

Item of business :

Sale and Supply of Alcohol (Community Participation) Amendment Bill

Submission name :

Hutt City Council

Hutt City Council wishes to make the following submission on the Sale and Supply of Alcohol (Community Participation) Amendment Bill.

Hutt City Council (HCC) supports the amendments in the Bill relating to appeals on provisional Local Alcohol Policies (LAP). HCC agrees that current provisions are not working as intended, and delay/prevent territorial authorities from adopting LAPs.

HCC also supports the proposed amendment to the principal Act so that District Licensing Committees can decline to renew a licence if the licence would be inconsistent with conditions on location or licence density in the relevant LAP.

Hutt City Council does not support the extent of some the proposed changes relating to who can object to licensing applications and the conduct of hearings.

Who can object

On the suggested amendments to Section 128 who is eligible to object.

HCC notes the concern that objections by individuals and organisations concerned about alcohol harm in their communities are being dismissed because they do not meet the narrow interpretation of a greater interest than the public generally . However, the Council believes the proposed amendment goes too far in the other direction as regards participation in the DLC process.

HCC is concerned that allowing any person to object as an individual or on behalf of an organisation will unnecessarily clog the efficient and fair conduct of local district licensing processes. There is very real potential that every licence application and renewal will draw objections from multiple persons and organisations who have little or no stake in that community. This is not aligned with the intent of the changes being to better reflect the stakeholder community.

Should the changes go ahead as planned, hearings would likely arise in every application and renewal, at a cost to local ratepayers. HCC licence fees are already comparatively high, but cost recovery to Council is less than 70%.

An applicant business seeking a liquor licence should expect to have to provide satisfactory assurances around the conduct of their business and the safe sale, supply and consumption of alcohol in the community directly impacted by purchases. A city or district's Local Alcohol Policy is, after all, a policy agreed for a particular area by the elected representatives of that particular community, after consultation with the community impacted by it. HCC agrees with the

analysis in the Supplementary Analysis Report that those impacted is wider than just those who reside in the immediate vicinity of the liquor outlet.

Concerns raised by members of the community are encouraged, as these can often be resolved through a process that avoids going to hearing. However, external organisations opposed to new alcohol premises in general are not likely to be able to pinpoint concerns to be resolved and instead would cause DLC decisions to go to hearing on the broad principle of anti- alcohol.

Our initial thought was that objections should be limited to people who reside, and organisations with a presence, in the city or district council in which the business applying for the licence or renewal is located. However, this would disallow objections from, for example, people who work or own a business near the outlet but don't live there, and organisations that could usefully contribute but don't have a direct presence in that city/district. An example of the latter that springs to mind is the very worthwhile contribution from the Problem Gambling Foundation when Hutt City Council was considering its bylaws relating to class 4 gambling.

HCC therefore prefers the approach outlined in option 2 in the Supplementary Analysis Report, namely:

Specify parties that may object, for the avoidance of doubt.

This option would retain the current test for greater than public interest to object to a licensing application or renewal of licence application but amend the Act so that specific parties who have standing are named for the avoidance of doubt . This would include, for example, people who live, work, shop or study in the wider area, or who whakapapa to that area. It could also include expressly extending the geographical limit within which a person has standing from the 1 to 2 kilometres established through case law.

The matter of what organisations should qualify is more problematic but it may be possible to name a short list of organisations with recognised expertise and a record of contributing fact-based submissions on liquor licensing issues.

Questioning of parties and cross examination

The impact statement for this Amendment Bill suggests that licensing hearings can be intimidating for those without resources or experience of licensing matters. Hutt City Council agrees that DLCs should strive to eliminate unnecessary formality.

DLC hearings delve into serious issues, often due to complicated matters raised by the community and reporting agencies. The matters to be investigated involve the livelihoods of business operators, the local economy and employment as well as - above all - the desire of all community members for the safe sale, supply and consumption of alcohol. If DLC members are to make fully informed, balanced and fair decisions they deserve the full range of opinions and evidence, and there should be capacity for those opinions and evidence to be robustly tested.

DLC members are frequently elected Councillors who seek to understand the full story when acting in their role as commissioner of inquiry. Councillors on the DLC may be changed every three years, and it takes time to build experience of licensing issues and Court practice. Parties to a hearing - including the Medical Officer of Health, the Police, licensing inspectors, the applicant and objectors - often ask questions during cross-examination that DLC members may not have thought of, eliciting useful information. It is the responsibility of the chairperson of a DLC to ensure that principles of natural justice are applied, and that objectors (and applicants) not familiar with licensing hearings are put at ease and helped during the process. Hutt City Council considers

losing the potential for useful and pertinent information elicited from questions from parties to a hearing and cross-examination is a backward step.

The Council acknowledges the move towards a less adversarial justice system that enables positive community participation. It is also clear that objectors and their witnesses can be considered most at risk of finding hearings intimidating/not having the resources that other parties can muster.

Rather than rule out questioning by parties, and all cross-examination, Hutt City Council favours changes that would require cross-examination of objectors and their witnesses to be directed via the DLC – in other words the questions of other parties would be directed through the Chairperson, with the Chairperson deciding the phrasing and whether the form of the question is appropriate.

If this is considered unacceptable by the select committee in terms of maintaining balance between parties, we believe the second best option would be for all cross examination questions to be directed via the DLC/Chairperson.