



Waitakere City Council
Te Taiao o Waitakere

NOTICE OF MEETING

PLANNING AND REGULATORY COMMITTEE HEARING

I hereby give notice that a Hearing of the Planning and Regulatory Committee will be held on:-

DATE: Monday, 24 November 2008 **TIME:** 9.30 am

MEETING ROOM: Council Chamber

VENUE: Waitakere Central, 6 Henderson Valley Road, Henderson, Waitakere

to hear submissions on the draft Control of Liquor in Public Places Bylaw 2008 and to take any necessary action connected therewith.

19 November 2008

Desiree Tukutama
COMMITTEE SECRETARY

Telephone (09) 836 8000 extn 8815

MEMBERSHIP:

Councillors	VS	Neeson, JP (Chairman)
	WW	Flaunty, QSM, JP (Deputy Chairman)
	DQ	Battersby, JP
	MFP	Chan, JP
	LA	Cooper, JP
	AK	Corban, OBE, JP
	MM	Jolley
	JP	Lawley, JP
	PG	Mitchell

Mayor RA Harvey, QSO, JP (ex officio)
Deputy Mayor (ex officio)

(Quorum 5 members)

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(Meeting Room could be subject to change)

(The reports and recommendations contained in all agendas are reports and recommendations only and are not to be construed, in any way, as Council policy until adopted.)

**AGENDA FOR A HEARING OF THE PLANNING AND REGULATORY COMMITTEE
TO BE HELD IN THE COUNCIL CHAMBER AT WAITAKERE CENTRAL,
6 HENDERSON VALLEY ROAD, HENDERSON, WAITAKERE,
ON MONDAY, 24 NOVEMBER 2008,
COMMENCING AT 9.30 AM**

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1 APOLOGIES



2 CONFLICTS OF INTEREST

The Council has acknowledged in its Code of Conduct that Elected Members need to be vigilant to stand aside from decision making when a conflict arises between their role as a member of the Council and any private or other external interest they might have. This note is provided as a reminder to members to check that no such conflicts arise in relation to any items on this agenda.



3 DRAFT CONTROL OF LIQUOR IN PUBLIC PLACES BYLAW 2008

GLOSSARY

Central Business District	(C.B.D)
Draft Control of Liquor in Public Places Bylaw 2008	(the draft bylaw)
Local Government Act 2002	(LGA)
New Zealand Bill of Rights Act 1990	(NZBORA)
Special Consultative Procedure	(SCP)

EXECUTIVE SUMMARY

The purpose of this report is to enable the Planning and Regulatory Committee to consider submissions received as a result of the Special Consultative Procedure (SCP) regarding the Draft Control of Liquor in Public Places Bylaw 2008 (the draft bylaw).

Feedback from the New Zealand Police, key stakeholders in the community, and the general public has been incorporated into this report.

RECOMMENDATIONS

It is recommended that the Planning and Regulatory Committee resolve to:

1. **Receive** the Draft Control Of Liquor In Public Places Bylaw 2008 report.
2. **Approve** the form of the proposed Control of Liquor in Public Places Bylaw 2008 with amendments, if appropriate, after consideration of the submissions received.
3. **Invite** the Council to adopt the Control Of Liquor In Public Places Bylaw 2008.

BACKGROUND

1. On 11 March 2008 the Planning and Regulatory Committee considered a report which concluded that Council has specific legal powers to make a bylaw for liquor control purposes pursuant to s. 147 of the Local Government Act 2002 (LGA). The following was resolved at the Planning and Regulatory meeting of 11 March 2008:

- “1. That the determination report – Review of the Control of Liquor in Public Places Bylaw 2003 report be received.*
- 2. That the problem to be addressed is to reduce the incidence of disorderly behaviour and criminal offending in the city linked to alcohol possession and consumption in public places.*
- 3. That the most appropriate way of addressing the perceived problem is to extend the Control of Liquor in Public Places Bylaw 2003 to cover those parts of the City identified by the Police as particularly affected by the problem.*
- 4. That Council officers in consultation with the Police prepare a draft bylaw statement of proposal and summary of information for consideration and discussion at a future Planning and Regulatory Committee meeting.”*

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2. A report and the draft bylaw, along with a statement of proposal and summary of information was prepared by officers, in consultation with the Police, and presented to the Planning and Regulatory Committee on 10 June 2008. At that meeting, the Planning and Regulatory Committee resolved (934/2008) that a Control of Liquor in Public Places Bylaw should continue to be used but the scope of the, Control of Liquor in Public Places Bylaw 2003 should be extended to cover more areas in the city, in particular parks and reserves, as well as central business districts (CBDs) that the Council and the Police consider are problematic areas where liquor possession and consumption should be controlled. Six options were considered as to how to effect this change. The fourth option was considered to best reflect the manner in which the City and the Police wished to control consumption and possession of liquor. The Planning and Regulatory Committee approved the draft bylaw for consultation.
3. The SCP has taken place. It is now for the Planning and Regulatory Committee to consider submissions received and, in light of those comments, and determine whether it is appropriate to amend the draft bylaw before referring the final version to the Council for approval and adoption.

DECISION MAKING

Issues

4. The LGA imposes a statutory test on all local authorities in the review of and adoption of new bylaws. This is to ensure that a proposed bylaw is relevant and meets the criteria set out in s. 145 of the LGA. In respect of the control of liquor, local authorities are specifically empowered to make bylaws for the purpose of controlling liquor: s. 147 of the LGA.

5. However, local authorities must first identify the issue to be addressed. With regard to the review of the existing Control of Liquor in Public Places Bylaw 2003, the problem to be addressed was identified as being the effective control of consumption and possession of liquor in public places. The Police in particular were of the view that this bylaw was ineffective in controlling the consumption and possession of liquor in public places. In particular the Police reported that offences in public places, particularly CBDs within Waitakere had increased in recent times and it was their opinion that a large proportion of these offences were and continue to be alcohol related. The Police presented a report to the Planning and Regulatory Committee on 11 March 2008 and made a presentation to the Planning and Regulatory Committee on 10 June 2008. Both reports outlined the key areas in the City that were of concern to the Police and the reasons for the concern.
6. The Police are of the view that an extended Control of Liquor in Public Places Bylaw will lead to a reduction in offensive behaviour in public places if the consumption of liquor in public places was limited.
7. The Planning and Regulatory Committee have determined that a bylaw continues to be the most appropriate means of dealing with the problems identified by the Police and council officers, and that extending the scope of the Control of Liquor in Public Places does not infringe the New Zealand Bill of Rights Act 1990 (NZBORA) and that it is a practical, enforceable and beneficial means of regulating the consumption and possession of liquor in public places. It is in this context that the draft bylaw was consulted on and is now being heard.
8. The SCP sought comment on all aspects of the Control of Liquor in Public Places Bylaw review process. Public input was not restricted to the proposed wording and content of the proposed bylaw. The consultation documents contained information about the process and the options the Council through the Planning and Regulatory Committee considered.

Options Identified

9. The recommended draft bylaw options to extend the scope of the Control of Liquor in Public Places Bylaw 2003 to cover many more public places and to permit the Council to set up a process whereby new areas could be added to control liquor possession and consumption.

Assessment of Options

10. The option contained in the proposed form of the draft bylaw caters for the needs of the business associations and resident groups. Ensuring that there are liquor bans during shop trading hours, and in the latter hours of the evening will provide shops keepers and businesses with an improved sense of security.
11. In respect of parks and reserves, public surveys conducted show that approximately 87% of the public support the introduction of liquor bans in parks and reserves within Waitakere during the hours of 9.00pm to 6.00am everyday.
12. Although there was interest expressed by both business associations and members of the community to introduce bans 24 hours a day, 7 days a week, there is no evidence supporting the need for a liquor ban 24 hours a day, 7 days a week. It is also considered that this option may in fact breach the NZBORA by imposing an unjust limitation on the public's rights to enjoy liquor in public areas, particularly when picnicking or when there are events for public entertainment.

Consideration of Maori Views

13. There are no special considerations to local Maori required in terms of Section 77(c) of the LGA. Nevertheless, in line with the purpose of the LGA, local iwi were included in the list of people that the draft bylaw was sent to as part of the SCP. It is noted that the Maori Wardens provided their views on liquor issues to both the Police and Safe Waitakere. They were in general support of a Control of Liquor in Public Places Bylaw limiting the ability for members of the public to consume or possess liquor in public places after 9.00 pm.

Consideration of Community Views

14. As indicated in previous reports, two public surveys were conducted which showed strong community support for reviewing the Control of Liquor in Public Places Bylaw 2003, and extending this bylaw to other parts of the City.
15. Since the meeting of the Planning and Regulatory meeting on the 11 March 2008, specific feedback has been sought from the Business Associations of Te Atatu, New Lynn, Glen Eden and Henderson. Their feedback was incorporated into the options presented to the Planning and Regulatory Committee on 10 June 2008.

STRATEGIC CONTEXT

16. This initiative is directly aligned with Council's strategic priorities of a Safe City and First Call for Children, as well as Council's strategic platform of Strong Communities; supporting the health and wellbeing of the City's residents, building community pride and local identity. It also aligns with the Citywide Alcohol Strategy, adopted by the Council in July 2005.
17. The initiative has been strongly supported by Police, the City's Business Associations and the public at large. It will provide the Police with the ability to adopt a preventative approach in dealing with alcohol related behaviour that is considered to be offensive and which causes a nuisance to members of the public in and around public places.

Preferred Option

A1-A75

18. The draft bylaw to be recommended to Council for consideration for adoption has been amended in response to submissions (see underlined amendments), and is attached at pages A1 to A33. A summary of these submissions is attached at pages A34 to A39, and the full submissions are attached at pages A40 to A75.

CONSULTATION

A76

19. In accordance with the SCP, public notices of the draft bylaw were published in the New Zealand Herald on 21 June 2008, in the Western Leader on 24 June 2008 and the Aucklander, West Edition on 25 June 2008 (as attached at page A76). The notices advised how to obtain a copy of the consultation documents. The Council website also advertised that the bylaw was being reviewed and provided all the relevant information including the date by which submissions were required to be submitted by, being 28 July 2008. Copies of the same documents which were on the Council website were also placed in each of the major libraries in the City in Te Atatu Peninsula, Henderson, New Lynn and Massey.
20. The SCP documents were also sent out to some key stakeholders for their consideration. This group of key stakeholders was involved in the preliminary consultation that Council officers undertook. The group includes:
 - Community Boards;
 - Te Taumata Runanga;

- Waitakere Pacific Board;
- Waitakere Ethnic Board;
- Business Associations of New Lynn, Henderson, Te Atatu and Glen Eden;
- The Portage and Waitakere Licensing Trusts; and
- New Zealand Police.

Submissions on the Draft Control Of Liquor In Public Places Bylaw 2008

21. In total 18 submissions were received. All submissions were received within the notified timeframe which was 28 July 2008. All but one submission were in support of the draft bylaw. The one submission that opposed the draft bylaw was in fact in support of the draft bylaw but was opposed to the fact that the Piha ban hours were not being extended. The submitter sought to have the hours at Piha extended to match the hours proposed for Te Atatu Peninsula.
22. Other submitters although in support of the draft bylaw wished to see the draft bylaw go further to include:
 - 24 hours, 7 days a week bans;
 - Bans on streets and roads surrounding parks and central business districts CBDs;
 - Bans around schools, within 500 metres of any school;
 - Bans around liquor outlets;
 - Restriction outlets that sell liquor; and
 - A complete ban on the sale of liquor in the City.
23. In summary, the submissions were all in support of the ban and the public were of the view that they were made to feel safer and more secure with the extended ban. A few submitters were of the view that the Council should be able to add new areas to the draft bylaw more readily than the draft bylaw permitted.
24. The Alcohol Advisory Council of New Zealand submitted that although the draft bylaw was a good starting point, the Council needed to address the following matters:
 - Note that enforcement of the draft bylaw can be difficult;
 - The issue of displacement should be addressed;
 - The Alcohol Strategy 2005 should be updated to reflect the control of intoxication as an issue in the City that needs to be addressed;
 - The draft bylaw should be consistent in hours and days across all areas to which it applies. Recommend changing this aspect of the draft bylaw to remove any confusion that may arise from differing hours and days in different areas of the City. State that this will make enforcement easier.

Officer's response

25. For the reasons set out above in the preceding section, a permanent ban is not possible. It is in contravention of the NZBORA and there is no evidence to support the proposal. Similarly this is the case with respect to extending the ban to streets surrounding parks, reserves and CBDs.
26. There is no reason for the Council to adopt a perimeter ban around schools. Although a conceptually good idea, it is difficult to do so and no other city has adopted such an approach. The LGA has some stringent requirements, it is important that any decision to add a new area is done so with the support of the Police base on the available evidence of issues in that particular area. To date, no issues have arisen around schools that warrant extending the draft bylaw to cover schools.

27. The aspect of permitting the Council to more readily add areas of concern to the list of areas where the ban extends to has not been discussed previously by the Planning and Regulatory Committee. The draft bylaw in its original form did not address this issue. However, the submissions on this point warrant adoption and the draft bylaw reflects the change. That change is to permit the Council by resolution extend the ban to cover a new area after taking into consideration a number of factors (discussed further below). These changes are proposed at clause 7.4 of the draft bylaw.
28. It is at the discretion of the Planning and Regulatory Committee to accept the proposal knowing that the LGA imposes a requirement to undertake consultation on any major change to a bylaw, unless a Council has reserved discretion through a bylaw to make certain changes without public consultation. It is noted that the criteria and methodology proposed in the draft bylaw for the Committee's consideration overcomes the need to go through an SCP to add a new area to extend the scope of the ban, but does so bearing in mind the requirements of the LGA.
29. The Auckland City Bylaw on Control of Liquor has a very similar provision. It is proposed that the discretion is exercised by the full Council bearing in mind the following matters:
- Whether liquor is likely to be present in a public place on the days or periods specified;
 - Information about the nature of the locality and the reasons why the prohibition or control is being sought;
 - The scale and nature of the area proposed for the prohibition or control;
 - Whether or not private rights will be unnecessarily or unjustly invaded;
 - Whether it is necessary to consult the public to gauge community views on a proposed prohibition or control;
 - Any recommendations, advice or other comments received from the Police in relation to the proposal; and
 - Any other information considered by the Council to be relevant.
30. Other changes introduced include the following:
- Changes to clause 5: some new definitions to clarify the terminology used in the draft bylaw. These terms are *container*, *specified period*, and *specified public place*.
 - A new section has been introduced as clause 9 to clarify the exceptions to the bans in place.
 - The offence and enforcement issues have been clarified at clause 11.
31. It is not recommended that the hours for Piha be extended to match the other areas in the draft bylaw as we have not been provided with any Police evidence on this matter. However, if the Police wish this change to occur, and the Planning and Regulatory Committee agree to the extension of hours, then the amendment can be introduced.

RESOURCES

32. The costs associated with the implementation of the draft bylaw have been previously addressed in the reports of 11 March 2008 and 10 June 2008. Those costs are budgeted for as between Safe Waitakere and Field Services (in respect of signage).
33. There are no other resourcing implications.

IMPLEMENTATION ISSUES

34. Once the draft bylaw is adopted the signs will be erected so that the bylaw is able to be enforced as soon as possible. It may be that there will be a one month delay from the date that the Control of Liquor In Public Places Bylaw 2008 is accepted by the full Council, to when public notice of it is given to when the signs are erected. It is noted though that the signs are ready and able to be placed in strategic locations to ensure that the ban is clear. It is anticipated that the ban will be in place by Christmas.

Report prepared by: Setareh Masoud-Ansari, Team Leader Legal: Regulatory.

