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02 February 2023

Committee Secretariat
Justice Committee
New Zealand Parliament

By email: justice.submissions@parliament.govt.nz

Hurunui District Council submission on the Sale and Supply of Alcohol (Community Participation) Amendment Bill.

1. Hurunui District Council thanks the Committee for the opportunity to make a submission on the Bill.

2. The Hurunui District is located in North Canterbury. We have approximately 13,450 residents and cover an area of 8,640km^2 of predominantly rural land. Our District spans from the east coast to the Main Divide. The Hurunui District is primarily a rural district with large areas dedicated to primary production interspersed with small service towns.

3. The District is home to both the Waipara wine growing region, where a number of wineries hold off licences, operate cellar doors, remote sales, and/or have on-licensed restaurants, and to the well-known tourist town of Hanmer Springs, where a number of on-licenced premises cater for visitors to the town.

4. Hurunui District Council agrees with the aims of the Sale and Supply of Alcohol (Community Participation) Amendment Bill, however, for the reasons set out in this submission we do not consider that the proposed amendments will effectively achieve those aims.

Who can object to an alcohol licence application

5. We support community participation in the licensing process. Whilst we have had a relatively small number of hearings, the feedback from the community members who have participated in them was that participation was challenging.

6. Currently there is a two-step process for determining objector standing. The first step is that the objector has a ‘greater interest in the application than the public generally’ as per s102(1). The second step is that the objection relates to a matter specified in s105, as per s102(3).

7. The Bill only proposes a change to the first step of the process, by amending s102(1).

8. We note that this still appears to create a need for objections to be assessed prior to a hearing to ensure they relate to matters in s105. If this is the case it maintains a barrier to the ability of ‘any objector’ to participate in a hearing.

9. The alternative is that no assessment is made as to whether an objection relates to s105 matters and an objector is permitted to give evidence at a DLC hearing simply by virtue of having lodged an objection. This would create a difficulty for the DLC, as the committee is only able to consider s105 matters when deciding the licence. As a result, an objection which did not relate to s105 would have to be struck out or given no weight by the DLC. We suggest that this would not be an improvement in terms of increasing the value of community participation in hearings.

10. Having said that, our experience is that the s102(1) ‘greater interest’ test has been the harder of the two steps for objectors to overcome. As an example, 92 objections were received by the DLC in regard to an application for a new bottle store. On assessment of those objections 40 did not assert any reason for having a greater interest in the application than the public generally and did not live within the same township as the proposed premises. Only 5 of the 92 objections didn’t relate to s105 criteria.

11. The DLC’s procedure when objections appear to be short of detail to meet the s102(1) or s102(3) requirements is to write to objectors by way of a Minute and offer them an opportunity to clarify the reasons why they had a greater interest than the public generally, or which s105 criteria their objection referred to. The aim of offering objectors the chance to make these clarifications is to assist objectors to participate.

12. We agree that objectors being more readily able to participate in hearings increases the opportunity for them to detail their lived experience of alcohol related harm in the community.
We have some reservations about the implications of widening the criteria for who may object to an application too far. We are aware of lobby or interest groups who may object to applications as a policy, despite having limited or no local interest in them. We would like to ensure that objections lodged in respect of licence applications reflect genuine local community concern relating to those applications.

13. We note that there is a distinct point of difference between the RMA hearing process and the Alcohol Licensing process. For a Resource Consent application to require a public hearing a test is first applied to the application, and only if the environmental effects pass a certain threshold is a public hearing required. This test doesn’t exist in the alcohol licensing process. Therefore, any alcohol licence application is able to be objected to by the public. In combination with the proposed ability for anyone to object to an alcohol licence, the licensing process may become significantly more uncertain and less efficient for applicants.

14. We note that s120(4), which sets out who can object to a licence variation; and s140(1)(a), objections to special licences, still have a requirement for objectors to have “a greater interest in the application than the public generally.” There doesn’t appear to be a provision in the Bill that this is changed should the proposal be enacted. We submit that if section 102(1) is amended then sections 120(4) and s140(1)(a) should also be amended to be consistent with section 102(1) of the Act.

Cost

15. At this point it is uncertain to what extent the proposed amendments will increase the number of hearings. However, it is clear that if the proposed amendments are successful there will need to be an increase in the number of hearings held.

16. An increase in the number of hearings will have a direct cost burden to councils. Beyond the DLC members and immediate support staff, hearings also require time and resource from licensing inspectors and governance staff. We are concerned about the cost & resource implications for council if there is an increased number of hearings. We do not believe the burden of these costs should fall to the ratepayer alone.

17. We do not agree that no longer needing to determine objector standing will mitigate the time and cost spent on an increased number of hearings.

18. We note that there is a review of the fees regulations currently underway. We submit that the ramifications of the changes proposed into the Bill are considered alongside the fees regulations.

19. We further submit that the changes proposed in this Bill are not enacted until such time as an appropriate fees mechanism is in place to fund the increased number of hearings.

20. We support the control of hearings powers proposed under s205A to 205C of the Bill. We agree that if properly used these tools should enable DLCs to maintain reasonably efficient hearings. We anticipate these tools being most effective if quality national guidance on their use is produced for DLCs.

Formal nature of DLC hearings

21. We agree that public objectors would benefit from DLC hearings being less formal to some extent. However we consider that the quasi-judicial nature of the licensing process means that DLC hearings require an elevated level of formality over an ordinary meeting.

22. We consider that participants in DLC hearings should be expecting procedure. It shows the importance of the matter before them, sets the tone, and provides order and guidance for participants. Good procedure allows the opportunity for all parties to be heard and ensure that no one is missed out or not heard.

23. Following a hearing, the DLC is required to produce a formal and legal decision. As such, we are cautious about removing too much formality from the hearing process. Participation in an informal process may set expectations with community participants that are unrealistic given that the process remains quasi-judicial.

24. If the proposal is adopted, we consider that guidance should be produced at a national level to assist DLCs in creating new hearing procedures and ensure a degree of consistency throughout the country. The guidance should be able to be relied on by DLCs so that if followed their hearing procedures are not able to be scrutinised by ARLA.

25. We note that the Act already allows a DLC to prescribe its own procedure, but there is little guidance and consistency on procedure nationally. This should be corrected if the proposal is adopted. A more prescribed procedure could help to ensure that hearings are conducted without undue formalities and consistency across the country. This would assist all parties to the hearing, not just the public. People would know what to expect at a DLC hearing held in any district.

26. We submit that if the proposed changes go ahead it would be desirable for DLC members to be trained in a co-ordinated and consistent way nationally.

Value of cross-examination

27. The DLC find cross-examination during the hearing process valuable. The committee considers that they benefit from the fact that each of the three reporting agencies are assessing applications through a different perspective. Police are often interested in crime and applicant's suitability, the Medical Officer of Health on public health matters, and Licensing Inspectors for local implications such as noise, nuisance and amenity (as well as often giving the overall picture of the application).

28. Without cross-examination, the responsibility to question lies entirely with the DLC. We do not agree that all questioning should sit with the DLC – they are not the subject matter/technical experts in those areas and may miss valuable information.

29. We are concerned that without cross-examination the requirement for the DLC alone to filter out the irrelevant matters, identify information gaps, and ask appropriate inquisitorial questions to verify information, will result in an increase in the number of appeals of DLC decisions.

30. We expect that applicants, especially those represented by legal counsel, will appeal decisions that favour objectors, where a DLC has relied heavily on a submission from an objector or objectors, and where evidence or views were unable to be tested by the other parties at the hearing as to the validity and relevance (i.e., is it an opinion or view, or is it evidence?).

31. We also consider that the process of asking questions through the DLC chair will likely lead to inefficiencies in hearings.

32. For these reasons we do not support the removal of cross-examination from DLC hearings.

Accessibility

33. We support the direction to consider the timing of hearings so as not to inadvertently exclude people who wish to be involved. The Hurunui DLC has previously taken measures to make hearings accessible by convening an evening session to accommodate public objectors who were unavailable during the day. We currently consider the suitability of the hearing time when hearings are set down.

34. We support the use of venues that are accessible to the community who wish to participate. We note that there is a need for appropriate audio-visual equipment so that a transcript can be produced, evidence can be displayed (if necessary) and parties are able to attend via audio-visual link. This may limit the use of some venues.

Experience / satisfaction of public objectors

35. We have received feedback from public objectors who engaged in a DLC hearing process that was followed by an appeal to ARLA. Their feedback was similar to what is documented – some found the process hard and were disillusioned with the ultimate decision of ARLA to grant the licence on appeal.

36. We do not agree that the proposed amendments are likely to result in an increase in the number of alcohol licence applications declined where only community objections are present (i.e., where there is no opposition from the reporting agencies). This is because the criteria for determining a licence is not changing, and DLCs will still need to rely on evidence of alcohol related harm or other matters in s105. Where such evidence exists, we consider it is very likely there will be opposition from reporting agencies. We suggest that when there is not opposition from reporting agencies it may be because there is little evidence to support opposition.

37. We consider that it would be beneficial for all parties to hearings to have access to comprehensive guidance to help them prepare. We submit that for consistency this guidance would be best prepared nationally, and should include short videos or other engaging material that explain the process to the applicant, objectors, etc. It is our view that the preparation of all parties and their ability to access good guidance about their role in the process, could have a greater impact on improving community participation than the legislative changes themselves.

Increased risk of appeal of DLC decisions

38. We consider that the proposed amendments will increase the number of DLC decisions that are appealed. In our view the removal of ability for parties to test evidence by cross-examination, the potential admission of objections that do not address s105 criteria, and the reliance on only the DLC to extract additional information through questioning opens the door for appeals on the grounds that DLCs relied on insufficient information when making decisions.

39. This undermines the purpose of the Act and its aim to enable local decision-making and public participation. When an appeal is lodged with ARLA, the hearings process and decision-making is undertaken at the district court level, which is a significant geographic distance away from our locality.

40. This in itself is likely to put off the public from participating. Attending an ARLA hearing will likely require people to take more time off work to travel to a district court for an appeal. If formalities are removed from the DLC hearing, then appearance at an ARLA hearing may be a more formal and considerably different experience. It is imperative that both DLC hearings and ARLA hearings, both being of a quasi-judicial nature, are convened under similar, consistent formalities

41. We are also mindful that an increase in appeals would put further pressure on ARLA's caseload and potentially lead to delays for applicants.

42. One option to address a high number of appeals could be to adjust the criteria for who may appeal a DLC decision. Currently s154 allows an appeal from any party to a DLC hearing who is dissatisfied with any part of the decision. In combination with allowing anyone to object to an alcohol licence (and therefore become a party to a DLC hearing) this creates a very open opportunity for appeals.

Removal of ability to appeal a provisional LAP

43. We support the removal of the ability to appeal provisional LAPs.

44. The Hurunui District Council currently has a LAP. The LAP has provided an advantage to the DLC's decision-making process and has supported better outcomes for our district. For example: the introduction of a discretionary condition for licensed hours of outdoor licensed areas has mitigated the issue of noise and nuisance in areas where there is conflicting use between outdoor areas at bars and accommodation or residences.

Requirement to consider renewal applications against the relevant LAP

45. We support the amendment to s133 requiring licence renewals to be considered against the relevant LAP.

46. We consider that this will ensure the community voice and influence as recorded in the LAP is able to flow through to all licensing decisions more freely.

Conclusion

47. Hurunui District Council agrees with the of the aims of the proposed Bill to enhance community participation in the alcohol licensing process and improve community input into regulation.

48. However, we do not consider that the aims are going to be effectively achieved with the proposed changes to the Act alone. As explained above we consider that the changes relating to who can object to alcohol licence applications and to the hearing process will present the following issues:

    - They will make only a minor difference to community members' satisfaction with the process.
    - They are unlikely to result in a higher number of licences being declined.
    - They will increase the likelihood of appeals to ARLA.
    - They will increase the administrative and cost burden on Councils.
    - They will create a less certain and efficient process for applicants.

49. For the reasons above we submit that these changes should not be progressed before a wider-ranging review of the Sale and Supply of Alcohol Act 2012 is undertaken.

50. We further submit that if the proposed changes are to be progressed, they are not enacted until the fees regime is reviewed.

51. We support the proposed changes removing the ability to appeal provisional LAPs

52. We support the proposed replacement of s133 with new wording allowing DLCs to decline or impose conditions on licences which are inconsistent with LAPs.

53. Thank you for the opportunity to provide this submission.

54. We are happy to be contacted for clarification on any points within this submission.

Yours sincerely

Marie Black
Mayor (on behalf of the Hurunui District Council)