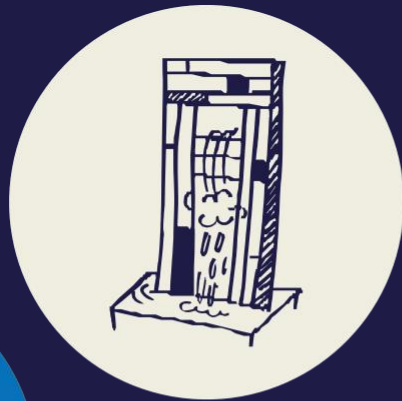


# HAMILTON CITY COUNCIL – STAFF SUBMISSION

## Sale and Supply of Alcohol (Community Participation) Amendment Bill

Parliament's Justice Committee



10 February 2023



**Hamilton  
City Council**  
Te kaunihera o Kirikiriroa

# Improving the Wellbeing of Hamiltonians

Hamilton City Council is focused on improving the wellbeing of Hamiltonians through delivering to our five priorities of shaping:

- **A city that's easy to live in**
- **A city where our people thrive**
- **A central city where our people love to be**
- **A fun city with lots to do**
- **A green city**

The topic of this submission is aligned to the priority **'A city where our people thrive'**.

## Council Approval and Reference

This staff submission was approved by Hamilton City Council's Chief Executive on 10 February 2023.

Hamilton City Council Reference D-4557816 - Submission # 718.

It should be noted that the following submission is from staff at Hamilton City Council and does not therefore necessarily represent the views of the Council itself.

## Key Messages

### 1. INTRODUCTION

2. Overall, Hamilton City Council staff support the aim and provisions outlined in the **Sale and Supply of Alcohol (Community Participation) Amendment Bill**.

3. We also support the submissions by Taituarā and LGNZ to the Sale and Supply of Alcohol (Community Participation) Amendment Bill.

### 4. APPEAL RIGHTS OF LOCAL ALCOHOL POLICIES

5. While a council is still required to notify and publicly consult on its Local Alcohol Policy (LAP), we note that the Bill would remove the objection/appeal rights on LAPs.

6. This step may be seen by some as removing the opportunity for 'natural justice' to occur. However, the ability to seek a judicial review will still be available (although this provision does not appear to be specified in the Bill), meaning that there is still the ability to challenge council decision-making where proper process has not been followed.

7. The removal of the existing requirements for an objector to a license application to have to prove they have '*a greater interest in the application than the public generally*' will likely open up the objections process to a wider group of individuals and groups to participate, and in turn will likely lead to an increase in the number of objections received.

8. We therefore envisage a considerably greater number of objections to licenses being made, which in turn will likely result in significantly more and longer District Licensing Committee hearings being held and therefore higher costs and time incurred by all councils. However, we acknowledge that this is of lesser importance in order to allow greater community participation in alcohol licensing decisions.

### 9. REMOVAL OF CROSS-EXAMINATION OPPORTUNITIES

10. We support the Bill's proposed provisions to prevent the unnecessary formality of hearings and also the removal of cross-examination opportunities by the parties at District Licensing Committee hearings - this should make hearings less formal and likely create an environment that will encourage participation by community members.

11. The removal of cross-examination opportunities may also potentially assist in reducing hearing times and enable District Licensing Committees to better schedule times of attendance for objectors and witnesses at these hearings.

12. While any person or organisation can object to the grant of a license (which relates to the removal of the requirement to prove '*a greater interest in the application than the public generally*'), a trade competitor can only object if they are directly affected in a way that does not relate to trade competition or the effects of trade competition. We support this provision.

13. We endorse the view that the current provisions in the Sale and Supply of Alcohol Act 2012 have allowed the alcohol industry to ‘ride roughshod’ over the views of the community about how and where and the hours during which alcohol should be allowed to be sold.
14. **COSTS OF DEVELOPING AND IMPLEMENTING A PROVISIONAL LAP**
15. Hamilton City Council incurred costs of around \$200,000 in 2014 getting its Provisional LAP notified and to the stage of an appeal.
16. **FURTHER COMMENTS**
17. While on the face of it the Bill seems like it will close the major ‘loopholes’ that allowed the appeals to take effect and allow greater community participation in the decision-making process, we retain reservations that the Bill will not meet all community expectations.
18. The proposed changes are viewed as an encouraging step in reducing the incidence of alcohol related harm in the community.

## Introduction

19. Hamilton City Council staff appreciate the opportunity to make a submission to Parliament’s Justice Committee on the **Sale and Supply of Alcohol (Community Participation) Amendment Bill**.
20. Overall, we support the aim and provisions outlined in the Sale and Supply of Alcohol (Community Participation) Amendment Bill, noting that:
21. *The Bill aims to improve communities’ ability to influence alcohol regulation in their area and, thereby, ensure that:*
  - *The sale, supply, and consumption of alcohol is undertaken safely and responsibly.*
  - *The harm caused by excessive or inappropriate consumption of alcohol is minimised.*

*The Bill does this by making targeted changes to the alcohol licensing process provided for in the Sale and Supply of Alcohol Act 2012 (the principal Act).*
22. We also support the submissions made by Taituarā and LGNZ to the Sale and Supply of Alcohol (Community Participation) Amendment Bill.

## Previous Submissions and Remits

23. On 11 May 2018, Hamilton City Council made a submission to **The Sale and Supply of Alcohol (Renewal of Licenses) Amendment Bill (No.2)**, which recommended removing the appeal rights of a Provisional LAP to the Alcohol Regulatory and Licensing Authority i.e., repealing Section 81 (and repealing/amending associated sections) of the Act by way of supplementary order paper. The removal of Section 81 would allow Judicial Review as the safeguard to check and balance the decision-making of a council.
24. Hamilton City Council also supported LGNZ’s 2018 remit, which was adopted at the 2018 LGNZ AGM, which asked LGNZ to seek the Government’s agreement to:
  - Amend the Sale and Supply of Alcohol Act 2012 so that LAPs can more accurately reflect local community views and preferences; and
  - Review policy levers to reduce alcohol-related harm that will complement LAP provisions established by territorial authorities, and include consideration of mechanisms for addressing the density and location of off-licensed premises.

## Appeal Rights of Local Alcohol Policies

25. While a council is still required to notify and publicly consult on its Local Alcohol Policy (LAP), we note that the Bill would remove the objection/appeal rights on LAPs i.e., it removes the objection/appeal rights currently available under existing sections 80 – 88 of the Sale and Supply of Alcohol Act 2012.
26. This step may be seen by some as removing the opportunity for ‘natural justice’ to occur. However, the ability to seek a judicial review will still be available (although this provision does not appear to be specified in the Bill), meaning that there is still the ability to challenge council decision-making where proper process has not been followed.
27. We also note that there are already other examples of council decision-making where there are no special appeals process e.g., Gambling Policies, Bylaws, Annual Plans and Long Term Plans.
28. Overall then, we still support this particular provision.
29. The removal of the existing requirements for an objector to a license application to have to prove they have ‘*a greater interest in the application than the public generally*’, will likely open up the objections process to a wider group of individuals and groups to participate, and in turn will likely lead to an increase in the number of objections received.
30. Given this, we envisage a considerably greater number of objections to licenses being made, which in turn will result in significantly more and longer District Licensing Committee hearings being held and therefore higher costs and time incurred by all councils. However, we acknowledge that this is of lesser importance in order to allow greater community participation in alcohol licensing decisions.

## Removal of Cross-Examination Opportunities

31. We acknowledge and support the introduction of the Bill’s proposed provisions to prevent the unnecessary formality of hearings and also the removal of cross-examination opportunities by the parties at District Licensing Committee hearings – we note the comments by the Justice Minister (the Hon Kiritapu Allan) on 7 December 2022<sup>1</sup> that:
  - *Members of the community have felt intimidated and disempowered at these hearings, as they can be cross-examined by experienced lawyers on behalf of well-resourced representatives of the alcohol industry. This can be a barrier to community participation.*
  - *The Bill will also ensure hearings are not conducted with unnecessary formality, making them less intimidating and easily accessible, including being held at more suitable locations and times and remotely by phone or audio-visual link where appropriate.*
  - *We’re also expanding who can object to a license or a renewal application, making it easier for people to object as individuals, or on behalf of organisations with a special interest in reducing the harm caused by alcohol in their communities.*

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<sup>1</sup> ‘Community voices amplified in fight against alcohol harm’ – 7 December 2022 beehive.govt.nz media release from the Minister of Justice, the Hon Kiritapu Allan.

- *Together these changes will boost the influence that communities have in local alcohol decision-making. It is the first step in bringing power back to the people, where it belongs.*
32. We acknowledge that these new provisions should make hearings less formal and likely create an environment that will encourage participation by community members.
  33. Removal of the cross-examination opportunity is important as the formality of such proceedings can be an intimidating and off-putting experience for community participants. We note that cross-examination is not permitted in resource consent hearings under the Resource Management Act as a means of encouraging community participation (although parties can suggest questions for the panel to ask) i.e., there is, in effect, already a precedent for not having this type of provision.
  34. The removal of cross-examination opportunities may also potentially assist in reducing hearing times and enable District Licensing Committees to better schedule times of attendance for objectors and witnesses at these hearings.
  35. While any person or organisation can object to the grant of a license (which relates to the removal of the requirement to prove *'a greater interest in the application than the public generally'*), a trade competitor can only object if they are directly affected in a way that does not relate to trade competition or the effects of trade competition. We support this provision.
  36. We note that the Bill specifies that a LAP will be adopted 30 days after it has been publicly notified.
  37. We endorse the view that the current provisions in the Sale and Supply of Alcohol Act 2012 have allowed the alcohol industry to 'ride roughshod' over the views of the community about how and where and the hours during which alcohol should be allowed to be sold.

## Costs of Developing and Implementing a Provisional LAP

38. Hamilton City Council incurred costs of around \$200,000 in 2014 getting its Provisional LAP notified and to the stage of an appeal. While on the face of it the Bill seems like it will close the major 'loopholes' that allowed the appeals to take effect and allow greater community participation in the decision-making process, we retain reservations that the Bill will not meet all community expectations.
39. As noted in the previous section, we have considerable concerns around the additional costs and time likely to be incurred by councils through additional compliance requirements of the Bill's new provisions.

## Further Comments

40. The proposed changes are viewed as an encouraging step in reducing the incidence of alcohol related harm in the community.
41. We would like Government to consider further changes in the future e.g., there should be a focus around the recommendations made in the Law Commission's April 2010 report 'Alcohol in Our Lives: Curbing the Harm - A Report on the Review of the Regulatory Framework for the Sale and Supply of Liquor'.

## Further Information and Hearings

42. Should Parliament's Justice Committee require clarification of the submission from Hamilton City Council staff, or additional information, please contact **Kelvin Powell** (City Safe Unit Manager – Community Group) on 07 838 6595 or 027 808 2927, or email [kelvin.powell@hcc.govt.nz](mailto:kelvin.powell@hcc.govt.nz) in the first instance.
43. Hamilton City Council representatives **do wish to speak** at the Justice Committee hearings in support of this submission.

Yours faithfully



**Lance Vervoort**  
**CHIEF EXECUTIVE**

Hamilton City Council  
Garden Place, Private Bag 3010, Hamilton

 /HamiltonCityCouncil

 @hamiltoncitycouncil

 07 838 6699

**hamilton.govt.nz**