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- 1 PRESENT**
- 2 IN ATTENDANCE**
- 3 APOLOGIES**
- 4 DECLARATIONS OF INTEREST**
- 5 PUBLIC EXCLUDED ITEMS**
- 6 HEARINGS**

7 REPORTS

7.1 ANNUAL REPORT ON DOG CONTROL POLICY AND PRACTICES 2020-2021

File Number: A4101468

Author: Alison Curtis, Compliance and Monitoring Manager

Authoriser: Rachael Davie, Group Manager Policy Planning And Regulatory Services

EXECUTIVE SUMMARY

1. Section 10A of the Dog Control Act 1996 requires Council to publicly report, each financial year, on the administration of our Dog Control Policy and practices along with specified dog control related statistics.

The content of the attached report is based on the requirements of the Dog Control Act 1996.

The format of this report is as required by the Ministry of Internal affairs and only includes incidents involving dogs.

RECOMMENDATION

1. That the Compliance and Monitoring Manager's report dated 18 August 2021 and titled 'Annual Report on Dog Control Policy and Practices 2020-2021' be received.
2. That pursuant to Section 10A of the Dog Control Act 1996, the Western Bay of Plenty District Council annual report on Dog Control Policy and Practices for 2020-2021 be adopted and publicly notified.

BACKGROUND

2. Council, as a territorial authority, is required to manage and enforce provisions pursuant to the Dog Control Act 1996 (the Act). Section 10A of the Act requires the Council to report on its Dog Control Policy and practices.
3. The attached report details Council's activities under the Dog Control Act 1996 and fulfils this statutory requirement for the dog registration year 1 July 2020 to 30 June 2021.

SIGNIFICANCE AND ENGAGEMENT

4. The Local Government Act 2002 requires a formal assessment of the significance of matters and decision in this report against Council's Significance and Engagement Policy to guide decision on approaches to engagement and degree of options analysis. In making this formal assessment it is acknowledged that all reports have a high degree of importance to those affected by Council decisions.
5. In terms of the Significance and Engagement Policy this decision is considered of low significance.

ENGAGEMENT, CONSULTATION AND COMMUNICATION

Interested/Affected Parties	Planned Communication		
Secretary for Local Government	Dog Control and Policy Report for 2020-21 copy sent within 1 month of adoption by Council, in accordance with legislative requirements.	Planned	Completed
Tangata Whenua	As per general public		
General Public	Dog Control and Policy Report for 2020-21 notified in the newspaper and report copy available on Council's website pages.		

ISSUES AND OPTIONS ASSESSMENT

Council adoption of the Dog Control and Activities report	
Reasons why no options are available Section 79 (2) (c) and (3) Local Government Act 2002	Legislative or other reference
This report is required to be produced by Council annually, the content of which is prescribed by the Dog Control Act 1996. Council decision-making is only in relation to adoption of the report.	Dog Control Act 1996. Section 10A. Territorial authority must report on dog control policy and practices.

STATUTORY COMPLIANCE

The report and recommendation have been prepared to ensure that Council meets the statutory requirements under the Dog Control Act 1996.

ATTACHMENTS

1. **Annual report on Dog Control Activities 2020-2021** [↓](#) 

Date 21 July 2021
Subject Annual Report on Dog Control Policy and Practices – 2020-2021

Open Session

Western Bay of Plenty District Council: Dog Control Policy and Practices Report 2020-2021

The Western Bay of Plenty District Council, as a territorial authority, is required to manage and enforce provisions pursuant to the Dog Control Act 1996 (the Act). Section 10A of the Act requires the Council to report annually on its Dog Control Policy and practices.

This report fulfils this statutory requirement for the dog registration year:
1 July 2020 to 30 June 2021.

1. Dog Control Policy and Dog Control Bylaw 2016

Council reviewed the existing 2011 Dog Control Policy and Dog Control Bylaw, in accordance with the requirements of the Local Government Act 2002 during the 2015-16 year, with introduction of the Bylaw taking effect on 14 October 2016.

The objectives of the policy are:

- To provide adequate opportunities to fulfil the exercise and recreational needs of dogs and their owners, including off leash exercise.
- To minimise the danger, distress and nuisance (of dogs) to the community generally.
- To minimise the likelihood for conflict between dogs and the public or environment, by restricting access for dogs to public places where appropriate.
- To avoid danger from uncontrolled dogs having access to public places which are frequented by children whether or not the children are accompanied by adults.
- To minimise, to the extent that is practicable, the public fear of attack or intimidation by dogs.
- To actively promote the responsible ownership of dogs.
- To actively promote public safety and education.

Council promotes the Policy and Bylaw through communications with residents and dogs owners through:

- Dogs of the Western Bay newsletter
- Council webpage and Facebook page
- One on one contact with dog owners
- Council dog events
- Puppy training classes

7.2 ANNUAL REPORT ON WESTERN BAY OF PLENTY DISTRICT LICENSING COMMITTEE 2020-2021

File Number: A4101501

Author: Alison Curtis, Compliance and Monitoring Manager

Authoriser: Rachael Davie, Group Manager Policy Planning And Regulatory Services

EXECUTIVE SUMMARY

1. This report provides information on the Western Bay of Plenty District Licensing Committee activities for the twelve-month period 1 July 2020 to 30 June 2021. This information is also provided to the Alcohol Regulatory Licensing Authority in Wellington as required under the Sale and Supply of Alcohol Act 2012.
2. The information listed in this report is in direct response to the reporting requirements of the Alcohol Regulatory Licensing Authority.

RECOMMENDATION

That the Compliance and Monitoring Manager's report dated 18 August 2021 titled 'Annual Report on Western Bay of Plenty District Licensing Committee 2020-2021' be received and the information noted.

BACKGROUND

3. The annual report provides a summary of activities for the Western Bay of Plenty District Licensing Committee. The information is required under the Sale and Supply of Alcohol Act 2012.
4. The statistical information is provided to the Alcohol Regulatory Licensing Authority through an online survey. The financial information for the financial year 1 July 2020 to 30 June 2021 is reported separately.

OVERVIEW OF DISTRICT LICENSING COMMITTEE WORKLOAD

5. The District Licensing Committee (DLC) has had no formal meetings or hearings during the period 1 July 2020 to 30 June 2021. There have been no public objections or matters in opposition that have required the District Licensing Committee to determine the licence outcome through a public hearing.

DISTRICT LICENSING COMMITTEE INITIATIVES

6. On-line applications through Council's website for special licences, manager's certificate and on licence applications can be received through Council's website. Further licence application types are to be introduced online in the 2021- 2022 year.
7. Public advertising of licence applications via Council's website is to be introduced in 2021-22.

LOCAL ALCOHOL POLICY AND BYLAW

8. The combined Tauranga City Council and Western Bay of Plenty District Council Local Alcohol Policy (LAP) came into force on 16 November 2015. The LAP is required to be reviewed every six years. The review is currently underway.
9. The Local Alcohol Policy reduced the trading hours for premises with later trading licences that were operating within the Western Bay of Plenty District since its adoption in 2015. The reduced premises trading hours apply across the District (maximum trading to 1am for on-licences and 10pm for off-licences).

10. The Liquor Control Bylaw 2016 applies in the District and the areas controlled include Katikati Township, Waihi Beach and Te Puke Township.

IMPACT OF COVID-19 ON DLC OPERATIONS

11. Covid-19 has impacted on DLC operations. There initially was a reduction in the number of applications lodged, specifically Manager's Certificates and special licence applications during levels 4 and 3 (total applications for 2019-20 was 231). The number of applications (post lockdown) for 2020-21 (365) represents a 5 year high.
12. The only direct manner in which it has impacted operations is through the introduction of the pandemic provisions through the Immediate Modification Order (IMO) that provide for reporting agencies reporting deadlines to be extended. This has negatively impacted on turnaround times for businesses to obtain new licences and licence renewal processing
13. The DLC considers that the IMO allowed too much provision for time extension. There was no consultation directly with DLC's as to what was, or wasn't possible during lock down. There should have been the opportunity for DLCs to consider and determine licences in certain circumstances without the input from Police and Medical Officer of Health.
14. This has directly impacted premises who have applications for NEW licences and are waiting to have their licences determined.
15. One of the tasks DLCs have is to administer the Act in a reasonable manner. The delays caused by the IMO for some new applicants has been unreasonable.

DLC COMMENTARY - HOW THE ACT IS ACHIEVING ITS OBJECT

16. The Alcohol Regulatory Licensing Authority in this year's annual report survey has requested comment on how the Sale and Supply of Alcohol Act 2012 is achieving its object. Note: the object of the Sale and Supply of Alcohol Act 2012 is that:
 - a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
 - b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
17. The following feedback was provided to the survey in the 2019-20 year and there are no changes or additions to the feedback previously provided.
18. Actions have been taken locally that have contributed to the overall object of the Act.
 - Sales and supply and availability of alcohol through off licences are being addressed. There are tighter controls on alcohol display and promotion in supermarkets, with alcohol less prominently displayed and promoted to patrons.
 - Applications for off licences in town centres are being closely scrutinised in relation to single sales, and the wider impact of off-site consumption, including public place drinking and associated antisocial behaviour. Single can sales from off licensed premises have been reduced through conditions applied to licences in town centres. Conditions are being applied as licence applications (new and renewal) are received.
 - Club licences have been closely assessed and inconsistencies with Club constitutions addressed for membership types and affiliated memberships.
 - Duty Managers certificates are assessed through interviews as part of the application process as it is recognised that managers are key to ensuring compliance with the objectives of the Act.
 - The income from annual fees has been beneficial in increasing the funding for monitoring by Council of licensed outlets. Increased inspections and interactions with licensees has seen an improvement in the knowledge of requirements by licensees, and compliance with the Act.

DLC COMMENTARY- CHANGES OR TRENDS IN LICENSING SINCE THE ACT CAME INTO FORCE

19. That ordinary citizens making an objection to another bottle store (as an example) in their community face an extraordinary hurdle in making a compelling argument against skilled and often “lawyered up” applicants. Objectors are often unskilled in this area and the whole process can be quite daunting for them.
20. It is difficult to get public objections and for them to maintain their objections right through to the hearing. Applicants and lawyers are aware that without LAP provisions in place to limit licensed premises numbers, e.g. OFF Licences in an area, it is difficult for communities to mount an argument sufficiently strong to stop another bottle store opening in their area.
21. There is currently no requirement for proving a need when another outlet is proposed in an area that is already well served, and in many low socio-economic areas the number of outlets is high particularly.
22. Tightening of drink-drive levels has seen more premises offer more food options instead of expanding alcohol offerings. This has been a positive spin off for all parties. While not directly related to changes introduced by the Sale and Supply of Alcohol Act, it is a positive trend.
23. Craft beer options are expanding and creating a culture of their own. Even though they are generally higher in alcohol content they are also higher in price. As most beer drinkers are price sensitive, they appear to be savouring the craft beer options and going for quality over quantity, this is having a positive effect on consumption.

DLC COMMENTARY- WHAT CHANGES TO PRACTICES AND PROCEDURES UNDER THE ACT WOULD BE BENEFICIAL

24. The Sale and Supply of Alcohol Regulations 2013 include provisions around grocery stores. Regulation 12(1)(c) requires that a ‘chartered accountant’ verify the figures from prepared accounts.
25. There are additional organisations that have approved advisor group status from the IRD. These three organisations are The Accountants and Tax Agents Institute of NZ, the NZ Institute of Chartered Accountants, Chartered Accountants Australia and New Zealand and CPA Australia.
26. The Regulations should be amended as many grocery store operators have engaged accountancy services from non ‘chartered accountants’ and finding their renewal applications opposed by some of the agencies on the grounds that the figures are not prepared by a chartered accountant.
27. Section 102 (4A) of the Act provides that where an application for a premise is of the same kind as the licence currently in force, and in which the conditions sought are the same, then the only grounds for objection are to the suitability of the applicant.
28. Community feedback is that the application should be treated the same as a new application where the community has the opportunity to address all matters. With a new applicant there is limited knowledge by the community that can be presented in relation to suitability, with unknown applicants and history, this is a very limited scope for the community to address any concerns.
29. Notification requirements continue to be an area of community concern with DLC’s often criticised for not engaging with communities regarding applications being lodged, particularly for licences of interest. The DLC and secretariat is required to be independent and not garner public interest in applications. Further consideration of notification requirements and mechanisms for communities to be engaged in the licensing process is sought.

FEES RECEIVED

30. Over the 12-month period 1 July 2020 – 30 June 2021 fees totalling \$157,413.18 were collected (this includes fees which have been invoiced in 2019-20, and unpaid until 2020-21) of which \$9,458.75 was apportioned to the Alcohol Regulatory Licensing Authority, as required by the Sale and Supply of Alcohol Regulations 2013.

APPLICATION TRENDS

31. For trends and comparative purposes, the last four years licence application numbers are listed below.

TYPE	1 July 2020 to 30 June 2021	1 July 2019 to 30 June 2020	1 July 2018 to 30 June 2019	1 July 2017 to 30 June 2018
Special Licenses	120	84	122	94
On Licenses	24	20	26	32
Club Licenses	3	3	16	7
Off Licenses	15	11	14	12
Manager's Certificates	134	132	139	162
Temporary Authorities	12	2	10	17
TOTAL	308	252	327	324

Please note: the numbers for special licences and temporary authorities differ from the annual return provided to ARLA, as the ARLA return reflects applications paid. The variations in this report reflect applications lodged, and may include applications received but not paid for, applications still in process and cancelled.

ENFORCEMENT AND INSPECTIONS

32. The Licensing Inspector undertakes inspections of premises including:
- inspections of new licensed premises,
 - premises renewing their licence,
 - regular monitoring of premises during trade.
33. 155 licensed premises inspections were undertaken during the year.
34. Controlled Purchase Operation (CPO) visits were undertaken during the year by the Agencies, the number of operations undertaken is not available at this time.

ATTACHMENTS

1. **Western Bay of Plenty District Council Annual Return 2020-2021** [↓](#) 
2. **Western Bay of Plenty District Council Alcohol Licensed Premises Listing as at 30 June 2021** [↓](#) 

