

Chairperson and Committee Members
REGULATORY MANAGEMENT COMMITTEE

25 JULY 2013

Meeting Status: **Public**

Purpose of Report: For Decision

SALE AND SUPPLY OF ALCOHOL ACT 2012

PURPOSE OF REPORT

- 1) This report seeks decisions on a number of matters to ensure the Council is ready when the Sale and Supply of Alcohol Act becomes fully operative on 18 December 2013.

SIGNIFICANCE OF DECISION

- 2) This report does not trigger the Council's Significance Policy.

BACKGROUND

- 3) On 9 May 2013 a presentation was given to the Regulatory Management Committee on the Sale and Supply of Alcohol Act 2012 (the Act). The presentation gave members an overview of the Act, the intention of the Act to move from national to local decision making around alcohol licensing matters, and the upcoming changes in the way the Council is required to undertake the business of alcohol licensing and decision making.
- 4) There are some interim decisions that need to be made by the Council. These interim decisions will enable staff to plan and implement the changes required to ensure the District Licensing Committee (DLC) and council staff are ready when the Act becomes fully operative on 18 December 2013.
- 5) The Council needs to make decisions on the following matters:
 - whether to develop a Local Alcohol Policy (LAP);
 - if the Council opts to develop a LAP, the question of a joint LAP with a neighbouring Council or Councils should be considered;
 - whether to form more than one District Licensing Committee (DLC);
 - whether the Chairperson of the DLC is an elected member or a commissioner appointed by the Chief Executive;
 - whether a joint list of DLC members should be developed with a neighbouring Council or Councils.

CONSIDERATIONS

Local Alcohol Policy (LAP)

- 6) Section 75 of the Act allows Territorial Authorities (TA's) to consider whether they want to have a policy relating to the sale, supply, or consumption of alcohol within

its district. The Act also outlines how the policy must be produced, adopted and brought into force, which includes:

- initial consultation with agencies and the community;
- preparing a draft policy and consulting on it using the special consultative procedure;
- after consultation, giving public notice of the intention to adopt a provisional local alcohol policy and the rights of appeal against it; and
- adopting the policy, 30 days after giving public notice or 30 days after any appeals have been decided.

The provisional local alcohol policy ceases to be provisional when it is adopted

- 7) If a TA has a LAP, it must be reviewed every six years using the special consultative procedure. In addition, if a TA decides to revoke a LAP this can only be done after using the special consultative procedure.
- 8) Through LAP's, the Act aims to give local communities more input into licensing decisions. LAP's have legal standing and, once developed, licensing bodies such as the District Licensing Committee and Alcohol Regulatory Licensing Authority (ARLA) must have regard to the LAP when making decisions about licensing matters.
- 9) A LAP may:
 - limit the location of licences in particular areas, or near certain types of facilities;
 - limit the density of licences by specifying whether new licences or types of licences should be issued in a particular area;
 - impose conditions on groups of licences (such as one way door requirements); and
 - restrict or extend the default national maximum trading hours set in the Act.
- 10) The Kāpiti Coast communities have expressed increasing levels of concern about the impact of alcohol-related crime and harm over the last few years. The high levels of community engagement in the development of LAPs in other areas of the Greater Wellington Region suggests that Kāpiti Coast communities may also be greatly interested in the development of a LAP.
- 11) Regional Public Health and Mid-Central Health have both written to recommend and encourage this Council to develop a LAP. As outlined in the report recommending adoption of the Kāpiti Coast District Council Control of Alcohol in Public Places Bylaw 2013, (Regulatory Management Committee, 13 June 2013 report SP-13-919 refers) the Council has decided to first focus on the adoption of a replacement alcohol bylaw. This has been the most appropriate focus for this District given recent issues in relation to violence and public place drinking.
- 12) There have also been advantages to delaying the possible start of the development of a LAP. Those Councils which have chosen to act quickly have found it a demanding process. Taking a slower approach will allow the Council, should it choose to develop an LAP, to take advantage of the experiences of other Councils and allows the agencies, such as the Police, the Health Promotion

Agency, Ministry of Justice and Regional Public Health to develop templates, guides and statistics that should make the process simpler.

- 13) It is recommended that the Council develop a LAP and staff begin the process in August 2013.

Joint Local Alcohol Policy

- 14) Section 76 of the Act allows for two or more TA's to adopt a joint LAP for their districts. A number of TA's have already signalled their intention to develop joint LAP's.
- 15) Deciding to have joint LAP with adjoining TA's has some obvious financial benefits given that costs associated with the development, special consultative procedure, resourcing and appeals can be shared.
- 16) A joint LAP applies as if the TA's were a single TA with a single district. However a LAP: can provide differently for different parts of the district; may apply to only part of the district; and, may apply differently to kinds of licensed premises.
- 17) In this region Wellington, Hutt City and Porirua are well down the track of preparing individual draft LAP's for consultation. It is understood that South Wairarapa, Masterton and Carterton are going to develop a joint LAP. In the South Island, it is understood that Invercargill City Council and Southland District Council have agreed to develop a joint LAP.
- 18) Given that the city councils in this region have moved quite quickly to develop their own individual LAP's it is unlikely the Council would have the opportunity at this time to pursue discussions on a joint LAP with neighbouring Councils.
- 19) On this basis it is not recommended that the Council develops a joint LAP. However it is recommended that staff give consideration to the content and intent of other LAP's regionally, especially those in neighbouring authorities. This will help ensure consistency as far as possible to minimise displacement of problems for this District and neighbouring TA's.

District Licensing Committees

- 20) Section 186 of the Act advises the TA must appoint one or more Licensing Committees as, in its opinion, are required to deal with licensing matters for its district. Each Licensing Committee consists of one Chairperson and two community members.
- 21) In the past the District Licensing Agency (DLA) only convened when an application for a temporary authority or an application for a special licence was opposed. All other opposed applications were sent to the Liquor Licensing Authority (LLA) for a decision. This meant this committee only met sporadically.
- 22) Under the Act, the DLC will now consider and determine all unopposed and opposed applications and the Alcohol Regulatory and Licensing Authority (ARLA) will only determine enforcement applications and appeals. This means the number of meetings to consider applications is expected to increase.
- 23) In summary it is estimated the DLC:
- may meet for a total of 5 opposed applications and have a total of 18 hours oral hearings per year

- may meet another 20 times, totalling 10 hours meeting time, to consider and determine temporary authorities
- may meet to consider and determine another 65 unopposed applications, totalling 32 hours, some of which could be determined at the same meeting date
- the total estimated number of times the full DLC would need to be convened is 37, with all meetings totalling approximately 60 hours
- see attachment A for further information on the rationale used to calculate the estimated meeting times and dates.

24) It is not considered financially viable to operate more than one DLC in this region for the following reasons:

- geographically Kāpiti is a relatively small district;
- there are considerable financial costs involved in supporting and resourcing a DLC; and
- the estimate of number of hours the full DLC will be convening each year does not justify multiple DLC's.

25) It is recommended that the Council operates one DLC.

Chairperson of the DLC

26) The DLC will usually consist of one elected member (the chairperson) and two committee members appointed by the Territorial Authority (TA). At the request of the Council the Chief Executive can appoint a Commissioner as chairperson to this committee.

27) An elected member who is appointed chairperson will need to understand that they hold a semi-judicial role and cannot allow a political standpoint to influence decisions. Decisions must be made according to what is legally correct and cannot be influenced by concerns that the decision may be unpopular.

28) Alternatively, the Council may decide the DLC chairperson should be an appointed commissioner. A commissioner should have the specialist skills and expertise in the hearing environment and may have a background in resource management hearings for example. A DLC chairperson or commissioner is appointed for all decisions considered by that DLC. The Act does not intend for a commissioner to replace a chairperson on an ad hoc basis.

29) It is important to note that the chairperson or commissioner can not choose to arbitrarily step aside from the role, except for reasons outlined in Section 189(3) of the Act, (principally illness and absence from New Zealand) when a deputy chairperson would need to be appointed.

30) In addition to the estimates of the times that the full DLC may meet, the Chairperson can make decisions on unopposed applications as a quorum of one, and in the majority of cases this is likely to be the case. It is anticipated that the Chairperson will need to be available on at least a weekly basis to decide on applications, and will spend approximately 7.5 hours each week solely related to DLC tasks. See Attachment A for information on how these estimates were calculated.

- 31) The timing of the elections complicates this matter due to the fact that until the new Council is elected it will not be clear if there is an elected member or members who want to be Chairperson of the DLC. If after the elections there is not a suitable applicant for the Chairperson role then the Council (at its first meeting) will need to recommend that the Chief Executive start the process to recruit a commissioner so that person could be ready to undertake the role from December 18.
- 32) Only the TA can make the decision as to whether they want the chairperson to be an elected member or a commissioner. Staff does not have a recommendation on this matter.

A joint list of DLC committee members with another Council or Councils in the region

- 33) The two members of each Licensing Committee (other than the chairperson) must be appointed from a list maintained under section 192 of the Act. The TA must establish, maintain and publish its own list of persons approved to be members of the licensing committee or do so jointly with one or more other TA's.
- 34) Any person approved for inclusion in the list must have experience relevant to alcohol licensing matters. In addition a person approved for inclusion on the list can not have involvement or appearance of involvement with the alcohol industry nor can that person be a constable, Medical Officer of Health, an Inspector or an employee of the TA.
- 35) In order to help TA's in selecting committee members Local Government New Zealand has developed a document titled "Competency Guidance for DLC members which can be accessed at:
<http://www.lgnz.co.nz/projects/SocialandCommunityIssues/AlcoholReform/>
- 36) Staff have been involved in regional planning meetings in relation to implementation of the Act and there is a high degree of interest in developing joint lists of DLC members with neighbouring TA's or a region wide list.
- 37) As one of the intentions of the Act was to move to more local decision making around alcohol licensing matters it would seem critical for Kāpiti to have local community members making these decisions who understand the district and its issues.
- 38) However, if the Council develops a LAP in consultation with the community, that LAP will be one of the tools the Licensing Committee will base their decision making on. Therefore any person from the region who has a good knowledge of alcohol licensing matters and has considered the district's LAP should be able to undertake good, community focused decision making.
- 39) If there is a shortage of people in the District who meet the criteria to be included on the list the Council may struggle to have enough members on the list to ensure hearings can be convened as promptly as may be required, due to illness or other reasons.
- 40) In smaller communities there can be more potential for conflicts of interest in decision making; this may be a problem if the district is unable to maintain a relatively large list of members.
- 41) It is recommended a recruitment campaign is undertaken to source local DLC members for the list but that the Council also request staff to continue to investigate taking part in a regional list to ensure sufficient and appropriate

members can be sourced. The decision whether to join any regional list can then be considered at the same time as DLC list members are appointed.

Financial Considerations

- 42) The costs associated with the implementation and ongoing support for the DLC, developing a LAP and increased duties for the liquor licensing team are uncertain at this stage. A small allowance of \$5,000 was included for DLC meeting fees.
- 43) The fees in relation to liquor licensing have been set by central government and are currently under review. This may mean a move to a user pays cost recovery approach in the long term, however implementation and resourcing costs will need to be considered in the next Annual Plan.

Legal Considerations

- 44) There are no legal considerations. The processes being followed have been guided by advice from LGNZ and the Ministry of Justice.

Delegation

- 45) Under Section B.2 of the Governance Structure 2010-2013 the Regulatory Management Committee has:

Authority to exercise all of the Council's functions, duties and powers under the Sale of Liquor Act 1989 and such other functions as may be conferred on the Council by or under the Sale of Liquor Act 1989.

A reference in the Governance Structure to an enactment, regulation or bylaw includes any amendment to the relevant provisions of that enactment, regulation or bylaw that, with or without modification, replaces or corresponds to that enactment, regulation or bylaw.

Consultation

- 46) There is no requirement to consult on these decisions. However, further work in this area may require significant future consultation.

Policy Implications

- 47) This work complements other Council initiatives, such as being a White Ribbon Council, and the work on the Kāpiti Coast Alcohol Action Plan.

Tāngata Whenua Considerations

- 48) During the development of the Kāpiti Coast Alcohol Action Plan, concerns were expressed over alcohol-related crime and harm within the District by members of all three Iwi. Late last year a hui held at the Whakarangotai Marae in Waikanae expressed grave concern about the impact of alcohol on the health and wellbeing of the Iwi.
- 49) It is understood that Te Whakaminenga ō Kapiti are stakeholders in this process and support the development of a LAP that recognises and addresses the potential for alcohol related harm on Māori. The competencies for DLC members will include an understanding of the potential for alcohol related harm on Māori.

Publicity Considerations

50) A communications plan will be developed to communicate the changes in the licensing area and will be required if a LAP is to be developed.

RECOMMENDATIONS

51) The Council agrees to develop a Local Alcohol Plan with staff to start the process in August 2013

52) The Council approves the establishment of one District Licensing Committee.

53) The Council agrees to:

- a) appoint an elected member as chairperson for the District Licensing Committee, or
- b) appoint a commissioner as chairperson of the District Licensing Committee and recommends the Chief Executive recruit and appoint a suitable commissioner.

54) The Council agrees a recruitment campaign is undertaken to source local committee members for the District Licensing Committee list but that staff continue to investigate the possibility of being part of a region wide joint list, and notes any decision as to whether to operate a joint list of members with other territorial authorities will be reported back to the Council for decision at the same time that the local list members are approved.

Report prepared by:

Approved for submission by:

Julie Lloyd

Tamsin Evans

**Senior Environmental Health and
Licencing Officer**

Group Manager, Community Services

Attachment A: Background Statistics: estimations of meeting times for the DLC