

Open Meeting

To	Policy & Regulatory Committee
From	S Duignan General Manager Customer Support
Date	12 February 2015
Prepared By	S Monrad Corporate Planner
Chief Executive Approved	Y
DWS Document Set #	934012
Report Title	Proposed Local Alcohol Policy 2014 Submissions

1. Executive Summary

On 06 October 2014 Council resolved to consider and approve the Proposed Waikato District Council Local Alcohol Policy 2014 (subject to any amendments) for public notification and consultation, in accordance with section 79 of the Sale and Supply of Alcohol Act 2012 and with section 83 of the Local Government Act 2002 (special consultative procedure) provisions.

The proposed policy was notified for public consultation on 21 October 2014, with submissions closing on 21 November 2014. Public notices to this effect were placed in the Waikato Times, North Waikato News, Franklin County News and Raglan Chronicle.

In total, 36 submissions have been received (refer to page 4 of Appendix I for the issues that were raised), with 23 submitters indicating that they wish to be heard.

The purpose of this meeting is to hear and consider submissions on the Proposed Waikato District Council Local Alcohol Policy 2014.

The following documents are included as appendices to this report (attached separately):

- Appendix 1 - A summary report incorporating staff comments on submissions to the Proposed Waikato District Council Local Alcohol Policy 2014 (attached separately)
- Appendix 2 - Copies of Original Submissions for the Proposed Waikato District Council Local Alcohol Policy 2014 (attached separately)
- Appendix 3 - Revised Local Alcohol Policy (incorporating suggested changes as a result of submissions) (attached separately)

2. Recommendation

THAT the report of the General Manager Customer Support – *Proposed Local Alcohol Policy 2014 Submissions* be received; and

AND THAT pursuant to sections 83 and 150 of the Local Government Act 2002, the Committee consider and, where requested, hear submissions on the notified Proposed Waikato District Council Local Alcohol Policy 2014

AND THAT subject to any amendments, the proposed policy will be further considered by the Committee at its meeting on 17 March 2015, with a view to recommending a Provisional Waikato District Council Local Alcohol Policy 2015 to Council to adopt at its meeting on 13 April 2015.

3. Background

The Sale and Supply of Alcohol Act 2012 (SASAA) allows local authorities to develop a Local Alcohol Policy (LAP) which may include policies on:

- a) The location of licensed premises by reference to broad areas (i.e. their location within the District);
- b) The location of licensed premises by reference to their proximity to premises of a particular kind (i.e. their location in respect to other licensed premises);
- c) The location of licensed premises by reference to their proximity to certain facilities (e.g. schools etc.);
- d) Whether further licences or types of licences should be issued in the District or part of the District;
- e) Maximum trading hours;
- f) Discretionary conditions; and
- g) One-way-door restrictions.

Council resolved to develop a draft LAP for the district on 6 May 2013.

The SASAA requires local authorities to consult with NZ Police, the Medical Officer of Health and Licensing Inspectors prior to the production of a draft policy. These groups were given early warning of this process with formal requests for comments sent in May 2013. Submissions have been received from the Police, Medical Officer of Health and one of the Licensing Inspectors with these being considered alongside all other submissions.

Staff also undertook engagement with the community to obtain their views in the early stages of policy development. A survey was undertaken in July 2013, asking for views on alcohol licensing and public meetings were also held in August 2014.

In total 56 completed surveys were returned before the specified end date of August 2013.

There were approximately 100 members of the community that attended the 5 public meetings held in the main centres of the district. These meetings utilised interactive posters seeking views on several options including whether there were too many licensed premises in their area, hours of operation of various types of licensed premises and separation distances between licensed premises and sensitive receivers.

There is significant support for Council developing a LAP with standout points being concern over the number and hours of off-licences in particular. There is strong support in the community for considering the location of licensed premises in relation to schools, kindergartens, places of worship and similar community facilities.

A report was then drafted to support the development of the LAP and Council input sought at a workshop held on 29 September 2014.

When developing a Local Alcohol Policy Section 78 of the SASAA also requires territorial authorities to have regard to the objectives and provisions of the District Plan, the number and hours of existing premises, liquor ban by-laws, demography of the District and its visitors, health indicators and the nature and severity of alcohol related problems in the district.

On 06 October 2014 Council resolved to consult on the Proposed Waikato District Council Local Alcohol Policy 2014. In total, 35 submissions were received, with 23 submitters indicating that they wish to be heard.

A list of submitters and the issues raised by submitters with an accompanying staff comment (where appropriate) for the proposed Local Alcohol Policy 2014 is provided as Appendix 1 of this report.

A copy of each original submission for the proposed Local Alcohol Policy 2014 is provided as Appendix 2 of this report in numerical order of submitter number.

The submissions on the proposed Local Alcohol Policy 2014 cover a wide range of issues, (refer to page 4 of Appendix 1 for the issues that were raised).

Council must consider each submission, and make a determination on each of the issues raised. Each submitter is entitled to be informed of the outcome of their submission, including the reasons for the decision.

All submissions to the proposed Local Alcohol Policy 2014 have been acknowledged and each submitter will receive a written response following Council's adoption of the Provisional Local Alcohol Policy 2015.

4. Discussion

4.1 Content of the proposed Local Alcohol Policy

Key points in the proposed Policy were included in the statement of proposal and are outlined below.

On-Licences

- No restriction on the number of on-licence premises
- On-licence premises to be located in business zone areas or locations authorised by resource consent
- The District Licensing Committee (DLC) shall have regard to the proximity of an outlet to any other licensed premises where considered relevant
- For taverns, class 1 restaurants, hotels or any other premises with a significant bar area operating in the manner of a tavern, a requirement to demonstrate to the DLC that the hours, signage or operation of the premises will have no effect on any directly bordering site containing a school, early childcare facility or place of worship

- Taverns or premises operating in the manner of a tavern in areas other than business zone areas to be located a minimum of 100 metres from the boundary of any school, early childcare facility, place of worship, public park or residential dwelling
- Maximum trading hours for hotels and taverns of 9am to 1am (extended to 2am on Friday and Saturday nights and New Years Eve in the urban areas of Ngaruawahia, Huntly, Raglan, Te Kauwhata and Tuakau). At any time to guests in hotels.
- Maximum trading hours of 7am to 1am for cafes, restaurants and function centres
- Maximum trading hours of 9am to 1am for any other premises
- One-way door restrictions to apply to any hotel, tavern or class 1 restaurant licensed after midnight. The restriction to apply for one hour prior to the closing time. A one way door policy is where a person cannot enter a licensed premise after a certain time, but those already inside a premise may remain until a later closing time. A class 1 restaurant is a restaurant that has a significant separate bar area and operates at least once a week in the manner of a tavern
- Provisions relating to discretionary conditions for on-licences.

Off-Licences

- Restrictions on the number of bottle stores in the urban areas of Ngaruawahia, Huntly and Raglan; with the number of licences to remain at the number existing at the date the policy comes into force
- Off-licence premises to be located in business zone areas or locations authorised by resource consent
- The DLC shall have regard to the proximity of an outlet to any other licensed premises where considered relevant
- New off-licences for bottle stores restricted within 1 km of any existing bottle store, grocery store or supermarket
- No new bottle stores, grocery stores or supermarkets within 100 metres of any school, early childcare facility, place of worship or public park unless it can be demonstrated to the DLC that the hours, signage or operation of the premises will have no effect on those facilities
- Maximum trading hours of 9am to 10pm for all off-licences
- Provisions relating to discretionary conditions for off-licences.

Club-Licences

- No restriction on the number of club licence premises
- Club licence premises for sports or social clubs to be located in close proximity to the sports ground or other facilities used by the club
- Club licence premises for chartered clubs to be located in business zone areas or locations authorised by resource consent
- The DLC shall have regard to the proximity of the club to any other licensed premises where considered relevant
- The DLC shall have regard to the proximity of the club to any school, early childcare facility, place of worship or public park where considered relevant
- Maximum trading hours of 9am to 1am for all clubs. RSAs from 5am on ANZAC Day
- One-way door restrictions may be applied to any club licensed after midnight. The restriction to apply for one hour prior to the closing time

- Provisions relating to discretionary conditions for club licences. A condition to require a manager to be on duty at all times in chartered clubs and when there are more than 50 patrons present or after 10pm at any other club.

Special Licences

- No maximum trading hours for special licences but guideline hours of 7am to 1am the next day
- Where the applicant for a special licence already holds an on, off or club licence with the maximum hours permitted for that type of licence under the policy, a special licence with greater hours will only be issued in exceptional circumstances as determined by the DLC.
- One-way door restrictions may be applied after midnight. The restriction to apply for one hour prior to the closing time
- Provisions relating to discretionary conditions for special licences.

The SASAA allows the District Licensing Committee to attach a range of discretionary conditions to any licence, in addition to compulsory conditions applied by the SASAA. This ability is recorded within the LAP, but as conditions are expected to be used on a case-by-case basis, conditions will be recommended by reporting agencies as they see appropriate.

It is emphasised that this policy may be subject to change through the additional SASAA appeal period.

4.2 Summary of Submissions Received

The majority of submissions received broadly support the policy with a range of views expressed on key elements. While each submission point is addressed in Appendix I, the main points of concern include:

On-licence hours

A number of submitters express a desire to restrict opening hours to 8am for cafes restaurants and function centres in line with the default national maximum hours provided in the Act rather than 7am as provided in the policy. A number of submissions refer to the fact that hotels and taverns are commercially disadvantaged with the different hours provided for their operations where they provide similar restaurant and function services.

A number of submitters also express concern at the proposed extension to 2am closing in the weekends, particularly in Raglan. Some submissions note the commercial disadvantage to rural hotels and taverns where the 2am extension is not proposed to apply. Submissions were also received requesting more restrictive opening and closing times.

One way door restrictions

A number of submissions have been received both strongly in favour and strongly opposed to the proposed mandatory one-way door restriction for hotels, taverns and class I restaurants. Those in favour include the Police, Medical Officer of Health,

Licensing Inspector for Raglan and other community organisations and agencies. Some promote extending the period that the one-way door restriction applies to. Industry organisations and licensees generally oppose the mandatory restriction noting that any restriction should apply to all types of premises. They note that such a restriction may be an unwarranted burden on the business and that it should be applied on a case by case basis only where the operation of individual premises warrants it. They also note that the proposed Waikato district policy is the only one in the region that provides for a mandatory restriction with other councils providing for it at the discretion of the District Licensing Committee.

Location of off-licences

A number of submissions were received both in support and in opposition to the proposed location controls of off-licences. Some particular concerns expressed include submissions that supermarkets and grocery stores should be considered differently to other types of off-licence while other submitters strongly submit that all should be considered equally.

Further Issuing of Off-Licences

Strong support is expressed for the cap on bottle stores in Ngaruawahia, Huntly and Raglan. Industry organisations representing bottle stores strongly oppose the provision noting that all licensed premises should be treated equally with the proposals putting bottle stores at a commercial disadvantage to supermarkets and grocery stores.

Off-Licence Hours

Strong support is expressed by many submitters for the consistent hours of 9am – 10pm hours for all off-licences. Some submitters seek further restriction to the hours. The main supermarket and grocery store organisations accept the 10pm closing time but strongly oppose the proposed 9am opening time noting operational issues the restriction may cause, the difference from the default national maximum hours opening time of 7am, their historical operation of 7am opening and lack of alcohol related harm data to support the restriction to 9am. Industry organisations representing bottle stores accept the proposed hours provided they are consistent for all licensed premises.

Discretionary Conditions

There is generally strong support for discretionary conditions in the policy. Some submitters have advocated for provisions around signage and advertising. Two submitters noted discretionary conditions sought for club licences. It is noted that the proposed policy did not contain a section for discretionary conditions in the club licence policies. Original drafts of the proposed policy did contain this section but it was inadvertently omitted from the final proposed policy.

Club Licence Policies

There is generally strong support for the proposed club licence policies. Some submissions seek more restrictive hours and some seek consistent provisions with on-licences noting that policies should not favour one group over another.

Special Licence Policies

Submissions generally support the proposed policies for special licences. Some seek greater definition around what may be considered an “exceptional circumstance”. Some also seek to provide greater prescription on the trading hours for special licences.

5. Considerations

5.1 Financial

It is not envisaged that the Policy will require any extra funding over that which is currently provided in operational budgets to operate the District Licensing Committee. Furthermore, government intends alcohol licensing fees to be risk-based and the system self-funding.

5.2 Legal

With the commencement of the SASAA on 18 December 2013, the current Waikato and Franklin District alcohol policies are no longer relevant. They will be superseded when the final LAP is adopted.

Policies under the previous Act had no legal standing, but were adopted by a number of Councils to ensure consistency around a number of matters including trading hours. They were a useful tool and where it could be demonstrated they had been created through a robust process, were often upheld by the Liquor Licensing Authority. The contents of the current policies were the starting point for the initial draft LAP.

Council is required to follow the special consultative procedure set out in the Local Government Act 2002 before the Proposed Local Alcohol Policy 2014 can be confirmed. The submission period was undertaken between 21 October and 21 November 2014. Public notices to this effect were placed in the Waikato Times, North Waikato News, Franklin County News and Raglan Chronicle.

Copies of the statement of proposal and proposed policy were available for viewing at Council offices, libraries and on the website. In addition, copies were posted to key agencies and community stakeholders.

5.3 Alcohol Regulatory and Licensing Authority

Since adopting the draft LAP the Alcohol Regulatory and Licensing Authority has issued decisions on appeals to the Tasman District and Wellington City LAPs. The decisions contain important points and guidance to Council when deciding the final provisions of the policy following consideration of submissions. It is noted that the only grounds of appeal to an element of a LAP is that it is unreasonable in the light of the object of the Act.

The decisions discuss reasonableness and link this to the object of the Act which is to minimise alcohol related harm. The circumstances under which elements may be considered to be unreasonable are discussed in both decisions, and may be summarised from paragraph 19 of the Wellington decision:

Accordingly, when preparing a PLAP, the territorial authority must consider what must be incorporated in the PLAP to achieve the object of the Act in its locality. If:

- (a) The proposed measures constitute a disproportionate or excessive response to the perceived problems; or*
- (b) Its proposed measures are partial or unequal in their operation between licence holders; or*
- (c) An element of a PLAP is manifestly unjust or discloses bad faith; or*
- (d) Is an oppressive or gratuitous in(ter)ference with the rights of those affected;*

then it is likely that the new measures will be unreasonable in the light of the object of the Act.

In paragraph 51 of the Tasman decision the Authority notes:

“It follows that where an element of a PLAP can demonstrably (through evidence presented to the Authority) be linked to the object of minimising alcohol-related harm, the Authority will be slow to find that element to be unreasonable. The invasion of public or private rights would need to be significant to outweigh the benefit of such an element in terms of minimising alcohol-related harm. However, if an element of a PLAP cannot be shown to attempt to minimise alcohol-related harm, then the Authority will be more likely to find the element unreasonable for the purposes of ss.81 and 83 of the Act.”

The decisions clearly reflect the necessity to base restrictions on local evidence of alcohol-related harm and that the proposed measures are an appropriate response to the issues. They note that overseas or national research relating to alcohol-related harm is of little assistance and that elements of the LAP should reflect local characteristics.

Paragraphs 30 and 31 of the Wellington decision state:

“It follows that evidence of research undertaken in other countries or even on a national basis in New Zealand, is unlikely to be of assistance when determining if an element of a PLAP is unreasonable in the light of the object of the Act. What is of assistance is what happens in the relevant district. The national or international research evidence needs to have a connection with what occurs in the district.”

“In this case, much of the evidence related to situations which have occurred either on a national basis or on an international basis. Much of that evidence came from academic research. Notwithstanding the authors of the various research papers did not give evidence, the reality is that the research was of little assistance in determining if the WCC PLAP is unreasonable in the light of the object of the Act. This is because it is the local issues that are relevant.”

When considering submissions on the LAP therefore Council must consider whether the element is reasonable in light of the object of the Act taking into account evidence of local issues. The reasons for the element should be clearly recorded.

5.4 Strategy, Plans, Policy & Partnership Alignment

There are potential implications on the Waikato District Council Public Places Liquor Control Bylaw 2009 and Franklin District Council Liquor Control Bylaw 2008.

5.5 Assessment of Significance

The Local Alcohol Policy triggers Council's Significance and Engagement Policy as the Special Consultative Procedure was required and undertaken.

6. Consultation

The following stakeholders have been/or will be consulted:

Planned	In Progress	Complete	
		✓	Internal
		✓	Community boards/Community committees
		✓	Waikato-Tainui/Local iwi
		✓	Households
		✓	Business
			Other Please Specify

7. Conclusion

The proposed Local Alcohol Policy 2014 has been notified for public consultation. 36 submissions were received and are summarised in this report. Council will decide the final policy following consideration of all submissions. The policy adopted will become the Provisional Local Alcohol Policy in accordance with the Sale and Supply of Alcohol Act 2012 and must be publically notified advising the rights of appeal against it and the grounds on which an appeal may be made. Appeals are made to the Alcohol Regulatory and Licensing Authority. The final policy may be adopted once all appeals have been determined or, if no appeals are received, 30 days after the public notification of the provisional policy

Attachments

The following documents are included as appendices to this report (attached separately):

- Appendix 1 - A summary report incorporating staff comments on submissions to the Proposed Waikato District Council Local Alcohol Policy 2014
- Appendix 2 - Copies of Original Submissions for the Proposed Waikato District Council Local Alcohol Policy 2014
- Appendix 3 - Revised Local Alcohol Policy (incorporating suggested changes as a result of submissions)