

**Submission to the Justice and Electoral Select Committee**

**In the matter of**

**ALCOHOL REFORM BILL**

**From Wellington City Council**

**February 2011**

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## 1. About this submission

Wellington City Council aims for a vibrant, active city which has a thriving entertainment district. Relevant Council outcomes include:

- *Wellingtonians 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.*

The Alcohol Reform Bill provides an opportunity to support and enhance the lead role that the Council plays in managing alcohol in its community through licensing premises, events, promoting a broad range of entertainment, keeping people safe and managing effects on city amenities and giving local communities more say over the management of alcohol in their area.

Wellington City Council is encouraged that the Bill, as introduced, reflects many of the recommendations Council made in its October 2009 submission to the Law Commission. In line with Council's submission, the Government has proposed a split purchase age, a fee structure that is based on an assessment of risk and premised on a cost recovery model, flexibility for local authorities to set trading hours, broader grounds on which decision-makers can refuse licenses, increased community input to decision-making processes, some new enforcement options and recognition of the important role local alcohol policies play in allowing communities to set limits around the sale and supply of alcohol.

However, there remain some significant financial and operational implications in the Bill for Council's ability to effectively manage alcohol in our community.

Wellington City Council considers that these aspects should be addressed by the Select Committee to give better effect to the underlying principles of the reforms. The focus of this submission, therefore, is on the financial, operational and social implications the draft legislation would have on Council's ability to manage alcohol, if implemented as drafted.

Three key themes flow through this submission:

1. Wellington City Council supports the intent of the reforms reflected in the draft legislation, particularly those related to increased emphasis on harm reduction, community involvement and cost recovery.
2. Local authorities play a central role in managing the sale and supply of alcohol in New Zealand. Decision making structures must be both effective and cost efficient to support that role. This implies clear lines of

accountability and delegation of straightforward and non-contentious decision making.

3. Many of the proposed legislative changes have significant resource implications for territorial authorities. It is critical that fee setting mechanisms reflect the specific contexts in which each territorial authority operates. This implies relevant fees should be set locally to, as far as possible, achieve cost recovery. Where relevant, infringement revenue should also be retained by territorial authorities to partially offset enforcement costs, and to minimise the extent to which good operators (or ratepayers) are required to fund enforcement action against poor operators.

Commentary focuses on those aspects of the Bill where it is Council's view that the proposed provisions would adversely and significantly impact on Council's resources, operational structure and ability to manage alcohol in the community. Council has also contributed to the development of, and supports, Local Government New Zealand's submission which includes detailed responses to many aspects of the Bill.

## **2. Overview**

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

The activity of local councils affects the lives of every resident and visitor on a daily basis through services such as roads, rubbish, sports facilities, housing, safety, community facilities and events. Councils are at the heart of communities and are well positioned to contribute strongly to change around alcohol consumption. To do so, though, councils need the right structure, levers and the appropriate level of funding to be effective.

The Bill focuses on improving controls on alcohol supply and consumption through creating an effective regulatory and enforcement regime, and through empowering communities to establish and maintain safe, healthy environments in respect to alcohol.

This submission identifies a number of areas where improvements to the Alcohol Reform Bill will further enhance the efficient and effective operation of alcohol controls, and reinforce community empowerment.

The new regime will place significant additional demands on territorial authorities. It is important that, as far as possible, those additional demands are appropriately resourced. It is also important that the regulatory regime is designed to operate as efficiently as possible.

Territorial authorities currently operate in a legislative environment that assumes territorial authorities can ascertain their own communities' aspirations

through consultation; that they can regulate their own fees within legislative parameters; and that they can efficiently manage their business through considered use of delegation.

The submission identifies several areas where the Bill takes an overly conservative approach to allowing territorial authorities the independence to effectively and efficiently manage alcohol in their own communities.

### **3. Discussion points**

#### **3.1 Local alcohol policies - Subpart2**

The current provisions in the Bill do not provide for existing policies relating to liquor made under the Sale of Liquor Act to be considered alcohol policies under the new Sale and Supply of Alcohol Act.

The Bill establishes very specific process requirements for the development of Local Alcohol Policies. Specifically, a Territorial Authority must:

- Consult with Police, inspectors and the Medical Officer of Health
- Assess a range of specified demographic, social, commercial and environmental factors
- Develop a “draft” Local Alcohol Policy using the Special Consultative Procedure (s83 LGA 2002).

The draft policy is then subject to limited appeal rights (submitters only) to the Licensing Authority (against its fit with the objectives of the Sale and Supply of Alcohol Act).

Appeals (and subsequent potential appeals to amendments arising) have the potential to extend decision making processes and considerably undermine community input. The special consultative process focuses on understanding and carefully balancing the full range of perspectives and interests within a community to establish robust policies that reflect the interests of the community as a whole.

Wellington City Council is firmly of the view that a policy established under the special consultative process should be considered final. All policies developed by territorial authorities are guided by, and subject to, any relevant legislation. There is no sound basis for introducing specific provision for challenges to ensure consistency with alcohol legislation. The potential delays created by appeals, or series of appeals, undermine Council’s mandate to deliver on our communities’ aspirations.

**Wellington City Council supports** recognition of the role local alcohol policies play in giving local communities more say over the management of alcohol in their area.

**Wellington City Council is opposed to** providing submitters the facility to appeal to the new Alcohol Regulatory Authority against a draft Local Alcohol Policy that has been developed using the special consultative procedure set out in the Local Government Act 2002. Wellington City Council's view is that a Local Alcohol Policy developed using the special consultative procedure should be considered final. Consequently we recommend deletion of clauses 80 – 87.

### 3.2 Decision making structures – clause 175

The Government proposes to establish a new District Licensing Committee (DLC) to replace the current District Licensing Agency model. The DLC is required to determine all applications.

The DLC will comprise a chairperson (who must be a territorial authority member - ie a councillor or a community board member) and two members. The chair and one member make up a quorum. There are strict criteria for the appointment of suitable members to the committee. Members must be selected from a list of licensing committee members established by the territorial authority (or jointly with other territorial authorities). Listed licensing committee members must have experience relevant to licensing matters, but persons with interests in the alcohol industry are excluded from membership.

This structure seeks to achieve better community involvement in the decision making process for licences. This intent was supported in principle in WCC's submission to the Law Commission.

The decision-making model proposed in the legislation has significant resource and operational implications for local authorities. Currently the Wellington District Licensing Agency (to become District Licensing Committee under new legislation) delegates all decision making for unopposed applications to the Secretary of the DLA (The Chief Executive), and the CE has, where appropriate, delegated this responsibility down to Officer level. Opposed applications are currently forwarded to the Liquor Licensing Authority for determination.

WCC currently receives in excess of 2000 applications per year.<sup>1</sup> If all application decisions were required to be considered by the Committee this would impose a significant workload on the elected member and appointed committee members.

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<sup>1</sup> Refer DLA annual report years 2006/07, 2007/08, 2008/09, 2009/10

The committee requirement as it is currently drafted does not provide for any delegation of the determination/decision making for licence applications to other than a commissioner.

Wellington City Council supports the opportunity for greater community involvement but due to the potential impact on resourcing for committee determinations, facility for limited delegations to the CEO (Secretary of the Licensing Committee) should be included in the Bill to enable Councils to manage committee workloads more efficiently.

**Wellington City Council supports** broader opportunities for community input into the decision making process, particularly where there is some community opposition and/or an applicant is seeking conditions not provided for in either legislation or local policy. The Council also supports the flexibility the proposed District Licensing Committee structure provides for the appointment of external persons (experts) as members.

However, to allow for efficient decision making, the structure should permit the delegation of all matters that comply with current legislation, local policy and have achieved favourable recommendations from required reporting agencies.

**Wellington City Council recommends** empowering the District Licensing Committees to delegate decision-making on unopposed applications to the position of Secretary of the District Licensing Committee.

### 3.3 Implications of statutory independence of licensing inspectors – clause 184

The Bill provides that inspectors must act independently when exercising their functions. Decisions made by a District Licensing Committee are appealable by anyone appearing before the committee to the new Alcohol Regulatory Authority (including licensing inspectors).

Wellington City Council considers that inspectors employed by the Chief Executive of the local authority should not have statutory independence. There is no precedent for a territorial authority officer, performing regulatory functions on behalf of the authority, to have statutory independence in any other legislation local authorities operate under. In mounting an appeal, an inspector would effectively require a local authority to resource a challenge to its own decision.

It is, in any case, unnecessary. The inspector's recommendation represents a review of all available information, including community submission/opposition and reports from required agencies. A right of appeal available to submitters to the process and reporting agencies provides for natural justice and quality control, therefore there is no need to provide licensing inspectors with similar rights of appeal.

**Wellington City Council recommends** that inspectors employed by the Chief Executive of the local authority should not have statutory independence.

### 3.4 Closure of licensed premises by Police - clause 249

The Bill provides Police with the power to close licensed premises immediately (i.e. without first obtaining a Court Order) where:

- A riot takes place within licensed premises, or where there are reasonable grounds for believing a riot would occur
- There is fighting or serious disorder, or there are reasonable grounds for believing that fighting or serious disorder will break out within licensed premises
- There is a significant threat to public health or safety

The submission supports the removal of a requirement to obtain a court order to close a premise, however, it is our view that Police, in all but the most serious of cases i.e. a riot, should be required to develop a wind-down protocol that would see Police engage the manager or licensee and request 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 en masse and causing more issues on the street.

**Wellington City Council supports** allowing Police to close licensed premises in certain urgent circumstances without requiring a court order.

**Wellington City Council recommends** that the Bill should be amended to require Police to develop guidelines for the closure of licensed premises that includes a wind down protocol for all but the most serious of cases such as a riot.

### 3.5 Fees and infringement revenue - (clauses 246 - 7 and 382 - 388)

The Bill provides for Government to set fees in regulations. The Bill also provides that Orders in Council can be made authorising territorial authorities to prescribe fees by bylaw. The regulations will not be drawn up until after the Bill is passed into legislation. Whilst the government has indicated it intends to, as far as possible, recover the costs incurred by territorial authorities through licensing fees, there is no clear indication of the model it intends to use to calculate these costs.

Our position is clear. We are a larger territorial authority with a significant range of hospitality and entertainment venues. As such the costs incurred within our regulatory framework, i.e. wage, compliance, monitoring and those associated with the impact of alcohol-related harm may be higher than for those

of smaller territorial authorities. We are an entertainment hub for the region. It is therefore vital we have the ability, as we do under other legislation such as the Resource Management Act, to set our own fees based on a cost recovery model. We are opposed to fees being prescribed in the regulations. Councils require a flexible/responsive cost recovery model that takes account of process, monitoring and enforcement costs attached to licensing premises and the costs to the community of alcohol-related harm.

The current District Licensing Authority 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 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 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 considers that legislative criteria around determining risk and the setting of fees could be helpful.

Where relevant, infringement revenue should also be retained by territorial authorities to partially offset enforcement costs, and to minimise the extent to which good operators (or ratepayers) are required to fund enforcement action against poor operators.

**Wellington City Council supports** the principle reflected in clause 385 that as far as is practicable the costs to territorial authorities of operating licensing committees are recovered from fees payable in respect of those functions.

**Wellington City Council is opposed to** a non-specific provision that simply provides a facility for making regulations to authorise territorial authorities to set fees by bylaw.

**Wellington City Council recommends** specific legislative provisions enabling territorial authorities to set fees should be included in the Bill, broadly following the Resource Management Act 1999 model.

**Wellington City Council supports** introducing infringement offences able to be issued by licensing inspectors.

**Wellington City Council is opposed to** infringement fee revenue being paid to the Crown and a non-specific provision that simply provides a facility for making regulations to authorise territorial authorities to set fees by bylaw.

**Wellington City Council recommends** fines related to the issue of infringement notices should be payable to the issuing body.

### 3.6 Alcohol in public places (Liquor bans) – clause 402

The Bill establishes specific criteria for implementing liquor bans in an effort to improve consistency of application across the country, by amendment to the Local Government Act 2002.

The net effect of the new criteria is to require a much stronger evidential base for any decision to implement a ban. Councils will have to be satisfied that:

- “the area to which the prohibition is proposed to apply can be justified as a reasonable limitation on people’s rights and freedoms; and
- there is evidence that the area to which it is proposed to apply has experienced a high level of crime or disorder that can be shown to be caused or made worse by alcohol consumption in the area; and
- the area to which it is proposed to apply and the time for which it is proposed to apply are appropriate and proportionate in the light of that evidence”.

This serves to limit the problem to disorder and offending. However, Wellington City Council’s position has always been that the problem is also, significantly, about perceptions of safety and public alcohol consumption as a precursor to disorder and offending.

This Council has employed liquor bans both to combat safety and disorder concerns in problem areas and as a preventative tool to deal with perceptions of safety, perceptions of the intimidating nature of groups drinking, perceptions of disorder arising from rubbish, vomit etc. In this sense, liquor bans have complemented a suite of initiatives such as Walkwise officers, CCTV, annual educational campaigns, various council policies and close working relationships with the NZ Police and welfare agencies that demonstrate a strong commitment to safety, help to reduce crime and disorder and improve perceptions of safety.

Wellington City Council’s position is that alcohol-related disorder and offending or the threat/perception of this, has just as significant if not more impact in suburban settings even if it is not experienced in high levels - for example, although we had many complaints about Oriental Bay, the actual level of offences was not high but the impact of the ban was significant in terms of improving perceptions of safety and reducing complaints to Council. Broken glass, other litter and groups that congregate to drink contribute to declining perceptions of safety. A liquor ban gives the Police a proactive early intervention tool to support responses and to mitigate the downstream effects of liquor related behaviour.

It is possible that under the regime proposed by Government our bylaw would not reach the necessary evidential threshold. It may be difficult to establish

liquor bans on areas of any size as the area has to be shown to have density of offending. Our position has been that alcohol-related disorder and offending or the threat/perception of this has significant impact in suburban settings - even if it is not experienced in high levels, or reported to the Police.

The Bill extends the scope for liquor bans to include schools and other areas which may not be public places, but to which the public have access. This is paradoxical given such areas may be unlikely to present high levels of offending or disorder and would therefore not meet the proposed new threshold for a ban. It is more likely that the current immunity of such areas to liquor bans presents opportunities for alcohol consumption to migrate from nearby public spaces that are subject to a ban.

The proposed criteria in the Bill do not provide for the management of any migration of disorder or offending to a neighbouring area or location. Wellington has experienced a degree of migration with the movement of disorder from the CBD to Oriental Bay and then most recently to Newtown.

The criteria set out in the bill is, in our opinion, contrary to the empowering intent of the legislation designed to encourage public involvement in the management of alcohol in their respective communities.

Wellington City Council's recommendation to Government is that it takes a broader view of the purpose of liquor bans and that the current provisions in the Local Government Act 2002 relating to liquor bans are adequate.

Wellington City Council commissioned an independent survey of 600 randomly selected residents on the liquor ban in April this year. Seventy nine percent of survey respondents supported the ban (24/7 in the CBD, Oriental Bay and Aro Valley). This indicates a high level of support for such bans by the community.

These changes along with the new regulations setting out signage provisions have the potential for significant financial implications for many local authorities. Wellington City Council has just spent a considerable amount updating and installing signage following a recent bylaw amendment, subject to the detail contained in the regulations this may need to be repeated in the near future to ensure regulatory compliance.

Finally, the amendment to the definition of 'public place', contained within the Local Government Act 2002, to include private car parks to which members of the public have access is supported in principle. As a local authority that operates a liquor ban we have experienced problems with members of the public consuming alcohol in, for example, supermarket car parks, parking buildings and museum car parks. However, we are not sure of the extent to which local businesses and residents would want to have these spaces included in any liquor control area.

**Wellington City Council supports** legislation to provide greater national consistency in the application of liquor bans and to seek to balance competing community interests.

**Wellington City Council is opposed to** the specific criteria in the Bill as currently drafted because it creates an unrealistically high threshold and evidential base to establish a liquor ban and fails to adequately provide for the prospect of crime and disorder migrating from a liquor ban area to other areas that will not meet the threshold set in the Bill.

**Wellington City Council recommends** that the Committee should take a broader view of the purpose of liquor bans and that the current provisions in the Local Government Act 2002 relating to liquor bans are adequate.

## **4. Conclusion**

This submission has focused on the operational issues linked to the regulatory role of local authorities contained within the Bill and related funding issues. It is Wellington City Council's expectation that the final form of the legislation will produce an efficient and effective framework, one that enables local authorities to effectively manage drinking environments within their respective jurisdictions to the extent intended by government.

The Mayor and/or a representative of Wellington City Council would like the opportunity to present an oral submission on this matter.

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