

# Sale and Supply of Alcohol Act 2012 District Licensing Committee (DLC)

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Competency Guidance for DLC Members



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## Section 1. Introduction

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### Guidance

This document provides guidance to territorial authorities on the competencies needed by members of District Licensing Committees (DLC). The guidance is high-level and is intended to assist territorial authorities in:

- the selection and appointment of DLC members;
- establishing DLCs, regardless of the size of the organisation or the number of licensing applications; and
- tailoring the DLC selection process to fit local circumstances.

The Sale and Supply of Alcohol Act 2012 (the Act) provides that decisions on all licences and managers' certificates, whether opposed or unopposed, are made by DLCs established by territorial authorities.

While it is a committee of Council, a DLC operates with the powers of a commission of inquiry. DLCs function under the regulatory framework as a semi-judicial board of inquiry, making decisions that can be appealed.

The Act promotes a stricter regime than its predecessor and is aimed at reducing harm to the community.<sup>1</sup> It provides greater scope for DLCs and the Alcohol Regulatory and Licensing Authority (ARLA) to consider whether the granting of a licence is likely to increase alcohol-related harm, and whether it will negatively impact the community.

The object of the Act states 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.
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<sup>1</sup> Dormer, Alan. 2013. *Brookers Sale and Supply of Alcohol Act 2012 Handbook*. Wellington

## Section 2. Functions and Powers of a DLC

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### Functions and powers

A DLC has the function of considering all licence applications (new and renewed on-, off-, club and special licences) all managers' certificate applications (new and renewed), and temporary authorities. It considers all applications regardless of whether they are opposed or unopposed. DLCs also consider and determine applications for the variation of all licences and also the suspension, or cancellation of special licences.

A DLC may refer applications to the Alcohol Regulatory and Licensing Authority (ARLA) with the permission of the ARLA chair. A DLC may also be required to conduct inquiries and make reports as requested by ARLA. The role and functions of a DLC are set out in s.187 of the Act. A territorial authority must establish at least one DLC and may have more depending on its requirements.

When considering the functions of a DLC, territorial authorities must understand the powers of the DLC and the implications that these powers may have on establishing a DLC. Every DLC is a committee of its territorial authority<sup>2</sup> [s.200], but a DLC has the powers of a Commission of Inquiry under the Commission of Inquiry Act 1908 [section 201]. This means that a DLC can issue summonses<sup>3</sup> requiring the attendance of witnesses before it or the production of documents.

It also has the power to rehear any matter that it has determined. These powers are greater than other Council committees and particular care is required to ensure that the membership selection process is built on a strong understanding of the competencies required. Table 3 sets out these competencies (see page 18 of this document).

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<sup>2</sup> A DLC does not need to comply with Part 7 of the Local Government Official Information and Meetings Act 1987 which relates to meetings. It must follow the procedure requirements set out in of the Sale and Supply of Alcohol Act; however, it regulates its own proceedings by virtue of being a Commission of Inquiry.

<sup>3</sup> See s7 of the Commission of Inquiry Act 1908 for witnesses' allowances.

## Section 3. Roles and Functions of DLC Members

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### 3.1 DLC Composition – The Chair

A DLC is made up of a chair and two members:

- the chair of a DLC can either be an elected member of the territorial authority;
- or a commissioner appointed by the chief executive, on the recommendation of the territorial authority;
- the territorial authority can decide which of these two options it prefers.

There is no requirement for an elected member of a territorial authority who is appointed as the chair of a DLC to have experience relevant to alcohol licensing matters and there is nothing to prevent an elected member with this type of experience being appointed as chair. If a commissioner is appointed as chair they should have specialist skills and expertise in conducting hearings and may, for example, have a background in resource management hearings.

A commissioner must have:

*'Good standing in the community and the necessary knowledge, skill and experience relating to matters that are likely to come before the committee'* [S193(2)].

A territorial authority may consider good standing in the community to include those who are respected in the community and hold positions such as a Justice of the Peace, a lawyer, school teacher or other professionally qualified person.

A commissioner must not be appointed if:

- there are grounds for exclusion including involvement, or appearance of involvement with the alcohol industry to the extent that there would be a bias or appearance of bias [s.193(a)]; or
- that the person is a constable, Medical Officer of Health, inspector, or employee of a territorial authority [193(b)].

A commissioner has all the functions, powers and duties of the chairperson [S193(1)]. The Act does not intend for a commissioner to replace a chair (or vice versa) on an ad hoc basis. This also excludes the possibility of a territorial authority delegating the power to appoint a commissioner to the DLC chairperson.

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## Section 3. Roles and Functions of DLC Members, continued

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### 3.1 The Chair, continued

The chair can only step aside from a meeting when the reasons outlined in s189(3) apply - principally illness or absence from New Zealand. In this situation a deputy chair, who must be an elected member of the territorial authority may be appointed. A commissioner may not deputise for the chair.

Territorial authorities should ensure that elected members of the DLC are aware that they hold a semi-judicial role and cannot allow electioneering or a political standpoint to influence their decisions. Decisions need to be made according to what is legally correct, and must not be influenced by concerns that the decision may be unpopular and affect the member's re-election prospects.

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### 3.2 DLC composition - Members

Members of a DLC:

- are eligible people approved by the territorial authority selected from a list of potential DLC members with experience relevant to alcohol licensing matters, as described in s.192 of the Act;
- these can be community members or elected members of a territorial authority.

The list:

- Ensures that DLC membership is flexible and can accommodate changes in the availability of members.
- Must be established, maintained and published by the territorial authority and can be a combined list with one or more territorial authorities. A combined list will ensure a greater pool of skills and expertise for the territorial authority to select from when appointing DLC list members.
- Each territorial authority decides a process for determining which list members will sit on each DLC for each of its hearings and may adapt other mechanisms such as those used to select members for resource consent hearings.

In determining what is required for appointment of a DLC member, careful consideration must also be given to s192(5)(a), which prevents a person from being included on the DLC member list who is, or has the appearance of being, involved with the alcohol industry. This can include the person's relationship with another person.

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## Section 3. Roles and Functions of DLC Members, continued

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### 3.2 Members, continued

Under s192(5)(b) certain people cannot be included on the list, including constables, Medical Officers of Health, licensing inspectors and employees of the territorial authority.

Examples of who may or may not be included in the list are provided in Table 1 (see page 8 of this document). This is not exhaustive but is designed to provide territorial authorities with an idea of who to consider in establishing a DLC member list.

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### 3.3 Term of office

DLC members, and the chair (whether elected member or commissioner), are appointed for a period of up to five years (as decided by the territorial authority). They can be reappointed for one or more further periods of up to five years.

Any DLC member can resign at any time and can be removed for inability to perform functions, neglect, bankruptcy or misconduct [s194].

An elected member cannot continue as the chairperson of a DLC if they cease to be an elected member of the territorial authority. However a territorial authority can appoint an elected member as a commissioner if they have the required competencies. Advice from the Ministry of Justice is that:

*“As a transitional measure around elections, an elected member who is a Chair can be appointed as a Commissioner either until a new elected member can take the position or he or she may remain as a Commissioner if the territorial authority considers that desirable.”*

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### 3.4 Meetings and quorum

The quorum for a DLC meeting is three members [s.191] except when applications for new or renewed licences or manager’s certificates where no objection has been filed and no matters of opposition have been raised. In this situation, the chair can form a quorum of one and consider and decide to approve the application on his or her own. When the chair acts as a quorum of one, this is considered to be a meeting of the DLC.

No decision to decline an application may be made by the chair acting alone. All decisions on applications that are opposed, not likely to be approved, or are for a temporary authority must be heard by the full DLC. Decisions are decided by majority vote.

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### Section 3. Roles and Functions of DLC Members, continued

**Table 1: Examples of inclusions and exclusions for DLC list members**

Examples of who could be included on the DLC member list (if they meet the criteria of the Act)	Examples of who should be excluded from the DLC member list
<ul style="list-style-type: none"> <li>• Former licensing inspector</li> <li>• Former Medical Officer of Health</li> <li>• Former council employees</li> <li>• Former licensee</li> <li>• Justice of the Peace</li> <li>• Retired district court judge</li> <li>• Former politicians</li> <li>• Former constable in the role of Alcohol Harm Reduction Officer</li> <li>• Former consultants in the alcohol industry</li> <li>• Trainer for licensing industry</li> <li>• Previous member of staff of Liquor Licensing Authority</li> </ul>	<ul style="list-style-type: none"> <li>• Involvement or appearance of involvement with the alcohol industry s192(5)(a) (consider pecuniary interests) – e.g.               <ul style="list-style-type: none"> <li>○ Owner/licensee/building owner of a restaurant, bar or café holding a licence</li> <li>○ Shareholder or director in the above</li> <li>○ Trustee on a charitable trust, e.g. Lions Foundation, Licensing Trust (can be a member of a charitable trust but not maintain a governance position by sitting on the board), due to funds obtained through gambling machines located in licensed premises.</li> </ul> </li> <li>• Alcohol industry representatives (s192(5)(a))</li> <li>• Lobbyist representatives (s192(5)(a))</li> <li>• Holder of a managers certificate (s192(5)(a))</li> <li>• Constable, Medical Officer of Health, an inspector or an employee of that territorial authority (s192(5)(b))</li> </ul>

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## Section 3. Roles and Functions of DLC Members, continued

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### 3.5 Conflict of Interest and Bias

Those affected by the decisions are more likely to have trust and confidence in the process if they believe that the decision making process is impartial. This also reduces the risk of legal challenge. In considering the appointment of any member of a DLC, a territorial authority must carefully consider any actual or perceived conflicts of interest, as the decisions made by the member must have no bias or perception of bias.

Bias or predetermination is evident where a DLC member has a strong opinion, or is seen to be one-sided on an issue. This includes instances where a member has taken a public position on an issue they have been appointed to make a decision on, as well as instances where they have a 'known' position on an issue (due to previous involvement, interests, or statements). For example, any person who has a strong view either opposed to or in favour of increasing or decreasing licensed outlets should not be appointed to a DLC.

A conflict of interest will exist when a member's duties or responsibilities to the DLC could be affected by some other interest or duty that the member may have. Conflicts of interest can arise as a result of a number of reasons, including a DLC member having previously submitted on a licence application decision, or having been a part of a community organisation that has submitted on a decision. This conflict may arise due to a member's own financial affairs or those of persons close to them, existing relationships that could be affected by decisions of the DLC, previous roles, or even something that has been said or done to suggest a conflict.

It must also be made clear to potential DLC members that the role they are proposing to undertake is not one of advocacy. Any form of advocacy will be deemed a conflict of interest and places a decision in jeopardy.

The onus is on those applying to the territorial authority to be included on the DLC member list to disclose any conflict of interest, preferably at the time of application or at least prior to the time that the conflict arises. The territorial authority must assess conflicts of interest on a case-by-case basis.

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## Section 3. Roles and Functions of DLC Members, continued

### 3.5 Conflict of Interest and Bias, continued

The questions in the following diagram can be used to alert or prompt potential DLC applicants to possible conflicts of interest. It may be kept in mind for recruitment purposes and for consideration of applications. Note that these are only prompts for discussion and not in themselves an indication of a potential DLC member actually having a conflict of interest



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## Section 3. Roles and Functions of DLC Members, continued

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### 3.6 Support and training for DLC members

Support for DLCs in the form of technical guidance and training is important to ensure the ongoing capability of the DLC. Training for DLC members and support staff is a desirable pre-requisite for all DLC members.

The ongoing technical support for DLC members will depend on the capacity and capability of a territorial authority. Support may come from territorial authority staff such as the committee secretary or members of the legal team (where appropriate). Territorial authorities may wish to engage an external advisor to provide guidance on specific matters such hearing procedures, the use of evidence, and the writing of decisions.

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## Section 4. Competencies

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### Competency guide

The competencies described in table 2 (see pages 13-15 in this document) are intended to guide territorial authority staff in the development of job descriptions and the selection process of DLC members. The competencies are provided at a level that each territorial authority can interpret as appropriate to their local situation and to those who are likely to apply.

As discussed in section 2 of this document, the mandatory requirements of DLC members and chair are clearly set out in the Act. The territorial authority must be satisfied that, overall, the candidates meet the legal test applicable to each type of applicant. The competencies listed in table 2 might help the territorial authority reach an overall view on this point.

For example, the essential competencies include the skills, knowledge and attributes that are necessary for the role. Desirable competencies are those qualities that may be useful, but are not critical. Chairpersons and list members would demonstrate different levels of experience and expertise against the various competencies but collectively the ideal should be for all competencies to be covered.

It is important for territorial authorities to note that table 2 is for guidance only and not to be interpreted as a strict checklist. That is, candidates who do not meet every requirement before appointment can instead be actively supported in their role to develop a particular skillset. The competencies are considered for the chair or a member.

#### **NB:**

- A chairperson is an elected member.
- A commissioner is not an elected member. S193(2) of the Act states: "The chief executive may only appoint a person as a commissioner if that person is of good standing in the community and has the necessary knowledge, skill, and experience relating to matters that are likely to come before the committee".
- However, a TA can appoint an elected member as a commissioner assuming they have the competencies necessary to fulfill their functions under the Sale and Supply of Alcohol Act 2012. Advice that MoJ has given before stated: "*As a transitional measure around elections, an elected member who is a Chair can be appointed as a Commissioner either until a new elected member can take the position or he or she may remain as a Commissioner if the TA considers that desirable.*"

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## Section 4. Competencies, continued

<b>Table 2: Competencies for DLC chairperson/Commissioner and DLC list members</b>		
<b>CHAIRPERSON/COMMISSIONER</b>		
<b>Competency descriptor</b>	<b>Essential</b>	<b>Desirable</b>
<b>1: Experience relevant to alcohol licensing matters</b> – Demonstrates knowledge of alcohol licensing matters and demonstrates active interest and ability to build new knowledge in this area.		
Knowledge of alcohol licensing		✓
Demonstrate experience of legal and regulatory alcohol environment	✓	
Knowledge of the Sale and Supply of Alcohol Act 2012	✓	
<b>2: Understanding of harm caused by the consumption of alcohol</b> – Demonstrates knowledge of the Act and alcohol related harm.		
Knowledge of alcohol-related harm and its impact on communities		✓
<b>3: Community knowledge</b> - Demonstrates knowledge of the community for which DLC operates.		
Awareness and understanding of the local alcohol policy (if relevant)	✓	
Understanding of community expectations around licensing		✓
<b>4: Quality decision making</b> – Utilises analysis, wisdom, experience, and logical methods to make good decisions and solve difficult problems with effective solutions. Probes beyond stated situation to identify underlying issues.		
Considers information from a variety of sources in an objective, unbiased way to reach a conclusion	✓	
Ability to sort fact from fiction	✓	
Operates independently with little direction	✓	
Applies pragmatic decision-making	✓	
Chairperson experience	✓	
Balanced assertiveness	✓	
<b>5: Hearing experience</b> – Demonstrates knowledge of the purposes of the hearing process and demonstrates knowledge of applying the legislation.		
Understanding and application of the legislation	✓	
Understanding written decisions	✓	
Interpreting case law	✓	
Knowledge and understanding of hearings procedure	✓	
<b>6. Strong communication</b> – Demonstrates effective written and oral communication skills. Can write clearly and succinctly. Listens to others and asks questions to gain understanding. Facilitates good working relationships with other DLC members and offers constructive input.		
Strong oral and written communication skills	✓	
Knowledge of and ability to operate under rules of confidentiality	✓	
Skills in questioning- ability to drill down to the issue	✓	
Writes clear and well thought-out decisions	✓	
<b>7. Professional integrity</b> – Upholds professional integrity at all times.		
Demonstrates behaviours that are consistent with standards for professional and ethical conduct	✓	
Refrains from behaviour that fosters the appearance of conflict of interest	✓	
Applies rules and regulations in a consistent, non-biased manner	✓	

## Section 4. Competencies, continued

<b>Table 2, continued: Competencies for DLC chairperson/Commissioner and DLC list members</b>		
<b>DLC LIST MEMBERS</b>		
<b>Competency descriptor</b>	<b>Essential</b>	<b>Desirable</b>
<b>1: Experience relevant to alcohol licensing matters</b> – Demonstrates knowledge of alcohol licensing matters and demonstrates active interest and ability to build new knowledge in this area.		
Knowledge of alcohol licensing	✓	
Demonstrate experience of legal and regulatory alcohol environment		✓
Knowledge of the Sale and Supply of Alcohol Act 2012		✓
<b>2: Understanding of harm caused by the consumption of alcohol</b> – Demonstrates knowledge of the Act and alcohol related harm.		
Knowledge of alcohol-related harm and its impact on communities	✓	
<b>3: Community knowledge</b> - Demonstrates knowledge of the community for which DLC operates.		
Awareness and understanding of the local alcohol policy (if relevant)	✓	
Understanding of community expectations around licensing	✓	
<b>4: Quality decision making</b> – Utilises analysis, wisdom, experience, and logical methods to make good decisions and solve difficult problems with effective solutions. Probes beyond stated situation to identify underlying issues.		
Considers information from a variety of sources in an objective, unbiased way to reach a conclusion	✓	
Ability to sort fact from fiction	✓	
Operates independently with little direction		✓
Applies pragmatic decision-making	✓	
Chairperson experience		✓
Balanced assertiveness		✓
<b>5: Hearing experience</b> – Demonstrates knowledge of the purposes of the hearing process and demonstrates knowledge of applying the legislation.		
Understanding and application of the legislation	✓	
Understanding written decisions	✓	
Interpreting case law		✓
Knowledge and understanding of hearings procedure		✓
<b>6. Strong communication</b> – Demonstrates effective written and oral communication skills. Can write clearly and succinctly. Listens to others and asks questions to gain understanding. Facilitates good working relationships with other DLC members and offers constructive input.		
Strong oral and written communication skills	✓	
Knowledge of and ability to operate under rules of confidentiality	✓	
Skills in questioning- ability to drill down to the issue	✓	
Writes clear and well thought-out decisions		✓
<b>7. Professional integrity</b> – Upholds professional integrity at all times.		
Demonstrates behaviours that are consistent with standards for professional and ethical conduct	✓	
Refrains from behaviour that fosters the appearance of conflict of interest	✓	
Applies rules and regulations in a consistent, non-biased manner	✓	

## Section 4. Competencies, continued

<b>Table 2, continued: Competencies for DLC chairperson/Commissioner and DLC list members</b>		
<b>SUMMARY FOR BOTH CHAIRPERSON/COMMISSIONER (C) &amp; DLC LIST MEMBERS (DLC)</b>		
<b>Competency descriptor</b>	<b>Essential</b>	<b>Desirable</b>
<b>1: Experience relevant to alcohol licensing matters</b> – Demonstrates knowledge of alcohol licensing matters and demonstrates active interest and ability to build new knowledge in this area.		
Knowledge of alcohol licensing	DLC	C
Demonstrate experience of legal and regulatory alcohol environment	C	DLC
Knowledge of the Sale and Supply of Alcohol Act 2012	C	DLC
<b>2: Understanding of harm caused by the consumption of alcohol</b> – Demonstrates knowledge of the Act and alcohol related harm.		
Knowledge of alcohol-related harm and its impact on communities	DLC	C
<b>3: Community knowledge</b> - Demonstrates knowledge of the community for which DLC operates.		
Awareness and understanding of the local alcohol policy (if relevant)	C / DLC	
Understanding of community expectations around licensing	DLC	C
<b>4: Quality decision making</b> – Utilises analysis, wisdom, experience, and logical methods to make good decisions and solve difficult problems with effective solutions. Probes beyond stated situation to identify underlying issues.		
Considers information from a variety of sources in an objective, unbiased way to reach a conclusion	C / DLC	
Ability to sort fact from fiction	C / DLC	
Operates independently with little direction	C	DLC
Applies pragmatic decision-making	C / DLC	
Chairperson experience	C	DLC
Balanced assertiveness	C	DLC
<b>5: Hearing experience</b> – Demonstrates knowledge of the purposes of the hearing process and demonstrates knowledge of applying the legislation.		
Understanding and application of the legislation	C / DLC	
Understanding written decisions	C / DLC	
Interpreting case law	C	DLC
Knowledge and understanding of hearings procedure	C	DLC
<b>6. Strong communication</b> – Demonstrates effective written and oral communication skills. Can write clearly and succinctly. Listens to others and asks questions to gain understanding. Facilitates good working relationships with other DLC members and offers constructive input.		
Strong oral and written communication skills	C / DLC	
Knowledge of and ability to operate under rules of confidentiality	C / DLC	
Skills in questioning- ability to drill down to the issue	C / DLC	
Writes clear and well thought-out decisions	C	DLC
<b>7. Professional integrity</b> – Upholds professional integrity at all times.		
Demonstrates behaviours that are consistent with standards for professional and ethical conduct	C / DLC	
Refrains from behaviour that fosters the appearance of conflict of interest	C / DLC	
Applies rules and regulations in a consistent, non-biased manner	C / DLC	

## Section 5. Key Relationships

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### Key relationships

The key relationships that all DLC members must effectively maintain and manage include:

#### *Internal Relationships*

- Territorial authority staff members including democratic services, legal team
- DLC Secretary

#### *External Relationships*

- Police
  - Inspector
  - Medical Officer of Health
  - ARLA representatives.
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## Section 6. Resourcing Requirements

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### Applications

Table 3 (on the following page) provides a suggested percentage split of the types of applications that a territorial authority may receive. This split will differ according to each territorial authority's situation and experience.

The table also provides indicative sitting times for the different types of applications. This information is provided by the Ministry of Justice and is based on figures provided by 15 representative councils. The following assumptions have been made for the calculation of the estimated sitting times:

#### *Unopposed applications:*

- It is expected that unopposed applications will generally be considered 'on the papers' (that is without a hearing) and, in many cases, will be approved by the chairperson of the DLC on their own. The Chair, acting as a quorum of one, may not decline an unopposed case but must refer it to for a full DLC hearing.
- Special licences are assumed to take as long as unopposed manager's certificates and be considered by the DLC chairperson alone.

#### *Opposed applications:*

- Considering opposed applications is more time-consuming than unopposed applications. Opposed applications must be considered by the full DLC and must be considered by way of a public hearing (unless the objector does not require a hearing, the objection is withdrawn, or it is considered vexatious or out of scope).
- Based on prior ARLA experience hearings for opposed licence applications typically take 3-6 hours and hearings of opposed manager's certificates typically take one hour.

Table 3 brings the assumptions together to create an indicative estimate of the direct costs of DLCs. This does not include the cost of additional council support staff to service the DLC. The fees for DLC members are set according to Cabinet fees framework. The DLC Chairperson is entitled to \$624 per day (\$78 per hour for part days) and other members will receive \$408 per day (\$51 per hour for part days).

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## Section 6. Resourcing Requirements, continued

**Table 3: Indicative estimate of the direct costs of DLCs.**

<b>Estimated percentage split by application type and estimated sitting time required for each</b>			
<b>Application</b>	<b>Considered by</b>	<b>Estimated % split of application type</b>	<b>Estimated DLC members' time (sitting hours only)</b>
Unopposed manager's certificates	Chairperson or Commissioner DLC	95%	0.33
Opposed managers' certificates- hearing	Full DLC	5%	1.5
Temporary Authority	Full DLC	100%	0.5
Unopposed licences	Chairperson or Commissioner DLC	70%	0.5
Opposed licences – hearing	Full DLC	30%	5
Unopposed special licences	Chairperson or Commissioner DLC	99%	0.33
Opposed special licences	Full DLC	1%	2 (though will vary depending on circumstances)