QUEENSTOWN LAKES DISTRICT COUNCIL

Private Bag 50072, Queenstown 9348, New Zealand
QUEENSTOWN, 10 Gorge Road | P: +64 3 441 0499
WĀNAKA, 47 Ardmore Street | P: +64 3 443 0024
www.qldc.govt.nz

Due Date: 11.59pm Sunday 12 February 2023
Online: https://www.parliament.nz/en/ECommitteeSubmission/53SCJU_SCF_BILL_130167/CreateSubmission

SUBMISSION TO JUSTICE COMMITTEE ON SALE AND SUPPLY OF ALCOHOL (COMMUNITY PARTICIPATION) AMENDMENT BILL

Thank you for the opportunity to present this submission on the Sale and Supply of Alcohol (Community Participation) Amendment Bill.

The Queenstown Lakes District Council (QLDC) is supportive of the overall work on Sale and Supply of Alcohol (Community Participation) Amendment Bill.

This submission outlines key points that are supported by QLDC and key points that QLDC would recommend for further consideration.

QLDC supports:

- Amending the Sale and Supply of Alcohol Act 2012 (the Act) so that parties can no longer appeal provisional local alcohol policies.
- Allowing District Licensing Committees to decline to renew a licence if they consider that the licence would be inconsistent with conditions on location or licence density in the relevant local alcohol policy.
- Changing the way that licensing hearings are conducted.
- Changing who can object to licensing applications.

QLDC does not support:

- The proposed inclusion of trade competitor objections.
- The removal of questioning and cross-examination from hearings.

QLDC would recommend further work is done on:

- The proposed timeframe of 10 workings days for submission of briefs and evidence set out under proposed section 205A(2) and it's correlation with current section 202(4) to provide at least 10 working days' notice of a public hearing being held.
- DLC members being qualified or have greater training available.

There are further points that the QLDC would recommend for consideration:

- Inclusion in the Amendment Bill of Te Tiriti considerations.
- Consultation with local Iwi should also be included as a mandatory provision as it already is with Public Health and Police.

QLDC would not like to be heard at any hearings that result from this consultation process.

Thank you again for the opportunity to comment.

Yours sincerely,

Glyn Lewers
Mayor

Mike Theelen
Chief Executive

SUBMISSION TO JUSTICE COMMITTEE ON SALE AND SUPPLY OF ALCOHOL (COMMUNITY PARTICIPATION) AMENDMENT BILL

1.0 Context of the Sale and Supply of Alcohol (Community Participation) Amendment Bill in relation to QLDC.

1.1 Queenstown-Lakes District (QLD) is a district with an average daily population of 48,300 and a peak daily population of 99,220[1].

1.2 Currently there are 463 licences in the district equating to one licence for every 105 people (average daily population). Dunedin by comparison has 401 licences with a population of 130,400, or one licence for every 325 people.

1.3 The QLD does not have a Local Alcohol Policy (LAP) in place, instead relying on the Act, associated Regulations, and case law for guidance and enforcement of licensing matters within the district.

1.4 Under the Sale of Liquor Act 1989, Queenstown Lakes District Council (QLDC) had in place the "Liquor Licensing Policy" which was adopted in 2007. The policy was litigated extensively between 2007 (in front of the former Liquor Licensing Authority) to 2009 (in front of the Court of Appeal). The decision *My Noodle Limited v Queenstown Lakes District Council* [2009] NZCA 564; [2010] NZAR 152[2] has become a piece of case law often referenced in many alcohol licensing decisions.

1.5 My Noodle is an example of a robust local council policy being able to withstand legal testing, provided that a policy is already in place in the first instance. Policies such as the 2007 QLDC policy were approved without appeals from large industry players and did have significant positive impact on the community, the My Noodle case saw the licensed hours for many Queenstown premises be reduced from 24-hour trading to 4am. The following comments were made at [48] of the decision:

"[48] *French J noted that ALAC's submission to the Council was to the effect that extensive research shows the key factors in liquor abuse are access and availability and that there is a link between trading hours and alcohol abuse. The more alcohol is available, the greater the potential there is for alcohol abuse. French J also referred to the minutes of the meeting of Council's Regulatory and Hearings Committee on 1 May 2007, which record discussion of a submission from the police highlighting an increase in alcohol-related offending in central Queenstown. The Committee concluded that a reduction in the trading hours would be required to achieve the aim of reducing the issues relating to alcohol related harm in central Queenstown."*

1.6 Community engagement around public notification of alcohol applications in this district, exceeds what is recommended in the Act and associated Sale and Supply of Alcohol Regulations 2013 (the Regulations). Public notification of applications is not only provided by the applicant at their premises, but also on the QLDC website, and in two local news publications (both of which are also available as digital editions).

1.7 The news publication component was introduced in September 2021 due to public requests. Since this was introduced, there has been one public hearing due to public objections.

1.8 Due to this hearing, comments from participants regarding the formality of hearings and finding the process daunting, were made to council. It is therefore agreed that current public hearings held by the Queenstown

[1] https://www.qldc.govt.nz/community/population-and-demand

[2] http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZCA/2009/564.html?query=my%20noodle

District Licensing Committee (DLC) are too formal, though they generally do follow the same process as the Alcohol Regulatory and Licensing Authority (the Authority).

1.9 Currently the Queenstown DLC are looking at a review of their hearing processes, information availability to the public informing them of their abilities to object to licences, location of information, and QLDC's communication of applications to interested community groups. This review is due to their not being sufficient information or guidance available or provided for in current legislation. This agency and its officers are also conscious of needing to strike a balance with the dissemination of information to the public regarding applications received, and not appearing to be touting for objections to applications.

2.0 Removal of appeals to Provisional Local Alcohol Policies.

2.1 The council **supports** the removal of appeals to Provisional Local Alcohol Policies.

2.2 The ability for councils to reduce trading hours and control proliferation of licensed premises has been difficult due to the problems with the appeal process. It has cost some councils over a million dollars to put their policies through the appeals process. Other councils have started the Provisional LAP process but have aborted it due to rising costs and appeals from large retailers such as Countdown and Foodstuffs.

2.3 Larger retail players have stalled all main centre LAP's. Of the 67 Territorial Authorities (TA's) in New Zealand, 41 have LAP's which have been adopted with no LAPs in place in Auckland, Hamilton, Wellington, or Christchurch[3]. Of the LAP's which are in place, it has taken on average three years to have been implemented from start to finish.

2.4 There is no guidance provided in the Act or Regulations around how to measure the effectiveness or not of the provisions set out in LAP's. Guidance therefore needs to be provided as to what provisions can and cannot be placed into LAPs to avoid stepping outside the Act and to avoid overlapping into Resource Management Act (RMA) territory and overlapping with the district or city plan. Harm minimisation must be maintained as the key component to any LAP.

2.5 It is suggested that by removing the LAP appeal provision, the addition of mandatory requirements that each TA must have a policy in place, along with providing guidance around what can and cannot be in an LAP. Guidance on how TA's can measure a LAP's effectiveness should also be provided.

2.6 In the Law Commissioner report "Alcohol in Our Lives: Curbing the Harm" it was suggested at paragraph 68, page 18, that the Authority should be "monitoring and auditing ……. local alcohol policies"[4].

3.0 Decline of renewal applications if inconsistent with relevant Local Alcohol Policy.

3.1 The council **supports** the decline of renewal applications if inconsistent with the relevant LAP.

3.2 This provision is pertinent particularly when density and proliferation of premises in one area of the community are considered. For example, a high number of premises in a high deprivation area, or the ability to minimise alcohol related harm due to declining an application, could be seen as beneficial by the community.

[3] https://www.ahw.org.nz/Issues-Resources/Local-Government-Policies-Strategies/Local-Alcohol-Policies

[4] https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R114.pdf

3.3 If an application is declined due to it being considered inconsistent with a LAP, the applicant still could appeal the DLC decision to the Authority to seek another opinion.

4.0 Changing the way licensing hearings are conducted.

4.1 The council **supports** changing the way hearings are conducted.

4.2 It is recommended the guidance be provided to clarify the statement "unnecessary formality" in proposed new subsection 203A(2)(a). The idea of formality will vary around the country based on experience various DLC members have. It is still considered pertinent that those attending hearings understand the importance of the hearing itself even with "unnecessary formality" removed.

4.3 For example, in Queenstown, DLC hearings are held in the Queenstown Lakes District Court rooms due to several factors including a separate room for the panel members to discuss applications, there being adequate spaces for all agencies, applicants, legal representation, media and public within the room the hearing is taking place. The Queenstown District Court rooms are also used by the Authority when they hold hearings in the district.

4.4 As mentioned at point 1.8, for those members of the public who have never been to a court room or participated in a public hearing before, the process can be intimidating particularly when the panel are seated up higher in the judge's area in a court setting, this adds to making court rooms not conducive to a public hearing. Other hearings such as RMA hearings are semi-formal though often held in other spaces such as conference rooms, hotel rooms or community facilities. It is noted that RMA hearings are not held at night or in weekends.

5.0 Amending who can publicly object.

5.1 The council **supports** amending who can publicly object.

5.2 It is considered this proposed amendment needs to go further to ensure that all persons/groups/entities who wish to object can do so. By granting standing to witnesses who reside or work in the locality would also align with the amenity and good order provisions within the Act. This would be a flexible assessment criterion that would logically be smaller for urban/CBD premises and larger for small towns and rural environments working on a radius basis with the premises being at the centre.

5.3 The threshold of "standing" of an objector has been argued in many Authority hearings. The test under section 128 of the Act has been interpreted as those "residing or doing business within a one- or two-kilometre radius of the premises"[5].

5.4 The current provisions within the Act do not consider those who walk past a premises on a daily or twice daily basis, or work in the vicinity or the premises.

5.5 The proposed changes would also allow groups of residents or other such community groups, and other individuals to be able to voice their concerns over certain applications.

[5] http://www.nzlii.org/cgi-bin/sinodisp/nz/cases/NZARLA/2019/94.html?query=flaxmere%20liquor

6.0 Proposed introduction of trade competition objections.

6.1 Council **does not support** the proposed introduction of "trade competitor" objections and their ability to object to any licence whether or not they sell alcohol, or regardless of their location.

6.2 In the past vexatious and frivolous appeals from trade competitors saw a change to the RMA in 2009 with the Resource Management (Simplification and Streamlining) Amendment Act 2009[6] introducing Part 11A "Act not to be used to oppose trade competitors".

6.3 The RMA amendment identifies who a trade competitor is, limits submissions able to be made, limits appeal representation, and prohibits the use of surrogates to appeal.

6.4 This amendment was introduced to deter "submitters and appellants from opposing applications on the basis of arguments that have little or no merit and does not effectively prevent anti-competitive behaviour by trade competitors"[7].

6.5 It is recommended that the changes made to the RMA as discussed above are taken onboard and considered at greater length.

7.0 Proposed removal of questioning and cross examination.

7.1 The council **does not support** the removal of the ability for questions or to cross examine persons during hearings.

7.2 By removing this provision takes away the ability for agencies to verify statements made by applicants, witnesses, or agencies. Questioning and cross examination is important to test the evidence produced at hearings.

7.3 Agencies must retain the ability question and to cross examine applicants and respondents. This is crucial for when applicants paint a picture that doesn't align with the facts as we know them and to draw out further details where necessary.

7.4 In contrast, applicants and respondents need to be able to question and cross examine agencies and their witnesses. From an agency perspective, the ability to question and cross examine a person enables the ability to flesh out their evidence and make sure that the full story is there for the decision makers to be aware of.

7.5 It is suggested that the issue is extensive questioning and/or cross examination by applicant (or respondent when that is the licensee) lawyers, when the questioning and/or cross examination is prolonged. This is more difficult to manage, but could be managed by better exercise of control by the decision-making body (i.e. the DLC or ARLA). It is understood that this is more of an issue at DLC hearings, where the DLC might not exercise such control over the applicant's lawyers.

7.6 It is also unclear if this provision includes the DLC and their ability to question persons during a hearing given proposed subsection 203A(4) which appears to only allow the Authority the ability to cross-examine.

7.7 The suggestion has been to move away from direct questioning or cross examination to something like the RMA hearing approach where there is still questioning but only by the commissioners. Under the RMA

---

6 & 7 https://www.legislation.govt.nz/act/public/2009/0031/latest/DLM2218401.html

subsections 39(2)(c) and (d), no person other than the chair or other member of the hearing panel is permitted to question any party or witness.

7.8 A DLCs duty is to consider and determine applications, not inquire into them, that is the licensing inspector's role. These are fundamentally different things. Shifting the expectation onto a DLC makes them more of an investigative body than is likely catered for with current skills.

7.9 It is suggested that DLC's undertake more training in how to run and control hearings rather than removing questioning or cross examination totally.

7.10 In the Law Commission report "Alcohol in Our Lives: Curbing the Harm" quote at 10.15, page 200:

"*It is intended that DLCs be constituted to be bodies rather like independent commissioners undertaking Resource Management Act consent hearings under the Resource Management Act 1991. In this respect, members would need to be trained in a similar way that councillors who hold hearings under the Resource Management Act have been trained under the "Making Good Decisions Programme" developed by the Ministry for the Environment and Local Government New Zealand. Obviously, this training will need to have a special component in relation to liquor. In its decision-making processes on licences, the committee would have to function judicially. The experience requirements for committee members and additional training should ensure DLCs are well-equipped to undertake their functions."*[8]

8.0 Areas of the Sale and Supply of Alcohol (Community Participation) Amendment Bill that are not addressed and should be considered.

8.1 A consideration to the revision of criteria around becoming a DLC member including consideration to those who are inspectors or consultants in one district and DLC members in another. Consideration also needs to be given to increasing the fees which are paid to DLC members as set out in the Cabinet papers.

8.2 Consideration also needs to be provided around training of new and existing DLC members. Those existing DLC members will have more technical knowledge than those who are new. The DLC Network have been facilitating training sessions with a Crown Solicitor for those DLC members who are new or are seeking to refresh their knowledge. Mandatory training and refresher training should be built into the criteria for assessment of DLC members.

8.3 For those members of the community who do wish to be DLC members, there should be the requirement to hold relevant qualifications to be a DLC member. Undertaking training to obtain NZQA qualifications to serve and supply alcohol is already in place under the Act and Regulations for those persons wishing to be duty manager's and is required for those decision makers assessing applications under the RMA.

8.4 With the proposed introduction of section 205A, implementing or supporting framework for implementation of hearing processes and proceeding guidance including best practice for disclosure and what the DLC can do if the timeframes for this are not met, need to be provided or allowed for in this section. Clarity should also be provided around taking submitted documents as read at hearings to aid in decreasing the hearing time.

8.5 Further consideration needs to be given to the proposed new subsection 205A(2) and the 10 working day timeframe regarding provision of evidence prior to a hearing. This 10-working day provision will be difficult for any party to a hearing to provide given the existing provisions of section 202(4) which requires the notice of hearing be sent to parties at least 10 working days prior to a hearing:

[8] https://www.lawcom.govt.nz/sites/default/files/projectAvailableFormats/NZLC%20R114.pdf

202 Procedure

(1) If no objection to an application is filed within the prescribed time, the licensing authority or licensing committee concerned may either grant the application on the papers or convene a public hearing to consider the application.

(2) With the leave of the chairperson of the licensing authority, a licensing committee may refer the matter to the licensing authority for decision.

(3) Where an objection is filed within the prescribed time, the licensing authority or licensing committee concerned must convene a public hearing to consider the application, unless—

(a) the application is withdrawn; or

(b) having considered the application, the authority or committee believes that the objection is vexatious or based on grounds outside the scope of this Act; or

(c) the objector does not require a public hearing.

(4) The licensing authority or licensing committee concerned must give at least 10 working days' notice of the public hearing to—

(a) the applicant; and

(b) each objector; and

(c) the constable, the inspector, and the Medical Officer of Health, to whom a copy of the application has been sent in accordance with this Act.

(5) The hearing of a matter or any part of it may be conducted by telephone, audiovisual link, or other remote access facility if the licensing authority or the chairperson considers it appropriate and the necessary facilities are available.

Compare: 1989 No 63 s 106

Section 202(5): inserted, on 14 November 2018, by section 270 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

8.6 The current Act also appears to be one of the few more recent Act's introduced whereby there are no Tiriti considerations. As outlined in the Supplementary Analysis Report for this Bill, inclusion in the amended Act of te Tiriti considerations has been discussed at various points throughout the document. However, of most pertinence is point 42 on page 13 and states the following:

"Meet Treaty of Waitangi/Te Tiriti o Waitangi (te Tiriti) obligations: *The processes facilitate Māori participation in decision-making and support the Crown's obligation to positively promote equity and protect Māori against alcohol harm."*

8.7 Inclusion of te Tiriti considerations would aid in meeting te Tiriti obligations and enhance community participation in alcohol licensing matters.

8.8 Consultation on applications with local Iwi should also be included as a mandatory provision as it already is with Public Health and Police for new, renewal and special licence applications.

Recommendations:

R.1. The council **supports** the removal of appeals to Provisional Local Alcohol Policies.

R.2. The council **supports** the decline of renewal applications if inconsistent with the relevant LAP.

R.3. The council **supports** changing the way hearings are conducted.

R.4. The council **supports** amending who can publicly object.

R.5. Council **does not support** the proposed introduction of "trade competitor" objections.

R.6. The council **does not support** the removal of the ability to undertake questioning or cross examine in hearing proceedings.

R.7. Additional training and qualifications mandatory for DLC members.

R.8. Revision to the timeframe set out in proposed subsection 205A(2) and how this aligns with existing subsection 202(4) of the Act, including clarity on taking submitted documents as read, what measures DLCs take if documents fail to be provided within the requested timeframes.

R.9. The introduction or inclusion of Te Tiriti considerations into the Amendment Bill.

R.10. Mandatory consultation with local iwi to align with existing police and public health agencies, and the enhancement of community participation.