Local Alcohol Policy Development

Overview

A key development of the Sale and Supply of Alcohol Act 2012 was the option for a territorial authority to develop a local alcohol policy (LAP), relating to the sale, supply or consumption of alcohol within its district.

LAPs are optional. A territorial authority may decide to develop an LAP to assist decision-makers to fine-tune the application of the Sale and Supply of Alcohol Act through its activities, and those of the Alcohol Regulatory and Licensing Authority, to better meet the needs of individual communities.

If an LAP is implemented, licensing bodies (the District Licensing Committee and Alcohol Regulatory and Licensing Authority) will have to consider LAPs when they make decisions about licence applications.

This briefing paper provides guidance to local authority staff involved in local alcohol policy development. It sets out the new legislative provisions and timetable; discusses issues related to constructing a robust evidence base and provides guidance on supporting local evidence with real life case studies to engage decision-makers.

The Legislative Provisions

Following the passing of the Alcohol Reform Bill in December 2012, the Government stated that the key features of the legislation aimed at reducing alcohol-related harm in families and communities were:

- giving local communities a say on alcohol licensing, such as determining maximum trading hours in their area and limiting the location of licensed premises near certain facilities, such as schools;
- introducing stronger rules about the types of stores eligible to sell alcohol and restricting supermarkets and grocery stores to displaying alcohol in a single area;
- requiring the supply of alcohol to under-18-year-olds to be done so in a responsible manner;
- requiring express consent from parents or guardians before supplying alcohol to a minor;
- introducing new liquor licensing criteria, making licences harder to get and easier to lose; and
- introducing stronger controls on alcohol advertising and promotion, such as by making it an offence to promote alcohol in a way that has special appeal to minors.

In introducing the Alcohol Reform Bill into Parliament for its third and final reading, the Hon Judith Collins, Minister of Justice, stated:

“Another important measure to give local communities a greater say is the option for communities to adopt a local alcohol policy. Under these policies, communities will be able to restrict or extend maximum trading hours. They will also be able to limit the location of licensed premises near certain facilities, such as schools, and specify whether further licences should be issued in a defined area. There have been calls to make local alcohol policies mandatory, however, there are important reasons why policies should be optional. Firstly, there is significant cost associated with the development of a local alcohol policy. Some territorial authorities—particularly the smaller ones—
may not want to fund the development of a policy. Secondly, some communities may consider that a local alcohol policy is unnecessary for their area, and that the national maximum trading hours, a new criteria in the bill, adequately address their needs. It is very important that we allow communities to decide what is best for them, especially given the aim of increasing community input and control over licensing.”

A local alcohol policy (LAP) may include policies on any or all of the following matters relation to licensing (section 77 (1)):

- a. location of licensed premises by reference to broad areas;
- b. location of licensed premise by reference to proximity to premises of a particular kind or kinds;
- c. whether further licences (or licences of a particular kind or kinds) should be issued for premises in the district concerned, or any stated part of the district;
- d. maximum trading hours;
- e. the issue of licences, or licences of a particular kind or kinds, subject to discretionary conditions; and
- f. one-way door restrictions.

In order for a territorial authority to have a local alcohol policy, a draft policy must be produced (section 78(1)), which has regarded (section 78 (2)):

- a. the objectives and policies of its district plan;
- b. the number of licences of each kind held for premises in its district, and the location and opening hours of each of the premises;
- c. any areas in which bylaws prohibiting alcohol in public places are in force;
- d. the demography of the district’s residents;
- e. the demography of people who visit the district as tourists or holidaymakers;
- f. the overall health indicators of the district’s residents; and
- g. the nature and severity of the alcohol-related problems arising in the district.

Timetable

Developing an LAP

If a territorial authority decides to have an LAP it must:

1. develop a draft LAP in consultation with Police, licensing inspectors and Medical Officers of Health;
2. consult the community on the draft policy using the special consultative procedure in the Local Government Act 2002;
3. prepare a provisional policy based on consultation feedback;
4. give public notice of the provisional policy. The LAP can be appealed at this stage;
5. adopt the provisional policy – a provisional policy becomes final 30 days after it is publicly notified (or after any appeals are resolved); and
6. give public notice of the LAP’s adoption and the date it will come into effect (as determined by council resolution).

When producing a draft policy, a territorial authority must consider the range of factors set out above regarding section 78(2). To satisfy section 78(2) a - g, some councils’ have produced research reports/discussion documents as a basis from which to engage stakeholders and draft LAPs:
The Health Promotion Agency has produced a resource to support regulatory agencies and communities looking for advice on local alcohol planning. The document is available here.

**When LAPs can come into force**

If a territorial authority decides it wants to start developing a policy before 18 December 2013, then it may:

- complete steps 1 – 3 (ie, develop and publicly consult on a draft policy and prepare a provisional policy); **but**
- only complete steps 4 – 6 (ie, adoption of a LAP) on or after 18 December 2013.

The initial delay is because the public notice requirements and details of the appeals process must be set out in regulations. Those regulations come into force 18 December 2013.

This means the earliest an LAP can come into force is 17 January 2014. Trading hours conditions in LAPs come into force three months after the rest of the policy. This is to give licensees time to make staffing changes necessary to comply with the policy.

**Factors to consider in LAP development**

**Local evidence base**

Whilst case law suggests territorial authorities may apply the precautionary principle found in environmental law\(^1\), the focus must be on the use of local data to support local policy development and decision-making.

Some good options for sourcing local data:

- NZ Police;
- Accident Compensation Corporation (ACC);
- Medical Officer of Health (Ministry of Health);
- Regional Public Health (RPH);
- District Health Board (DHB) – Local Health & Emergency Department clinicians;
- Council call centre – service calls, complaints;
- NZ Fire Service;
- University or other tertiary education providers; and
- Alcohol and drug re-habilitation services.

Section 78(4) “…The authority must not produce a draft policy without having consulted the Police, inspectors, and Medical Officers of Health, each of whom must, if asked by the authority to do so, make reasonable efforts to give the authority any information they hold relating to any of the matters stated in subsection (2)(c)to(g).”

**Consider how information is presented to elected members**

The retail and hospitality sector have a very strong and effective lobby against facts and figures. Where possible, consider working with agencies such as, ACC, MoH and NZ Police to support local

\(^1\) My Noodle Limited and ors v Queenstown-Lakes District Council and anor [2009] NZCA 564
data with real life examples or case studies to demonstrate the impact the sale, supply and consumption of alcohol is having on local communities.

A powerful representation of how profiling a case study can influence decision-makers is offered by Detective Chief Superintendent John Carnochan, Co-Director of the Scottish Violence Reduction Unit, United Kingdom, at the World Safety Conference held in Wellington 2012:

- **David’s story - born to fail the perfect**
- Case Law – Case law produced under the Sale of liquor Act 1989 is still relevant, particularly where the provisions and or subject matter under interpretation can be found in the Sale and Supply of Alcohol Act 2012. You can search for case law by visiting the [Ministry of Justice website](keywords: Tribunals/Alcohol Regulatory and Licensing Authority) or click [here](#).
- Appeals – Industry is particularly interested in the development of LAPs, and the potential for variation of operating conditions across NZ as a result of local approaches to implementation of the Act. We anticipate that major corporate retailers will participate in all levels of consultation and engagement processes and it is likely that some LAPs will be appealed.

The only ground for appealing an element of a provisional LAP is that it is unreasonable in light of the object of the Act.

The Act’s object is that:

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

The latter ground is significant, as the object of the Act has been broadened and at the same time is now more specific in the scope of alcohol-related harm it aims to address.

Harm caused by the excessive or inappropriate consumption of alcohol includes:

a. any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and

b. any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

The provisional LAP cannot come into effect until all appeals are resolved.

For more information, visit [what’s changing and when?](#) – The Ministry of Justice’s document on changes to the sale and supply of alcohol.