

## **Position Description District Licensing Commissioner**

### **Position purpose**

The purpose of a District Licensing Commissioner is to chair New Plymouth District Council District Licensing Committees (DLC) that consider and determine applications made under the Sale and Supply of Alcohol Act 2012.

More particularly, the functions of the DLC are to:

- consider and determine licence applications, renewals, variations, suspensions and cancellations
- consider and determine new applications for and renewals of manager's certificates
- consider and determine applications for temporary authority
- conduct inquiries and make reports to the Alcohol Regulatory and Licensing Authority (ARLA)
- with the leave of ARLA, refer applications to ARLA.

A DLC consists of three members appointed by a territorial authority for its district.

The DLC will have to issue reasoned decisions in writing and send copies to the relevant parties.

In its decision making, the DLC will have regard and, where applicable, give effect to the New Plymouth District Council and Stratford District Council Local Alcohol Policy.

### **Workload**

The workload of the DLC depends on the number of applications received and the number of these applications that are objected to by members of the public or where reporting agencies are in opposition. All uncontested applications are to be considered on the papers by a Commissioner, while contested applications are considered by a full DLC.

A DLC can transfer an application to ARLA for its consideration, with the agreement of the Chair of ARLA.

Formal meetings will only be required for contested applications. Consideration of matters on papers is estimated to average 22 hours per month for a Commissioner.

New Plymouth District Council is looking to appoint two Commissioners with the workload rotated between the two appointees.

### **Remuneration**

As determined by the Minister of Justice in accordance with the Cabinet fees framework, Commissioners will receive remuneration at a rate of \$624.00 per day or \$78.00 per hour for part days.

Commissioners will also be reimbursed for reasonable expenses incurred in the discharge of duties associated with the position.

Commissioners must provide their own equipment, including provision of internet. A Council email address will be provided.

### **Duration of appointment**

The appointment will be for a period of up to five years. The appointee may be reappointed for one or more further terms.

A Commissioner may resign from office at any time by written notice to the relevant territorial authority.

The territorial authority may at any time remove a member of a DLC or a Commissioner appointed to a DLC for inability to perform the functions of office, bankruptcy, neglect of duty, or misconduct, proved to the territorial authority's satisfaction.

### **Person specification**

A person can only be appointed 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 DLC.

Additionally, a person must not be a Commissioner if:

- a) the territorial authority believes that person has, directly or by virtue of his or her relationship with another person, such an involvement or appearance of involvement with the alcohol industry that he or she could not perform his or her duties without actual bias or the appearance of bias; or
- b) the person is a constable, a Medical Officer of Health, an inspector (Alcohol Licensing), or an employee of the territorial authority.

Attached is an extract from the Health Promotion Agency's "Selecting and appointing district licensing committees a guide for Councils"

### Important functional relationships

#### *Internal*

- DLC Secretariat staff
- Other staff of the New Plymouth District Council

#### *External*

- Police
- Medical Officers of Health representatives
- Licensing inspector(s)
- Fire and Emergency NZ
- ARLA

# Extract from the Health Promotion Agencies “Selecting and appointing district licensing committees a guide for Councils”

## 1. A brief introduction to DLCs

This section provides background information on DLCs and relevant legal requirements under the Sale and Supply of Alcohol Act 2012 (the Act). It covers:

- 1.1 What DLCs do
- 1.2 The legal status of a DLC
- 1.3 Relevant sections of the Act

### 1.1 What DLCs do

Anyone wanting to sell and supply alcohol to the public in New Zealand must apply to their local council (territorial authority) for a licence. District licensing committees (DLCs) consider and decide all applications for licences and manager’s certificates (s 187 of the Sale and Supply of Alcohol Act 2012).

DLCs are established under the Act and administered by councils. Each council must establish and maintain a list of DLC members. They can have their own list or have a combined list with one or more other councils (s 192).

A DLC considers the application, agency reports, evidence and submissions presented to it against the criteria in the Act and any relevant case law. It then objectively evaluates the evidence, determines facts, forms opinions and draws conclusions to make its decision.

Within their local areas, DLCs decide applications for:

- new and renewal applications for on-, off- and club licences
- special licences
- new and renewal applications for manager’s certificates
- opposed acting or temporary appointments of managers
- variation of licence conditions
- temporary authorities and temporary licences
- orders to vary, revoke, suspend or cancel a special licence.

### 1.2 The legal status of a DLC

A DLC is a committee of council (s 200(1)), is administered by the council, and may include councillors. However, it is an independent inquisitorial and impartial body and operates differently from all other council committees. A key difference is that in DLC hearings the parties have the right to call, examine and cross-examine witnesses. In addition, DLCs are not required to publicise or run their meetings in the same way as other council committees (s 207 of the Act and part 7 Local Government Official Information and Meetings Act 1987 (LGOIMA)).

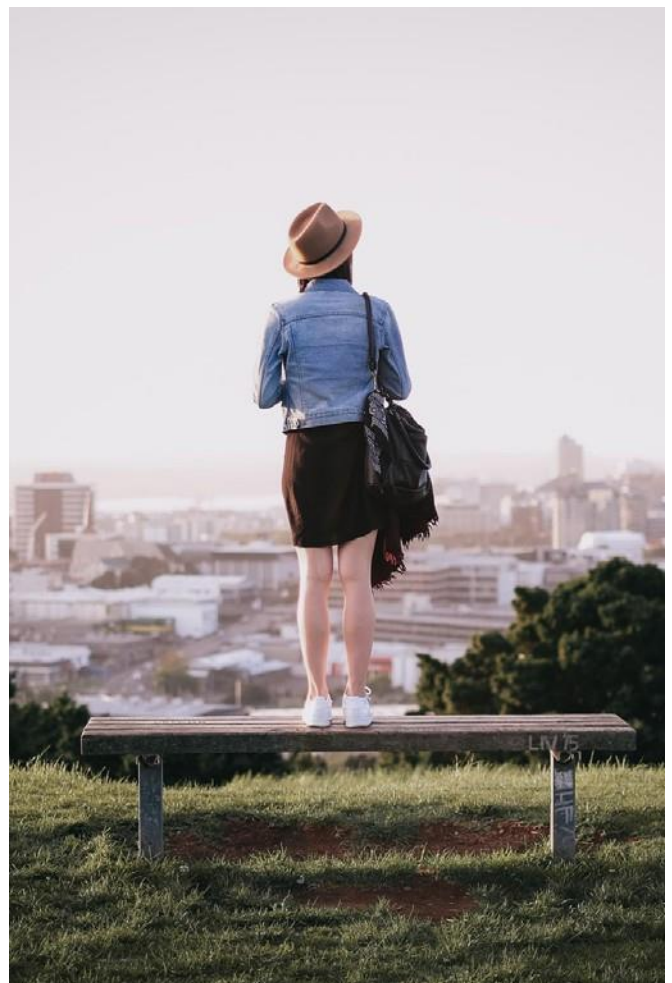
DLCs have the powers of commissions of inquiry under the Commissions of Inquiry Act 1908. As a commission of inquiry, a DLC has a quasi-judicial role. DLCs have powers and procedures similar to those of a court of law or a judge and are obliged to objectively make findings of facts and draw conclusions from them. This means, for example, that a DLC can issue summonses 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 (s 201(4)). DLCs should not be subject to influence from the council (or from any other third party). A council can, if it wishes, be represented and participate in a DLC hearing (s 204). However, a council cannot override a decision of a DLC.

A decision of a DLC can be appealed to the Alcohol Regulatory and Licensing Authority (ARLA) by any party to the decision. Decisions of ARLA can be appealed to the High Court, and then, if leave is granted, to the Court of Appeal.

## 1.3 Relevant sections of the Act

The following sections of the Act relate to the appointment and operation of DLCs:

99	Applications to be made to licensing committee
186	Territorial authorities to appoint district licensing committees
187	Functions of licensing committees
188	Powers of licensing committees
189	Composition of licensing committees
190	Meetings of licensing committees
191	Quorum
192	Territorial authority to establish and maintain list of licensing committee's members
193	Appointment of commissioners
194	Resignation or removal
200	Application of Local Government Official Information and Meetings Act 1987
201	Licensing authority and licensing committees have powers of commissions of inquiry
202	Procedure
203	Proceedings of licensing authority and licensing committees
204	Right of certain persons to appear in proceedings
207	Evidence in proceedings before licensing authority or licensing committee
208	Licensing authority or licensing committee may waive certain omissions
211	Decisions to be given in writing



## 2. Who can be on a DLC?

This section explores who can be on a DLC by considering:

- 2.1 What the Act says
- 2.2 What this means: good practice guidance
  - 2.2.1 What is good standing?
  - 2.2.2 What is relevant knowledge, skills or experience?
  - 2.2.3 Detailed guidance on essential and desirable knowledge, skills and experience

### 2.1 What the Act says

#### Councils must have a list of DLC members

Councils must establish, maintain and publish a list of people approved to be members of that council's DLC. Councils can establish a combined list with one or more territorial authorities.

Members must have: "experience relevant to alcohol licensing matters" (s 192(2)). Members can be elected councillors or people from the community. Members are included on the list for a fixed term of up to five years and can be reappointed for one or more periods of up to five years.

#### Councils can appoint commissioners

Councils can appoint a commissioner to any of its DLCs. A commissioner has all the functions, powers and duties of the chair (s 193(1)) and can be appointed as a chair (s 189(2)).

The Act requires a commissioner to be someone who: "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" (s 193(2)).

Commissioners are appointed for a fixed term of up to five years and can be reappointed for one or more periods of up to five years.

#### The composition of a DLC

Each DLC, which is selected to consider an application, is made up of a chair and two members. The chair can be either an elected member of the council (from the approved member list) or a commissioner appointed by the chief executive, on the recommendation of the council.

### 2.2 What this means: good practice guidance

The Act does not define or set out:

- good standing or the necessary knowledge, skill and experience relating to matters that are likely to come before the committee (required for commissioners)
- the experience relevant to alcohol licensing matters (required for members).

In the absence of such detail, this document provides some guidance to councils about good standing and the types of knowledge, skills and experience that would contribute to the effective running of a DLC.

#### 2.2.1 What is good standing?

A commissioner must be someone who "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" (s 193(2)).

The Act does not give a definition of "good standing in the community". When considering good standing you could think about whether an applicant:

- is of good character eg, do they have any convictions? Have they been bankrupted?
- has a good reputation and is held in high regard in their community
- holds positions of leadership within a community eg, school board of trustees or iwi authority
- belongs to a professional organisation that upholds professional standards of ethics.

## 2.2.2 What is relevant knowledge, skills or experience?

In considering what might be relevant knowledge, skills or experience, it is useful to think about the skills that DLCs need to carry out their role effectively.

DLCs must understand alcohol-related harm and how it can be minimised

All members must have an understanding of the nature of alcohol-related harm – what it is, how it impacts communities (particularly vulnerable communities), and how it can be minimised. While alcohol-related harm is often perceived as direct harm, DLCs need to understand the deeper and more complex layers of impacts on communities. Alcohol-related harm is not just about rubbish and noise. It is also about the broader health, social, economic and cultural impacts (both direct and indirect) of the sale, supply and consumption of alcohol, particularly inappropriate or excessive consumption of alcohol.

DLCs need experience in legal processes

There are different views about the need for legal training and skills on DLCs. Many applicants have legal representation for hearings, so having a DLC that is suitably experienced to address matters of law raised by lawyers is necessary. Some councils value legal expertise and only have lawyers on their DLC. Other councils don't believe that formal legal expertise is essential for a well-functioning DLC and have no lawyers at all. In these cases, chairs may have experience in legal and regulatory processes such as the Resource Management Act 1991 and councils provide legal advice or support to their DLC.

DLCs need skills to facilitate community participation  
One of the key drivers behind the Act was to enhance community participation in licensing decisions. DLC practices can have a big impact on the willingness and ability of the community to take part. DLCs need skills and experience to work effectively with community participants in hearings.

When selecting and appointing your DLC you might want to consider:

- the skills and experience that members have in working with communities or running hearings in a way that makes community members feel welcome. This is particularly important for members of the community appearing as objectors who may not be familiar with judicial processes
- whether members have an understanding of:
  - the diversity of the community/communities that the DLC is responsible for
  - how alcohol-related harm impacts disproportionately across different communities and population groups
  - differing patterns of alcohol-related harm in the local community
  - barriers that some communities face to participating in the licensing and hearings process and how these might be addressed
- whether members are open to attending hearings in the evenings to accommodate objectors who work during the day
- whether your chair or members are familiar with basic te reo (language), pronunciation, and tikanga (customs). You can provide support for your DLC members to build this capacity.

You might also think about how the diversity of your DLC reflects the community it serves, in particular those most affected by alcohol-related harm.

The table below provides some detailed suggestions for relevant knowledge, skills and experience.

### 2.2.3 Detailed guidance on essential and desirable knowledge, skills and experience

The table below provides good practice guidance on essential and desirable knowledge, skills and experience for DLC chairs and commissioners (C), and members (M).

We have not differentiated between chairs and commissioners in this table. Chairs, regardless of whether they are elected members or appointed commissioners, need to have the same knowledge, skills and experience to run effective hearings and decision-making processes.

	ESSENTIAL	DESIRABLE	EXPLANATION/COMMENTARY
Knowledge, understanding or experience of:			
✓ Te Tiriti o Waitangi/ the Treaty of Waitangi	C, M		While the Sale and Supply of Alcohol Act 2012 does not refer to the Treaty of Waitangi, it is good practice for all people in public office to have a knowledge and understanding of the Treaty and its implications for their decision-making roles.
Law and legal processes			<i>This experience could be through other roles such as an employer or a mediator.</i>
✓ the law and its application (including the Act, case law and written decisions)	C	M	An understanding of law and how it is applied is essential for chairs. Chairs need to understand and apply the Act, case law and written decisions.
✓ judicial processes	C	M	DLCs are quasi-judicial bodies so understanding or experience of judicial processes is essential for chairs who manage hearings.
✓ natural justice and its application	C, M		Chairs and members must understand what natural justice is and what they need to do as decision makers to achieve it.
Sale and Supply of Alcohol Act 2012			
✓ the object of the Act	C, M		All members must be familiar with the object of the Act.
✓ alcohol-related harm and its impacts on communities	C, M		All members must have an understanding of the nature of alcohol-related harm – what it is, how it impacts communities (particularly vulnerable communities), and how it can be minimised.
✓ the Act and its application	C	M	Chairs must have a thorough understanding of provisions of the Act and their application.
✓ alcohol licensing (including local alcohol policies if relevant)	C	M	Chairs need a thorough understanding or experience of alcohol licensing processes.

	ESSENTIAL	DESIRABLE	EXPLANATION/COMMENTARY
Hearings			<i>This could be through experience in other roles such as an employer or a mediator – and as a facilitator or a participant in hearings.</i>
✓ the purpose of hearings	C, M		Chairs and members must understand the purpose of hearings.
✓ hearing procedures (and the unique nature of DLC hearings procedures)	C	M	Chairs are responsible for running hearings, so must have knowledge, skills and/or experience in hearings procedures generally, and DLC hearings in particular.
✓ the nature of evidence	C	M	Chairs need to understand the nature of evidence, what does (and doesn't) constitute evidence, and how evidence differs from submissions.
✓ conflict of interest and bias and the appearance of conflict of interest or bias	C, M		Chairs and members must understand the nature of conflicts of interest and bias and be able to apply them to their own situations.
✓ operating under rules of confidentiality	C, M		Chairs and members must be able to operate under rules of confidentiality.
The community			
✓ the local community in which the DLC operates	C, M		Chairs and members need to have a good understanding of the local community in which the DLC operates, including: <ul style="list-style-type: none"> <li>• the demography of the community</li> <li>• whether and how it is changing</li> <li>• the environment that the premises are, or would be, in</li> <li>• groups within the community who are particularly vulnerable to alcohol-related harm</li> <li>• whose views are (and aren't) being presented.</li> </ul>
✓ the local community's concerns and expectations around alcohol and alcohol-related harm	C, M		Chairs and members need to have a good understanding of the local community's concerns around alcohol and alcohol-related harm
✓ the nature of the licensing environment and alcohol-related harm in the community in which the DLC operates	C, M		Chairs and members need to be familiar with: <ul style="list-style-type: none"> <li>• the local licensing environment: <ul style="list-style-type: none"> <li>– numbers and types of on- and off-licence and club licence premises</li> </ul> </li> <li>• the local environment that the application is for, and the nature of the current alcohol-related harm that exists there: <ul style="list-style-type: none"> <li>– who is affected, where, when?</li> <li>– where is the alcohol sold and supplied and consumed?</li> </ul> </li> </ul>



	ESSENTIAL	DESIRABLE	EXPLANATION/COMMENTARY
✓ the local iwi, hapū, and Māori communities	C	M	Chairs should have an understanding of local Māori communities: their aspirations; their concerns and expectations about alcohol and alcohol-related harm.
✓ the cultural and ethnic make-up of the local community	C	M	Chairs should have an understanding of the cultural and ethnic make-up of local communities: their aspirations; their concerns and expectations about alcohol and alcohol-related harm.
✓ working with community and community groups		C, M	Previous experience or skills in working with community groups would be valuable to have on any DLC, particularly if they are to provide an environment that is welcoming to public objectors who are not familiar with legal environments.
<b>Skills in:</b>			
<b>Communication and teamwork</b>			
✓ oral communication	C, M		Chairs and members need to be able to communicate effectively with one another, with staff, and with participants at hearings.
✓ listening and asking questions to gain understanding	C, M		Chairs and members must be active listeners who can use questions to gain understanding.
✓ considering information from a variety of sources in an objective, unbiased way and being open-minded in reaching a conclusion	C, M		The key role of the DLC is to evaluate information from a range of parties (often in opposition to one another), consider this in an objective and unbiased way, and come to a conclusion within the context of the Act.
✓ written communication	C	M	Chairs undertake most written communication on behalf of the DLC (including minutes and decisions) so must have strong skills in this area.
✓ te reo and tikanga Māori	C,	M	Chairs should have basic understanding of te reo and tikanga so that they are able to run and manage hearings effectively and appropriately (as required).
✓ computer literacy	C, M		Chairs and members need computer literacy to carry out their role effectively, for example for: <ul style="list-style-type: none"> <li>• email communication</li> <li>• research (eg, case law)</li> <li>• downloading, uploading and amending DLC documents and decisions.</li> </ul>

	ESSENTIAL	DESIRABLE	EXPLANATION/COMMENTARY
✓ facilitating good working relationships with other DLC members	C, M		Chairs and members need to have good inter-personal skills and be able to build good working relationships with others.
<b>Responsibilities of the chair</b>			
✓ running hearings	C		The chair must be able to run or chair hearings in a way that: <ul style="list-style-type: none"> <li>• is fair and effective</li> <li>• is inclusive of members of the community appearing as objectors who may not be familiar with judicial processes</li> <li>• ensures that no party dominates proceedings</li> <li>• ensures procedures are correctly followed</li> <li>• achieves natural justice.</li> </ul>
✓ writing clear and well-thought-out decisions	C		Chairs are responsible for writing decisions on behalf of the DLC. They must be able to write decisions that: <ul style="list-style-type: none"> <li>• are well structured, logical and clear</li> <li>• outline the considerations of the DLC in reaching its evaluations, opinions and conclusions</li> <li>• refer to relevant case law</li> <li>• are legally sound.</li> </ul>
<b>Personal qualities</b>			
✓ willingness to upskill and develop new knowledge	C, M		Chairs and members need to be open to upskilling where necessary and developing their knowledge.
✓ willingness to make decisions (that may be unpopular) and be subject to media scrutiny and appeals by higher authorities such as ARLA and the High Court	C, M		The decisions made by DLCs will sometimes be unpopular and subject to scrutiny by the courts and the media. Members and chairs need to have the resilience to manage such scrutiny and criticism.

## 3. Who can't be on a DLC?

This section explores who can't be on a DLC by considering:

- 3.1 What the Act says
- 3.2 What this means: good practice guidance
  - 3.2.1 General principles for decision makers
  - 3.2.2 Managing conflicts and bias

### 3.1 What the Act says

You cannot appoint a commissioner (s 193(3)) or a list member (s 192(5)) if:

- 1 the person is:
  - a police officer, or
  - a Medical Officer of Health, or
  - an alcohol licensing inspector, or
  - an employee of the territorial authority
- 2 the council believes that the person has, directly or by virtue of his or her relationship with another person, such an involvement or appearance of involvement with the alcohol industry that he or she could not perform his or her duties without actual bias or the appearance of bias.

Chairs who were appointed to the DLC as an elected member of council cannot remain on the DLC if they are no longer an elected member of the council. However, the council could choose to reappoint them as a commissioner if the individual has the necessary knowledge, skill and experience relating to matters that are likely to come before the committee (s 193(2)).

### 3.2 What this means: good practice guidance

DLCs make important decisions on applications for licences under the Act and, in doing so, must run a fair process. Councils must ensure that the people they appoint to their DLC can run a fair and objective decision-making process.

The Act specifically prohibits the appointment of anyone to a DLC who could not perform their duties due to bias or the appearance of bias as a result of their involvement, or the appearance of their involvement, in the alcohol industry.

However, considerations of bias and conflict of interest are not restricted to those with industry involvement. Every member or official of a public entity has professional and personal interests and roles. Occasionally, some of those interests or roles overlap. This is almost inevitable in a small country like New Zealand, where communities and organisations are often close-knit and people have many different connections. Elected members of council have extensive involvement in their communities and a great deal of local knowledge. This knowledge can help inform the decision-making processes of the DLC; however, this closeness to the community can also give rise to a conflict of interest or a perception of bias.

Conflicts of interest sometimes cannot be avoided, and can arise without anyone being at fault. They are a fact of life. But they need to be managed carefully. Even where no conflict of interest exists, councils and DLCs must be careful to avoid any perception of a conflict of interest. DLCs need to be impartial and be seen to be impartial.

This section sets out some general principles for decision makers and some specific guidance on managing bias and conflicts of interest.

### 3.2.1 General principles for decision makers

Decision makers must uphold natural justice  
 Natural justice is about fair process. It means that any public decision-making body, including a DLC, must be independent and impartial and its procedures must be fair and transparent. Natural justice can be enforced by the courts, administrative tribunals or ombudsmen. Determining whether a decision complies with natural justice will generally depend on whether a fair and proper procedure was followed in making it.

Decision makers must avoid bias and the appearance of bias

Decision makers must be unbiased in all procedures, when holding a hearing or making a decision. A decision maker must be impartial and must make a decision based on a balanced and considered assessment of the information and evidence before them without favouring one party over another. Even where no actual bias exists, decision makers should be careful to avoid the appearance of bias.

Decision makers must avoid conflicts of interest

The Office of the Auditor-General defines it the following way: "Put most simply, a conflict of interest can arise where two different interests overlap."

In the public sector, there is a conflict of interest where a member's or official's duties or responsibilities to a public entity could be affected by some other interest or duty that the member or official may have.

The other interest or duty might exist because of:

- the member's or official's own financial/business interests or those of his or her family
- a relationship or other role that the member or official has
- something the member or official has said or done.

### 3.2.3 Managing conflicts and bias

Involvement in the alcohol industry – what might this mean?

Examples of involvement in the alcohol industry that might lead to real or perceived bias or conflicts of interest for DLC members could include (but are not limited to):

- having a financial interest in a licensed premises
- having family members with interests in a licensed premises
- having close personal or working relationships with licensees
- being the property owner of the site of a licensed premises.

People who have had involvement in the alcohol industry will have knowledge, skills and experience that would be useful on DLCs. For example, ex-licensees would bring knowledge of the practical application of the Act in licensed premises. In this case, you might consider how much time has passed since they left their role. It is not easy to prescribe a specific length of time – it should be long enough that the person is unlikely to be dealing with parties they have worked closely with, but recent enough that their knowledge and skills are still relevant.

If you are thinking about appointing someone with previous involvement with the industry, then consider:

#### *The nature of their relationships*

- Who does the individual have professional relationships with?
- Could these relationships lead to bias or a perception of bias?

#### *Awareness*

- Does the person concerned have an awareness of their potential bias and whether/how it could be managed?

#### *The observer test*

- Would a reasonably informed, objective observer consider that the individual could perform their duties without bias or a perception of bias?

## Managing bias and conflicts of interest in DLC decision making on specific applications

There are many ways that bias can be managed in the context of a specific application including:

- assessing the relationships between DLC members/ chairs and applicants or parties to a hearing
- members excluding themselves
- appointing an outside commissioner if required
- allowing for concerns about bias prior to a hearing, for example:
  - all DLC members/chairs could have a photo and short biography on the council website
  - when an application is advertised and a committee is selected, the parties could be sent a link to the biographies
  - council could provide a timeframe for parties to state any concerns around bias of members prior to the hearing
- members making a declaration at the start of the hearing that they have no conflicts. Parties can object and be heard in ‘chambers’ if required
- the DLC referring the case to ARLA (s 170(a)).

For more information on managing conflicts of interest see the Office of the Auditor-General’s guide – Managing conflicts of interest: Guidance for public entities.