

Strategies and Opportunities In Liquor Licensing and Local Government

Linda Hill

National Workshop Development
for Alcohol Health Promoters
6-17 June 2005, Wellington

Sale of Liquor Act

- Liquor laws regulate the sellers of alcohol
- “A holder of a liquor licence... is granted a privilege. It permits him to sell liquor when others are not permitted to do so.” Holland J AP209/92
- Licensing regulation based on power to cancel or suspend - upheld 2003
- Legislative objective of SOLA (S4):
“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 this can be achieved by legislative means.’ (S.4)
- World Health Assembly May 2005
population based policies ‘most cost effective public health response’ ie,
 - taxation affecting price
 - restrictions on availability (min. age, hour/days of trading, outlet density)
 - education and persuasion ‘not necessarily effective’

- SOLA 1989 - Premise of legislation reversed:

1894-1989 – granted only if ‘community need’ demonstrated

1989-→ - grant all applications with resource consent and ‘suitable’ applicant. Raise infringements/unsuitability on renewal.

- Bill proposed full devolution to local level but Parliament retained national level Authority, esp for contested matters
- Narrow criteria and conditions in SOLA
 - applicant chooses type of licence
 - Act sets criteria that LLA (or DLA) may use, and conditions
 - hours of trading the main point of flexibility
 - Object of Act – not a criteria but ‘where the scales are evenly balanced’
- Appeals against LLA decisions go to the civil courts on
 - i) ‘suitability’
 - 2) matters of law (not matters of fact)

Case law summarised in Brookers Bulletin - or ring LLA

Key LLA decisions on ALAC website

Roles - SOLA delegates admin and most enforcement to local level

- DLA – administration of licences/renewals - grants or refers to LLA
 - must refer to LLA if Police, MOH or public object
 - 1999 amendments increased DLA role in saying yes, but not no

Inspector – monitoring and enforcement,

- power/role delegated from LLA, but employed by local govt

- Police – ‘suitability’ checks – front line police enforcement
 - can apply for variation, suspension, cancellation
 - prosecute offences – but so can others
 - can close for ‘rioting’

MoH – investigates and reports on on-licence applications/renewals,

- can close for health reasons
- MOH reporting role led to HPO work with licensees on host responsibility, in-house policies etc.
- MOH took first prosecution against irresponsible promotion (S154)

- Public – ‘with interest greater than the public in general’ can object

- **Research**

1995, 1998

- many districts monitoring only 'problem premises'
- In districts where HPO active, more attention to host responsibility by inspector and police
- no HPOs operating in some areas, delays in reporting
- most satisfaction with Act where 3 local agencies work as team
- proactive, informal tactics can be effective

- 1999 SOLA changes

- DLAs can grant all uncontested licences
- Police/MOH reporting within 15 working days, or assumed okay

- 2004 changes

- Minors can assist police
- DLA can't change conditions on renewal unless licensee asks (but can oppose renewal, apply for variation or whatever)
- but LLA will recognise policies adopted by the full Council

SOLA depends on local effectiveness

- Roles set by Act, criteria narrow, contested matters go to LLA
BUT remember INITIATIVE FOR ENFORCEMENT lies with local agencies
- Regular monitoring of all premise types effective, including late night visits by team - not just at renewal time.
Best practice guidelines for Controlled Purchase Operations
- Enforcing the law
 - applications to LLA generally more effective than prosecutions
 - team approach works well before LLA
 - MUST address criteria, cannot 'impose' non-standard conditions
 - evidence from public objectors can be integrated into DLA or police objection or request for cancellation
 - LLA can only consider specific premises, not general or cumulative harm
 - LLA can have regard to policies of full Council
 - cutting back hours useful, but LLA increasingly willing to cancel licences/
manager's certificates

Current research

- Police researching effective policing inside/outside premises
- Alco-link (last drink survey) kicks in September 2005

Planning & Licensing

- Most community objections about suitability of location, but this is a planning matter
 - ‘overlap’ between planning and licensing now a ‘gap’
- Prior resource consent required for a liquor licence – that is, District Plans can shape licensing decisions, provided the sale of alcohol has been considered as a land use activity
- RMA default is to give consent unless ‘significant’ adverse impact
 - consents under rules of District Plan
 - can activities can be prohibited, controlled or discretionary
 - social impacts under S.5 Purposes not yet tested in court
- Most local govts do not allow licensed premises in residential zones. Some ban on and/or off licensed premises in smallest commercial zones. A few now use ‘buffer zones’ to keep them away from houses, schools etc.

- S.5 Purpose of Resource Management Act – ‘sustainable management.. to enable people and communities to provide for their social, economic and cultural wellbeing and for their health and safety...’ ... not yet tested
- | | | |
|-----------------|--------|--------|
| 1989 | 2002 | 2004 |
| ~6,000 licences | 14,211 | 15,242 |

1999-04 – 40% increase in on- or off-licences in many cities (ALAC 2005)
- In the US and Canada, council planning zoning policies limit alcohol outlet numbers/density. Could NZ do this with a District Plan or Council Community Plan, or would we need a law change?
- Good international evidence that local alcohol related harm (crime, violence) increases as outlet density increases (www.ndp.govt.nz)
- Can restrict zones where licensed premises are located
 Can cap gaming machine numbers, but not alcohol outlet numbers?
 New gambling and prostitution require a council policy, provide broad criteria for restrictions.

Key recommendations from NZDF/MoH project:

- Need for local govts to integrate planning and licensing work better
- More detailed zoning for different kinds of licensed premises (or not permit)
- Where permitted, make all licensed premises **a discretionary land use**, so situation will be publicly debated and decided on its merits
- Need to flag 'desired outcomes' for alcohol in Council Community Plan as framework for planning and licensing policies and Local Alcohol Strategy

See papers on www.ndp.govt.nz under alcohol and *Toolkit for a Local Alcohol Strategy* (ALAC/LGNZ)

Local Alcohol Strategies

- Purpose of Local Government Act 2002 – ‘to promote the social, economic environmental and cultural wellbeing of communities in the present and for the future’ (S.10(b))
- Council Community Plans – ‘desired outcomes’ – now shape all future policies and new activities
- Many local govts already have liquor licensing policies.
Eg Dunedin, Wellington, Waitakere, Hastings
- Liquor ban policies under Local Govt Act 2002
- Some local govts are developing wider Local Alcohol Strategies to reduce local alcohol related harm. These cover regulatory, corporate and community-based activities by Council that relate to alcohol (planning, licensing, enforcement, host responsibility at council events/halls, youth activities etc.)
- ALAC / LGNZ have prepared a Toolkit for a Local Alcohol Strategy

- Local govt licensing policies and Local Alcohol Strategies are informal – not required or supported by law
- Licensing and planning and licensing informants suggest:
 - make preparing a Local Alcohol Strategy for council sign-off a DLA function (SOLA S.100)
 - include the Local Alcohol Strategy in the criteria for licensing decisions

The local licensing team approach –

- Current research question: Could regional MOHs/HPOs assist by providing local alcohol consumption/harm data and information?

2004 UK law, licensing shifted to local govt, local licensing policies required.
Allowed 24 hour licensing against evidence

2003 Irish law: tough on intoxication, no happy hours, recent legislation on alcohol advertising.