



EVERYTHING MATTERS

Options for control of liquor outlets by TLAs

Sally Dossor and Kerry Anderson, DLA Phillips Fox

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Options for control of liquor outlets by TLAs



The issue:

- Controlling alcohol related harm caused by the availability of alcohol
- Looking at ways to address:
 - location of outlets
 - numbers of outlets
 - hours of operation

Options for control of liquor outlets by TLAs



The Context:

- SOLA changed previous regime:
 - no need to show 'unsatisfied demand' or need
 - free market for liquor outlets
- Our work has excluded amendment to SOLA
- Focus on existing tools – based on RMA/ LGA experience

Options for control of liquor outlets by TLAs



The Focus:

- Tools available to TLAs to control liquor outlets in their district:
 - bylaws
 - district plan provisions

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Other options looked at – and dismissed:

- New Zealand Standards (RMA)
- National Environmental Standards (RMA)
- Specific legislation
- TLA policy/incorporation into LTCCP

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Bylaws:

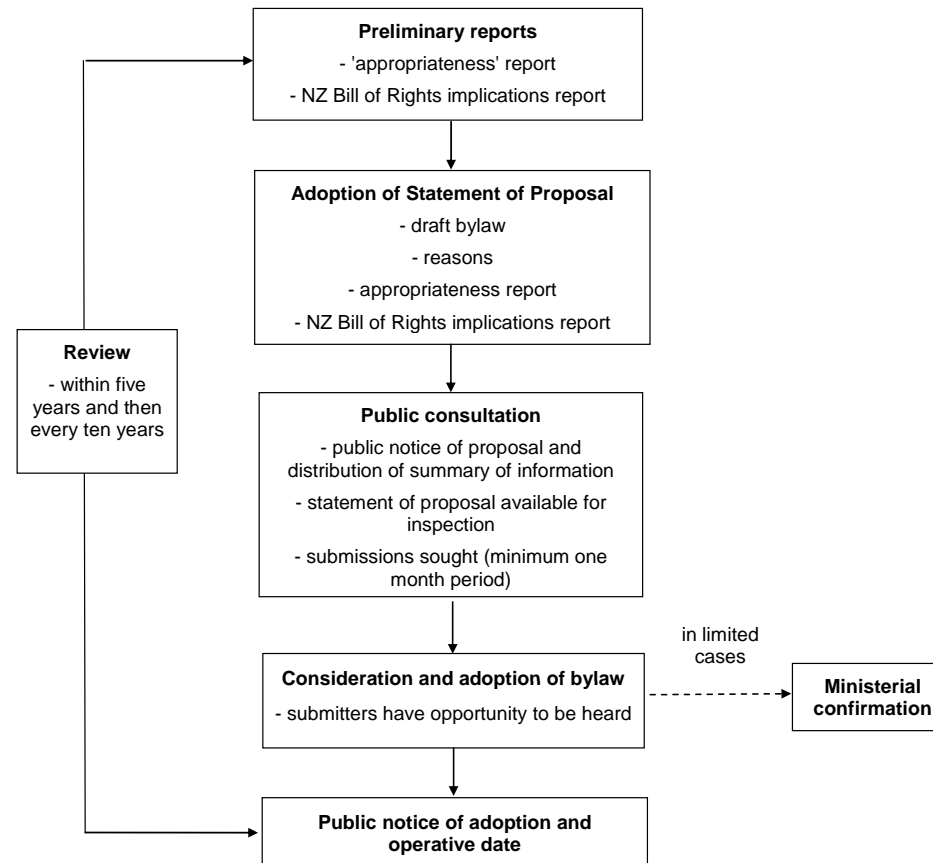
- Are they a potential tool?
- Process involved
- Constraints

Bylaws - are they a potential tool?

- Empowering provisions:
 - Section 64 of the Health Act 1956 - improving, promoting, or protecting public health and preventing or abating nuisances
 - Section 145 of the LGA 2002 - protecting the public from nuisance, protecting, promoting and maintaining public health and safety, minimising the potential for offensive behaviour in public places

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Bylaws - process involved



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Bylaws – constraints:

- Ability to control existing outlets
- Enforcement

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Bylaw Advantages	Bylaw Disadvantages
<p>Relatively quick process to make a bylaw. Once made, there is no direct right of appeal available (although High Court judicial review could be sought on the basis of procedural issues with the making of the bylaw. Bylaws are also open to collateral challenge - see above).</p>	<p>Prior to the bylaws being made operative, anyone has the ability to seek an order from the High Court to quash the bylaw on the basis of invalidity. If there is strong opposition then this sort of challenge becomes more likely.</p>
<p>There is no statutory protection of existing use rights. Therefore, it is possible to impose controls on existing outlets, however, there is a high risk of challenge. This risk could be reduced by appropriate wording.</p>	<p>The only way of enforcing bylaws at the moment is by prosecuting for the breach or seeking an injunction. These are expensive options and often time consuming (ie defended District Court proceedings can take up to a year to be heard).</p>
	<p>A bylaw is always open to a collateral challenge. That is, if a prosecution is taken for breach of a bylaw, a defendant can raise the collateral challenge that the particular bylaw is not valid. If successful, not only does the prosecution fail, but there is a Court decision declaring the bylaw invalid (cf, district plans rules, which are deemed Regulations).</p>

RMA Overview

- Ability to control land use
- In general terms:
 - can do anything unless a district plan restricts
 - existing activities 'lawful'
- If district plan restricts - need a resource consent
- When a resource consent is needed:
 - consider effects on case by case basis

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Are district plan provisions an option?

- Can it be done? (as a matter of law)
- Matters to be considered
- How - ie process
- How would a plan change be structured ?

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Can it be done ? (as a matter of law)

- Not prohibited
- An appropriate matter for RMA regulation?
 - environmental versus political/social issue
 - SOLA not an exclusive code
 - breadth of RMA
 - link to effects

District plan preparation – matters to consider:

- TLA functions in section 31 and Part 2 of RMA
- Section 32 analysis
- Evidence of link between the land use and resulting effects
- Cumulative effects
- Promotion of sustainable management of natural and physical resources

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District plan preparation – matters to consider:

- Is the research adequate?
 - application of overseas research
 - methodology/ peer review
- Likely challenges:
 - adequacy of the research
 - other uses with similar effects on amenity
 - horse has bolted – effects present anyway (one more will make no difference)

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How? - The plan change process:

- Three main issues to consider:
 - the significant issues for the district
 - the evaluation of alternatives under section 32 of the RMA
 - consideration of whether implementing the proposed provisions will serve the statutory purpose
- The process (in materials)

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How would a plan change be structured?

- Matters to consider when determining desired controls:
 - purpose of control - objectives
 - effects that need control
 - status of activity
 - apply controls to all areas? extent of control
 - special areas of concern
- Prohibited activities – very unlikely

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FAQ's?

How soon can a district plan become operative?

- After appeal period/appeal resolved/public notice
- Interim effect from notification

How long will it take?

- 2 year - 4 year process
- significant commitment of resources

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FAQ's?

- Appeal process?
 - appeal possible
 - mediation
 - timing
- Who can be involved?
 - TLA
 - appellant
 - section 274 parties

FAQ's?

- What about existing outlets?
 - existing use rights/ lawfully established
 - effects same or similar in character, intensity and scale
 - removal of existing outlets needs legislation
- How to enforce RMA controls?
 - raft of options
 - 'parking ticket' to prosecution

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District Plan Advantages	District Plan Disadvantages
<p>The plan change process ensures a robust and thorough analysis of the evidence and research which is applied on a district/area specific basis. It is subject to a transparent public process, and right of appeal.</p>	
<p>Once operative, there is no scope for challenging the validity of the Rules - the Rules are deemed Regulations.</p>	<p>This is no ability to remove or more stringently control existing outlets.</p>
<p>There are a wide range of enforcement mechanisms available to enforce the district plan provisions, from instant fines to abatement notices to prosecutions.</p>	<p>It can be a long and expensive process, particularly if the plan change is appealed to the Environment Court.</p>
<p>A plan change is to be given effect to from the time it is publicly notified. From the date of public notification, a resource consent will be required (but the objectives and policies will not have full weight until the plan change is further through the process).</p>	
<p>It is likely there will be a specific process in place that requires (some/all) liquor outlets to obtain a resource consent. The consent process is a clearly defined, public process which should mean that a more thorough investigation of the activity and its effects occurs.</p>	

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Conclusions:

- Research, research, research!
- Wider amenity effects should be considered, as well as social effects
- First one will be the hardest!



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Questions?

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