

### 35. RESOLUTION TO BE PASSED – SUPPLEMENTARY REPORTS

Approval is sought to submit the following reports to the meeting of the Council on 10 February 2011:

- Submission on the Alcohol Reform Bill
- Banks Peninsula Wastewater Issues

The reason, in terms of section 46(vii) of the Local Government Official Information and Meetings Act 1987, why the reports were not included on the main agenda is that they were not available at the time the agenda was prepared.

The reports are urgent and cannot wait for the next meeting of the Council.

#### **RECOMMENDATION**

That the reports be received and considered at the meeting of the Council on Thursday 10 February 2011.

## 36. SUBMISSION ON THE ALCOHOL REFORM BILL

<b>General Manager responsible:</b>	General Manager Regulation and Democracy Services, DDI 941-8462
<b>Officer responsible:</b>	Legal Services Unit Manager
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### PURPOSE OF REPORT

1. This report is to advise the Council about the Alcohol Reform Bill ("the Bill") and present a submission (**Appendix 1**) to be approved by the Council on the Bill.

### EXECUTIVE SUMMARY

2. The Bill implements the Government's decisions on the reform of alcohol legislation. These decisions were made in response to the Law Commission's 2010 report, Alcohol in Our Lives: Curbing the Harm. The Council made a submission on the Law Commission discussion document and a copy of the submission is attached to this report (**Appendix 2**).
3. The explanatory note to the Bill outlines that excessive drinking and intoxication is contributing to New Zealand's crime rate (alcohol is implicated in 30 per cent of all police recorded offences, 34 per cent of recorded family violence, and 50 per cent of all homicides) and its injury rate and road crash statistics (during weekends, up to 70 per cent of injury-based emergency department presentations are alcohol related. Excessive drinking is affecting the nation's overall level of health, as well affecting absenteeism and workplace productivity).
4. The direct costs to the taxpayer of alcohol-related harm in New Zealand have been estimated to be as high as \$1,200 million per annum. The explanatory note states that legislation alone wont change New Zealand's excessive drinking culture so it intends to provide further support through robust public education and treatment interventions.
5. However, the Government recognises that the right legislative controls support a safe and responsible drinking culture by regulating the availability of alcohol, requirements for safe and responsible licensed premises, and the management of alcohol in public.
6. The policy objectives of the Bill are stated to be to:
  - Reduce excessive drinking by young people and adults;
  - Reduce the harm caused by alcohol use, including crime, disorder, public nuisance and negative public health outcomes;
  - Support safe and responsible sale, supply and consumption of alcohol;
  - Improve community input into local alcohol licensing decisions;
  - Improve the operation of the alcohol licensing system.
7. The measures in the Bill follow the Government's indication in a media release on 23 August 2010 regarding the proposals it intended to implement. It has adopted in full, or in part, 126 of the 153 Law Commission recommendations, as well as making other changes. The key features of the package include:
  - a graduated approach to purchasing alcohol by providing for new age restrictions of 18 years of age for on-licences and 20 years of age for off-licences;
  - restricting "ready-to-drink" alcohol to 5 per cent alcohol content and limiting the amount a container can hold to no more than 1.5 standard drinks;
  - making it an offence for anyone other than a parent or guardian to provide alcohol to an under-18-year-old without a parent's or guardian's consent, and where alcohol is provided to an under-18-year-old the parent, guardian or authorised person will need to ensure the alcohol is supplied in a responsible manner;
  - providing for alcohol products which are particularly appealing to minors or particularly dangerous to health to be banned;
  - allowing and empowering local communities to adopt local alcohol policies, through which they can decide on the concentration, location, and hours of alcohol outlets (including one-way-door policies) for both on and off-licences in their area, as well as including other policy provisions that will achieve the object of the Act;

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- setting national default maximum hours of 7am - 11pm for off-licences and 8am - 4am for on- licences; club licence, and special licences for local authorities who do not adopt a local alcohol policy;
  - broadening the considerations for decisions on licences to include such things as the object of the Act, the local alcohol policy, and whether the amenity or good order of the area would be lessened if the licence is granted;
  - strengthening the law on the type of stores eligible for an off-licence to reinforce the current approach that dairies and convenience stores are not eligible;
  - increasing penalties for a range of licence breaches, including allowing an intoxicated person to be on licensed premises, allowing violent behaviour to take place on premises, and running an irresponsible promotion;
  - strengthening the existing offence of promotion of excessive consumption of alcohol by making it apply to any business selling or promoting alcohol, and setting out examples of unacceptable promotions, such as giving away free alcohol;
  - making it an offence to promote alcohol so it has special appeal to people under the purchase age (applicable to any promotion, including TV advertising and billboards);
8. The Bill will repeal and replace the Sale of Liquor Act 1989 entirely, although the fundamental requirement for, and types of, licence and other processes relating to licences are generally the same. It will also amend several other Acts including, most importantly for the Council, the Local Government Act 2002. Key changes are:
- The object of the Act will be broadened to include the minimising of the harm caused by excessive or inappropriate consumption of alcohol. This would include the effects of crime, disease, injury and the harm to society generally. The current Act talks only of establishing a reasonable system of control, with the aim of contributing to a reduction in alcohol abuse.
  - The Bill proposes a split purchase age of 18 for licensed premises and 20 for purchase from off-licences. The present age is set at 18 years and over for purchase both on and off premises. N.B. there is no provision in either the old Act or the Bill for a minimum drinking age.
  - The explanatory note to the Bill stated that dairies/convenience stores are to be specifically excluded from the ability to obtain off-licences. The current Act allows for grocery stores to obtain off-licences but the definition has allowed dairies/convenience stores to be defined as "grocery stores", which was never the intention of Parliament .
  - The Bill proposes default trading hours 8am-4am, which can only be modified by a local alcohol policy. Currently, 24 hour trading is possible.
  - Introduction of a formal Local Alcohol Policy (LAP). The current Act has no provision for an LAP however case law involving a Queenstown bar did hold that a proper constituted alcohol policy could be used to place restrictions on a licence.
  - Licenses will able to be declined on the basis that the "amenity and good order of the locality would be reduced". This is an important change as there is no corresponding definition in the present Act however would appear to open interpretation.
  - Legislative recognition for one-way door requirements. The current Act does not allow for a one way door and the Council achieves this through a voluntary Accord with the CBD licensees and the Tri-Agency Group (Liquor Inspector-Police-Community Public Health).
  - Supply of alcohol to minors without parent/guardian consent is an offence. The current Act has no such provision, as long as the alcohol was not purchased with the intention of being supplied to a minor then there was no offence to later supply it. This introduces the requirement for parent/ guardian to give their permission before alcohol is supplied at parties etc.

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- Restrictions on Special Licenses subject to LAP. Currently the Council's alcohol policy does place restrictions on special licenses, the use of a LAP will give the community more input into the conditions that should be placed on the special licence.
  - Newly named District Licensing Committees to decide all applications. 1 councillor + 2 others. The present Act only allows for District Licensing Agencies to grant applications, opposed applications had to be forwarded to the Liquor Licensing Authority.
  - Fees can be set by the TA by bylaw on a risk based approach. Under the current Act fees are set by regulation and TA's have no ability to increase or decrease the fee to reflect the cost of administering and enforcing the Act
  - Alcohol Ban Bylaws – will have wider application than under the current LGA provisions, through an improved definition of public places and better ability to enforce the bylaw by the introduction of infringement notices for breaches. Enforced by the police and currently they can only warn or in some circumstance arrest the offender they will now have the ability to issue an on the spot fine for breach of the ban.
9. The following matters (by reference to the clause number in the Bill) represent the key concerns with the proposals in the Bill (and are set out in section 3 of the draft submission):

*Clauses 5, 6 and 38* – the position in relation to convenience stores and their ability to hold off-licences needs to be clearly set out in the Bill. The Bill should provide that an off-licence may not be granted in respect of convenience stores.

*Clauses 25 and 63* – there should be a clear statement that BYO supply is not authorised by a special licence.

*Clause 44* – default national trading hours are supported but the national trading hours for on-licences should finish at 2am and the default national trading hours for off-licences should be 10am to 10pm.

*Clause 77* – that the five matters “relating to licensing” that can be included in a LAP do not provide sufficient flexibility in relation to licence conditions - clause 77 should be amended to allow local authorities to include in LAPs other policies that relate to licence conditions.

*Clause 79* - some of the matters Councils must assess before producing a draft LAP are not clear, particularly the level of detail required to be assessed and the currency/accuracy of the information. The Bill needs to clarify what is required of a Council so it is not an easy target for a judicial review.

*Clause 90* - the Council should not be required to use the special consultative procedure (SCP) for minor amendments to a LAP. The Act should contain a similar provision as in section 156(2) of the Local Government Act 2002 (for bylaws), to allow insignificant amendments to be made without an SCP.

*Clause 97* – the clause limits the persons who may object to a licence application, but this should be widened.

*Clauses 177 to 185* – the clauses relating to licensing committees are not particularly clear. It is not clear how these committees will work in practice. There are some unusual provisions dealing with delegations and the appointment of commissioners.

*Clauses 200 and 201* – a minimum age requirement of 20 years for a person wishing to hold a managers certificate should be included.

*Clause 252* - the power to demand details from a person should be given to a licensing inspector not only a police constable, as both a constable and an inspector have many of the same powers in the Bill. Failure to supply particulars or evidence required under this section to an inspector should also be an offence under the Bill.

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*Clause 402/section 147A* – section 147A needs serious reconsideration, particularly the criteria requiring the Council to be satisfied before making a bylaw that there is evidence of a high level of crime or disorder caused by alcohol consumption in the area. The proposed new criteria are not needed. The Council should simply be required to comply with section 155 of the LGA in making or amending bylaws, which it has previous experience in applying, and that it also be required to have Police support for the bylaw being made.

10. More detail on these matters and other submissions are in the draft submission.
11. Further information on the proposals in the Bill can be found in the Bills Digest, which is a document prepared for Parliament to assist in its consideration of the Bill. The Bills Digest is attached to this report (**Appendix 3**).

### **FINANCIAL IMPLICATIONS**

12. If an oral submission is to be made by the Council then there may be financial implications if the Council representatives need to travel to Wellington for the Select Committee hearing.

### **LEGAL CONSIDERATIONS**

13. No legal considerations involved in making a submission on a Bill.

### **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

14. Not applicable.

### **ALIGNMENT WITH STRATEGIES**

15. Not applicable.

### **CONSULTATION FULFILMENT**

16. The Council would not need to consult with any member of the public in relation to its submission on the Bill, because any member of the public can also make their own submission. Staff from the Inspections and Enforcement Unit (Liquor Licensing), Strategy and Planning (Policy Team & Environmental Health) and the Legal Services Unit have worked together on the draft submission.
17. Staff will present a seminar to elected members on the Bill on 7 February 2011.

### **STAFF RECOMMENDATION:**

That the Council resolve to:

- (a) Approve the submission on the Alcohol Reform Bill (**Appendix 1**);
- (b) Determine whether the Council should make an oral submission on the Bill and, if so, appoint a Councillor or Councillors to represent the Council at the Select Committee hearing.

## BACKGROUND

18. The following information provides a brief background to the introduction of the Bill, and the Council's previous involvement in submissions on an earlier Sale of Liquor Amendment Bill and the Law Commission discussion document "Alcohol in Our Lives".
19. The philosophy behind the Sale of Liquor Act 1989 was meant to be that liquor licences would be easier to get, but also easier to lose, and the idea was that legislation had only a very limited role to play in controlling liquor abuse. There have been nine Sale of Liquor Amendment Acts to the 1989 Act since its enactment, as well as a number of minor and consequential amendments by other legislation. None of the amendments made any improvements to controlling liquor abuse.

### *Sale and Supply of Liquor and Liquor Enforcement Bill*

20. In 2009 Sale and Supply of Liquor and Liquor Enforcement Bill, was introduced. It was to amend the Sale of Liquor Act 1989, the Summary Offences Act 1981, and the Land Transport Act 1998, in order to limit the social harm caused by alcohol abuse. The bill would give local councils' alcohol management plans formal status in the liquor licensing decision-making process, make it an offence for adults to supply alcohol to minors without the consent of their parents, introduce a system of enforced self-regulation of alcohol advertising, and impose a zero-alcohol limit on drivers under the age of 20 who do not hold a full driving licence.
21. The Council made a submission on that Bill in April 2009. In fact, more than 200 submissions were made to the Select Committee, who commenced hearing evidence. However, they put their consideration of the bill on hold while they waited for the Law Commission to report on its review of New Zealand's liquor laws. Ultimately the Select Committee recommended the Sale and Supply of Liquor and Liquor Enforcement Bill not be passed, because of the Alcohol Reform Bill overtaking that earlier bill.
22. The summary of the Council's submission on that Bill, as set out in the submission, was as follows:

#### **"Summary of Submission**

4.1 The Council supports the clauses relating to LAPs, but would like to see a number of changes, including:

- renaming them Local Alcohol Policies (not Plans)
- extending the range of matters that can be covered by a LAP, with the addition of "any other matters a territorial authority considers relevant" to s.84B
- clarification of s.84B(l)
- a requirement for regular review – every six years, to align with other local body legislative requirements
- recognition of existing liquor licensing policies adopted through the Special Consultative Procedure (deemed LAPs), but with a corresponding requirement to review them within two years in the first instance

4.2 The Council would also like to see:

- **Joint LAPs** - the addition of a provision allowing territorial authorities within a region to develop joint LAPs for all or parts of their district (particularly to address boundary issues)
- **Convenience-style off-licenses** - an examination of current LLA case law to see if this would provide a better mechanism than a minimum floor size
- **Convenience-style off-licenses** - if a minimum floor size is to be used, it should relate specifically to retail space, and should be 200m<sup>2</sup>, not 150m<sup>2</sup>
- **Convenience-style off-licenses – rural** – the clause should specify whether 10km is by road or as the crow flies. Other licenses issued under the new section should be taken into account, not just licenses issued under s.36(1)(c) or (d). Decisions should be local (by DLAs) not by the LLA, in the first instance, and may be something specified in a LAP

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- **Store within a store** – further definition is required of ‘adjacent’
- **Cancellation of Managers’ Certificates** – the range of offences should not be limited to breaches of the Sale of Liquor Act, but should include other offences that call a person’s suitability into account, eg drink driving and assault. The timeframe should be extended from three offences within two years to three offences within five years.
- **Defences for selling to a minor** – supportive
- **Sale and supply of alcohol to minors** – the current Act too strongly relates to intent when purchasing. It needs to refocus on the supply of alcohol to minors (regardless of intent when purchasing the alcohol). Additionally, the focus may need to shift from sale, supply and purchase, to examine regulating or restricting the consumption of alcohol by minors
- **Compensation** – the compensation protections for the LLA need to be extended to DLAs
- **Advertising** – supportive, but as a first step. Controls need to go further. Particularly in the area of sports sponsorship.
- **Blood alcohol for under 20s not on a full licence** – supportive, but also seeking a reduction for drivers aged over 20 years (from 0.08% to 0.05%).

4.3 The Council wishes to raise some resourcing issues. These include:

- ...
- most DLAs are already cross-subsiding to fulfil their obligations under the Act – current licensing fees to do not adequately cover these costs.
- consideration needs to be given to both the licensing fee model (particularly given Treasury and the Auditor-General’s advice on setting fees and charges) and the licensing fee levels themselves

4.4 The Council wishes to raise some further issues outside the scope of the Bill. These include:

- greater control of the sale of specific types of alcohol, such as “Alco-Pops” or Ready to Drink (RTD)s
- recognition that alcohol is not a normal commodity
- legislative controls over loss-leading by supermarkets
- health warning labelling of alcohol
- controls over advertising the percentage of alcohol compared to price
- different types of licensed premises with different purchase ages (eg off-licences to have a purchase age of 20 years, while supervised drinking environments (on-licenses) have a purchase age of 18)
- the re-introduction of Police powers to deal with people who are drunk in a public place
- party buses.

4.5 The Council has also raised the point that there are some types of retail store that do not fit current definitions in the Act, such as shops that sell a limited range of alcohol to complement specialty food products.”

### *Law Commission review*

23. In 2008, the Law Commission was tasked with reviewing the complete legislative framework under which liquor is supplied and sold in New Zealand, because it had been more than 20 years since the framework for the sale of liquor laws were established by the 1986 Working Party on Liquor, and with the many amendments to the Act, the overall coherence of the Act had been undermined. The terms of reference for the review required the Commission to consider a broad range of issues including: the adequacy of the current liquor licensing laws; alcohol taxation and pricing; advertising; age restrictions and the responsibilities of parents with respect to adolescent drinking.

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24. On 30 July 2009, the Law Commission released its Issues Paper 'Alcohol In Our Lives', as part of the review, on which it sought submissions to be made by 31 October 2009. As part of its public consultation on the paper the Law Commission visited Christchurch (on 17 September 2009) holding a public meeting and also meeting with Councillors. A Council workshop had been held on 15 September 2009 for Councillors to learn about the Issues Paper and to contribute to the development of the submission.
25. The Council's submission to the Law Commission was approved at its meeting on 22 October 2009, and is attached to this report (Appendix 2).
26. After receiving submissions the Law Commission considered these and then released its report at the end of April 2010. The report contained 153 recommendations to Government. Justice Minister, Simon Power stated:

"The 514-page report is the first ground-up review of our alcohol laws in 24 years. It's an extensive piece of work which has attracted unprecedented interest from the public, with nearly 3000 submissions to the Law Commission," Mr Power said.

"The commission's 153 recommendations require a considered response from the Government.

"A response must be presented to the House within 120 working days. I intend to meet that deadline."

"Reducing alcohol-related harm has been identified as a priority for addressing the drivers of crime, with police reporting it is a factor in nearly a third of all recorded crime.

"That's why I asked the Law Commission to report back on this a year earlier than originally intended.

"I have previously made it clear that legislative changes to alcohol laws are likely, and my intention is to deal with this before the end of 2011.

"The Government is carefully considering the report and the response is likely to be framed as regulatory in nature, with an emphasis on alcohol availability and licensing. It is extremely unlikely that the Government will move to raise excise tax as part of its alcohol reform agenda."

27. Not all of the recommendations were accepted by the Government and not all of the accepted recommendations require legislation to promulgate. The changes introduced by the Alcohol reform Bill give effect to proposals in the Law Commission report.