

Subject: Gisborne District Licensing Agency - Sale of Liquor Policy Review

Prepared By: Angela Joe (Senior Environmental Health Officer)

Meeting Date: 4 May 2010

Report to HEARINGS Committee for decision

SUMMARY

The draft Gisborne District Licensing Agency's Sale of Liquor Policy was released to the public in accordance with the Special Consultative procedure from 1 March to 1 April 2010.

Eleven submissions were received.

The report discusses the submissions made in relation to the proposed changes. Other issues raised by submitters are also discussed.

It is recommended the previous proposals are adopted and a statement specifying the policy review period be inserted.

RECOMMENDATIONS

That the Committee

1. receives the report
2. Recommends that Council
 - a. amends the Gisborne District Licensing Agency Sale of Liquor Policy as proposed.

Angela Joe
Senior Environmental Health Officer

Hans van Kregten
Environment and Planning Manager

1. BACKGROUND

Under the Sale of Liquor Act 1989 the local authority is charged with the role as the District Licensing Agency.

The object of the Act is *to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means.*

The existence of a Sale of Liquor Policy assists in providing guidance and consistency when it comes to liquor licensing and related issues with the goal of promoting the Act's objective. The policy was last reviewed in 2002.

The draft policy is attached as Appendix 1.

Council resolved to release the draft policy for public comment on 1 March. The consultation period closed on 1 April 2010.

Eleven submissions were received. A summary of the submissions is attached as Appendix 2. The submissions in their entirety are attached in Appendix 3.

The report discusses the submissions made in relation to the proposed changes. Other issues raised by submitters are also discussed.

It is recommended all previous proposals be adopted with the addition of a statement specifying the policy review period.

2 DISCUSSION AND OPTIONS

2.1 Proposed Change

Reduce the latest trading hour of on-licensed premises from 3am to 2am, and impose a one-way-door condition on those premises seeking to operate beyond 2am

Those in favour:

NZ Police, Gisborne

Healthy Environments, Tairāwhiti District Health/Medical Officer of Health (reduce to 1.30am)

Alcohol Advisory Council of New Zealand (ALAC)

Those against:

Hospitality Association of New Zealand (HANZ)

Creative Tairāwhiti

Comment

There are currently 25 licensed premises throughout the district that operate beyond 2 am.

Reducing the maximum licensing time by one hour of premises reduces the accessibility of liquor and the time people spend drinking. It is accepted that the longer a premises operates the increased likelihood of intoxication and alcohol related harm (particularly when operating into the early hours of the morning).

In decision *N.B.T. Limited* LLA PH 584-585/2005 the Authority commented:

"Limiting the hours of operation has become established as an important tool in addressing the growing social and economic cost of alcohol-related crime, disorder, and anti-social behaviour.

Although it has been said that the issue is not so much about the hours of trading, as the way the premises are managed, it is our experience, that the longer the hours, the greater the potential exists for liquor abuse, or breaches of the Act. In our view, the liberal hours that have been granted in the past have not been universally respected."

The trade-off for premises wanting to trade beyond 2am is that they operate a one-way-door policy. Those that do will be making a commitment to address alcohol related harm by discouraging migratory drinkers and reducing the flow of people on the streets during the early hours of the morning, when loitering and anti social behaviour is more likely to occur.

A one-way-door policy is also used as an intervention to reduce the level of intoxication of those that choose to drink. The concept is that patrons remain at a premises knowing they cannot gain entry at others after 2am, alternatively they go home. The premises are a controlled environment where bar staff are obliged to monitor patrons for signs of intoxication. Those that become intoxicated are refused service or asked to leave the premises. Knowing this, it is hoped that some, if not all, patrons will then moderate their drinking or face having to go home, knowing they will not gain access to other premises.

Such a change in behaviour is not expected to happen quickly but requires re-educating and encouraging acceptance by patrons.

Ten of these 25 licensed premises voluntarily participate in the 2am one-way-door policy, and have done so since February 2009. All premises are located within or close to Gisborne's city centre. The previous proposal to operate a one-way-door policy from 1.30am has not found favour with licensees. Licensees claimed they had lost significant revenue in having to refuse entry to patrons at this time, largely because of some clientele who do not come into town until much later in the night.

Although an earlier one-way-door time (1.30am) could allow for earlier intervention into people's drinking behaviour (on licensed premises) the current one-way-door policy is a voluntary agreement and is reliant on buy-in from licensees.

A one-way-door policy from 2am goes some way to achieving a balance between limiting liquor availability, yet still allows premises to cater for its patrons that choose to socialise late into the night.

Anecdotal evidence from the Gisborne Police indicates the 2am policy is working well and has reduced the incidence of antisocial behaviour particularly in the city centre.

A one-way-door policy does not claim to be the only solution to liquor problems but is only one of a number of other measures.

Earlier closing times and one-way-door policies in no way interfere with arts and entertainment venues. A possible advantage of early closing times is that patrons may head to premises earlier on in the evening and be less inclined to drink at home first, therefore potentially spending more time and money at licensed premises.

A policy on maximum licensing hours allows for a level of consistency across premises. Premises that stay open later than others are more likely to attract migratory drinkers seeking to continue socialising into the night. This includes people that choose to loiter on the street simply because there is activity around the premises.

Recommendation

Reduce the latest trading hour of on-licensed premises from 3am to 2am at the next renewal or application for a new licence. Continue with a voluntary one-way-door agreement until the next renewal or application for a new licence, after which a one-way-door policy will be required for those premises seeking to operate beyond 2am.

2.2 Proposed Change

Limit the latest trading hour of premises with restaurant-style on-licenses to 1am

Those in favour:

NZ Police, Gisborne

Healthy Environments, Tairāwhiti District Health/Medical Officer of Health

Alcohol Advisory Council of New Zealand (ALAC)

Those against:

Grant Bailey and Anez Barnes (The Fettuccine Brothers)

Hospitality Association of New Zealand (HANZ)

Creative Tairāwhiti

Of the 22 premises with restaurant-style licenses, six are able to trade beyond 1am.

Licensed restaurants are restricted by their licence conditions to operate as a "restaurant" in order to be able to sell liquor.

The Authority commented in *The Van Tra and Dzung Tuyet Tra* LLA Decision PH 696-698/2008

*"Our views on restaurant trading are well documented. It is common ground that we see the phraseology enshrined in condition (b) on the on-licence "... **[when the premises are being operated as a restaurant...]**" as being unequivocal. A restaurant, in the Authority's estimation, is a business where there is a fully operational kitchen, with meals being available and served at all times when the business is authorised to be open for the sale of liquor."*

It is argued local restaurants that operate beyond 1am are unlikely to have an operating kitchen and patrons are there for the purposes of dining. It has been stated by the Authority "It is the extra two hours of trading which is likely to lead to breaches of the conditions of the licence, and possible liquor abuse."

Further in *Fatzcat Bar & Grill Limited*, LLA Decision PH 258/2007

"We are concerned that if the company's restaurant is allowed to trade until later, there is a danger that it will attract patrons who go there only to drink. There are two potential consequences for such activity. First, that the business may lose its original identity after a certain time in the evening where it switches from a restaurant to a tavern style operation. Secondly, there still seems to be a belief that all a restaurant has to do to keep selling liquor is to have substantial meals available."

It is acknowledged there may be potential economic flow-on effects in reducing licensing hours, however there are equal considerations that the law must be complied with. Under the Act, the financial survival of a liquor outlet is not a matter that is required to be considered.

Gault's on Quay Limited, LLA Decision PH 356/2005

"The company will be aware that a licence is a privilege and not a right. It is not a guarantee of profitability. The holder of a licence acquires certain responsibilities. Among them, is the responsibility to uphold the conditions of the licence."

And in *Bar Bar Black Sheep Limited*, LLA Decision PH 187/2010

"As noted in paragraph [8] the applicant cited 'business reasons' for the application, and submitted that "the restricted hours has [sic] had a serious financial impact on the profitability of the business". The Authority has always held that it cannot consider profitability as grounds for its determinations, and indeed it would be acting outside the criteria stated in s.22 of the Act if it were to do so."

Recommendation

Limit the latest trading hour of premises with restaurant-style on-licenses to 1am at the next renewal or the application of a new licence.

2.3 Proposed Change

Simplify the categories of club, and reduce the trading hours liquor can be sold in clubs to more accurately reflect club activities

Those in favour:

NZ Police, Gisborne

Healthy Environments, Tairāwhiti District Health/Medical Officer of Health

Hospitality Association of New Zealand (HANZ)

Rangatira Tavern

Those against:

Gisborne Tātapouri Sports Fishing Club

The Act is quite specific about the criteria for clubs to be able to sell liquor. The predominant purpose must be other than the consumption of liquor. It could be argued due to the lack of feedback from clubs to the proposed reduction in hours that many do not see themselves affected by the change and it may be that they do not utilise the later hours some may have.

Club licensing hours must be a reflection of actual clubs activities. Functions and events can and are catered for with a special licence.

Recommendation

Simplify the categories of club. Reduce the trading hours liquor can be sold in clubs to more accurately reflect club activities at the next renewal or the application of a new licence.

2.4 Proposed Change

- **Split designation time to move forward one hour**
- **Additional criteria to be considered for special licence applications**
- **Remove certain restrictions on special licence applications for the sacrosanct days**
- **Additional options of trading days for small clubs**
- **Manufacturers part deleted**

No specific comments received in relation to these proposed changes.

Recommendation

Adopt the above proposals.

2.5 Proposed Change - Formalise Existing Procedures or Policy

Those in favour:

NZ Police, Gisborne

Tairāwhiti District Health/Healthy Environments/Medical Officer of Health

Those against:

Hospitality Association of New Zealand (HANZ)

It is considered prudent to formalise those procedures or policy statements that add to and strengthen the policy as a whole. To include these in the policy provides specific guidance and contributes to a level of consistency, not just for DLA and staff but assists in providing the reason behind a particular requirement for all affected by the policy.

It is important to include references taken from the Act so that specific processes are given relevance and are further underpinned by the requirements of the legislation. Policies are by their nature a reflection of the community and the legislation it is developed under.

It is expected some aspects of the policy will have to be reviewed in line with the outcome of the pending review of the Act.

Recommendation

Adopt proposed changes to formalise existing procedures or policy.

2.5.1 Certain Off-licensed Premises will be Required to Impose a Designation

Those against:

Progressive Enterprises Limited

The draft policy proposes stand-alone premises adopt a designation. Under the policy a stand-alone premises is one that sells liquor as its principal business e.g. a bottle store.

There is no intention to require supermarkets to impose a designation or have designated areas. Each application is considered on its merits and the imposition of a suitable designation would be at the discretion of a licensing inspector guided by the nature of the operation, the policy and any other relevant matters.

Recommendation

Require certain off-licensed premises to impose a designation at the next renewal or the application of a new licence.

2.5.2 All premises to have a Host Responsibility Policy

Those in favour:

Healthy Environments, Tairāwhiti District Health/Medical Officer of Health

Progressive Enterprises Limited

Alcohol Advisory Council of New Zealand (ALAC)

A Host responsibility policy should be a statement outlining the licensee's commitment to providing a responsible drinking environment. What needs to be addressed in a policy is described in the Act and submitted with the application for a licence. How well the licensee implements their policy is in some way measured via monitoring visits by the reporting agencies and complaints received from the public.

It is debatable whether an implementation policy would assist further or whether such a function could be achieved as part of a more comprehensive Host responsibility policy. Again the statements made in any policy still need to be evident whilst the premises is operating.

Recommendation

Require all premises to have as a minimum a Host Responsibility Policy at the next renewal or the application of a new licence.

No other comments were received with regard to the remaining proposed changes to formalise existing procedures or policy.

Recommendation

Adopt the remaining proposals.

2.6 Other Points raised by Submitters

2.6.1 Policy wording – off licenses

Submission

DLA has no discretion to determine an application for renewal if there are adverse effects or objections raised.

- Foodstuffs (Auckland) Limited

The policy states the DLA and inspectors must consider those aspects in 3.5.1, it is not suggesting the application be determined by the DLA or inspectors in light of any objections received. In such cases the DLA is obliged under the Act to forward the application to the Authority for determination.

Recommendation

Continue with the policy wording as is.

2.6.2 Submission

Use of certain wording in policy 3.5

- Progressive Enterprises Limited

Progressive oppose applications being considered in light of "*adverse environmental impact*" and "*environmental or other effects*" and that such aspects are more appropriately dealt with under the Resource Management Act. Further that the term "*or other effects*" is ambiguous and that the term "*affected parties*" be defined in the same manner as the RMA.

The use of these terms in the policy are not limited to Resource Management matters but are rather used as a catch-all phrase for the matters the DLA and inspectors may consider in relation to applications.

The matters which the DLA or inspectors must take into account when considering an application are limited to those described in the Act. There may be occasions or developments where such effects may become relevant to a licence application but not to other legislation or plans.

In many cases environmental or other effects will need consideration in conjunction with a number of different pieces of legislation. For example noise nuisance from premises was previously regarded by the Authority as a resource management issue and not one that could be taken into account when considering a licence application.

The Authority has since changed its thinking and now considers noise issues to be relevant to the suitability and management of a premises.

Other issues such as appropriate hours of operation are likely to be influenced by neighbouring land use, in that trading hours for residential areas will not be the same as those for the premises located in the city centre.

There is no specific definition in the Resource Management Act for "affected parties". The general consensus is that an affected party is one in the opinion of the consent Authority where the activity's adverse effects are minor or more than minor on that person or persons.

There is no similar definition in the Sale of Liquor Act and to adopt one from another piece of legislature that has different purpose may be unduly restrictive.

The use of these catch-all phrases allows the policy some flexibility in light of changes in thinking and other developments.

Recommendation

Continue with the policy wording as is.

2.6.3 Submission

Trading hours for off-licensed premises

Those in favour:

Foodstuffs (Auckland) Limited

Those against:

Progressive Enterprises Limited

Alcohol Advisory Council of New Zealand (ALAC)

The draft policy states specific hours for stand-alone premises. Under the policy a stand-alone premises is one that sells liquor as its principal business, e.g., a bottle store.

The policy does not specify hours of operation for other types of off-licence given their variability e.g. supermarkets or taverns with an off-licence. Although other types of application are considered within the context of stand-alone policy, there is some flexibility in that each application will be considered on its merits.

As mentioned by submitters, there is some merit in aligning licensing hours with the trading hours at the beginning of the day as the level of alcohol related harm is likely to be much greater at the other end of the day. The hours of operation for other types of off-licence are subject to the criteria in the policy and the Act.

The Law Commission report has suggested all off-licenses be closed by 10pm, this has been reiterated by ALAC.

At this stage no changes are proposed to alter the maximum trading time for stand-alone premises or others that are considered against the policy, because such hours have to date been considered reasonable for the type of establishment.

Recommendation

Continue with the policy as is.

2.6.4 Submission

Consider density and location of outlets

- Healthy Environments, Tairāwhiti District Health/Medical Officer of Health

Currently there is no legal requirement to define or restrict density or location of liquor outlets. The 1962 Sale of Liquor Act required applicant's to prove there was a need for the new licence. The 1989 Act emphasis changed to foster safe drinking environments and implement a system focused on the suitability and accountability of licensees (Law Commission, *Alcohol in our lives*, 2009).

The Law Commission has suggested the Authority could be allowed under impending legislation to be able to refuse a licence on the grounds that the impact of the licence is likely to be detrimental to the well being of the community which could include taking into account the proposed site and characteristics of the local population (Law Commission, *Alcohol in our lives*, 2009).

Proposals to limit density and location require further investigation and could be linked to a wider alcohol strategy and other policy e.g. District Plan.

Recommendation

Continue with the policy as is and review the need for further restrictions in light of proposed legislation changes.

2.6.5 Submission

Define policy review period

- Alcohol Advisory Council of New Zealand (ALAC)

It is recommended the policy be reviewed every four years. A statement to this effect can be inserted into the policy Introduction.

Recommendation

Insert a policy review statement.

2.6.6 Submission

Consider wider alcohol strategy

- Alcohol Advisory Council of New Zealand (ALAC)

ALAC suggest the development of an alcohol strategy would provide an opportunity for the different strands working towards reducing liquor-related harm to link together. Such a document could be of value so long as its purpose cannot be found in other Council documents or changes to existing documents. At this stage the development of a strategy is not proposed.

Recommendation

Continue with the policy as is and review the need for an alcohol strategy in light of proposed legislation changes.

2.6.7 Submission

- Alcohol Advisory Council of New Zealand (ALAC)

Consider including a section on community events

The special licences section of the policy already encompasses the aspects that need to be considered regardless of the size of the event. Applications are considered on a case-by-case basis and often the various aspects of events are considered guided by policy, albeit informally.

Recommendation

Continue with the policy as is.

2.6.8 Submission

Require a compulsory compliance programme as standard in all premises with on and off licenses

- General Manager, The Mill Liquorsave

The requirement of a compliance programme, as stated by the submitter will involve set up and administration costs funded by a levy of sorts. This will require central government involvement and is currently beyond the scope of this policy.

Recommendation

Continue with the policy as is.

3.0 SIGNIFICANCE

The proposed changes are not considered significant when measured against the criteria of the significance policy as provided for in the 2009-2019 Community Plan.

4.0 CONSULTATION

In March 2010 correspondence advising the policy was to be reviewed was posted out to all licensed premises and other stakeholders including local Maori groups. This correspondence called for any changes that stakeholders might want to see.

The public were advised they could make submissions from 1 March to 1 April via a notice in the Gisborne Herald.

5.0 FINANCIAL & LEGAL

There are no financial or legal implications involved in the decisions being considered in this report.

APPENDIX 1 - GISBORNE DISTRICT LICENSING AGENCY SALE OF LIQUOR POLICY DRAFT

APPENDIX 2 – SUMMARY OF SUBMISSIONS

Name	Position	Organisation represented	Submission	Reason	To speak at Hearing?
Sgt Issac Ngatai	Alcohol Harm Reduction Officer	NZ Police	General support of the policy and proposed changes.	Proposals and the existence of a policy assist in reducing liquor abuse by educating the industry and the wider community.	Yes
Kate Sykes for Medical Officer of Health	Team Leader-Healthy Environments	Tairawhiti District Health	General support of the policy and proposed changes, some proposals could be more restrictive. Consider location and density of outlets.	Reduce accessibility to alcohol given the wide ranging and complex relationship between alcohol abuse and health effects.	Yes
Cathy Bruce	Project Manager Local Government Relations	Alcohol Advisory Council of NZ	<ul style="list-style-type: none"> • Stipulate review period. • Consider a wider alcohol strategy linked to the LTCCP. • Supports proposed 2am closing time. • Restrict off licensed hours to 10pm. • Support owd requirement • Consider including section on community events. 	<ul style="list-style-type: none"> • Emerging issues can be addressed. • Alcohol related harm could be reduced further with a strategy that considers the wider community and issues surrounding alcohol. • Consistent closing times may reduce instances of liquor abuse. • Reduce transferring drinking from on-licensed premises to other sites/homes. • Owd may assist in reducing alcohol related harm. 	Yes
Darryl Monteith		Creative Tairawhiti	Don't discourage the development of the (arts) night time economy by introducing overly restrictive measures.	Licensed premises provide a venue for performers and allow access by the public/patrons this includes visitors to the district.	No

Name	Position	Organisation represented	Submission	Reason	To speak at Hearing?
Chris Hince	Regional Manager – Gisborne Branch	Hospitality Association of NZ (HANZ)	<ul style="list-style-type: none"> • Remove trading hour limits for on-licenses. • Generally support proposed trading hour limits for off licenses. • Remove one way door policy requirement. • Remove trading hour restrictions on restaurants. • Supports review of club licenses and how it relates to club function. • Remove provisions already stated in the Act. 	<ul style="list-style-type: none"> • Each application for on-licence to be considered on its merits. • Limit off-licenses to 10pm closing as consumption or supply is not within a controlled environment. • OWD is not a solution to abuse, each premises to operate a voluntary OWD policy if they choose to. • Line between restaurant and tavern function increasingly blurred. Single type of on licence should be introduced. • Unfair trading advantages of clubs over other types of establishments. • Provisions taken from the Act and reiterated in the policy are redundant and may be repealed in near future. 	Yes
Grant Bailey and Anez Barnes	Proprietors	The Fettuccine Brothers restaurant	Object to 1am restriction for restaurants.	<ul style="list-style-type: none"> • Reduced trading hours reduces full time employment opportunities, in turn discouraging people entering the restaurant/hospitality industry. • Locally reduced trading hours will discourage interest from non-locals looking to purchase business. • Restaurants that operate responsibly should have the ability to trade to 3am as other licensed premises. • Restaurant premises are not the precursors for liquor abuse. • One-size policy does not fit all. 	Yes
Alisa Fleming	Proprietor	Rangatira Tavern and Events Centre	Supports simplifying categories of club and reducing trading hours to reflect club activities.	Commercial competition from local clubs is affecting Tavern patronage	Unsure

Name	Position	Organisation represented	Submission	Reason	To speak at Hearing?
Mike Brooker	Group Solicitor	Foodstuffs (Auckland) Limited	<ul style="list-style-type: none"> • Endorses proposed hours for off licensed premises. • Policy 3.5 correct? 	<ul style="list-style-type: none"> • Also support move to 8am to 10pm so that licensing hours are aligned with trading hours. • DLA has no discretion to determine applications based on criteria in Policy 3.5. 	No
Rachael Keenan	Senior Commercial Lawyer	Progressive Enterprises Limited	<ul style="list-style-type: none"> • Measures to regulate alcohol supply need to be balanced with ability to conduct business without unreasonable burden. • Largely supportive of policy, except: <ul style="list-style-type: none"> • opposed to local policies determining licensing hours • designation for supermarkets unnecessary • <i>environmental or other effects</i> to be considered by other more appropriate mechanisms. 	<ul style="list-style-type: none"> • Trading hours should be consistent on national basis. • No study proving longer trading hours leads to liquor abuse. • Reducing early and late trading hours unlikely to alleviate abuse. • High level of compliance within stores. • DAL/LLA has no discretion to determine applications based on adverse environmental impacts, better dealt with under Council Planning/RMA instruments. 	Yes
Roger Faber	Club President	Gisborne Tatapouri Sports Fishing Club	Don't support the policy.	GTSFC is a controlled environment and a valuable facility for members.	Yes
Stephen Fromont	General Manager	The Mill Liquorsave	Compliance programmes to be compulsory in all on and off licensed premises.	Educate industry workers and improve compliance with the Act.	Unsure

APPENDIX 3 - SUBMISSIONS