

PLANNING FOR THE SALE OF ALCOHOL

A review of research and policy

for the Ministry of Health

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CONTENTS

1. Introduction.....	4
2. Review of international literature	5
Environmental approaches to prevention.....	5
Planning for licensed premises in the USA and Canada.....	5
Research linking outlet density to alcohol related harm	8
Better planning for licensed premises.....	10
The precautionary principle.....	11
3. Planning for licensed premises in New Zealand.....	12
Role of in alcohol policy.....	12
Changes in planning and liquor licensing legislation	13
Resource Management Act 1991	13
Sale of Liquor Act 1991	14
Changes in legislation.....	17
Planning for prostitution and gaming machines	18
4. Conclusion	20
References.....	22
Appendix: Sections of legislation referred to in this paper	24

1. INTRODUCTION

Internationally, environmental approaches, including restricting alcohol availability, are considered to be the most effective way of reducing alcohol related harm (Babor et al. 2003; WHO 1999). Research reviewed shows that higher density of alcohol outlets is associated with higher levels of alcohol related harm. In the USA and Canada, a number of local governments are using their policy and planning powers to address this issue. Some New Zealand communities with high Māori and Pacific populations are becoming concerned that an excessive number of outlets is contributing to increasing teenage drinking in their locality. A two-year geo-spatial research project¹ has been funded by the Health Research Council to explore supply to young people, outlet density and harm indicators in deprivation indexed neighbourhoods in the Auckland region.

This paper is one of two publications exploring issues and opportunities in planning for licensed premises that may contribute to the reduction of local alcohol-related harm. The aim of the papers is to contribute to debate and strategic thinking about local alcohol policy and planning issues as local governments develop long term Council Community Plans in consultation with communities and partnership agencies.

This first paper presents US and Canadian material on the use of zoning and other local policies to exercise greater community control over alcohol outlets. It reviews the international research on outlet density and local alcohol related harm. It describes and discusses the legislative Acts that govern planning and liquor licensing decisions in New Zealand, and the 2002 Local Government Act that has increased local government powers and requirements for long term community planning. Exploring the way these Acts fit together – looking at gaps, barriers and future possibilities – suggests ways in which planning for the sale of liquor could be improved, should communities wish to do so, in order to reduce alcohol-related harm.

From this work, a second paper was prepared, *Planning for the sale of alcohol: An issues paper*.² This was developed with the participation of informants with planning and liquor licensing expertise in seven local government organisations nominated by Local Government NZ. A draft of the review of research and policy was circulated to the informants. Telephone interviews were undertaken to investigate planning and licensing policies in each city. The participants were then invited to Wellington to discuss the issues, share their experiences and develop suggestions about how planning for licensed premises could best be improved.

The aim of both this *Review of Research and Policy* and the *Issues paper* is to present evidence, analysis and useful suggestions for consideration by local governments, public health units and communities. Since 1989 legislative changes have given local governments increasing responsibility for decisions and activities that shape where and how New Zealanders drink. New legislation has confirmed a wide leadership role for local governments in helping communities plan for the future. For many communities, that future may include planning to reduce local alcohol related harm.

¹ The SHORE Centre, Massey University, 'Alcogenic Environments: Effects of Alcohol Access on Youth Alcohol Related Harm'.

² Available on the National Drug Policy website, www.ndp.govt.nz.

2. REVIEW OF INTERNATIONAL LITERATURE

Environmental approaches to prevention

Internationally, policy efforts to reduce alcohol related harm have increasingly focussed on environmental factors, rather than on individual drinkers. A range of physical, social, economic and policy factors shape individual drinking choices and can encourage safer behaviour (Babor et al. 2003; Holder and Edwards 1995; Goodman 1996). Although media campaigns and alcohol education in schools have their place, an environmental approach is likely to be more cost-effective in reducing alcohol related harm among each year's crop of young risk-takers (Wagenaar and Perry 1994; Mosher 1996; Holder 1994). Prevention that focuses on educating individuals to change their behaviour depends on them wanting to do so, or having the time and resources to participate in programmes. A large body of research since the 1980s has shown that prevention strategies that focus on physical and social environments can influence more people for longer. Population-based policies that restrict the availability of alcohol, as well as minimum age of purchase and drink driving laws, are most likely to reduce alcohol related harm (Babor et al. 2003; WHO 1999; Edwards et al. 1994).

The World Health Organization (WHO) has emphasised the importance of settings, including the 'healthy cities' approach (WHO 1981; Dooris 1999). WHO notes that cross-sectoral community action can be effective in reducing alcohol related harm, citing as 'exemplary' some US projects that included strengthening local planning and licensing policies (WHO 2002; Perry, Williams et al. 2002; Wagenaar et al. 2000; Holder, Saltz and Grube 1997, Reynolds, Holder and Gruenewald 1997). Local agencies operate within a statutory framework set by national or state policy, but they can, and already do, set mid-range policy about and through the way in which they carry out their statutory roles (Holder and Reynolds 1997) – in the priority they give to alcohol issues, levels of routine monitoring, and informal practices that encourage compliance without full recourse to the law (Hill and Stewart 1997; Ayres and Braithwaite 1992).

Successful local action to reduce alcohol related harm and disorder involved a wide range of activities (Casswell 2000; Holder, Saltz and Grube 1997; Homel, Hauritz et al. 1995). Activities related to strengthening local policies have included increasing enforcement of drink-driving laws and licensing laws, host responsibility training for on-licensed premises, 'sting operations' to decrease underage sales, and alcohol policies for event management (eg. Holder and Reynolds 1997; Reynolds, Holder and Gruenewald 1997). These are familiar tactics in New Zealand. What may be less familiar is the way in which some communities in the USA and Canada are making proactive and strategic use of town planning rules, particular in regard to the density of alcohol outlets in neighbourhoods.

Planning for licensed premises in the USA and Canada

In the US, zoning has become a common means of exercising local control over the sale of alcohol. The 21st Amendment of the US Constitution gives State governments power over all aspects of alcohol regulation, but States may pass some or all regulatory control to city or county jurisdictions, most usually through the delegation of liquor licensing powers.³ Many States have regulations that limit the number of different licence types according to the community's size of population. Cities and county jurisdictions that do not have delegated licensing powers can nevertheless use zoning to control alcohol sales in their area (Ashe et al. 2003). Zoning decisions can be a slow and complex, and require evidence that the proposed ordinance would reduce harm to the community (Alcohol Epidemiology Program 2003).

A range of zoning tactics are used. In some US states (and Canadian provinces), a whole city or county can be voted entirely 'dry' through a 'local-option' election.⁴ When Barrow, Alaska voted to ban all alcohol sales, assaults and emergency room visits decreased significantly, increased sharply

³ US state alcohol laws can be accessed via www.epi.umn.edu/enacted/

⁴ This was once the case in New Zealand, but since the 1940s voters have been able to abolish no-licence areas, but not create them.

when the ban was lifted and declined significantly again when it was reinstated. Zoning can be used to prohibit the sale of alcohol in certain areas – usually in residential zones, but also in some downtown areas. California took the lead in the mid 1980s on using zoning and conditional use permits affecting the location and operation of alcohol outlets (Ashe et al. 2003). When zoning changes led to the closure of several alcohol outlets in Union City, California, youth violence decreased significantly in those neighbourhoods (Parker and Cartmill 1998). Zoning rules may allow licensed restaurants but not bars or off-licensed sales in an area, and may prescribe hours of sale for alcohol.

Zoning can also be used to set prescribed distances between licensed premises and schools or churches as ‘buffer zones’. For example, licences are not granted to within 1,000 feet of a park, church, school, day care centre or government building in Tampa, Florida, within 1000 feet of a school or church in Bloomington, Indiana and Orlando, Florida, or 300 feet in Minneapolis. In Pasadena, California, the Municipal Code (Title 17, Ch.51) ‘overlays’ an alcohol density district on existing zones and planning requirements. Within this district, any new licensed premises or outlet, or any existing premises or outlet applying to sell spirits as well as beer or wine, must be either 250 feet or 1000 feet from any other licensed business. Notification of the application must be posted on the site, and neighbours within 300 feet must be notified.

To reduce the number and concentration of outlets near college campuses, some communities have introduced new zoning laws, or stricter enforcement of existing building and zoning codes. Others have reduced the number of premises by increasing the cost of alcohol licences (Higher Education Center 2003).

In many US States, zoning can be used to regulate the density of alcohol outlets to protect the health, safety and welfare of the community. To use special zoning to do this, a relationship between outlet density and community problems must be established. Disproportionate concentration of alcohol outlets in poorer neighbourhoods has become a concern in many communities. In South Central Los Angeles, residents used conditional use permit requirements to prevent the rebuilding of 200 liquor stores burnt down in the civil unrest of 1992 (Ashe et al. 2003). Requirements covered responsibility for cleanliness and lighting outside the premises, security and limited hours of operations. Oakland took a similar approach, and the Court of Appeals confirmed that this was a valid use of city authority that override existing land use rights (Ashe et al. 2003). In Chicago, Illinois, by 1997, 36 out of 50 wards had changed their zoning rules to place a moratorium on new licensed premises or retail outlets. All were the result of community campaigns, either via a local referendum or via city councillors and a planning ordinance. In the view of Chicago researchers, ‘along with halting new liquor licences, a moratorium sends the message that the community cares enough to take action’. Community action included increased monitoring and enforcement of laws and regulations governing outlet management. In Illinois, differential rating for particular areas can be used to fund special services, and this has paid for extra late night hours by security staff near licensed premises and for extra street and footpath cleaning (Maxwell and Immergluck 1997).

Zoning and similar planning controls have been an important component of US community action to reduce alcohol related harm. One evaluated project considered ‘exemplary’ by WHO has published details of this. Over a five-year period, community action projects were undertaken in three middle-sized communities in Northern and Southern California and South Carolina (pop.~100,000), and compared with matched non-project communities (*Addiction* Special Issue 1997). Each community coalition organised its own programme of community mobilisation, media coverage of alcohol issues, host responsibility training, initiatives to reduce off-licence sales to minors, drink-driving law enforcement, and using zoning and other local government powers to address the number, density and management of alcohol outlets. Researchers anticipated that the policy and planning component would come late in the project, but all three communities made alcohol access and availability a priority for action. Although unfamiliar with planning and policy systems, community members knew about problems related to local alcohol outlets and began to draw on wider scientific evidence about the relationship between alcohol availability and alcohol problems. They found that local planning, zoning, licensing and enforcement tools were available to address these problems, even if such efforts had not been undertaken in the past. These tools included reviewing consents decisions, making

alcohol sales a conditional land use to allow case-by-case control, using a model Conditional Use Permit to meet restrictions set by local government (California only), limiting areas of permitted location, and creating buffer zones. All three communities encountered set-backs or easing of regulations in downtown areas, however, as some business and political interests supported rapid outlet growth as part of community economic development (Reynolds, Holder and Gruenewald 1997; Gruenewald, Millar and Roeper 1996).

In Canada in the late 1970s, local governments in Ontario realised they could be held in some degree liable for alcohol related harm at city-organised events or in city-owned facilities under 'special' licences. In consultation with facility users and the wider community, they developed municipal alcohol policies requiring organisers to adopt host responsibility practices. By 1995 117 out of 816 Councils in Ontario had adopted a municipal alcohol policy and 50 others were being developed. Since then, some municipal alcohol policies have been extended to include relevant by-laws. Councils that adopted a high quality alcohol policy reported a fairly rapid and sustained reduction in problems, with slower improvement reported by those with less developed policies. A municipal alcohol policy provides an opportunity for engaging the community on local alcohol issues and is now recommended in Ontario's Drug Prevention Strategy (Douglas et al. 1999; Depape et al. 1995).

In Canada, alcohol laws are made by Provincial governments, but local governments are increasingly using their planning powers to exercise local control. Provincial laws have traditionally restricted alcohol availability by allowing only state-owned stores to sell takeaway alcohol, but these have been coming under political pressures for privatisation. State liquor store monopolies in Canada, Scandinavia and 14 US states have been challenged under free trade treaties (Grieshaber-Otto, Sinclair and Schacter 2000; Carricaburu 2003).

In 1993 the Province of Alberta privatised retail sales through specialist liquor stores and the number of outlets almost doubled. Continuing control over wholesaling kept prices high but over the next year per capita consumption increased in Alberta, compared with decreases in the rest of Canada (Her et al. 1999). The City of Edmonton was concerned that the new stores would create and concentrate problems in certain parts of the city. Licensing and hours of operation were Provincial responsibilities, and it was likely that using zoning ordinances to control density directly would be considered a restriction on competition. Edmonton's response was to define two new land uses by size of outlet – major and minor alcohol sales – to be distributed through most commercial zones, together with new rules separating liquor stores from schools and other public facilities. On-licensed premises were also restricted by size and number of seats. More recently, changes in alcohol regulations, reduced monitoring by the Provincial licensing authority and changes in way licensed business were operating led to growing concerns about impacts in some neighbourhoods. An increased number of more precise land use classes was adopted, together with new rules on permitted and discretionary uses, including such things as outdoor patios and sound systems. This allowed greater sensitivity on how different kinds of premises or retail outlets were distributed in five different commercial zones and a sounder base for regulating land use and local impacts (City of Edmonton 2000).

In Ottawa, revitalising the inner city on a 'festival marketplace' model resulted in increased nuisance from alcohol and licensed premises. Youth parties in private car parks were addressed through zoning rules to disallow 'public assembly with commercial intent' and through cross-sectoral negotiations involving parking lot operators, adjacent bar owners, police, city officials and the Province's licensing authority with its power to withdraw liquor licences. Concerns about public safety and inner city residential amenity led to a bylaw controlling the location of large bars and putting a moratorium on new bars over 500m² (Turnbridge 2001).

The effects of local planning changes are not immediate. Existing outlets may be protected, making past patterns slow to change unless a community has a high turnover of licensed businesses. In contrast to enforcement of liquor law infringements, which is reactive, planning and zoning can operate prospectively, that is, make decisions that shape the future (Reynolds, Holder and Gruenewald 1997). The aim is to take local alcohol related risk into consideration in planning, before it becomes alcohol related harm.

Research linking outlet density to alcohol related harm

Developments in statistical and geographical analysis are contributing to better understanding of how environmental factors, such as the location of alcohol outlets, influence alcohol-related problems in communities (Gruenewald, Remer and Lipton 2002). That is, harm rates are moderated by place characteristics (Gruenewald, Friesthler et al. 2003), and these may be amenable to local policy action. Geo-spatial research on crime, traffic crashes and other harms in which alcohol frequently plays a role are being undertaken in a number of countries to inform policing as well as policy. The NZ Drug Foundation and the Ministry of Health were aware of this research, and a particular objective of this paper was to review the available literature.

Studies in the US in the 1980s and early 1990s showed a dynamic relationship between alcohol outlet density and consumption, which was mutually reinforcing over time (Reynolds, Holder and Gruenewald 1997). Since then, a growing body of statistical and geo-spatial research in medium-sized US cities has investigated levels of alcohol related harm (such as drink-driving and crime) and alcohol outlet density, using both geographical and population based measures of availability. Although findings from city level data show variation between different regions of the US, analyses at the neighbourhood level of census tract or block data have consistently shown a significant association between outlet density and harm after controlling for socio-demographic and other relevant contributing factors.

One of the earliest studies, of 213 California cities, showed that a 1 percent increase in 'beer bars' resulted in more than 1 percent increase in public drunkenness and drink driving (Watts and Rabow cited in Alaniz 1998). Studies in California linked high outlet density to high numbers of night-time traffic crashes and pedestrian injuries in study neighbourhoods, with some spill-over effects on neighbouring areas (Gruenewald, Millar and Roeper 1996).

In regard to links between alcohol and violence, a recent study in Newark, New Jersey, showed that alcohol outlet density was the single greatest predictor of violent crime at census tract and census block level (Gorman, Speer et al. 2001). This association with harm levels holds whether density is measured per head of population or per square kilometre (Scribner, Cohen et al. 1999). California studies linked off-licensed outlet density to violent assault, including violence involving young people (Scribner et al. 1995; Gruenewald et al. 1996; Alaniz 1998). In an average city in Los Angeles County, one additional outlet was associated with a 0.62 percent increase in violent offences. In New Jersey, alcohol outlets, along with bus stations and all-night businesses, appeared to function as crime 'hot-spots' (Gorman et al. 2001). The effect of high outlet density on crime, however, was specific to the high density area, with little of spill-over into neighbouring areas shown for drink-driving offences. A US crime review attributed a decline of homicide to falling alcohol consumption, and presented evidence that tighter regulation of alcohol availability should be included in policy to reduce violence (Parker and Cartmill 1998).

A New Orleans study of outlet density is described below in some detail because it is relevant to debates about personal choice versus community responsibility that often arise when government or local agencies intervene in the alcohol market. The study showed how this link between outlet density, drinking and harm works through the social norms that are created within communities. Rather than impacting directly individual behaviour, alcohol outlet density within a community has a structural effect on alcohol attitudes and drinking patterns across that community that helps explain individual drinking (Scribner, Cohen and Fisher 2000).

In this study, urban residential census tract areas were randomly selected to provide three examples each for high and low outlet density and four different levels of socio-economic deprivation index – 24 areas in all. A random telephone survey of 2,604 adults in these areas asked about personal drinking patterns and alcohol attitudes including social acceptability and perceived norms for friends, distance from an off-licensed alcohol outlet (as a proxy for density) and socio-demographic characteristics. Hierarchical linear modelling was used to analyse differences in drinking and attitudes between individuals and also between averages for each census area. In the individual level analysis, all variables except density were strongly related to drinking norms: male sex and higher education were

positively linked to heavier drinking; black ethnicity and increasing age showed a negative association. Distance from residence to closest outlet made no difference. However, 16 percent of the variation in individual drinking norms and 11.5 percent of variation in self-reported consumption related to where the individual lived. When the data was analysed by neighbourhoods, the mean of the distances to nearest outlet in each neighbourhood was the only variable that linked to means on attitudinal and drinking measures. That is, in neighbourhood with low distances on average to the nearest off-licence, there were heavier drinking norms.

In the researchers' view, this finding indicated that in a high outlet density area, whether you live next door to a liquor store or a kilometre away, everyone's drinking norms are affected to some degree by the neighbourhood (Scribner, Cohen and Fisher 2000). This is consistent with other research showing that individual drinking behaviour is influenced by the drinking behaviour of one's social network (Skog 1995; Paton Simpson 2001), and supported by social learning theory (Bandura 1977). New Zealand research has linked heavier drinking by 10-17 year olds and by university students to perceptions about drinking by friends that overestimate their actual consumption (Wyllie 1997; Kypri 2002).

High density of alcohol outlets increases the visual presence of alcohol in a neighbourhood, and may have similar effects on attitudes and norms to exposure to billboards, television and print advertising (Babor 2003; Alaniz 1998). The presence of alcohol outlets, including signage and empty bottles or intoxicated patrons in the street, may also have a 'broken window' effect, suggesting that 'no one cares' in this neighbourhood (Gorman et al. 2001). Concentrations of alcohol outlets can act as 'attractors' of socially disinhibited people and helps creates the conditions for non-normative activities such as drug use and prostitution. It is argued that this, as well as the effects of increased alcohol consumption in the neighbourhood, contributes to the association between violence and outlet density (Parker and Carmill 1998).

The type of outlet linked to increases in harm varied between the studies reviewed. Difference appear to be related to state differences in licensing systems and in local patterns of drinking and risk. In New Orleans it was the density of off-licensed premises that made a difference, with researchers pointing out that the data for on-licensed premises would include many serving the tourist industry, rather than the local population (Schribner et al. 1999). No such distinction could be made in a New Jersey study, where licensed premises usually have both on and off sales (Gorman, Speer et al. 2001). In California studies, the density of restaurants affected alcohol related crash rates, as alcohol was twice as likely to be consumed in restaurants than in bars (Gruenewald et al. 1996), but bar density was linked to higher assault rates (Lipton and Gruenewald 2001). Research in Perth on different types of licensed premises did not consider density but linked drink-driving, alcohol related crashes and intoxication to late opening hotels, particularly those with high volume alcohol sales (Chikritzhs and Stockwell 2002; Stockwell 1997; Stockwell et al. 1992).

These studies link density to hard data on harm, which is most readily available for drinking-driving and violent offending. A report of community action in lower income Chicago neighbourhoods describes other negative effects of excessive liquor store density, as increased competition may encourage cost-cutting and irresponsible management (Maxwell and Immergluck 1997) or become a 'hot spot' for petty crime (Gorman et al. 2001):

Typical complaints include the serving of minors, littering, loitering, harassment and intimidation of pedestrians and customers, public urination, drug dealing, prostitution, assault and even murder. These specific grievances represent more general quality-of-life, public health and safety problems that feed into the economic and social deterioration of an area. For example, safety issues, like drug dealing and stealing, raise local business operating expenses and create a poor business environment. (Maxwell and Immergluck 1997: 1)

Outlet density patterns are not explained by socio-economic or ethnic differences. In the US, whites and those with higher incomes are more likely to drink frequently and to drink heavily. Yet in Chicago, for example, zip code areas with high African American populations had six times as many alcohol retail outlets as areas with predominantly white populations (Maxwell and Immergluck 1997). Studies in California and Los Angeles investigated the association of violence with disproportionate

concentration of alcohol outlets and of alcohol shop-front and billboard advertising in poor neighbourhoods with African-American, other non-white or foreign born residents (eg. Latino or Vietnamese Americans). Analysis showed that alcohol availability and outlet density were stronger predictors of levels of violence in these communities than race or ethnicity (Alaniz 1998; Schribner, Cohen et al. 1999). Percentages of professionals (ie. positive role models) and of divorced adults also linked to levels of violent offending by young people (Alaniz 1998). Schribner et al. found the concentration of alcohol outlets, particularly off-licensed outlets, was a major predictor of homicide levels, after controlling for other neighbourhood characteristics. That is, higher ratios of blacks or young males in a neighbourhood do not explain a higher crime rate. Alcohol availability and outlet density are more closely linked to crime rates, although high availability neighbourhoods often have high levels of young males or blacks (whatever the supply/demand causality of this). These researchers suggested that the over-representation of African-American in US violence statistics may therefore result from neighbourhood-level risk factors rather than personal or cultural characteristics (Schribner, Cohen et al. 1999).

In summary, a growing body of research on alcohol outlet density, consumption and harm shows links that are most marked at the neighbourhood level. This suggests that reducing alcohol availability and the geographic density of alcohol outlets can ameliorate heavier drinking and levels of alcohol related harm.

Better planning for licensed premises

A recent international review of research and public policy concluded that policies regulating the physical availability of alcohol were most effective, and there was a breadth of research showing that restricting the density of alcohol outlets could be an effective low-cost strategy for reducing local alcohol related harm (Babor et al. 2003).

The implication of this is that communities can work to reduce local alcohol related harm through urban planning and licensing policies that affect local alcohol availability. Many decisions on planning and policy are made at the local level by communities experiencing the social, cultural and public health impacts of alcohol (Yen and Syme 1999; Reynolds; Holder and Gruenewald 1997). Approaches will vary between local governments, as local policies about the number or type of premises or hours of trading address the concerns of different population groups or the problems of particular neighbourhoods, as well as being shaped by differences in the developmental strategies and aspirations of communities.

Yet alcohol policy is often seen as a 'social matter' best left to central government, while local governments concern themselves with local infrastructure and development. When local governments seek to grow their local business, retail and hospitality sectors, they may view increased numbers of restaurants, bars and bottle shops as providing jobs and other economic benefits. US research shows, however, that rapid growth in alcohol outlets leads to rapid growth in alcohol problems (Gruenewald, Millar and Roeper 1996). Customer visits to liquor stores or bars often do not involve additional retail shopping and may displace a retail mix that would benefit other businesses (Maxwell and Immergluck 2001).

Local planning and licensing policies can reduce adverse social impacts by considering appropriate location, types of licensed business to be encouraged, reasonable hours of trading, neighbouring land use, and disruption or risk factors. Appropriate location decisions may include such considerations such as litter, sound disturbance, crowding, access to public transport, and street safety. Detailed planning may assist in encouraging hospitality sector development and entertainment environments with lower risk of adverse impacts in terms of public drinking or increased local problems from intoxication or gambling.⁵ Spatial techniques, both descriptive and analytic, can support local planning and policy choices that aim at prevention (Millar and Gruenewald 1997).

⁵ The recent rapid increase in gaming machines is linked to liquor licensing as machines must be on age-restricted premises, and this is most easily accomplished via 'tavern' type on-licences.

The precautionary principle

In the context of discussing the role of local governments to regulate local environments and promote health, safety and community well-being, it may be useful to point to the relevance of the Precautionary Principle – Principle 15 of the Rio Declaration, 1992. The Precautionary Principle links the limitations of available research evidence with the responsibility of decision-makers to protect human and environmental health. It involves acting to avoid serious or irreversible potential harm, even where there may be limited scientific certainty as to the likelihood, magnitude or causation of that harm (IUCN World Conservation Union 2003).

At the international level, this Principle is being used by the European Commission and its Health and Consumer Protection Directorate (Coleman 2002; European Commission 2000), is the subject of an international project by the World Conservation Union (IUCN World Conservation Union 2003) and has been debated at recent international conferences on biodiversity, sustainable development and trade.

In June 2003 the City and County of San Francisco adopted the Precautionary Principle to guide local government decision-making. The approach was supported by health as well as environmental organisations in the Bay area. By taking this step, San Francisco's leaders affirmed that there was a duty to take anticipatory action to prevent harm and that proponents of products and services bore responsibility for their safety (City of San Francisco 2003).

3. PLANNING FOR LICENSED PREMISES IN NEW ZEALAND

Role of local government in alcohol policy

Until 1990, a new liquor licence was granted only where community ‘need’ could be shown. It was argued that this in effect gave existing premises a monopoly over local alcohol sales. The Sale of Liquor Act 1989 took the reverse approach and all licence applications are now granted provided the applicant is personally ‘suitable’ and has a valid planning certificate. The number of liquor licences rapidly doubled, steadying at 11,000-12,000 in the mid to late 1990s, then rose to 14,211 by 2002.⁶ All on-licensed premises were required to provide food and low-alcohol drinks. These changes encouraged a shift from large pubs focused on drinking to venues with meals and/or entertainment. From the mid 1990s many cafés obtained licences. Supermarket sales of wine were permitted in 1989, increasing total wine sales by 17 percent (Wagenaar and Langley 1995). Since beer sales were permitted in supermarkets in 1999, slumping beer sales have revived. Many smaller grocery outlets now have off-licences. The 1989 Act also increased alcohol availability by permitting later trading, including 24 hour licences (Hill 1998b), and since December 1999 all licence types may trade seven days a week.

Other national-level alcohol policy changes increased the visibility of alcohol by permitted brand advertising on television and radio from February 1992, and youth access was increased by lowering the drinking age from 20 to 18 in 1999. Over the same period, government initiated host responsibility on licensed premises, free airtime for alcohol counter-advertising, high profile enforcement of drink-driving laws, and instant fines for minors caught in pubs or drinking in public. Over the 1990s there was an increase in typical amounts drunk by teenagers, including minors (Habgood et al. 2001; Wilkins et al. 2001; Moewaka Barnes 2003), and in the proportion of teenagers among drink-drivers (Lash 2002). Young people are more likely to experience harm from their drinking than older people drinking the same amount (Wyllie et al. 1996). Many communities around the country experienced problems of public drinking and disorder involving underage drinkers, and this led local governments to lobby in 2002 for increased powers to implement alcohol bans in public spaces.

Local government was already involved in alcohol issues as a result of the liberalisation of liquor licensing. The Sale of Liquor Act 1989 and further amendments in 1999 delegated responsibility for administration and monitoring of liquor licensing to District Licensing Agencies, who are committees of local government. Local police and public health units were also given roles in investigating and reporting on licence applicants.

Some local governments have, or are working on, alcohol policies that bring together all aspects of local government relating to alcohol – liquor licensing, alcohol bans for public spaces, alcohol use in halls, host responsibility at Council functions, public events management, and youth policies and activities. An inverse relationship between alcohol and public safety is tacitly recognised in many localities. Safer Community Councils now operate in many areas, and may be seen as a local adaptation of the Healthy Cities. They are funded by the national Crime Prevention Unit but have local cross-sectoral participation, facilitated by local governments. Local governments are involved in community action on alcohol and in public health initiatives with positive preventative effects, and are being encouraged by Local Government NZ to share their ‘best practice’ ideas with other localities.

This paper focuses at a different level – on local governments’ statutory responsibilities and powers related to the sale of alcohol, in the context of a wider role for local government on social issues and in long term planning towards community objectives.

⁶ On-licences 7,160, off-licences 4,280, club licences 2,771. Liquor Licensing Authority, 14.11.02.

Changes in planning and liquor licensing legislation

Decisions about the sale of alcohol in local communities are framed by two pieces of legislation, the Sale of Liquor, 1989 and the Resource Management Act, 1991. Applicants for liquor licences under the Sale of Liquor Act require prior planning consent under the Resource Management Act.

Each of these Acts introduced major conceptual and operational changes in their area of jurisdiction. As described by the Economic Development Commission (1987), the aim of legislative reform was to ensure that any intervention in the economy would have demonstrable net benefits, or if this objective was set aside for social or other reasons, such decisions and their cost implications were to be transparent. The purpose of regulation was to construct more competitive markets, with easy market entry and exit, as well as to address more traditional aims which markets do not achieve.

Both the Resource Management Act and the Sale of Liquor Act deliver central government policies by devolving statutory obligations, roles and tasks to local governments, including administrative and low-level specialist decision-making. However, both Acts established specialist judicial bodies for decision making on contested issues, with appeals/review by higher courts. The Resource Management Act may be considered less prescriptive than the Sale of Liquor Act, in that local governments have the opportunity to incorporate local policy perspectives into District Plans, which are the key mechanism of the Resource Management Act. The complexities of the new system of resource management meant, however, that by the late 1990s, few District Plans were operational and fewer still considered the location of licensed premises (Hill and Stewart 1998b).

Resource Management Act 1991

The Resource Management Act has been described as setting ‘environmental bottom lines’. Grundy (2000) traces how the wide vision of social, economic and environmental sustainability in international agreements has come to be narrowly interpreted under the Resource Management Act as ‘managing the use, development and protection of natural and physical resources’ (S.5: Purposes, see Appendix I). This wording, taken together with the definitions of ‘environment’ and ‘amenity values’ (S.2), have tended to subordinate social purposes to the management of bio-physical ones. Urban planning and development have received less attention, and purposes of ‘enabl[ing] people and communities to provide for their social, economic and cultural well being and...health and safety’ (S.5) have been largely ignored (Perkins and Thorns 2001). The Resource Management Act aims to manage resources by minimising adverse effects, but legal interpretations to date have allowed little provision for the social effects of some land use activities.

Under the Resource Management Act, each local government develops a District Plan that uses zones to regulate land use for a variety of residential, business and other activities. Local governments may set their own objectives, policies and rules in the District Plan, but the Resource Management Act prescribes the processes and categories to be used. Any proposed Plan, policy or variation must be based on a consideration of alternatives, benefits and costs, having regard to efficiency and effectiveness. Prior to 2003, the Act required any objective, policy, rule or other method to be based on whether it was ‘necessary’ in achieving the purpose of the Act, giving reasons for and against the proposed action and also the principal alternative and ‘taking no action’ (S.32). Amendments in 2003 used more enabling language. The Act now requires an evaluation report showing that the action taken was the most ‘most appropriate way’ of achieving stated objectives and the purpose of the Act, after assessing costs and benefits and ‘the risk of acting or not acting’ (S.32, see appendix).

This establishes decision making processes that appear to be more scientifically objective than under previous legislation, but increases the compliance burden on local governments. The effectiveness of the Resource Management Act depends on the information and skills available to each local government. This assumes a political commitment to allocating ratepayer resources for this purpose (Memon and Perkins 2000; Perkins and Thorns 2001). Requiring formal processes for the rational and objective prediction and control of externalities obscures the fundamentally political and value-based nature of planning as a process of community decision-making. Within the new planning discourse of the Resource Management Act, old tensions between different interests continue to be played out, in

contested decisions and in legal interpretations of legislation wording (Grundy 2000; Perkins and Thorns 2001). The defining of certain natural and physical ‘resources’ as appropriate for ‘management’, rather than taking an integrated eco-systems or social systems approach, has been seen as a social construct resulting from the market-led politics of the 1980s and 1990s (Murray and Swaffield 2000; Memom and Perkins, 2000).

The shift in focus from zoning restrictions under previous planning legislation to effects-based management under the Resource Management Act has made it more difficult for local governments to proscribe any activity (Perkins and Thorns 2001), as opposed to requiring ‘significant’ impacts to be minimised. In line with the ease of market entry principle, applications for planning consents tend to be granted unless significant adverse impacts can be demonstrated. District Plans now control the level of effects permitted in different zones, and therefore the kind of land use activities permitted in each zone, together with any rules about such activities. The Plans set general rules about business activities and processes for consent. However, zones may include non-complying activities with ‘existing land use rights’ that pre-date the Plan, or non-complying activities that have successfully negotiated local government or Environment Court processes to obtain a consent certificate, with or without additional conditions to limit effects.

Resource consent is not required if the activity is *permitted* in the zone. Under the Act as recently amended, a publicly notified application for resource consent must be made for any activity in a zone that the council has designated as *controlled* (consent must be granted if specified conditions and general standards in the plan are met), *restricted discretionary* (conditions and general standards specified in the plan must be met, but the council can decline consent), *discretionary* (council can grant or decline and set conditions, general standards to be met), *non-complying* (council can grant or decline and set conditions, no general standards apply) or *prohibited* (consent cannot be granted) (S.77B, as amended 2003). The Resource Management Act lays out processes and criteria for Council decisions on resource consents under these categories – for example, adverse effects of non-complying activities must be minor, and market competition must be considered (S.104).

Sale of Liquor Act 1991

The Resource Management Act replaced the Town and Country Planning Act 1977 two years after the current Sale of Liquor Act replaced previous licensing legislation, but both reforms were being debated over the same period. The 1962 Sale of Liquor Act restricted alcohol availability by limiting hours and days of trading and the number of outlets. Its Liquor Licensing Commission decided where new licensed premises could be located, by granting new licences only if community ‘need’ could be demonstrated. This decision-making about location was considered to infringe on town planning powers and to be ‘a continuing source of confusion, delay and expense’ (Laking 1996). The 1989 Act which liberalised liquor licensing was intended to distinguish clearly between planning and licensing responsibilities.

The Sale of Liquor Act 1989 focused on the management of licensed premises. The location of licensed premises was a town planning matter, so the Sale of Liquor Act required applications for liquor licences to be accompanied by a valid planning certificate. Planners have been slow to consider the sale of liquor as a land use or business activity, however. Licensed premises were not a local government responsibility prior to 1989. Hours of trading had been prescribed by law and all licensing and inspection came under the Justice Department. Under the current Sale of Liquor Act and Resource Management Act, local governments are responsible for both the location and the licensing of alcohol outlets, and the jurisdictions of the two Acts are considered to be complementary. The courts have confirmed that ‘the two statutes can be construed so as to give effect to both’, and that when the Liquor Licensing Authority (LLA) considered ‘neighbouring land use’ in setting set hours of trading (S.14, S.37, S.60), this was an ‘ancillary power’ under the Sale of Liquor Act that was dependent on planning consent under the Resource Management Act (Fraser *J Hornby Trust*, AP 113/92).

In the review that led to the 1989 Act, the Laking (1986) report expressed support for greater community control over licensed premises. The new laws needed to be:

... sufficiently flexible to cope with changing social conditions and with the particular requirements of local circumstances. (p.17)

...the number and type of outlets to be licensed, their location and the conditions under which they are to operate is of primary concern to those who will be directly affected by the decisions, that is to say, the residents of the area involved. (p.19)

As initially drafted, the Bill devolved all licensing decisions to local government. However, submissions to the Review and Bill raised concerns about full devolution, because of the risk of 'political pressures' and business interests in small face-to-face' communities (Laking 1986). Local government areas had not yet been amalgamated, providing the larger organisational capabilities they have today. In the event, Parliament preferred to retain a national-level Liquor Licensing Authority with specialist expertise. In 1999, routine decision making by District Licensing Agencies in local government was increased, but contested matters continue to be referred to the national-level Liquor Licensing Authority. The initial intention of full devolution may account for the prescriptive nature of the current legislation. The Act allows its specialist Authority little discretion in decision-making, compared with similar licensing Acts in Australia, Canada and the UK (Hill 1997). This inflexibility has tended to be reinforced by rulings on appeals of Liquor Licensing Authority decisions (Hill and Stewart 1998b).

Under the new Sale of Liquor Act, liquor licenses were to be 'easy to get, easy to lose' (*Douglas-Oliver Corp.* LLA 6/90), and the first part of this precept has certainly been true. In the mid 1990s, Liquor Licensing Authority decisions pointed out to objectors its inability to actually refuse a licence in terms of the criteria it must or may consider (*Pratrap* [1995] NZAR 44, LLA 1669/94; *Berg* LLA 212/95). The main criteria for any new licensee are planning consent and personal 'suitability' to hold a licence. The language of the Act – eg. S.13. 'In *considering* an application...' – does not give the Liquor Licensing Authority a clear power to approve an application *or not*.

Under the 1962 Act, an application for new premises close to a hospital, school or church could be declined. The 1989 Act assumes that matters of location are covered by the prior planning consent. The Liquor Licensing Authority may consider neighbouring land use only in setting the hours of trading. Decisions cannot be based on expectations of problems, or on implications or evidence related to public health in general (*Cameron Rd* LLA 115/92). Concerns about the potential of new premises to contribute to increased anti-social behaviour 'would not normally be sufficient to prevent the grant of a licence' (*Sporting Investments* LLA 486/2002). Nor may the Liquor Licensing Authority decline to grant a licence based on the legislative intention of the Act – 'a reasonable system of control... with the aim of contributing to the reduction of liquor abuse' (S4) – as this is not referred to in the licence criteria sections of the Act (*Wild J Goldcoast Supermarkets* AP 123/00).

By the late 1990s, the Liquor Licensing Authority's annual reports to Parliament were pointing out a 'gap in jurisdiction' between planning and licensing that left the Liquor Licensing Authority 'powerless' to respond to the reasonable concerns of communities (LLA 1996, 1997). Its 1997 report stated that neither the Resource Management Act nor the Sale of Liquor Act gave local communities the opportunity to lodge an effective objection to the grant of a licence in respect of a specific site, and requested a clear right to decline a licence in response where there was strong opposition from local communities.

A review of case law showed that objections to new liquor licences were about the suitability of the site, not the applicant (Hill 1998a). Land use regulation by zone and broad class of activity seldom allows the suitability of a particular site for a particular kind of licensed premises to be considered. Few District Plans make licensed premises a discretionary land use, requiring public notification and consent processes that would allow potential adverse impacts to be considered. In most cases, objectors only hear about new premises when the liquor licence application is notified, and the applicant already has planning consent (Hill 1998a). Unless the applicant is personally unsuitable, the Liquor Licensing Authority grants the licence.

The Sale of Liquor Act was reviewed in the late 1990s. The Bill introduced to Parliament in 1988 focused on further controversial liberalisation of the liquor laws, including full Sunday trading and lowering the drinking age to 18. An opportunity was missed to make minor amendments to the Act

that could improve the fit of the licensing and planning systems. The NZ Drug Foundation continues to support amending the Act to consider neighbouring land use in the criteria for deciding whether or not to grant a licence, as well as in setting licence conditions on hours of trading.

Neighbourhood impacts are given attention when licences are renewed. At that time, the Liquor Licensing Authority can hear evidence about law infringements and poor management, such as intoxicated patrons, sales to minors or a high profile in drink-drive data. In more recent decisions, the Liquor Licensing Authority has considered noise that intrudes on neighbours to be evidence of poor management that reflects on 'suitability' to hold a licence, and has commented that noise management requirements need to change as neighbourhoods change (see *Paihia Saltwater*, LLA 391/2001 and *Chris Yates Holdings*, LLA 450-451/2001). However, the Liquor Licensing Authority cannot consider or anticipate wider social impacts on the community.

In this situation, objections are sometimes resolved by informal negotiation at the local level. The District Licensing Agency might suggest that a licensed café, rather than a pub, or an earlier closing time could make the application more acceptable to the local community. At a Liquor Licensing Authority hearing, an applicant may agree to sound insulation, restrictions on live bands or other suggestions for reducing impacts on neighbours. The legislation does not allow the Liquor Licensing Authority to make such agreements a formal condition of this or future licences, but Liquor Licensing Authority decisions often state that upholding such agreements will be taken as evidence of continuing 'suitability'.

Where communities have raised concerns about licensed premises, some Council have adopted policies or planning rules on closing times or parking requirements. In making decisions, the Liquor Licensing Authority must have regard to planning conditions but can also have regard to any formal policy adopted by the full Council, as if it were already part of a District Plan (Hill and Stewart 1998aandb). The Liquor Licensing Authority has also recognised policies recently adopted by some Councils to designate stand-alone bottle stores as 'supervised' areas, limiting access by minors unless accompanied by a parent or guardian (eg. *Lockwood* PH 328/2003). In its 2002 report to Parliament, the Liquor Licensing Authority recommended amending the Act to require age restrictions for specialist off-licences, as for taverns. The Liquor Licensing Authority's ability to recognise Council policies related to licensed premises is important, as a number of local governments are currently formalising their District Licensing Agency's policies on licensing and developing comprehensive alcohol policies for their community.

In November 2003, as this paper was being finalised, a Bill for minor amendments to the Sale of Liquor Act was introduced in Parliament. It included clauses allowing District Licensing Agencies to renew licences either continuing current conditions or with new conditions 'as the District Licensing Agency thinks fit'. This clarified the ability of District Licensing Agencies to apply new Council policies to existing premises, whether or not problems or poor management could be demonstrated, in order to bring existing licence conditions into line with conditions now being required of new licensees. However, both new and existing conditions would still be limited to the matters already specified for each type of licence. For example, for on-licences conditions may relate to hours of trading, provision of food and low alcohol drinks, and steps to ensure alcohol is not sold to intoxicated or underage people. Under the Bill as proposed, any other matters that a Council included in its licensing policy to help reduce neighbourhood impacts of licensed premises generally or of premises on a particular site still have to be negotiated informally, with continuing compliance providing evidence of 'suitability', as described above. It may be that the Bill's wording will be broadened as it progresses through Parliament. If not, licence conditions on matters other than hours or host responsibility could only be formally required and enforced if they became conditions of the prior resource consent under the District Plan. This would involve a slow and closely process to change zone rules to incorporate licensing policy issues and, as described above, any condition to resolve neighbour impacts specific to a particular site would continue to fall into the gap between planning and liquor licensing.

Changes in local government legislation

In 1989, and again in 2002, major changes were made to legislation on local government. In New Zealand, Councils are not a constitutional ‘second tier’ of government but a political system with a separate history, electoral mandate and revenue base from that of central government. Local government legislation passed by central government has largely been about defining, restricting or acknowledging the extent of local governments’ role in acting for their community.

The 1974 Local Government Act was largely an historic list of tasks and proscriptions, supplemented by other legislation delegating public health, planning and other regulatory responsibilities to Councils and their staff. The 1989 Local Government Amendment Act imposed a controversial restructuring into larger electoral and administrative units, but at the same time acknowledged local government’s role in communities by including for the first time a set of widely-expressed ‘Purposes of Local Government’. The larger scale of local government organisations has supported increasing professional and policy capacity to pursue those purposes.

In 1993 the Act was again amended to require greater efficiency, effectiveness and accountability in local government through long-term financial plans and increased consultation with residents and ratepayers. A further amendment in 1996 required the funding of services and other activities to be based on whether benefit accrued to individuals or to all residents (but not whether there were benefits for New Zealand society as a whole (Reid 1999)). The purpose of these amendments was to restrict the activities of local governments. Their unintended consequence was to provide mechanisms for debate and strategic planning not just about TLA finances but about future directions for districts as a whole (McKinlay 1999). With little attention being given to regional development and major cutbacks to social services, there was pressure on local governments to fill the gaps (Reid 1999). In low socio-economic areas in particular, consultations showed that many residents and ratepayers saw the role of local government not just as ‘rubbish, roads and rats’ but promoting a local identity, supporting the local economy, acting as a broker in social and health service delivery and advocating to central government on a wide range of policy issues. The strategic plans developed by the four Auckland cities, for example, reflected local political outcomes, but also geographic, economic and demographic differences together with differing local aspirations and desires (Hill 2000, Hill 2001).

Debate about the role of local government continued through a general election in 1999, at which the winning political parties promised local governments ‘power of general competence’ – that is, promises to clarify their right to do whatever their communities want and are prepared to pay for. Historically, local government had been considered to operate under a legal principle of *ultra vires*, which made automatically illegal any activity not expressly permitted by statute – that is, by central government. Infrastructure and services to property – ‘roads, rubbish and rats’ – were safely within traditional boundaries. Any discretionary or innovative act was potentially challengeable and open to judicial review.

The new Local Government Act passed in December 2002 provides a broad role for local government, with purposes stated as:

- (a) to enable democratic local decision-making and action by, and on behalf of, community; and
- (b) to promote the social, economic, environmental and cultural well-being of their communities, in the present and for the future.

These purposes take local government well beyond any arguments restricting activities to roads, rubbish and rats and gives legal support to the alternative view, that local governments may pursue any goals set by residents and ratepayers.⁷ The Act then lays out very detailed processes for how they shall go about deciding what those are. For example, S.77 requires that all reasonably practical options should be identified before making a decision, the present and future costs and benefits of each option must be assessed, as must the extent to which desired community outcomes would be promoted or achieved in an integrated and efficient manner by each option, together with their impact on the Council’s capacity to meet present or future statutory responsibilities. Any decisions about land or

⁷ Although the Act is prescriptive about Council responsibilities for water and sanitation.

water must also take account of the relationship with Māori, their culture and traditions. S.78 requires consultation of anyone affected by or interested in the matter, following detailed principles of consultation including special consultative procedures (S.82-92). S.79 allows some discretion in achieving compliance with S.77 and S78 that is in proportion to the significance of the matters.

The Act requires the formulation of ten-year Council Community Plans (S.93), developed through a special consultative procedure (S.84). That is, the broad strategic planning undertaken by some local government in recent years is now required of all local governments, whatever their size, and legislatively prescribed processes now apply. The outcomes desired by the community and all activities undertaken by the council are to be described in such a Plan. This will provide integrated decision-making and coordinate the use of resources, as well as increasing accountability and public participation. Future decisions are required to be consistent with policies and plans (S.80).

As Local Government NZ commented about the 1993 requirements for long term financial planning (Reid 1999), these legislative requirements for consultation, decision processes and accountability by local government are beyond what government formally requires of itself. The costs of compliance in regard to any significant new activities a Council wishes to pursue are likely to be considerable. The inclusion in legislation of these detailed processes means that all decisions or all compliance with these processes (including the discretion on proportionality) is open to challenge and legislative review.

Local governments succeeded in obtaining broader powers to make bylaws under the 2002 Act and can enforce them with fines up to \$20,000. Councils' ability to address increased public drinking, usually by teenagers, had been limited by previous legislation which restricted bans to 12, then 24 hours for specified dates or events. As well as allowing bylaws to control liquor in public places (S.147), general bylaws can now be used for 'protecting the public from nuisance; protecting, promoting and maintaining public health and safety; and minimising the potential for offensive behaviour in public places (S.145). The Act requires Councils first to consider whether a bylaw is the most appropriate way of addressing the problem and to consult their community. However, the wording of S.145 supports precautionary action on social and public health impacts, in a way that the Sale of Liquor Act does not. Whereas the Resource Management Act allows 'non-complying' or 'discretionary' consents, conditions and other exemptions from a planning rule, a Council bylaw, once adopted, has the advantage of being a law that applies to all, end of story.

Planning for prostitution and gaming machines

Both the Resource Management Act and the Sale of Liquor Act establish systems in which it is difficult to decline any individual application or consider cumulative social or public health effects. In 2003, two new Acts – the Prostitution Reform Act and the Gambling Act devolved further responsibilities onto local governments but granted a clear power to decide whether *or not*, as well as where, prostitution businesses and gaming machines could be located in their area. The Gambling Act requires local government to develop policies in consultation with the community to guide decisions.

In considering resource consents for brothels as a land use, local governments must consider whether the business of prostitution is likely to 'cause a nuisance or serious offence to ordinary members of the public' using the area or is 'incompatible with the area's existing character or use' (S.15). It may then *grant or refuse* to grant the resource consent or impose conditions on any consent granted. This clear capacity to say no contrasts with the Resource Management Act and Sale of Liquor Act under which applications are 'considered'. The decision may 'override' the provisions of the District Plan.

The Prostitution Reform Act also affirms local governments' right to pass bylaws about brothels (S.14). As well as prohibiting the advertising of commercial sexual services on television, radio and in cinemas, the Act specifically permits local governments to pass a bylaw prohibiting or regulating publicly visible signage (S.12), 'even if... it is inconsistent with the NZ Bill of Rights Act 1990' (S.13(c)). This short-circuits any legal arguments about freedom of commercial speech that might be raised, by delegating in this specific case central government's power to override the Bill of Rights.

Gaming machines have increased greatly in number over the past few years, and are licensed by the Department of Internal Affairs. The Gambling Act limits the number of machines to 9 per venue, although venues licensed before October 2001 may retain up to 18 existing machines. Department of Internal Affairs' licensing policy, recently confirmed and enforced, required that access to gaming machines be restricted to those aged over 18. This restriction has been included in the new Act. This means owners have located them in bars or pubs with liquor licences that either do not allow minors on the premises, or allow minors only if supervised by their parent or guardian. Liquor licensees receive site rental payments from the charitable trusts who may own the machines. The Sale of Liquor Act requires age-restricted licences for businesses in which the principal activity is drinking, in order to protect minors. In the view of the Liquor Licensing Authority, some licensed premises are now 'no more than a cover for a gambling operation' (*Graffiti Sports Bar* LLA PH 265/2002). The potential for rental income from these machines has in turn created pressure to establish more licensed premises. In August 2002, the Liquor Licensing Authority laid out guidelines to ensure that the Liquor Licensing Authority 'will not be used' in this way. Gaming rooms will not be given 'supervised' or restricted designations. A bar area that includes gaming machines may be designated age-restricted only if the applicant can demonstrate that the business is that of a hotel or tavern. The number of machines, the site rental for the machines and the rental of the premises will be considered in assessing this (*Sporting Investments* LLA 486/2002).

The Gambling Act 2003 gives local governments the power to control the location, number and density of gaming machine venues. In effect, it gives local governments the ability, if they wish, to place a moratorium on further gaming machines in their locality.

Each local government is required to develop a policy on whether *or not* any further gaming machine venues are to be established in the area, and if so, where they may be located. In doing so, they 'must have regard to the social impact of gambling in the district'. The policy allows local governments to look beyond the merits of any individual application and consider issues of density, neighbouring land use and the social impacts of gambling on the district. Relevant matters to be considered include:

- “ (a) the characteristics of the district and parts of the district
- (b) the location of kindergartens, early childhood centres, schools, places of worship, and other community facilities
- (c) the number of gaming machines that should be permitted to operate at any venue or class of venue
- (d) the cumulative effects of additional opportunities for gambling in the district
- (e) how close any venue should be permitted to be to any other venue
- (f) what the primary purpose of any venue should be.” (Gambling Act, S.101)

These are the kinds of concerns that communities have not been able to consider for licensed premises.

4. CONCLUSION

This paper has reviewed research evidence linking the density of alcohol outlets to levels of local alcohol related harm. A recent international review of alcohol policy strategies, co-published by the World Health Organization, concluded that evidence of policy effectiveness was strong for the regulation of the physical availability of alcohol (Babor et al. 2003). Restrictions on the density of outlets was rated high for breadth of research and considered to be a low cost policy strategy. It was given a rating of ‘moderately effective’, noting that existing premises means the time course for implementation was longer than with some other policies that restrict availability (such as legal purchase age).

A number of local governments in the USA and Canada are exploring ways of improving planning for licensed premises, so as to contribute to the reduction of local alcohol related harm. The material reviewed above may provide suggestions that are relevant in the New Zealand context.

If this approach is to be explored in New Zealand, local and national evidence on the impacts of alcohol outlet location and density will be needed. A major study funded by the Health Research Council is currently being undertaken by the SHORE Centre, Massey University. This will explore relationships between licence types, trading hours and local harm indicators, in the context of neighbour-hood deprivation levels and population characteristics. Another source of geo-spatial data on alcohol related harm and licensed outlets is police information about offences. NZ Police’s new Alcohol Intelligence project will provide enhanced analysis of data on intoxication and place of last drink from police charge sheets for drink-driving and other crimes, including violence.

The Sale of Liquor Act 1989 devolved the administration and enforcement of liquor licensing to local level. However, this has resulted in the increased community control that was called for in the 1986 Liquor Review (Laking 1986). The statutory roles and responsibilities of local government District Licensing Agencies, district police and regional Medical Officers of Health are narrowly defined, as is that of the national-level Liquor Licensing Authority. By 1996 the Liquor Licensing Authority was telling Parliament that it felt ‘powerless’ to respond to reasonable concerns raised by communities (LLA 1996, 1997). Once planning consent has been granted, however, the role of District Licensing Agencies and the Liquor Licensing Authority is limited to addressing poor management and law infringements, *after* they have occurred. Since locational issues are outside its jurisdiction, the Authority cannot decline an application for licensed premises on an inappropriate site. Nor can it currently impose formal, enforceable licence conditions that could reduce impacts on neighbours.

It is possible that District Plans could be used more than at present to regulate the location of licensed premises. The slowness of District Plan development processes and the difficulty of anticipating where future venues or outlets might pop up have meant that in practice community policy via District Plans is not well developed. Narrow interpretations to date of the Resource Management Act’s Purpose mean that any Council wishing to address the social or public health impacts of licensed premises would have to be prepared to spend rates revenue defending its position in court. Case-by-case effects-based management approach of the Act makes it difficult to decline consent applications, and subsequently difficult to decline liquor licence applications. It might be possible to emulate some of the policy and/or planning strategies now being developed by local governments in regard to gaming venues, but it is significant that central government thought it necessary to include specific provisions in the Gambling and Prostitution Reform Acts to enable these.

Local social and public health impacts are not currently being addressed under either the Resource Management Act or the Sale of Liquor Act, either in regard to particular premises or in regard to the major increase in alcohol availability and visibility from the proliferation of on-licensed and retail outlets. There is a broad consensus that some styles of drinking venues – more focused on food or entertainment than simply on drinking – tend to encourage responsible drinking behaviour, which in turn reduces alcohol related harm (Stockwell et al. 1992). Closing times also affect levels of intoxication and neighbourhood disorder (Chikritzhs and Stockwell 2002; Stockwell 1997). However,

the legislative frameworks do not make it easy for local policy, planning and resource consent or liquor licensing application processing to proactively encourage one kind of premises over another, or to consider whether the total number or density of local alcohol outlets may have social and public health impacts on communities.

Central government has continued to devolve operational responsibilities for its policies to local government. However, the Gambling and Prostitution Reform Acts indicate a greater willingness to provide local governments with clearer decision making powers and increased ability to address local social impacts. It may be that future amendments or interpretation of planning and licensing laws will similarly reflect this change.

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APPENDIX: SECTIONS OF LEGISLATION REFERRED TO IN THIS PAPER

Resource Management Act, 1991

S. 5 Purposes

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—
 - (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment

S. 2 Interpretation [selected definitions]

"Environment" includes—

- (a) Ecosystems and their constituent parts, including people and communities; and
- (b) All natural and physical resources; and
- (c) Amenity values; and
- (d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters:

"Amenity values" means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes:

Meaning of "effect"

In this Act, unless the context otherwise requires, the term "effect" ... includes—

- (a) Any positive or adverse effect; and
- (b) Any temporary or permanent effect; and
- (c) Any past, present, or future effect; and
- (d) Any cumulative effect which arises over time or in combination with other effects— regardless of the scale, intensity, duration, or frequency of the effect, and also includes
- (e) Any potential effect of high probability; and
- (f) Any potential effect of low probability which has a high potential impact

S. 32. Consideration of alternatives, benefits, and costs— [as amended 2003]

- (1) In achieving the purpose of this Act, before a proposed plan, proposed policy statement, change, or variation is publicly notified, a national policy statement or New Zealand coastal policy statement is notified under section 48, or a regulation is made, an evaluation must be carried out by—(a)
(c) the local authority, for a policy statement or a plan (except for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part 2 of Schedule 1);
- ...
- (3) An evaluation must examine—
 - (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
 - (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.
- (4) For the purposes of this examination, an evaluation must take into account—
 - (a) the benefits and costs of policies, rules, or other methods; and
 - (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.
- (5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.
- (6) The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.

S. 32. Duties to consider alternatives, assess benefits and costs, etc

- (1) In achieving the purpose of this Act, before adopting any objective, policy, rule, or other method in relation to any function described in subsection (2), any person described in that subsection shall—
 - (a) Have regard to
 - (i) The extent (if any) to which any such objective, policy, rule, or other method is necessary in achieving the purpose of this Act; and
 - (ii) Other means in addition to or in place of such objective, policy, rule, or other method which, under this Act or any other enactment, may be used in achieving the purpose of this Act, including the provision of information, services, or incentives, and the levying of charges (including rates); and
 - (iii) The reasons for and against adopting the proposed objective, policy, rule, or other method and the principal alternative means available, or of taking no action where this Act does not require otherwise; and

- (b) Carry out an evaluation, which that person is satisfied is appropriate to the circumstances, of the likely benefits and costs of the principal alternative means including, in the case of any rule or other method, the extent to which it is likely to be effective in achieving the objective or policy and the likely implementation and compliance costs; and
- (c) Be satisfied that any such objective, policy, rule, or other method (or any combination thereof)—
 - (i) Is necessary in achieving the purpose of this Act; and
 - (ii) Is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means
- (2) etc.

Sale of Liquor Act, 1989

S.4 Object of Act—

- (1) The object of this Act is to 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 that can be achieved by legislative means.
- (2) The Licensing Authority, every District Licensing Agency, and any Court hearing any appeal against any decision of the Licensing Authority, shall exercise its jurisdiction, powers, and discretions under this Act in the manner that is most likely to promote the object of this Act.

Local Government Act, 2002

10. Purpose of local government—

The purpose of local government is—

- (a) to enable democratic local decision-making and action by, and on behalf of, communities; and
- (b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.

145. General bylaw-making power for territorial authorities

A territorial authority may make bylaws for its district for 1 or more of the following purposes:

- (a) protecting the public from nuisance
- (b) protecting, promoting, and maintaining public health and safety
- (c) minimising the potential for offensive behaviour in public places.

147. Power to make bylaws for liquor control purposes

(1) In this section,—

“Liquor” has the meaning given to it in the Sale of Liquor Act 1989.

“Public place”

- (a) means a place—
 - (i) that is under the control of the territorial authority; and
 - (ii) that is open to, or being used by, the public, whether or not there is a charge for admission; and
- (b) includes—
 - (i) a road, whether or not the road is under the control of a territorial authority; and
 - (ii) any part of a public place.
- (2) Without limiting section 145, a territorial authority may make bylaws for its district for the purpose of prohibiting or otherwise regulating or controlling, either generally or for 1 or more specified periods,—
 - (a) the consumption of liquor in a public place
 - (b) the bringing of liquor into a public place
 - (c) the possession of liquor in a public place
 - (d) in conjunction with a prohibition relating to liquor under paragraphs (a) to (c), the presence or use of a vehicle in a public place.
- (3) A bylaw made under this section does not prohibit, in the case of liquor in an unopened bottle or other unopened container,—
 - (a) the transport of that liquor from premises that adjoin a public place during any period when, under the Sale of Liquor Act 1989, it is lawful to sell liquor on those premises for consumption off the premises, provided the liquor is promptly removed from the public place;
 - (b) the transport of that liquor from outside a public place for delivery to premises that adjoin the public place, provided the premises are licensed for the sale of liquor under the Sale of Liquor Act 1989;
 - (c) the transport of that liquor from outside a public place to premises that adjoin a public place—
 - (i) by, or for delivery to, a resident of those premises or by his or her bona fide visitors; or
 - (ii) from those premises to a place outside the public place by a resident of those premises, provided the liquor is promptly removed from the public place.

Prostitution Reform Act, 2003

(emphasis added)

15. Resource consents in relation to businesses of prostitution

(1) When considering an application for a resource consent under the Resource Management Act 1991 for a land use relating to a business of prostitution, a territorial authority must have regard to whether the business of prostitution—

(a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or

(b) is incompatible with the existing character or use of the area in which the land is situated.

(2) Having considered the matters in subsection (1)(a) and (b) as well as the matters it is required to consider under the Resource Management Act 1991, the territorial authority may, in accordance with sections 104A to 104D of that Act, **grant or refuse to grant a resource consent**, or, in accordance with section 108 of that Act, **impose conditions on any resource consent granted**.

(3) Subsection (1) does not limit or affect the operation of the Resource Management Act 1991 in any way, and it may be overridden, with respect to particular areas within a district, by the provisions of a District Plan or proposed District Plan.

Gambling Act, 2003

S. 100. Considering and determining application for territorial authority consent—

(1) A territorial authority must—(a) consider an application for a territorial authority **consent in accordance with its gambling venue policy**; and

(b) then either—

(i) grant a consent **with or without a condition specifying the maximum number** of gaming machines that may be operated at the venue; or

(ii) **not grant a consent**.....

(2)etc.

S. 101. Territorial authority must adopt class 4 venue policy

(1) A territorial authority must, within 6 months after the commencement of this section, adopt a policy on class 4 venues.

(2) In adopting a policy, the territorial authority **must have regard to the social impact of gambling within the district**.

(3) The policy—

(a) must specify **whether or not** class 4 venues may be established in the territorial authority district **and, if so, where** they may be located; and

(b) may specify **any restrictions on the maximum number** of gaming machines that may be operated at a class 4 venue.

(4) In determining where any venue may be located and any restrictions on the maximum number of gaming machines that may be operated at venues, the territorial authority may have regard to any relevant matters, including:

(a) **the characteristics of the district and parts of the district:**

(b) **the location of kindergartens, early childhood centres, schools, places of worship, and other community facilities:**

(c) **the number of gaming machines that should be permitted to operate at any venue or class of venue:**

(d) **the cumulative effects of additional opportunities for gambling in the district:**

(e) **how close any venue should be permitted to be to any other venue:**

(a) **what the primary purpose of any venue should be.**

S. 102. **Adoption and review of class 4 venue policy**(1) A policy on class 4 venues under section 101 must be **adopted in accordance with the special consultative procedure** in section 83 of the **Local Government Act 2002** and, for the purpose of subsection (1)(e) of that section, the territorial authority must give notice of the proposed policy, in a manner that the territorial authority considers appropriate, to—(a) each society that holds a class 4 venue licence for a venue in the territorial authority district; and

(b) organisations representing Maori in the territorial authority district

(2) A policy may be amended or replaced only in accordance with the special consultative procedure, and this section applies to that amendment or replacement.

(3) Subsection (1)(b) does not affect the ability of a territorial authority to take similar action in respect of any other population group.

(4) A territorial authority must, as soon as practicable after adopting, amending, or replacing a policy, provide a copy of the policy to the Secretary.

(5) A territorial authority must complete a review of a policy within 3 years after the policy is adopted and then within 3 years after that review and each subsequent review is completed.

(6) A policy does not cease to have effect because it is due for review or being reviewed.