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Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No 2) AND Supplementary Order Paper No 14


Thank you for the opportunity to provide a submission to the Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No 2) ("Bill") and Supplementary Order Paper ("SOP").

The following submission represents the views of ARPHS and does not necessarily reflect the views of the three District Health Boards it serves. Please refer to Appendix One for more information on ARPHS.

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Overview

1. The Sale and Supply of Alcohol Act 2012 (SSAA; “the Act”) allows territorial authorities to develop local alcohol policies (LAPs) in consultation with communities. The development of a LAP is a significant commitment for a Territorial Authority and involves broad democratic processes. Effective LAPs are required as alcohol-related harm is a significant concern for New Zealand.
2. Between 2010 and 2015 there were 49,465 hospital admissions in New Zealand where the primary diagnosis was for a condition wholly attributable to alcohol consumption or where an alcohol external cause was listed in the admission record. Of these, 19,601 were residents of the Auckland region (40% in comparison to 32.4% of the New Zealand population)¹. This is an average 3,266 events per year in the Auckland region alone, and is 7% higher than the national rate overall².
3. The aim of a LAP is to minimise alcohol-related harm, and LAPs can contain provisions that limit the location and density of licences in particular areas. Such measures are aligned with international and New Zealand research that shows increased alcohol outlet density is associated with increased alcohol-related harm.
4. Amongst other criteria, licensing authorities must consider a LAP when making a decision about a licensing application. At present the Act is structured so a licensing authority may refuse to issue a new licence if it is contrary to the relevant LAP, yet cannot refuse a renewal of licence on the same basis. This removes any incentive for LAPs to contain location and density policies that apply to applications for renewal of licences, and therefore limits the ability of communities to fully address (through their LAPs) any concerns they might have about the sale, supply and consumption of alcohol in their local areas.
5. ARPHS supports the intent of the proposed Bill to provide the licensing authority with the discretion to refuse a renewal of a licence if inconsistent with a LAPs location and density policies. The Bill brings renewals into line with new licence requirements, ensuring LAPs have more prominence in the decision-making process for renewal of licences.
6. However, without accompanying changes to the current LAP process, particularly the way in which LAPs are developed and implemented, ARPHS considers the proposed amendments will have little effect on licensing decisions for renewals in Auckland in the near to medium future. See Appendix Two for further details.
7. ARPHS considers a wider review of the LAP process is warranted, and has made several recommendations (outlined in paragraphs 26 and 27 of this submission) that aim to address some of the current (and potential future) issues limiting the effectiveness of the Bill. Key recommendations include:
 - policy guidance should be developed to support local authorities to decide how a reduction in existing off-licence premises in a locale would be managed;

¹ Statistics New Zealand 2013 census QuickStats about a place: Auckland Region (2013).

² Huckle, T. (2016) *Alcohol-Related Harm Snapshot 2015. Auckland v Rest of New Zealand 2015*. SHORE and Whariki Research Centre, Massey University, Auckland.

- review of the appeal process in Part 2, Subpart 2 of the Act to limit the ability to appeal further once the Alcohol Regulatory and Licensing Authority has first dealt with appeals to a Provisional LAP (PLAP); and
- local authorities should have the ability to bring into force elements of a LAP that are not subject to appeal.

ARPHS supports the intent of the Bill

8. ARPHS supports the general principle that renewal of licences should be assessed against all relevant provisions of a LAP. ARPHS acknowledges that the proposed Bill seeks to ensure LAPs have more prominence in the decision-making process for renewal of licences, and it brings renewals into line with new licence requirements.
9. The purpose of the Bill is to ensure a licensing authority or licensing committee takes into account *location and density* policies in a LAP when considering whether to renew a licence. This intent is consistent with paragraphs (a) to (c) of section 77(1) of the Act.
10. The Bill's explanatory note states that [emphasis added]:

"To not assess existing off-licence renewals against local alcohol policies concerning density and location is to render the basis of a local alcohol policy nugatory and to ignore that existing outlets may have contributed to the identification of areas in a local alcohol policy where there is excessive harm caused by alcohol consumption to the community..."
11. New section 133(1) potentially elevates the importance of LAP location and density matters in the decision-making process, by signalling to the licensing authority or licensing committee that it may refuse to renew a licence on this criterion alone if it holds sufficient weighting amongst other considerations. ARPHS strongly supports this intent.

Alcohol availability (reducing location and density of alcohol outlets to reduce alcohol-related harm)

12. International evidence identifies five policies that are effective for reducing alcohol-related harm³. One of the five policies is to reduce the availability of alcohol, and one way to do this (relevant to this Bill and Supplementary Order Paper (SOP)) is through reducing the number of retailers licenced to sell alcohol.
13. Studies undertaken by recognised leading international researchers provide reliable scientific evidence that regions with high numbers of outlets and with extended trading hours appear to have higher levels of alcohol related injuries⁴.
14. New Zealand research has found a positive correlation between increased density of alcohol outlets and increased alcohol-related social harms (which includes violence, offensive behaviour, sexual abuse, and

³ Thomas Babor and others *Alcohol No Ordinary Commodity: Research and Public Policy* (2nd ed, Oxford University Press, New York, 2010) at 255.

⁴ M Hobday and others "The effect of alcohol outlets, sales and trading hours on alcohol-related injuries presenting at emergency departments in Perth, Australia, from 2002 to 2010" (2015) *Addiction* 110 (12).

motor vehicle accidents⁵), as well as increased alcohol related harm among those who live nearby⁶. This positive association is the same across social deprivation levels⁷.

15. Using 2014 data ARPHS undertook some geospatial analysis to evaluate the accessibility and availability of off-licence liquor premises in the Counties Manukau region and found a disproportionately high density of alcohol outlets. See Appendix Three for more detail.

Effect of Supplementary Order Paper (SOP)

16. The SOP amends the Bill so the discretion to refuse the renewal of a licence only applies to existing off-licences.
17. ARPHS understands the rationale for the SOP and, although we would prefer the Bill to apply to on-licences also, we are supportive of the SOP if it allows the Bill to progress to its second reading.
18. The New Zealand Alcohol Supply and Demand Structures report⁸ highlighted that:
- Off-licence outlets account for the largest share of estimated sales by value (66%), just over twice that of on-licences (32%);
 - The lower price levels of off-licence sales mean that off-licence outlets account for the largest share of sales by total beverage volume (estimated at 84%), with on-licence outlets accounting for 14%; and
 - Supermarkets account for an estimated 31% of national alcohol sales by total beverage volume; bottle stores an estimated 33%.
19. Throughout alcohol licensing hearings in Auckland (including the Auckland PLAP appeal), community groups have expressed particular concerns about the number and location of off-licences. Communities have experienced significant difficulties when objecting to renewal applications, especially in relation to the location and density of off-licences.
20. There is a large body of reliable literature about the relationship between alcohol-related harm and location and density of off-licences. For example, a New Zealand research study found an association between the density of off-licences (specifically) and binge drinking in addition to an association between density of all types of outlets and alcohol-related harm scores (as above)⁹. During the Auckland PLAP appeal, a primary issue identified was with off-licences, which aligns with the position of the SOP.
21. The proliferation and ubiquity of off-licence premises in some parts of Auckland is concerning, and the issue needs to be given due consideration.

⁵ Cameron P., Cochrane W., & Livingstone M. 2016. The relationship between alcohol outlets and harm. A spatial panel analysis for New Zealand, 2007-14. Pp 3-9. Health Promotion Agency. Available from:

<https://www.hpa.org.nz/sites/default/files/The%20relationship%20between%20alcohol%20outlets%20and%20harm.pdf>

⁶ Connor J, Kypri K., Bell M., & Cousins K. 2011. Alcohol outlet density, levels of drinking and alcohol related harm in New Zealand: a national study. *Journal of Epidemiology and Community Health*, 65 (10). Available from:

<http://jech.bmj.com/content/65/10/841.full.pdf>

⁷ *Ibid.*

⁸ M.E Consulting. (2018). New Zealand alcohol supply and demand structures: Research report. Wellington: Health Promotion Agency.

⁹ Connor and others "Alcohol outlet density, levels of drinking and alcohol-related harm in New Zealand: a national study" (2010) *Epidemiol Community Health* 3.

Other LAP amendment considerations: existing section 133 requires change

22. The Object of the Act is that:

- (a) The sale, supply, and consumption of alcohol should be undertaken safely and responsibly, and;
- (b) The harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

23. The Act provides for territorial authorities (TAs) to develop and implement a LAP. The aim of a LAP is to minimise alcohol-related harm (and subsequently address community concerns) through measures which control alcohol availability. This includes controlling the number of retailers licenced to sell alcohol, which therefore, includes the renewal of licences.

24. It is recommended that existing section 133 either needs to be amended or deleted, as it limits the effectiveness of a LAP as an assessment tool when considering renewal of licence applications. Within the context of a LAP, existing section 133 assumes that existing premises should be granted a renewal of licence, and any community concerns or alcohol related harm associated with the location of the business can be appropriately mitigated through conditions.

25. It is noted however, this approach ignores the reality that, in a few cases, a licenced business might simply be located on an inappropriate site (as identified by the wider community), and should be encouraged to find an alternative site to operate.

Further review recommended to support LAP adoption and implementation

26. ARPHS considers there are several issues with the current LAP process that need to be addressed to ensure the proposed amendments to section 133 have practical relevance to Auckland, as well as ensure local authorities are encouraged to consider location and density matters in relation to existing premises when developing or reviewing their LAPs. Without supporting amendments, ARPHS has concerns that provisions in draft, provisional and enacted LAPs will fail to a) minimise alcohol related harm and b) address the communities' concerns around the availability of alcohol in their local areas.

27. Accordingly, in addition to amending section 133 of the Act as proposed, ARPHS recommends:

- If the intent is for LAPs to contain location and density provisions that apply to renewals for off-licence premises, then policy guidance needs to be developed that supports local authorities to decide how a reduction in existing off-licence premises in a locale would be managed through their plans (as discussed in Appendix Three). Aspects that could be considered include, the ability to transfer licences, 'last in first out' policies, differentiating between those business owners that own a site versus leasing, and identifying potential methods to support the conversion of an off-licence liquor store into a new form of business that benefits the surrounding community.
- If a licence up for renewal is inconsistent with the density and location provisions in a LAP, then it should be mandatory for an applicant to demonstrate to the licensing authority that they have considered alternatives (including alternative sites); this is similar to the approach taken in the Resource Management Act (schedule 4, section 6(1)(a)) where resource consent applications are

required to consider alternative locations or methods for undertaking the activity if it will result in any significant adverse effect on the environment.

- Review of the appeal process in Part 2, Subpart 2 of the Act to limit the ability to appeal further once the Alcohol Regulatory and Licensing Authority has first dealt with appeals to a PLAP in order to address the cost and time it takes to adopt a LAP.
- To help inform the licensing authority or licensing committee's decision on an application, local authorities should have the ability to bring into force elements of a LAP that are not subject to appeal.
- Amend the Act so a policy on maximum trading hours in a LAP takes precedent over the default delivery times for remote sellers as outlined in section 59(1) (as currently some remote sellers can complete a delivery in under one hour, such as My Beer Case¹⁰);
- To improve community participation in licensing decisions, consideration should be given to holding licensing hearings in community settings that better enable the community to attend;
- A full review of the LAP process to identify where further improvements can be made. This is because, as discussed above, it is a very lengthy, litigious and costly process for all parties.

Conclusion

28. Thank you for the opportunity to submit on the Sale and Supply of Alcohol (Renewal of Licences) Amendment Bill (No 2) and Supplementary Order Paper.

¹⁰ https://www.mybeercase.co.nz/?gclid=EAlaIQobChMlt4ys-eS92gIVCya9Ch3nDAyyEAAYASAAEgJrx_D_BwE

Appendix One: Auckland Regional Public Health Service

Auckland Regional Public Health Service (ARPHS) provides public health services for the three district health boards (DHBs) in the Auckland region (Counties Manukau Health and Auckland and Waitemata District Health Boards).

ARPHS has a statutory obligation under the New Zealand Public Health and Disability Act 2000 to improve, promote and protect the health of people and communities in the Auckland region. The Medical Officer of Health has an enforcement and regulatory role under the Health Act 1956 and other legislative designations to protect the health of the community.

ARPHS' primary role is to improve population health. It actively seeks to influence any initiatives or proposals that may affect population health in the Auckland region to maximise their positive impact and minimise possible negative effects on population health.

The Auckland region faces a number of public health challenges through changing demographics, increasingly diverse communities, increasing incidence of lifestyle-related health conditions such as obesity and type 2 diabetes, infrastructure requirements, the balancing of transport needs, and the reconciliation of urban design and urban intensification issues.

Appendix Two: The Bill and SOP will currently have little effect in Auckland

While we support the intent of the Bill, it is ARPHS's view that, in practice, the proposed amendment will have little or no effect on licensing decisions for renewals in Auckland¹¹ in the near to medium future. ARPHS holds this view for the following reasons:

- Currently Auckland's PLAP does not contain policies to control the density and location of existing licences.
- The process of developing a LAP is costly, time consuming and subject to appeal and judicial review rights, and therefore, Auckland Council may be reluctant to undertake a process to amend its LAP to include density and location provisions applicable to existing licences.

Having a LAP in force is vital to this Bill having practical application. However, after five years of development, public consultations and appeals, Auckland's LAP is still not in force. Importantly, Auckland's PLAP only contains location and density related provisions for new licence applications, and not renewals for licenced premises. This is not surprising given section 133 effectively removed the need to consider such matters.

Given the amount of time and resources Auckland Council has allocated to developing its PLAP, ARPHS would understand if Council was hesitant to amend its plan to include location and density policies applicable to renewal of licences. This is because this would require the plan to be released for community consultation, and therefore open to further appeals and subsequent delays. Stakeholders may therefore need to wait until the six-yearly review before they get an opportunity to consider density and location matters that relate to existing premises.

¹¹ ARPHS acknowledges that Counties Manukau Health region also covers the top of Hauraki and Waikato District Councils, where both territorial authorities have LAPs in force.

Appendix Three: Results from geospatial analysis of off-licence liquor premises in Counties Manukau District Health Board (DHB) region

Using 2014 data ARPHS undertook some geospatial analysis to evaluate the accessibility and availability of off-licence liquor premises in the Counties Manukau DHB region. Households' accessibility to off-licence liquor premises and neighbourhood corner stores (NCSs) was compared by calculating the ratio of off-licence liquor premises to NCSs within a five minute drive for all Unitary Plan zoned residential addresses within the locality. NCSs were defined as any small premise that sold non-specialised food items, and included dairies, convenience stores and service stations.

For the study, the region was subdivided into four study areas. Several methods were adopted to measure the average household's accessibility to off-licence liquor premises within each of the four study areas. The tables below contain the following information:

- Table 1 – The average number of off-licence liquor premises within a five minute drive for all Unitary Plan zoned residential addresses within the locality. This measure is also analysed for Maori and Pacific populations.
- Table 2 – The ratio of off-licence liquor premises to NCSs within a five minute drive for all Unitary Plan zoned residential addresses within the locality. NCS was defined as any small local premise that sold non-specialised food items, and included dairies, convenience stores, and service stations. A figure of 100 represents a 1:1 ratio. The ratios are calculated on an individual address level basis.

Table 1

5 minute off-licence liquor premises counts by locality				
<i>ID</i>	<i>Locality</i>	<i>Tot Pop</i>	<i>Maori</i>	<i>Pacific</i>
1	Eastern	4.4	4.7	5.5
2	Mangere/Otara	4.5	4.7	4.7
3	Manukau	5.6	5.5	5.4
4	Franklin	3.0	3.8	3.9
	CM DHB	4.7	5.0	5.0

Table 2

5 minute off-licence liquor premises-NCS ratios by locality				
<i>ID</i>	<i>Locality</i>	<i>Tot Pop</i>	<i>Maori</i>	<i>Pacific</i>
1	Eastern	115	112	105
2	Mangere/Otara	44	44	45
3	Manukau	55	55	60
4	Franklin	62	78	80
	CM DHB	72	61	55

While results varied between regions, overall the results demonstrated that households within the Counties Manukau DHB region could at least access one off-licence liquor store for every two NCSs. An off-licence to NCS ratio of 1:2 highlights the disproportionately high density of alcohol outlets currently in South Auckland.