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Christchurch City Council submission on the Sale and Supply of Alcohol (Community Participation) Amendment Bill

INTRODUCTION

1. Christchurch City Council (the Council) thanks the Justice Committee for the opportunity to provide comment on the Sale and Supply of Alcohol (Community Participation) Amendment Bill.
2. The Sale and Supply of Alcohol Act 2012 (the Act) provides a legislative framework to manage the safe and responsible sale, supply and consumption of alcohol and to minimise the harm caused by excessive or inappropriate consumption of alcohol. The Act devolves responsibility for licensing decisions from a central body to local communities. Two key new components of the Act were:
 - a District Licencing Committee (DLC) to make local licensing decisions; and
 - the ability for territorial authorities to develop a Local Alcohol Policy (LAP) as a local framework for DLC licensing decisions.
3. It is clear there are elements of the Act which have not empowered communities as much as was intended. LAPs (where these have been adopted) have largely failed to ensure community voices are heard in licensing decisions, and communities have faced barriers objecting to individual licence applications.
4. This Council has been an advocate for legislative change to the Act to enable communities to have more influence in local alcohol licensing decisions. **The Council supports and welcomes this Bill**, which delivers on many of our key concerns.
5. The Council does not wish to appear in support of its submission.

OUR FEEDBACK ON THE BILL

Removal of the ability to appeal a Local Alcohol Policy under development

6. The Council **supports removing the ability to appeal Local Alcohol Policies**. The appeals process under the current legislation makes for a costly, lengthy and litigious policy development process which has resulted in losing or diluting the views and preferences of local communities.

7. Christchurch City Council does not have a Local Alcohol Policy (LAP) in place. The Council attempted to develop a LAP under the existing legislation in 2013. It was eventually abandoned five years later. The Council's experience included two rounds of appeal, long pauses to await hearing dates and the outcome of appeals on other Councils' policies, and judicial review proceedings. The Council considered it untenable to continue because of the wide grounds for appeal, the indefinite duration of the appeals process, and the significant costs associated with defending subsequent appeals in court. By the time the provisional LAP was discontinued, it had cost over \$1 million.
8. Based on this experience, the Council has advocated for legislative change to ensure community preferences are reflected in a LAP. In 2018 the Council put forward a successful remit at the Local Government New Zealand (LGNZ) conference, calling for LGNZ to engage with the Government to seek change¹. The remit passed with 95% support, reflecting the shared concern among the sector. The Council has also submitted in support of the Sale and Supply of Alcohol (Renewal of Licences) Bill (No.2) in 2018, and also expressed support for the private member's Bill put forward in 2022².
9. The existing quasi-judicial process to develop a LAP is an anomaly in regulatory policy development in local government. Other similar policies enabled or required by legislation, such as a Class 4 Gambling Venue policy³ or a Local Approved Products policy⁴ can be put in place after following a Special Consultative Procedure under section 83 of the Local Government Act, without the ability to appeal.
10. The requirement to consult the community (including the alcohol industry) through a Special Consultative Procedure will be retained. The Council believes this process is sufficiently robust to develop a Local Alcohol Policy, and will align with other regulatory policy and bylaw development processes. Further, judicial review proceedings are possible if an individual or organisation believes proper decision-making processes have not been followed, or a decision is unreasonable.

Inclusion of provision to recommence development of a LAP

11. The Council **agrees with the provision enabling territorial authorities to recommence development of a previously discontinued LAP**. While this option is not available to the Council, because of the time passed since consultation, we appreciate that it could be useful for other territorial authorities in terms of mitigating sunk costs and resources.

Recommended changes to LAP development provisions

12. While the Council is very supportive of the overall intent of the changes outlined in clauses 6-9, we recommend the following amendments in relation to the LAP development process to better align with standard local government policy development processes:
 - **When section 78(2) matters are considered (clause 6(3))**
 13. Clause 6(3) of the Bill⁵, requires territorial authorities to have regard to section 78(2) matters⁶ when consulting. Under the existing legislation, these matters must be considered when producing both a draft policy and a provisional policy.
 14. We do not agree that section 78(2) matters should be considered when consulting. The use of the term "consulting" suggests these matters will need to be considered during the external-facing part of the consultation process. The appropriate time for these considerations is a)

¹ The remit sought the Government's agreement to: 1) amend the Sale and Supply of Alcohol Act 2012 so that LAPs can more accurately reflect local community views and preferences; and 2) review policy levers to reduce alcohol-related harm that will complement LAP provisions established by territorial authorities, and include consideration of mechanisms for addressing the density and location of of-licensed premises.

² The Sale and Supply of Alcohol (Harm Minimisation) Bill.

³ Required under section 101 of the Gambling Act 2003.

⁴ May choose to have under section the Psychoactive Substance Act 2013.

⁵ Amending section 79(2) of the Act.

⁶ Section 78(2) matters include the objectives and policies of the district plan, the number and location of existing licensed premises, any local alcohol bans, demography (residents and visitors), health indicators, and the nature and severity of alcohol-related problems arising in the district.

when drafting a draft LAP (prior to consulting); and (b) when making any changes to the draft LAP as a result of consultation.

15. **The Council requests the amendment to section 79(2) of the Act more accurately reflects that these considerations are required when making changes to a policy as a result of submissions**, as below:

“(2) A territorial authority must have regard to the matters stated in section 78(2) when amending a draft local alcohol policy as a result of consultation.”

- **When a LAP is adopted and required public notifications (clause 7)**

16. The Bill proposes that after a special consultative procedure is undertaken, if a territorial authority wishes to adopt the policy, it must notify its “finalised” policy. The policy is subsequently adopted 30 days after the notification date. Section 90 of the Act requires a second public notification at the end of the 30 day period. The LAP then comes into force on the date(s) set by the Council by resolution.
17. Public notification with automatic adoption after 30 days is appropriate under current legislation, but not under a system where there is no appeals process. The current 30 day period allows for appeals to be lodged on a provisional policy. With the Bill removing the requirement to produce a provisional policy and the ability to appeal, the “finalised policy public notification” simply delays adoption and serves no purpose.
18. The Council recommends the requirement to notify a “finalised policy” is removed. We also submit that a territorial authority’s decision to finalise a LAP after undertaking a Special Consultative Procedure should constitute “adoption”. These changes would align LAP development with other regulatory policy development processes undertaken by local government.
19. To effect these changes, **the Council requests that replacement sections 80 and 81 contained in clause 7 of the Bill are removed; and Regulation 17 of the Sale and Supply of Alcohol Regulations 2013 is revoked.**

Licence Renewals

20. The Act currently does not allow a District Licensing Committee to take inconsistencies with a LAP into account when considering a licence renewal. This undermines the effect of a LAP.
21. The Council **supports clause 12 of the Bill which enables a DLC to decline to renew a licence if it is inconsistent with LAP provisions relating to location and proximity**. This ensures that after a Council and its community have followed a process to adopt a Local Alcohol Policy, matters of location and proximity can be given full effect, and not just apply to new licences.
22. The Council notes there is discretion inherent in this provision. The Bill proposes that section 133(1) will state *“A licensing committee or licensing authority may decline to renew a licence...”*
23. In line with our previous submission on the Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No.2), while the Council would prefer mandatory refusal for renewal of a licence which is inconsistent with a LAP to prevent inconsistent decision making, the Council accepts there may be rare circumstances where discretion is necessary. The ability to place conditions on renewed licences where there are inconsistencies with a LAP goes some way to mitigate this concern. Provisions of LAPs may also be able to provide further clarification for DLCs and the licensing authority to support their decision-making.

Participating in Individual Licensing Decisions (Objections and Hearings)

24. The Council **supports the Bill's proposed amendment to allow any person to object to a licence application**, rather than only persons with "*a greater interest than the public generally*". 'A greater interest' is often defined by arbitrary boundaries determined by case law which makes it difficult for people living further than one kilometre from the premises to object, even if they genuinely do have an interest in the licensing decision (e.g: a resident living in a rural area where their "local" is 15km away). The amendment would also ensure advocacy groups or other organisations holding relevant information can participate in a licensing decision.
25. The Council also supports the proposed limitations for objections by trade competitors i.e: objections cannot be made on the basis of trade competition.
26. The Bill allows DLCs and the licensing authority discretion on how they conduct an objection hearing. In particular, the Council **supports the removal of ability to cross-examine parties objecting to a licence**. Cross-examination creates a hostile, confrontational atmosphere which dissuades the objector from participating.
27. These changes will simplify the process for objections and hearings; and remove barriers, making it easier and less daunting for communities and individuals to participate in licensing decisions.
28. The Council supports the intent of these changes, but notes it may result in more hearings and an increased demand on DLCs and the skills required of DLC members. The Council recommends consideration is given to reviewing the fees framework set under Regulations to ensure this is sufficient to cover costs, including being able to provide a level of remuneration that attracts a high calibre of DLC applicants. We would also recommend more detailed mandatory training (e.g. proper questioning techniques) for DLC members, and funded by central government.
29. With regard to rights to appear and be heard, the Council notes that cl.204(5) is not necessarily needed because of existing powers under the Commissions of Inquiries Act 1908. While it provides a further tool for the DLC to manage hearings, it could be perceived to undermine the intent of this Bill by limiting the ability for all objectors to be heard.

Other Matters – Alignment of new licences with LAPs

30. Currently, the Act only requires DLCs and the licensing authority to "have regard to" a LAP when deciding whether to issue a licence. This allows a degree of discretion as to whether a new licence should comply with a LAP or not. The Council believes that all new licences should align with LAP provisions to support the outcomes that communities are seeking for their local areas.
31. The Council **requests that section 105 is amended to make it mandatory that all new licences align with a relevant LAP**.

CONCLUSION

32. The Council supports the intent of the Bill, particularly the removal of the ability to appeal a LAP, and enabling licensing committees and the licensing authority to decline renewal of a licence if it does not comply with an operative LAP. However the Council also recommends the following amendments to streamline processes and strengthen the effect of a LAP:
 - Amend clause 6(3) to clarify when section 78(2) matters must be considered
 - Remove the proposed replacement sections 80 and 81
 - Revoke of regulation 17 of the Sale and Supply of Alcohol Regulations 2013

- Amend section 105 to make it mandatory that all new licences align with a relevant LAP.

33. We believe there is widespread support for Christchurch to develop a LAP, including from our DLC, Community Boards, the Police and Community and Public Health – Te Mana Ora. Removing the ability to appeal a LAP will address the most significant barrier which has prevented the Council from embarking on a LAP development process again. We look forward to working with stakeholders on a new LAP for Christchurch when this Bill is enacted.

34. The Council looks forward to the government’s further proposals on wider issues including pricing and advertising; and other possible law changes to reduce alcohol-related harm, as indicated by Justice Minister Kiri Allan. We understand this work is to be initiated in 2023.

35. Thank you for the opportunity to provide this submission. For any clarification on points within this submission please contact David Griffiths - david.griffiths@ccc.govt.nz

Yours faithfully



Pauline Cotter

DEPUTY MAYOR