
REPORT 2
(1215/52/IM)

**SUBMISSION ON THE LAW COMMISSION'S ISSUES
PAPER 15: ALCOHOL IN OUR LIVES: AN ISSUES
PAPER ON THE REFORM OF NEW ZEALAND'S LIQUOR
LAWS**

1. Purpose of Report

The report seeks Committee agreement to the attached submission to the Law Commission regarding:

- Issues Paper 15 Alcohol In Our Lives: An Issues Paper On The Reform Of New Zealand's Liquor Laws – Consultation Document

2. Executive Summary

The Law Commission's consultation document on its first principles review of New Zealand's liquor laws brings together research and a comprehensive range of options for change. It gives a clear indication of the Commission's intentions and the rationale behind their preferences. This is the first of several opportunities the Council will have to influence change in this area.

The focus of the attached submission is largely on the supply control and problem limitation options. The Council could strengthen its management of the environment in which alcohol is sold, supplied and consumed if it was more adequately resourced and had appropriate enforcement capabilities.

Four key themes flow through our 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; we don't have the resources.
4. With the appropriate level of resources, councils can effect change at a local level around our drinking culture.

The attached submission supports a suite of options that will provide resources, support and appropriate levers to target the harm so the Council can deliver effective management of the drinking environment, reducing the harm without sacrificing economic growth or the social vitality and development of the city. It takes account of the lead role the Council plays in respect of managing alcohol in its community through licensing premises, hosting events and promoting a broad range of entertainment in the city. Given the appropriate legislative levers and enforcement tools, the Council can improve the drinking environment.

Commentary in the submission relates to issues that impact on the Council's role under the Sale of Liquor Act as the District Licensing Agency.

In particular:

Purchase Age – Support for split purchase age – that is leave the minimum purchase age at on-licences at 18 and increase the minimum purchase age at off-licences to 20 years.

Opening Hours – Flexibility for councils to decide and reflect this in local policy.

Social Impact Assessments – Supports social impact assessments for those non-standard applications and/or those deemed high risk.

District Licensing Agencies – Supports enhanced powers and functions for DLA's, particularly the ability to set fees locally and proposes an operational model.

Alcohol Policies – Supports the formal recognition of local alcohol policies in the decision-making process, recommends guidelines be developed for policy development, strongly opposes Liquor Licensing Authority sign off on local policies.

Enforcement Options – Supports a range of enforcement options that provide efficiencies, incentivise compliance and reduce time lags between detection of an infringement and sanction.

Alcohol in Public Places – Supports comprehensive national legislation that provides for local exemptions.

3. Recommendations

Officers recommend that the Committee:

1. *Receive the information.*
2. *Agree to the attached submission Appendix 1 on the Law Commission's consultation document "Alcohol In Our Lives: An Issues Paper On The Reform Of New Zealand's Liquor Laws."*
3. *Agree to delegate to the Chief Executive Officer and the Mayor the authority to edit the submission and include any amendments agreed by the Strategy and Policy Committee.*

4. Background

There are three pieces of work currently underway that relate to reform of the Sale of Liquor Act:

- *A Government Bill: The Sale and Supply of Liquor and Liquor Enforcement Bill.*

This bill amends the Sale of Liquor Act 1989, the Summary Offences Act 1981, and the Land Transport Act 1998 to implement recommendations arising from recent reviews of the sale and supply of liquor to minors, and sale of liquor and liquor enforcement issues. It also introduces a new system of enforced self-regulation of alcohol advertising.

- *A Private Members Bill to make wider provision for objections to applications for on-licences and off-licences.*

Sponsored by George Hawkins, this bill seeks to amend the Sale of Liquor Act 1989 to make wider provision for objections to applications for on-licences and off-licences. The bill allows any person to object to an application. However, the objector must be able to provide evidence of adverse impact on the objector if the application were to be granted.

- *The Law Commission review of NZ's liquor laws.*

The Law Commission was asked by Government to conduct a first principles review of New Zealand's Liquor Laws. The consultation paper "Alcohol in our Lives: An Issues Paper On The Reform Of New Zealand's Liquor Laws" was released on 31 July 2009 by the Law Commission. Submissions close 30th October 2009, with a final report to Parliament due mid 2010. This report presents the Council's submission.

The Law Commission does not make policy, it makes recommendations. Those recommendations are presented to Government which would then need to draft a bill to take account of any recommendations for reform that it agrees with. It is envisaged by the Commission that a bill could be introduced to parliament before the end of 2010.

The responsible Minister, Simon Power stated his intention that the Commission's work will complement the two bills currently before the House and that all three will be merged and considered together early to mid 2010.

5. Discussion

5.1 *Purchase Age*

The attached submission supports a split purchase age. This would see the purchase age from an off-Licence i.e. bottle store or supermarket revert to 20 and the purchase age from an on-Licence i.e. restaurant or bar remain at 18. This option supports 18 year olds consuming alcohol in supervised environments but limits those under 20 accessing alcohol and in doing so reduces some of the harm associated with unsupervised alcohol consumption.

5.2 *Opening Hours*

If Councils are to effectively manage the environment in which alcohol is made available to the public, they must have the flexibility to specify a policy regarding opening hours. In this respect, a local policy would:

- Take account of local amenity values, the particular nature of specific communities and be subject to public consultation.
- Incentivise 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.

5.3 *Social Impact Assessments*

The attached submission supports a change in the law to allow the licensing decision-maker to refuse licenses on wider grounds than at present, and supports social impact assessments for non-standard applications that are not covered by existing policy or that are deemed high risk.

5.4 *District Licensing Agencies*

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

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.

However, there is dissatisfaction with the current operation of DLAs across the country evidenced in a report on liquor licensing by territorial authorities issued by the Auditor General in 2007 and in the Commission's vision of a "*...vital and involved DLA that takes ownership of the issues in its area*". It is not clear how the Commission intends to enact its vision 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.

Whilst it is not entirely clear how the Commission intends to achieve this through the options set out in the consultation document, 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.

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 would enhance the decision making process.

Wellington City Council's Proposed Model:

Membership of DLA

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

DLAs should 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.

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 is compromised.

Non-Delegated Functions

The DLA committee meets to hear urgent matters related to enforcement activity and applications that seek to operate outside current policy, or at the request of the applicant, 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.

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.

Currently, application fees are prescribed in the Sale of Liquor Act. Local authorities should have the ability to set fees. This would:

- Allow for a fee structure based on risk, one which takes account of the type and scale of the operation and its likely impact on the community
- Ensure fees reflect the cost to the Council related to decision-making, monitoring and enforcement of licensed premises
- Allow for additional charges to be imposed when compliance driven inspections are required
- Provide an incentive for monitoring by local authorities and an incentive to comply for licensees.

5.5 Alcohol Policies

In this new operating environment, comprehensive alcohol policies are vital. They would take account of a broad range of issues, the Council's functions and powers. The attached submission supports local policies being formally recognized in the decision-making process, and the Liquor Licensing Authority providing guidelines for policy development, but strongly opposes the LLA having final approval. Final approval for local policies appropriately rests with the local authority engaged in the development process.

5.6 Enforcement Options

The enforcement options supported in the attached submission would enable minor matters to be dealt with immediately in the form of an infringement notice or inspection fee, significant matters could be dealt with by way of instant sanction i.e. the wind down of service in a bar leading to closure and/or urgent DLA hearing to consider interim restrictions in lieu of an LLA hearing date being scheduled.

5.7 Alcohol In Public Places

The current process for restricting drinking in a public place is time consuming, provides for regional inconsistencies and in our experience is the subject of ongoing pressure for expansion. A simpler more comprehensive system of control administered by those with the powers to enforce it is preferred. The attached submission supports a national legislative approach to this issue which makes provision for local exemptions.

See attached Appendix 2 for a summary of options for alcohol in public places and the preferred option set out in the submission.

7. LTCCP Implications

There are no LTCCP implications at this stage. These will be assessed once the final form of the legislation becomes clear.

8. Conclusion

The attached submission responds to the Law Commission's discussion document. It focuses on the role of local authorities and highlights funding shortfalls.

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.

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Supporting Information

1) Strategic Fit / Strategic Outcome

The submission supports Council's overall vision of supporting economic growth, building strong, safe and healthy communities for a better quality of life.

The submission supports Council activities as a regulator under the Sale of Liquor Act 1989, its role as a regulator of public health and as a facilitator of community safety.

Agreement to the submission will contribute to the Council meeting the outcomes:

- *Wellington will feel safe in all parts of the city.*
- *Wellingtonians will be healthy and experience a high quality of life.*
- *Opportunities for active and passive recreation are diverse, safe, affordable, accessible and attractive*
- *Wellington's CBD will be the region's premier retail, entertainment and commercial district.*

And, its long term outcomes detailed in 6.1, 6.5 and 6.6 of the Social and Recreation Strategy.

2) LTCCP/Annual Plan reference and long term financial impact

None. This is a submission on proposed recommendations to Government. At this stage there are no direct implications for local government.

3) Treaty of Waitangi considerations

None.

4) Decision-Making

This is not a significant decision. This submission is the first opportunity of many the Council will get to influence legislative change.

5) Consultation

a) General Consultation

Limited to internal business units, Youth Council and some key external organisations such as Police, Alcohol Advisory Council of NZ and ACC.

b) Consultation with Maori

This report does not require consultation.

6) Legal Implications

None. This is a submission on proposed recommendations to Government. At this stage there are no legal implications for local government.

7) Consistency with existing policy

This report recommends certain measures which are inconsistent with some existing WCC policy, such as national restrictions on public place drinking. These measures are recommended despite this inconsistency for the reasons detailed in the report but especially because the enforcement provisions related to this restriction rest with the Police and should therefore sit within a national legislative framework.