

2. CONSIDERATION OF A LIQUOR BAN BYLAW

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The purpose of this report is to provide the Council with some evaluation of the current central city liquor ban, made under the Local Government Act 1974, and to consider a liquor ban bylaw under the provisions of the Local Government Act 2002.

INTRODUCTION

Provision for the introduction of liquor bans in any area existed under section 709 of the Local Government Act 1974, and this section was used late last year to impose a prohibition on the consumption of liquor in the Central City.

This prohibition covered Thursday, Friday and Saturday nights from 7pm to 7am the following morning and banned the consumption, possession, and the bringing of liquor into the specified public places.

The prohibition was introduced on the grounds that the presence of liquor in a public place was likely to lead to the commission of a number of offences against the Summary Offences Act 1981.

Since then s.709 of the Local Government Act 1974 has been repealed. The new Local Government Act 2002, (s.314), provides that every prohibition in force under s.709A to s.709H of the Local Government Act 1974 continues in force, unless it is revoked or expires, for 12 months commencing 1 July 2003. Therefore, the current prohibition expires the 30 June 2004.

The new power to make bylaws specifically for liquor control purposes is contained in s.147 of the Local Government Act 2002 that states:

“(2) Without limiting section 145, a territorial authority may make bylaws for its district for the purpose of prohibiting or otherwise regulating or controlling, either generally or for 1 or more specified periods,-

- (a) the consumption of liquor in a public place:*
- (b) the bringing of liquor into a public place:*
- (c) the possession of liquor in a public place:*
- (d) in conjunction with a prohibition relating to liquor under paragraphs (a) to (c), the presence or use of a vehicle in a public place.*

(3) A bylaw made under this section does not prohibit, in the case of liquor in an unopened bottle or other unopened container,-

- (a) the transport of that liquor from premises that adjoin a public place during any period when, under the Sale of Liquor Act 1989, it is lawful to sell liquor on those premises for consumption off the premises, provided the liquor is promptly removed from the public place:*
- (b) the transport of that liquor from outside a public place for delivery to premises that adjoin the public place, provided the premises are licensed for the sale of liquor under the Sale of Liquor Act 1989:*
- (c) the transport of that liquor from outside a public place to premises that adjoin a public place-*
 - (i) by, or for delivery to, a resident of those premises or by his or her bona fide visitors; or*
 - (ii) from those premises to a place outside the public place by a resident of those premises, provided the liquor is promptly removed from the public place.”*

It should be noted that this section does not require the Council to have any belief that there will be offences related to the liquor being in a public place against the provisions of the Summary Offences Act 1981. It does, however, require a determination as to whether a bylaw is the most appropriate way of addressing the perceived problem, and if so, the special consultative procedure under s.156 must be used.

On 23 October 2003, the Council resolved:

“That staff report in February 2004, once some evaluation of Police information has been received and the results of surveys of persons using the Central City at night have been obtained, on the merits of making a bylaw under section 147 of the Local Government Act 2002.”

EVALUATION OF CURRENT LIQUOR BAN

A limited evaluation of the effects of the current central city liquor ban was undertaken in 2003 after it had been in force for just over three months. This evaluation consisted of a report from an independent researcher and some statistical information provided by the NZ Police on offences occurring in the central city area.

The evaluation sought to answer the following questions:

- Has the liquor ban in the inner city resulted in a reduction of summary offences, particularly disorder and assaults?
- Has there been a change in public perception of the safety of the Central Business District (CDB)?
- To what extent has the problem been displaced to areas other than the CDB?

There were limitations to the extent of surveying that could be done by the researcher, in particular relating to perceptions of safety, but the Executive Summary of the report stated:

“Despite expectations that the crime statistics would follow what has happened in other cities that introduced liquor bans, this has not happened in Christchurch. The number of incidents and arrests carried out by the Police has continued to increase during this period. When the ban was first introduced, the Police preferred to take an educative approach and if necessary issue warnings. During the initial three months of the liquor ban only four arrests for breaching the liquor ban were made.

Most of the people interviewed wanted to see the Police take a firmer stance in enforcing the liquor ban. The trend over the past three years has been for steadily increasing numbers of incidents and arrests in the inner city area during the last three months of the year. Given this trend, it would be appropriate for the Police to place greater emphasis on enforcement of the inner city liquor ban, up to and including this period.

Young people under the legal drinking age of 18 have never legally been able to drink in public places. The inner city liquor ban has made young people who do continue to drink on the streets more visible as fewer legally aged people are drinking on the streets. Many youth workers, and others working with young people have concerns that these young people are continuing to drink, but are now either more secretive about it, or have moved outside the inner city boundaries to areas like Sydenham and Somerfield Park.¹”

The report recommended that the Council continue the inner city liquor ban, that the Police be encouraged to effect greater enforcement of the inner city liquor ban, and that the Police statistics for incidents and arrests in the Christchurch inner city area be reviewed in January 2004, after implementation of one full year of the inner city liquor ban.

The Police mentioned the liquor ban in their submissions² on the Proposed Alcohol Policy although no formal evaluation document had been presented to the Council at that time. In their submissions the following matters could be considered as relevant to the evaluation:

- Police believe from anecdotal evidence that the liquor ban has been successful in reducing the fear of violence in the inner city.
- Few arrests have been made in relation to the liquor ban due to the immediate compliance of those found to be breaching the ban.

¹ Dr Lesley MacGibbon, *Christchurch Inner City Liquor Ban Evaluation Report*, June 2003.

² Inspector N Banks, Acting Area Controller, Hagley/Ferrymead, New Zealand Police, *Proposed Alcohol Policy - Police Submissions*, 11 July 2003.

- Police have been able to use their powers under the liquor ban to intervene with groups possessing alcohol and who were likely to cause problems later in the evening. It is this intervention that has reduced offending and the fear of violence.
- There is no evidence of displacement of problems to areas outside the four avenues however, there are problems in the southern end of Colombo Street that existed prior to the Inner City Liquor Ban and are now even more apparent.

The Police submissions in relation to the liquor ban were:

- That the liquor ban remain with its current conditions and borders.
- That there is some justification for extending the existing liquor ban to the south, with a corridor along Colombo Street, and approximately one block either side of Colombo Street, to the Beckenham Shopping Centre.
- The area Police suggest is the area south of Moorhouse Avenue bordered by Waltham Road, Eastern Terrace, Colombo Street, Strickland Street and Antigua Street.
- That a separate submission be made under the terms of any policy relating to future establishment of liquor bans.
- The current days and hours of the liquor ban are sufficient at this time.
- That the Council lobbies the Government for the prescription of an infringement offence and infringement fee in relation to breaches of liquor bans.

Inspector Banks provided some further statistical information for offences reported in the Christchurch area, which is slightly larger than the four avenues covering parts of Christchurch East and Linwood but it was considered, by Inspector Banks, that the majority of offending occurs in the four avenues area. He had undertaken an analysis of the offences according to type and on this basis the figures do show reductions in the categories of robberies, grievous assaults, serious assaults, threats and intimidation, intentional damage and trespass. This comparison is for the first four months of the year from 2000 to 2003. He stated:

“The disorder figures do not show a marked reduction in the level of disorder within the inner city, however, during this time Police conducted several very effective campaigns targeting disorder in the CBD and this may have had the effect of skewing the true position. Anecdotally it is quite clear to us that levels of violence and disorder are reducing in the CBD and the liquor ban can be credited with having some effect on those offence categories.”³

Of the 31 submitters on the Alcohol Policy, 21 supported a continuation of a ban with nine suggesting either an extension of the area(s) or the period covered. Two submitters suggested a reduction of the size of the area.

Additional information has been provided by the Police on the effects of the liquor ban in the central city, covering the last three months of 2003. They have also provided information on their perception of the effects of the ban and suggestions for extensions to the areas covered and the times it could operate.

From the information on offence reports and arrests, for the period specified above for each of the last five years, there has been a gradual increase in the number of offences in the central city with a somewhat larger increase in 2003.

The Police comment as follows on this aspect.

“This increase can be attributed to the extra policing provided through Operation Earlybird. Senior Sergeant Colin Campbell, the head of the Beat section reported the operation has resulted in over 190 arrests, of which only about one quarter are for Liquor Ban offences.

Results of the effects of the liquor ban can be seen in other areas of policing such as the Police Reception at the station on Hereford Street. Customer Services Manager, Sergeant Graeme Duncan reports that when Operation Earlybird is in operation, the number of assault complaints usually drop to less than half the usual number for a weekend.

³ N G Banks, Acting Area Controller, Hagley/Ferrymead, New Zealand Police, *Christchurch City Liquor Ban Evaluation Report*, letter 24 July 2003.

The number of persons arrested over the four days for the Christmas holiday and following weekend numbered only 71, about the same for a normal two day weekend during the year when the number of arrests can exceed 100. A similarly low number were arrested for the New-Year Holiday and following weekend.

Overall, serious violence and sex offences are slightly down for 2003 on the previous year and arrests are up on all previous years' figures.

The Liquor Ban was not enforced during the first half of the year, allowing a period for the public to learn of the ban without being punished. Only 10 arrests for breach of the Liquor Ban were recorded in the first six months of the year. Since 'Earlybird' was activated, there have been 114 arrests for breaches, 110 of which in the last three months of the year.

Senior Sergeant Campbell reports that arrests for breaches of the Liquor Ban account for only about 30 percent of the 198 arrests made during Operation Earlybird with most of the arrests for other offences such as assault and disorder⁴.

Acting Sergeant Hastie states that:

"The liquor ban has been used as a tool combined with several other policing measures, which have included thirteen Earlybird Operations. The combination of the ban and operations has resulted in a dramatic decrease in serious crime. This has become evident through both statistics and anecdotal evidence. Sergeant Duncan of Central Police Station Reception reports that when 'Earlybird' enforces the liquor ban they will have one or two assault complaints on Sunday and Monday. When not enforced they have six to eight assaults⁵."

A limited survey (234 respondents), through face-to-face interviews, was undertaken by the Council of young persons in the central city to obtain some indication of their perceptions of safety in the area. This was not directly aimed at the effects of the liquor ban but it did raise matters related to that issue.

The report⁶ concludes:

"The results show that there are some corresponding factors related to why people feel safe in the day and unsafe at night. For example in the day people felt safe because there are more people around, more light, people are able to see you and you are able to see others and, there are less undesirable people such as drunks. This is compared to why people feel unsafe at night that includes: there are less people around; it is dark and the presence of undesirable people, in particular, drunks or people drinking.

An important finding from this research is the negative impact drunks or people drinking have on peoples' perception of safety in the central city. Many respondents commented that they felt unsafe around these people, for reportedly, they are aggressive and intimidating."

A smaller sample of persons (24) who work in the central city was undertaken on the same basis as the one for young persons. The report⁷ reflected similar comments to the youth survey such as drunks and people drinking being seen as intimidating and unpredictable. In this case some respondents referred to the alcohol ban, for example, 'The alcohol ban is good, but the liquor hours at pubs should be only to about 2am' and 'The alcohol ban has done some positive things, but the amount of alcohol bought into the city is still a lot'.

It is clear that issues related to alcohol use exist in public places within the central city area and the Council introduced the central city liquor ban, at the request of the Police to assist them in managing disorderly behaviour and criminal offences linked with the consumption of alcohol. From the reports provided they find the liquor ban useful to support their community policing activities. They also appear to have further advantages as expressed in an opinion appearing in The Press⁸.

⁴ R A Small, Constable D749, Christchurch Intell, New Zealand Police, 8 January 2004.

⁵ Raymond William Hastie, Acting Sergeant RHC383, Central (Hagley-Ferrymead), New Zealand Police, January 2003.

⁶ Gedson, S and Ryan, C, A Report on Young People's Perceptions of Safety in the Central City, January, 2004.

⁷ Gedson, S and Ryan, C, Draft Report on Workers' Perception of Safety in the Central City, December 2003.

⁸ Setting a standard, The Press, Monday, January 5, 2004.

“Liquor bans are the obvious cause of the big gatherings not deteriorating into mayhem. That is borne out by Raglan’s example. It was one of the few popular New Year gathering places without a ban and the only one to suffer major trouble.

This is not surprising because the bans are doubly effective. Not only do they keep alcohol out, they also set a standard. You will not drink here, they say, and you will behave soberly.”

DISCUSSION

It has previously been stated that under the provisions of section 147 of the Local Government Act 2002 the fact that offences under the Summary Offences Act are occurring is not now a necessary requirement in introducing liquor bans.

There appears to be no doubt, however, that in the central city covered by the current ban such offences do occur, and the Police advise that many are amongst persons affected by alcohol. The evidence that the enforcement of a liquor ban significantly reduces such offences occurring is tentative on the basis of Police reporting back to the Council, at least at this time.

However, there are a number of other matters that should be considered in determining the possibility that provision be made to introduce such a bylaw:

- The first is that some provision may need to be made for liquor bans for special occasions, New Years Eve in the Cathedral Square is one such with a long history of liquor bans.
- The second is that the current central city liquor ban appears to have general approval and is strongly supported by the Police as having value in reducing some offences.
- The third is that the Police have recommended some further restricted areas to be included in such bans both of which have had problems reported to the Council in the past.
- The fourth is that there appears to be support from the wider public for some limitation on people consuming alcohol in public places, in an uncontrolled manner outside licensed premises, at least during the night time hours.

From the information presented by the Police there is an indication that disorder offences are committed in the central city and some other areas by people under the influence of alcohol. While some of these people may be coming from ‘on licensed’ premises in the central city, others obtain the liquor from “off licences”, either in the particular area or by carrying it in from outside and this has been consumed in public places in the area.

The central city is an area which appears to attract many people engaged in alcohol related activities associated with the restaurants and bars.⁹ Indeed, there has been some support for such activities through the Central City Strategy adopted by the Council in 2001. It has been stated that “... *alcohol is a key component of the entertainment/leisure industry. However, it is also considered that the entertainment/leisure industry (and in particular the associated consumption of alcohol) can have negative effects such as crime (vandalism, litter, theft, assaults)*¹⁰.”

The perceived problem therefore relates to alcohol being consumed in public places, although outside those public place areas which are included in Sale of Liquor licences, and related behavioural activities.

There is some evidence that changes to the areas and times of the current liquor ban are needed to support the Police undertake early intervention to reduce possible alcohol related problems occurring in the certain areas.

Regulating the consumption of alcohol on licensed premises provides for early intervention and reduces the likelihood of disorder and offending eventuating. Licensees have responsible host policies and, in many cases, security staff to assist in early controls. These methods are not as readily available when drinking occurs in public places.

⁹ At present of the total on-licences in force under the Sale of Liquor Act in Christchurch City 45% are within the central city area covered by the current liquor ban and of the premises issued with 24 hour licences 35 of the 36 are in the central city area.

¹⁰ Central City Team Draft Alcohol Policy Submission, 2003.

The Council has introduced liquor bans in public places to assist the Police in managing disorderly behaviour and criminal offences, linked to the consumption of alcohol. In the past it has either used event bans (eg New Year's Eve in Cathedral Square) or the more recent ongoing area ban such as the one covering the central city. The liquor bans were introduced under section 709A-H of the Local Government Act 1974. The Local Government Act 2002 has since repealed this Act.

By 1 July 2004 the Council will be required to have a bylaw relating to the control of liquor in public places if it wishes to continue to provide the Police with these additional powers for the control of liquor in public places.

In general, there are a number of perceived problems that have been identified as leading to the need for such controls. There is a perception of reduced safety in areas where there is consumption of alcohol in public places and there is some evidence that disorderly behaviour and criminal offending is linked with such consumption. Where this occurs it is often associated with both property damage and a certain amount of vandalism and public nuisance affecting businesses in the areas.

There is evidence, although largely anecdotal, that this is occurring both in the central city area and in the other two areas the Police are suggesting should have on-going liquor bans applied, ie Colombo Street south of Moorhouse Avenue and in Sumner. Such problems could be seen as needing to be addressed to aid in fulfilling the Community Outcome *A Safer City - Our people are free from crime, violence, abuse, and injury*.

Section 155 of the Local Government Act 2002 requires the Council, before commencing the process for making a bylaw, to determine whether that is the most appropriate way of addressing the perceived problems. Sections 77 and 155 of that Act require an assessment of all practicable options to address the identified problems.

At this stage there are a number of possible options for dealing with the perceived problems through bylaw provisions. It should be noted that liquor bans can be seen as an early intervention measure to attempt to prevent or reduce the development of disorderly behaviour and criminal offending arising from the effects of alcohol consumption. They do not necessarily provide a total response to offending nor do they deal with alcohol related offending where alcohol was consumed on licensed premises. This latter requires action under the provisions of the Sale of Liquor Act, particularly the appropriate introduction and enforcement of host responsibility policies by licensees, managers, and staff.

However, the Police consider that such liquor bans are useful as an early intervention tool that can be used prior to problems developing and offences occurring. The view is held by a number of people in the community that such bans are worthwhile in improving perceptions of safety in the areas in which they have been applied.

CONSIDERATION OF OPTIONS

Option 1 - Do Nothing

If action is not taken to introduce a bylaw under section 147 of the Local Government Act 2002 there would be no controls on the consumption of alcohol in public places after the 30 June 2004 except for those licensed premises which have permits to occupy public land and which areas are included in the Sale of Liquor licence. This would apply to both general bans such as currently relating to the central city area and specific events bans such as have applied for New Year's Eve in Cathedral Square and Spencer Park.

This would not provide the partnership between the Police and the Council and could have adverse effects on the level of perception of safety in the area covered by the current ban.

It would not enable the Council to place specific area bans for New Year's Eve in Cathedral Square that could lead to disorderly behaviour and problems of safety and littering.

Option 2 - Undertake Educational Activities Regarding Drinking in Public Places

In the initial stages of the current central city liquor ban the Police attempted educational means, rather than enforcement actions, to obtain a degree of compliance with the ban. This was not entirely successful and later in the year it was necessary to use more enforcement means, including arrests.

There would appear to be a need for quite a large and extensive education programme on an ongoing basis if this option was chosen and, from experience with dealing with alcohol affected persons who may be less than rational, it may need an increased number of educators to obtain any success.

There would not necessarily be a short-term reduction in the activity and associated problems such as littering and disorderly behaviour may not be adequately addressed. It is not clear that the Police would support this measure.

Option 3 - Introduce a Bylaw Covering the Central City and the New Year Eve Areas

This option would be to introduce a bylaw under section 147 to cover the area of the current central city liquor ban and to make provision for the prohibitions for Cathedral Square and Spencer Park over the New Year Eve period. This would have the advantage that the public and the Police, who have the responsibility of enforcing the provisions, have generally accepted these bans.

This option could be seen as implementing the status quo situation but, from comments made, there would need to be an extension of the number of street signage in regard to the ban in the central city area

Option 4 - Introduce a Bylaw Covering the Central City, Colombo Street South, Sumner and Special Event Times (New Year's Eve) and Provide for Specific one-off Events

This option would be to introduce a bylaw under section 147 to cover the current central city liquor ban area, but with the extended days and times requested by the Police. The submission is to extend the ban to cover the period from 7pm to 8am from Wednesday to Sunday due to increasing problems of disorder during these periods.

In the case of Colombo Street south the Police suggest that such a ban should extend from Moorhouse Avenue to Centaurus Road. There is support for such a ban from many businesses in that area and Police note that there are still problems of people drinking in public as far down as the Cashmere Club area. They seek a ban on Thursday, Friday and Saturday nights for this area.

The Police request in relation to Sumner relates to an alcohol ban along the entire length of the Esplanade from Cave Rock to the Scarborough Clock Tower from 8pm on Friday night until 7am Monday morning as there are reported to be significant problems during these times in this area. Again some residents of the area provide support for such a ban. In addition provision should be made for the special New Year events as at present.

Also it is proposed to make provision for the Council to apply such prohibitions in other areas and times, for the purpose of controlling the consumption of alcohol in other areas and for specific limited times by resolution. This may be useful when large events are occurring in public places outside the areas or times that permanent bans are in place.

Conclusions

The problems that have been defined in this report include matters of perceptions of safety, public nuisance, violence, vandalism and litter. The desired outcome is the reduction and or mitigation of disorderly behaviour and criminal offending linked to the consumption of alcohol in public places. The disorderly behaviour and criminal offending linked to consumption of alcohol in public places can be seen as detrimental to the social, cultural, economic and environmental wellbeing of the city.

In determining action under section 155(2) of the Local Government Act 2002 the Council must take account of section 5 of the New Zealand Bill of Rights Act 1990.¹¹

"... the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

¹¹ New Zealand Bill of Rights Act 1990, 1990 No 109.

In *Police v Hall* the Judge approached the issue in the following way¹²:

“The bylaw is directed at curbing drunken and unruly behaviour by young people gathering in the main streets of Gore. To achieve that object the rights of the public generally have been affected. In particular the public rights affected include the right to peaceful assembly ... the right to freedom of association ... and the right to freedom of movement ... However, the infraction of those particular rights is insubstantial as it is only the consumption of intoxicating liquor or its possession for that purpose in the context of the exercise of the rights and freedoms of peaceful assembly, association, and movement which is proscribed. In short, adult members of the public may pass through the main streets of Gore, may assemble there peacefully and may freely associate there with their fellows provided they eschew the pleasures of intoxicating liquor.”

In any of the proposals for the introduction of a bylaw to control the consumption of alcohol in the specified public places, it would be proposed to provide for similar exemptions as contained in the current liquor ban to allow carrying through the area of unopened containers of alcohol.

To this extent it is not considered that there would be Bill of Rights implications.

In the submissions on the introduction of the current liquor ban the matter of the ability of persons to transport bottles of wine to BYO restaurants within the prohibited area was raised. This was covered by the exclusions from the ban but, in any case, given the limited days the proposed ban would be in effect would probably not be considered a significant breach of the Bill of Rights.

It is noted that the areas included in the above are those recommended by the Police as, in their view, having sufficient evidence to support a prohibition and which they are prepared to enforce. Some other areas have not been nominated at this time, including the New Brighton area, which did have problems in the past but the Police have not sought a ban at this time.

As required by Section 77 of the Act an assessment of the options has been undertaken and will be available at the meeting.

- Recommendation:**
1. That the Council introduce a bylaw under section 147 which continues the existing central city liquor ban on a 24 hour, seven days per week basis, and allows for special events bans.
 2. That in response to the request of the New Zealand Police, the Council introduce a bylaw under section 147 which covers the area of the Esplanade, Sumner (7pm Thursday to 7pm Sunday) and Colombo Street south.
 3. That the Alcohol Policy Subcommittee meet with Police on Friday 13 February 2004 to define the Colombo Street south liquor ban area and report back to the reconvened meeting of the Regulatory and Consents Committee on 23 February 2004.

(Note: Councillor Megan Evans declared an interest in this clause and retired from the discussions and voting thereon.)

¹² *Police v Hall* [2001] DCR 239 at 249-250.