



LAW COMMISSION
TE AKA-MATUA-O TE-TURE

July 2009, Wellington, New Zealand | SUMMARY

ALCOHOL IN OUR LIVES

A SUMMARY OF THE LAW COMMISSION'S
ISSUES PAPER ON THE REFORM OF
NEW ZEALAND'S LIQUOR LAWS



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This summary document is primarily designed for use by individuals and groups wishing to participate in the consultation process and to make submissions on the reform of the liquor laws. It includes the terms of reference given to the Law Commission for the review, a high level summary of the contents of the Issues Paper, and a list of questions to help focus public debate and submissions.



INTRODUCTION

The Law Commission is an independent body established by statute to undertake the systematic review of New Zealand laws. The Commission undertakes legal analysis and provides recommendations to the Government of the day.

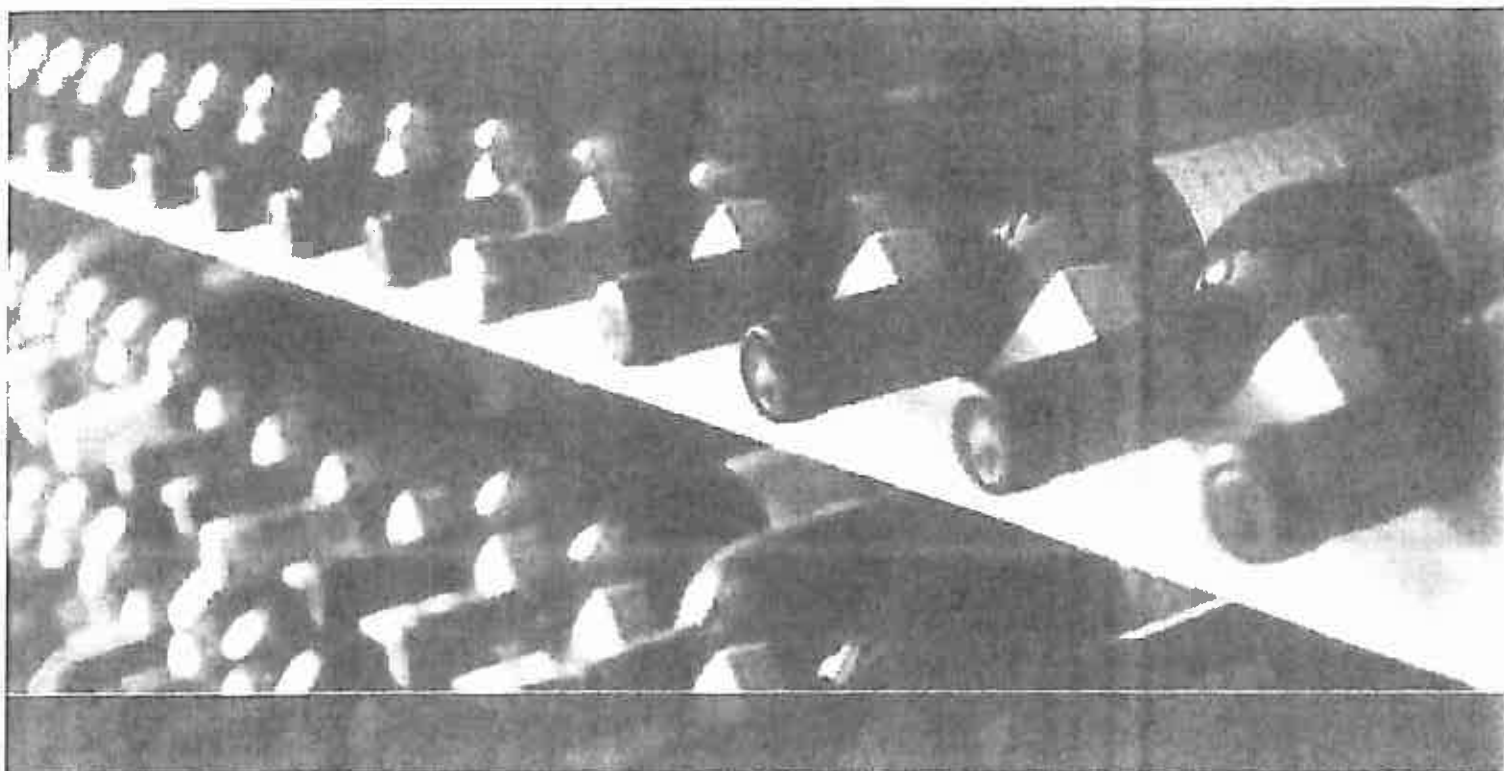
Last year, in response to growing public concern about the harms associated with the misuse of alcohol, the Law Commission was asked to review the law governing the sale and supply of alcohol. This request was subsequently reaffirmed by the incoming Government and the Commission's reporting time frames brought forward by Justice Minister Rt Hon Simon Power.

The project is the most fundamental review of the law on the sale and supply of liquor since the Sale of Liquor Act 1989 was passed. There have been profound changes in the intervening 20 years: beer and wine are now sold in supermarkets; the age of purchase has been reduced from 20 to 18 years; Sunday trading has been extended.

The Law Commission's Issues Paper *Alcohol in Our Lives* has found that harmful drinking has become a source of serious social problems in New Zealand today.

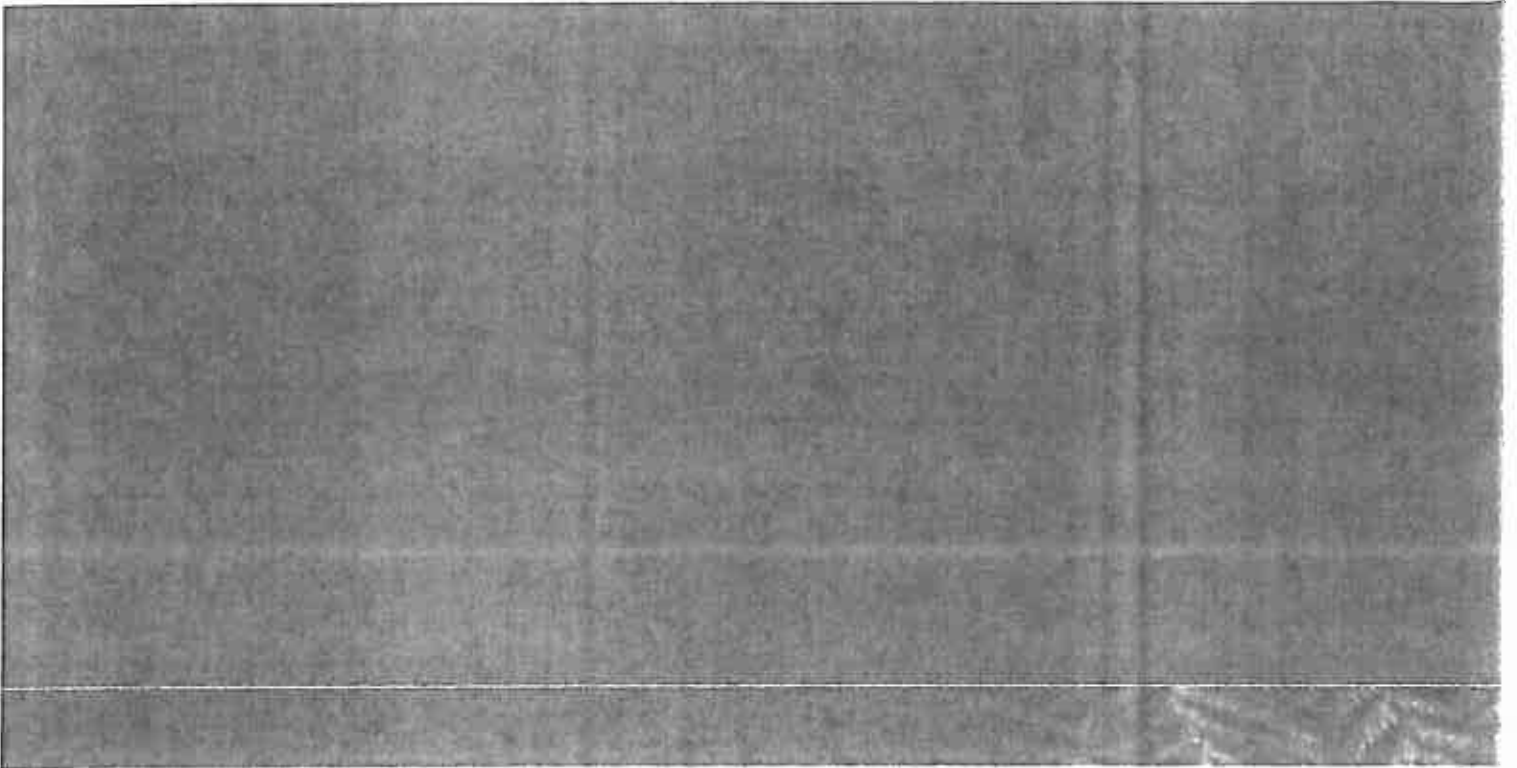
The Issues Paper is divided into two parts. Part I describes the range of problems associated with harmful alcohol consumption in New Zealand. Part II sets out some of the measures that can be used to help curb those problems and concludes with some preliminary ideas on law reform.

The full text of *Alcohol in Our Lives* can be viewed on the Commission's website www.talklaw.co.nz. It is also possible to comment on specific questions raised in the report and to make submissions via the website.



TERMS OF REFERENCE

1. To examine and evaluate the current laws and policies relating to the sale, supply and consumption of liquor in New Zealand.
2. To consider and formulate for the consideration of Government and Parliament a revised policy framework covering the principles that should regulate the sale, supply and consumption of liquor in New Zealand having regard to present and future social conditions and needs.
3. To deal explicitly with a number of issues, including:
 - the proliferation of specific outlets and the effect this has on consumption;
 - how the licensing system should be structured and who should be responsible for which aspects of licensing decisions;
 - revising the licence renewal and fee framework to consider whether risk can be more appropriately managed and to ensure that the funding of the licensing and enforcement regime is adequate;
 - to ensure that unnecessary and disproportionate compliance costs are not imposed by the licensing system;
 - the age at which liquor can be purchased;
 - the responsibility of parents for supervising young members of their family who drink;
 - the influence of excise tax on alcohol and how pricing policies can minimise harm from alcohol consumption;

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- advertising of liquor and whether there should be restrictions on discounting alcohol or advertising discounts;
 - the relationship between the Sale of Liquor Act 1989, the Resource Management Act 1991 and the Local Government Act 2001;
 - the relationship between the Sale of Liquor Act 1989 and the liquor-related offences in the Summary Offences Act 1981;
 - the application of competition law to the sale of liquor; the need to ensure the appropriate balance between harm and consumer benefit;
 - the health effects of alcohol use and the ways to ameliorate these adverse effects;
 - the effects of alcohol use on the level of offending in the community and consideration of measures to minimise such offending; and
 - enforcement issues in relation to liquor, including penalties, bans, measures to control alcohol related disorder and to deal with intoxicated people, and methods for preventing the use of fake proof-of-age identification.
4. To prepare an issues paper for publication and take submissions on it, and to engage in extensive public consultation.
 5. To prepare a final report, including the proposed new policy framework and draft legislation, so that people can judge accurately the precise effects of what is proposed.



SUMMARY OF THE ISSUES PAPER

- Part I of the Issues Paper looks at the changes that have taken place since the liberalisation of our drinking laws under the 1989 Act. It covers the size and value of the modern alcohol industry, changes in our drinking preferences and the availability and affordability of alcohol. It looks at our drinking patterns, the risks and benefits of drinking and the harms that can result from the misuse of alcohol. It concludes with an examination of some of the social factors that may be influencing our drinking and asks whether the level of harm and, in particular, the risks alcohol poses to young people, are sufficient to justify a new approach to the law.*

NEW ZEALAND'S LIQUOR INDUSTRY

- 2 The alcohol industry is a multi-billion dollar sector. The wine sector alone is estimated to contribute \$1.5 billion to the country's gross domestic product. Directly and indirectly, the alcohol industry is estimated to employ over 70,000 New Zealanders. In the last 10 years, our per capita consumption of pure alcohol has increased by nine per cent. In 2008, alcohol importers and manufacturers made 9.5 litres of pure alcohol available for every New Zealander aged 15 plus – the highest volume since 1994.
- Since deregulation under the 1989 Act, the number of liquor licences has more than doubled from 6,295 in 1990 to 14,183 in June 2009.
 - New Zealanders spend an estimated \$85 million a week on alcoholic beverages. This equates to \$4 billion – \$5 billion a year. Since gaining the right to sell wine (1989) and beer (1999), supermarkets have become a major force in the alcohol retail trade.
 - Overall, since 1989, alcohol has become more affordable relative to our incomes.

HOW WE ARE DRINKING

- 3 Over 80 per cent of New Zealand adults (2.98 million people) drink at least occasionally. Men are more likely to be drinkers than women and to drink greater volumes when they drink.
- Some 44 per cent of all alcohol is consumed in "heavier drinking occasions" – defined as one in which a woman consumes six or more drinks and a man eight or more drinks.
 - A quarter (25 per cent) of New Zealand drinkers aged 12 to 65 typically drink large amounts when they drink, as do over half (54 per cent) of 18 to 24 year-old drinkers. Just over a third of male drinkers aged 18 to 24 report drinking enough to get drunk at least once a week.

RISKS AND BENEFITS

- The drinking patterns of young people (14 to 19) show a trend towards heavier per occasion consumption. Women's consumption has been increasing over time across all age groups but particularly among young women
- 4 New Zealanders associate alcohol consumption with many important benefits including alcohol's role as a social lubricant and relaxant. However, alcohol is also a toxic substance with the potential to cause both immediate and long-term harms.
- The risk of immediate harms relate to the amount of alcohol consumed on a single drinking occasion. These include alcohol poisoning and intentional and unintentional injury.
 - The risk of longer-term harms relate to the cumulative effects of the volume of alcohol consumed over a lifetime. These include a variety of alcohol-related diseases and disorders.
 - In this country, one in five drinkers over 12 and nearly half of 15 to 24 year-old drinkers usually drink quantities that put them at significant risk of injury in the six hours after drinking.
 - Nearly one in three drinkers, including a quarter of drinkers aged 35 to 64, face a greater than 1 in 100 risk of dying of an alcohol-related disease or injury because of their average daily consumption levels.
 - New evidence shows that young people face a significantly higher risk of both short term and later alcohol-related health and social problems than older drinkers, even at the same level of alcohol consumption.

ALCOHOL AND CRIME

- 5 The link between alcohol and offending is complex and involves many environmental and individual variables. International and New Zealand research shows that alcohol is strongly implicated in aggressive and violent behaviour.
- Of all the recorded criminal offending in 2007/08, at least 31 percent was committed by those who had consumed alcohol beforehand. In that year, alcohol was a factor for offenders in over 20,000 violence offences. Those most likely to have consumed alcohol before offending are males and those under 25.
 - Between 2002 and 2007, the number of individuals under 20 and over 40 apprehended for drink driving has substantially increased.
 - Evidence suggests that many patrons entering clubs and bars late at night have consumed alcohol purchased from an off-licence beforehand. This phenomenon, called "pre-loading", combined with the extended trading hours of inner city bars and clubs, is believed to be linked to high levels of intoxication in public places and anti-social behaviour.
 - In 2007/08, the Police recorded over 21,000 occasions on which they either drove home very intoxicated people or took them to a safe place to sober up. The harmful use of alcohol and drugs is imposing significant costs on our criminal justice sector.

ALCOHOL AND HEALTH

- 6 The World Health Organisation recently classified alcohol as "carcinogenic to humans", placing it in the same hazard category as asbestos, formaldehyde and tobacco. The long-term health effects of alcohol contribute directly to over 60 different diseases and conditions.
- About 1000 New Zealanders are estimated to die each year from alcohol-related causes. Thousands more are injured in alcohol-related road trauma and hospitalised for conditions ranging from gross intoxication and alcohol poisoning to facial fractures and hand injuries from accidents and assaults.
 - The harmful consumption of alcohol has also been identified as a risk factor in suicide and self-harm.

- Over 120,000 New Zealanders currently suffer from a diagnosable alcohol use disorder (e.g. dependence).
- The young, Māori and Pacific peoples are disproportionately affected by alcohol-related harms.

A CASE FOR CHANGE

- 7 Despite many positive changes associated with the liberalisation of our drinking laws, heavy drinking and drinking to get drunk remain strong features of our drinking culture.
- Since the 1989 Act, alcohol has become more affordable and more widely available. Young people are drinking from an earlier age (12 years on) and drinking larger quantities.
 - Drinking patterns are influenced by a combination of individual and external factors. These external factors include demographic, social and economic changes.
 - In the past two decades, our understanding of the risks associated with alcohol consumption has increased greatly. In particular, there is now strong evidence of the increased risks facing young people from drinking.
 - The laws governing the sale and supply of alcohol are an important component in the mix of forces shaping our drinking environment. The question for New Zealanders to consider is whether the risks associated with harmful drinking are sufficient to justify a strengthened legal framework.

THE NEED FOR A NEW ACT

- 8 The Law Commission has identified a large number of possible options for changing the legislative framework to reduce alcohol-related harms.
- 9 The existing Act is a complex measure that covers 178 pages of the statute book. It has been amended on 12 occasions since 1989. The Act is used by many people who are not legally qualified, such as publicans, bar managers, local authority officers and the Police. The law needs to be made as clear and accessible as possible. It is our firm view that the whole Act should be completely redrafted and not be made the subject of a further amending Act in light of the current review.
- 10 The Commission also believes the Act's objects need to be more precise. The 1989 Act's objects are broadly to contribute to the "reduction of liquor abuse". We consider the Act's objects should be made much more specific, for example, to: minimise crime and disorder; promote public safety; protect families and children from harm; encourage responsible attitudes to alcohol; ensure the liquor industry operates responsibly, etc.

SUPPLY CONTROL

11 On the basis of our discussions with stakeholders and after reviewing key international evidence, we have indicated some preliminary ideas for reform. In the time available, it has not been possible to identify all of the impacts (costs and benefits) of each option. There are three overall sets of options – relating to supply control, demand reduction and problem limitation. The preferences identified are tentative at this stage.

12 Supply control measures address the availability of alcohol, and cover outlet density, days and hours of sale, minimum purchase age and/or drinking age and licensing controls.

(A) LICENSING REGIMES

13 The way in which liquor licences are granted and enforced has an impact on the availability and consumption of alcohol. We have identified a number of ways in which we believe the current licensing regime could be improved

- **Strengthen the Liquor Licensing Authority:** We favour boosting the Authority's powers and functions so it can be proactive in enforcing the law. The Authority should continue to be presided over by a District Court Judge, and its resource base enhanced. The Authority should also have additional powers to: monitor and report on trends; make rulings on aspects of the sale of alcohol policy; award costs; impose fines for breaches of the Act; improve the flow of information from inspectors, the Police, licensees, medical officers of health, and District Licensing Agencies (DLAs); impose quality controls on DLA output and compliance; have wider grounds on which to refuse, suspend or cancel a licence; and add any conditions to a licence it considers appropriate to reduce alcohol-related harms.
- **Remove exemptions:** We favour retaining the four types of liquor licences: on-licences, off-licences, club licences and special licences. In our view, current exemptions for licences (eg. chartered clubs, police canteens, Parliament, defence premises, fire stations etc) should be eliminated. The law should apply equally so that all premises must apply for a liquor licence to sell alcohol.
- **Upgrade District Licensing Agencies:** The performance of DLAs around the country is extraordinarily variable. Some are close to inactive and never meet, having delegated their functions to council officials. The powers and functions of DLAs need to be restructured and enhanced. Council-employed inspectors should receive mandatory training. Improved training, education and character requirements for licensees, managers and other staff should also be required. We believe that every district council should have a local alcohol policy that is approved both by the council and the Liquor Licensing Authority.
- **Set local licensing fees:** There is a good case for local authorities to set their own licensing fees so that each DLA's costs in processing, monitoring and enforcing licences are better reflected in the fees. Alternatively, local authorities might impose an annual "supervision" fee that reflects the burden of inspections required. If a national licence fee system continues, we favour a graduated fee structure, particularly for licence renewal, to better reflect the relative risks posed by some licences over others.

(B) RESTRICTIONS ON RETAIL OUTLETS, DAYS OR HOURS OF TRADING

14 The trend toward extended hours, including 24 hour trading of liquor, is leading to increasing problems for the Police. Liquor is typically much cheaper at off-licences than at on-licences. The evidence suggests many people buy alcohol at off-licences, drink at home or on the street, and then come to licensed premises where there is entertainment but the liquor is more expensive. Sometimes they return to the off-licence or their vehicles to drink – often breaching a liquor ban in the process. Often they drive after drinking.

- **Restrict trading hours:** Our preference is for all off-licences to be closed by law from 10 pm to 8 am. On-licences should be restricted, in our view, from selling liquor after 2 am but they should be permitted a standing extension to serve liquor until 4 am if the premises operates a “one-way-door” policy from, say, 1 am as a condition of its licence. By that, we mean patrons can remain there drinking till 4 am but new patrons cannot enter. This would encourage people off city streets, and facilitate a staggered departure from licensed premises.
- **Restrict range of liquor products and outlets?:** The statistical link between drinking and harm with outlet density is difficult to interpret. At this stage, we do not favour extending the range of liquor outlets (e.g. allowing petrol stations to sell alcohol), or extending the product range sold (e.g. allowing supermarkets/grocery stores to also sell spirits and spirits-based drinks). Indeed, we have heard from many people who favour stricter controls on ready-to-drink, spirits-based drinks. We do not think it wise for the law to make distinctions between liquor products. There is possibly a case for the Minister, on expert advice, to ban certain products for health reasons.

(C) MINIMUM AGE FOR PURCHASE OF ALCOHOL

- **Split the purchase age:** Scientific evidence suggests that the earlier one starts to drink the greater the later alcohol-related problems. Furthermore, young people experience more harm per drink than older people. At this stage, we favour a split purchase age – leaving the minimum purchase age at on-licences at 18 years, and increasing the minimum purchase age at off-licences to 20 years. This should help to reduce the supply of alcohol to people under 18 years while still allowing 18 and 19 year-olds the freedom to drink at licensed premises where there are responsible serving practices.
- **Require greater parental responsibility:** In many cases, parents are not taking responsibility for their young people’s drinking. We think a broader set of obligations on parents in this regard has merit. We favour making it an offence for an adult to supply liquor to a young person unless it is a private social gathering and that adult has the consent of that young person’s parent or guardian.

DEMAND REDUCTION

- 15 Demand reduction measures seek to reduce alcohol misuse as well as the levels of alcohol-related harm. They include policies relating to the pricing and marketing of alcohol, such as excise tax policies, minimum pricing, price promotions and social marketing programmes.

(A) PRICING POLICIES

- **Increase excise tax:** Extensive international research shows that tax or price measures that increase the retail price of alcohol products are effective in reducing alcohol-related harms. New Zealand has a system of excise tax whose aims are to minimise harms and to recover the net fiscal costs of those harms. We favour increasing the excise tax but by how much is unclear at this stage. We invite public comment on the issue.
- **Reduce tax on low alcohol products:** In our view, there is, at the same time, a strong case for reducing the tax on low alcohol products (less than 2.5% alcohol) to encourage their consumption over products with a higher alcoholic content.
- **Introduce minimum pricing:** Minimum pricing schemes set a minimum price below which alcohol products cannot be sold by retailers. They have been

proposed as a way of reducing the consumption of cheaper alcohol products, which tend to be favoured by hazardous drinkers (for example, young binge drinkers and heavy drinkers). We have examined the Scottish proposal for minimum pricing but nothing has been enacted there yet. The implementation and enforcement of minimum pricing in New Zealand would have to be carefully worked out. We are interested in the public's views on minimum pricing.

(B) MARKETING/ADVERTISING POLICIES

- **Maintain self-regulation approach:** There are many who favour a total ban on liquor advertising. At this stage we do not favour this approach. There is an existing system of self-regulation administered by the Advertising Standards Authority (ASA) that works well, in our view. The ASA's powers will soon cover promotions. We favour leaving the bulk of regulation to the ASA, and providing for a regulation-making power in statute so that if self-regulation fails to promote responsible advertising, the Government can intervene quickly. This would provide an incentive for responsible advertising.
- **Restrict price promotions:** The issue of irresponsible promotion practices by both on and off-licences could be made grounds for the Licensing Authority to suspend or cancel a licence.

**PROBLEM
LIMITATION**

16 Problem limitation comes from minimising the impact of harmful consumption through such measures as better enforcement, drink driving policies, health sector interventions, and curbing alcohol in public places.

(A) ENFORCEMENT

- **Encourage enforcement:** Because enforcement is expensive and other priorities take precedence, the current liquor licensing laws are not fully enforced. The process for enforcing breaches of the law needs to be simplified. We favour the following measures: giving senior police officers the power to immediately close on-licence premises; increasing the penalties for serious breaches of the law; allowing for infringement notices to be issued for technical or minor breaches; providing a statutory process for the recognition of alcohol accords (voluntary agreements between licensees and local regulatory authorities) aimed at minimising alcohol-related harm; and reintroducing drunkenness in a public place as an infringement offence.

(B) RESTRICTIONS ON PUBLIC DRINKING

- **Alcohol and public places:** There are an estimated 166 local by-laws banning liquor around New Zealand. This system is problematic from a legal point of view. It is difficult to find out what the law is in any given place or time. Despite this, liquor bans have served an important purpose in keeping order, especially in city and town centres. One alternative to liquor bans is to make drinking in any public place an infringement offence.

(C) SERVING SIZES

- **Introduce standard measures:** The official measure of a standard drink (10 grams or 12.67 ml of pure alcohol) is not well understood by consumers. There is a case for requiring licensed premises to offer standard measures of wine, beer and spirits so that people are better informed about how much they are drinking. We do not favour a regulatory power to restrict the alcohol content and size of packaged beverages

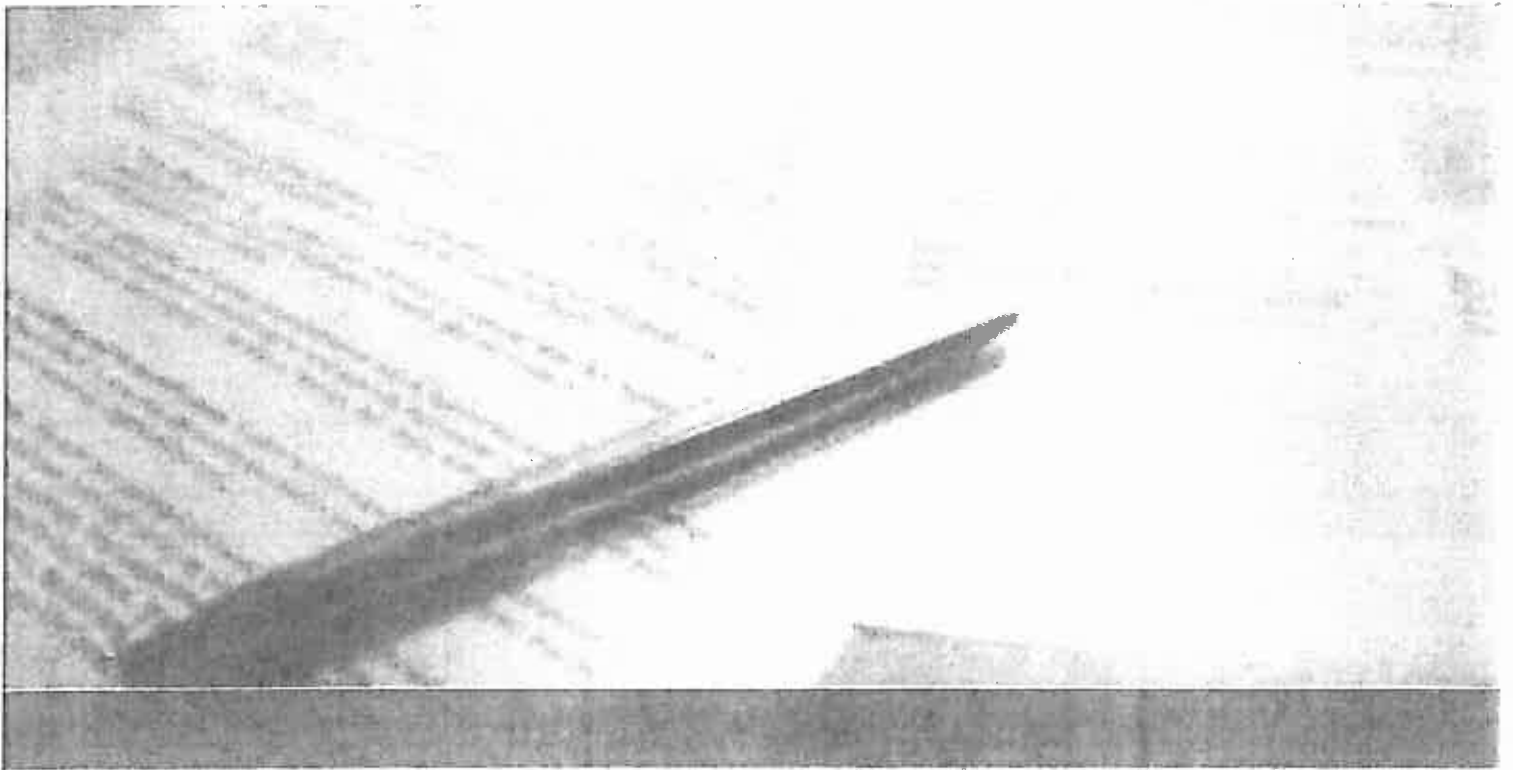
(D) HEALTH SECTOR INTERVENTIONS

- **Fund more treatment:** We have become concerned at the lack of policies, facilities and programmes for the assessment and treatment of people with alcohol problems. There needs to be increased funding across a range of sectors – primary care, mental health, emergency departments, justice, corrections, education, Work and Income, and ACC – so that individuals get the treatment they need.

(E) DRINK DRIVING AND TRANSPORT POLICIES

- **Reduce legal drink driving blood alcohol limits:** New Zealand's level of drink driving fatalities is higher than other countries – 30 percent of fatal crashes are alcohol-related. In Australia, the rate is 21 percent and in Great Britain, it is 17 percent. In our view, there is a strong case for blood alcohol limits (BAC) to be reduced from 0.08 mg of alcohol per millilitre of blood to 0.05 mg for all drivers, with zero tolerance for all drivers under 20 years. This is the only drink driving countermeasure not yet implemented that could produce significant savings in social harms. Alcohol Healthwatch estimates a lower BAC would save 16 to 72 lives and 640 to 1280 injuries annually.
- **Consider ignition locks for drink drivers:** Alcohol ignition locking devices offer considerable promise in reducing repeat drink driving offences. Consideration should be given to requiring all convicted drink drivers to have an interlock installed in their vehicle.

17 *Note:* The Ministry of Transport will shortly issue a discussion paper on road safety strategy, including legal blood alcohol limits and other matters. We prefer to leave further action in relation to these transport issues to the Ministry and its Minister. Submissions on transport issues should be directed to the Ministry of Transport, P.O.Box 3175, Wellington 6140 or www.transport.govt.nz.



QUESTIONS FOR THE PUBLIC

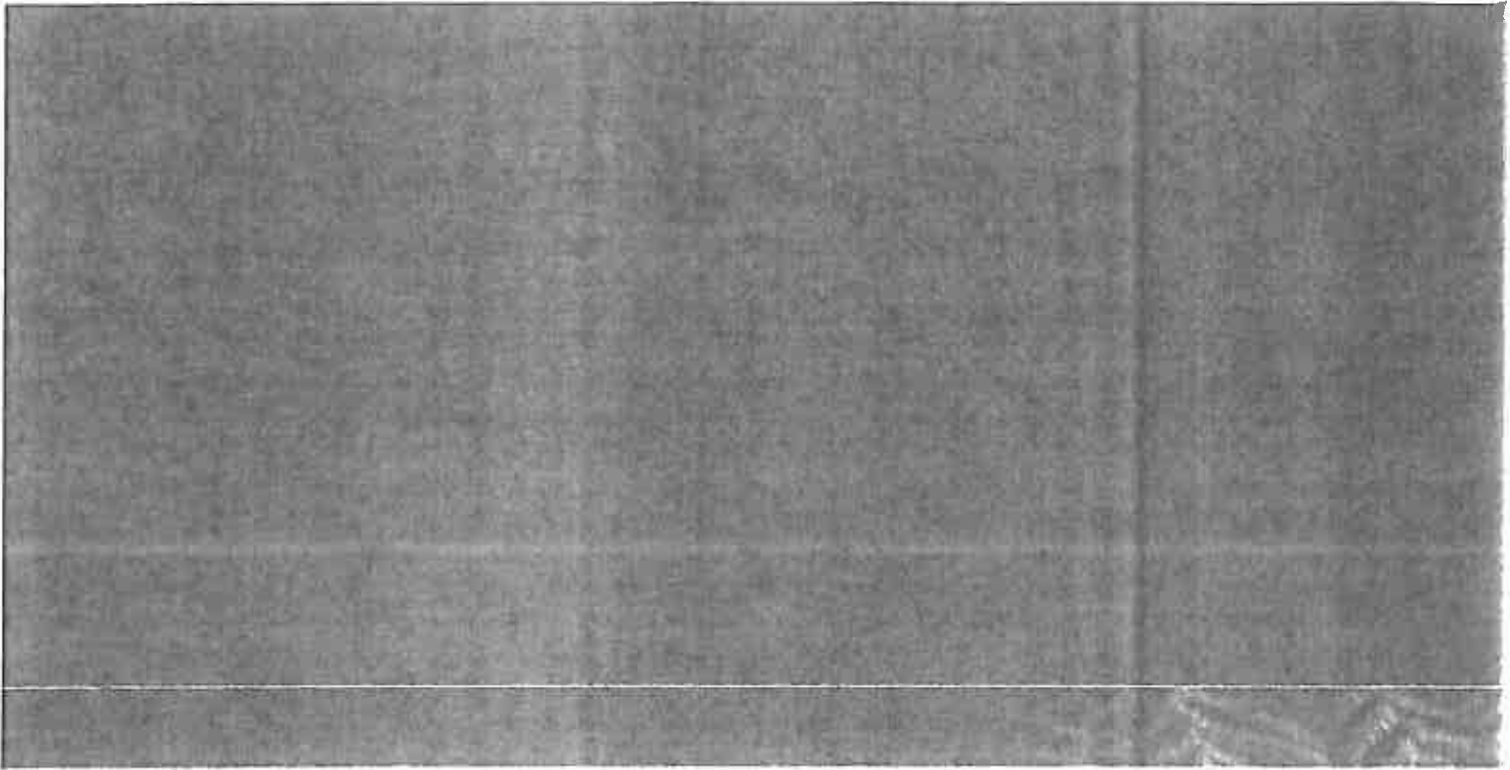
*The Law Commission would like feedback on the key issues raised in this document. A fuller range of options for change are contained in chapters 12 and 13 of the full report *Alcohol in Our Lives*.*

THE HARM

1. Does the level of alcohol-related harm we are experiencing justify a new approach to the law?
2. Do you agree that getting drunk is considered acceptable drinking behaviour in New Zealand?
3. Do you think the risks associated with heavy drinking are well known? If not, what more could be done to make people aware of them?
4. Do you think the cumulative lifetime risks associated with drinking are well known? If not, what more could be done to make more people aware of them?
5. Is the management of intoxicated people an acceptable use of a large part of the New Zealand Police resources? If not, what are the alternatives?

OBJECT OF THE LAW

6. Is the balance in the current law between individual responsibility and providing an environment that is conducive to moderate drinking the correct one? If not, what changes could be made?



SUPPLY CONTROLS

Licensing

7. Do you agree with the current system of four types of liquor licence?
8. Should the criteria for licences change and, if so, what should the changes be?
9. Do you think the Liquor Licensing Authority should be retained as the regulator?
10. Do you think local views should be taken into account in respect of licences in that area?

Hours

11. Do you think the hours that restaurants, bars, and clubs can be open should be restricted? If so, what should the hours be?
12. Do you think the hours that off-licence premises (including supermarkets and liquor stores) can sell alcohol should be restricted? If so, what should the hours be?
13. Should we continue to have specific days on which alcohol cannot be sold?

Age

14. At what age should a person be able to purchase alcohol in New Zealand?
15. At what age should a person be able to drink at a pub, club, bar or restaurant?

Individual and parental responsibility

16. Should it be an offence for anyone other than a parent or guardian to supply alcohol to someone under the purchase age?

Types of products

17. Do you think there are any alcohol products that should be banned?
18. Do you think the rules about supermarkets and grocers selling liquor should continue as now?

**DEMAND
REDUCTION**

Tax/price

19. Do you think the availability of cheap alcohol is contributing to alcohol-related harms?
20. Does the difference in price between alcohol bought from retailers such as supermarkets and liquor stores and alcohol bought in a bar or restaurant influence where you drink?
21. Do you think there is a case for increasing tax or setting a minimum price for alcohol in order to help reduce the amount of alcohol consumed by young people and heavy drinkers?

Advertising

22. Should the way alcohol is marketed (including advertising, promotions, and sponsorship) have greater restrictions? If so, what restrictions are appropriate?

**PROBLEM
LIMITATION**

Treatment

23. Do you think there is a need for greater emphasis on treatment for people using alcohol in a risky manner?

Penalties

24. Should there be increased penalties for serious breaches of the liquor laws?
25. Should there be greater use of infringement offences for minor breaches of the liquor law?
26. Should the Police have greater powers to close down bars where there are breaches of law occurring?

Liquor in public places

27. Should liquor bans be retained?
28. If so, how can the liquor ban provisions be improved?
29. Do you think an offence of drinking in a public place, rather than the liquor ban system, is preferable?
30. Do you think it should be an infringement offence to be drunk in a public place?

GENERAL

31. Do you have any further comments or suggestions?

SUBMISSION FORM

Submissions close at 5pm on Friday 30 October 2009

Complete the submission form overleaf, staple any extra pages and post to the Law Commission as follows.

Liquor Project Co-ordinator
Law Commission
PO Box 2590
WELLINGTON

Alternatively, you can send your submission to us online by going to www.talklaw.co.nz where you can also participate in forum discussions and surveys.

Tell us about you

Name

Address

I am writing this submission as an individual on behalf of an organisation

Name of organisation

Age under 18 18-29 30-39 40-49 50-59 60 years or older

Gender female male

**You don't have to complete this section but this information helps us to know who we are reaching.
We will use this for statistical purposes only.**

Have you made a submission to the Law Commission before? yes no

How did you hear about the review of the liquor laws?

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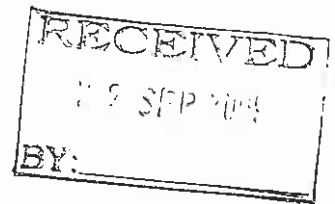
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Westland District Plan review – Initial Comments

To: **Rebecca Strang**
Westland District Council
Private Bag 704
Hokitika 7842

Details of person making comments

Name: Chris Hickford, Acting Conservator

Address: West Coast *Tai Poutini* Conservancy
Department of Conservation
Private Bag 701
Hokitika 7842

Phone No: 03 756 9100

Fax No: 03 756 9188

Contact person: Anna Gerraty

Email: agerraty@doc.govt.nz

General comments

Thank you for offering the Department the opportunity to provide comment on the existing Westland District Plan (the Plan) at this early pre-consultation stage. The following notes provide a brief overview of our thoughts, concerns and suggestions regarding the existing Plan. We would welcome the opportunity to discuss additional points with Council at a later date, including potential solutions to issues we have raised.

In the Department's view, a review of the Plan should generally seek to ensure that its policy framework is strong and robust and achieves the purpose of the Resource Management Act, and that the Plan structure and contents are user-friendly. We have identified a number of areas where improvements could be made to the existing Plan; these are discussed under separate topic headings below. Our top priorities for Plan improvements¹ include: restructuring the Plan; identification of outstanding landscapes; furthering work on the protection of significant natural areas and other natural environments and ecosystems, including wetlands; management of the coastal environment; management of general development issues/zoning, energy/transmission proposals, and historic heritage; integration of management directions proposed in the draft West Coast Conservation Management Strategy; management of surface water activities; procedure for processing resource consent applications; and Plan implementation, monitoring and enforcement.

The Department is interested in receiving all future information relating to the Plan review, as it has interests relating to all significant natural resource management issues within the District.

¹ These are not listed in any particular order.

Plan structure

Our first specific comment relates to the existing Plan structure. Departmental staff have commented that they find the structure confusing and/or have difficulty locating relevant rules and provisions. One explanation for this may be that the rules are presently scattered throughout the policy units and three other sections of the Plan, rather than being grouped together in a single location. The Quality Planning guidance notes on 'structuring and organising regional and district plans' advocate that second generation plans utilise a 'quadrant approach'² to structuring a plan. A key aspect of this approach is the consolidation of rules into one Plan section that is kept separate from issues, objectives and policies. Further exploration of alternative approaches to structuring plans is encouraged, with the aim of making the Plan more user-friendly and accessible to the general public.

The Department notes that amendments to the RMA made in 2005 mean that incorporation of issues, methods, explanations, reasons and environmental results expected (EREs) is no longer a mandatory requirement, and is at the discretion of each local authority. However, these policy framework elements are, in the Department's view, useful and worth retaining.

'Methods of Implementation', both regulatory and non-regulatory, are very important and ideally both types will be retained within the Plan. It is acknowledged that non-regulatory methods may be moved to a reference document, but if that option is chosen the Department suggests retaining strong links with the District Plan wherever possible (e.g. via thorough cross-referencing).

Electronic versions of the Plan

The Department commends Council for making the existing Plan available online in a format that is accessible to those residents of Westland with dial-up internet. We would like to suggest that presentation of the Plan on Council's webpage (and the CD version) could be improved by adding a new downloadable file containing the entire Plan in a single, word-searchable document. This would allow users with access to broadband/satellite internet connections to easily print a copy of the entire Plan and/or undertake electronic searches for specific words or terms within the Plan without having to open the numerous links provided on Council's website and repeating the exercise each time.

Landscapes and natural features

The existing Plan's list of broad landscape types is supported. However, the absence of a detailed inventory of the District's outstanding landscapes and natural features poses a risk to the ongoing protection of these resources. A review of this part of the

² Extract from Quality Planning website: http://www.qp.org.nz/plan-development/structure-organisation-plans.php#arranging_provisions *Why use the quadrant approach?*

The quadrant approach is based on trying to structure a plan in a way that it follows a logical progression, is able to handle complexity without repetition, and is orientated to what most users will be looking for. To avoid duplication, provisions are grouped in terms of whether issues apply across a district or region, or to only part of the district or region – so avoiding repetition of district-wide issues in every chapter. This is used in relation to both the policy sections and rules sections of the plan. The policy sections run in logical fashion from issues through to policy, so that cross-referencing for these sections is minimised and the relationship from issue to policy (and back again) clearly evident. Most people use a plan to determine how to design their proposal to fit plan rules and thereby avoid the need to obtain a resource consent. In this respect, most plan users are primarily interested in the rules that apply to them. Having all rules together without the need to sift through pages of issues, objectives and policies is beneficial to plan users. If a resource consent is required, cross-references can refer the plan user back to the relevant policy, objective or issue.

Plan is important for ensuring sustainable management of outstanding landscapes and natural features.

Natural habitats and ecosystems

The background in Plan section 3.7 'Natural environments' does not adequately address the potential effects of urban and farming activities on Westland's natural environments: "The pressure for urban or farming activities is limited due to the remoteness of most such areas and the Conservation mandate". The Department does not support this perspective, particularly in relation to wetlands and vegetation clearance from alluvial lowland systems and riparian margins. The increase in the dairy industry in recent years has contributed to an increase in dairy conversions, vegetation clearance and humping and hollowing (as noted on page 102 of the Westland LTCCP 2009-19). Such activities have resulted in modification and/or drainage of many wetland habitats within the District. These activities also have the potential to adversely affect wetlands, even when a wetland is largely protected as public conservation land, due to works undertaken either within the main body of the wetland or up or downstream of their margins. Development pressure from these and other (e.g. mining) activities is likely to continue over the next 10 years, with its subsequent threats to the District's wetlands and other natural environments and ecosystems.

While the objectives in Plan section 3.7 are generally supported, the Plan's overall policy approach needs to be strengthened to ensure the sustainable management of wetlands and other natural environments and ecosystems in the face of such threats. Objectives specifically relating to the protection of wetlands should also be included in the Plan, e.g. within section 3.11 'Water resources' (at present the objectives seem limited to water quality and quantity) and/or section 3.7. The chosen policy mix should be backed up with an appropriate set of rules, as a precautionary measure – to ensure the sustainable management of wetlands and other natural environments and ecosystems within Westland District. Ideally, policies and rules will also provide adequate protection for ecosystems and natural habitats that an assessment determines are not "significant" as such under the RMA, but are still important for other reasons (e.g. connectivity, wildlife corridors, general ecological function etc.).

The Department notes that the existing Plan's stated intention of creating a schedule of significant natural areas (SNAs) has not occurred to date. Council's existing approach of assessing resource consent applications on a case-by-case basis has both advantages and disadvantages for all parties. While the Department generally supports the Plan's existing model for significance assessment (section 4.9, Policy D), a thorough review of the rules relating to this and other relevant policies is desirable - to ensure the overall policy approach is robust.

Forward planning of some type is advocated, to ensure the Plan is consistent with the New Zealand Biodiversity Strategy and the New Zealand Statement of National Priorities for Protecting Rare and Threatened Biodiversity on Private Land. The NZ Biodiversity Strategy and the NZ Statement of National Priorities are intended to help inform local authorities and others about biodiversity issues and to understand the national context within which the region sits. These guidance documents state that significance of native biodiversity may not be apparent until it is considered against the full range of biodiversity across New Zealand. Wetlands have been specifically identified as a national priority for protection.

The reviewed Plan should draw on the national priorities and directions listed above to create a robust framework for the management of the District's significant natural

areas. The benefits of taking a proactive approach, rather than the current reactive approach, include the following:

a) Prevention or minimisation of incremental losses of significant habitat on private land over time and the associated cumulative impacts (under the existing rules it is possible for any area of land in the District to be cleared at a rate of up to 2000m² every 5 years per site – resulting in the eventual destruction of what may otherwise have been defined as a significant natural area);

b) Interested parties such as the Department could focus their engagement at the proactive planning stages (e.g. identification and assessment of potential significant natural areas), which may in turn reduce their need for intensive involvement at the resource consent processing stage;

c) Increased efficiency in the management of enforcement and compliance issues. At present, if a landowner is non-compliant and destroys indigenous vegetation/wetland habitat without authority, retrospective assessment of the significance of the natural area is difficult to determine because the values have already been modified or lost. Conversely, if a proactive planning approach had been employed the values of the area would have been identified and assessed prior to the non-complying event, which would help to inform any decision relating to enforcement action.

The Department would like to work closely with Council on the review of Plan sections relating to natural environments, wetlands and significant natural areas.

Use of the Land Environments of New Zealand (LENZ) database and other tools may assist Council to identify potentially significant areas within locations likely to come under development pressure in future. For example, what significant sites are located on HariHari soils (i.e. good soils with pastoral potential, likely to be drained/humped and hollowed)?

As an aside, Timaru District Council is currently undertaking a district-wide assessment of biodiversity values. Council may wish to investigate their approach when reviewing relevant sections of the Plan.

Management of the coastal environment

Many of the coastal issues that have arisen over the past 10 years or so have been associated with coastal subdivisions (refer Plan section 4.9 Method 'e'), their ad hoc nature, the application of setback limits related to coastal hazards and their effects on coastal habitats. It would be useful for Council to review the relevant Plan sections in light of the building developments over the last 10 years, learning from any problems that arose so that they are less likely to happen in future developments. Related to that, the Plan review should take into consideration the recent Local Government Guidelines: "*Adapting to climate change - sea level rise and accelerated coastal erosion.*"

Where applicable, policies and rules should be included in the Plan to discourage further building in areas adjacent to coastal environments that are, or may be, at risk from coastal hazards such as erosion, inundation, storm surge or sea level rise. Consideration should also be given to control of vehicles on beaches/other sensitive areas that provide habitat for threatened birdlife/marine animals.

It would be useful if whale and seal burials could be designated as permitted activities under the Plan. The Department holds information on the types of sites previously used or avoided. The Plan should recognise that whale burial sites almost always need to be located very close to the site where the whale washes up. Logistically, it can be almost impossible to move a large whale any great distance,

and burial is sometimes (but not always) preferred over leaving it as is when it is close to a residential area.

The Department encourages Council to include provisions in the Plan that would provide recognition of any Marine Protected Areas (MPAs) established as a result of the West Coast Marine Protection Forum's process. We note that the Forum's existing draft proposals include recommendations for some unformed legal roads adjacent to the proposed MPAs to be transferred to the Department. While no decisions have yet been made by the Minister, Council may wish to consider these draft recommendations as part of the Plan review.

The Plan needs to consider the broader 'downstream' effects of activities on the coastal environment. For example, some activities (such as hydro-dams) have the potential to cause a reduction of sediment travelling down the lower reaches of rivers and a subsequent reduction in sediment deposit within the downstream coastal environment. This in turn may lead to accelerated rates of coastal erosion/accretion and associated risks of inundation. The potential effects of such proposals on the coastal environment, should be taken into consideration in the Plan review.

General development / Zones

Applications for resource consents for rock protection work to manage flood hazards in Westland District have increased during the term of the Plan. The impact of these works needs to be carefully considered and managed. Restricting the course of a river at one point may lead to erosion problems further downstream or in the coastal environment. Rock protection at one site sometimes encourages intensification of land use within the locality, which in turn leads to further requests for rock protection, exacerbating the aforementioned problems. Proactive planning is required to ensure future development is kept away from those areas most at risk of flooding (e.g. Waiho Flood Zone and other areas) and/or prone to other natural hazards such as erosion. A preventative approach to managing this issue is preferred over the existing reactive approach. Implications of potential sea level rise and coastal development issues should also be taken into consideration, as discussed above.

Subdivisions have been increasing over the past 10 years and the activity is likely to continue affecting natural resources in coastal and other environments during the term of the new Plan. Council will need to be cognisant of continued growth and expansion of lifestyle and tourist growth and development, e.g. in the Lake Kaniere and Hokitika Gorge areas.

Where land being subdivided adjoins water bodies, applications to waive or reduce esplanade reserves/strips may, in some cases, be acceptable. A recent amendment to the Buller District Plan outlines criteria requirements and waivers for esplanade reserves/strips. Such an addition may be beneficial in the Westland District Plan.

Ideally the Plan should identify areas that provide habitat to sensitive wildlife (e.g. little blue penguins) and consideration should be given to the protection of such vulnerable species when applicants apply for adjacent areas of land to be subdivided. District councils in other parts of the country sometimes impose conditions on such subdivisions.

Energy generation/transmission

The Plan should note that the demand for renewable energy has increased over the past few years, resulting in a number of new hydro proposals. It is desirable that

additional objectives, policies, rules and other methods be included in the Plan, to provide specific guidance and clarity on the sustainable management of activities involving energy generation and transmission.

Management of historic heritage

We feel that the components of the Plan relating to historic heritage should be strengthened. Some deficiencies of concern to the Department include:

- a) The current schedule of historic sites is incomplete; it does not provide a comprehensive list of Westland's historic heritage. For example, many of the historic sites that the Department actively manages on public conservation land are missing from the schedule.
- b) The existing Plan does not identify any archaeological sites.
- c) Cultural sites are not comprehensively listed. Notable gaps include important areas in South Westland, such as Bruce Bay.
- d) The rules should be strengthened (e.g. demolition of historic buildings listed in Plan schedules and/or on the Historic Places Trust register should be a non-complying activity).
- e) It would be helpful to alert potential applicants to the fact that authorisation from the Historic Places Trust may also be required, in addition to a resource consent.
- f) The wording of some of the existing policies and rules creates confusion and uncertainty for Plan users. Redrafting the relevant Plan sections should aim to make these less ambiguous, open to interpretation and difficult to follow.

We recommend Council consider the guidance document published by the NZ Historic Places Trust: "*Sustainable management of historic heritage, Guide No 3, District Plans*"³ when reviewing the historic heritage components of the Plan.

Relationship between Council and the Department

The Department seeks to maintain and strengthen the existing relationship with Council. Joint projects, such as the Hokitika Gorge development, will facilitate improved public access to Westland's natural and historic heritage assets. Similarly, joint promotion of the District's tourist opportunities (e.g. mountain biking opportunities, glaciers, walkways, historic heritage and other recreational activities) is a high priority for the Department. Our relationship also extends to other areas such as the management of land use activities in order to protect marginal strips, indigenous vegetation and waterways. The reviewed Plan should ideally recognise and facilitate the existing good relationship between Council and the Department and assist both organisations to work together towards positive outcomes for the future.

Linkages with the draft West Coast Conservation Management Strategy (CMS)

The Department would like to work with Council to identify areas where management directions (i.e. objectives, policies and outcomes) proposed in the CMS may be integrated into the Plan, where appropriate. While the main focus of the CMS is on public conservation land, it also includes advocacy statements relating to private land. A new feature of the CMS is the identification of 'desired outcomes for Places'. Ideally the Plan's 'anticipated environmental outcomes' and the CMS desired outcomes would be consistent, where possible. The CMS also identifies natural, historic and recreational values of Westland District and may be a useful resource document to refer to when reviewing relevant sections of the Plan.

³ Available online at: www.historic.org.nz/publications/SustMgt_guidance_series.html

Surface water activities

The existing Plan remains silent on the issue of surface water activities. However, the Department suggests Council consider incorporating new management directions into the reviewed Plan, consistent with the relevant desired outcomes described in the CMS.

CMS sections 4.2.6.7 & 4.2.7.10 describe the following desired outcomes for lakes within Westland District, underneath the heading 'People's benefit and enjoyment in 2019':

"...The striking scenic and natural values of Lakes Mahināpua and Kaniere make both lakes popular destinations for boating, fishing, swimming, picnicking, camping and walking. These lakes are an important focus of the Department's provision and development of services and facilities....At Lake Mahināpua picnicking, walking, camping and boating activities take place in a peaceful natural setting, dominated by uninterrupted views of tall podocarp forests on the lake margins and beyond to the Southern Alps *Kā Tiritiri o te Moana*. ...The Department successfully advocates for no high speed motorised boats and minimal overnight mooring on Lake Mahināpua (see Section 3.6.4.12).... Recreational activities on and adjacent to Lake Kaniere are limited to those that are in keeping with protection of the lake's scenic character and Poutini Ngāi Tahu cultural values, and maintenance of the natural setting and environmental quality. There are no new moorings on Lake Kaniere (see Section 4.2.5.6, Frontcountry sites). Concession opportunities are in keeping with the protection of scenic natural character, environmental quality and recreational use by local communities.

...Lakes, rivers, streams and coastal lagoons provide a wide variety of settings for canoeing. For example, the meandering Ohinetamatea can be canoed between the main highway and the sea....The accessible lakes in Te Wāhi Pounamu, including lanthe *Matahi*, Wahapo, Mapourika, Matheson, Pāringa, Moeraki and Ellery, retain their outstanding scenic and natural values. Recreational activities at these lakes take place in peaceful natural settings, dominated by spectacular views of the Southern Alps *Kā Tiritiri o te Moana*. At Lake lanthe *Matahi*, Mapourika and Pāringa, the Department provides small-scale overnight camping and picnicking facilities. No additional facilities or services are provided by the Department or envisaged at any of these lakes, except for the track at Lake Ellery. Recreational activities on or adjacent to these lakes do not unduly disturb protected birdlife nesting or feeding at the lakes and do not harm indigenous freshwater species. On Lakes lanthe *Matahi* (which remains a stronghold for crested grebes *kāmana*) and Moeraki, activities are managed to protect and preserve the natural character of the lakes and their value as a waterfowl habitat. Recreational boating is not permitted on Lake Matheson, ensuring the renowned mirror-like qualities of this lake are retained (see Westland *Tai Poutini* National Park Management Plan). Recreational and concessionaire use on and adjacent to all lakes in Te Wāhi Pounamu Place is limited to low-impact activities that are consistent with the protection of the lakes' outstanding scenic character and cultural values, and maintenance of their peaceful natural settings and environmental quality."

Procedure for processing resource consent applications

The Buller District Plan currently suggests applicants seek authorisation from the Department before applying to Council for resource consents. Encouraging applicants to seek landowner approval first is supported and appreciated by the Department⁴, and as a suggestion, we would like to see such an approach included within the reviewed Plan.

Buller District Council's approach of requiring a single EEA by both Council and the Department is also supported. It is important to note that, in addition to the information required under District Plans, the Department may also require further information for concession and access arrangement applications – due to the different legislative criteria involved. If such an approach is to be included in the reviewed Plan, the importance of having a pre-application meeting with applicants, to

⁴ This allows the Department to discuss the proposed activity with the applicant and raise any potential issues relating to conservation values prior to engaging in the wider RMA process.

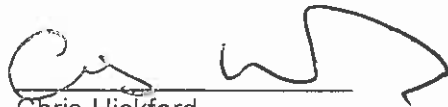
discuss the different information requirements each agency has, should also be emphasised.

Plan implementation, monitoring and enforcement

Plan implementation, monitoring and enforcement issues are very important, and should be considered during the review process. Particular focus should be given to use of information tools to ensure members of the public are aware of Plan rules and restrictions on activities, and adequate resources allocated to compliance and enforcement.

The Department supports the use of "Anticipated Environmental Outcomes" and "Monitoring" components of the Plan, and encourages Council to retain these, acknowledging that their content may need to be updated and/or amended.

Signed by



Chris Hickford
Acting Conservator
for Director General of Conservation

Dated this 22nd day of September 2009