

STAFF REPORT

TO: Environment & Planning Committee

FROM: Tracy Waddington, Environmental Health Officer

REFERENCE: E490

SUBJECT: **ALCOHOL LAW REFORM- REPORT EP09/10/04** Report prepared for meeting of 8 October 2009

1. INTRODUCTION

In 2008, in response to growing public concern about the harms associated with the misuse of alcohol, the government requested the Law Commission to undertake a review of the laws relating to the sale and supply of alcohol. The project, headed by Sir Geoffrey Palmer, is the most fundamental review of the law on the sale and supply of liquor since the Sale of Liquor Act 1989 was passed. It has the potential to change significantly how alcohol is managed in New Zealand.

In July of this year the Law Commission released "Alcohol in our Lives", the first issues paper from this review with public submissions being received until 30 October 2009. Following the closure of the public submission process, a final report that includes the proposed policy framework and draft legislation will be prepared. The Law Commission will be producing the final report for the Minister in March 2010. Following this will be the usual select committee and public submission process before the bill becomes law probably late 2010/ early 2011.

At the recent New Zealand Institute of Liquor Licensing Inspectors conference the Minister of Justice announced that the Sale and Supply of Liquor and Liquor Enforcement Bill, which had been before the select committee, will be held over to be incorporated with the Law Commission review. It was also announced at this time that the Minister of Justice would be the Minister solely responsible for the Liquor portfolio and it is his intent that the reforms be considered from a regulatory focus rather than allow a conscience vote.

Local Government New Zealand has prepared a draft discussion paper in order to co-ordinate a submission to the Law Commission document, with Council's comment required by 9 October. The following report will address the key points raised by the discussion paper and submit recommendations for the Committee's consideration.

2. Background

To give some background to the existing situation in the Tasman District Licensing Agency area the following information is provided:

- A Liquor Policy Statement was developed and adopted by Council in 1997. This is obviously due for review but in light of the current situation and likely changes to legislation this should be held off until these have been finalised;
- A draft Nelson Tasman Alcohol Strategy was prepared in 2006 however this was not adopted by Tasman District Council. Elements of this strategy have been included in the Nelson Tasman Alcohol Accord (see below);
- Council adopted a Bylaw for the Control Of Liquor In Public Places in 2004 that was amended most recently in 2008;
- Council staff are actively involved in the Nelson Tasman Liquor Liaison Group (LLG), which comprises key stakeholders in the wider issues involving alcohol in our community throughout the region;
- Council staff work closely with both the Police and Public Health on Liquor Licensing issues through the Liquor Enforcement Group (LEG);
- Through the LLG the Nelson Tasman Alcohol Accord has been developed with various agencies and licensees. The Accord is focussed on the development of strategies and projects with the aim of reducing alcohol related harm in our communities. The Protocol between licensees in the Nelson Tasman area for the issue of trespass notices to unruly patrons has been supported through the Accord;
- The Regulatory Services Co-Ordinator has been an active member of the LGNZ Reference Group on alcohol and has had a number of opportunities for discussion directly with Sir Geoffrey Palmer.

2.1 LGNZ Discussion Paper

As previously stated the review is comprehensive and far reaching. It looks at the impact of alcohol on the lives of New Zealanders from all possible perspectives and suggests a range of measures that may be used to curb some of the problems. It also raises some preliminary ideas on law reform.

The LGNZ discussion document addresses many of the points raised in the paper and it is proposed to highlight and discuss those points that have the greatest potential to impact on our district with the full submission to LGNZ attached as Appendix 1

Key points in the discussion document include:

- Whether District Licensing Agencies and the Liquor Licensing Authority should be required to consider issues such as community views and density when making decisions on granting or renewing licences;
- What, if any, conditions ought to be attached/able to be attached to liquor licences;
- What, if any, types of plans local authorities should have, and how those should be developed;

- Roles and responsibilities related to alcohol licences, licensing and enforcement;
- If more education is needed to change attitudes to alcohol;
- Staff working in establishments serving alcohol should have more training, to clear standards;
- What offences and enforcement procedures are needed;
- What controls there should be on the types of outlets selling liquor, how it is promoted, pricing and trading hours.

It is proposed to discuss the following issues in more detail:

- Local Alcohol Plans
- Changes to District Licensing Authority (includes Recovery of Costs)
- Hours/Days of Trade
- Drinking/Purchase age
- Types of Off Licence Premises

2.1.1 Local Alcohol Plans

LGNZ Position:

Councils will need to consider their views on Local Alcohol Plans (LAP). Bearing in mind that councils and communities vary in both need and capacity, consideration should include:

- That it needs to be clear a LAP is NOT an alcohol strategy, and can be specific to informing DLA/licensing functions (although a wider strategy can be developed and consulted on concurrently and be part of the same document if this is desirable).
- What should be required?
- What should be optional?
- How costs of development, review and challenge are covered.
- Whether a special consultative procedure (SCP) should be required when consulting on LAPs or other matters, or whether an SCP should be optional.
- What influence an LAP should have on licensing decisions.

Staff Comment:

In essence it is envisioned that a Local Alcohol Plan will be in effect an Alcohol Policy. It has been proposed that the Alcohol Policy be produced on the recommendation of the DLA with input from the Police and the Medical Officer of Health, approved by the Council, and then by the Licensing Authority. As previously

stated our Alcohol Policy is due for review and so a regulated requirement to have such a plan will have little impact.

What may be at issue is if the **content** of such a plan is regulated. An example of this would be a requirement for Council's to regulate for a maximum density of outlets of licensed premises, particularly off licences (for take-away alcohol off licences). Whilst this may and very likely does have relevance in other areas of the country, setting a density figure for our premises wouldn't necessarily be relevant. Many of the businesses that operate in our region make their money over a short period of time when our population is substantially swollen by holiday makers, and they just survive through the remainder of the year when it is just locals supporting them. If the density of those premises was calculated on a population basis, the fact that their main business is the visitors would be missed.

Essentially the point to make here is that there are many variations between councils and communities and any legislated policy framework should allow local variations and issues to be taken into account.

2.1.2 Changes to District Licensing Agency

The Commission has taken the view that the powers and functions of the District Licensing Agencies (DLAs) need to be restructured and enhanced.

This may include:

- The requirement for higher levels of performance and reporting from DLAs;
- Local authorities being permitted to keep the fines imposed as a result of prosecutions;
- Mandatory training for Inspectors employed by the DLA;
- Ensuring that the decisions of the DLAs are independent of the Council itself;
- Allow local opinion more weight in licensing decisions but not to confer a veto on it. The final word should be with the Licensing Authority.
- To enable local authorities to set their own licensing fees so that each DLA's costs in processing, monitoring and enforcing licences can be more closely reflected in the fees and charges

LGNZ Position:

Options for the powers, role and composition of the District Licensing Agency (DLA)

The majority of the group supported:

- Retaining DLAs and enhancing their powers and functions, with higher reporting and performance standards, ensuring DLA decisions are independent of the relevant Council, specifying a particular membership for DLAs, retaining prosecution fines, enabling fee setting that allows effective performance of functions, mandating inspector training - making the points that:

- Fee levels or other support is needed to ensure all of these costs are covered, including any need to develop training and reporting.
- Both staff and DLA members need training.
- The ability of the DLA to set conditions on licences needs to be very clear, to avoid situations such as a current appeal against a DLA decision that placed a condition on hours.
- DLAs (and the Liquor Licensing Authority) should be required to consider issues such as community views and density when making decisions on granting or renewing licences.
- Decisions need to be independent of other influences also.
- Membership of the DLA might have some conditions, but allow for local context. Good practice might recommend (but not require) that DLAs co-opt an expert from a legal or Police background.
- We would like consultation on what might be suitable in terms of any meeting conditions to ensure they allowed for variable need.

Staff Comment:

Fees: The existing fees for liquor licensing are currently set by statute, and in a district such as ours where large travel distances to premises are often required, these often fall well short of the cost of providing the service. The ability to set fees and charges at a local level will ensure that those requiring the service are those paying for it, rather than the costs being subsidised by the community.

2.1.3 Drinking/Purchase Age

LGNZ Position:

This looks at:

- what the purchasing age should be in different types of situations
- whether there should also be a legal drinking age.

The majority of the LGNZ Reference Group supported:

- Different ages for purchase of alcohol, with 20 the legal purchase age from off-licence premises, but keeping the purchase age for consumption of alcohol in on-licence premises at 18. The support for this is a compromise to what is thought to be a more publicly acceptable position, as people felt that returning to 20 as the minimum purchasing age for all premises would do more to reduce harm from alcohol to young people.
- remove the defence for licensees if they have served someone underage and not checked an ID, with stronger enforcement and penalties to all types of premises who serve underage people.

- We also concur that it could be made an offence to provide alcohol to young people anywhere without supervision and the permission of parent or guardian, noting there are some enforcement practicalities that would have to be considered.

These were seen as the most likely options to be publicly acceptable and contribute to reducing the de facto age of alcohol purchase/availability and recognising that in licensed premises there is more control of the age of drinkers and monitoring alcohol consumption to avoid drunkenness. There were mixed views on a drinking age, preferring to support more responsible attitudes to drinking, with family and celebrity role models an important part of influencing how young people are likely to drink. Controls need to be wider than 'pubs' as much of the heavy drinking that occurs is done outside licensed premises.

Staff Comment

It is considered likely that some change to the purchase age will eventuate from this review. The Commission at this stage favours an increase to the age of 20 for the purchase of alcohol from Off Licences (liquor stores, supermarkets etc), with the age of 18 being retained for On Licence purchase and consumption. The theory behind this is that it should help reduce the supply of alcohol to people under 18 by older friends, while still allowing 18 and 19 year olds the freedom to drink in the supervised environments of on licence premises.

2.1.4 Hours of Trade

LGNZ Position

This looks at:

- Whether there should be national controls on opening hours and if so what those should be.

The majority of the group supported:

- Restricting off-licence opening hours to 8.00 am to 10.00 pm with the ability for a territorial authority to specify more restricted hours in a Local Alcohol Policy.
- A national "latest" time of 3.00 am but allowing local flexibility how to apply licences after 1.00 am to ensure they can manage social, transport, bathroom and other pressures, whether that be through staggered closing times, requiring one-way door policies or other means.
- It was noted that this should also apply to other venues, including casinos (currently under the Gambling Act) and brothels (anecdotally often allowed a 24 hour licence which could create perverse incentives/unintended consequences and contribute to additional risks and risk-taking).

Staff Comment

Council's Policy currently restricts on licence closing hours to no later than 3.00 am (2.00 am by agreement in Motueka) with 11.00 pm closing specified for stand alone liquor stores. As such, a nationally legislated limit on closing hours is not likely to have a huge impact in our district.

2.1.5 Prohibited Days

LGNZ Position

This looks at whether there should be prohibited trading days for licensed premises selling alcohol, and if so what those should be and how and what from what time they should apply.

The majority of the group supported:

- Allowing venues to stay open until 2.00 am (maximum) on a prohibited day, and treat that as the night before (e.g., until 2.00 am Christmas morning).
- There was considerable discussion around the need to ensure that there are some family days where it is appropriate to ban the sale of liquor, and general consensus that these should include ANZAC Day and Christmas Day. The application of this to restaurants was less clearly agreed.

Staff Comment

At present it is a condition of all on licences held by hotels and taverns (but not other premises such as restaurants) that they may not sell alcohol on the so called "sacrosanct days" - Christmas Day, Good Friday, Easter Sunday and until 1.00 pm on Anzac Day, unless the purchaser is living on the premises or is present for the purposes of dining. Off licences are similarly prohibited from selling liquor on these prohibited days.

Other regulations restrict almost all shops to be closed on these three and a half days and it is likely that this restriction will continue to apply to off licence premises for reasons of consistency.

Under existing law there are several areas of inconsistency and confusion. One of these is that the trading restriction only applied to hotels and taverns and therefore premises such as bar/brasseries, theatres, indoor cricket and ten pin bowling venues, chartered clubs and sports clubs do not have any similar restriction.

The other point of confusion is the timing of the restriction. As it is not stated in the Act the Authority has taken the view that the prohibited days begin at midnight the previous night. This obviously has an impact on licensees on what is effectively the night before the prohibited days.

2.1.6 Types of Off Licence Premises

LGNZ Position

This looks at whether there should be controls on what type of premises is allowed an off-licence, and if so what those controls should be.

The majority of the group supported:

Specific and further restrictions on the type of premises that may be granted off-licences. Discussion of suitable conditions included:

- Stand-alone off-licences retained.
- Supermarket (floor area 1000 m²+) sales should continue to be allowed (and restricted to beer and wine only).
- Grocery stores should be further defined, allowing that distance from other outlets needs to be considered (particularly to not unduly affect rural areas).
- Density of outlets should be controlled (attrition periods may be needed in this instance).
- When and how conditions could apply to factors such as proportion of floor space, proportion of retail/display area, proportion of sales and minimum floor space.
- Size/floor controls may also be applicable for off-licences, although density controls might assist in this regard.
- There was strong concern about any potential that takeaway places could be licensed, and we concur that service stations should not be linked with alcohol sales.
- Clear tools and definitions need to be provided, and additional conditions should be allowed to be applied in some instances such as staff numbers on duty.

Staff comment

The existing legislation poses some considerable confusion in this area, mainly as a result of successive amendments made to the provisions concerning off licences by way of conscience votes in Parliament. The resulting clause has led to substantial controversy and a great deal of case law. This area of any new law needs to be very clear on what is permitted.

3. CONCLUSION

As previously stated the impact of the Law Commission review is far reaching and covers much wider ground as is discussed in this report. The full submission to the Local Government New Zealand discussion paper is attached at Appendix 1, and it is proposed that this document be adopted by the Committee as representing Councils position.

4. RECOMMENDATION

THAT the Tasman District Council, adopts the “Submission to The Law Commission In the matter of ALCOHOL IN OUR LIVES From Local Government New Zealand” document as attached in Appendix 1, and submits that document to LGNZ as Council’s response to the Law Commission paper.

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