

District Licensing Committee Hearing Guidance



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Introduction

- 1 This document provides guidance on the Kāpiti Coast District Licensing Committee's (the Committee) hearing procedures.
- 2 A District Licensing Committee must hold a hearing if an application is objected to by a member of the public or opposed by the Medical Officer of Health, the Police or the Licensing Inspector (collectively called the reporting agencies); or when a District Licensing Committee decides, on its own initiative, that a hearing is required. A hearing may not be held if the application is withdrawn, or the District Licensing Committee believes the objection is vexatious or based on grounds outside the scope of the Sale and Supply of Alcohol Act 2012.
- 3 The Committee will approach all hearings with consistency by applying the procedures in this guide. However, no two hearings are the same, and minor variations in approach and procedures may occur.
- 4 Any alterations to procedures will be communicated to all parties as soon as possible.
- 5 References to the Act are to the Sale and Supply of Alcohol Act 2012 (the Act) unless stated otherwise.

Who is involved in a District Licensing Committee hearing

- 6 The **Committee Chair** presides over the hearing. They ensure the principles of natural justice¹ are observed, and that all participants respectfully follow hearing protocols. The Chair will ask questions of parties at the hearing to ensure they have all the required information they need to make a decision on the application.
- 7 Two **Committee Members** sit on each hearing panel and make the decision with the Chair. Like the Chair, they will ask questions to ensure they have all the information they need to make a decision on the application.
- 8 The **Governance Advisor** is the point of contact for all parties to a hearing. They organise the hearing, ensure the necessary equipment and information is available, support and advise the Committee on the correct hearing processes, and record the proceedings.
- 9 The **Applicant** is the person, company or incorporated society who made the application. They may have a lawyer, support person, and/or witnesses supporting them at the hearing.
- 10 The **Objector(s)** give their views on the application and may have a lawyer, support person, and/or witnesses supporting them at the hearing.
- 11 The **Reporting Agencies** comprise the Licensing Inspector, Police and Medical Officer of Health. They may attend the hearing to oppose the

¹ Natural justice is a fundamental legal principle ensuring fair decision-making. It requires that decisions are made ensuring the right to a fair hearing (audi alteram partem) and the rule against bias/conflict of interest (nemo iudex in causa sua).

application or to assist the Committee. They may have witnesses or counsel supporting them.

- 12 A **Lawyer or representative** may attend the hearing on behalf of a party to present their case or provide advice. They could be a lawyer or an agent.
- 13 **Support people** can accompany an applicant or an objector to a hearing to provide support. They may include witnesses, counsel, representatives, whānau (family) and kaumātua.
- 14 **Parties** to a hearing include the applicant, objectors, and reporting agencies (New Zealand Police, Medical Officer of Health and the Alcohol Licensing Inspectorate).
- 15 **Media and members of the public** are able to observe hearing proceedings from the public gallery, except when the Chair and Committee have ordered the public be excluded from the hearing.

Tikanga

- 16 The Committee is required to allow for tikanga Māori to be incorporated into hearing proceedings as appropriate.
- 17 Tikanga is a fundamental aspect of te ao Māori (the Māori world). Tikanga can be best understood when considered within the wider context of a Māori world view.
- 18 Appropriate tikanga is determined by mana whenua (iwi or hapū Māori who exercise historic and territorial authority over an area) and not the Committee. This means what is 'tika' (correct) may differ depending on the tikanga recognised and practised by local iwi or hapū.
- 19 Hearings will be opened and closed with karakia.
- 20 The Governance Advisor will discuss what tikanga is appropriate with the parties where tikanga is relevant to the application, and the Committee will try to accommodate all reasonable requests in relation to tikanga.

Te Reo Māori

- 21 Objections and evidence can be provided in te reo Māori. The Governance Advisor should be made aware of the intent to provide evidence in te reo Māori in a timely manner so they can make the appropriate arrangements. An objector may be asked to provide an English translation of their objection for use by the Committee.
- 22 Any party can present in te reo Māori at the hearing. If a party wishes to do so, and does not wish to provide a translation, they are asked to please inform the Governance Advisor as soon as possible and at least 15 working days before the hearing so a qualified interpreter can be present.
- 23 If an interpreter is not available on the date of the hearing, the Governance Advisor will inform the party and discuss alternatives.

Pre-hearing

Date and time of hearing

- 24 A member of the Governance team will be in contact with the applicant, objectors and reporting agencies to confirm the date and time of the hearing. Hearings are generally held during normal business hours, though reasonable requests to hold hearings outside of these hours will be considered.
- 25 Once the hearing date is set, a Notice of Hearing will be issued via email to all parties which provides the date, time and venue of the hearing.
- 26 In most cases the applicant and anyone who wishes to speak at the hearing will be given at least 20 working days' notice of the date, time and venue of the hearing.
- 27 In some circumstances the notice period may be shortened, but no fewer than 10 working days' notice will be provided.

Hearing venue and attendance

- 28 Hearings are generally held in the Kāpiti Coast District Council Chambers in the Civic Building at 175 Rimu Road, Paraparaumu, but may be held at a different venue or held online via Zoom if appropriate.
- 29 Parties may request to join the hearing remotely via Zoom. Please send requests for attending the hearing remotely to the Governance team as soon as possible, so that the request may be passed along to the Chair for decision.
- 30 The venue will be as accessible as possible, but parties with any additional accessibility needs are encouraged to let the Governance team know in advance so that appropriate arrangements can be made. Further information regarding the accessibility of Council's Civic Building and Chambers can be found on [Council's website](#).
- 31 Time restricted parking is available along Iver Trask Place outside the Civic Building. If a party intends on parking along Iver Trask Place on the day of the hearing, they are asked to please notify the Governance Advisor, and they can arrange for a parking permit for collection.
- 32 The standard layout of the hearing venue is shown in the picture below:



- 33 Members of the public and the media may attend a hearing, except when a decision is made to exclude the public. They are not entitled to participate and can only observe.
- 34 Hearings for licensing applications will be livestreamed, except when a decision is made to exclude the public. Hearings for Manager's Certificates will not be livestreamed.

Notice of Hearing

- 35 Once a date is set, the Governance Advisor will issue the Notice of Hearing, which sets out the location, date and time of the hearing, as well as the dates and times parties are required to provide and exchange their evidence.
- 36 Evidence must be filed in accordance with the dates and times set out in the Notice of Hearing. If a party is unable to submit evidence within these timeframes, they are asked to please contact the Governance Advisor to request an extension to their deadline. The Governance Advisor will pass on the request to the Chair, who will decide on whether to grant an extension.
- 37 As the principles of natural justice apply to hearings, it is important that all evidence is submitted in accordance with the Notice of Hearing. This enables all parties to have a fair opportunity to review any evidence that will be considered at the hearing and prepare for questions by the Committee.

- 38 Failure to provide written evidence in accordance with the timeframes may result in the Committee declining to consider evidence that is filed late, unless extraordinary circumstances apply.**
- 39 Please note that the Notice of Hearing document is uploaded to Council's website, and it will list the names of all parties. For licensing applications, the location of the premises will also be listed. Past Notices can be viewed on Council's website.
- 40 All parties will also be sent an Outlook calendar invitation for the hearing to add to their electronic calendars. This invitation will also have the Notice of Hearing attached.

Evidence

- 41 Evidence is the information presented at the hearing to prove or disprove a fact. It can include written or spoken testimony, and other material such as documents, photographs, maps and audiovisual material.
- 42 Parties should demonstrate how their evidence directly relates to the application and the case the party is making, and context should be provided for visual evidence such as photographs, maps, and audio-visual material.
- 43 If a party wishes to provide audio or video evidence, they are asked to please contact the Governance Advisor to arrange for a secure upload location for evidence to be submitted (or to arrange for another submission method, such as transfer on a USB stick).
- 44 A secure upload location can also be provided by the Governance Advisor to parties for documents exceeding 25MB in size.
- 45 Evidence must be sent to the Governance team (governance@kapiticoast.govt.nz) and all other parties via email within the timeframes specified in the Notice of Hearing. Please note that the Governance team will share all email addresses of all parties when the Notice of Hearing is issued, so evidence can be sent via email directly to all other parties.
- 46 Physical copies of evidence may also be provided to the Governance team, who can then distribute the material via email to other parties.
- 47 If a party does not intend to file evidence further to the materials already provided as part of their application, opposition, or objection, they should notify the Governance team of this by the relevant deadline set out by the Notice of Hearing, so no further reminders are sent, and the Chair can be notified.
- 48 For any documents that have not previously been exchanged with other parties electronically, the applicable party is required to bring hard copies of their evidence or submission to the hearing. The exact number of copies required will be listed in the Notice of Hearing document.

Opening Submissions

- 49 Opening submissions outline the case, present the party's position, outline any submitted evidence and contain any legal arguments made. Opening submissions can be made by the lawyer or a representative for a party.
- 50 It is preferable for parties to file written opening submissions in accordance with the timeframes provided in the Notice of Hearing; however, this is not a strict requirement, and verbal and written opening submissions can be provided on the day of the hearing.
- 51 If a party is to provide their opening submission on the day of the hearing, the party should bring hard copies of this to distribute to the Committee and other parties.
- 52 Please note the Committee may decide that written opening submissions must be filed ahead of the hearing.

Sensitive or confidential information

- 53 If any party wishes to present evidence which it considers sensitive or confidential, for reasons that may include privacy, commercial sensitivity or tikanga, they should raise this with the Governance Advisor in advance. The Governance Advisor will then refer the matter to the Committee to consider and issue a decision on the best way forward.
- 54 The Committee may decide that the sensitive or confidential information is not required to be supplied to other parties, or they may order certain aspects of the material to be redacted before being supplied to other parties.
- 55 The Committee may also decide that hearing participants must not copy, remove, or publish certain information supplied for the hearing.
- 56 If necessary, the Committee can decide to hold the hearing in private and exclude the public and media.

Questioning parties or witnesses

- 57 Parties are not permitted to question or cross-examine other parties or witnesses of other parties at the hearing.
- 58 If any party seeks clarification or further information from another party, they should circulate these questions to all parties ahead of the hearing. The Chair will then consider whether the question is relevant, helpful, and/or necessary, before deciding to put the question to the applicable party.
- 59 If questions seeking clarification or further information arise during the hearing, there may be the opportunity for the party to raise their question(s) with the Committee. Similarly, for pre-circulated questions, the Chair will consider and exercise their discretion as to whether to put the question to the applicable party.
- 60 Lawyers and representatives may ask their own witnesses questions at the hearing. This may be to provide up to date evidence since written evidence

was filed, or to clarify any matters raised by other parties or the Committee.

Site Visits

- 61 For licensing applications, site visits can be a valuable tool the Committee can use to familiarise themselves with the venue. A site visit is not intended as a substitute for evidence at the hearing.
- 62 The Committee may request to make a site visit before, during or after the hearing and prior to delivering its decision. The request for a site visit will be communicated via the Governance team, who will liaise with the applicant.
- 63 The Governance team will advise parties that the Committee intends to conduct a site visit and will indicate when and where the visit is expected to occur. Only the Committee is expected to attend the site visit, and they will not communicate with the applicant and/or staff that may be present at the premises during the visit to ensure no questions are asked outside of the formal hearing process.

Hearing evidence pack, agenda, and run sheet

- 64 Evidence submitted within the deadlines provided by the Notice of Hearing will be collated into the '**evidence pack**', together with the application and any documents issued by the Chair.
- 65 The **agenda** will list the Chair and Committee members for the hearing, and provides a high-level overview of the proceedings.
- 66 The **run sheet** will provide a detailed overview of the hearing's proceedings.
- 67 Electronic copies of the evidence pack, agenda, and run sheet will be distributed to all parties via email at least five working days prior to the hearing. This may change in certain circumstances, and any changes to this timeline will be communicated by the Governance Advisor.
- 68 Hard copies of the agenda and evidence pack will not be provided to parties, unless there are exceptional circumstances where they are unable to receive the electronic copy. Hearing participants are welcome to bring a device to the hearing upon which they may view the electronic copies of these documents.
- 69 A hard copy of the run sheet will be made available for in-person participants at the hearing.
- 70 The agenda, run sheet and evidence pack are not uploaded to Council's website.

The Hearing

- 71 The Committee will endeavour to make all parties feel comfortable and welcome, while ensuring the appropriate process is followed and natural justice is respected, and each eligible person is given a fair opportunity to present their case and be heard.
- 72 Parties are not expected to stand when the District Licensing Committee enters or leaves the room, or when a party is speaking during hearing proceedings.
- 73 If an applicant or objector does not appear in person (or through legal counsel), the matter is more than likely to be heard and determined in their absence. An objector does not have to attend and speak at a hearing, however the objection will have less impact on the Committee and will be given little to no weight. This is because the assertions made in an objection cannot be tested by either the Committee. This is a practice that has been set by case law.

Order of Proceedings

- 74 Unless otherwise advised by the Chair, the hearing will usually follow a set format as listed below. An example of the run sheet that provides further details on the order of proceedings will be provided to parties together with this guidance in the early stages of the pre-hearing process.
- Welcome
 - Karakia
 - Introductions and Swearing in by Oath or Affirmation
 - Hearing proceedings overview
 - Declarations of Interest
 - Applicant to present their case
 - Reporting agencies to present their case
 - Objectors to present their case
 - Closing submissions
 - Hearing concludes and deliberations
 - Karakia Whakamutunga | Closing Karakia

Post-hearing

- 75 The Committee may deliberate privately after the hearing has concluded and deliver an oral decision on the day, with a written decision to be issued later. Alternatively, the Committee may take time to consider the decision, and rule that the decision is reserved and will be issued to all parties in due course.

Decision made and issued

- 76 Once the Committee has decided on the outcome of the application, they will then write the decision with reference to the applicable criteria set out in the Act.
- 77 Once finalised, the Chair will issue the completed decision, which will be circulated by the Governance Advisor via email to all parties.
- 78 The decision will also be uploaded to Council's website, with any sensitive or confidential information redacted.

Appealing a decision

- 79 Under section 154 of the Act, any party to the proceeding who is dissatisfied with the decision, or any part of the decision, may appeal to the Alcohol Regulatory and Licensing Authority (ARLA) within 10 working days of the date of decision being notified to the party.
- 80 Parties appealing a decision to ARLA must notify other hearing parties and pay the applicable hearing fees.
- 81 The Notice of Appeal form and full details on commencing an appeal can be found on the Ministry of Justice website here:
<https://www.justice.govt.nz/tribunals/arla/make-an-appeal-against-a-district-licensing-committee-decision/>