

Workshop Agenda Waiheke Local Board

Date of Workshop: Wednesday 25 January 2023
Time: 10:30am
Venue: Waiheke Local Board, 10 Belgium Street

Time	Workshop Item	Gov. Role	Presenter	Proposed Outcome(s)
10:30	Draft submission on Sale and Supply of Alcohol (Community Participation) Amendment Bill Attachment: Council Draft Submission Full content of the bill	3	N/A	Define board position and feedback prior to urgent decision-making process to accommodate due date of 1 Feb
Close of workshop				

Governance Role

1. Accountability to the public
2. Engagement
3. Input to regional decision-making
4. Keeping informed
5. Local initiative / preparing for specific decisions
6. Oversight and monitoring
7. Setting direction / priorities / budget

Role of Workshop:

- (a) Workshops do not have decision-making authority.
- (b) Workshops are used to canvass issues, prepare local board members for upcoming decisions and to enable discussion between elected members and staff.
- (c) Workshops are not open to the public as decisions will be made at a formal, public local board business meeting.
- (d) Members are respectfully reminded of their Code of Conduct obligations with respect to conflicts of interest and confidentiality.
- (e) Workshops for groups of local boards can be held giving local boards the chance to work together on common interests or topics

Submission to Justice Select committee

Sale and Supply of Alcohol (Community Participation) Amendment Bill

Auckland Council, 10 February 2023



**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, 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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Auckland Council Submission on the Sale and Supply of Alcohol (Community Participation) Amendment Bill

Submission to the Justice select committee:

1 Introduction

- 1.1 Auckland Council thanks the Justice Select Committee for the opportunity to provide feedback on the proposed Sale and Supply of Alcohol (Community Participation) Amendment Bill (the Bill).
- 1.2 This submission has been approved by the chair of the Regulatory and Safety Committee.

2 Executive summary

- 2.1 Auckland Council adopted its Local Alcohol Policy in May 2015. The Local Alcohol Policy has not come into effect as it has been subject to a variety of appeals. These ongoing appeals mean it is unlikely that the Local Alcohol Policy will come into effect for some time yet.
- 2.2 This means that Aucklanders who wish to influence alcohol regulation in their area have been unable to do so through the Local Alcohol Policy and has undermined the efforts of the Auckland residents and businesses who participated in the development of the Local Alcohol Policy.
- 2.3 Given this, Auckland Council strongly support the intents of the proposed Sale and Supply of Alcohol (Community Participation) Amendment Bill and believe that passing it is an important step towards ensuring communities have the ability to influence alcohol regulation in their area. However, we believe the Bill could be improved through the following amendments:
 - ensuring the Bill provides adequate opportunities for Māori to be engaged and reflects the Crown's Te Tiriti obligations
 - clearly stating that provisions in a Local Alcohol Policy are justified if they have a real and appreciable possibility of reducing alcohol-related harm
 - enabling Local Alcohol Policies to come into effect in part
 - requiring people appealing the granting or renewal of a licence to have a demonstrated tie to the relevant community
 - making a range of minor and technical changes to sections 205 to 205C

- providing appropriate transitional provisions for Provisional Local Alcohol Policies that are currently under appeal before the Alcohol and Regulatory Licensing Authority (ARLA) (as Auckland's is).

Background and context

3 Tāmaki Makaurau’s Local Alcohol Policy Experience

- 3.1 Auckland Council adopted its Proposed Local Alcohol Policy in May 2015. The Proposed Local Alcohol Policy reflects widespread calls from Auckland’s communities to put in place more effective mechanisms to minimise alcohol-related harm.
- 3.2 However, the Proposed Local Alcohol Policy has been subject to multiple appeals. The most recent appeal was to the Supreme Court, which has not yet issued a decision. However, there are a number of outstanding matters that are not within the scope of the Supreme Court case and cannot be resolved until the Supreme Court decision is issued. This means Auckland will not have an operative Local Alcohol Policy for some time yet.
- 3.3 To date these appeals have cost ratepayers over \$1million in legal fees, in addition to staff time and other costs. More importantly, these appeals have frustrated Aucklanders’ desire for more effective regulation and denied the many people who participated in the process the chance to have any impact.

Response to the specific changes proposed

Māori involvement and Te Tiriti obligations

- 3.4 The current Act does not address involvement of Māori in the Local Alcohol Policy and licencing process, or whether the process is consistent with the Crown’s obligations under Te Tiriti. This gap is not addressed in the proposed Bill.
- 3.5 There are a variety of options for addressing these gaps, and any response to this issue should be developed in consultation with mana whenua, however one simple step would be to mirror the provisions of s39(2)(b) of the Resource Management Act 1991, which requires that:

In determining an appropriate procedure for the purposes of subsection (1), the authority shall... recognise tikanga Maori where appropriate, and receive evidence written or spoken in Maori and Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016 shall apply accordingly.
- 3.6 Incorporating a similar provision in the Bill would not be adequate to fully address this issue but is an example of a simple step that could be taken to improve it.

Removing appeal rights for Proposed Local Alcohol Policies

- 3.7 We strongly support the Bill and its objective of improving communities’ ability to influence alcohol regulation in their area. In this section we have some suggestions to improve the likelihood that the Bill will achieve this outcome.
- 3.8 As noted earlier, Auckland Council developed a Proposed Local Alcohol Policy in 2015 but this is not operative as a result of appeals. We strongly support the objective of improving communities’ ability to influence alcohol regulation in their area. This must be not only through participating in the development of alcohol regulation, but for it to be possible for that participation to have an effect by being reflected in an operative policy.
- 3.9 Many individuals and organisations in Auckland, including those currently appealing, participated in the Local Alcohol Policy development process, but because the Proposed

Local Alcohol Policy is not operative their participation has had no effect on alcohol regulation in Auckland. Given that this process has undermined the effect of communities' participation we support the removal of appeal rights proposed in the Bill.

- 3.10 However, under the Bill judicial review will still be available. This could still potentially result in years of delay. We have two proposals that would maintain access to judicial review but limit the risk that this undermines the Bill's objectives. Specifically, the Bill should:
- a. Specify the level of evidence required to justify elements of a Local Alcohol Policy
 - b. Enable Local Alcohol Policies that are subject to appeal to come into effect in part.
- 3.11 The most recent appeal in relation to Auckland's Local Alcohol Policy was before the Supreme Court and focussed on the issue of the level of evidence required to justify elements of a Local Alcohol Policy. At the time of this submission the Supreme Court has not issued a decision.
- 3.12 Regardless of the Supreme Court's decision we suggest that the Bill should state that the standard of evidence required is that the proposal will have a 'real and appreciable possibility' of achieving its objective. This was the standard of evidence the Court of Appeal determined was appropriate and best aligns with the objective of improving communities' ability to influence alcohol regulation in their area.
- 3.13 We also suggest that the Bill enable Local Alcohol Policies to come into effect in part. This approach is used in other areas of local government; for instance, this was used for Auckland's Unitary Plan. It will also maximise communities' influence while respecting the right to seek judicial review.

Broadening ability to object to granting a licence

- 3.14 Currently, s204(2)(c) requires that a person must have "an interest in the proceedings, apart from any interest in common with the public" to object to the granting of a licence or renewal. This has posed a barrier to participation in hearings and the Bill proposes eliminating this requirement.
- 3.15 We support the general intent of this change as it will allow groups such as Māori Wardens and Communities Against Alcohol Harm to object to a premise without having to justify their standing.
- 3.16 However, there is a risk that this change may excessively broaden the range of people and groups who can participate, slowing the process and placing a strain on resources. We suggest the Committee consider requiring participants to have a demonstrated tie to the relevant community. This would significantly broaden the range of people in the community who can participate in the process, while balancing the need to ensure an efficient hearing process.

Control of hearings

- 3.17 The new sections 205 to 205C provide additional mechanisms for licensing committees or licensing authorities to control hearings. While we support these new provisions, we suggest some minor changes:
- All sections: suggest replacing all references to “briefs” with “submissions” for consistency with more commonly used terminology.
 - s205A: we support this clause but consider that there should be obligations in new s205A to both file and serve evidence to ensure a fair and informed process and comply with the requirements of natural justice.
 - s205B: The majority of the powers provided in new s205B can already be exercised under s203(9), and/or s201. There needs to be clarity as to who is obliged to pay if the new power in s205B(3)(c) is exercised. In order to meet the requirements of natural justice, parties need to be given the opportunity to comment on any information provided to them under s205B(6).
 - s205C: There is currently no objection process built into the Act. New section 205C introduces a right of objection without saying who the objection is to be made to or what factors the person dealing with the objection must take into account when considering the objection. There are also no process provisions. We suggest the Bill be amended to provide more detail on the objection process.

Transitional provisions for Provisional Local Alcohol Policies that are currently under appeal

- 3.18 The Bill creates a new Schedule 1AA that provides transitional provisions for existing Local Alcohol Policies. However, the transitional provisions do not address the status of Provisional Local Alcohol Policies that are currently under appeal before the Alcohol and Regulatory Licensing Authority (ARLA) (as Auckland’s is).
- 3.19 We request that the Bill be amended to provide clear direction on the application of the Amendment Act to Provisional Local Alcohol Policies that are currently under appeal, including the status of provisions that have been resubmitted to ARLA under s84 of the Act.
- 3.20 This could be achieved by adding a provision to the Bill that provides that in any case where a provisional policy has been resubmitted to the authority, under s84(1)(b) or 85(2)(b), and no hearing on the matter has concluded, then Part 2 of proposed new Schedule 1AA applies to the resubmitted version of the provisional policy.

4 Summary

- 4.1 In summary, we support the intent of the Bill and believe that passing it is an important step towards ensuring communities have the ability to influence alcohol regulation in their area. However, we believe the Bill could be improved through the following amendments:
- ensuring the Bill provides adequate opportunities for Māori to be engaged and reflects the Crown’s Te Tiriti obligations
 - clearly stating that provisions in a Proposed Local Alcohol Policy are justified if they have a real and appreciable possibility of reducing alcohol-related harm

- enabling Local Alcohol Policies to come into effect in part
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- making a range of minor and technical changes to sections 205 to 205C
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