

LOCAL ALCOHOL POLICY



Date adopted by ARLA:	30 June 2017
Date brought into force by Council resolution:	All provisions except those relating to trading hours and one-way restrictions – 26 October 2017 Provisions relating to trading hours and one-way restrictions – 26 January 2018
Minute Reference:	74/17
Previous Policy Reference(s):	N/A
Statutory Requirement:	Optional policy under the Sale and Supply of Alcohol Act 2012
Business Unit/Author:	Policy, Planning & Regulatory Services
Next Review Date:	26 October 2023

1. COMMENTARY ON POLICY ELEMENTS (INFORMATION ONLY)

This section has been provided in response to a recommended approach for the preparation of a provisional local alcohol policy (LAP) in *Hospitality New Zealand Incorporated v Tasman District Council* [2014] NZARLA PH 846.

This section does not form part of the policy it is for information only.

1.1 Maximum trading hours

From the evidence reviewed by the Council, maximum trading hours appear to be the most influential policy measure available for the reduction in alcohol related harm. However there must be a balanced approach to protect the rights of moderate drinkers from being excessively restricted and maintain the viability of licensed premises.

(a) Off-licences –

- i. The Council recognises the difference between the host responsibility that must be applied within an on-licence as compared with that of off-licences. It also recognises the impact of pre-loading on on-licensed premises, including the transfer of host responsibility. Consumption of alcohol purchased from off-licences is less controllable than on-licences. Many licensees of off-licences demonstrate excellent licensee practices. However, the Council believes that restricting late night, spontaneous purchasing of alcohol from off-licences is

likely to have significant benefits by reducing alcohol harm in public places and private residences which are away from the protection of the regulatory regime.

- ii. The Council was persuaded by submitters on the draft LAP to have consistent maximum licensing hours across Porirua to improve certainty for licensees and consumers. There was an apparent correlation between harmful activities and off-licence premises. The Council believes moderate consumers of alcohol will adjust their purchasing behaviour to the more restrictive hours without significant, if any, negative implications. Because of this the Council has taken a precautionary approach in reducing the maximum license hours from the national default provisions in the belief that reduced maximum licensing hours are likely to reduce pre-loading, reduce rates of criminal activity and admissions to hospital.
- (b) **On-licences** – The licensing system puts significant restrictions around on-licences. The nature of on-licence premises is that consumers must be actively managed by the licensee. Their responsibility extends to helping consumers to get home, managing the impact that their premises have on others and the environment in close proximity. Most premises in Porirua currently close before 2 am. This would not change under this policy. The policy seeks to allow the district licensing committee to consider the risks of each application and apply conditions where appropriate. It may also adjust the licence hours where appropriate. The policy codifies the existing expectation of 2 am maximum and it represents a reduction from the national default hours.

1.2 Proximity to sensitive sites

The Council identified two groups as vulnerable if exposed to licensed premises:

- (a) **School students** - the research reviewed suggested that there was a link between alcohol advertising and alcohol related harm in this group. Pre-schools were excluded because of the large number of premises, the difficulty in tracking these premises and their inclusion would create significant restrictions to open new licensed premises, when there was no evidence presented to suggest this group was more susceptible to alcohol related harm.
- (b) **People undergoing alcohol and drug use rehabilitation** – this is an identifiable group with a heightened sensitivity to exposure to licensed premises and an LAP should protect them so that they may undergo treatment. The definition restricts the applicable organisations to those that are registered as receiving public funding. This is because private operations may not be registered and would not provide a clear standard for potential applicants and Council inspectors to apply.

- (c) The Council restricted the definition of sensitive sites to these two categories recognising that the licensing process still allowed others to oppose an application on a range of grounds, including for the preservation of the amenity and good order of the area around the premises. That for these two groups there was a demonstrable risk from exposure. These groups are required to be registered and can be applied transparently and effectively.
- (d) The Council built in an automatic trigger to the LAP where a sensitive site is in close proximity to proposed licensed premises. That trigger is to switch the onus onto the applicant to demonstrate that they can suitably mitigate the exposure of the users of the sensitive site or that exposure is not in fact a factor. If they are unable to do so the licence should not be granted. This requirement recognises that mere straight line distance between premises and a sensitive site is a blunt instrument and that building design, natural barriers and other factors can mitigate the impact of close proximity.
- (e) The reverse sensitivity provision was included to protect the value of licensed premises to allow them to be sold. However, for this provision to be invoked the licence must be current, that means a new owner would need to apply for a temporary authority and keep the underlying licence intact. If they are unable to get a temporary authority, for example if the underlying licence had expired or was revoked, then the sensitive site provision would apply. This should act as an incentive for licensees to manage premises to a high standard to protect the value in their investment and maintain the currency of their licence.

1.3 Discretionary conditions

- (a) The Council expects the district licensing committee to determine each case on its merits as the circumstances of every application are different. The discretionary conditions have two parts, the first is to identify principles by which they may be applied. This includes emphasising the importance of only inserting a discretionary condition where a foreseeable harm is identified. The severity of the condition should be proportionate to the harm identified and it should only apply to the extent necessary to mitigate that harm. The second part is the conditions themselves which are stated broadly to maintain the flexibility of the committee.
- (b) The Council determined that the use of discretionary conditions applied appropriately would produce a targeted and proportionate response to identifiable harms than a district wide reduction in on-licence hours. Conditions can also be altered based on past performance at the time of renewal providing the committee with greater flexibility to manage known harms.

2. INTRODUCTION

The local alcohol policy or LAP (the policy) should provide guidance for the Council's district licensing committee (the committee) when deciding whether to issue a licence to sell and/or supply alcohol. The policy is an important tool to assist the committee and the Alcohol Regulatory Licensing Authority (the licensing authority) in making decisions that are appropriate for Porirua and achieving the object of the Sale and Supply of Alcohol Act 2012 (the Act).

3. POLICY GOALS

3.1 The policy aims to:

- a) minimise alcohol-related harm in Porirua
- b) reflect local communities' character, amenity, values, preferences and needs
- c) encourage licensed premises to foster positive, responsible drinking behaviour.

4. POLICY OBJECTIVES

4.1 The objectives of the policy are to:

- a) reflect the views of local communities as to the appropriate location, hours and conditions that should apply to licensed premises within their communities
- b) provide certainty and clarity for applicants and the public as to whether a proposed licence application will meet the criteria of the LAP
- c) provide effective guidance and allow flexibility for the decisions of the district licensing committee and the licensing authority.

5. SCOPE OF POLICY

5.1 The policy relates to the sale, supply and consumption of alcohol in Porirua. It is limited to matters relating to licensing set out in section 77 of the Sale and Supply of Alcohol Act 2012.

6. STATUTORY FRAMEWORK

6.1 The Sale and Supply of Alcohol Act 2012

- a) The Sale and Supply of Alcohol Act 2012 (the Act) has the following objectives:
 - i. that the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
 - ii. that the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.

- b) Section 75 of the Act allows Councils to have a local alcohol policy relating to the sale, supply, and/or consumption of alcohol within its district. The contents, development, adoption and review of that policy must comply with the provisions of part 2, subpart 2 of the Act.
- c) The local alcohol policy must be consistent with the general law of New Zealand and the Council's district plan.
- d) The Council must not produce a draft local alcohol policy without having consulted the NZ Police, the Medical Officer of Health and the public.

7. POLICY CONTENTS

7.1 Maximum trading hours

- a) The maximum trading hours in the table below apply consistently across the district. The maximum trading hours vary by the kind of licence applied for. There are four exceptions for the major kinds of licence. Where an application is consistent with an exception, the maximum trading hours for the exception should be substituted.
- b) The major categories are shown in grey and the exceptions to those categories are listed underneath in white. Definitions of each licence kind are contained in the definitions sections of the policy.

Table 1: Maximum trading hours by licence kind

Licence Kind	
OFF	7am-10pm
OFF-REMOTE	At any time on any day
ON and CLUB	8am-2am the following day
ON-HOTEL	At any time on any day to lodgers
CLUB-RSA	8am-2am the following day, except 4am to 1pm on ANZAC day
SPECIAL	At any time on any day – applications assessed on merits

7.2 Proximity to sensitive sites

- a) Sensitive sites under this policy are sites where the target users have been identified as having a greater vulnerability than the public generally to alcohol related harm as an outcome from direct exposure to premises that sell or supply alcohol. Sensitive sites in Porirua are exclusively:
 - a school as defined by section 2 of the Education Act 1989, which does not include early child care or kindergartens
 - premises that are registered with the Alcohol and Drug Association of New Zealand as the location of a drug and/or alcohol treatment service provider.

- b) Except for supermarkets¹, no new licences may be granted where the proposed licence is in close proximity to a sensitive site; unless:
- the users of the sensitive site are unlikely to be directly exposed to the sale or supply of alcohol and its related activities; or
 - any exposure can be mitigated by the applicant to a minor or less than minor exposure.
- c) Except for supermarkets, every application for a new on, off or club licence, or to vary an existing licence in close proximity to a sensitive site, will require an impact assessment to determine the extent that the users of the sensitive site are likely to be exposed to alcohol promotion, consumption and consumers from the proposed licence premises. The assessment must address the impact of that exposure and any proposed mitigation of the exposure.

d) **Reverse sensitivity-**

Proximity to a sensitive site will not be considered for new licence applications for premises for which an existing licence is held at the date of the application, unless the nature of the application differs significantly from the current licence. This is to protect the pre-existing use rights in those premises.

e) **Sensitive site impact assessment-**

The Alcohol Licensing Inspector will determine if an impact assessment is required. The applicant is responsible for preparing and filing the impact assessment with the committee. The assessment will identify the level of exposure of users of the sensitive site and any potential mitigation of exposure. Specifically it must identify:

- the users of the sensitive site
- the extent of advertising and promotion on and around the proposed site
- the potential exposure of users to the sale and supply of alcohol and any related activities e.g. promotions, noise
- potential adverse impacts identified by the operator of the sensitive site if any
- potential mitigation measures, if any, are identified
- any other issues identified by the Alcohol Licensing Inspector.

The Alcohol Licensing Inspector should provide commentary to the committee on the quality and completeness of the impact assessment as part of their report to the committee.

¹ The Sale and Supply of Alcohol Act 2012, section 32, 1 (e) allows an off-licence to be issued to supermarkets with a floor area of at least 1000 m²

7.3 Discretionary conditions

Discretionary conditions may be applied to a licence to mitigate an identified foreseeable harm. In using its discretion to apply conditions, the committee and the licensing authority will be guided by the following principles:

- **connection** – whether there is a connection between an identified foreseeable harm to be addressed and the proposed licensing activity
- **impact** – whether there is evidence to support that the proposed condition will make the drinking environment safer and minimise harm
- **reasonableness** – whether it is within the capabilities of the applicant or licensee to satisfy this condition, any condition must be a proportionate response to an expressly identified harm or potential harm.

(a) Off-licences

- all bottle stores must have supervised designation (minors must be accompanied)
- limiting alcohol product advertising to less than 50% of the total shop front area
- requiring the licensee to ensure litter (this includes, but is not limited to, vomit and alcohol-related rubbish) is removed from any areas the licensee has outside the licensed premises (including any carparks, external walkways and landscaping).

(b) On-licences and Club licences

- restriction on the use of outdoor areas after 10pm outside the City Centre
- restriction of loudspeaker, amplifier, relay or other audio equipment after 10 pm outside the City Centre
- provision of effective exterior lighting
- provision of additional security (staff) after 11pm
- the installation and operation of CCTV cameras on the exterior of, and within premises
- no serving in glass containers at specified times
- requiring the licensee to ensure litter (this includes, but is not limited to, vomit and alcohol-related rubbish) is removed from any areas the licensee has outside the licensed premises (including any carparks, external walkways and landscaping).
- one-way door restriction
- patron number to security personnel ratio
- patron number to bar manager ratio
- provision of transport for patrons

(c) Special licences

The following special licence discretionary conditions should be considered for both on-site and off-site special licences:

- number of 'nominated persons' or certified Duty Managers to be present
- specify locations for Managers to be present (e.g. at point of sale, anywhere else on site that their presence would be beneficial)
- limit on number of drinks to be sold in one transaction
- drink containers to be opened at point of sale
- no high alcohol doubles or shots to be sold
- specify security staff number required and their location
- patron number to security ratio
- specify event staff to wear high visibility clothing
- specify containers alcohol may be sold in
- condition to ensure Police reserve rights to require earlier cessation of licence hours by request to the licensee and reduce number of sales and slowing of service
- limits on promotion of alcohol
- require one-way door restriction
- noise limits from an event
- lighting requirements
- consideration of having specific 'licensed area' within an overall 'event area' - this will help restrict movement of patrons with alcohol inside the event and be easier to monitor for event staff, and Police and Alcohol Licensing Inspectors.

8. DEFINITIONS

Act, the	means the Sale and Supply of Alcohol Act 2012
Alcohol Regulatory and Licensing Authority (ARLA)	is the licensing authority and national body that hears appeals from district licensing committee decisions and appeals of LAPs
Bottle store	means off-licensed premises being retail premises where (in the opinion of the licensing authority or licensing committee concerned) at least 85% of the annual sales revenue is expected to be earned from the sale of alcohol
Close proximity	within 100 metres in a straight line from boundary to boundary
Club	means a body that <ol style="list-style-type: none"> is a body corporate having as its object (or as one of its objects) participating in or promoting a sport or other recreational activity, otherwise than for gain; or is a body corporate whose object is not (or none of whose objects is) gain; or holds a permanent club charter (refer section 5 of the Act)
Club-RSA	means a club licence where the club is a member of the Royal New Zealand Returned & Services Association.

District Licensing Committee (DLC)	means District Licensing Committee at Porirua. The DLC members are appointed by the Council but it acts independently
District Plan	means the operative Porirua City District Plan
Harm, alcohol related	has the same meaning as contained in section 5 of the Act
Hotel	means premises used or intended to be used in the course of business principally for providing to the public: <ul style="list-style-type: none"> (a) lodging; and (b) alcohol, meals, and refreshments for consumption on the premises (refer section 5 of the Act)
Maximum trading hours	Means the maximum trading hours for the purpose of section 45 of the Sale and Supply of Alcohol Act 2012
Off licence	means a licence for premises where the licensee can sell alcohol for consumption somewhere else
Off-remote	means an off-licence to conduct remote sales under the Act. Remote sale, in relation to alcohol, means a sale pursuant to a contract that— <ul style="list-style-type: none"> (a) has been entered into (using the Internet, by telephone or mail order, or in any other way) between— <ul style="list-style-type: none"> (i) a seller who holds an off-licence; and (ii) a person (whether the buyer or a person acting on the buyer's behalf) who is at a distance from the premises where the seller entered into the contract; and (b) contains a term providing for the alcohol to be delivered to the buyer (or to a person or place nominated by the buyer) by or on behalf of the seller
On licence	means a licence for premises where the licensee can sell alcohol for consumption on the premises or can let people consume alcohol on the premises. For the avoidance of doubt, on-licences includes club licences per section 21 of the Act
On-conveyance	means an on-licence for a vehicle (e.g. bus tours, ferries, trains)
One-way door restriction	means, in relation to a licence, a requirement that, during the hours stated in the restriction: <ul style="list-style-type: none"> (a) no person is to be admitted (or re-admitted) into the premises unless he or she is an exempt person; and (b) no person who has been admitted (or re-admitted) into the premises while the restriction applies to the licence is to be sold or supplied with alcohol (refer section 5 of the Act)
On-hotel	means an on-licence for a hotel and relates to sales to lodgers only

Opposed application

means an application where:

- a report has been filed in opposition by the Medical Officer of Health, Police or Council Inspector; or
- an objection has been filed by a person with a greater interest than the public generally

Special licence

means a licence granted for an event or series of events and can be for either on-site consumption or off-site consumption. A full definition is contained in section 22 of the Act

9. APPLICATION OF POLICY

The local alcohol policy is applied by the committee and the licensing authority. The committee and the licensing authority must have regard to this policy when deciding whether to issue a licence or renew a licence, subject to section 133 of the Act.

10. POLICY MONITORING AND REVIEW

Decisions by the committee that are inconsistent with this policy will be monitored by the Secretary for the committee and reported annually to the Council.

Monitoring of compliance by licensees with the maximum licence hours and licence conditions is the responsibility of the Council's Licensing Inspectorate and the NZ Police.

11. APPEAL/ COMPLIANCE PROCESS

Appeals on the decisions of the committee are made to the licensing authority in accordance with the Act. A subsequent right of appeal exists under the Act to the High Court.