

29 June 2022

Via: Teams Interview with Allen & Clarke

To whom it may concern,

FEEDBACK ON 2022 REVIEW OF THE SALE AND SUPPLY OF ALCOHOL (FEES) REGULATIONS 2013

Thank you for the opportunity for the Queenstown Lakes District Council (QLDC) as a key stakeholder, to provide feedback in the initial consultation round in relation to the Sale and Supply of Alcohol (Fees) Regulations discussion paper provided by Allen & Clarke engaged by the Ministry of Justice to undertake the legislated five year fees review.

The QLDC would appreciate the ability to provide further feedback should there be changes proposed to the fees regulations in the future.

The QLDC supports the Ministry of Justice considering changes to the current fees Regulations and emphasises consideration to the following matters:

- The QLDC's cost recovery. At the moment the fees do not cover the expenditure involved in the licensing process.
- Contributions to the object of the Act. There is opportunity with the fees Regulation review for consideration as to where and how money can or should go back into the community with harm reduction as its primary purpose.

This submission addresses preliminary high level questions asked by Allen & Clarke, recommendations, and specific responses to the consultation questions in Annex A.

The QLDC does acknowledge that this is the initial round of consultation, and that once initial consultation is complete, there may not be any further consultation or changes in the fees Regulations.

Yours sincerely,



Mike Theelen
Chief Executive

FEEDBACK ON TRANSFORMING RECYCLING

1. CONTEXT

- 1.1 When the Law Commission report *Alcohol in our Lives: Curbing the Harm* was released in 2009, it recommended that fees be set in a risk-based way to aid in cost recovery, along with being sufficient enough to cover monitoring and enforcement activities. The intention was to aid in reducing the amount ratepayers were contributing to fund alcohol licensing matters.
- 1.2 When the Sale and Supply of Alcohol Act came fully into force in December 2013, there was provision under section 405 for Territorial Authorities (TA's) to create a bylaw to set its own prescribed fees. This section also tied in with section 402 which sets out what reasonable costs could be recovered.
- 1.3 As part of the legislation implementation in December 2012, this also included the introduction of the Sale and Supply of Alcohol (Fees-setting Bylaws) Order 2013. This Order advised TA's that if they were to create any bylaws they must be consistent with the Act and any regulations, most relevantly the Sale and Supply of Alcohol (Fees) Regulations 2013.
- 1.4 The QLDC does not currently have any fees bylaws in place, although some research has been done around this prior to Covid in 2019.
- 1.5 Additionally, every five years a review of the fees must undertake¹. The last review undertaken in 2017 did not see amendments or changes made to existing fees regulations.

2. ANNEX A: REVIEW OF FEES REGULATIONS SUBMISSION

- 2.1 With the fees review currently being undertaken in 2022, the following questions were asked in the initial consultation round:

2.2 Fit for Purpose

1. **Is the current alcohol licensing cost/risk rating framework and its associated fees, outlined in the Regulations, allowing for the minimisation of potential harm caused by excessive or inappropriate consumption of alcohol?**
 - *No, the financial penalties for premises that commit offences (by way of an increase in annual fees if they receive a negative holding), whether deliberate or not, do not encourage licensees to raise the standard of their staff training and expectations around the safe and responsible service of alcohol.*
 - *The fees in general are extremely low as well, encouraging anybody who wants to attempt the sale of alcohol to try which brings in low quality operators who don't care about offering a safe comfortable space as if anything goes wrong, they a) don't receive harsh penalties and b) even if they receive a negative holding, the increase in annual fee is insignificant. Higher fees means only serious better operators can afford to stay in the market thereby keeping everyone safer.*
 - *The fees also shouldn't "just" be trying to "minimise" the "potential" harm to communities. The fees from alcohol licenses should be covering the costs to the community as well, much like the Gambling Act and Regulations. The fees should cover the cost to process licenses,*

¹ Section 404 of the Act

*minimise the potential harm **and** provide a pot that can (only) be used by communities towards the fixing of any harm caused to a community by the use of a licence.*

- *What we have seen is some businesses avoiding the holdings which may have been placed on the licence, by creating a new company which then takes over the same business and they no longer have to pay the additional fee amount or have a holding tied to their licence.*
- *The period of time a holding is in place (18 months, Regulation 5(5)) is odd timing as well. It would be more consistent to have the timeframe tie in with the ss289 and 290 Act provisions of 3 years.*
- *If a licensed premises undertakes a licensed premises tour activity (effectively an organised bar crawl of licensed premises normally starting or finishing at their own premises) their licence fees should be higher due to potentially larger groups of patrons and type of drinks promoted.*
- *Fees are generally quite low for high risk premises. The fees also do not appear to dictate any harm reduction; anyone can't get a licence, whether they are well funded or not (e.g. higher risk, lower end businesses, which stereotypically contribute to the most harm can easily afford a licence). Again the same can be said for premises that regulatory have ticketed DJ events for example.*

2. Are the default fees outlined in the Regulations being utilised by the majority of TAs?

- *It appears so, although QLDC only uses the default fee structure. Prior to Covid-19 (in 2019) some work had been done to look at an increase in the fees our licensees pay given the increase in licensed premises number we had been experiencing. Licensees were generally supportive of the increase due to the perception that if application fees are higher, then this would make it unattractive for "cowboy" or bad operators to open up to make a quick buck.*
- *On the contrast to that, increased fees could make it harder for smaller operators (small clubs, small sized businesses) to open at all as they would be priced out of the market. It could also lead to more rough operators selling alcohol with no licence at all, these people would then have to be taken to district court by police for prosecution.*

2.3 Alcohol Licensing Fees

3. What are the primary reasons for TAs using non-default fees?

- *We are unsure, it would be inappropriate for us to speculate as to why other TAs have implemented fees bylaws.*

4. What is the non-default fee structure and how was this determined?

- *QLDC uses the fee structure set out in the Act and Regulations.*

5. Has the TA applied section 6(4) of the Regulations to allow a discretionary decrease in fee category?

- *No not under subclause 6(4), but we have a policy whereby subclause 10(2) is applied to some special licence applications for not for profit or fundraising events². (On the QLDC Policy page under Regulatory).*

² QLDC Sale and Supply of Alcohol 2012 – Alcohol Licensing Fee Reduction Policy

6. If the Regulations outlined an ability to allow a discretionary increase in a fee category, would this be utilised? Why and how much would the increase be?

- *Potentially for very large-scale special licence events. An event with 400 attendees and an event with 10,000 currently pay the same fee; but class one events (typically) require a lot more work – i.e. pre-meetings, monitoring, de-briefs, etc.*
- *Other than this scenario (and even in this scenario), it's hard to imagine applying a criteria for an increase that won't make an applicant feel they are being treated unfairly compared to others in the local industry, if the fees aren't set by central government.*

2.4 Alcohol Licensing Cost Recovery

7. Are the fees recovered covering the costs of administering the alcohol licensing system?

- *Not over the past year they haven't. Covid has seen a decline in the number of special licence applications we would normally have received, refunds provided for events which have been cancelled, and several premises have not renewed their licences, or they have surrender licences with pro-rata refunds on annual fees provided in some cases. Manager's applicants have also had some refunds provided after relocating back home overseas and not being able to obtain a visa to get back in along with unknown lengths of time till the boarders did reopen.*
- *Ordinarily recovered costs would have been marginally higher than expenditure however, one of our DLC members would only charge for disbursements and not the hearing time itself or time spent in discussion about the application.*

8. Are there any regional differences in the licensing system implementation?

- *Yes, some TAs have lowered the annual fees, and others like Wellington were incrementally increasing the fees over a period of years by set percentages.*

9. What are the factors that inform these regional differences?

- *Unsure. It could be that there is a higher rate payer base so the rate payer covers more functions so less reliant on licensing income; it could be a higher number of licenced premises in the district which would generate more income; it could be less hearings are held so the costs associated with that are far lower.*

10. How effective is the cost/risk rating for different premises/events and the corresponding fee categories?

- *Not very. All licence categories from very low to very high along with all three classes of special licence, are too low. Special licence categories are also too simplistic or it's considered there not enough of them. There's a big difference in time and effort required for the processing of a 450 person market special licence application as opposed to a 20,000 person concert application.*
- *This also applies for special off licenses as well. The holder of a special "off" licence as the aforementioned market is charged \$575 even though the majority of event goers won't even look at the tent let alone buy anything and there maybe five other "off" licence holders who are also paying the same price, yet the "on" licence holder who's running a bar at the market is also paying the same price while being at full capacity for the length of the event.*

- *The wording for specials is troublesome in terms of the fact it states the number of people at the “event”. The A&P show for example has multiple vendors all wanting licences for the three day event which see some 30,000 people attending, not all 30,000 will visit a stall or a bar and a licensee of a stall may only end up with a couple of hundred visit them and purchase. To charge each stall holder \$575 when there are between 15 to 25 stalls is a bit much particularly as some won’t make that back if they are smaller and unknown. Perhaps a separate more details fees matrix for special licence scenarios would be more appropriate especially when there is one large event occurring over several days with multiple vendors or one large event over one day with multiple vendors.*
- *Enforcement holdings should have a higher cost applied to licences. A one fee category increase in fees is not at all noticeable to some licensees who operate multiple busy premises.*
- *Cellar Door vs Remote Seller is very problematic, as Cellar Doors have lower fees but require inspections, these premises can also undertake remote sales. Albeit, cellar doors sell their wine only, whereas remote seller can sell spirits, RTD’s, etc.*
- *Licensees who wish to operate a licence after 12.00 midnight or 2.00am, should have significantly higher fees attached because the vast majority of harm occurs after midnight. This situation was addressed in the Law Commission Report³ where international comparisons regarding premises fees were made of Victoria and Queensland in Australia where their fees are significantly higher however still associate the proposed premises activity with a risk factor.*

2.5 Alcohol Licensing Regulatory Framework

11. Is the current Alcohol Licensing cost/risk rating framework and its associated fees still suitable (i.e., that those who create the greatest regulatory effort bear the highest costs)?

- *Class 1 restaurants, Class 2 restaurants, and hotels all fall into the same fee category as a tavern closing before 2.00am (without any holdings). Often these types’ premises (particularly Class 2 restaurants and hotels) have very low alcohol sales, few alcohol promotions, and require only limited monitoring. It seems unsuitable (particularly in the case of a Class 2 restaurant) for them to be charged the same as a tavern.*
- *It is arguable that holdings fall off too quickly – premises may not even need to renew a licence in the 18 months following a negative holding, or could only end up paying one higher fee amount before the fees are again reduced.*
- *Currently there is only one fee for a large Class 1 event. The amount of work involved for a 500 person event compared to a three day event totalling 30,000 event is greatly different, there is a lot more time involved with meetings, monitoring, inspections and discussions with not only the applicant but other parties. Another class (or two) of fees should be introduced for events with over 1,500 people at a cost of over \$1,000.*
- *Currently there are three different class of restaurants. A class 2 and class 3 both have the same fee category. There is no clear distinction between the two and mostly operate in the same manner, with the design perhaps a bit different. The design and operation of*

³ *Alcohol in our Lives: Curbing the Harm*; Chapter 11 – Licence fees, renewals and managers; Pages 211 to 213, paras 11.7 to 11.18.

restaurants have changed significantly in recent years. For ease to both licensees and agencies, having two distinct classes of restaurants would be more beneficial.

- *The higher risk premises fees could be significantly higher, so it is more of a privilege to hold a licence.*
- *No, while the fees in general are too low they are also not fairly weighted. A “wine cellar door” can have a risk weighting of “Very Low” carrying a weighting of 2 points yet require as much time and effort as some taverns paying medium fees. This is also unfair to current businesses that are known as “Micro-Breweries” which aren’t categorised and/or defined at all under the Act or Regulations meaning they carry the same weighting as a tavern and can carry a risk rating as high as “High” yet carry no more real world risk than a cellar door.*
- *The definition for what a Hotel is, is also far too broad with all “Hotels” carrying a weighting of 10 or 15 points which are both still “Medium” risk. We had/have premises that technically met the definition of a “Hotel” thus need to be licensed as such, yet have a nightclub as part of the premises. These premises are licensed as “Hotels” with “Medium” risk ratings yet are just as, and in some cases, more concerning and time consuming than taverns carrying a “High” rating. As guided by the Act we provide the applicant a hotel style licence as the main source of income from the applicant is from accommodation. Additionally, small motels or lodges which only operate mini-bars and no in-house bar for example, would also then fall into the category of a hotel.*

12. Are there any additional risk factors that should be considered when calculating alcohol licensing fees?

- *Potentially their seasonality. As a tourist town, we have several premises that are only open for part of the year, that are paying the same annual fees as premises open year-round (e.g. Wet Jacket Wines, Ski fields, Ultimate Hikes huts).*
- *Capacity of premises. Why does a small bar that may have a maximum capacity of 30 people pay the same licensing fee as a nightclub that can fit 300 people?*

13. What can be implemented to improve the efficiency or minimise the cost of your alcohol licensing functions?

- *Not much other than changes to the Act itself to make it easier for licensees to understand, and to remove/simplify administration requirements that seem fairly pointless (such as s.69 notice, s.231 notices, s.232 requirements – we spend a lot of time chasing these and educating licensees on the requirements, when in reality it appears they have little purpose and no-one is ever taken to ARLA for not complying with the requirements).*
- *Legal costs are a significant burden on TAs when incurred – so something like Chloe Swarbrick’s proposed bill to limit the right of appeal to LAPs could also help reduce costs in the long term.*
- *Standard fees for advertising in print or online. We place adverts for applications both online and in print at no additional costs to applicants. There is no standardised or guidance costs in the Regulations for this; consideration to other areas of council who get involved in applications or large events who’s costs aren’t covered i.e. events team here have put significant amounts of work into one event occurring in September but aren’t covered by any costs. We also undertake de-brief meetings with the likes of Greenstone Entertainment Ltd who run the Gibbston Valley summer concert, the event is monitored every year but the*

tri-agencies for hours with additional police as well as road police tasked with attending, \$575 doesn't cover much. Then there's the clean-up costs of the town in the morning by our custodians.

14. Are there any barriers or challenges to the TAs experience of applying the Regulations that might affect the effectiveness of the cost recovery of its activities under the alcohol regulation?

- *Some ambiguity in the definitions – i.e. for special licences, clarity is needed to explain the difference between one event taking place across multiple days, and a “series of events”.*
- *A restaurant that does not have a separate bar area but serves alcohol at the point of sale counter doesn't fit into any of the restaurant classes.*
- *No definitions of Cellar Door, Convenience Store, Brewery, Dairy, etc, have all caused issues in the past. In wine regions, you have several premises wanting to offer their wine at locations separate from their vineyard, or premises wanting to showcase a selection of local wineries, some want to also offer a beer or two on the menu – hard to know which of these (if any) would be considered a Cellar Door with the very low fees they incur, vs a ‘tavern’ with medium fees.*
- *The classification of the three different types of restaurants could be simplified by only having two. “A” be a restaurant primarily selling food, either counter service or table service. “B” be a restaurant that has a clear separate bar area, (not just a counter that is used for dining by the only ‘bar’ on the premises, as is popular with new premises) or promotes casual drinking e.g. wine club, happy hour.*
- *Remote sellers licence is currently a “low”. This is considered high for this type of licence especially considering that licensees are required to get new licence every time they move house/office as a licence must be issued specifically for a premises.*

15. What has been the impact of the implementation of the Epidemic Preparedness (Sale and Supply of Alcohol Act 2012—Licence Application Inquiries) Immediate Modification Order 2020 on the current alcohol licensing cost/risk rating framework and its associated fees?

- *Overall no real impact with the IMO, that only delayed the responses to applications in some cases but our agencies tried to stick to the 15 working day timeframe to not get out of the habit.*
- *Some work did go into looking at whether we should introduce a fees bylaw to decrease the fees to help the licensees out at the start of Covid however there was no appetite for it from GM who has a finance background.*
- *Generally with Covid more businesses are taking longer to pay annual fees with several reminders and phone calls to prompt payment.*

2.6 Additional Consideration Points:

- *Over the years the ARLA have requested DLC hearing transcripts so there is now a cost associated with each hearing for that with costs being anywhere between \$250-400 +GST per hour for the services.*

- *We also need to cover signage costs as part of the Local Government Act with bylaw changes, and advertising of the alcohol band areas. We have Welcome to Winter, Crate Day and New Years' where we put temporary signage up over these periods, we also need to pay our contractor to put them up.*
- *Advertising costs associated with applications not covered, adverts placed online and in print media vary around the country. Some licensees have multiple business which could go into other districts where the requirements and costs are different.*
- *DLC fees are set under Cabinet but the costs for their training and organised meetings also comes out of the budget and potentially isn't adequately covered by licensing fees either.*

DISCUSSION PAPER TO INFORM STAKEHOLDER ENGAGEMENT

2022 REVIEW OF THE SALE AND SUPPLY OF ALCOHOL (FEES) REGULATIONS 2013

Background



In 2013, the Sale and Supply of Alcohol Act 2012 (the Act) came into effect. The Act introduced a new system for alcohol licensing in Aotearoa New Zealand, with most of its implementation being the responsibility of Territorial Authorities (TAs).

The Sale and Supply of Alcohol (Fees) Regulations 2013 (the Regulations) also came into force in 2013 and it sets out the application and annual fees that may be charged for alcohol licences to enable TAs to recover costs from administering the licensing provisions in the Act.

Under the Act, the Ministry of Justice (the Ministry) is required to undertake a five-year review of alcohol licensing fees and of cost recovery by TAs for alcohol licensing. The first review of alcohol licensing fees and cost recovery was undertaken in 2017 and did not result in any amendments. *Allen + Clarke* has been engaged by the Ministry to undertake the second review to determine whether the licensing fee regime remains fit for purpose, and specifically, achieves cost recovery and contributes to the objects of the Act; or whether it requires amendment.

The scope of the review includes all the regulatory settings in the Regulations and the associated Sale and Supply of Alcohol (Fee-setting Bylaws) Order 2013 (the Order):

- fees framework for the types of licences established under the Act
 - the cost/risk ratings for different premises/events and the corresponding fee categories
- specific fees payable
 - the composition of the fees (who must pay them, who they pay them to, and how much they are)
- associated administrative requirements
 - timing and reporting requirements for District Licensing Committees (DLCs) and TAs
- application of the Order.

The purpose of this Discussion Paper is to provide the framing for the next stage of stakeholder consultation.

Stakeholder Consultation is central to the Review

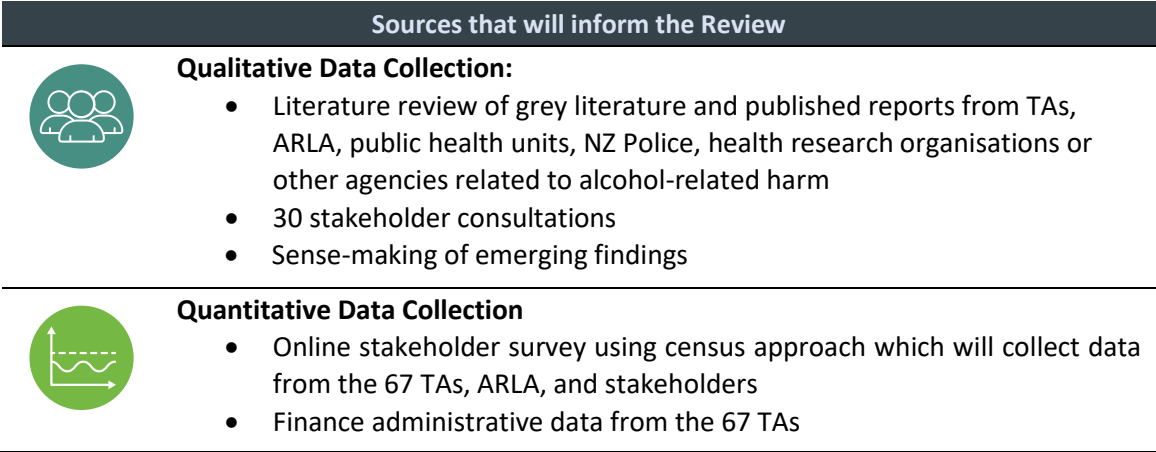


Stakeholder consultation is a key part of the review and will inform the Review Team’s understanding of Aotearoa New Zealand’s alcohol licensing regime and in turn, whether the licensing fee regime remains fit for purpose, specifically, achieving cost recovery and contributing to the objects of the Act; or requires amendment.

The Review Team is keen to engage with those who deliver, use, and otherwise interact with the alcohol licensing regime to help us ensure it is working well, accurately accounts for the real cost of providing licensing functions, and helps minimise risks associated with alcohol in our communities. The consultation is intended to:

- identify what is working well and what requires improvement with the alcohol licensing fee framework
- identify stakeholder attitudes and experiences with the alcohol licensing system and procedure
- provide stakeholders with a meaningful opportunity to engage with the Review
- complement other aspects of the Review.

Figure 1: Sources to inform the Review



How to participate in the review



Consultation with stakeholders that regularly interact within Aotearoa New Zealand’s alcohol licensing regime is a key part of the Review. Between May and July 2022, the Review Team will consult with participants through interviews via MS Teams, Zoom or Skype as preferred by stakeholders. Interviews are expected to last approximately one hour. During consultation, the Review Team will ask a series of questions and invite participants to share their views and perspectives on the current alcohol licensing cost/risk rating framework and its associated fees as outlined in the Regulations. A sample of the questions the Review Team will ask appears in Part 4 of this Discussion Paper.

How will the information you provide be used?

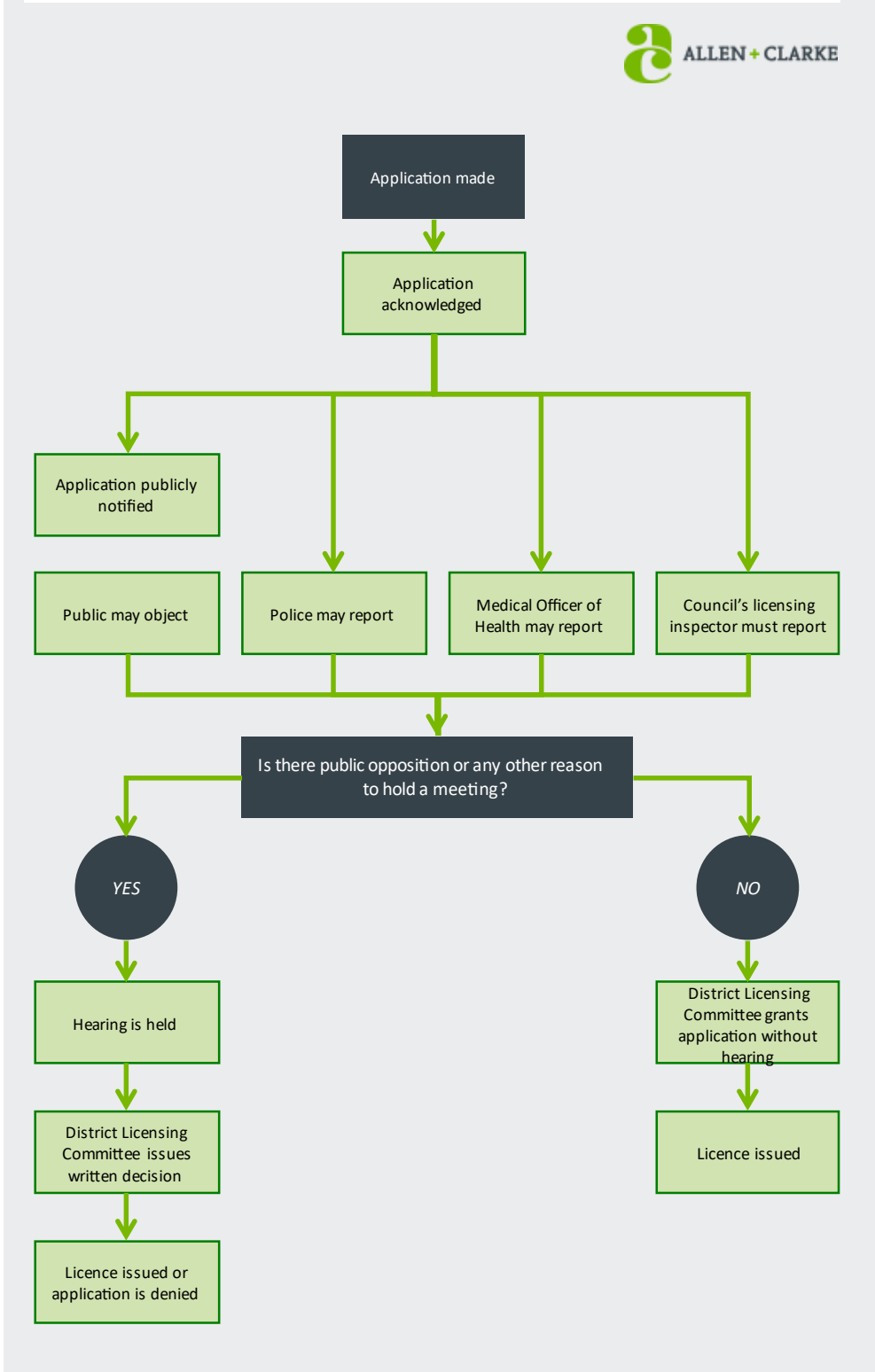
Information you provide during consultations will be anonymised, analysed, summarised, and grouped by theme to inform the development of any recommendations for the Ministry. Notes may be taken during consultations and all information will be stored securely.

HIGH-LEVEL OVERVIEW - CURRENT ALCOHOL LICENSING COST/RISK RATING FRAMEWORK AND ITS ASSOCIATED FEES



Entities who wish to obtain a licence for the sale and supply of alcohol, can make an application to the District Licensing Committee (DLC) within its local council. DLCs are required to consider and decide on all applications for alcohol licensing within their local area.

Figure 2: The process for applying and issuing alcohol licenses



Applicants can seek an on-licence, off-licence, or club licence to supply alcohol and all application fees and annual fees are paid to TAs for each licence type⁶. The fee depends on the fees category of the relevant premises which is determined by its cost/risk rating. The cost/risk rating of a premises is the sum of the highest applicable weighting. A weighting is determined by three factors:

1. Type of premises (e.g., class of restaurant, class of club, hotel, or grocery store)
2. Latest alcohol sales time
3. Number of recent enforcement actions

Table 1: Cost/Risk rating

Licence type	Type of premises	Weighting
On-licence	Class 1 restaurant, night club, tavern, adult premises	15
	Class 2 restaurant, hotel, function centre	10
	Class 3 restaurant, other	5
Off-licence	BYO restaurant, theatres, cinemas, winery cellar doors	2
	Supermarket, grocery store, bottle store	15
	Hotel, tavern	10
	Class 1, 2 or 3 club, remote sale premises, other	5
Club licence	Winery cellar doors	2
	Class 1 club	10
	Class 2 club	5
	Class 3 club	2
Licence type	Latest trading hour allowed by licence	Weighting
On-licence or club licence	2:00am or earlier	0
	Between 2:01am and 3:00am	3
	Any time after 3:00am	5
Off-licence (excl. remote sales premises)	10:00pm or earlier	0
	Any time after 10:00pm	3
Remote sales premises	Not applicable	0
Licence type	Number of enforcement holdings in last 18 months	Weighting
All licence types	None	0
	1	10
	2 or more	20

There are five fee categories for premises:

1. 0-2 risk rating = very low (Application Fee: \$320, Annual Fee: \$140)
2. 3-5 risk rating = low (Application Fee: \$530, Annual Fee: \$340)
3. 6-15 risk rating = medium (Application Fee: \$710, Annual Fee: \$550)
4. 16-25 risk rating = high (Application Fee: \$890, Annual Fee: \$900)
5. 26+ risk rating = very high (Application Fee: \$1050, Annual Fee: \$1250)

The fees payable to TAs and to ARLA are to ensure that, their costs relating to licensing and other matters under the Act are recovered.

⁶ TAs must pay a portion of each application and annual fee to the Alcohol Regulatory and Licensing Authority (ARLA) for an on-licence, off-licence, or club licence, and a specified portion of each manager's certificate fee, required by s.8 of the Regulations.

QUESTIONS FOR CONSULTATION

A high-level document review and preliminary inception meetings with key stakeholders identified a range of themes for the Review Team to explore to determine whether the licensing fee regime outlined within the Regulations remains fit for purpose, and specifically, achieves cost recovery and contributes to the objects of the Act; or whether it requires amendment.

Consultation questions will relate to the following themes and may cover the following questions:

Fit for Purpose

- Is the current alcohol licensing cost/risk rating framework and its associated fees, outlined in the Regulations, allowing for the minimisation of potential harm caused by excessive or inappropriate consumption of alcohol?
- Are the default fees outlined in the Regulations being utilised by the majority of TAs?

Alcohol Licensing Fees

- What are the primary reasons for TAs using non-default fees?
- What is the non-default fee structure and how was this determined?
- Has the TA applied section 6(4) of the Regs to allow a discretionary decrease in fee category?
- If the Regulations outlined an ability to allow a discretionary increase in a fee category, would this be utilised? Why and how much would the increase be?

Alcohol Licensing Cost Recovery

- Are the fees recovered covering the costs of administering the alcohol licensing system?
- Are there any regional differences in the licensing system implementation?
- What are the factors that inform these regional differences?
- How effective is the cost/risk rating for different premises/events and the corresponding fee categories?

Alcohol Licensing Regulatory Framework

- Is the current Alcohol Licensing cost/risk rating framework and its associated fees still suitable (i.e., that those who create the greatest regulatory effort bear the highest costs)?
- Are there any additional risk factors that should be considered when calculating alcohol licensing fees?
- What can be implemented to improve the efficiency or minimise the cost of your alcohol licensing functions?
- Are there any barriers or challenges to the TAs experience of applying the Regulations that might affect the effectiveness of the cost recovery of its activities under the alcohol regulation?
- What has been the impact of the implementation of the Epidemic Preparedness (Sale and Supply of Alcohol Act 2012—Licence Application Inquiries) Immediate Modification Order 2020 on the current alcohol licensing cost/risk rating framework and its associated fees?