

Whangarei District Licensing Agency

Liquor Licensing Policy

Adopted 25 August 2010

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1 Definitions

For the purpose of this Policy the following acronyms will be used:

Acronym	In full
ALAC	Alcohol Advisory Council of New Zealand
CBD	Central Business District
Council	Whangarei District Council
DLA	District Licensing Agency
HANZ	Hospitality Association of New Zealand
LLA	Liquor Licensing Authority
Policy	Liquor Licensing Policy
SCANZ	Sport Club Association of New Zealand
The Act	Sale of Liquor Act 1989
TLA	Territorial Local Authority

2 Introduction

The primary legislation for controlling the sale of liquor in New Zealand is the Sale of Liquor Act 1989 (the Act). The licensing provisions are administered through institutions known as the Liquor Licensing Authority (LLA) and District Licensing Agencies (DLA). Under the Act Territorial Local Authorities (TLAs) perform an important statutory role as DLAs, receiving and processing applications for various types of premises licenses, and authorities and certificates held by managers who work in these premises. Licensing agencies must also appoint licensing inspectors who report on all applications and monitor the performance of licensees in complying with licensing conditions. The Police and the Medical Officer of Health are also required by the Act to report on applications. There are four different types of licences which can be granted; On, Off, Club and Special licences. The Act sets down criteria for the granting and operation of these licences, and the processes which the LLA and the DLA must follow in issuing licenses.

The object of the Act is to establish a reasonable system of control over the sale and supply of liquor to the public, with the aim of contributing to the reduction of liquor abuse in so far as that can be achieved by legislative means:

‘There is a requirement that the LLA, every DLA and any court hearing an appeal against the decision of the LLA, shall exercise its jurisdiction, powers, and discretions under the Act in the manner that is most likely to promote the object of this Act.’

There is no legal requirement to adopt Policy under the Act but Council as a DLA has followed best practice in adopting Policy from the time that the Act came into force in 1990. The Policy provides for important community issues such as licensing hours, the DLA approach to enforcement of the Act as well as providing for discretionary matters under the Act, and general information about Agency roles. The LLA has encouraged DLAs to adopt policies and gives weight to Policy in that they are seen as a mechanism for communities to have a level of input in licensing decisions. In the case of *H L & W J Walker v New Zealand Police*, Fisher J stated in part ‘essentially it (the Policy) is the perceptions and desires of the local community as expressed through their elected representatives, presumably after some level of consultation with the community’.

The Whangarei DLA uses the special consultative process of the Local Government Act 2002 to establish the Liquor Licensing Policy (*Policy*). Council first adopted the Policy in 2000 with the introduction of the Sale of Liquor Act 1989, and has continued to amend and review the Policy over time.

The DLA therefore has a role to play in the reduction of liquor abuse through its responsibilities and obligations under the Act. Council believes that the key to achieving the aims of the Act is the promotion of responsible attitudes of both licensees and the public in achieving a mature approach to liquor consumption

3 Object and content of the Policy

The purpose of the Policy is to clearly define Council's attitude to and administration of its responsibilities pursuant to the Act. The Policy defines the parameters which guide liquor licensing within the District and specify how the DLA will carry out its statutory functions. The Policy contains guidelines in respect of the hours of operation of licensed premises in or **adjacent** to residential areas, criteria for the reporting on and approval of licence applications and renewals, enforcement procedures, communication between the various sectors and strategies aiming to reduce liquor abuse:

'The Whangarei DLA shall exercise functions under the Sale of Liquor Act 1989 so as to promote a reasonable system of control over the sale of liquor to the public and through liaison with other agencies and the community and by the development of initiatives shall aim to:

- *contribute to the reduction of alcohol abuse*
- *reduce the social and economic cost to the community from alcohol abuse*
- *create safe drinking environments which will enhance the protection of the health and safety of all citizens through the promotion of host responsibility concepts.'*

4 Strategic links

The Whangarei DLA Policy aligns with the following community outcomes established for the 2009-2012 Long Term Council community Plan:

- a District which is safe and crime free
- a community which is healthy and educated.

5 Regulatory and policy links

The Whangarei District Liquor Management Bylaw 2005 – liquor bans.

6 Functions of the statutory agencies – a summary

Under the Act the functions of the DLA and the LLA are as follows:

6.1 District Licensing Agency (DLA)

The DLA:

- performs as a judicial body considering applications on the papers, conducting public hearings, and can act as a commission of enquiry
- determining unopposed applications for On, Off and Club Licences, Manager's Certificates and unopposed renewals of On, Off and Club Licences and Manager's Certificates
- determining temporary authority applications (*On/Off Licences*)
- determining applications under Section 134 of the Act from the Medical Officer of Health and New Zealand Fire Service
- determining applications for special licences
- appointing one or more licensing inspectors. Licensing inspectors have the following responsibilities under the Act:
 - reporting in an independent manner on all applications under the Sale of Liquor Act to the DLA or LLA
 - monitoring licensee compliance within the conditions of licence requirements of the Act and reporting to the DLA or LLA
 - power of entry to any licensed premises at any reasonable time (the inspector must carry a warrant of appointment)
 - require ability to see the premises' licence or any records reasonably required to establish compliance with the Act

- ability to apply to the Licensing Authority for the variation, suspension or cancellation of a licence.

The agency will observe any statement issued by the LLA under Section 96.

- reporting in an independent manner on all applications under the Sale of Liquor Act to the DLA or LLA
- monitoring licensee compliance within the conditions of licence requirements of the Act and reporting to the DLA or LLA
- power of entry to any licensed premises at any reasonable time (*the inspector must carry a warrant of appointment*)
- ability to request to see the premises' licence or any records reasonably required to establish compliance with the Act
- ability to apply to the Licensing Authority for the variation, suspension or cancellation of a licence.

6.2 The Liquor Licensing Authority (LLA)

The LLA is the Judicial Body administered by the Justice Department consisting of a District Court Judge and two appointed members. The LLA is based in Wellington but members travel around the country to hear applications which have been referred to it. Matters which the LLA deal with include:

- determining opposed applications for On, Off and Club Licences and renewals, Manager's Certificates referred to it by DLAs and licenses issued under the Winemakers Act 1981
- determining appeals arising from decisions of DLAs
- giving direction on sale of liquor matters to DLAs
- determining applications for variation, suspension or cancellation of On, Off or Club Licences and Manager's Certificates from the Police or a licensing inspector
- considering the suspension or cancellation of licences in respect of certain offences (*relating to sale and supply of liquor to minors, unauthorised sale or supply, sale or supply to intoxicated persons or allowing persons to become intoxicated*) referred to them by the Police.

7 The Whangarei District Licensing Agency – administrative and judicial process

Council has a statutory role under the Act as a DLA, and in terms of Section 100 of the Act is required to consider and determine applications for the granting and renewal of uncontested *licences (On, Off, Club Licences and Manager's Certificates)* and is solely responsible for applications, both contested and uncontested, relating to special licenses and temporary authorities. Contested applications are otherwise investigated and reported on by Agency Inspectors but sent to the LLA in Wellington for determination. The LLA is also empowered to conduct public hearings, to act as a commission of enquiry and to appoint licensing inspectors.

The Act provides that the chief executive officer of the Local Authority shall be the secretary of the DLA. The secretary is largely an administrative figure but also has a number of discretionary powers relating to the processing of applications. An example is that the secretary can determine whether or not a special licence application is to be publically notified. The work of the secretary in receiving and processing applications is undertaken by environmental health staff.

Section 104 of the Act provides that the Local Authority may delegate to a committee such powers, duties and discretions as it considers necessary. Section 104 further provides that the committee, with the approval of the Local Authority, can then sub-delegate to the secretary or to a sub-committee, such powers, duties, and discretions as relate to any matter that is the subject of an application to which no objections have been received. The delegations and sub-delegations must be in writing and must state each power, duty and discretion being delegated.

Council uses these powers to delegate various DLA functions to a sub-committee and then further down to the secretary to ensure that applications are dealt with in a timely and efficient manner. These delegations are recorded in Council minutes and are recorded in the delegation manual. The DLA receives around 700 applications under the Act each year, many of them uncontested renewals.

A range of processes can be used to determine applications, ranging from public hearings before sitting DLA members (*a committee of Council*) to issue by DLA staff working under the control of the DLA Secretary (*Council's chief executive officer*). Because these functions can change from time to time they are not described in the Policy, rather shown in Appendix 2 of the Policy which can be amended as appropriate at any time outside of the statutory Policy amendment process. This ensures that the information relating to how the Agency carries out its functions remains current and up to date.

8 Performance measures for staff and agency members

- to apply a customer focus so as to assist all parties to proceedings involving agency responsibilities under the Act, i.e.:
 - facilitative
 - co-operative
- to process filed applications for licenses and certificates within a timely manner
- to perform all functions in accordance with procedure set down in the Act while minimising administrative involvement for any party
- to work in a professional manner with both the liquor industry, the general public and other agencies so to bring about resolution of concerns or complaint in a timely and customer focused manner
- to monitor the performance of licensees' and managers' in meeting their obligations under the Act in a professional and consistent manner so that licensing inspectors can report on any application filed
- to carry out inspection in a professional and consistent manner.

9 The public role in the licensing process

The DLA encourages public input to the licensing process indirectly through participation in the Policy development process, and will make efforts to ensure the general public is aware of its role and functions.

The Whangarei DLA will encourage public participation and consultation in liquor issues generally with a particular emphasis on awareness of:

- the DLA and its role
- public responsibility in ensuring a responsible approach to liquor consumption.

10 Alcohol health promotion and communication

The DLA recognises that alcohol is part of New Zealand's social fabric and that general public and individuals have a responsibility in respect of maintaining a healthy attitude to alcohol consumption. The Act provides a legislative basis in respect of the sale of alcohol on licensed premises. However, initiatives from statutory agencies, stakeholder groups such as ALAC and the industry (*groups such as HANZ, and SCANZ, etc*) also encourage a healthy public and industry attitude to alcohol and the reduction of liquor abuse.

The DLA, in collaboration with its regulatory partners, the Whangarei Police and Northland Health will support strategies promoting a responsible attitude towards the use of alcohol with the public and industry.

Strategies will be targeted at specific groups that are appropriate, from time to time, including:

10.1 Youth as a primary target with parents and other adults as secondary target

Strategies will encourage a sensible approach and responsibility with alcohol as well as affirming those who choose not to drink. Strategies will also target the secondary audience of parents, caregivers and other adults by emphasising responsibility in respect to the supply of *alcohol (and the impact of adult role model)* to minors.

10.2 The general public

The general public and particularly minors need to be aware of the requirements of the Act, and the fact that the misuse of alcohol can jeopardise the operation of licensed premises.

10.3 Licensees and their staff

Strategies promoting awareness of licensee and staff responsibility under the Act will continue. Strategies include the provision of information and advice in respect of licensees and licensed premises, staff awareness of and compliance with the legislative requirements.

10.4 Staff of district licensing agency and other agencies or organisations involved in the licensing process

In order to carry out their functions and responsibilities in accordance with the Act, it is essential for staff of the DLA and other organisations to be aware of and up to date with, the requirements of the Sale of Liquor Act, along with other relevant legislation or regulations.

10.5 Communication

Communication is a key tool in the local licensing process so it is essential that all parties involved communicate regularly and are working towards similar common goals within the bounds of their own legislative or association requirements and purpose. The DLA will continue to liaise with its partners, defined by legislation, and other relevant bodies and groups including ALAC, National Police Headquarters, HANZ, Club New Zealand, SCANZ, etc.

Whangarei District Council will work collaboratively with the Northland District Health Board, New Zealand Fire Service and the New Zealand Police as enforcement agencies under an agreed memorandum of understanding to achieve the object of the Sale of Liquor Act 1989.

11 Alcohol promotions

Section 154A of the Sale of Liquor Act 1989 provides that a licensee or manager of licensed premise commits an offence if they do 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 likely to encourage persons on the premises to consume alcohol to an excessive extent. This section is aimed at discouraging promotions of the business or any activity that encourages excessive consumption of alcohol.

The 'National Protocol on Alcohol Promotions' produced jointly by the Alcohol Advisory Council (ALAC) and the Hospitality Association of New Zealand (HANZ) with assistance from the police and Local Government New Zealand (LGNZ), gives examples of acceptable and unacceptable practices.

- the Whangarei DLA endorses the national protocol and requires all licensees to carry out promotions or activities in accordance with the protocol
- where the regulatory agencies consider that an activity or promotion infringes the Act, the enforcement procedures as detailed in section 22.1 of the Policy will apply.

12 Licensing hours

New premises

This Policy shall apply to all new premises or conveyances for which a license is sought after the date of adoption of this Policy. New premises include premises or conveyances for which a liquor licence is not in force and include existing buildings and buildings not constructed at the time the application was made.

Existing licensed premises (*Policy to apply as from 31 December 2012*)

This Policy seeks to bring about a uniform reduction in operating hour for existing licensed premises across the district at the conclusion of a sunset period on 31 December 2012. The sunset period will allow existing businesses to plan for and adapt to new trading hours. In that interim period up until 31 December 2012, the specific Policy statements of clauses 12.1 (*On licenses*), 13.1 (*Off Licenses*), 14.1 (*Club Licences*) and 15.6 (*Special licences*) of the Policy adopted on 6 March 2002 shall continue to

apply in relation to operating hours. The Agency wishes to work with the hospitality industry to bring about a transition to the new Policy hours and encourages applicants for new On, Off and Club Licences relating to existing licensed premises during the interim sunset period to voluntarily work within the new hours with the exception that later hours for the Whangarei CBD area will not be subject to a one way door system.

General

The hours of operation are set by the DLA in terms of this Policy or alternatively by the LLA when an application is contested.

Applicants for On, Off and Club Licences must apply for and be granted a certificate from Council that the sale of liquor activity on a particular site complies with the Resource Management Act 1991 which means that activities will comply with rules in the Whangarei District Plan or will have been granted a land use consent. The Resource Management certificate forms part of the application made to the Agency.

Land use consent is granted after careful consideration of the environmental effects generated on the licensed premises site (*noise, vibration, light spill etc*) on any surrounding neighbours and Council must be confident that any effects are less than minor and in compliance with the rules in the District Plan. The District Plan does not control operating hours of licensed premises, with one exception, and generally it is this Policy which will determine operating hours. The one exception is for activities in the Business 3 Environment of the District Plan. Where a premise is located within 50 metres of a Living Environment boundary then the operating hours are restricted from 6am to 10pm.

Premises which are situated adjacent to residential areas will be required to close early. This strategy is used to ensure that the effects on adjacent residents generated both on site (*e.g. entertainment noise*) controlled by District Plan rules and off site, which is not otherwise controlled by District Plan rules (*i.e. effects generated in adjacent streets or public place as people come to or leave the licensed premises*) is minimised. District Plan rules are not well suited to control such noise and such controls are seen as a liquor licensing matter.

Adjacent to residential areas means adjacent to, or in close proximity of residential areas.

12.1 On licences (*hotel, tavern, night club, restaurant, others*)

The maximum trading hours for all On License premises in the Whangarei District, other than those situated in the Whangarei CBD, are subject to the rules in the Whangarei District Plan and the Resource Management Act 1991 are for:

12.1.1 On licensed premises situated adjacent to residential areas

Sunday – Thursday 8am – 11pm

Friday – Saturday 8am – 1am the following day

12.1.2 On licensed premises isolated from residential areas

Monday – Sunday 8am – 1am the following day

12.1.3 On licensed premises situated within the Whangarei CBD, (*map in Appendix 1*)

Monday – Sunday 8am – 3am the following day - with a one way door system in place from 1am. Provided that where a licensee wishes to operate hours between 8am-1am then the one way door system will not apply.

12.2 Off licences (*all types including across the bar sales*)

The maximum trading hours for off licensed premises in the District, including across the bar sales in hotels, taverns and club licensed premises shall be as follows:

Monday – Sunday 9am – 10pm

Note Where electronic sales are made and no alcohol is stored on the premises then no restrictions on hours apply under this Policy.

12.3 Club licences

The maximum trading hours for Club Licensed premises in the District shall be as follows.

12.3.1 For club licensed premises situated adjacent to residential areas

Sunday – Thursday 8am – 11pm

Friday – Saturday 8am – 1am

12.3.2 For club licensed premises isolated from residential areas

Monday – Sunday 8am – 1am the following day

12.4 Special licences

The maximum trading hours for special licensed premises in the District shall be as follows:

For On, Off and Club licensed premises (other than on, off licensed premises located within the Whangarei CBD):

- 1 hour extension to the hours held as a condition of licence, or
- 8am – 1am the following day whichever is the shorter hours.

For any premises situated within the Whangarei CBD:

- 8am – 4am the following day.

For non licensed premises (halls, conference centres etc)

- 8am – 1am the following day.

Any hours sought for special licences outside of these hours must be determined by the sitting Agency.

12.5 Additional provisions relating to hours for on and club licensed premises situated adjacent to residential areas

In respect of On Licensed premises to which Clause 12.1.1 applies (*On Licensed premises situated adjacent to residential area*), and in respect of Club Licensed premises to which Clause 12.3.1 applies (*Club Licensed premises situated adjacent to residential areas*), the Agency may permit an extension on licensing hours to 1am the following day on the days Sunday through to Thursday, if the Agency is satisfied that the licensee will be able to adequately manage and control any potential adverse effects on adjacent residential areas from the operation of the licensed premises

In determining whether or not to permit such an extension to licensing hours, the Agency will have regard to the following matters:

- noise management plan
- comprehensive host responsibility plan
- manager training
- event management plan.

12.6 Application which exceeds hours of operation

Any application for an On Licence, Off Licence or a Club Licence which exceeds the hours of operation permitted by this Policy will be opposed and forwarded to the LLA for determination.

13 Receiving applications for renewal of on, off and club licences under sections 18(2)(b), 41(2)(b) and 64(2)(b) of the Act

The DLA will exercise discretion under the Act to allow applications for the renewal of On, Off and Club Licences to be made not later than the date of expiry of the licence.

14 Public notification of on, off and club licenses

For the purpose of public notification, the following newspapers are nominated by the DLA Secretary:

- Northern Advocate
- Whangarei Report
- Whangarei Leader

15 Provision of managers

Section 115 of the Act requires that when liquor is being sold or supplied to the public on any licensed premises a manager must be on duty and is responsible for compliance with, and enforcement of the provisions of the Act, the conditions of the license in force, in respect of the premises and the conduct of the premises with the aim of contributing to the reduction in liquor abuse. From time to time the DLA receives applications for On and Off License to operate extensive hours but without an adequate number of managers to cover the hours. The DLA is concerned that such a situation may culminate in premises being operated without a duty manager and requires that, where an application is received for an On or Off License, the applicant show that adequate numbers of managers have been employed to cover the hours sought as provided in the following table.

The DLA may grant but not issue a license subject to an applicant providing an adequate number of managers.

The formula for this purpose when determining any new or renewal of license is:

Hours per week	Number of certified managers required
Under 60 hours	1 manager
60-120 hours	2 managers
Over 120 hours	3 managers or more, determined on each application

16 On licence

An On Licence authorises the sale and supply of alcohol for consumption on the licensed premises and includes hotels (*where accommodation is also offered*), taverns, restaurants, night clubs and other premises such as bowling alleys. An endorsed On Licence can be obtained to allow bring your own (BYO) alcohol into restaurants.

An application for an On Licence must be accompanied by certificates from the Local Authority (*Council*) that the premise complies with the Resource Management Act 1991 and the Building Act 2004. Once the application is made the applicant must make public notice in a local newspaper twice within 20 days of the date of application. Notice must also be displayed on the premises. The licensing inspector, Police and Medical Officer of Health are required to report to the Agency on the application.

Section 13 of the Act sets down the matters which must be considered by the DLA or the Licensing Authority in determining an application. The licensing inspectors must report on all of these matters. Section 13 provides as follows:

'In considering any application for an On License, the Licensing Authority or DLA, as the case may be, must have regard to the following matters:

- The suitability of the applicant*
- The days on which and the hours during which the applicant proposes to sell liquor.*
- The areas of the premises or conveyance, if any, that the applicant proposes should be designated as restricted areas or supervised areas*
- The steps proposed to be taken by the applicant to ensure that the requirements of this Act in relation to the sale of liquor to prohibited persons are observed*
- The applicant's proposals relating to:*
 - The sale and supply of non-alcoholic refreshments and food*

- ii The sale and supply of low-alcohol beverages*
 - iii The provision of assistance with or information about alternative forms of transport from the licensed premises*
 - f Whether the applicant is engaged, or proposes to engage in:*
 - i The sale or supply of any other goods besides liquor and food*
 - ii The provision of any services other than those directly related to the sale or supply of liquor and food*
- and, if so, the nature of those goods or services.*
- g Any matters dealt with in any report made under Section [11](#) of this Act.*
 - h The Licensing Authority or DLA, as the case may be, must not take into account any prejudicial effect that the grant of the licence may have on the business conducted pursuant to any other licence.'*

16.1 Objections

Where objections are made the licensing inspector must provide comment as to the status of the objection in terms of determining:

- whether the objector has a greater interest in the application than the public generally
- that the matters to which the objection relates are matters specified in Section 13(1) of the Sale of Liquor Act 1989.

The status of an objector is important because it will determine how the application for a licence will be dealt with. Where status cannot be claimed then the application will be unopposed and dealt with by the Whangarei DLA. Where status is accepted, then the application is deemed to be opposed and must be referred to the LLA for determination (*other than special licences*). The licensing inspector needs to take particular care to establish validity of the objector's status.

The LLA has adopted the practice of corresponding with objectors to ascertain if they wish to be heard at the public hearing or to clarify the validity of objections which appear not to comply with Section 10. However in some circumstances, where there is wide spread opposition to an application but status is not validated, a public hearing has been convened in an endeavour to allow for a natural course of justice. The Whangarei DLA requires its licensing inspectors to fully investigate and report on the status of any objector with the aim of promoting public participation in the licensing process within the authorities provided by the Act.

Where objections are received which appear not to comply with Section 10, the licensing inspector shall communicate or meet with the objector to clarify the validity of the objection.

16.2 On licence renewals

All On Licences are required to be renewed after an initial 12 month period and then every three years thereafter. The DLA will send a reminder notice to all licensees that their licence is due for renewal. It is however, the responsibility of the licensee to ensure that the renewal application is lodged on time.

16.3 On licence renewal criteria

The criteria for which the DLA will consider an application for renewal of an On Licence includes all relevant matters raised by the Police, Medical Officer of Health or in the licensing inspector's report.

Matters considered will include, but are not be restricted to, the following:

- inspection of the premises to assess compliance with the Act and Licence
- number of certified managers as outlined in the formula in Section 12
- any reports or complaints relating to the sale or supply of liquor to minors, intoxication, behavioural problems, motor vehicle accidents, violence or any other anti-social acts or consequences in which the management of the premises is a factor
- the adequacy and implementation of the premises' Host Responsibility Policy

- any adverse environmental impact
- any objections/concerns lodged through the public process or raised by affected parties
- the approach of the management of the premises to the Act and its requirements
- promotion of the premises and control of liquor abuse

In undertaking the outcome review of each premises, the DLA and/or its inspector may take into account the following:

- information obtained from any public complaint relating to the premises directly or indirectly
- information obtained from the Police, Medical Officer of Health, Fire Service or any other body considered appropriate by the inspector or DLA
- information obtained from any independent study or monitoring commissioned by or undertaken on behalf of the DLA
- any other information/source that the DLA deems appropriate
- the suitability of the premises and effects of any variation to the conditions sought by the applicant
- in addition to the above criteria the licensing inspector may also take into account the required reporting criteria for On Licence applications.

17 Off licence

An off licence authorises the sale or delivery of alcohol on or from the premises described in the licence for consumption off the premises. Examples are bottle stores, supermarkets, grocery and general stores, and across the bar sales in hotels, taverns and certain clubs. Restaurants are precluded from having an off licence as are sports clubs, dairies and petrol stations. Auctioneers can obtain an endorsed off licence to sell alcohol at an auction. There are restrictions on supermarkets and grocery stores to sell only beer and wine but general stores can sell all types of alcohol. There are provisions in the Act which identify the difference between supermarkets, grocery stores and general stores, and require applicants in respect of these licences, to provide specific information relating to business finances and to economic considerations.

An application for an off licence must be accompanied by certificates from the Local Authority (*Council*) that the premises complies with the Resource Management Act 1991 and the Building Act 1995. Once the application is made the applicant must make public notice in a local news paper, twice within 20 days of the date of application. Notice must also be displayed on the premises. The licensing inspector and Police are required to report on the application to the Agency.

Section 35 of the Act sets down the matters which must be considered by the DLA or the Licensing Authority in determining an application. The licensing inspector must report on each of these matters. Section 35 provides as follows.

'In considering any application for an Off Licence, the Licensing Authority or DLA, as the case may be, must have regard to the following matters:

- a *The suitability of the applicant*
- b *The days on which and the hours during which the applicant proposes to sell liquor*
- c *The areas of the premises, if any, that the applicant proposes should be designated as restricted areas or supervised areas*
- d *The steps proposed to be taken by the applicant to ensure that the requirements of this Act in relation to the sale of liquor to prohibited persons are observed*
- e *Whether the applicant is engaged, or proposes to engage, in:*
 - i *The sale or supply of any other goods besides liquor*
 - ii *The provision of any services other than those directly related to the sale or supply of liquor*

and, if so, the nature of those goods or services:

- f Any matters dealt with in any report made under Section 33 of this Act*
- g The Licensing Authority or DLA, as the case may be, must not take into account any prejudicial effect that the grant of the licence may have on the business conducted pursuant to any other licence.'*

17.1 Objections

Where objections are made the licensing inspector must provide comment as to the status of the objection in terms of determining:

Whether the objector has a greater interest in the application than the public generally.

That the matters to which the objection relates are matters specified in Section 13(1) of the Act.

The status of an objector is important because it will determine how the application for a licence will be dealt with. Where status cannot be claimed then the application will be unopposed and dealt with by the Whangarei DLA. Where status is accepted, then the application is deemed to be opposed and must be referred to the LLA for determination (*other than special licenses*). The licensing inspector needs to take particular care to establish validity of the objectors' status.

The LLA has adopted the practice of corresponding with objectors to ascertain if they wish to be heard at the public hearing or to clarify the validity of objections which appear not to comply with Section 10. However, in some circumstances where there is widespread opposition to an application but status is not validated, a public hearing has been convened in an endeavour to allow for a natural course of justice. The Whangarei DLA requires its licensing inspectors to fully investigate and report on the status of any objector with the aim of promoting public participation in the licensing process within the process set down by the Act.

Where objections are received which appear not to comply with Section 10, the licensing inspector shall communicate or meet with the objector to clarify the validity of the objection.

17.2 Off licence renewals

All Off Licences are required to be renewed after an initial 12 month period and then every three years thereafter. The DLA will send a reminder notice to all licensees that their licence is due for renewal. It is however, the responsibility of the licensee to ensure that the renewal application is lodged on time.

17.3 Off licence renewal criteria

The criteria for which the DLA will consider an uncontested application for renewal of an Off Licence includes all relevant matters raised by the Police or in the licensing inspector's report.

Matters considered will include, but are not restricted to, the following:

- inspection of the premises to assess compliance with Act and Licence
- number of certified managers as outlined in formula in Section 13
- any reports or complaints relating to the sale or supply of liquor to minors or intoxicated persons, or any other consequences in which the management of the premises is a factor
- the adequacy and implementation of the premises' Host Responsibility Policy
- any adverse environmental impact
- any objections/concerns lodged through the public process or raised by any affected parties
- the approach of the management of the premises to the Act and its requirements
- promotion of the premises and control of liquor abuse.

In undertaking the outcome review of each premises, the DLA and/or its Inspector may take into account the following:

- information obtained from any public complaint relating to the premises directly or indirectly
- information obtained from the Police or Medical Officer of Health, Fire Service or any other body considered appropriate by the inspector or DLA

- information obtained from any independent study or monitoring commissioned by or undertaken on behalf of the DLA
- any other information/source that the DLA deems appropriate
- the suitability of the premises and effects of any variation to the conditions sought by the applicant
- in addition to the above criteria the licensing inspector may also take into account the required reporting criteria for Off Licence applications.

17.4 Host responsibility – off licences

Off licensed premises should have their own Host Responsibility Policy. While it is obvious that the requirements for an Off Licence are considerably different from that of an On or Club Licence, the DLA believe that Off Licence premises' should have a Host Responsibility Policy appropriate to its particular operation. The Host Responsibility Policy for an Off Licence premises should include requirements such as measures to ensure that sales to minors or intoxicated persons do not take place as well as other measures aimed at reducing alcohol abuse, like the availability and promotion of low alcohol beers, non-alcoholic drinks, and the display of appropriate cautionary measures.

18 Club licence criteria

A Club Licence authorises the sale and supply of alcohol for consumption on the club premises to any member of the club or any person who is a guest of, or who is accompanied by, a member of the club, and to any member of any other club with which the holder of the licence has an arrangement for reciprocal visiting rights. Clubs must be incorporated to hold a licence.

An application for a Club Licence must be accompanied by certificates from the Local Authority (*Council*) that the premises comply with the Resource Management Act 1991 and the Building Act 2004. Once the application is made the applicant must make public notice in a local news paper, twice within 20 days of the date of application. Notice must also be displayed on the premises. The licensing inspector, Police and Medical Officer of Health are required to report on the application to the Agency.

Section 59 of the Act sets down the matters which must be considered by the DLA or the Licensing Authority in determining an application. The licensing inspectors must report on each of these matters. Section 59 provides as follows:

'In considering any application for a club licence, the Licensing Authority or DLA, as the case may be, must have regard to the following matters:

- a *The suitability of the applicant*
- b *The days on which and the hours during which the applicant proposes to sell liquor*
- c *The days on which and the hours during which the premises are used for the club's activities*
- d *The areas of the premises, if any, that the applicant proposes should be designated as restricted areas or supervised areas*
- e *The proportion of the membership of the club who are prohibited persons*
- f *The steps proposed to be taken by the applicant to ensure that the requirements of this Act in relation to the sale of liquor to prohibited persons are observed*
- g *The applicant's proposals relating to:*
 - i *The sale and supply of non-alcoholic refreshments and food*
 - ii *The sale and supply of low-alcohol beverages*
 - iii *The provision of assistance with or information about alternative forms of transport from the licensed premises.*
- h *Any matters dealt with in any report made under Section [57](#) of this Act.*
 - i *Before granting an application for a club licence, the Licensing Authority or DLA, as the case may be, must require to be satisfied that the predominant purpose for which the premises are or will be used is other than the consumption of liquor.*

- j The Licensing Authority shall not take into account any prejudicial effect that the grant of the licence may have on the business conducted pursuant to any other licence.'*

18.1 Objections

Where objections are made the licensing inspector must provide comment as to the status of the objection in terms of determining:

- whether the objector has a greater interest in the application than the public generally
- that the matters to which the objection relates are matters specified in Section 13(1) of the Act.

The status of an objector is important because it will determine how the application for a licence will be dealt with. Where status cannot be claimed then the application will be unopposed and dealt with by the Whangarei DLA. Where status is accepted, then the application is deemed to be opposed and must be referred to the LLA for determination (*other than special licences*). The licensing inspector needs to take particular care to establish validity of the objectors' status.

The LLA has adopted the practice of corresponding with objectors to ascertain if they wish to be heard at the public hearing or to clarify the validity of objections which appear not to comply with Section 10. However, in some circumstances where there is wide spread opposition to an application but status is not validated, a public hearing has been convened in an endeavour to allow for a natural course of justice. The Whangarei DLA requires its licensing inspectors to fully investigate and report on the status of any objector with the aim of promoting public participation in the licensing process within the authorities provided by the Act.

Where objections are received which appear not to comply with Section 10, the licensing inspector shall communicate or meet with the objector to clarify the validity of the objection.

18.2 Reporting criteria for licensing inspector

The licensing inspector's report in respect of a Club Licence application will take into account:

- the nature and activities of the Club
- the size and membership and degree of social activities
- the hours of operation and their relevance to the Club's prime activity
- compliance of the premises with other relevant legislation
- matters raised in objection to the application
- the Club's Host Responsibility Policy (*includes food, non/low alcohol drink and transport*)
- the persons or types of person to who liquor may be sold pursuant to the licence
- any other matters in respect of the application promoting the responsible consumption of liquor
- the need to recommend whether or not the licence should be granted and any special conditions/circumstances.
- are the club premises on Council or reserve property with any special conditions applied.

18.3 Club licence renewal

All club licences are required to be renewed after an initial 12 month period and then every three years thereafter. The DLA will send a reminder notice to all licensees that their licence is due for renewal. It is however the responsibility of the club to ensure that the renewal application is lodged on time.

18.4 Club licence renewal criteria

The criteria under which the DLA will consider an application for renewal of a club licence will include all relevant matters raised by the Police, Medical Officer of Health or in the licensing inspector's Report.

Matters considered will include, but not be restricted to, the following:

- inspection of the premises to assess compliance with Act and Licence

- number of certified managers as outlined in formula in Section 14
- evidence of the sale or supply of liquor to minors, intoxication, behavioural problems, motor vehicle accidents, violence or any other anti-social acts or consequences in which the management of the premises is a factor
- the adequacy and implementation of the premises Host Responsibility Policy
- any adverse environmental impact
- any objections/concerns lodged through the public process or raised by any affected parties
- the approach of the management of the premises to the Act and its requirements
- promotion of the premises and control of liquor abuse.

In undertaking the assessment of each premise, the DLA and/or its inspector may take into account:

- information obtained from any public complaint relating to the premises directly or indirectly
- information obtained from the Police, Medical Officer of Health, Fire Service or any other body considered appropriate by the inspector or DLA
- information obtained from any independent study or monitoring commissioned by or undertaken on behalf of the DLA
- any other information/source that the DLA deems appropriate
- the suitability of the premises and effects of any variation to the conditions sought by the applicant
- in addition to the above criteria the licensing inspector may also take into account the required reporting criteria for Club Licence applications.

19 Special licence

Special licences provide a right to sell alcohol for special events. The Act sets out who may hold a special licence, how it is applied for and the criteria which apply to them. A special licence can be issued pursuant to either Section 73 or 74 of the Act. A special licence issued under Section 73 authorises the holder of the licence to sell and supply liquor on the premises or conveyance described in the licence to anyone attending any occasion or event or series of occasions or events described in the licence.

A special licence issued under Section 74 authorises the holder of an On or Club Licence to sell and supply liquor for consumption on the premises, at any time when the premises are required to be closed for the sale of liquor, to persons attending social gatherings of any kind specified in the licence.

19.1 Occasion or event or a series of occasions or events and social gatherings

An occasion or event or series of occasions or events can be any lawful purpose. A special licence must not be used in substitution for a substantive On, Off or Club Licence. A social gathering must involve people sharing a common interest with the principal activity of the function being something other than the consumption of liquor. There is a need to separate an 'occasion or event' or 'series of occasions or events' and 'social gatherings' from a regular activity that would be covered by an On, Off or Club Licence.

This Policy endeavours to define the legitimate use of a special licence and the point at which the activity is one for which an On, Off or Club Licence should be sought. This is a general Policy only and should be applied in respect of the merits of each particular special licence application.

The Whangarei DLA will apply the criteria for the following events:

- an occasion or an event can be any identifiable event and should be outside the usual or regular activities of an On, Off or Club Licensed premises.
- a series of occasions or events is defined as a series of related events or activities which has specified beginning and end points.

- a special licence can be used for any lawful activity that does not fall into the regular activity of any other category of licence specified in the Act.
- a special licence will not be issued where, in the opinion of the DLA, the extent or regularity of the activity is such that an On, Off or Club Licence is required by the Act.
- in all cases the supplier of alcohol to be sold under the special licence must be the applicant.

19.2 Private social gatherings on licensed premises

If a private social gathering (*e.g. a wedding or birthday party*) is being held on a licensed premises outside the hours or conditions of the licence and the host of the function is giving the liquor to their guests and paying the licensee for the cost afterwards, the person selling the liquor (*i.e. the licence holder*) requires a special licence.

19.3 Special licence procedure

- all applications for special licences should be submitted at least 20 working days prior to the event. Applications received later than 20 days prior to the event will be accepted and processed only where, in the opinion of the DLA Secretary or a delegated officer, it is practicable to do so
- all applications for special licences will be referred to the Police and licensing inspector for reports as required by the Act
- where the DLA (*secretary or delegated officer*) consider it appropriate the Medical Officer of Health and the New Zealand Fire Service may also be consulted and requested to comment on a particular special licence application
- the secretary of the DLA (*or delegated officer*) may require public notice of a special licence application
- where there are no objections or matters raised in opposition by the licensing inspector or Police, the special licence will be granted subject to any conditions imposed by the DLA
- where there are objections or the licensing inspector or Police raise any matters in opposition to a special licence application, the matter will be determined by the Agency at a public hearing
- the applicant will also have the opportunity to meet with the reporting licensing inspector in order to resolve any matters in opposition before the application proceeds to a public hearing.

19.4 Criteria for special licences

Section 79 of the Act provides as follows:

In considering any application for a special licence, the DLA shall have regard to the following matters:

- a *The nature of the particular occasion or event or series of occasions or events in respect of which the licence is sought*
- b *The suitability of the applicant*
- c *The days on which and the hours during which the applicant proposes to sell liquor*
- d *The areas of the premises or conveyance, if any, that the applicant proposes should be designated as restricted areas or supervised areas*
- e *The steps proposed to be taken by the applicant to ensure that the requirements of this Act in relation to the sale of liquor to prohibited persons are observed*
- f *The applicant's proposals relating to:*
 - i *The sale and supply of non-alcoholic refreshments and food*
 - ii *The sale and supply of low-alcohol beverages*
 - iii *The provision of assistance with or information about alternative forms of transport from the licensed premises.*
- g *Any reports made under Section 78 of this Act*

h The DLA shall not take into account any prejudicial effect that the grant of the licence may have on the business conducted pursuant to any other licence.

19.5 Designation of areas for special licences

The DLA may require that a particular area in respect of a special licence be designated either a restricted or supervised area in accordance with the Act.

Generally premises licensed under a special licence shall not be designated 'restricted' or 'supervised'. However, where there is concern about the likelihood of patronage or presence of minors or at the request of the applicant, an appropriate designation taking into account the nature of the event can be made as recommended in the inspectors' report.

19.6 Separate applications required under sections 73 and 74 and for unrelated series of events

Applications for special licence shall be made either in terms of Section 73 or Section 74 of the Act. Any application for a series of related events (*'series' is defined as 'a group or succession of related things: a number of things of which each is similar to the preceding'*) over a 12 month period can be made on a single application. Where a series of unrelated individual events are planned then a separate application will need to be made for each event. The DLA is guided by *Gisborne RSA Club* LLA Decision 301/98 and *Invercargill Workingman's Club Inc* LLA Decision PH50/02.

19.7 Nature of the particular occasion

Should an event or occasion for which a special licence has been issued be postponed the licence will have effect in respect of the day to which it is to be held, provided the licensing inspector is notified in sufficient time to enable an amendment to be made to the licence issued and for the police to be notified. The inspector shall sign and date such amendment to the licence.

19.8 Unlicensed clubs – 12 events per year

Where a small club or organisation wishes to hold events at which alcohol is sold to members in what would otherwise be deemed to be a club activity, and it is not economically viable for the club or organisation to hold a Club Licence then the DLA will grant a special licence or licences for up to 12 occasions in any 12 month period.

19.9 Application for special licences relating to school events

Where a special licence application is for an event promoted by a school and to which students who are minors can attend (*for example school leavers ball*) then the application shall be placed before the sitting Agency for determination.

19.10 Certified manager in attendance

Managers will generally be required to be appointed for multiple and/or commercial oriented operations and unincorporated clubs.

Private, charitable single occasion functions will generally be exempt.

19.11 Limitation for special licenses granted on prohibited days

Under mandatory conditions placed upon licenses pursuant to Section 14(2) of the Act, hotels and taverns are prohibited from selling or supplying liquor on Good Friday, Easter Sunday, Christmas Day or before 1pm on Anzac Day with the exception that alcohol can be sold or supplied to people staying or dining on the premises. The Act permits hotels and taverns to hold a special licence for special events on these days. Special licences will be granted as the exception and not the rule in situations where the special event or occasion cannot be held on any other day of the year and is a private social gathering to which the general public do not have entry. An example would be a wedding reception for a wedding held on that day.

19.12 Special licences for large scale public events

An applicant for a special licence for a large public event should plan to operate the event in accordance with Alcohol Advisory Council of New Zealand (ALAC) document 'Guidelines for the

Management of Alcohol at Large Scale Public Events' and provide an alcohol management plan with the application which sets down how the event will be managed.

20 Manager's certificate criteria

20.1 New applications

Regulation 20 of The Sale of Liquor Regulations 1990 provides that an application for a Manager's Certificate must be in a form specified by the regulations (*Form 18*) and that an application shall contain certain information. Generally, an application should not be made where the applicant has neither training nor recent experience in managing licensed premises in a situation where the granting of a Manager's Certificate is unlikely to occur, taking into account licensing authority decisions in respect of training and experience. While acknowledging that each application must be considered on its merits, the Whangarei DLA is of the view that applications should contain adequate information for reporting agencies to properly report on, and that applicants should have adequate training and experience in managing licensed premises as required by Section 121 of the Act. The one exception to this is for low risk businesses as outlined in clause 20.2 of this Policy.

- the DLA requires that any applicant for a Manager's Certificate shall provide the following information
- the application to be completed in full and signed by the applicant
- three copies of the application must be approved
- the application must contain a CV which outlines work experience including contact persons who may be contacted by the reporting officers
- the application must contain a character reference (*from someone other than a family member*)
- the applicant should have a minimum of three months experience managing licensed premises in New Zealand and the application must contain documented evidence of the experience.

The Act defines the process for considering applications for Managers' Certificates. Unopposed applications are considered by the DLA while applications that are opposed by the licensing inspector or Police are referred to the LLA. The DLA or LLA must have regard to the following matters when considering applications for Managers' Certificates:

- the applicant's character and reputation
- any criminal convictions
- experience, in particular recent experience, in the management of licensed premises
- training, in particular recent training, that the applicant has undertaken
- issues raised by the reports from the inspector and the Police
- for club managers' applications the DLA will also consider their involvement in the clubs' activities.

Applications for Manager's Certificates are referred to the licensing inspector and Police for reports. The licensing inspector and Police will report to the DLA on the suitability of the applicant in respect of the above criteria.

20.2 Owner/manager in low risk premises

As outlined in 20.1 above, applicants for Manager's Certificates generally must have three months experience in managing licensed premises and hold an LCQ to be able to obtain a certificate. On taking over or opening licensed premises, business owners must have certificated managers' on site at all times alcohol is offered for sale to the public. In entering into the hospitality industry, new owners need to plan ahead to provide managers either through employment of additional certificated staff or undertaking training themselves and gaining the prerequisite three months experience before applying for and gaining a Manager's Certificate. In some circumstances this can be difficult for small business owners and may be the difference between a business success or otherwise. The DLA wishes to promote small economic growth alongside responsible alcohol consumption. The DLA may grant a Manager's Certificate to applicants who do not have experience in managing licensed premises in the following circumstances or similar.

- the applicant has made application for an On licence relating to a café/restaurant operation which is low risk, for example the only alcohol to be sold is for lunch time dining
- the applicant has made application for an On licence relating to a motel operation where the only alcohol sold is in room bars or associated with dining
- the businesses are small family operations (*sole operator or 2 partners*)
- the applicant has experience in managing successful businesses or other ventures either in New Zealand or overseas.
- the applicant is in all other aspects suitable to hold a licence, having gained the LCQ etc.

Where the DLA grants such a Manager's Certificate then it will be granted on signed agreement between the holder, police and DLA, that the use of the certificate is restricted to the particular premises which is subject to the On Licence and that failure to comply with that requirement will reflect on suitability to hold the certificate. The certificate would be issued concurrently at the time of the On Licence issue.

20.3 Manager's certificate renewals

Applications for renewal of Manager's Certificates are also referred to the licensing inspector and Police for reports. The licensing inspector and Police will consider any matters brought to their attention in respect of the individual's performance during the term of the certificate in regard to the above criteria. Where there are no matters raised in opposition by the licensing inspector or Police the application will be approved by the DLA. Where any matters are raised in opposition the application will be referred to the LLA.

The DLA will renew a Manager's Certificates in circumstances where:

- The licensing inspector and Police have reported on the application in accordance with the specified criteria and have raised no matters in opposition
- The applicant has demonstrated that they have taken appropriate steps to manage the sale and supply of liquor in accordance with the object of the Act.

20.4 Orders for temporary authority sections 24 and 47 Sale of Liquor Act 1989

Orders for a temporary authority will be granted on application to any person who appears to the DLA to have any right, title, estate, or interest in premises to permit the premises to continue to operate while a new licence is gained. A temporary authority order can only be granted where a licence is in force. On granting an application for a temporary authority order the DLA may impose such reasonable conditions as it thinks fit.

20.4.1 Initial application

Orders for temporary authorities shall be made for a period of up to three months.

20.4.2 Subsequent applications

Temporary authorities which have expired after the initial three month period without the issue of the on/off licence(s) will be extended for a similar term by the Agency subject to the applicant having:

- made application for the on/off licence(s) before the expiry of the initial three month period
- lodged an application on Form 17 of the Regulations and paid the appropriate fee
- no report received from the Police licensing inspector or the public to suggest that the premises are not being properly managed in terms of the licensing conditions in place.

21 Enforcement procedures

21.1 Liquor licensing enforcement response guidelines

This protocol set down the process which Whangarei enforcement agencies (*Whangarei DLA, Whangarei Police and Northland Health*) will use when undertaking enforcement action against licensees in respect of non-compliance with the Act. The process is based upon adopting an appropriate response which gives licensees the opportunity to be fully informed about non-compliance issues so that corrective

action can be taken. Where ongoing non-compliance is evident however the protocol provides for increasing intervention which retains specific communication with licensees but which can culminate in severe action such as application for cancellation/suspension of licenses and Managers' Certificates or opposition to renewal of licences and certificates. It should be noted however that there may be situations where because of the serious nature of offences (*for example drink/drive convictions of the holder of a Manager's Certificate or serious offences on premises*) immediate action involving cancellation/ opposition may be required by an Agency. The Graduated Action Plan in the New Zealand Police Action Plan (*March 2008*) will in general also be followed by enforcement agencies.

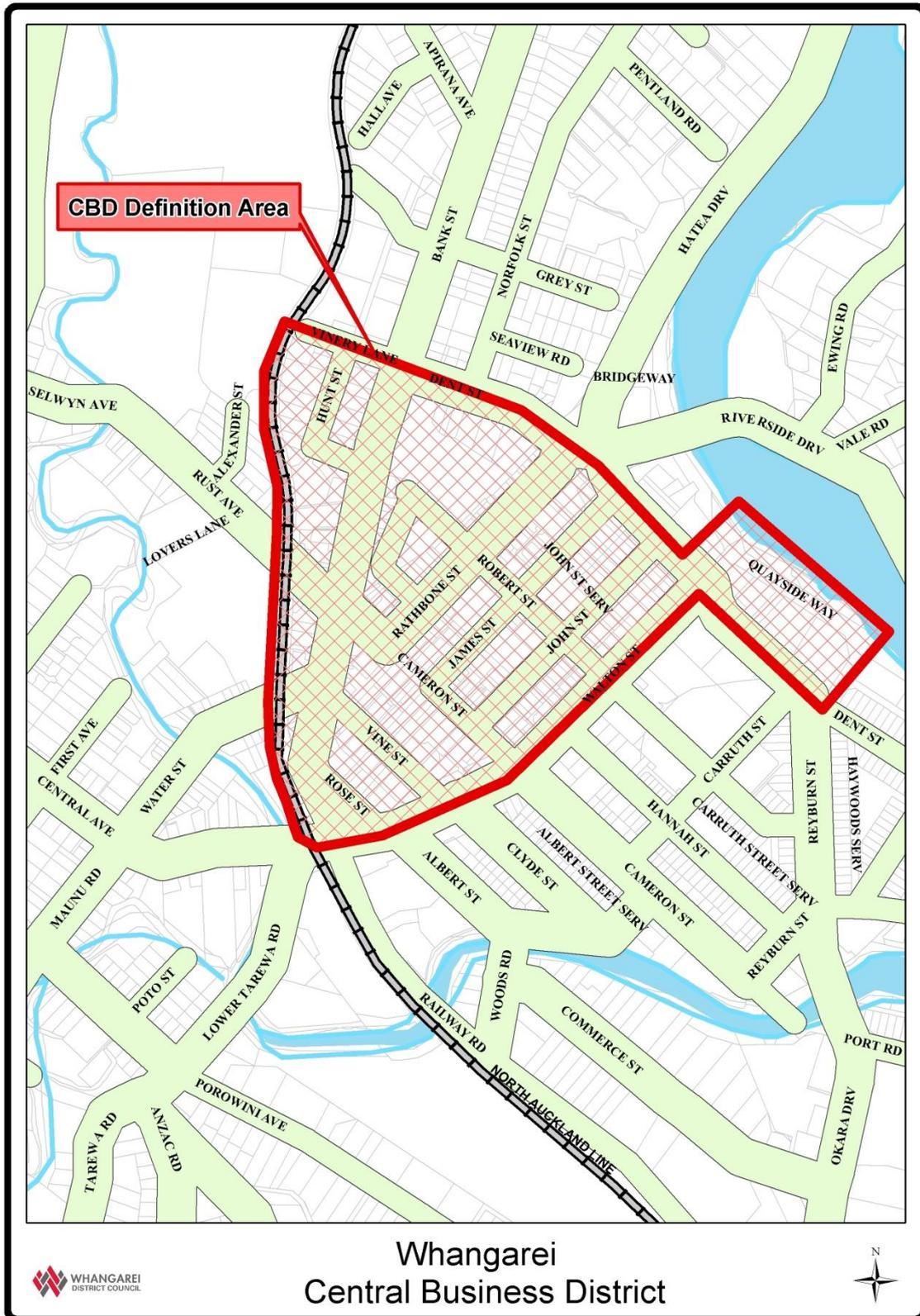
21.2 Enforcement procedure

- initial non-compliance will be documented by enforcement agencies and communicated to duty manager and where possible the licensee if possible at the time non-compliance is noted. Minor offences communicated verbally but noted in records or alternatively communicated to duty manager by field advice notice at the time of visit to premises. All non-compliance to be communicated to the licensee either by field advice notice or where the licensee is not available by later letter
- subsequent non-compliance. Licensee will be requested to attend a meeting with staff from enforcement agencies when matter discussed with the aim of assisting manager/licensee to comply with Sale of Liquor Act requirement. Letter sent outlining outcome of meeting and enforcement process should further non compliance occur
- further non compliance. Licensee will be called before Whangarei DLA where warning will be given that further non-compliance will be dealt with by severe action – opposition to renewal, application for cancellation/suspension. Written warning given
- further non-compliance. Application for cancellation/suspension, opposition to renewal, prosecution made, licensee advised in writing.

22 Policy review

This Policy shall be reviewed in January 2014 (*40 months after adoption*) and thereafter every five years. This Policy may require review at an earlier date subject to requirements of any statute which replaces the Sale of Liquor Act 1989.

Appendix 1



Appendix 2

Sale of Liquor Act 1989 - District Licensing Agency – powers and duties	
Legislative requirement	Council delegations/sub delegations
<p>A Section 99 Local authority to be District Licensing Agency</p> <p>B Section 104(1) Local Authority may delegate to any committee appointed under clause 30 of Schedule 7 of the Local Government Act 2002 such of its powers, duties, and discretions under the Act as it considers necessary</p> <p>C Section 104(2) A committee to which any such powers, duties and discretions have been delegated may, with the approval of the local authority, sub delegate to the secretary or to any subcommittee such of those powers, duties, and discretions as relate to any matter that is subject of an application to which no objection has been received</p>	<p>Whangarei District Council delegated all of its powers, duties and discretions of the Whangarei District Licensing Agency to the Licensing, Exemptions and Objections committee (<i>LEOC</i>) on 27 February 2008</p> <p>Pursuant to Section 104 (2) of the Sale of Liquor Act 1989, the Whangarei District Licensing Agency on the 28 February 2008 sub delegated to the secretary of the Agency all of its powers, duties and discretions as related to any matter that is the subject of any application to which no objections have been received such being:</p> <ol style="list-style-type: none"> 1 Unopposed applications for any On Licence under section 9 and the renewal of an On Licence under section 21 2 Unopposed application for an Off Licence under section 31 and the renewal of an Off Licence under section 44 3 Unopposed application for any Club Licence under section 55 and the renewal of any Club Licence under section 67 4 Unopposed application for any Manager's Certificate under Section 120 and the renewal of any Managers Certificate under section 125 5 Unopposed application for a temporary authority under section 24 and section 47 6 Unopposed applications for any special licence under sections 73 and 74 7 Unopposed applications for the variation or cancellation of licence conditions under section 16, 39 and 62 8 The granting of a certificate of waiver under section 111 9 Unopposed applications for authority to redefine premises under Regulation 7(3), 10 (3) and 13(3) of The Sale of Liquor Regulations 1990'