

Memorandum

19 March 2018

To:	Chair and members of the Environment and Community Committee Local board chairs and members
Subject:	Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No 2)
From:	Michael Sinclair, Unit Manager, Social Policy & Bylaws

Purpose

1. To provide a summary of the Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No 2), and an opportunity for elected members to present their views on the bill.

Background

Outline of the bill

2. The Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No 2) ("Bill") has been introduced to Parliament. The Bill amends the Sale and Supply of Alcohol Act 2012 ("Act") by amending section 133 which addresses the renewal of licences where a relevant local alcohol policy exists.
3. The purpose of the Bill is to require the licensing authority and licensing committee to take a relevant local alcohol policy into account when considering the renewal of an alcohol licence. It also allows the licensing authority and licensing committee to exercise its discretion to refuse to renew a licence if it would be inconsistent with location and density policies contained in a local alcohol policy.

Outline of Supplementary Order Paper 21 February 2018

4. During the first reading on 21 February 2018, a Supplementary Order Paper ("SOP") was tabled. The SOP seeks to amend the Bill by limiting its application to only off-licences renewals.
5. Attachment A is a comparison of section 133 as it appears in the Act, the Bill, and as it would appear if the amendments referred to in the SOP were incorporated.
6. A copy of the Bill, relevant sections of the Act and the SOP are attached.

Auckland Council's Provisional Local Alcohol Policy

7. The council has developed a local alcohol policy. The council's local alcohol policy is currently provisional and is not in force as it is subject to legal challenges.
8. The proposed changes to section 133 as referred to in the Bill would not affect the council's provisional local alcohol policy. The current version of section 133 is specifically referred to in the local alcohol policy.
9. Elements relating to location and density such as the temporary freeze on the issuing of off-licences and rebuttable presumption against the issuing of off-licences in Priority Overlay Areas¹ only apply to new alcohol licences. However, the Bill may affect any future local alcohol policy which is developed.
10. In addition, this is the first time that a Bill which touches on local alcohol policies has been put forward and it provides a timely opportunity to comment on the local alcohol policy process. Issues identified with the process include:
 - The significant cost and delay in developing and implementing a local alcohol policy due to legal challenges

¹ 23 areas identified as at most risk of alcohol-related harm

- The process required by the court system when negotiating amendments to a policy
- The inability to address the delivery times of remote sales in a local alcohol policy.

Process and draft submission

11. The Bill passed its first reading on 21 February 2018. Submissions have opened and are due 25 April 2018. The Governance Administration Committee is to report on the Bill in August 2018.
12. A staff working group consisting of staff from Social Policy and Bylaws, Local Board Services, Community Empowerment, Alcohol Licensing, Legal and Hearings (Democracy Services) has been formed to discuss the Bill and submission.
13. Staff advised local board chairs at a local board chairs forum on 12 March 2018 of the Bill and how local board input can be included into a submission.
14. The below dates provide an approximate timeframe of the Council’s submission process:

Date	Action
12 March 2018	Local board chairs forum
21 March 2018*	Drop in session for elected members to provide feedback on the draft submission.
22 March 2018	Date for elected members to provide feedback on the draft submission via email.
22 March 2018	Environment and Community Committee agenda report submitted to management for approval
10 April 2018	Report to the Environment and Community Committee for submission approval
By 16 April 2018	Send approved submission to the Select Committee (minor amendments may be required by Committee and approved by the chair before submission)

*dates subject to councillors availability.

15. A first draft of the submission is attached. Staff have identified:
 - While the principle behind the Bill is positive for communities, there are problems with the Bill which need to be addressed to ensure there are not unintended consequences.
 - The Bill has no practical application for Auckland Council’s Provisional Local Alcohol Policy. While the provisional local alcohol policy contains elements relating to location and density of off-licences, these specifically relate to new off-licences.
 - The Bill would only have practical application when a local alcohol policy containing elements relating to location and density on the renewal of licences is brought into force.
 - The process for developing a local alcohol policy and subsequent legal challenges means significant cost and delay for councils. Local alcohol policies which include elements which vary too much from the default rules in the Sale and Supply of Alcohol Act 2012 are often appealed
16. Staff are seeking feedback on the draft submission.

Next steps:

17. For elected members who are interested in attending the drop in session, please contact Tam White before close of business on **20 March 2018**.
18. For questions or responses regarding the bill or submission, contact Mike Sinclair, Manager – Social Policy and Bylaws on 027 473 8723 or michael.sinclair@aucklandcouncil.govt.nz.

Attachment A

Table one: comparison of section 133 –key differences highlighted

Version of s133	Content
<p>Section 133 as it appears in the Act</p>	<p>133 Renewal of licences where relevant local alcohol policy exists</p> <p>(1) In considering whether to renew a licence, the licensing authority or licensing committee concerned must not take into account any inconsistency between a relevant local alcohol policy and—</p> <p>(a) the renewal of the licence; or</p> <p>(b) the consequences of its renewal.</p> <p>(2) The licensing authority or licensing committee concerned may impose particular conditions on any licence it renews if—</p> <p>(a) there is any relevant local alcohol policy; and</p> <p>(b) it considers that the renewal of the licence, or the consequences of the renewal of the licence, without those conditions imposed on it would be inconsistent with the policy.</p>
<p>Section 133 as it appears in the Bill</p>	<p>133 Renewal of licences where relevant local alcohol policy exists</p> <p>(1) A licensing authority or licensing committee may refuse to renew a licence if, in its opinion, the renewal of the licence or the consequences of its renewal would be inconsistent with policies, on any or all of the matters set out in paragraphs (a) to (d) of section 77(1), that are contained in any relevant local alcohol policy.</p> <p>(2) A licensing authority or licensing committee may impose particular conditions on any licence it renews if, in its opinion, the renewal of the licence, or the consequences of its renewal without those conditions would be inconsistent with policies, on any or all of the matters set out in paragraphs (e) to (g) of section 77(1), that are contained in any relevant local alcohol policy.</p>
<p>Section 133 as it would appear if incorporating the provisions of the SOP</p>	<p>133 Renewal of licences where relevant local alcohol policy exists</p> <p>(1) A licensing authority or licensing committee may refuse to renew an off-licence if, in its opinion, the renewal of the off-licence or the consequences of its renewal would be inconsistent with policies, on any or all of the matters set out in paragraphs (a) to (d) of section 77(1), that are contained in any relevant local alcohol policy.</p> <p>(2) A licensing authority or licensing committee may impose particular conditions on any off-licence it renews if, in its opinion, the renewal of the off-licence, or the consequences of its renewal without those conditions would be inconsistent with policies, on any or all of the matters set out in paragraphs (e) to (g) of section 77(1), that are contained in any relevant local alcohol policy.</p> <p>(3) In considering whether to renew a licence other than an off-licence, the licensing authority or licensing committee concerned must not take into account any inconsistency between a relevant local alcohol policy and—</p> <p>(a) the renewal of the licence; or</p> <p>(b) the consequences of its renewal.</p> <p>(4) The licensing authority or licensing committee concerned may impose particular conditions on any licence it renews, other than an off-licence, if—</p> <p>(a) there is any relevant local alcohol policy; and</p> <p>(b) it considers that the renewal of the licence, or the consequences of the renewal of the licence, without those conditions imposed on it would be inconsistent with the policy.</p>

Submission to Governance Administration Select Committee

**In the matter of the Sale and Supply of
Alcohol (Renewal of Licences)
Amendment Bill (No 2)**

Auckland Council, April 2018

Mihimihi*

<p>Ka mihi ake ai ki ngā maunga here kōrero, ki ngā pari whakarongo tai, ki ngā awa tuku kiri o ōna manawhenua, ōna mana ā-iwi taketake mai, tauiwi atu. Tāmaki – makau a te rau, murau a te tini, wenerau a te mano. Kāhore tō rite i te ao.</p>	<p><i>I greet the mountains, repository of all that has been said of this place, there I greet the cliffs that have heard the ebb and flow of the tides of time, and the rivers that cleansed the forebears of all who came those born of this land and the newcomers among us all. Auckland – beloved of hundreds, famed among the multitude, envy of thousands. You are unique in the world.</i></p>
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*Note Mihimihi may be amended as part of finalising the submission

Title: Auckland Council Submission on the Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No 2)

Submission to the Governance Administration Committee

1 Introduction

1.1 This submission relates to both the Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No 2) (“the bill”) and the Supplementary Order Paper dated 21 February 2018 tabled by MP Louisa Walls (“the paper”).

2 Executive Summary

2.1 Alcohol related harm is a concern in Auckland and Auckland Council has developed a local alcohol policy in response.

2.2 The council recognises concerns have been raised by communities with location and density of off-licences.

2.3 The council supports the principle behind the bill and the paper but wants to ensure minimisation of unintended consequences. The current wording of the bill and the paper raise concerns about complexity and potentially introduces unintended consequences which need to be addressed.

2.4 The council questions the bill’s practical application. The bill would have no immediate practical effect within Auckland because:

2.4.1 The council does not have a local alcohol policy in force.

2.4.2 Auckland Council’s Provisional Local Alcohol Policy currently excludes renewals from density provisions.

2.5 The council has concerns about the local alcohol policy process, including:

2.5.1 The court process is lengthy and delayed through costly legal challenges. This has the effect of undermining community voices and expectations.

2.5.2 Elements relating to delivery times for remote sellers are unable to be included in a local alcohol policy.

2.6 More central government guidance is needed to strengthen the voice of the community in the development of a local alcohol policy.

3 Alcohol-related harm is a concern in Auckland

- 3.1 Research conducted by the council when considering whether to develop a local alcohol policy identified issues of alcohol-related harm in Auckland. This research fed into the development of Auckland Council's Provisional Local Alcohol Policy.

4 Council recognises concerns have been raised with location and density of off-licences

- 4.1 Communities in Auckland have made it clear to the council that they have serious concerns about the number and location of off-licences in some parts of Auckland. The council also recognises the difficulties that communities have raised when objecting to renewal applications, especially in relation to the location and density of off-licences.
- 4.2 The Auckland Council Provisional Local Alcohol Policy addresses location and density elements which apply to off-licences differently to on- or club-licences. This was as a result of research into alcohol-related harm in the context of Auckland. Other communities may have different contributors to harm and in those communities this may require a focus on the location, or density of, on- or club-licences to reduce alcohol-related harm in their area.

5 Council supports the principle behind the bill but wants to ensure the minimisation of unintended consequences

- 5.1 The council supports the principle of the community having a voice in alcohol licensing decisions, including renewal applications, new licence applications and input into the development of local alcohol policies.
- 5.2 However, the bill needs to be balanced to minimise potential negative impacts on established businesses, employment and economic growth. Potential negative impacts may include:
- 5.2.1 Established businesses, which are located in an area where location or density provisions apply, may face an uncertain future. This may be due to the businesses current location, or as a result of a facility defined as a sensitive site subsequently opening nearby.
 - 5.2.2 Loss of 'good operators'. Where density provisions are intended to reduce numbers, consideration is needed to determine which established businesses

may have their licence renewed and which would be refused. This is difficult for decision makers to assess in terms of applications for renewal of individual licences.

- 5.3 The paper does seek to address this balance in part by only applying the changes to off-licences, however this adds complexity to the legislation.
- 5.4 If a concern is about 'bad operators', the Act in section 131 has mandatory criteria that a licensing decision maker must have regard to on renewal applications. Two of these are:
 - 5.4.1 Whether the amenity and good order of the location would be likely to be increased by more than a minor extent by the effects of a refusal to renew a licence
 - 5.4.2 The applicant's prior conduct (i.e. how it has sold, supplied, displayed, advertised or promoted alcohol).
- 5.5 While these are not location or density elements, if the concern is bad operators in particular areas, they would be caught by section 131.

6 Council questions the bill's practical application

- 6.1 The bill and paper allows the licensing authority or a licensing committee to exercise its discretion to refuse to renew an off-licence if it would be inconsistent with location and density policies in a local alcohol policy. To have any practical application, there needs to be a local alcohol policy which:
 - 6.1.1 Includes elements relating to location and density
 - 6.1.2 Allows those elements relating to location and density to apply for off-licence renewals
 - 6.1.3 Has survived all legal challenges and is in force.
- 6.2 The bill would have no effect for Auckland Council's Provisional Local Alcohol Policy because:
 - 6.2.1 The elements in the provisional policy relating to location and density only apply to new licence applications
 - 6.2.2 It is still subject to legal challenges and is **not in force**.

7 Council has concerns about the local alcohol policy process

- 7.1 This bill presents an opportunity to address issues with the local alcohol policy process. Having a local alcohol policy in force is vital to this bill having practical application.
- 7.2 There has been significant cost and delay in developing and progressing Auckland Council's Provisional Local Alcohol Policy. The social and public health issues that the policy intended to address continue to occur at similar levels.
- 7.3 Nationwide, there are difficulties in developing and bringing a local alcohol policy into force. A December 2017 publication from Alcohol Healthwatch¹ summarises progress of local alcohol policy development to date. The publication highlights that as at 1 August 2017, of the 40 draft local alcohol policies which have been developed and notified, 21 were in force. Large urban centres such as Wellington City, Christchurch City, Dunedin City and Hamilton City have all developed a draft local alcohol policy which have been subject to various legal challenges and are not in force.
- 7.4 From council experience the level of evidence and legal challenges faced when a local alcohol policy departs from the default provisions of the Sale and Supply of Alcohol Act 2012 requires a substantial level of resources to defend.
- 7.5 A further unintended consequence of the bill is that changes to the legislative framework at this point may provide another opportunity for further legal challenges. This may have the unintended consequence of actually further delaying the implementation of local alcohol policies.

Elements relating to delivery times for remote sellers unable to be included in a local alcohol policy

- 7.6 The primary focus of the bill and paper is to enable a reduction in opportunities to access alcohol from off-licences in local communities. This reduction in availability could be superseded by alcohol being available through immediate delivery of remote sales.
- 7.7 Section 59 of the Act provides that alcohol sold by remote sale is not to be delivered to a buyer any time after 11pm and before 6am.
- 7.8 The Alcohol Regulatory and Licensing Authority has determined that section 59 of the Act cannot be subject to, or be overridden by, a local alcohol policy.²

¹ Jackson, N. and Robertson, H. (2017). A review of Territorial Authority progress towards Local Alcohol Policy development (2nd edition). Auckland: Alcohol Healthwatch.

² Refer *Foodstuffs South Island & Ors v Dunedin City Council* [2016] NZARLA PH 212-226; *Redwood Corporation Limited v Auckland Council* [2017] NZARLA PH 247-254.

7.9 Where a local alcohol policy is in force which changes the maximum trading hours to a time before 11pm, this provision undermines any change to maximum trading hours, as alcohol could still be obtained up to 11pm through remote sales and a fast-turnaround delivery service. This is an issue which a local alcohol policy should be able to address if it is not addressed by central government.

Court process

7.10 Legal challenges against local alcohol policies are common. In the council's case, these are ongoing and continue to delay implementation.

7.11 Table 1 below sets out the timeline for development of Auckland Council's Provisional Local Alcohol Policy.

Table 1 – timeline for Auckland Council's Provisional Local Alcohol Policy

Date	Action
May 2012	As a result of a paper presented on alcohol-related harm in Auckland, confirmation obtained to develop a local alcohol policy on the basis the Alcohol Reform Bill passed.
January 2013 - May 2014	Work on developing local alcohol policy. Draft local alcohol policy approved in May 2014.
June – November 2014	Special consultative procedure with 2688 submissions received.
December 2014 – May 2015	Development and approval of the Provisional Local Alcohol Policy. Public notification of Provisional Local Alcohol Policy in May 2015
June 2015	Appeals lodged in the Alcohol Regulatory and Licensing Authority ("Authority") by eight parties.
February – March 2017	Appeals heard in Authority (approximately four weeks of hearing time required).
July 2017	Decision from Authority released.
September 2017	Decision from Authority considered by councillors and Provisional Local Alcohol Policy amended to address the decision from the Authority.
October 2017	Provisional Local Alcohol Policy resubmitted to the Authority.
November 2017	Appeals lodged in the Authority by three parties.
November 2017	Judicial review proceedings filed against Authority's decision of July 2017.

7.12 Other amendments which could be made to the Act to improve communities' input and the effectiveness of the development and implementation of local alcohol policies are:

7.12.1 Enabling territorial authorities to negotiate amendments to their policy to address issues raised in appeals without having to concede that an element is unreasonable (as is currently required in the Authority).

7.12.2 Allowing elements of a local alcohol policy which have not been appealed against to be brought into force immediately. The effect of an appeal against a local alcohol policy delays the application of all of the policy until all appeals are finally dealt with.

7.12.3 Confirming the matters a territorial authority must have regard to when a territorial authority is directed by the Authority to reconsider an element.

7.12.4 Reducing the number of opportunities for appeals to be made or at least making it clear that only specific parts of a local alcohol policy which have been amended by a territorial authority following direction from the Authority can be appealed.

8 More central government guidance needed

8.1 The local alcohol policy process which is intended to give communities more input into alcohol licensing matters has been met with legal challenges and six years later, none of the large urban centres in New Zealand have one in force. More central government guidance is needed to address what is a complex, lengthy and expensive process for councils to undertake.

8.2 Auckland Council applauds the Government for their willingness to amend components of the Sale and Supply of Alcohol Act 2012 in order to strengthen the voice of the community in the development of a local alcohol policy. However, the council considers that the bill and paper in their current form falls short of delivering on this and that there are other changes that could be made to the Act which would have a far greater impact on this intent.

Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No 2)

Member's Bill

Explanatory note

General policy statement

This Bill provides that where a local alcohol policy is in place under the provisions of the Sale and Supply of Alcohol Act 2012 any renewal of a licence under the Act must not be inconsistent with the provisions of that local alcohol policy. This Bill replaces a previous Bill that contained a drafting error, referring to section 71 instead of section 77, in the replaced section 133 of the Act.

The process of adopting a local alcohol policy is a consultative process that provides for community input in respect of numbers of licences issued in a community, the location of premises and their proximity to other facilities identified by the Council. Examples have been schools, early childhood education centres, places of worship, and public services.

The object of the Sale and Supply of Alcohol Act 2012 is contained in section 4 and is that both the sale, supply, and consumption of alcohol should be undertaken safely and responsibly, and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised. That harm includes—

- any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by excessive or inappropriate consumption of alcohol, and
- any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury.

The aim of this Bill is to allow the Act to meet its stated object.

That alcohol causes harm to society or the community is a given and the only effective tool offered to communities to control that harm is the local alcohol policy process. Section 78 of the Act requires Councils, in drafting a local alcohol policy, to

have regard to the demography of the district's residents, the health indicators of the residents and the nature and severity of alcohol related problems in the district. The main concerns expressed by communities are the proliferation of liquor outlets and their proximity to sensitive facilities such as schools and early childhood education centres.

There is no rational base on which existing off-licence renewals should not be assessed against a local alcohol policy that has been through a rigorous process that takes specific account of the harm caused directly or indirectly to the community by alcohol. To not assess existing off-licence renewals against local alcohol policies concerning density and location is to render the basis of a local alcohol policy nugatory and to ignore that existing outlets may have contributed to the identification of areas in a local alcohol policy where there is excessive harm caused by alcohol consumption to the community. For those matters not concerning location and density, conditions can be imposed to bring the operation of a licence into conformity with a local alcohol policy, that is trading hours, particular licences, and one-way door restrictions.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides for the Bill to come into force on the day after the date on which it receives the Royal assent.

Clause 3 states that the Bill amends the Sale and Supply of Alcohol Act 2012 (the **principal Act**).

Clause 4 states that the purpose of the Bill is to amend the Act to ensure that a decision on the renewal of an existing licence considers matters in a local alcohol policy, that has been adopted or is in force, that relates to location and density.

Clause 5 replaces section 133, which relates to the renewal of licences where a relevant local alcohol policy exists.

Clause 6 amends section 135, which relates to decisions on renewal of licences.

Louisa Wall

**Sale and Supply of Alcohol (Renewal of Licences)
Amendment Bill (No 2)**

Member's Bill

Contents

	Page
1 Title	1
2 Commencement	1
3 Principal Act	1
4 Purpose	2
5 Section 133 replaced (Renewal of licences where relevant local alcohol policy exists)	2
133 Renewal of licences where relevant local alcohol policy exists	2
6 Section 135 amended (Decision on renewal)	2

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Sale and Supply of Alcohol (Renewal of Licences) Amendment Act **2018**.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act**
This Act amends the Sale and Supply of Alcohol Act 2012 (the **principal Act**).

4 Purpose

The purpose of this Act is to amend the principal Act to provide that, in considering a renewal of licence where a relevant local alcohol policy exists, a licensing authority or licensing committee must take into account any inconsistency between any location and density matters contained in a relevant local alcohol policy and the renewal of a licence or the consequences of that renewal. 5

5 Section 133 replaced (Renewal of licences where relevant local alcohol policy exists)

Replace section 133 with:

133 Renewal of licences where relevant local alcohol policy exists 10

(1) A licensing authority or licensing committee may refuse to renew a licence if, in its opinion, the renewal of the licence or the consequences of its renewal would be inconsistent with policies, on any or all of the matters set out in paragraphs (a) to (d) of section 77(1), that are contained in any relevant local alcohol policy. 15

(2) A licensing authority or licensing committee may impose particular conditions on any licence it renews if, in its opinion, the renewal of the licence, or the consequences of its renewal without those conditions would be inconsistent with policies, on any or all of the matters set out in paragraphs (e) to (g) of section 77(1), that are contained in any relevant local alcohol policy. 20

6 Section 135 amended (Decision on renewal)

In section 135(1), delete “, subject to **section 133**,”.

House of Representatives

Supplementary Order Paper

Wednesday, 21 February 2018

**Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill
(No 2)**

Proposed amendments

Louisa Wall, in Committee, to move the following amendments:

Clause 4

In *clause 4*, replace “renewal of licence” (page 2, line 3) with “renewal of an off-licence”.

In *clause 4*, replace “a licence” (page 2, line 6) with “an off-licence”.

Clause 5

In *clause 5*, *new section 133(1)* replace “a licence” (page 2, line 11) with “an off-licence”.

In *clause 5*, *new section 133(1)* replace “the licence” (page 2, line 12) with “the off-licence”.

In *clause 5*, *new section 133(2)* replace “licence” (page 2, line 17) with “off-licence” in both places it occurs.

After *clause 5*, *new section 133(2)* (page 2, after line 20), insert:

- (3) In considering whether to renew a licence other than an off-licence, the licensing authority or licensing committee concerned must not take into account any inconsistency between a relevant local alcohol policy and—
 - (a) the renewal of the licence; or
 - (b) the consequences of its renewal.
- (4) The licensing authority or licensing committee concerned may impose particular conditions on any licence it renews, other than an off-licence, if—

**Proposed amendments to
Sale and Supply of Alcohol (Renewal of Licences)
Amendment Bill (No 2)**

- (a) there is any relevant local alcohol policy; and
- (b) it considers that the renewal of the licence, or the consequences of the renewal of the licence, without those conditions imposed on it would be inconsistent with the policy.

Explanatory note

This Supplementary Order Paper clarifies that the discretion to refuse the renewal of a licence for sale and supply of alcohol that is inconsistent with a relevant local alcohol policy applies only to existing off-licences. This Supplementary Order Paper reinstates existing section 133(1) and (2) of the principal Act in respect of renewal of licences other than off-licences.