

# CLUTHA DISTRICT COUNCIL POLICY

Policy Number	04 – 05 – 001	Sale of Liquor
Prepared by	Regulatory Services Manager	
Authorised by	Council	
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## Policy on Sale of Liquor

### Purpose

The purpose of this Sale of Liquor Policy is to reflect the needs of the community, and the direction Council wishes the District Licensing Agency to take when carrying out its statutory functions under the Sale of Liquor Act. The policy contains guidelines on host responsibility, operating hours, processing and enforcement procedures and strategies aimed at reducing or minimising liquor abuse.

The object of the Sale of Liquor Act is to '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, so far as that can be achieved by legislative means'. Each District Licensing Agency has the jurisdiction, powers, and discretion to give effect to the object of the Act in a manner that is most likely to promote the reduction of liquor abuse within their district.

### Policy

In order to undertake its functions as a District Licensing Agency, the following statements will govern the Council's approach to its administration of the Sale of Liquor Act 1989.

#### ***Regional Policy***

This Agency will endeavour to work with other agencies both nationally and within the Otago Southland region to encourage a consistent approach to liquor licensing, while acknowledging that local diversity means that a uniform approach is not possible on all issues.

This agency works within a regional partnership approach in the development of initiatives which facilitate communications between the regulatory agencies, industry groups and the public.

#### ***Relationship with Other Legislation, Plans and Policies***

This policy will generally be consistent with the District Plan, Annual Plan and other Council rules and policies. Where there is an inconsistency or dispute the issue must be referred to the Agency Committee for determination and a policy change if necessary.

#### ***Public Participation***

The District Licensing Agency encourages public input to the licensing process. National, regional and local initiatives will be communicated to the public in an effective and timely manner. All policy changes other than those required to correct omissions or errors, or as a result of a directive from the Liquor Licensing Authority, will be publicly notified.

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Public notification of applications for other than Special Licences shall be published in one or more newspapers circulating within the district.

Publicly notified Special Licence applications may be published in local or community newspapers as appropriate.

## ***Host Responsibility and Alcohol Health Promotion***

The principles of host responsibility include the promotion and availability of low and non alcohol drinks and food, serving alcohol with care and responsibility, responsible approaches to dealing with intoxicated and underage people and information about safe transport options.

The Agency will require all premises to have a written host responsibility policy prior to the approving or renewing any On or Club Licences.

## ***The Licensing Process***

### **Functions of the District Licensing Agency and the Liquor Licensing Authority**

Pursuant to the Act the functions of the District Licensing Agency (Council) and the Liquor Licensing Authority include but are not limited to the following:

#### **1. Functions of the District Licensing Agency:**

- Determining unopposed applications for on, off and club licences, and managers certificates and renewals.
- Determining temporary authority applications (on/off licences).
- Varying conditions of on, off and club licences (if conditions imposed by District Licensing Authority).
- Determining caterers and auctioneers off licence applications.
- Determining applications for special licences.
- Appointing one or more Licensing Inspectors.
- Granting waivers under Section 111 of the Act.
- Determining applications for the re-definition of licensed premises

#### **2. Functions of the Licensing Inspector:**

- Reporting on all applications for licences and managers certificates and renewals to the District Licensing Authority or Liquor Licensing Authority.
- Monitoring licensed premises compliance with the requirements of the Act, and reporting to the District Licensing Agency or Liquor Licensing Authority.
- Power of entry to any licensed premises at any reasonable time (the inspector must carry a warrant of appointment).
- Ability to require to inspect the premises licence or any records reasonably required to establish compliance with the Act.
- Ability to apply to the Liquor Licensing Authority for the variation, suspension or cancellation of a licence or managers certificate.

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### 3. Functions of the Liquor Licensing Authority:

- Determining opposed applications for on, off and club licences and renewals, and managers certificates referred to it by district licensing agencies.
- Determining appeals arising from decisions of district licensing agencies.
- Giving direction on sale of liquor matters to district licensing agencies.
- Determining applications for variation, suspension or cancellation of on, off or club licences and managers certificates on receiving a report 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.

### 4. The Political Function

The District Licensing Agency will operate in accordance with this policy adopted by Council.

The District Licensing Agency Committee (Regulatory Services Committee) will meet on an as required basis. This Committee operates within overall Council Policy and is delegated to consider opposed special licence or other applications that fall outside the parameters of the Policy. The various statutory obligations of the Agency have been delegated in accordance with schedule 1 as attached. Generally determination of unopposed applications that fall within the parameters of the Agency Policy, will be delegated to the Secretary of the District Licensing Agency or his nominee.

#### ***Hours of Operation***

The hours of operation are set by the Liquor Licensing Authority or District Licensing Agency after consideration of the reports from the Licensing Inspector, Police, Medical Officer of Health and any objections. An application for a licence must comply with the Resource Management Act (Clutha District Plan) before it is lodged, however sometimes additional restrictions in respect of hours of operation are required. This usually relates to the proximity of a licensed premises to a residential area and the nuisance potential which may arise from activities related to the premises. In such instances restrictions may be imposed.

#### **1) On Licences**

***On Licence premises in or adjacent to a residential activity are restricted as follows:***

Monday to Saturday	7.00 a.m. to 3.00 a.m. the following day
Sunday	7.00 am to 12.00 midnight

These hours are intended as a guide only and may be modified by the District Licensing Agency where it is appropriate to do so in extraordinary circumstances.

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### ***On Licence premises that are not in or adjacent to residential activity are restricted as follows:***

The Agency will not impose any general restrictions on the hours of operation where a premises is not adjacent to a residential activity, but will consider each application on its merits. This will effectively provide the opportunity for some premises to obtain a 24 hour licence.

### **2) Off Licences**

In general the hours for Off Licences which are run in conjunction with an On Licence, will be restricted in the same manner as the On Licence.

The Agency will not impose general restrictions on the hours of operation where a stand-alone Off Licence premises is not adjacent to a residential activity, or an Off Licence is run in conjunction with a supermarket or grocery store, but will be obliged to follow any national policy as guided by the Liquor Licensing Authority.

### **3) Club Licences**

Clubs, like On Licences, can have an adverse effect on adjacent residential activities. However, because of the diversity of activities and locations of clubs, it is not practical to impose specific restrictions in respect of types of clubs in residential or non residential areas.

In general the hours of operations for chartered clubs will be considered in the same manner as for On Licences.

Sports clubs licences should be consistent with the activity occurring and generally fall within the following parameters:

Sundays to Thursdays - 8.00 am to 12.00 midnight

Fridays, Saturdays and Public Holidays - 8.00 am to 2.00 am the following day

These are not standard hours and the District Licensing Agency will consider each particular application on its merits with more restrictive hours being appropriate in some residential areas.

### ***Special Licence Criteria***

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

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premises are required to be closed for the sale of liquor, to persons attending social gatherings of any kind specified in the licence.

A special licence can be issued 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 District Licensing Agency, the extent and regularity of the activity is such that an on, off or club licence is required.

The Secretary may, in circumstances where there is likely to be an effect beyond the immediate vicinity in granting a special licence, require that the application be publicly notified.

In respect to small clubs, Council recognises that it is beyond the resources of some small clubs to meet the criteria and expense of obtaining a Club Licence. The District Licensing Agency will therefore consider applications for special licences by small clubs for a series of events. Matters which will be taken into consideration are:

1. The nature of the club's activity.
2. The type or kind of occasions or events for which the licence is sought.
3. Club membership.
4. Any other consideration as determined by the Secretary, e.g. financial resources.

Should a licence be granted the following conditions would apply:

1. The sale of liquor will be restricted to one occasion or event on a specified day per week.
2. The maximum trading hours on the specified day shall not exceed four hours.
3. The licence will be granted for a period of up to one year.
4. The licence will be issued for a specified premises.

There must also be provision for the availability of food and non alcoholic beverages.

It is considered that these criteria are restrictive enough to ensure that a special licence is not a viable option for larger clubs and at the same time makes compliance with the Act reasonably achievable for the many small clubs operating throughout the District.

All new applications for special licences for small clubs will be considered by the Agency Committee. Re-application of such licences will be reviewed by the Secretary and may be referred to the Agency Committee for determination.

Notwithstanding the provision for small clubs in general, a special licence will be issued for activities on unlicensed premises for up to 6 occasions on any one licence, and shall not continue in force for longer than 12 months.

Where an application seeks an amendment to an issued special licence, an additional administration fee may be charged.

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### ***Managers Certificates***

The Act defines the process for considering applications for Managers Certificates. Applications are referred to the Licensing Inspector and Police for reports on the suitability of the applicant, in accordance with the criteria outlined in the Act. Unopposed applications will be considered by the District Licensing Agency while applications that are opposed by the Licensing Inspector or Police will be referred to the Liquor Licensing Authority.

For all applications for both new and renewed General Managers Certificates the law provides that a valid Licence Controller Qualification [LCQ] must be supplied. The District Licensing Agency cannot refuse to accept as incomplete any application which fails to supply an LCQ. Where no proof that the LCQ has been obtained is provided, a two month period will normally be allowed for the qualification to be supplied before the matter is referred to the Liquor Licensing Authority for a determination. This period may be extended at the District Licensing Agency's discretion so as to avoid overwhelming the Liquor Licensing Authority and also to take account of applicants' ability to attend suitably accredited training courses.

Applicants must also demonstrate that they have adequate experience. Where applicants within 'Off' Licensed premises are unable to demonstrate adequate experience of the management of 'On' Licensed premises, they will be requested to submit a formal undertaking. This will result in their certificate being endorsed so as to prohibit its use within an 'On' Licensed premises without first gaining the consent of either the District Licensing Agency or the Liquor Licensing Authority. This practice is supported by the Liquor Licensing Authority as a means of avoiding inexperienced managers supervising 'On' Licensed premises whilst at the same time facilitating the appointment of managers for 'Off' Licensed premises.

For Club Managers Certificates the applicant must have completed a course approved by the District Licensing Agency, and have evidence of involvement with, and support of the club.

Where application for a Managers Certificate or the renewal of a Managers Certificate is received, the District Licensing Agency will generally require that the applicant have a five year period free of any serious conviction, although in the case of other convictions, including a single minor offence or an isolated incident, a two year period may suffice.

### ***Anomalies Arising From Legislation Interpretation***

It is inevitable that from time to time anomalies will become apparent, particularly in respect of the new legislative environment. Where this occurs the agencies and industry need to co-operate towards practical commonsense solutions bearing in mind the object of the Act. Where legitimate anomalies arise the enforcement agencies will endeavour to work towards achieving a satisfactory solution expeditiously.

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### ***Liquor Bans***

It has infrequently been necessary in the past to impose liquor bans where public safety issues have arisen.

Generally it is likely such situations will be brought to the District Licensing Agency's attention via the Police. Where there is sufficient evidence to show that there are public safety or public order issues at stake the District Licensing Agency will consider whether or not to seek to adopt a Liquor Ban Bylaw. The nature and extent of such a Bylaw would be an issue for the Council to consider based upon the merits of the situation that apply at the time.

### ***Smoke Free Legislation***

Recent amendments to the Smoke Free Environments Act 1990 have introduced requirements to prohibit smoking within licensed premises. This has resulted in many premises providing exterior decking areas, etc. which allow drinkers to smoke whilst remaining on licensed premises.

The increased use of exterior areas associated with licensed premises has the potential for a greater impact upon the peaceful enjoyment of neighbours of their properties. Recent Liquor Licensing Authority decisions have supported the point of view that such external areas are provided as a means of complying with smoke free legislation and should not be seen as an extension of the licensed premises. The Liquor Licensing Authority views the failure to control noise emission as a suitability issue for licensees. Exterior decking areas can serve to increase the impact of noise on surrounding neighbours and for this reason the District Licensing Agency will take into account the impact that applications for re-definition will have upon surrounding properties, particularly those in residential areas.

### ***Encroachment on Council owned land***

The Council has received a number of requests for Licensed areas to extend onto Council owned land, notably footpaths and road reserve adjacent to premises where the ability to locate exterior seating is requested.

In considering such requests the District Licensing Agency will not grant consent without the prior approval of the Council's District Assets Department being obtained by the applicant.

### ***Controlled Purchase Operations [CPO's]***

In circumstances where it appears to the Council that sales of liquor are taking place to prohibited persons [either under age or intoxicated] the use of Controlled Purchase Operations will be considered in active co-operation with the New Zealand Police. More detailed legal requirements governing the operation of CPO's have been introduced in recent times and the usefulness of such operations is now well established.

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In the event of illegal sales being witnessed the District Licensing Agency would consider each case on its merits when deciding what subsequent action should be taken. This could involve any one of the following;-

- Warnings
- Prosecution
- Application for suspension or cancellation of Licenses or Managers Certificates

### ***Review Period***

Council has not identified any pressing need to review its policy on a frequent basis but there is a clear need to establish a more formal framework for the review of this important policy.

The Council will therefore review its policy at a maximum interval of five years.

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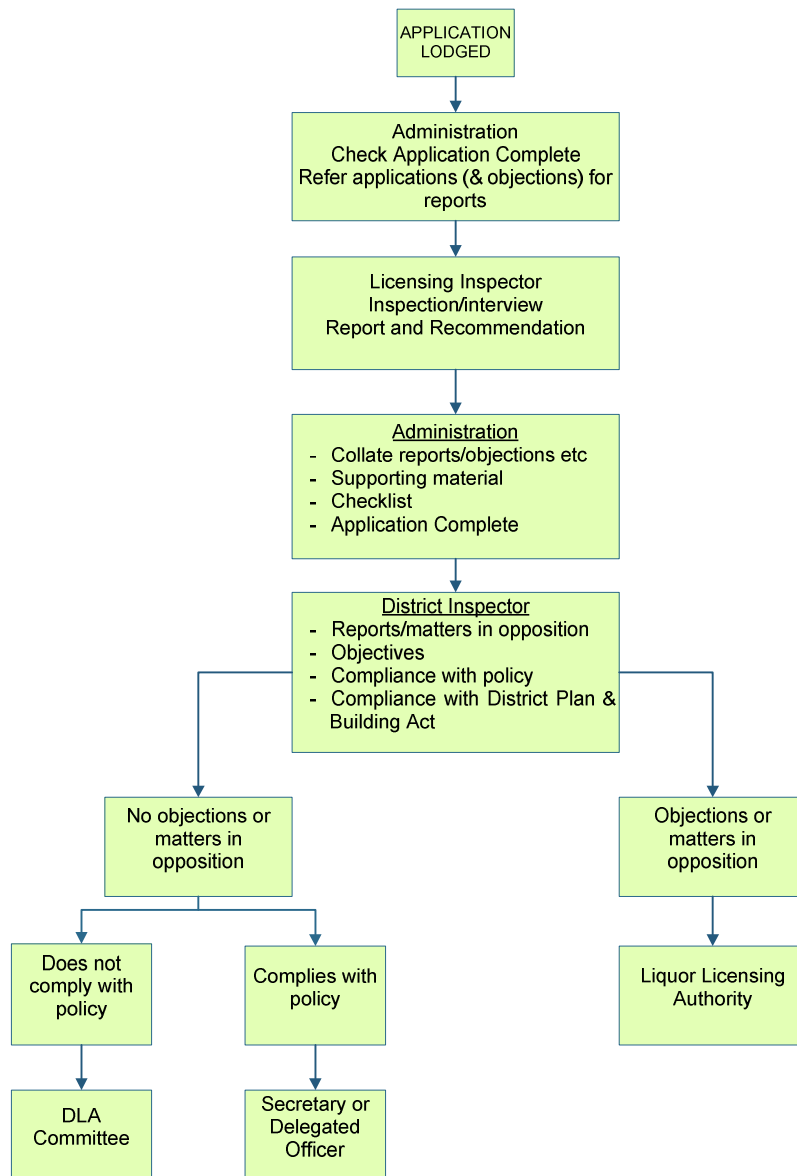
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## Procedures

### ***The District Licensing Agency Processing System***

The District Licensing Agency activities are carried out within the Regulatory Services Department by staff delegated the various functions in accordance with Council's Delegations Manual.

This flow chart illustrates the various stages of a liquor licence application:



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### Definitions

N/A

### Relevant Legislation

Sale of Liquor Act 1989  
Sale of Liquor Amendment Act 1999  
Sale of Liquor Regulations 1990

### Legal Compliance

The Policy is directly relevant to the Council's role as a District Licensing Agency responsible in law for the administration of the legislation relating to the sale of liquor.

Whilst the policy does not have the force of law, it has a direct bearing upon the Council's actions and is potentially open to legal challenge for decisions that are made in accordance with its content.

### Related Policy and Documents

Council Policy Register

### Key Words

Club, Host responsibility, Hours, Licence, Manager, Off Licence, On Licence, Sale of Liquor Act , Special Licence