

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



**Auckland
Council**

Te Kaunihera o Tāmaki Makaurau



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, tauwiwi atu.</p> <p>Tāmaki – makau a te rau, murau a te tini, wenerau a te mano.</p> <p>Kāhore tō rite i te ao.</p>	<p><i>I greet the mountains, repository of all that has been said of this place,</i></p> <p><i>there I greet the cliffs that have heard the ebb and flow of the tides of time,</i></p> <p><i>and the rivers that cleansed the forebears of all who came those born of this land</i></p> <p><i>and the newcomers among us all.</i></p> <p><i>Auckland – beloved of hundreds, famed among the multitude, envy of thousands.</i></p> <p><i>You are unique in the world.</i></p>
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*Note Mihimihi may be amended as part of finalising the submission

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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.