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Committee Secretariat
Justice Committee
Parliament Buildings
Wellington

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Kāpiti Coast District Council's Submission to the Sale and Supply of Alcohol (Community Participation) Amendment Bill

Thank you for the opportunity to submit on the Sale and Supply of Alcohol (Community Participation) Amendment Bill. Council would like to speak to its submission.

The Kāpiti Coast District Council supports enabling stronger community participation in the regulation of alcohol sale, supply and consumption to better ensure minimising alcohol related harms in our communities.

We note that the Purpose of the substantive Act was to put in place a new system of control over the sale and supply of alcohol to meet the Act's object. The Act's object is to ensure that the sale, supply and consumption of alcohol is undertaken safely and responsibly and to minimise alcohol-related harm arising from excessive or inappropriate consumption of alcohol. These objectives are to be achieved for the benefit of the community as a whole.

To date, we do not believe the Act's implementation has supported the achievement of this purpose for the benefit of all in our communities. This failure is due to the voice of our communities being effectively silenced by actions taken by the well-resourced alcohol industry. This has occurred through the alcohol industry:

- appealing Local Alcohol Policies (LAPs), which has deterred territorial authorities from developing an LAP, and where developed, slowed down its adoption and/or seen the LAP's adopted policy elements watered down.

- pursuing an overtly legalistic strategy supported by established common law principles around “standing” to challenge the right of communities and individuals to object to the issuing of alcohol licences or their renewal; and,
- vigorously challenging lay witnesses through cross-examination of their position and evidence at hearings.

The ability for the alcohol industry to do this so effectively has occurred due to the overly legalistic framework in which LAP policies are developed and licence hearings are carried out.

Council believes that the provisions of the Amendment Bill go a long way to redress this imbalance in influence in the implementation of the Act and that the reforms will provide our communities with a more effective voice in the regulatory control of the sale and supply of alcohol in their local areas.

Our communities and alcohol

As with other communities across Aotearoa New Zealand, our district experiences the broad impacts arising from alcohol-related harm – including that to our more vulnerable communities. This impact can be severe. Research literature¹ has identified that more deprived communities, young people, and the elderly as particularly vulnerable to alcohol-related harm. Alcohol has also become a particular burden for Māori over the last 30 years.²

Kāpiti district has two communities with evidence of higher socio-economic deprivation, one in Ōtaki, and the other in parts of Paraparaumu. Ōtaki also has a high Māori population. The ongoing impact of a significant number of alcohol outlets (particularly off-licences) within the Ōtaki community has raised ongoing concerns for rangatahi in this community.

The Ōtaki community has raised frustration in being able to influence the availability of alcohol in the area through objection to new licences, where community groups representative of health, education and Māori communities have struggled to attain standing. The community is very supportive of Council’s current work in developing a Local Alcohol Policy that could include policy elements to restrict alcohol availability in the Ōtaki area.

Our district also has a higher-than-average older population³ (those 65 years and over). This group is particularly susceptible to alcohol-related harm due to a higher physiological sensitivity to alcohol (such as poorer metabolism of alcohol and higher blood alcohol concentration). This means that older adults are more likely to develop problems at relatively low levels of alcohol consumption. Older adults also have more co-morbidities and often have higher use of medications that alcohol can interact with. Alcohol has been linked with a number of physical and mental health consequences for the elderly, such as increased risks of heart disease, cancer, dementia, depression and higher anxiety. For the elderly, alcohol can also lead to a greater susceptibility to life threatening accidents such as falls.

¹ Alcohol Healthwatch, (2020). *Evidence-based alcohol policies: Building a fairer and healthier future for Aotearoa New Zealand*. Auckland: Alcohol Healthwatch

² Ibid

THE BILL REFORMS

The proposed reforms in the Bill address:

1. The appeals process for local alcohol policies (LAPs)
2. Inconsistency between LAPs and the renewal of licences
3. Who can object to an alcohol licence application
4. The way in which DLC hearings are conducted
 - a. that DLCs develop procedures to ensure transparency and consistency for applicants and objectors
 - b. that questioning of parties at hearings and the use of cross-examination is removed
 - c. the use of technology for hearing meetings.

SUBMISSION POINTS

1. The appeals process for local alcohol policies (LAPs)

Commentary

- 1.1. Currently, the Act provides for parties to appeal provisional LAPs to the Alcohol Regulatory and Licensing Authority (ARLA). This process is not working as intended as it has allowed alcohol retailers (supermarkets and bottle store chains) to use the process to delay, and add significant costs, to the process. This has impeded territorial authorities from adopting LAPs in a timely manner, or at all, or lead to them adopting watered down policies to avoid or answer legal challenge. This appeals process is inconsistent with other Council social policy and bylaw processes and causes councils and communities to be held hostage to alcohol industry interests. This does not support the Act being implemented, as stated in its Purpose, for the benefit of the community as a whole.
- 1.2. Strengthening community participation in policy setting and ensuring community preference finds its way through to LAPs will reduce the burden on individuals and community organisations to have to try to litigate the community's position at numerous licence hearings, which is often well beyond their resources.
- 1.3. This reform will also remove the ability for reporting agencies such as the Medical Officer of Health and Police, and community groups and individuals, to also appeal an LAP. Council's position is that policy matters should be explored and resolved through policy development and consultation processes, not through litigation after the fact.
- 1.4. If the appeals process is removed, Judicial Review will remain to ensure councils follow due process. The Courts, however, will need to be vigilant on the misuse of Judicial Review to slow down the adoption of an LAP.

Kāpiti Coast District Council **supports** the amendment removing the ability of parties to appeal provisional Local Alcohol Policies.

2. Inconsistency between LAPs and the renewal of licences

Commentary

- 2.1. A LAP states a community's expectations regarding alcohol licensing matters.
- 2.2. Currently, DLCs must not take inconsistencies between a relevant LAP and a licence renewal application into account when determining renewal. This means that decisions are less likely to reflect the LAP and there is no ability to make licensing conditions consistent across the district over time.
- 2.3. Council supports the reform provision allowing the DLC or ARLA to decline renewing a licence if it considers renewing the licence would be inconsistent with the location or licence density elements (as specified in section 77(1(a) to (d) of the principal Act) of a relevant LAP. However, this should be supported with guidance to ensure that this consideration is fair and balanced, and that small businesses, in particular, are not unduly disadvantaged as the changes are transitioned in.
- 2.4. Council notes that the amended section 133 continues to include that the DLC may impose conditions on any licence it renews if it considers that the renewal of the licence, or the consequences of the renewal of the licence, without those conditions would be inconsistent with the relevant local alcohol policy. This would include licence hours conditions. However, Council believes that while this section provides discretion to ARLA or a DLC to apply the other policy element conditions, this should be strengthened to require it to do so, except in exceptional circumstances.
- 2.5. Council also notes that other local government parties are recommending that this proposal be extended through amendment to section 105 of the principal Act, making it mandatory for all new licences to align with a relevant LAP. Council believes this extension is not necessary and would remove sensible discretion from ARLA or a DLC.

Kāpiti Coast District Council **supports**:

- the amendment providing for the Alcohol Regulatory Authority or a District Licensing Committee to be able to decline to renew a licence if the licence would be inconsistent with conditions on location or licence density (as specified in section 77(1(a) to (d) of the principal Act) in the relevant LAP of a matter.

Council also **recommends** to the Select Committee that:

- the amendment to section 133 of the Act continues to provide for the Alcohol Regulatory Authority or a District Licensing Committee to impose particular conditions (including licence hours) on any licence it renews if there is any relevant local alcohol policy; and 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.
- conditions inconsistent with a relevant LAP should only be allowed for in the most exceptional of circumstances.

3. Who can object to an alcohol licence application

Commentary

Who may object:

- 3.1. Currently, people with “a greater interest than the public generally” can object to licensing applications. Following common law precedent, in most cases this test of “standing” has been taken to mean a person can object only if they live, work, attend school or a community site (eg Marae) within one kilometre of the proposed licensed premises. This can mean that a community organisation whose spokesperson lives outside this one-kilometre radius is also excluded.
- 3.2. In the case of bottle stores and supermarkets, the alcohol is taken and consumed off-site resulting in alcohol related harm potentially being experienced much further than one kilometre from the location of the premises it was purchased from. A community that is impacted by a licence may therefore be geographically extensive or may have social and/or cultural interests within the local community area.
- 3.3. The proposed reforms as currently drafted opens up the right to object to everyone, including both individuals and organisations. Council has a concern that this may be too expansive and open the process to serial objectors without connection to, or interest in, our district and its communities. This would seem to run counter to the aim of the legislation to "improve communities' ability to influence alcohol regulation in their area."
- 3.4. Council fully supports opening-up the right to object in a way that allows individuals and organisations located in, or with a clear association with or interest in, a community within its district the right to object to a licence application.
- 3.5. However, there needs to be some parameters set either within the legislation, or through clear guidance to the DLC and ARLA. These parameters and/or guidance should be open and inclusive and support recognition of social, cultural, economic, or environmental (liveability of an affected area) association with and interest in the district. Someone in Invercargill **should be** able to object on behalf of an elderly parent living in Kāpiti and potentially affected by the granting of an on-licence. An individual or organisation based in Auckland **should not**, if the objection is only on the basis of the most general of terms of perceived potential alcohol-related harm. As an adjunct to this, the onus should be on the applicant to show no further increase in alcohol-related harm, rather than on the objector to show a potential increase.

Trade competition:

- 3.6. Council is unsure of any way that trade competitors will be directly affected other than in relation to trade competition. The proposed amendment may be intended to allow them to object on the grounds of suitability of the applicant, or amenity and good order. We urge clarification of this point, and clear guidance for decision-makers and would support a tight interpretation as to what may be permissible.

- 3.7. While the result of these proposed amendments could be an increase in the volume of objections and participation in DLC and ARLA hearings, Council believes this would be advantageous to the regulation of alcohol sale and supply within communities and the minimisation of alcohol-related harm. Council also believes that any such impact will be mitigated by the other proposed amendments which will encourage the adoption of LAPs, reducing the need for objections to applications, and requirement for DLCs to have procedures to administer hearings. These procedures must ensure that hearings avoid unnecessary formality. Both DLCs and ARLA already have powers to restrict unnecessary vexatious and repetitious objections. (Comment on questioning and cross-examination in this amended section will be addressed below).

Kāpiti Coast District Council **supports** amendment of the Act providing for any person (individual or organisation) to be able to object to an application for a licence or renewal of a licence, providing the objector can show an association of interest in the territorial district where the application is situated.

Council recommends that parameters to assess such association or interest be either included within the legislation or through guidance to the DLC and ARLA.

As an adjunct to this, Council recommends that the onus of proof be on the applicant to show there will be no increase in alcohol-related harm arising from the additional licence in the district, rather than on objectors and the community to show there will be an increase in alcohol-related harm.

Council also **supports** that objections to a licence cannot be made by a trade competitor on any ground related to trade competition.

Council **recommends** that the grounds for objection by trade competitors is clearly and tightly defined and clear and precise guidance is provided to District Licensing Committees on this matter.

4. The way in which DLC hearings are conducted

Commentary

That questioning of parties at hearings and the use of cross-examination is removed:

- 4.1. Council understands that questioning of parties by other parties at a hearing, particularly when it is legal counsel cross-examining a member of the public, can be daunting and/or intimidating for the party being questioned, to such a degree as to inhibit some members of the general public making objections to a licence application. However, protection of members of the public from intimidating questioning should not be at the expense of the ability to generally get to important points of clarification of evidence.
- 4.2. As an alternative, Council would recommend to the Select Committee that parties be allowed to continue to question other parties at hearings, but that no party (including the

applicant) be allowed to be actively represented at the hearing by legal counsel. Removing the words "...by counsel" from the amended text of section 204 (3) and (4) would achieve this. We suggest that it should still be possible for legal counsel to be present to monitor proceedings, but that they would not be able to directly participate in proceedings, including the questioning of submitters. The Chair of the DLC would be able to manage proceedings to ensure any lawyers present are not participating in, or unduly influencing, proceedings.

4.3. The Chair would need to take responsibility to monitor the tenor of questioning, and its appropriateness to a point of evidence raised. The Committee could also take a stronger inquisitorial approach to managing the hearing.

4.4. Council would also recommend that this restriction is extended to ARLA hearings as well.

That DLCs develop procedures to ensure transparency and consistency for applicants and objectors - the use of technology for hearing meetings:

4.5. Requiring DLCs to develop clear procedures for hearings would support greater transparency and consistency for applicants and objectors. This could include set timeframes for provision of briefs, expert evidence, and that all such documents are provided to all parties prior to the hearing.

4.6. Council considers that any change to process that enables easier and greater participation and is less formal will better support the ability of community groups and members of the public to participate. Allowing the use of technology enabling remote access would facilitate this.

Kāpiti Coast District Council **does not support** the amendments that would no longer permit those who appear at hearings to question any party or witness, and for cross-examination to not be permitted at hearings.

Council **recommends** instead, an amendment to section 204 (3) and (4) to exclude the participation of legal counsel at Alcohol Regulatory and Licensing Authority and District Licensing Committee meetings.

Council **supports** the amendments:

- requiring District Licensing Committees to develop procedures to reduce formality of hearings and to include timeframes for provision of briefs, and expert evidence, and that all such documents are provided to all parties prior to the hearing.
- providing for a hearing to be conducted and/or attended using technology enabling remote access

AREAS FOR FURTHER AMENDMENT

There are some further points that Council believes should be included in this Amendment Bill as they play to the heart of increasing effective community participation and good decision-making.

5. Te Tiriti o Waitangi

- 5.1. Māori did not make or consume alcohol (waipiro, in te reo Māori, meaning stinking water) until colonisation. Alcohol and its concomitant harms have a disproportionate effect on Māori, and there is now significant evidence of this unequal burden of harm. Until recently, Māori were significantly less likely than non-Māori to drink alcohol. The 1996/97 New Zealand Health Survey found that 27.4% of Māori adults reported no alcohol use in the past year, compared to 12.9% of European/Other adults. By 2006, this gap had substantially reduced to 15.7% of Māori compared to 12.1% of European/Other adults. By 2020/2021 the gap had reversed.
- 5.2. The Crown has a duty to uphold and honour its obligations to Te Tiriti o Waitangi by addressing this disproportionate exposure to risk and impact of alcohol on Māori. Māori advocacy groups have been active in objecting to licence applications where there is alcohol related harm affecting their communities. Notable cases before the courts have been the Ka Pai Kaiti Trust in Gisborne, and Communities Against Alcohol Harm Inc. in South Auckland. In both cases the courts ruled they did not meet the criteria to be able to object because their representatives lived more than one kilometre from the premises. Kāpiti's own Ōtaki community has faced the same difficulties. Research in 2022⁴ found that Māori connection to a local area, their whakapapa, kaumatua status or māngai kōrero (authoritative spokesperson) were not accepted as reasons to give evidence.
- 5.3. Council believes that additionally to opening up who can object, the evidence iwi and hapu can give to their connection and identity with an area be accepted as valid interest in the impact of alcohol on their communities.

6. District Licensing Committee – Skills and training

- 6.1. Alcohol law, policy and decision-making is complex and multi-faceted. It often requires the careful balancing of competing social, economic, and cultural considerations within an explicit legal framework. As with resource management law and decision-making, Council believes that members of district licensing committees should be trained by a nationally approved provider to a consistent level of expertise. This training should include inquisitorial approaches to undertaking hearings and how they can give effect to Te Tiriti in their role as decision makers on a DLC.

⁴ New Research shows how institutional racism impacts alcohol licensing decisions.
<https://www.massey.ac.nz/about/news/new-research-shows-how-institutional-racism-impacts-alcohol-licensing-decisions/>

Kāpiti Coast District Council **recommends:**

- That the Act include Te Tiriti o Waitangi as a fundamental consideration for decision-makers and the connection of Māori, iwi and hapu, to their rohe and places of significance become a fundamental consideration to decision-making.
- For all District Licensing Committee members to be trained via a nationally approved provider as is currently required for RMA Commissioners, and that the training includes both inquisitorial approaches to undertaking hearings and how DLCs can give effect to Te Tiriti in their decision making.

ADDITIONAL AMENDMENTS TO THE SALE AND SUPPLY OF ALCOHOL ACT 2012

Council understands that the provisions for reform in this Amendment Act are the first of a number of reforms of the Act that the Government is looking at. Council would strongly support further review and amendment of the Act.

Alcohol related harm can be minimised by the regulation of availability, advertising, and pricing. The Sale and Supply of Alcohol (Community Participation) Amendment Bill only effectively impacts the availability of alcohol (through making LAPs easier to adopt and providing communities a stronger say in licensing decisions). It does not address the other underlying controls that can reduce alcohol related harm.

Advertising is addressed under the "Harm Minimisation" Bill put forward as a Private Members' Bill by MP Chloe Swarbrick. It is currently before Parliament, waiting for its first reading. We would support Government picking up the advertising and sponsorship matters covered by the Private Members' Bill. Additionally, neither Bill addresses the following amendments which we would also recommend:

Kāpiti Coast District Council recommends that in future amendments to the Sale and Supply of Alcohol Act 2012, to be undertaken by Government in this Parliamentary term, the following matters be considered for reform:

- controls on alcohol advertising and sponsorship of sport and other community and recreational activities
- the introduction of minimum unit pricing (proven successful in other countries eg Scotland)
- strengthening control to ensure that alcohol purchased online is delivered to a person aged 18 years or over.

Yours sincerely


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Kāpiti Coast District Council**


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