

# APPENDIX 1

Submission to the Law Commission

in the matter of

Issues Paper 15:

**ALCOHOL IN OUR LIVES**

An Issues Paper on The Reform Of New Zealand's Liquor  
Laws.

From Wellington City Council

October 2009

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## ***1. Executive Summary***

*Wellington City Council* supports the root and branch reform of the law relating to the sale and supply of liquor in New Zealand. The review is timely and an important opportunity to examine the broader issues that impact on an ability to manage effectively, at a local level, alcohol in the community.

Wellington City Council aims for a vibrant, active city which has a thriving entertainment district. The challenge, for those charged with managing the environment in which alcohol is sold, supplied and consumed is reducing the harm and finding balance between the associated benefits and costs. The prospect of legislative change in this area creates significant opportunities.

This submission focuses on the lead role that the Council plays in respect of managing alcohol in its community through licensing premises, events and promoting a broad range of entertainment in the city.

This submission supports a suite of measures the Council believes will reduce the harm and achieve balance without sacrificing economic growth or the social vitality and development of the city.

Four key themes flow through support for options:

1. Currently, District Licensing Agencies (DLAs) have inadequate tools to effectively manage the drinking environment. Therefore, this submission supports a suite of measures that give DLAs the appropriate levers to target alcohol-related harm and manage effectively the sale, supply and consumption of alcohol in their jurisdiction.
2. Changes to the regulatory structure have cost, time delay and transparency implications.
3. Local councils are not the default provider for additional services; they don't have the resources.
4. With the appropriate level of resources, councils can effect change at a local level around the drinking culture.

***In particular, Wellington City Council supports;***

- A split purchase age.
- Local authorities having the ability to set fees.
- Local authorities having the flexibility to specify a policy regarding opening hours. A local policy would:
  - ❖ Take account of local amenity values, the particular nature of specific communities and be subject to public consultation.
  - ❖ Incentivize compliance and exceptional performance as a means to obtaining longer trading hours

- ❖ Allow for better management of people out of the city in the early hours of the morning via a staggered dispersal of patrons.
  - ❖ Support Wellington City Council's position as a creative hub and stager of key events.
- A change in the law to allow the licensing decision-maker to refuse licenses on wider grounds than at present.
  - The use of social impact assessments for non-standard applications and/or those deemed high risk.
  - A new DLA structure to support a robust and transparent risk assessment process, one that allows for increased community input to the decision making process and expedites enforcement action so that consequences for serious breaches of the Act are immediate. Wellington City Council proposes a model (see 5.4) that is applicable from a super city environment to that of a provincial territorial authority.
  - A range of enforcement options that provide efficiencies, incentivize compliance and reduce time lags between detection of an infringement and sanction.
  - Comprehensive national legislation around drinking in public that provides for local exemptions.
  - Local policies being formally recognized in the decision-making process, and the Liquor Licensing Authority providing guidelines for policy development

In this new operating environment, comprehensive local alcohol policies are vital. Given the options supported in this submission, local alcohol policies would take account of a broader range of issues, functions and powers.

***Wellington City Council is strongly opposed to:***

- The LLA having final approval. Final approval for local policies appropriately rests with the local authority engaged in the development process.
- Territorial local authorities being responsible for transferring intoxicated persons home or elsewhere for safety reasons.

Our expectation is that the final recommendations furnished by the Commission to Government should address the funding issue, enhance and add to the levers available to territorial authorities to enable them to manage more effectively the drinking environments within their respective jurisdictions.

Wellington City Council has focused this submission on issues that impact on its role under the Sale of Liquor Act as the District Licensing Agency.

### **3. A Wellington Snapshot**

Wellington is a culturally rich, creative, innovative capital city which takes pride in staging major and exciting events for all sectors of the population; however, there are some alcohol-related issues that threaten this reputation:

- Violence is one of the leading types of offending on licensed premises in Wellington. This is supported by Police reports that 90% of offending in the Central Area on Friday and Saturday nights is alcohol-related.
- 37% of offenders reside outside Wellington City but are attracted into the vibrant city centre for their entertainment.
- LTSA data shows the number of car crashes involving alcohol in Wellington City are on the increase
- Regional crime data (Year ended 31 March 2009) indicate 'Drugs and Antisocial Behavioural offences' are on the increase in Wellington City.
- Half of emergency admissions to Wellington Hospital on Thursday, Friday and Saturday nights are directly related to alcohol abuse by young people.
- Wellington City has a large student population (approx 33,000)
- Young people have died from alcohol-related behaviour in the city
- Results of local youth surveys support the trend towards a binge drinking culture and increased risk taking behaviour, particularly by young people.
- Wellington has a uniquely high concentration of premises (approx 370) in the central business district.

Wellington City Council has a strong commitment to safety and has implemented a range of initiatives such as the Liquor Licensing Policy, a 24/7 liquor ban in the Central Area, CCTV, Walkwise and annual safety education campaigns. Despite these efforts, Council surveys show a continuing trend in the decline of the public's perception of safety in the central city at night and an increase in concern from residents about the impact alcohol and drug use is having on the city.

### **4. Object of the Act** (See Law Commission p219)

Wellington City Council supports the Commission's view that the 'Object of the Act' needs to be more specific. There needs to be tighter more explicit requirements on those that supply, sell and consume alcohol if councils are to create an environment that supports a moderate drinking culture.

## 5. Supply Controls (See Law Commission p111-160)

Given the regulatory functions of local authorities in their role as District Licensing Agencies, this section of recommendations is of particular significance to Wellington City Council. Where possible, the submission illustrates how the preferred option strikes an acceptable balance i.e. reducing alcohol-related harm whilst at the same time retaining the economic and social benefits responsible alcohol consumption has for this city.

A key concern is that many of the preferred options signalled by the Law Commission have resource implications for local authorities. Councils should not be viewed as the default provider of additional services and changes to regulatory structure which require additional resources cannot be absorbed by local authorities in the current climate. Many of the Commission's preferred options have operational and service delivery implications for Wellington City Council and these are highlighted in the commentary. Those resourcing implications must be addressed.

### 5.1 *Licence Options* (See Law Commission p234)

#### ***Wellington City Council supports options:***

**B) *Leave the system as it is, but remove the existing exemptions from the need to obtain a licence for some or all of the following: chartered clubs, police canteens, defence establishments, fire-fighters' facilities, and parliament;***

**D) *Increase the licence fees to better reflect the costs that the granting of a particular licence is likely to generate;***

**E) *Create a graduated licence fee structure to reflect the risk posed to the community by the relevant licence;***

**F) *Clarify the requirements for managers and temporary managers, and require multiple managers for large licensed premises;***

**G) *Increase the education, age and training requirements for managers and door staff working in all licensed premises.***

#### ***Wellington City Council recommends:***

The club licence category is removed from the Act and instead, clubs apply for on-licences.

Licensing fees be set by local councils.

Legislative criteria is set out to assist Councils determine risk factors and set fees.

There is no evidence to suggest the current four licence system is not working.

### ***Club Licenses***

Given the proposal to “*allow the licensing decision-maker to impose any licence condition it considers appropriate for the purpose of reducing alcohol-related harm*”, the Commission could further consider the rationale for the club-licence category. The club-licence category could be removed from the Act and clubs could apply for an On Licence. Recognition of the status as a club should be reflected as a condition on the licence which reflects the limit of service to members or their guests.

The issue of a certified manager being required on site could also be dealt with as a condition on the licence. DLAs can assess the scale and nature of the clubs operations and determine whether or not a certified manager is required on site at all times. In keeping with the Object of the Act, there should be few exceptions to this requirement.

The Council supports the removal of exemptions (i.e. Police, Fire Service, Army, Parliament). Alcohol consumption, alcohol-related harm has no boundaries, therefore every situation that involves the sale, supply or consumption of alcohol should be subject to the regulations imposed by government<sup>1</sup>.

The DLA functions of this Council are not fully recovered by the fees received from the licensing process. Approximately 60% of these services are ratepayer funded. The options here do not specifically provide for territorial authorities to determine a fee or fee structure for applications but note this is an option considered in respect of changes to the DLA (See section 5.4).

The cost of monitoring and managing poorly performing licensed premises is significant, therefore any ability for Councils to develop a fee structure which enables increased cost recovery and the ability to structure fees according to risk and/or performance is critical to the improved performance being sought by both the Auditor General in his 2007 performance report of Liquor Licensing by territorial local authorities, and that signalled by the Law Commission.

Licensing fees should be set locally. Local authorities via their DLAs should have the authority to set their own fees in relation to licences under the Sale of Liquor Act. This is consistent with local authorities' ability to propose, consult on and set fees under the Local Government Act for the other activities and services they provide. The Council would however, find legislative criteria around determining risk and the setting of fees helpful.

There is a need for clarification of the requirements for managers and temporary managers, and a requirement for multiple managers for larger premises. A local alcohol policy could determine the level at which multiple managers were required.

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<sup>1</sup> The Dominion Post (Monday 7 September 2009). ‘*Cop drives drunk from police bar.*’

There is also a need for increased education, age and training requirements for managers and door staff working in all licensed premises.

In addition to general support for clarification around the number of managers required on licensed premises, the Council recommends specifying that managers of large premises (i.e. premises exceeding an occupancy rate specified in a local alcohol policy), receive endorsed certificates indicating further training around crowd control, relationship management and basic first aid.

Related and interdependent options:

- Requirement for local policy
- Enhanced enforcement Options

## 5.2 *Liquor Licensing Authority* (See Law Commission p234/5)

***Wellington City Council supports option:***

***D) Retain the Licensing Authority as the specialist regulator but give it enhanced powers and functions, for example to:***

- *monitor and report on trends and adjust aspects of sale policy like promotions.*
- *award costs.*
- *impose fines on licensees, managers and staff of licensed premises for breaches of any of the provisions of the Act.*
- *enhance the flow of data from inspectors, police, District Licensing Agencies (DLAs), medical officers of health, and licensees.*
- *implement quality control of DLA output and compliance.*

***Wellington City Council recommends***

Abolishing lay membership on the LLA and instead establish a position for another sitting judge based in Auckland.

Wellington City Council supports a specialist authority presiding over matters under the jurisdiction of New Zealand's Liquor Laws. Specialist advice will be critical to the implementation of a new regulatory framework.

The current tribunal structure also allows for a slightly more relaxed, less formal approach to court proceedings. This has been beneficial to those in the community wishing to be heard on a matter, and to the DLAs, many of whom allow experienced inspectors to take and represent cases before the LLA.

Wellington City Council is concerned that currently, a licensee can continue to operate unsanctioned for up to three or more months following an application for variation and/or suspension being lodged. That is, the performance is such that the



DLA is seeking sanctions yet delays in obtaining a hearing mean the activities can continue unsanctioned for several months. This has resulted in the Wellington DLA and Police using voluntary suspensions to deal with some cases of non-compliance. The proposal to enhance the powers and functions of both the LLA and DLA will help to formalise these arrangements (see section 5.4).

The current level of resources at the disposal of the LLA is insufficient for the increase in workload experienced since the 1999 amendments. A larger, more adequately resourced LLA should reduce such delays and improve enforcement processes.

The Council notes the Commissions consideration of the multi-member structure of the current Liquor Licensing Authority (9.207 - 9.211). The Council recommends the abolishment of lay membership, and its replacement with a permanent sitting judge in Wellington covering the lower North Island and South Island with a corresponding sitting Judge dealing with the upper North Island.

### **5.3 *Purchase/Drinking Age Options*** (See Law Commission p233)

***Wellington City Council supports option:***

***C) Create a split purchase age - that is, leave the minimum purchase age at on-licenses at 18 and increase the minimum purchase age at off-licenses to 20 years.***

The impact of this on the Council's regulatory role is low. Whilst the Council has little evidence to suggest underage consumption on licensed premises is a problem, there is some evidence to suggest that off licence sales to minors and the on-supply of alcohol (that is the supply from legal purchasers) to minors is a problem.

## 5.4 *District Licensing Agency Options* (See Law Commission p235)

### ***Wellington City Council supports option:***

#### ***C) Enhance the powers and functions of DLAs, for example by:***

- *Requiring higher levels of performance and reporting from DLAs.*
- *Allowing local authorities to keep the fines imposed as a result of their prosecutions.*
- *Providing for mandatory training for their inspectors.*
- *Enabling the setting of fees for the issuing of licences to allow the DLAs' functions to be performed effectively.*
- *Ensuring that DLAs' decisions are independent of the Council of the relevant local authority.*
- *Specifying by statute a particular membership for DLAs.*

### ***Wellington City Council recommends:***

Mandatory training for DLA Committee members. This could be provided by the Alcohol Advisory Council of NZ (ALAC).

In light of the recommendations in the Auditor General's report on liquor licensing by territorial local authorities', the Council does not believe the status quo is an option. Abolishing DLAs and incorporating their functions into a central body would not further the proposed object of the Act. Councils are best placed to significantly influence a change in the drinking environment given the appropriate structure, resourcing and legislative levers.

Wellington District Licensing Agency (Regulatory Processes Sub Committee) has delegated to the Chief Executive all of the Secretary's powers, duties and discretions as relate to any matter (including signing authority) that is the subject of an application to which no objections have been received. The Chief Executive has delegated these functions to officers.

The structure of the DLA is premised on a process of efficient, robust, and consistent decision-making around the issue of licences in Wellington City. There are benefits to ensuring broader opportunities for community input into the decision making process, particularly where there is some community opposition and/or an applicant is seeking non-standard operating conditions.

It is not clear in the options proposed how the Commission intends to enact its vision of a "*...vital and involved DLA that takes ownership of the issues in its area.*", other than indication within option c) that it intends to require:

- higher levels of reporting and performance from DLAs.
- specifying by statute a particular membership for DLAs.

Some change to the structure of DLA operations coupled with improvements in the effectiveness and efficiency of the process for notifying the public of licence applications could enhance the decision making process.

The Council supports the enhanced powers and functions of DLAs and proposes the following model:

#### Membership of DLA

DLA chaired by elected representative and appointed members. Quorum of three required.

DLA's need to be able to seek expert advice as required. This may be reflected in flexible membership arrangements. It is important that legislation is specific and clear about the composition, role, function and powers of the DLA.

#### Delegated Functions

All matters consistent with DLA Policy be delegated by the DLA to officers.

A well constructed policy guides decision making on the majority of cases. Unless the DLA has the discretion to delegate and receive enhanced enforcement powers, the structure outlined here is of little use.

#### Non-Delegated Functions

The DLA committee hears urgent matters related to enforcement activity and applications to operate outside current policy, or at the request of the applicant, Police, DLA Inspector, for example;

- Police or DLA Inspector requests an urgent hearing to impose sanctions for serious breach of Act whilst awaiting LLA hearing
- Opposition from Inspector or reporting agencies regarding the type of licence or conditions sought (i.e. conditions sought are outside of policy), or;
- The application has attracted opposition and the applicant would like an opportunity for the DLA to mediate a resolution, prior to an LLA hearing.

If increased powers are invested in inspectors i.e. the ability to request an urgent hearing, or in the case of Police an additional power to close a bar immediately, then a DLA hearing may be convened for such matters. In some cases, the ability to impose a temporary suspension or restrict conditions subject to the scheduling of an LLA hearing would ensure an immediate response to a serious breach of the Act, something the current system does not provide for.

In the case of an opposed application when the applicant seeks a DLA hearing, the DLA could take into account all relevant reports, submissions; hear any public opposition and review the application of the local alcohol policy in an attempt to mediate a resolution. If no resolution found, that is, the application remains opposed then the file proceeds to the LLA for determination.

This model represents a mediatory process, providing the applicant and reporting agencies with an opportunity to mediate a resolution thereby avoiding the cost and delay of an LLA hearing. It is a model that would address identified structural flaws within the current system and cater for a super city arrangement down to smaller provincial agencies. It would improve transparency around decision-making, provide increased opportunity for community input and, if a resolution is achieved, deliver timelier outcomes for all parties. DLA's should be required to set out this process in their alcohol policy.

Once again, it is critical that the Commission recognises additional costs will be incurred as a result of changes and therefore the Commission must turn its mind to greater resourcing of DLAs.

A mandatory training requirement for DLA Committee members is required, this could be provided by the Alcohol Advisory Council of NZ (ALAC).

The Council's support for local authorities through their DLAs having the ability to set fees is discussed in section 5.1. However, the issue is expanded on here in the context of cost recovery associated with non-compliant premises.

Those who cause the harm should bear a significant share of the cost of monitoring and enforcement. The current fees set out in the Act make no allowances for scale or type of operation, for example, the risk associated with a café in a suburb selling alcohol with food (max of 30-40 patrons) during limited hours of operation is far less than that posed by a bar in Courtenay Place open 24 hours, offering limited food and with a capacity of up to 2000 patrons.

Flexibility around fee setting at a local level would ensure the targeting and cost recovery incurred through monitoring and enforcing legislative compliance. A graduated fee structure based on risk would be a fairer system that ensured those that contribute to a greater share of alcohol-related harm paid a higher price depending on the risk their proposed operation posed to the community.

For example, an on-licence assessed as high risk might have a standard application fee that included 3 annual inspections. If monitoring of the premises resulted in detection of non-compliance and additional inspections were required then the local authority should be able to charge additional inspection fees. This is not only fairer to compliant operators but focuses limited enforcement resources where they are needed most.

Currently, the cost of taking a prosecution outweighs the level of fines imposed. The proposed ability for DLAs to recover fines imposed under enhanced enforcement powers is unlikely to fully cover the costs of prosecution.

Allowing territorial authorities to set fees will support improved performance from DLAs'. The mandatory training of inspectors will also improve the performance of DLAs.

Related and interdependent options:

- Requirement for local policy
- Enhanced enforcement Options
- Ability to set hours locally
- Ability to set fees and fee structure locally
- Increased opportunity for community input

## 5.5 *Licence Criteria and Objection Options* (See Law Commission p235)

***Wellington City Council supports options:***

***A qualified option B):***

***B) Change the law to allow the licensing decision-maker to refuse licences on wider grounds than at present, for example, on grounds that:***

- *the overall social impact of the licence is likely to be detrimental to the well-being of the local or broader community, taking into account matters such as the site of the proposed premises, the density and type of other premises in the area, and the health and social characteristics of the local population;*
- *granting the licence would be inconsistent with the object of the Act;*
- *the amenity, quiet or good order of the locality would be lessened by the granting of the licence;*
- *the licence would be inconsistent with the relevant local alcohol policy.*

***Qualification- Wellington City Council supports*** social impact assessments insofar as they are an assessment mechanism for non-standard applications and/or those deemed high risk.

***C) Allow the licensing decision-maker to impose any licence condition it considers appropriate for the purpose of reducing alcohol abuse***

***D) Widen the category of persons who can object to a licence application.***

***E) Specifically authorise medical officers of health to report on all types of licences and licence renewals***

***F) Better define and strengthen the criteria for the suitability of licence applicants.***

***G) Improve the effectiveness and efficiency of the process for notifying the public of licence applications.***

***Wellington City Council recommends:***

A close down period for public notification of applications consistent with the close down period in the current Act for determining applications.

The LLA provide criteria to guide alcohol policy development.

***Wellington City Council is strongly opposed to:***

The LLA having final approval over local alcohol policies.

- *Social Impact Assessments*

Social impact assessments could be an important aide in determining suitable conditions to impose on certain licences. In principle, the Council supports the concept; however if pursued, additional funding to perform this function *must be* a consideration in the Commission's final recommendations.

The Council supports social impact assessments insofar as they are an assessment mechanism for non-standard applications.

- *Alcohol Policy*

The Council supports decision-makers taking account of local alcohol policies but is strongly opposed to any consideration (see 9.87) that might lead to the LLA having final approval over local alcohol policies. Final approval for council policies appropriately rests with the local authority engaged in the process. If final approval rested with the LLA this may fetter its discretion on a case by case basis. There is however a role for the LLA in providing DLAs with guidance around alcohol policy development.

The Council is in favour of allowing the licensing decision-maker to impose any licence condition it considers appropriate for the purpose of reducing alcohol-related harm.

This option is a significant tool for DLAs, offering flexibility in mitigating the risks of particular types of operation, location and target markets. There is potential for litigation so this option should be supported with a set of guidelines for determining 'reasonable or appropriate conditions' which DLAs must have regard to.

Whilst in principle the Council supports the increased involvement of the MOH, it has some concerns around reporting timeframes. The MOH must be adequately resourced to report regionally on all types of applications. If the Commission was to put forward there must be further consideration of resources and reporting timeframes.

There is scope for improvements in the effectiveness and efficiency of the process for notifying the public of licence applications.

A more cost effective method for notifying the public of applications would be to either regularly list applications received in major newspapers with a published link to a website where further details pursuant to the Sale of Liquor Act are displayed, or to promote in regular Council advertising space the website location as THE place to look for public notification. This is a more effective way of ensuring interested parties can monitor what was happening in their area. DLAs would be able to negotiate a discounted fee for regular space and the costs associated with this type of advertising could be a consideration of determining the licensing fee.

The Council considers there should be a close down period for public notification of applications, and that this should be consistent with the close down period in the

current Act for determining applications. This would mean no public notification from 20<sup>th</sup> December to 15<sup>th</sup> of January.

Related and interdependent options:

- Requirement for local policy
- Enhanced enforcement Options
- Ability to set hours locally
- Ability to set fees and fee structure locally

## 5.6 *Hours* (See Law Commission p236)

***Wellington City Council supports option:***

*F) Allow each territorial authority to specify policies regarding opening hours and conditions around opening hours in a local alcohol policy, and require the licensing decision-maker to take this into account in licensing decisions.*

***Wellington City Council is strongly opposed to:***

A standard set of hours applied nationally.

Local authorities must have the ability to tailor hours allowing for the particular requirements of a city's community to be taken into account.

The sale and supply of alcohol in Wellington city and the entertainment reputation that attracts residents and visitors to the CBD is vital to not only the economy, and social cohesion within jurisdictional boundaries but also this city's position as a creative hub that takes pride in staging major and exciting events for all sectors of the population.

The ability to set hours in consultation with the community is vital if local Councils are to effectively manage the sale and supply of alcohol in their respective jurisdictions. It provides for the flexibility needed in determining the appropriate level of operation given a particular location in the community and allows for a graduated set of hours licensees earn the right to operate.

With this comes associated spin offs such as noise issues, litter and alcohol related crime and violence. However, the Council's services are planned to mitigate where possible the negative aspects of this activity, for example, noise monitoring, CBD cleaning schedules, city safety planning, monitoring and enforcement, a CBD liquor ban and key stakeholder relationships with Police and ACC.

The reality of street activity in the early hours of Thursday, Friday, Saturday and Sunday mornings can be alarming. What is needed are greater flexibility and scope

for DLA functions and the appropriate enforcement levers for both the DLA and Police.

A well crafted policy around operating hours has the ability to reward the responsible operator and provide for the responsible drinker.

The ability for example, for DLAs to set fees that more accurately reflect the risk to the community of a particular type of operation, charge for additional inspections, utilise new enforcement powers and operate a DLA structure that provides for prompt responses to breaches of the Act, provides a strong incentive for all players. These changes would give Councils the levers required to ensure compliance and see policies work as they were intended.

There are some risks attached to the proposal for a national standard set of hours and a one way door policy. The mass exodus of patrons onto the city streets could lead to issues of congestion that promote confrontation, for example around taxi availability. It would also unnecessarily restrict responsible operators and hinder economic development. From an 'Events Capital' perspective, a national standard does not cater for regional differences.

Related and interdependent options:

- Requirement for local policy
- Enhanced enforcement Options

## **5.7 Prohibited Days** (See Law Commission p236)

*Wellington City Council supports option:*

*B) Maintain status quo, but specify the hour at which the prohibition begins, for example, 2.00am.*

The Wellington DLA reports that it would be operationally preferable if it was clearly articulated what time the prohibited days begin and recommend in today's climate that 2.00am is appropriate.



## 5.8 *Types of Off-Licence* (See Law Commission p237)

### *Law Commission option:*

*B) Irrespective of the type of premises, allow an off-licence to be issued provided the application meets the general licence criteria, (for example, the overall social impact of the licence is not likely to be detrimental to the well-being of the local or broader community).*

### *Wellington City Council recommends an amended option:*

*B) Irrespective of the type of premises, allow an off-licence to be issued provided the application meets the general licence criteria, or where a social impact assessment is required by its local policy, that the overall social impact of the licence is not likely to be detrimental to the well-being of the local or broader community.*

The current statutory provisions concerning the types of premises in respect of which off-licences may be granted are confusing and have led to substantial litigation. Proposals to further define the distinction between for example grocery stores and dairys are problematic.

Wellington City Council agrees with the Commission when it states that...‘where the application meets the general licence criteria that should be sufficient’ and that what is required is an assessment of risk in each case. The Council believes the focus on operating restrictions regarding off licence sales should be based on the level of risk the operation poses to the community.

Option B) as it is written in the consultation document implies a social impact assessment would be part of general criteria. It is the Council’s view (see 5.5) that social impact assessments should be discretionary.

Related and interdependent options:

- Purchase/Drinking Age
- Requirement for local policy
- Enhanced enforcement Options
- Ability to set hours locally

## 5.9 *Licence Renewal* (See Law Commission p237/8)

***Law Commission option:***

***B) Provide for three-yearly applications for renewals of licences, but remove the requirement to advertise the application for renewal unless changes to the licence conditions are sought.***

***Wellington City Council recommends an amended option:***

***B) Provide for three-yearly applications for renewals of licences, but remove the requirement to advertise the application for renewal unless changes to the licence conditions are sought and/or public / reporting authority opposition is registered.***

Public complaints, adverse reports from reporting agencies and/or enforcement action over the last renewal period should serve as grounds for requiring public notification. The Council proposes an amended option B).

Related and interdependent options:

- Split age
- Requirement for local policy
- Enhanced enforcement Options
- Ability to set hours locally

## 6. Demand Reduction (See Law Commission p163-185)

Wellington City Council in its role as the District Licensing Agency has little direct impact on the policy levers that work towards demand reduction.

### 6.1 *Promotions* (See Law Commission p239)

***Wellington City Council supports option:***

***C) Require the licensing decision-maker to take account previous harmful promotional practices in licensing decisions.***

The impact on the Council's regulatory role is low. Currently, DLA inspectors consider cases of previous irresponsible alcohol promotions in its licensing decisions and/or recommendations.

The Council considers the National Protocol on Alcohol Promotions produced by ALAC, HANZ, NZ Police and LGNZ to be critical in articulating good practice and would support any moves to formalise its use.

## **7. Problem Limitation** (See Law Commission p187-214)

As the DLA, the Council supports a simplified system that is cost effective and has timely mechanisms for requiring legislative compliance.

### **7.1 Enforcement Penalties** (See Law Commission p239/40)

#### ***Wellington City Council supports options:***

**B)** Increase the penalties for breach of licence conditions, including making it easier for a licensee to lose a licence.

**C)** Provide the police with the power to close a bar immediately to prevent further breaches of the Act or for serious public safety concerns based on behaviour in the licensed premises or in the immediate vicinity.

**D)** Provide the police and licensing inspectors with the ability to request an urgent hearing with the licensing authority if there are serious concerns or repeated breaches of the Act to expedite the Licensing Authority's consideration of the matter.

**E)** Provide for infringement notices to be issued for any technical or minor breach of the Act or a licence condition.

**G)** Provide medical officers of health with the same powers of entry as licensing inspectors.

**H)** Remove the requirement for licensing inspectors to identify themselves when entering licensed premises.

**I)** Provide a statutory process for the development and recognition of alcohol accords for the purpose of minimising alcohol-related harm, and exclude these accords from the provisions of the Commerce Act 1986.

**J)** Make it an infringement offence to present fake evidence of age documents to a licensee.

**K)** Empower licensees to confiscate fake evidence of age documents, including driver licenses, and hand these in to the Police.

#### ***Wellington City Council Recommends:***

Option **C)** Should require Police in the first instance to engage licensees and/or managers by requesting the wind down of service i.e. stop or reduce the sale of alcohol, turn off music and turn on lights, this would encourage gradual dispersal of patrons as opposed to patrons leaving premises on mass and causing ongoing issues on the streets.

Wellington City DLA has an active enforcement and monitoring regime, however, the current system lacks incentive, incentive to enforce and monitor on the part of DLAs and the incentive to comply on the part of industry.

Enforcement activity is time consuming and resource intensive. There is no cost recovery for enforcement action and licensing fees fall short of funding DLAs activities. Currently, the funding split for the DLA is 60% Ratepayer, 40% Fees.

LLA hearings are often scheduled several months after application is made by Police or the DLA for serious breaches of the Act. Because of this, monitoring and enforcement is sporadic and DLA Inspectors seldom take anything but the worst performers to the LLA, preferring to use warnings and interventions for those consistent but perhaps not so serious breaches of the Act. In some instances this is effective, in others a premise can continue to be poorly operated, with management showing only token engagement with the authorities. In these cases, improvements are short lived and usually followed by continued lapses and general poor performance.

There is a lack of enforcement tools to ensure compliance. New tools, penalties and powers would greatly enhance the ability of local authorities to ensure compliance.

The ability for Police to close a bar is important but should require Police to engage the licensee and/or bar manager and as a first option, require a wind down of service as opposed to outright closure. The Council would have some concerns about crowd control and behaviour management if Police were simply to close a bar and require patrons to leave on mass.

The options supported by Wellington City Council would enable minor matters to be dealt with immediately by way of a financial penalty in the form of an inspection fee or infringement notice, significant matters to be dealt with by way of instant sanction i.e. bar closure or urgent DLA hearing to consider interim restrictions.

This approach, coupled with the ability for local authorities to structure fees according to risk would focus licensees on compliance with the legislation and will give greater effect to alcohol policies that aim - to reduce (without delay) alcohol-related harm in the community.

## 7.2 *Alcohol in Public Places* (See Law Commission p240)

***Wellington City Council supports options:***

***E) Create an offence of drinking in a public place***

***Wellington City Council recommends:***

The ability for local authorities to apply exemptions to a national ban on public place drinking is built into any legislative framework.

***Wellington City Council is strongly opposed to:***

Option H), Empower persons other than the police (for example, persons employed by local authorities) to transfer intoxicated persons home or elsewhere for safety reasons.

Wellington City Council has had a Liquor Control Bylaw in place since 21 November 2003. The bylaw was introduced to address a gap in measures aimed at managing alcohol related behaviour and at having a city where people feel safe and free from intimidation at all times.

The Council's experience of the Liquor Control Bylaw is that it is strongly supported by the community. Whilst initially introduced in the Central Business District with a restricted set of hours that differed according to the season i.e. winter or summer, it has been amended twice and is now a 24/7 ban that extends beyond the CBD. The Council continues to come under pressure to implement bans in neighbouring suburbs.

There is a strong public perception that a ban on public place drinking creates a safer environment.

The current system using liquor control bylaws under the Local Government Act is cumbersome, provides for regional inconsistencies and in our experience is the subject of ongoing pressure for expansion. A simpler and more comprehensive system of control is needed.

The Council does not have the ability to enforce the bylaw, this sits with the Police, therefore as with other public order offences the appropriate place for this restriction is under Police jurisdiction in the Summary Offences Act.

The ability for applied exemptions must be built into any legislative framework. This would ensure opportunities for public place consumption of alcohol will still be accessible, via for example obtaining a special licence, to responsible drinkers.

A local authority could also designate appropriate areas where public place consumption could be permitted. Provisions for exemptions would have to be tightly controlled and limited in some respects to for example:

- approved events,
- areas designated suitable for the controlled public consumption of alcohol.
- on application - private social occasions

The Council is opposed to option H). Councils are not in the business of transporting intoxicated people home. Councils do not have the resources, expertise or inclination to have staff or contractors transfer intoxicated persons home or elsewhere for safety reasons.

### **7.3 Treatment** (See Law Commission p241)

***Wellington City Council supports:***

*B) Provide centres for temporary supervision for individuals who are not charged with an offence but pose a significant concern to their own or others' safety or health.*

*C) Require the need for alcohol and other drug assessment and treatment to be taken into account during sentencing in cases where alcohol and other drugs may have contributed to offending.*

*D) Develop the workforce to ensure assessment, referral and brief interventions can be delivered by appropriate professionals across sectors (for example, primary care, mental health, emergency departments, justice, corrections, education, Work and Income, ACC).*

*E) Investigate the range of alcohol-specific treatment interventions provided, with a view to determining gap areas (for example, alcohol detoxification and nationally consistent drink driving group interventions) with the potential to increase funding via the alcohol levy managed through the Alcohol Advisory Council of New Zealand (ALAC).*

*F) Fund primary care providers to deliver screening, brief interventions in a range of settings.*

*G) Investigate the feasibility of using electronic screening and brief interventions in a range of settings.*

*H) Monitor the prevalence of alcohol use disorders, and the delivery of screening, brief interventions, and referrals in primary care and emergency departments.*

The impact on the Council's regulatory role is low. However, there is a lack of appropriate detox and treatment services in Wellington, which means Wellington hospital and other hospitals in the region, are routinely the ambulance at the bottom of the cliff in terms of alcohol-related harm.

The Council supports all treatment options that result in an increased level of interventions, service provision and treatment services generally to deal with alcohol-related harm.



## 8. Summary

### Wellington City Council's Preferred Suite of Options: Summary Table

Issue (Wellington Specific)	WCC Response	Impact / Benefits to Wellington
<p><b>5.1 Licence Options</b></p> <ul style="list-style-type: none"> <li>• Exclusions inconsistent with Object of proposed Act and one could argue current Act</li> <li>• Inability to set fees locally</li> <li>• Current fee structure does not reflect risk or level of alcohol-related harm generated from particular premises</li> <li>• No distinction between size of premises and management requirements</li> <li>• Deficient training requirements</li> </ul>	<p><b>Support:</b> B) D) E) F) &amp; G)</p> <p><b>Recommends:</b> Removing club licence category Fees to be set by local councils Legislative criteria to determine risk</p> <p><b>Related/Interdependent Options:</b></p> <p>4.1 D), E) dependant on 5.4 C) 5.1 F) dependant on 5.1 G)</p>	<ul style="list-style-type: none"> <li>• Recognition that alcohol-related harm is prevalent in society, no exceptions regardless of status</li> <li>• Fees to reflect more accurately the cost of licensing, monitoring and enforcement</li> <li>• Fairer risk based fee structure for industry</li> <li>• Resources targeted to risk and associated levels of alcohol-related harm</li> <li>• Improved training and operating environment</li> </ul>
<p><b>5.2 Liquor Licensing Authority Options</b></p> <ul style="list-style-type: none"> <li>• Dissatisfaction with timeframes lead DLA &amp; Police to introduce voluntary suspensions</li> </ul>	<p><b>Supports:</b> D)</p> <p><b>Recommends:</b> Abolishing lay membership of LLA</p>	<ul style="list-style-type: none"> <li>• LLA operating with enhanced powers gives the enforcement process more teeth and provides for an increased role in development and monitoring of DLAs</li> <li>• Prospect of the appointment of two judges favours the DLA based in</li> </ul>



		<p>Wellington</p> <ul style="list-style-type: none"> <li>• A better resourced LLA should reduce hearing delays and general frustration around the cumbersome enforcement process</li> <li>• Reduced costs if LLA can impose fines instead of having to go to District Court</li> </ul>
<p><b>5.3 Underage Access to Alcohol</b></p> <ul style="list-style-type: none"> <li>• Minors purchasing from off-licence premises</li> <li>• On supply to minors</li> <li>• Alcohol related crime and disorder</li> <li>• Pressure on Wgtn Hospital A&amp;E</li> </ul>	<p><b>Supports:</b> C)</p> <p><b>Related/Interdependent Options:</b> 5.3 C) dependant on 7.1 B) through to K)</p>	<ul style="list-style-type: none"> <li>• Reduced availability</li> <li>• Anticipate less pressure on Wgtn hospital A&amp;E</li> <li>• Possible reduction in disorder offences related to young people</li> </ul>
<p><b>5.4 District Licensing Agency Structure</b></p> <ul style="list-style-type: none"> <li>• Current delegated process is efficient</li> <li>• Not transparent from public's perspective</li> <li>• Limited community input</li> <li>• Issues with prosecution process, time lags, no ability to recover costs</li> <li>• Inspector training not mandatory</li> </ul>	<p><b>Supports:</b> C)</p> <p><b>Recommends:</b> Mandatory training for DLA</p> <p><b>Related/Interdependent Options:</b> 5.4 C), dependant on 7.1 B) through to K); 5.5 B), D), G; 5.6 F); 5.1 D)</p>	<ul style="list-style-type: none"> <li>• Improved transparency and opportunity for community input</li> <li>• Improved DLA performance</li> <li>• Reduced delays between detection of offence and sanction</li> <li>• Cost recovery</li> <li>• Training becomes a requirement for DLA inspector positions</li> </ul>
<p><b>5.5 Licence Criteria and Objection Options</b></p> <ul style="list-style-type: none"> <li>• Timeframes - lengthy in terms of obtaining hearing dates &amp; decisions</li> <li>• Limited grounds for refusal</li> </ul>	<p><b>Supports:</b> C) D) E) F) G)</p> <p><b>Recommends:</b></p>	<ul style="list-style-type: none"> <li>• Flexibility to asses risk, tailor licence conditions to risk , social issues and/or community expectations around the</li> </ul>

<ul style="list-style-type: none"> <li>• Resource issues with MOH reporting</li> <li>• Current public notification inadequate</li> <li>• Limited scope for objection</li> </ul>	<p>Amended option B)</p> <p>Introducing close down period for public notification and aligning this with close down period for processing applications</p> <p>LLA providing criteria for policy development</p> <p><i>Opposes:</i> LLA having final approval over local alcohol policies.</p> <p><i>Related/Interdependent Options:</i></p> <p>5.5 B), C), D), E), F), G) dependant on 5.4 C); 7.1 B) through to K)</p>	<ul style="list-style-type: none"> <li>• Broader perspective gained through MOH reports but consideration must be given to capability i.e. resources and timeframes to mitigate the risk of increased/undue delays</li> <li>• Improved community notification</li> </ul>
<p><b>5.6 Hours</b></p> <ul style="list-style-type: none"> <li>• Current policy allows for community to set out the hours deemed acceptable for CBD and Suburbs</li> <li>• Peak times for alcohol related disorder</li> <li>• Difficult to amend extended hours once granted</li> </ul>	<p><i>Supports:</i> F)</p> <p><i>Opposes:</i> A standard set of hours applied nationally.</p> <p><i>Related/Interdependent Options:</i></p> <p>5.6 F) dependant on 5.1 D), E); 5.4 C); 5.5 B); 7.1 B) through to K)</p>	<ul style="list-style-type: none"> <li>• Continued flexibility to support broader Council strategies around Events, Social Wellbeing, Economic Development</li> <li>• Coupled with increased enforcement ability and a risk based fee structure this policy initiative will have the levers needed to ensure improved levels of compliance</li> </ul>
<p><b>5.7 Prohibited Days</b></p> <ul style="list-style-type: none"> <li>• Negative impact on city economy, particularly retailers and tourists</li> </ul>	<p><i>Supports:</i> B)</p>	<ul style="list-style-type: none"> <li>• Eliminates current confusion around the time at which the prohibition</li> </ul>

<ul style="list-style-type: none"> <li>Wellington DLA has communicated a consistent view on this issue in its annual reports.</li> </ul>		
<p><b>5.8 Types of Off-Licence</b></p> <ul style="list-style-type: none"> <li>History of confusion and dissatisfaction with current restrictions around type of premises in respect of which off-licences may be granted.</li> </ul>	<p><b>Recommends:</b> Amended Option B)</p> <p><b>Related/Interdependent Options:</b></p> <p>5.8 B) dependant on 5.3 C); 5.6 F); 5.1 D), E); 5.4 C); 5.5 B) C); 7.1 B) through to K)</p>	<ul style="list-style-type: none"> <li>Licences obtained on merit</li> <li>Ability for consideration of impact of licence type in a particular community if Object of the Act is broadened and options 5.5 B) 7 C) pursued.</li> <li>Fairer system for determining who may hold a licence</li> <li></li> </ul>
<p><b>5.9 Licence Renewal</b></p> <ul style="list-style-type: none"> <li>No current issues with process but acknowledge the current renewal cycles and fee system do not reward compliance.</li> </ul>	<p><b>Recommends:</b> Amended Option B)</p> <p><b>Related/Interdependent Options:</b></p> <p>5.9 B) dependant on 5.3 C); 5.1 D), E); 5.4 C); 5.5 B) D), F), G); 7.1 B) through to K)</p>	<ul style="list-style-type: none"> <li>Will reward and incentivise compliance</li> <li>Reduce DLA workload and enable focused monitoring of high risk/problem premises</li> </ul>
<p><b>6.1 Promotions</b></p> <ul style="list-style-type: none"> <li>No stand out issues, promotional activity has consistently been monitored and taken into account in the licence renewal process</li> </ul>	<p><b>Supports:</b> C)</p> <p><b>Related/Interdependent Options:</b></p> <p>6.1 C) dependant on 5.4 C)</p>	<ul style="list-style-type: none"> <li>Consolidates current approach for Wellington DLA and provides explicit mandate for evidence.</li> </ul>

<p><b>7.1 Enforcement Penalties</b></p> <ul style="list-style-type: none"> <li>• Current process is time consuming for both Police and DLA Inspectors.</li> <li>• Delays and resource intensive process are disincentives for action on minor infringements</li> <li>• Time delays in metering out a consequence to a serious breach of the Act reduces the impact of the message and/or punishment delivered</li> <li>• Gap in suite of tools available to Police and DLA Inspectors.</li> <li>• Limited MOH involvement</li> </ul>	<p><b>Supports:</b> B) C) D) E) G) H) I) J) K)</p> <p><b>Related/Interdependent Options:</b> 7.1 B) through K) dependant on 5.3 C); 5.4 C); 5.1 D), E); 5.5 C); 7.2 E)</p> <p><b>Recommends:</b> Option C) Should require Police in the first instance to engage Licensees and/or Managers by requesting the wind down of service i.e. stop or reduce the sale of alcohol, turn off music and turn on lights, this would encourage gradual dispersal of patrons as opposed to patrons leaving premises on mass and causing ongoing issues on the streets.</p>	<ul style="list-style-type: none"> <li>• Those that contribute to the harm bare the cost of enforcement and monitoring</li> <li>• Provides incentives for compliance as at present there are huge lags in consequences to non-compliance</li> <li>• Incentivises monitoring and enforcement</li> <li>• Provides effective levers to support policy</li> <li>• Improves information base for DLA</li> </ul>
<p><b>7.2 Alcohol in Public Places</b></p> <ul style="list-style-type: none"> <li>• Current system for implementing, maintaining or amending bylaw is time consuming</li> <li>• The Council does not have the power to enforce the bylaw</li> <li>• Public want the ability to enjoy alcohol in public places</li> <li>• Public place drinking impacts negatively on perceptions of safety</li> </ul>	<p><b>Supports:</b> E)</p> <p><b>Recommends:</b> Provision for Local Authorities to apply exemptions be built into legislation</p> <p><b>Opposed to:</b> Option H)</p> <p><b>Related/Interdependent Options:</b> 7.2 E), G) dependant on 7.1 B) through K)</p>	<ul style="list-style-type: none"> <li>• Locates an enforcement power for the Police within central legislation in line with other enforcement provisions in the Act and elsewhere</li> <li>• Provides for exceptions so controlled examples of alcohol in public places can be permitted.</li> <li>• Impacts positively on perceptions of safety across the city i.e. not just in CBD</li> <li>• Gives Police an ability to act where ever the public place consumption of</li> </ul>

<p><b>7.3 Treatment Options</b></p> <ul style="list-style-type: none"> <li>• Currently no detox facility in Wellington</li> <li>• A&amp;E services at Wellington hospital burdened by patients presenting with alcohol-related issues</li> </ul>	<p><b>Supports:</b> B) C) D) E) F) G) H)</p>	<ul style="list-style-type: none"> <li>• Wellington City would benefit from resources targeted at specialist training and treatment facilities.</li> </ul>

## **8. Conclusion**

Wellington City Council supports the first principles review of the law relating to the sale and supply of liquor in New Zealand. It represents an important opportunity to examine and influence the broader issues that impact on management of alcohol in communities at a local level.

The Council's support and subsequent recommendations represent a belief that local authorities are positioned at the heart of a community and have a unique opportunity, given the appropriate resources and tools, to manage effectively the drinking environment and influence drinking culture, more so than any organisation with responsibilities under the current Act.

Perceptions that control at a local level has failed or that centralisation of functions is required, is unjustified. Previous reforms have not provided councils with the resources, scope for decision-making or necessary enforcement tools/levers to assume adequate control over the sale, supply or consumption of alcohol to the public.

Wellington City Council strongly advocates this position is given due consideration in the Commissions review.