

Notice is hereby given that an extraordinary Meeting of the Council will be held on:

Date: Thursday 10 May 2018
Time: 9.30am
Meeting Room: Council Chamber
Venue: Municipal Building, Garden Place, Hamilton

Extraordinary Council

OPEN ATTACHMENTS

ATTACHMENTS UNDER SEPARATE COVER

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Attachment 1

**Submission by
Hamilton City Council**

SALE AND SUPPLY OF ALCOHOL (RENEWAL OF LICENCES) AMENDMENT BILL (NO.2)

10 May 2018

1.0 INTRODUCTION

- 1.1 The Hamilton City Council (**HCC**) supports the content and direction of the Supply of Alcohol (Renewal of Licences) Amendment Bill (No.2) (**the Bill**). HCC also supports Local Government New Zealand's submission on this Bill.
- 1.2 HCC, however, highlights that the Bill (if passed) is only meaningful for councils that have a Local Alcohol Policy (**LAP**). For the main centres that have been unable to adopt a LAP such as Hamilton, Auckland, Christchurch, Dunedin and Wellington, if the Bill became law tomorrow, there would be no effect.
- 1.3 The challenges with the Sale and Supply of Alcohol Act 2012 (**the Act**), therefore, are not limited to s133, which the Bill proposes to amend. HCC therefore advocates for the consideration of a specific amendment to the Act (as outlined in our recommendation below). HCC's proposed amendment would stop the lengthy and problematic appeals process so that LAPs can be efficiently adopted as to give effect to the proposed Bill.

2.0 BACKGROUND

- 2.1 The focus of the appeals process has resulted in a reductionist approach to policy development across the country. The trend to date is for less restrictive measures included in policies following appeals, which signals the increasing gap between community expectations for greater control and the reality of the LAP process as it is prescribed in the Act.
- 2.2 The requirement for local evidence has been highlighted by the Alcohol Regulatory and Licensing Authority (**ARLA**) as the most valuable evidence for the decision-making process. Yet, the views of elected representatives, who understand their own local community around the harm that alcohol is causing, are being constantly dismissed. This is due to the Act being silent on the definition of 'unreasonableness'. Accordingly, ARLA, an authority of three people from outside a territorial authority, has and continues to have the ability to call the decisions of a council (in Hamilton's case comprising 13 Members representing its local community) unreasonable.
- 2.3 A disparity of alignment is also apparent between central governments devolution of responsibility in various legislation. Local councils have been empowered to determine whether a local business can open or not on Easter Sunday (under the Shop Trading Hours Act 1990), yet under the current Act councils are not trusted to determine the local sale and supply of alcohol within its own community. In addition, this mistrust is not restricted to councils as limited Police

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and DHB resourcing at a localised level means that these organisations have generally been unable to collect the data to support restrictive policies as the data falls short of the required local evidence standard required by ARLA.

- 2.4 Local authorities have spent millions of dollars defending appeals, and decisions have been deferred to new Elected Members at the end of a local authority triennium, who continue to develop a previous council's policy with their hands tied in being able to reflect the needs of community which may have changed over the 5-year development period.

3.0 RECOMMENDATION

- 3.1 The solution is to remove the appeal rights of a Provisional LAP to ARLA. More simply put, repealing s81 (and repealing/amending associated sections) of the Act by way of supplementary order paper.
- 3.2 The removal of s81 will allow Judicial Review as the safeguard to check and balance the decision-making of a council. This will ensure consistency, as no other legislation that relates to policies controlling harm (e.g. the Gambling Act 2003 and the Psychoactive Substances Act 2013) uses a separate authority to hear appeals on decisions made by local government.

4.0 CONCLUSION

- 4.1 The new Act brought promises of increased community input into decision-making, but for many New Zealanders this has yet to be realised. The delegation of policy-making to councils with limited financial and personnel resources to fight appeals appears to have been, in the most part, an impossible ask. As all but one of the LAPs to date have been appealed by key alcohol industry groups, HCC is not an isolated case. The proposed solution outlined in our recommendation above will ensure that the views of the key alcohol industry groups are considered alongside and do not replace the views of our community.

5.0 FURTHER INFORMATION AND HEARING

- 5.1. Hamilton City Council **wishes to speak** to the Governance and Administration Committee in support of its written submission.
- 5.2. Should the Governance and Administration Committee require clarification of the points raised in this submission, or further information, please contact Riki Manarangi (Corporate Policy Specialist) on 07 838 6769, email Riki.Manarangi@hcc.govt.nz in the first instance.

Yours faithfully

Richard Briggs
CHIEF EXECUTIVE