
REPORT 2
(1215/52/IM)

**CONSULTATION PROCESS AND ADOPTION OF THE
AMENDMENT TO THE LIQUOR CONTROL BYLAW**

1. Purpose of Report

To report on the special consultative procedure carried out for the proposed Liquor Control Bylaw, and for agreement that the proposed Liquor Control Bylaw be referred to Council for adoption.

2. Executive Summary

On 12 April 2007, the Council agreed to consult on an amendment to the Liquor Control Bylaw so that it would apply to Oriental Bay and the Mount Victoria Lookout. The current Bylaw prohibits consumption and possession of liquor in public places on Thursday, Friday and Saturday nights in the Wellington Central Area.

The special consultative procedure has been undertaken for the amended Liquor Control Bylaw as required by the Local Government Act 2002. Forty one written submissions were received. The majority of submitters supported the proposed amendment to the bylaw. The Strategy and Policy Committee heard two oral submissions on 7 June 2007 and is scheduled to hear one further oral submission on 14 June 2007.

The rationale for the proposed Liquor Control Bylaw is to address issues of anti-social behaviour at Oriental Bay. A number of responses to those issues at Oriental Bay have already been put in place and the extension of the liquor ban to Oriental Bay is seen as a further mechanism that supports and complements those responses. In addition, concerns have been raised about the potential for an increasing incidence of alcohol related anti-social behaviour in the area of the Mount Victoria lookout and the proposed amendment to the Bylaw seeks to pre-empt displacement to that area.

Police support the extension of the bylaw to Oriental Bay and the Mount Victoria lookout. They have advised that it will be a useful tool in managing those areas.

It is recommended that SPC agree to the draft bylaw attached as Appendix 1 and refer it to Council for adoption.

3. Recommendations

It is recommended that the Committee:

1. *Receive the information.*
2. *Note that 41 written submissions on the Proposal to Amend the Wellington Consolidated Bylaw 1991 Part 23 (Liquor Control) were received during the special consultative procedure undertaken in accordance with section 156 of the Local Government Act 2002.*
3. *Note that 2 oral submissions were heard by the Strategy and Policy Committee on 7 June 2007 and a further oral submission is scheduled to be heard by the Committee on 14 June 2007.*
4. *Agree that the special consultative procedure has been completed pursuant to sections 83 and 86 of the Local Government Act 2002.*
5. *Agree that NZ Bill of Rights Act 1990 implications have been considered.*
6. *Agree to the Liquor Control Bylaw attached as Appendix 1 subject to any amendments arising from consideration of the oral submission or from this meeting.*
7. *Recommend to Council that it:*
 - (a) *note that the Strategy and Policy Committee considered the draft bylaw and submissions, attached as Appendix 1 and 2 respectively, at the 14 June 2007 meeting.*
 - (b) *resolve to adopt the Liquor Control Bylaw attached as Appendix 1, pursuant to sections 83, 86, 147 and 156 of the Local Government Act 2002.*
 - (c) *resolve that the commencement date for the bylaw is 5pm 19 July 2007 allowing for at least fourteen days public notice, following the 21 June 2007 Council meeting.*
 - (d) *resolve that the draft bylaw (attached as Appendix 1) is part of the Wellington Consolidated Bylaw 1991.*
 - (e) *resolve to amend the Wellington Consolidated Bylaw 1991 by revoking Part 23 (Liquor Control) and replacing it with Part 23 (Liquor Control) attached as Appendix 1, to come into effect at 5pm 19 July 2007.*
8. *Note that media releases, advertising and signage will be arranged to ensure that the public are aware of the bylaw coming into effect.*

4. Background

4.1 *Rationale for a Bylaw*

The reasons for this amendment are concerned with anti-social behaviour at Oriental Bay. The Wellington City Council adopted an amended Liquor Control Bylaw in May 2006. At that time, the Council considered extending the area to which the liquor ban applied to include Oriental Bay but decided against that extension. It was agreed that complaints in Oriental Bay and at Mount Victoria would be monitored and reported back to the Strategy and Policy Committee in April 2007.

Oriental Bay residents and the Police reported an ongoing escalation in problems at Oriental Bay that include liquor consumption and associated anti-social behaviour.

The Council has received complaints concerning music and car motor noise, driver behaviour, vandalism, anti-social behaviour, violence and breaking bottles through to the early hours of the morning at Oriental Bay with most complaints being received on Friday and Saturday nights. The level of disorder and disruption has been escalating with anti-social activity based at the triangular “green” between Oriental Parade and Oriental Terrace adjacent to the toilets and the wishing well.

Some of this offensive behaviour is associated with liquor consumption taking place in cars, on the beach and on footpaths. Because the problems are broad ranging across disorder, traffic, litter and vandalism the responses must also be comprehensive and cohesive.

A multi faceted response has been put in place at Oriental Bay with Council officers working closely with the Police and residents. Initiatives have included the installation of CCTV, increased presence of Walkwise and cleaning staff in the area, traffic calming initiatives and immediate responses to noise complaints (rather than having a 15 minute stand down before responding). The Police have increased their presence in the area and perceive the area as a priority in managing crime and safety in the city.

The plan to manage the area includes the use of a liquor ban which will complement the other initiatives. An extension to the liquor ban should not be seen in isolation and will not on its own solve the problems, but rather is one more mechanism to ensure an appropriate and timely response to problems as they occur at Oriental Bay.

The proposed amendment does not re-litigate the premise for the prohibition in the Central Area.

4.2 *Consultation Process*

The Strategy and Policy Committee agreed to the proposed amendments to the Liquor Control Bylaw at its meeting on 5 April 2007. On 12 April 2007, Council agreed to initiate the special consultative procedure required by the Local Government Act 2002 when making a bylaw. The consultation period opened on 19 April 2007 and written submissions closed on 1 June 2007.

Consultation documents were prepared and submitters were asked specifically whether

they supported the extension to Oriental Bay, supported the extension to Mount Victoria Lookout and guidance was sought on preferences for the start time to the ban.

A submission form, statement of proposal and summary of information were posted on the Wellington City Council website. A submission form and Summary of Information booklet was sent to stakeholders including all Residents Associations and made available to the public in Wellington City Council Service Centres and Libraries.

Public notices were placed in 'Our Wellington Page' in the Dominion Post.

5. Discussion

5.1 Consultation Results

Forty one written submissions were received and two oral submissions were heard on 7 June 2007. A further oral submission is scheduled for June 14 and although the written submission from that person has been taken into account in the preparation of this report the content of that oral submission has not been. Copies of the submissions are attached as Appendix Two.

Generally there was support for the proposed bylaw. In summary:

- 41 written submissions were received
- 35 supported the extension to Oriental Bay, five were opposed to it and one was ambiguous
- 30 supported the extension to Mount Victoria Lookout, five were opposed, four were unsure and one was ambiguous
- 19 supported a 5pm start time, 11 supported a start time of 8pm, six indicated "other" with suggestions being 10pm, sunset to sunrise and 24/7. Five did not indicate a preference for a start time.

5.1.1 Key Issues Raised in Submissions – Support for Proposal to extend the ban

In the main those submitters who supported the extension of the ban area to include Oriental Bay and Mount Victoria either made no comment or commented on problems associated with alcohol related behaviour, boy racers and not feeling safe in the areas. The Oriental Bay Residents Association noted that it had asked Oriental Bay residents whether they supported a liquor ban and received 190 replies indicating support and no replies opposing a liquor ban for the area.

Submission 31 from Regional Public Health supported the extension and noted concerns about displacement, the impact on homeless people and youth.

Submission 32 from ALAC suggests that the approach to liquor control bylaws be placed within the framework of the District Plan, that there is a concern about inconsistent enforcement and there is a need for liquor control bylaws to be developed alongside other strategies that support the management of public drinking.

Submission 4 from John Shrapnell said he supported the extension in principle but

suggested that rather than enforcing the ban, police time would be better spent responding to offending (see comments below).

Three submitters suggested extending the ban to a larger area of Mount Victoria, two suggested the ban should apply to all public holidays, and one suggested the ban should be 24 hours a day, seven days a week. Because those options were not included in the Statement of Proposal and therefore were not consulted on, Councillors are unable to adopt them.

5.1.2 Key Issues Raised in Submissions - Opposition to proposal

Submitters opposed to the extension raised a number of issues. Some noted the impact on social drinking, considered that the ban would do little to solve any problems with troublesome drinking and noted the risk of displacement to other areas. One submitter considered that Oriental Bay was a significant recreational facility for all Wellingtonians and the ban would undermine that.

Submission 9 from Ian Apperley and submission 36 from Katja Riedel commented that adequate policing would be more helpful. Police consider that the liquor ban is a useful early intervention tool to mitigate the downstream effects of liquor related behaviour. The ban prevents the possession and consumption of liquor in public places with a view to preventing or reducing the downstream effects of alcohol consumption.

Submission 41 from Alistair Sherriff raised several significant issues, some of which are also raised by other submitters or implied by other submitters. Those issues are:

- *a ban in Wellington is unnecessary as existing legislation/ measures are sufficient - there are already regulations and legislation in place to address issues of noise, vandalism, criminal activity, anti-social and offensive behaviour.* (also raised in submissions 6 and 9)

The Liquor Control Bylaw is a tool to contribute to the management of liquor related behaviour in public places. Without a bylaw there is a gap in measures designed to manage drinking which occurs in public places because there are no other early intervention provisions for managing alcohol-related behaviour where alcohol is consumed in public places. There is no provision to take pro-active steps to avoid alcohol-related harm, but rather offending must occur before any action can be taken. Legislation addresses offending and the bylaw is intended as an early intervention mechanism to be used prior to offending occurring. The bylaw is intended to complement other measures in place to manage anti-social behaviour more generally.

- *the bylaw infringes on people's rights*
Legal advice has been sought and concluded that there is no unreasonable limitation on any rights established in the New Zealand Bill of Rights Act 1990. The proposed bylaw is consistent with the specific empowering provisions of the LGA 2002.

Rights such as freedom of expression, peaceful assembly and association are not specific to alcohol or reliant on alcohol. Therefore the rights are not impinged except to the extent that alcohol cannot be involved.

- *there is no empirical evidence to support the extension of the bylaw, the identified problem is non-existent*

Mr Sherriff says that the problem definition is not soundly based on evidence of a problem. The proposed amendment to the Bylaw arose after concerns about an escalation in anti-social behaviour at Oriental Bay. In a report to Council on 21 March 2007 it was reported that “in February 2007, the Council received 118 complaints about vandalism, noise, motor cars and partying. In the previous six months there have been between 51 and 85 complaints each month. The Police also report escalation of disorder in that area.” In tallying the complaints some double counting occurred and in fact 112 calls were received by the Council. Mr Sheriff notes that those complaints included a large number of issues that were not alcohol or disorder related and that some in fact were not complaints. Officers agree that the problem definition does rely on informal advice from police, Councillors and residents of an escalating issue around disorder in Oriental Bay.

5.1.3 Start time of the ban

Submitters were asked about a preferred start time for the liquor ban. Nineteen supported a 5pm start time which is consistent with the current provisions for the Wellington Central Area. Eleven preferred 8pm and six said “other” with suggestions being made of 10pm, sunrise to sunset and a 24 hour, seven days per week ban. The major reason people were opposed to the 5pm start time was because it precludes social drinking perhaps with a meal or picnic in the early evening. The police are firmly of the view that the start time should be 5pm so that there is certainty across the city in relation to the ban.

5.2 Adoption of the Liquor Control Bylaw

It is recommended that the provisions of the current Liquor Control Bylaw apply to Oriental Bay and the Mount Victoria Lookout. Specifically the Bylaw provides that there is a prohibition on possession and consumption of liquor on each of Thursday, Friday and Saturday nights from 5pm until 8am the following day. The bylaw also has provision for bans to be put in place for special events across the city and imposes a liquor ban for every Christmas Eve and New Year’s Eve.

It is recommended that the Strategy and Policy Committee agree to the bylaw attached as Appendix 1, subject to any amendments, and refer it to Council for adoption. It is recommended that the amended bylaw comes into effect at 5pm on 19 July 2007 allowing for at least fourteen days public notice following the Council meeting of 21 June 2007. Media releases, advertising and signage will be arranged to ensure that the public are aware of the bylaw.

6. Conclusion

This paper reports on the special consultative procedure undertaken in respect of the proposed amendments to the Liquor Control Bylaw. It outlines the key issues raised in submissions and recommends that the bylaw attached as Appendix 1, subject to any amendments, is referred to Council for adoption.

Contact Officer: *Helen Walker, Principal Policy Advisor*

Supporting Information

1) Strategic Fit / Strategic Outcome

This paper is consistent with Council's overall vision of Creative Wellington – Innovation Capital and contributes to Strategic Outcome 9 Safer

2) LTCCP/Annual Plan reference and long term financial impact

There are no financial implications. It is expected that costs associated with signage and publicity will be met from the operating budget.

3) Treaty of Waitangi considerations

The proposal was sent to manawhenua as part of the special consultative procedure.

4) Decision-Making

This is not a significant decision.

5) Consultation

a) General Consultation

The special consultative procedure was adopted and carried out.

b) Consultation with Maori

The proposal was sent to manawhenua as part of the special consultative procedure. No submissions were received.

6) Legal Implications

The proposal incorporates advice received from the Council's legal advisors.

7) Consistency with existing policy

The draft Liquor Control Bylaw is consistent with existing policy.

APPENDIX ONE

WELLINGTON CONSOLIDATED BYLAW 1991

PART 23 – LIQUOR CONTROL

This part of the bylaw prohibits the consumption and possession of liquor in public places from 5pm each Thursday, Friday and Saturday until 8am the following day. In addition, the prohibition applies every year on Christmas Eve, the 24th of December and New Years Eve, the 31st of December from 5pm to 8am the following day and occasionally during special events. It applies to the Wellington Central Area, Oriental Bay and Mt Victoria as shown on the attached map. The bylaw includes a process to obtain prior written permission from the Council to authorise events that would otherwise breach the bylaw. The Council will erect signage to communicate the terms of the bylaw to the public.

The purpose of this bylaw is to address concerns relating to potential criminal offending and safety concerns that are linked to the possession or consumption of liquor in public places. By imposing this ban, the consumption of liquor within the central area and Oriental Bay should primarily be restricted to private residences or licensed premises on Thursday, Friday and Saturday nights.

The bylaw is introduced pursuant to s147 of the Local Government Act 2002 – this section should be read together with this part of the bylaw as it contains relevant definitions and the situations when this bylaw control will not apply (particularly relating to the transportation of unopened liquor). Pursuant to s169 and s170 of the Local Government Act 2002, the Police can enforce this part of the bylaw. Further details on the statutory provisions are provided as a note at the end of this part of the bylaw.

DEFINITIONS

Wellington Central Area means the area inside the boundaries depicted in the attached map but excluding:

- a) Any area that is subject to a road encroachment issued by the Council;
- b) Any licensed premises that occupies a paved area on legal road or Council land where permission to occupy has been granted by the Council.

23.2 LIQUOR PROHIBITION

23.2.1 The consumption or possession of liquor in a public place (including while in a vehicle), is prohibited within the Wellington Central Area, Oriental Parade and Mt Victoria as shown on the attached map. This prohibition is effective from 5pm Thursday to 8am Friday, 5pm Friday to 8am Saturday, 5pm Saturday to 8am Sunday. The prohibition also applies every year on Christmas Eve, the 24th of December and New Years Eve, the 31st of December from 5pm to 8am the following day

23.2.2 In addition to the prohibition in Clause 23.2.1 above, the Council by resolution may

order a prohibition on the consumption or possession of liquor (including while in a vehicle) in a public place for certain specified times and/or within certain specified public places for specified special events. The prohibition must be notified in the appropriate Wellington metropolitan newspaper at least 14 days in advance of the special event.

23.3 COUNCIL PERMISSION

23.3.1 Any person may apply to the Council for prior written permission for any activity that would be in breach of any prohibition under this part of the bylaw.

23.3.2 The process for obtaining the Council's permission is outlined in Part 1 (Introduction) of this bylaw.

23.4 SIGNAGE

23.4.1 The Council will erect signage within public places covered by this bylaw to provide information to the public on the terms of the bylaw. The size, location and terms of this signage shall be at Council's discretion. To avoid any doubt, the absence of signage in any public place does not authorise breach of this part of the bylaw.

23.5 OFFENCES

23.5.1 Everyone commits an offence who:

- a) Consumes or possesses any liquor in a public place in breach of a prohibition under this part of the bylaw; and
- b) Breaches, or permits a breach of, the terms of any Council permission granted pursuant to clause 23.3 of this bylaw.

Note: This bylaw is introduced pursuant to the specific empowering provisions of the Local Government Act 2002 that provide for bylaws for liquor control purposes. This bylaw does not repeat or paraphrase those statutory provisions, and accordingly those provisions should be read in conjunction with this bylaw. In particular, the following provisions are noted:

Section 147 empowers the Council to make this bylaw. It also defines 'liquor' and 'public place'. In addition, s147(3) sets out a number of specific exemptions when the bylaw will not apply with respect to the transportation of unopened bottles or containers.

Section 169 provides the Police with powers of search and seizure, without warrant, to enforce the bylaw. The Police are responsible for enforcing the bylaw.

Section 170 sets out certain conditions imposed on the Police powers of search under s169.

This bylaw has no effect on any other Police powers of search, seizure and arrest or any other statutory offences.

Wellington Liquor Control Area,

