
REPORT 2
(1215/52/IM)

STATEMENT OF PROPOSAL TO AMEND THE LIQUOR CONTROL BYLAW

1. Purpose of Report

To present a statement of proposal to amend the Liquor Control Bylaw. If the Committee agrees, the Statement of Proposal can be referred to Council to initiate the special consultative procedure as required by section 156 of the Local Government Act 2002.

2. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that legal advice concludes that the proposed draft Liquor Control Bylaw does not place unreasonable limitation on any rights established in the Bill of Rights Act 1990*
3. *Note that on 1 December 2005, Strategy and Policy Committee considered an evaluation of the Liquor Control Bylaw and the following options to extend it:*
 - (a) *A 24 hours per day, seven days per week ban on Cuba/ Courtenay precincts*
 - (b) *A 24 hours per day, seven days per week ban in Wellington central*
 - (c) *A general ban from 8pm Thursday to 8am Sunday*
4. *Note that Strategy and Policy Committee agreed that officers should prepare a statement of proposal to amend the bylaw to allow for a general ban from 8pm Thursday to 8am Sunday*
5. *Agree to the draft Liquor Control Bylaw (attached as Appendix 1 of the Statement of Proposal) that:*
 - (a) *prohibits the consumption and possession of liquor to public places in the Wellington Central Area as shown in the map attached to the proposed bylaw*
 - (b) *applies from Thursday 8pm to Sunday 8am*
 - (c) *applies every year on Christmas Eve, the 24th of December and New Years Eve, the 31st of December from 5pm to 8am the following day*
 - (d) *provides for Council to resolve to invoke bans that prohibit the consumption and possession of liquor for specified events or periods in specified public places.*

6. *Recommend to Council that it agrees:*
- (a) *a bylaw remains the most appropriate way of addressing the perceived problem and*
 - (b) *that the most appropriate form of bylaw is one that combines prohibition at specific times with an events based ban*
 - (c) *the bylaw does not place unreasonable limitation on any rights established in the Bill of Rights Act 1990*
 - (d) *to the Statement of Proposal (attached as Appendix 1) to amend the Liquor Control Bylaw*
 - (e) *to resolve that the bylaw proceeds through the Special Consultative Procedure as required by section 156 Local Government Act 2002*

3 Background

3.1 Process to Amend the Bylaw

Section 147 of the Local Government Act 2002 (LGA 2002) enables the Council to make a bylaw for liquor control purposes in relation to any public place. The Council used those provisions to adopt a Liquor Control Bylaw on 30 October 2003.

In making or amending a bylaw the LGA 2002 requires that the Council first determine that a bylaw is the most appropriate way of addressing the perceived problem. If it is, then the Council must determine whether the proposed bylaw is the most appropriate form of bylaw and whether it gives rise to any implications under the Bill of Rights Act 1990. The special consultative procedure contained in section 83 must be followed.

Attached, as Appendix 1, is a Statement of Proposal to amend the Liquor Control Bylaw so that a prohibition on the consumption and possession of liquor is in place from 8pm Thursday night until 8am Sunday morning. It applies to the central area excluding Thorndon and that area north of the stadium as depicted in the map attached to the draft bylaw. In addition it includes provision that the prohibition is permanently in place on Christmas Eve and New Years Eve.

The Statement of Proposal also discusses an alternative option that the ban remains as a night time ban but is amended to include Thursday night.

3.2 Timeline

If Council agree to amend the Bylaw, the special consultative procedure must be initiated. Committee agreement is sought to refer the Statement of Proposal and draft bylaw to the Council so that the special consultative procedure can be initiated and commence on 2 March 2006.

Consultation will take place in March/April with oral submissions in May. The Council would be in a position to adopt the amended Bylaw in May 2006.

The proposed timeline for amending the bylaw is:

22 February 2006	Council considers the Statement of Proposal to amend the current Liquor Control Bylaw and resolve that the bylaw proceed through the Special Consultative Procedure as required by section 156 Local Government Act 2002
2 March 2006	Special Consultative Procedure commences
6 April 2006	Written submissions close
20 April 2006	Strategy and Policy Committee hears oral submissions.
11 May 2006	Present analysis of consultation and written submissions for consideration and approval of proposed bylaw
31 May 2006	Proposed bylaw presented to Council for adoption

4. Conclusion

Officers recommend that Strategy and Policy Committee agree to the Statement of Proposal amending the current Bylaw and recommend to Council that it initiates the special consultative procedure so that there is a general ban in place from Thursday 8pm to Sunday 8am, and every year on Christmas Eve, the 24th of December and New Years Eve, the 31st of December from 5pm to 8am the following day. Such a ban would apply to the Wellington central area as defined in the attached map.

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Supporting Information

1) Strategic Fit / Strategic Outcome

This paper is consistent with Council's overall vision of Creative Wellington – Innovation Capital and contributes to Outcome 9 Safer

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

There are no financial implications. It is expected that costs associated with signage and publicity will be met from the operating budget.

3) Treaty of Waitangi considerations

The proposal will be sent to manawhenua as part of the special consultative procedure.

4) Decision-Making

This is not a significant decision.

5) Consultation

a) General Consultation

Once Council has agreed the consultative procedure required by the LGA 2002 will be initiated.

b) Consultation with Maori

The proposal will be sent to manawhenua as part of the special consultative procedure.

6) Legal Implications

The legal implications of the proposal are discussed in the background section. The proposal incorporates advice received from the Council's legal advisors.

7) Consistency with existing policy

The Statement of Proposal is consistent with existing policy.

**STATEMENT OF PROPOSAL TO AMEND THE LIQUOR
CONTROL BYLAW**

1. Introduction

This statement of proposal concerns an amendment to the Liquor Control Bylaw so that there is a prohibition on consumption and possession of liquor in public places from Thursday 8pm until Sunday 8am. The current Bylaw prohibits the consumption and possession of liquor on Friday and Saturday nights only (along with provision for the Council to invoke a prohibition for special events). This statement also proposes an amendment to the area to which the prohibition applies and includes a permanent liquor ban on Christmas Eve and New Year's Eve from 5pm on those days through to 8am the following day.

Section 147 of the Local Government Act 2002 (LGA 2002) provides for the Council to make a bylaw for liquor control purposes in relation to any public place under the control of the Council. The current Liquor Control Bylaw was adopted in October 2003 and came into effect in November 2003.

The LGA 2002 requires that a special consultative procedure is used when it is proposed to make or amend a bylaw. This Statement of Proposal has been prepared in accordance with the requirements set out in LGA 2002 s86 for the adoption of the special consultative procedure.

It includes:

- the reasons for the proposal
- consideration of whether a bylaw is the most appropriate way to address the perceived problem
- whether the proposed bylaw is the most appropriate form of bylaw
- implications under the New Zealand Bill of Rights Act 1990
- a draft of the proposed bylaw.

2 Reasons for proposal

In December 2005, the Strategy and Policy Committee (SPC) considered an evaluation of the Liquor Control Bylaw (a summary of the evaluation is included later in this statement). After considering four options, SPC agreed that officers prepare a statement of proposal to extend the Bylaw so that a liquor ban is in place from 8pm on Thursday night until 8am on Sunday morning.

2.1 Problem Definition

The Liquor Control Bylaw is concerned with addressing a gap in measures aimed at managing alcohol related behaviour. It supports the current strategic outcome that people feel safe at all times and also the draft strategic outcomes around Wellingtonians feeling safe in the city, being healthy and experiencing a high quality of life. A liquor ban is an early intervention tool that prevents the possession and consumption of liquor in public places with a view to preventing or reducing the downstream effects of alcohol consumption.

There continue to be two related aspects to the problem of drinking in public places:

1. alcohol related offending
2. an ability to proactively manage public place drinking at an early stage to support a city that is both vibrant and safe.

Alcohol related offending

Although the evaluation did not show a reduction in alcohol related offending this needs to be seen in the context of the ban being one measure amongst a suite of initiatives designed to address alcohol-related behaviour and in the context of an increasingly busy inner city. Police believe the Bylaw has helped keep a lid on offending and firmly believe that without the Bylaw in place levels of offending would have increased.

Police remain concerned about drinking in public places in central Wellington on Friday and Saturday nights and report that Thursday night is increasingly problematic due to a steady increase in the number/range of events and entertainment available in the city on these three key nights.

Findings from the Bylaw evaluation confirm that Friday and Saturday appear to be the worst days of the week for offences for which the offender stated in the Last Drinks Survey that their last drink was taken in a Wellington public place¹. Thursday night is the next most problematic. Police have asked for the Bylaw to be extended so that a ban is in place from Thursday night at 8pm until 8am Sunday morning.

Safe City Initiatives

Without the current Bylaw in place, there are no provisions for early intervention to manage the downstream effects of liquor consumption in public places. There is no provision to take pro-active steps to avoid liquor-related harm, but rather offending must occur before any action can be taken. Regardless of offending, people may feel less safe or intimidated when there is drinking in public places.

Most of the Citywise staff (82%) in the context of a 2005 survey indicated that liquor consumed in public affected public safety. This result was down only slightly on the 2003 Citywise survey result of (86%) in response to the same question.

In the context of the evaluation data collection, people reported feeling safer knowing that a ban on public place drinking exists in the Central City on Friday and Saturday nights.

It is apparent that in order to maintain a lid on alcohol-related offending in an increasingly busy inner city and to contribute to people's perceptions of safety, there remains a need to manage drinking in public places.

¹ Caveat: LDS data includes all offending in Wellington City and is not just limited to the ban area but it is worth noting that the majority of offences are committed in the Central City.

3 Is A Bylaw The Most Appropriate Way To Address The Problem?

Without a Liquor Control Bylaw there is a gap in the measures aimed at managing liquor related behaviour.

The consumption of liquor on licensed premises is regulated and supported by policies and practice that provide early intervention tools to manage alcohol-related behaviour to reduce the likelihood of disorder and offending eventuating. For example, licensees must have responsible host policies and a regime to manage on and off site problems.

The Liquor Licensing Policy establishes a framework for consistent decision-making about the sale of liquor in Wellington with the intent of reducing alcohol abuse. It is concerned with liquor consumption that becomes excessive and leads to alcohol abuse. It also acknowledges that Wellington City is an entertainment destination and the bars, clubs and taverns provide life and vitality to many parts of the City. The Council has actively supported the development of that vitality within the City.

The police run targeted operations, for example, adopting a zero tolerance policy to underage drinkers in public places. Legislation does not allow for similar measures where the person is over 18 years.

In addition the Summary Offences Act 1981, Crimes Act 1961 and Sale of Liquor Act 1989 establish offences for some liquor-related behaviour. However it is appropriate to pre-empt situations arising before offending occurs particularly at times where there is a higher risk of disorder.

Up until the introduction of the Liquor Control Bylaw, there were no similar policies or programmes to manage alcohol-related behaviour arising from drinking in public places. A ban on possession and consumption of liquor in public places sits alongside a range of initiatives that contribute to a safe and vibrant city. The current liquor ban places a limit on public place drinking thereby filling what would otherwise be a gap in the current measures. The police believe that by having a Liquor Control Bylaw they have been better able to manage an increasingly active inner city.

A Liquor Control Bylaw prohibition is not, however, a panacea. It does not, on its own:

- provide a response to offending
- reduce alcohol related offending where the liquor has been consumed on licensed premises
- address issues associated with homelessness. Those issues often arise from mental health problems or from abuse of substances not captured within the definition of liquor, for example methylated spirits, drugs or glue.

There are no other practicable options to manage public place drinking. For example, education is not a practicable option while people are drinking in public places although there are a range of education and information programmes available as early intervention measures. Education is unlikely to be helpful at the time that public place drinking is occurring. Duplicating the regime for alcohol management in licensed premises is also not practicable.

It is recommended that Council agree that a bylaw remains the most appropriate way to address the perceived problem of drinking in public places.

4 The Most Appropriate Form of Bylaw

In the context of a report on the evaluation in December 2005, Strategy and Policy Committee (SPC) considered the following options for extending the Bylaw

- Retaining the status quo
- Providing for a 24/7 ban in the Cuba / Courtenay precincts
- Providing for a 24/7 ban across the central city
- Providing for a ban from 8pm Thursday night to 8am Sunday morning across the central city

SPC requested officers prepare a statement of proposal to amend the Bylaw so that a liquor ban is in place from Thursday night through to Sunday morning. An alternative option is also discussed which suggests amending the Bylaw so that the ban continues to be in place at night time only but includes Thursday night.

4.1 Extend the general ban to Thursday 8pm to Sunday 8am

It is proposed to amend the Bylaw so that a liquor ban is in place in the Wellington central area (as shown on the map attached to the Bylaw) from Thursday 8pm to Sunday 8am. The evaluation reports that in 2002, 2003 and 2004, Friday and Saturday followed by Thursday are the worst days of the week for offending when the last drink was in a public place².

Thursday nights are becoming increasingly busy with more people in the inner city. Drinking habits are changing and more people are drinking at different times of the day. Police say that on many of these occasions a liquor ban would have been useful to prevent anti-social behaviour from escalating.

By having a continuous ban there is clarity for people in understanding when and where drinking is banned in public places and it is less likely that people will become accustomed to drinking in public places. Under the current provisions there has been some ambiguity for people with the times it starts and finishes.

² In 2005 Sunday emerged as worse than Thursday particularly in the winter months (1 May to 30 September). A new computer system was introduced in June 2005, therefore the Last Drink Survey data is more comprehensively entered and Police believe that offences occurring early on Sunday morning may previously have been recorded as occurring on Saturday and this would no longer be the case with the new system. Police maintain that Thursday is more problematic.

The police favour this option as they believe there would be greater proactive management within the city if the Bylaw was in place on Thursday night. Officers recommend this option.

4.2 Extend the general ban to include Thursday 5pm to Friday 8am

An alternative to the proposal is to amend the Bylaw so that a liquor ban is in place on Thursday, Friday and Saturday nights from 5pm until 8am the following day.

This option acknowledges that most disorder offences occur at night and that people may use public places for activities that include liquor but do not contribute to problems associated with offending and safety.

Under the current Bylaw, the prohibition starts at 8pm between November and April and at 5pm between May and the end of October until 6am the following day. This option could remove the seasonal variation in hours to either 5pm or 8pm. The seasonal variation means the ban is more complex and there has been no evidence to suggest that the activity level in the city varies across the seasons.

Three quarters of the bans invoked by Council for special events since the Bylaw was introduced have been for events on a Friday or Saturday night. That is, the current ban hours were considered inadequate for managing the event and a special ban was in place to bridge the gap between the start of event related activity and the general ban starting. To address this, it seems that 5pm would be a more practical start time for the prohibition.

Police have indicated that whilst this is not the preferred option, they would support and enforce such an amendment.

4.3 Miscellaneous Amendments

The following amendments to the Bylaw are also proposed:

- That the area to which the Bylaw applies is redefined
- That the Bylaw prohibits the consumption and possession of liquor on Christmas Eve and New Years Eve
- That provision is made for special events bans anywhere in the city

The ban area

The current Liquor Control Bylaw applies to the Central City area of Wellington as defined in the District Plan. The area is relatively large and incorporates some residential areas in Thorndon and land beyond the Stadium to Kaiwharawhara. There has been no enforcement activity beyond the Stadium or in the Thorndon area. It is proposed that the area covered by the Bylaw be amended to exclude those areas. The Police have indicated they support such an amendment.

Christmas Eve and New Years Eve

Christmas and New Years Eve have attracted special bans each year since the current Bylaw was introduced. Large numbers of people come into the city to celebrate and the potential for activity to get out of hand is high, therefore Police advise that a ban on these nights will continue to be a useful tool. It is proposed to commence the Christmas Eve and New Year's Eve ban at 5pm and continue it through to 8am. Except for 2003,

Appendix 1

the special events bans on those evenings began earlier than 8pm to prevent a situation of widespread public place drinking just prior to the ban starting. Police have advised that the city continues to have a high level activity after 6am. It is proposed that the Liquor Control Bylaw is amended so that a prohibition is permanently in place for those two evenings. That is, the consumption and possession of liquor would be prohibited from 5pm on 24 December and 31 December until 8am the following day.

Special events

The current Liquor Control Bylaw provides for the Council to agree to invoke a ban for special events within the central area as defined by the District Plan. Although there have been no events outside the central area for which a ban was considered desirable, it is feasible that there may at some time be an event for which such a ban is appropriate. Therefore it is proposed to amend the Bylaw to allow for Council to resolve that a liquor ban can be put in place for special events anywhere in the city.

Since the current ban was implemented there have been 17 special event bans approved by Council. It is expected that many events will be captured by the Thursday to Sunday ban and therefore the number of special events bans invoked annually should reduce. It is proposed that officers will continue to consult with the Police and other internal and external stakeholders to compile a list of upcoming events on a regular basis and recommend to the Council which events attract a ban. In making the recommendations consideration will be given to the size of the audience for the event, its target market, previous history and/or tradition, associated activities (for example fires associated with Guy Fawkes celebrations) and advice from emergency services.

The Proposed Liquor Control Bylaw

The proposed Liquor Control Bylaw is attached as Appendix 2. It prohibits the consumption and possession of liquor to public places from Thursday 8pm to Sunday 8am, and every year on Christmas Eve, the 24th of December and New Years Eve, the 31st of December from 5pm to 8am the following day in the Wellington Central Area as depicted in the map attached to the draft bylaw and also provides for Council to resolve to invoke a prohibition for specified events or periods in specified areas as required.

The Liquor Control Bylaw does not apply to encroachments or to licensed premises with pavement leases. The LGA 2002 provides that a bylaw does not prohibit carrying unopened liquor from licensed premises or to licensed premises provided the liquor is removed from the public place promptly.

There are some events for which consumption of alcohol is responsible, well controlled and integrated with the event. There is provision for events organisers to apply to the Council for dispensation from the ban on those occasions when those events fall within ban times. To date, no exemptions have been sought from the Liquor Control Bylaw.

It is recommended the Committee agree to the attached draft bylaw that:

- prohibits the consumption, possession and bringing of liquor to public places in the Wellington central area as shown in the map attached to the bylaw
- applies from Thursday 8pm to Sunday 8am

- applies every year on Christmas Eve, the 24th of December and New Years Eve, the 31st of December from 5pm through to 8am the following day
- allows for Council to resolve to invoke bans that prohibit the consumption and possession of liquor for specified events or periods in specified public places.

5 NZ Bill of Rights Act 1990 - Implications

Legal advice concludes that the proposed draft Liquor Control Bylaw does not place unreasonable limitation on any rights established under the Bill of Rights Act 1990.

No complaints from the public about the current Bylaw have been received by Council or the Police.

6 Liquor Control Bylaw Evaluation

In 2003, the Regulatory Committee requested an evaluation of the Liquor Control Bylaw. This was completed and the findings reported to SPC in December 2005. Overall the evaluation reported little evidence that public place drinking during ban times or offending related to public place drinking during ban times has reduced.

Awareness of the current Bylaw is high and people report feeling safer knowing that a ban on public place drinking exists in the Central City on Friday and Saturday nights (although that is not reflected in Resident's Satisfaction Survey data on perceptions of safety). There is high overall support for the current ban. Data shows that retailers and residents support the ban and Police believe the ban is an effective tool for managing an increasingly active inner city.

As at 17 July 2005, Police had given 6,056 warnings to people breaching the ban and arrested 167 people. Most arrests occur around major city events such as Guy Fawkes and New Years Eve.

The evaluation reported that Friday and Saturday continue to be the worst days of the week with Thursday emerging as the next most consistently problematic night for offending linked to drinking in public places. Offenders who state their last drink was taken in a public place are most likely to be arrested for disorder offences and whilst a time scale comparison shows the percentages have declined since the current bylaw has been enforced, it remains the highest offence category for offending linked to liquor consumed in public places.

That said, the Police advise that the Liquor Control Bylaw has been effective in managing the downstream effects of liquor related problems in the inner city. Wellington has an increasingly active inner city and this activity needs to be balanced with measures implemented to improve safety.

7 Implementation Issues

Enforcement

As provided in section 169 of the LGA 2002, the Police will continue to be responsible for the enforcement of the bylaw. The Police can:

- search a container or vehicle entering a public place
- seize and remove the liquor if the liquor is in breach of the bylaw
- arrest a person who has been asked and refused to either leave a public place or surrender liquor that is in breach of the bylaw.

The Police advise that the bylaw will continue to be used as an early intervention tool. That is, people breaching the bylaw will be given ample opportunity to comply either by relinquishing the alcohol or by leaving the public place.

Publicity and Signage

The signage in place for the current bylaw will be updated as required following Council's final decision.

Wellington consolidated bylaw 1991

Part 23 – Liquor Control

This part of the bylaw prohibits the consumption and possession of liquor in public places from 8pm each Thursday until 8am each Sunday. In addition, the prohibition applies every year on Christmas Eve, the 24th of December and New Years Eve, the 31st of December from 5pm to 8am the following day and occasionally during special events. It applies to the Wellington Central area as shown on the attached map. The bylaw includes a process to obtain prior Council written permission to authorise events that would otherwise breach the bylaw. The Council will erect signage to communicate the terms of the bylaw to the public.

The purpose of this bylaw is to address concerns relating to potential criminal offending and safety concerns that are linked to the possession or consumption of alcohol in public places. By imposing this ban, the consumption of alcohol within the central area should primarily be restricted to private residences or licensed premises from Thursday night until Sunday morning.

The bylaw is introduced pursuant to s147 of the Local Government Act 2002 – this section should be read together with this part of the bylaw as it contains relevant definitions and the situations when this bylaw control will not apply (particularly relating to the transportation of unopened liquor). Pursuant to s169 and s170 of the Local Government Act 2002, the Police can enforce this part of the bylaw. Further details on the statutory provisions are provided as a note at the end of this part of the bylaw.

23.1 Definitions

Wellington Central Area means the area inside the boundaries depicted in the attached map but excluding:

- a) Any area that is subject to a road encroachment issued by the Council;
- b) Any licensed premises that occupies a paved area on legal road or Council land where permission to occupy has been granted by the Council.

23.2 Liquor prohibition

23.2.1 The consumption or possession of liquor in a public place (including while in a vehicle), is prohibited within the Wellington Central Area as shown on the attached map. This prohibition is effective from 8pm each Thursday to 8am each Sunday. The prohibition also applies every year on Christmas Eve, the 24th of December and New Years Eve, the 31st of December from 5pm to 8am the following day

23.2.2 In addition to the prohibition in Clause 23.2.1 above, the Council by resolution may order a prohibition on the consumption or possession of liquor (including while in a vehicle) in a public place for certain specified times and/or within certain specified public places for specified special events. The prohibition must be notified in the appropriate Wellington metropolitan newspaper at least 14 days in advance of the special event.

23.3 Council permission

23.3.1 Any person may apply to the Council for prior written permission for any activity that would be in breach of any prohibition under this part of the bylaw.

23.3.2 The process for obtaining the Council's permission is outlined in Part 1 (Introduction) of this bylaw.

23.4 Signage

23.4.1 The Council will erect signage within public places covered by this bylaw to provide information to the public on the terms of the bylaw. The size, location and terms of this signage shall be at Council's discretion. To avoid any doubt, the absence of signage in any public place does not authorise breach of this part of the bylaw.

23.5 Offences

23.5.1 Everyone commits an offence who:

- a) Consumes or possesses any liquor in a public place in breach of a prohibition under this part of the bylaw; and
- b) Breaches, or permits a breach of, the terms of any Council permission granted pursuant to clause 23.3 of this bylaw.

Note: This bylaw is introduced pursuant to the specific empowering provisions of the Local Government Act 2002 that provide for bylaws for liquor control purposes. This bylaw does not repeat or paraphrase those statutory provisions, and accordingly those provisions should be read in conjunction with this bylaw. In particular, the following provisions are noted:

Section 147 empowers the Council to make this bylaw. It also defines 'liquor' and 'public place'. In addition, s147(3) sets out a number of specific exemptions when the bylaw will not apply with respect to the transportation of unopened bottles or containers.

Section 169 provides the Police with powers of search and seizure, without warrant, to enforce the bylaw. The Police are responsible for enforcing the bylaw.

Section 170 sets out certain conditions imposed on the Police powers of search under s169.

This bylaw has no effect on any other Police powers of search, seizure and arrest or any other statutory offences.