



13. 11. 2002

REPORT OF THE LEGAL SERVICES MANAGER

1. LIQUOR BAN - CENTRAL CITY AREA

Officer responsible Legal Services Manager	Author Peter Mitchell, DDI 941-8549
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The purpose of this report is to provide advice to the Council regarding a proposed liquor ban in the central city.

INTRODUCTION

At its meeting on Friday 8 November 2002 the Regulatory and Consents Committee received a deputation from the New Zealand Police regarding its request that the Council exercise its powers under section 709C of the Local Government Act 1974 and implement a liquor ban in the "inner central business district". The Police explained at the meeting they saw the ban as covering the area generally within the four avenues.

In considering a report on a proposed sale of liquor policy the Committee resolved in relation to the Police request:

"That the Regulatory and Consents Committee request that the Mayor call an Emergency Council meeting as soon as possible to consider the establishment of a liquor ban before Christmas within the four avenues between the hours of;

*Thursday night from 7.00 pm until Friday morning 7.00 am
Friday night from 7.00 pm until Saturday morning 7.00 am
Saturday night from 7.00 pm until Sunday morning 7.00 am."*

The Mayor has called an emergency meeting of the Council to be held on Wednesday 13 November 2002 to consider this issue of a liquor ban.

SECTION 709C - LOCAL GOVERNMENT ACT 1975

Under section 709C of the Local Government Act, prohibition on the consumption and possession of liquor can be implemented in respect of any public place. In the present context "public place" would include all roads and footpaths within a defined area, Cathedral Square and Victoria Square, Cranmer and Latimer Squares, and the City Mall.

Section 709C(1) and (2) provides:

- "(1) A council may exercise the power in subsection (2), if the council—*
- (a) Is satisfied on reasonable grounds that—*
 - (i) Liquor will be present in a public place on a specified day; and*
 - (ii) The presence of liquor in the public place on the specified day is likely to lead to the commission in the public place of a number of offences against 1 or more of the following sections of the Summary Offences Act 1981:*
 - (A) Section 3 (disorderly behaviour);*
 - (B) Section 4 (offensive behaviour or language);*
 - (C) Section 5A (disorderly assembly);*
 - (D) Section 7 (fighting in a public place);*
 - (E) Section 9 (common assault); and*
 - (b) Has used the special consultative procedure in section 716A.*
- (2) A council may prohibit 1 or more of the following:*
- (a) The use of vehicles in a public place during a specified day;*
 - (b) The consumption of liquor in a public place during a specified day;*
 - (c) The bringing of liquor into a public place during a specified day;*
 - (d) The possession of liquor in a public place during a specified day.*

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The Act also contains exceptions for residents and licensed premises as follows:

“709D Exceptions to prohibition for residents and their visitors

A prohibition does not apply to—

- (a) The use of a vehicle by a person residing in premises on land having a frontage to the public place concerned or by genuine visitors of the person:*
- (b) The transport of liquor from premises on land having a frontage to the public place concerned if—*
 - (i) The liquor is being delivered by a person residing on the premises or by the person's genuine visitors to a place outside the public place; and*
 - (ii) The liquor is promptly removed from the public place:*
- (c) The transport of liquor from outside the public place concerned if—*
 - (i) The liquor is being delivered to a person residing on premises having a frontage to the public place or to the person's genuine visitors; and*
 - (ii) The liquor is promptly removed from the public place.*

709E Exceptions to prohibition for licensed premises

A prohibition does not apply to—

- (a) The transport of liquor from premises on land having a frontage to the public place concerned if—*
 - (i) The liquor has, under the Sale of Liquor Act 1989, been sold on the premises for consumption off the premises; and*
 - (ii) The liquor is promptly removed from the public place:*
- (b) The transport of liquor from outside the public place concerned for delivery to premises on land having a frontage to the public place concerned if—*
 - (i) The liquor may, under the Sale of Liquor Act 1989, be sold on the premises; and*
 - (ii) The liquor is promptly removed from the public place.”*

It is an offence punishable by a fine not exceeding \$500.00 per person to breach the prohibition and the Police are also given powers of arrest, search and seizure in relation to liquor in the possession of persons. The Police are required before exercising a power of search to advise the person of the ban and that the person has a reasonable opportunity to remove the liquor from the public place.

POLICE PROPOSAL

The Police proposal is that the Council declare under the provisions of section 709C(2) that the consumption, possession and bringing of liquor into the area shaded grey on the attached map be prohibited on specified days and times.

It is proposed that the prohibited days and times be:

Thursday night from 7pm until Friday morning 7am

Friday night from 7pm until Saturday morning 7am

Saturday night from 7pm until Sunday morning 7am.

The Police note that the law allows a person to take liquor through the liquor ban area to and from residences and licensed premises so long as the liquor is properly removed from the liquor ban area.

The Police advise that a similar ban in Auckland's Queen Street has to date resulted in approximately a 35% reduction in disorder and assaults and what are classed as general assaults and that a ban in New Plymouth has resulted in approximately 28% similar reductions. The Police advise that a similar effect can be expected in Christchurch.

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It will be noted that section 709C(1) requires that the Council be satisfied on reasonable grounds that liquor will be present in a public place on a specified day and that the presence of liquor in the public place on that day is likely to lead to the commission of a number of offences against the Summary of Offences Act 1981.

The New Zealand Police have advised that the presence of liquor does lead to offences against the Summary Offences Act within the central business district.

The Police also advise that it is not their intention to utilise the powers by way of actual prosecution unless absolutely necessary and that they intend to educate the drinking youth/public that the carrying and drinking of alcohol within the business district is not acceptable behaviour.

Their policy will be an ongoing education phase of public education, public notices and signposts, and warnings with prosecution as a last resort. It will be necessary to place signage in the prohibited area.

GENERAL COMMENTS

- (a) Enforcement of the liquor ban would be the responsibility of the Police and not the Council.
- (b) The law requires this ban to be implemented through the special consultative procedure which requires the matter to be considered at two Council meetings, and for there to be a minimum of one month's notice for public submissions. The Police have requested that the liquor ban be implemented by Christmas 2002.

For this reason the second Council meeting to consider this matter has been scheduled for Friday, 20 December 2002, and it may be necessary for submissions to be considered by the full Council at that meeting.

- (c) The ban would not apply to licensed premises where they have outdoor seating on a footpath or in a mall and where their liquor licence formally includes that outdoor seating area. This is reinforced by such licensed premises (including areas where special licences are in force) being excluded from the liquor ban.
- (d) Section 709C requires that for the liquor ban to have effect the Council must give public notice in a newspaper before the ban comes into effect and must display notices in the public place.

The notices are required to state:

- (i) the days and hours of the ban;
- (ii) whether or not vehicles are prohibited;
- (iii) the place or places where liquor is banned;
- (iv) the prohibitions regarding consumption;
- (v) the powers of arrest, search and seizure conferred on the Police;
- (vii) the maximum penalty for offences against the prohibition.

In the time available no detailed work has been done as to the location of the signs in Christchurch on a permanent basis. Auckland City Council implemented a liquor ban in central Auckland in September 2002 and street signage in Auckland cost approximately \$35,000 plus advertising on radio, newspapers, posters and leaflets. It is possible there will be a similar cost in Christchurch City.

Section 709F generally requires that there be three weeks public notice before the liquor ban comes into force. That requirement cannot be met for a ban to come into force before 25 December 2002.

The Act provides that a shorter timeframe for public notice may be given "... because the decision of the Council was made in special circumstances within a short period before the date of the prohibition". The Council must comply "as far as is practicable" in giving public notice.

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Here the "special circumstance" may be considered to be the urgent request by the Police for the ban to be implemented before 25 December 2002. If the Council agrees with that view it could go on to resolve to implement the ban for this Christmas.

If the Council proceeds to commence special consultative procedure further details regarding signage costs will be available at the second Council meeting.

- (e) The liquor ban in this report is in addition to the liquor ban proposed for Cathedral Square, Worcester Boulevard, Colombo Street (between Hereford Street and Gloucester Street) and Oxford Terrace (between Armagh Street and the Bridge of Remembrance) proposed for New Year's Eve on Tuesday, 31 December 2002.

DRAFT RESOLUTION

A draft resolution for consideration by the Council could be:

1. That pursuant to section 709C(2) of the Local Government Act 1974 the Council commence the special consultative procedure to prohibit:
 - (a) the consumption of liquor;
 - (b) the possession of liquor; and
 - (c) the bringing of liquor;within the shaded area of the map attached to this report at the following times:

each Thursday night from 7pm until Friday morning 7am
each Friday night from 7pm until Saturday morning 7am
each Saturday night from 7pm until Sunday morning 7am
2. That any land where the sale of liquor is authorised by any licence granted under the Sale of Liquor Act 1989 is excluded from the definition of public place for the purpose of paragraph 1 of this resolution.
3. That pursuant to section 716(A)(1)(b) of the Local Government Act 1974 public notice be given calling for submissions from interested persons in accordance with section 716A; such submissions to close at 5.00pm on Monday 16 December 2002.
4. That public notice be given that the proposed liquor ban will be considered by the Council at a special meeting to be held on Friday, 20 December 2002.

CONSIDERED THIS 13TH DAY OF NOVEMBER 2002

MAYOR