

**QLDC Council
30 June 2015**

Report for Agenda Item: 10

Department: Legal and Regulatory

Local Alcohol Policy – Report on additional research

Purpose

- 1 To recommend to Council that further investigation is undertaken into the need for a local alcohol policy.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Accept** that further investigation to establish the need for a local alcohol policy in the 2015/2016 is required.
3. **Appoint** three Councillors to participate in a working party to determine the need for a local alcohol policy in 2015/2016.
4. **Direct** the Manager, Regulatory to report back to Council by 30 June 2016, determining if a local alcohol policy is needed and when.
5. **Direct** the Manager, Regulatory to develop a draft local alcohol policy should further investigation establish that a local alcohol policy is needed in 2015/2016, and to report back to Council by 30 June 2016.

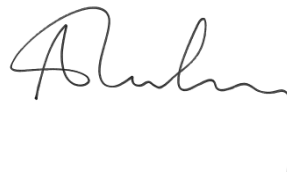
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Manager, Regulatory

15/06/2015

Reviewed and Authorised by:
Adam Feeley



Chief Executive

15/06/2015

Background

- 2 The Sale and Supply of Alcohol Act 2012 (“Act”), provides the Council with the ability to develop a Local Alcohol Policy (“LAP”), to control the sale, supply and consumption of alcohol across the Queenstown Lakes District.
- 3 On 12 April 2013, Council reviewed item 10 – Sale and Supply of Alcohol, http://www.qldc.govt.nz/assets/OldImages/Files/2013_Full_Council_Agendas/12_April_2013/10_-_Sale_and_Supply_of_Alcohol.pdf and resolved to proceed with the development of an LAP, with an intention to have a provisional policy in place by December 2013.
- 4 In producing a draft policy, the Council must have regard to:
 - (a) the objectives and policies of its district plan;
 - (b) the number of licences of each kind held for premises in its district, and the location and opening hours of each of the premises;
 - (c) any areas in which bylaws prohibiting alcohol in public places are in force;
 - (d) the demography of the district's residents;
 - (e) the demography of people who visit the district as tourists or holidaymakers;
 - (f) the overall health indicators of the district's residents; and
 - (g) the nature and severity of the alcohol-related problems arising in the district.
- 5 Initial consultation was undertaken with the Police and Medical Officer of Health in June 2013 as required under s.78 of the Act, to provide local information held respectively regarding the above criteria.
- 6 Reports were received from the Medical Officer of Health and the Police in July 2013 and September 2013 respectively. Further information regarding details contained in the Police report was also formally requested from the Police in December 2013.
- 7 In October 2013, Council undertook informal community consultation, on a wide range of alcohol related questions, in consideration of the need for an LAP.
- 8 The Chief Executive's performance plan required a review of the options regarding an LAP.
- 9 Council has also consulted with licensees through a series of targeted meetings to discuss alcohol harm in our community and licensees' views regarding the need for an LAP.

Comment

- 10 The Sale and Supply of Alcohol Act 2012, provides the ability for the Council to develop an LAP; however, a policy is not mandatory.
- 11 To date, there are approximately 20 Territorial Authorities (“TA”) that have a draft LAP, with a further 25 that have a notified provisional LAP (“PLAP”). Most notified LAPs have been appealed, and the Alcohol Regulatory Licensing Authority (“ARLA”) has heard three appeal hearings to date.

- 12 Approximately 17 TAs do not have an LAP or believe no LAP is needed or are awaiting the outcomes of appealed LAPs.
- 13 The three main cases heard by ARLA to date are Tasman District Council, Wellington City Council and Thames-Coromandel District Council. The results from these cases have provided guidance on the approach to taken for TAs when considering an LAP. These are:
- Appeals are to be heard on a de novo basis;
 - ARLA will assess the reasonableness of an element of an PLAP under appeal from the perspective of an informed, objective bystander;
 - Unreasonableness must always be checked against the object of the Act;
 - The appellant carries the burden of proof in showing that an element of an PLAP is unreasonable in light of the object of the Act, on the balance of probabilities;
 - Guidance on what is likely to be considered as unreasonable;
 - A TA is entitled to adopt a precautionary approach in a PLAP providing there is an evidential basis to support it.

Discussion

Pre-consultation

- 14 The Police and Medical Officer of Health's reports identify alcohol related harm issues in our community, and provide a national organisational recommendation to support a LAP with maximum closing times of 2am, rather than the current and national maximum trading hours of 4am.
- 15 The results from the Council's online pre-consultation in October 2013 provided almost 1000 responses, with a representational response from residents, holiday home-owners, international and domestic visitors.
- 16 The majority of these responses (57%) did not agree that alcohol/drinking was a major problem in our community, with 65% agreeing or strongly agreeing that the current legislation is strong enough to regulation alcohol licensing.
- 17 The results from this survey generally do not support the need for an LAP, or that alcohol is an issue in our community, but do acknowledge overwhelmingly that alcohol contributes to harm, e.g. physical, domestic or sexual violence, either in part or as a main factor.
- 18 However, discussions with community groups and interagency professionals identify alcohol as the single most contributory factor to harm in our community, given the number of on and off licensed premises, i.e. density, the hours of operation, and the level of enforcement undertaken.

Community Balance

- 19 The Council is challenged to represent the wants and needs of the community, while also balancing regulatory proportionality with business development to encourage a strong economy.
- 20 The growth of our community and the increasing number of licensed premises indicate a thriving industry with an arguable justification for this increase based on demand. However, this cannot continue unchecked if it is shown to be to the detriment of our community, especially from those who visit Queenstown Lakes District for a short time, and do not appear to value our home and the values we are trying to protect.
- 21 Developing a LAP could contribute to improving the quality and safety of Queenstown's CBD, which is one of the Council's priority focus areas.

Working Party

- 22 The guidance from appeals to ARLA provides significant insight into the consideration the Council must give when developing a LAP. To conclude the work undertaken to date, it is recommended that a working party is established, which should include three elected members, agency representation, licensees, policy planners and a Council solicitor. The purpose of the working party would be to determine if a LAP is needed in 2015/2016 or if the development should be further delayed, while further appeals to PLAPs are heard and the Act is utilised through the District Licensing Committee and enforced by Police and Alcohol Licensing Inspectors.

Options

- 23 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002:
- 24 The first step is to identify all "reasonably practicable" options. If an option is not reasonably practicable, then it will not require consultation. One option that should always be considered is the option of doing nothing – the status quo.
- 25 Option 1 Status quo – No LAP

26 Advantages: No risk of an appeal or associated legal costs, one way door restrictions may be set through licence conditions, encourages business competition.

- 27 Without a LAP there are no additional costs to the Council regarding development costs and staff resourcing, while retaining the ability to address some licensing aspects through discretionary conditions via the District Licensing Committee ("DLC"). This option arguably also encourages business competition. The Council has previously determined the need for an LAP, but the decision to implement a LAP now or at a later stage needs to be considered.

- 28 Disadvantages: DLC decisions may not be consistent with this Council's objectives; there would be less community consideration; discretionary conditions cannot be added to a licence; potential reputational damage to the district from media reporting on alcohol related harm may have a negative impact on the local economy.
- 29 Where no LAP exists, the DLC retains its ability to grant licences, which may not follow the Council's over-arching objectives regarding alcohol in the community. It also partially reduces the community consideration of 'enough is enough' where more alcohol licences are granted under the Act.
- 30 Any discretionary conditions identified cannot be added to all licences (as a de facto mandatory condition) to deal with licensing matters in place of a LAP.
- 31 Alcohol related harm issues will continue in our community as the predominant issues that have already been identified by the Police, Health Authorities and welfare organisations. This could potentially damage our reputation as a tourist destination if the negative consequences of alcohol related disorder and social issues continue to increase.
- 32 Option 2 Develop a LAP immediately
- 33 Advantages: Increased control and consistency of licensing e.g. hours, and density of licensed premises, increased community consideration, reduction of alcohol related harm, increased compliance with the object of the Act, reduced risk of reputational damage.
- 34 Where a LAP exists, this could provide clarity regarding the number of licensed premises in our district, which may prompt operators to raise standards to protect a valuable asset. It provides an additional degree of control above the District Plan, and provides a further opportunity for the community to consider alcohol related matters.
- 35 An LAP provides increased clarity on the specific rules for our community, to achieve greater self compliance in accordance with the Council's Enforcement Strategy, which may assist in reducing any potential reputational risk as a result of negative alcohol related issues.
- 36 Disadvantages: Impact on business opportunity; potential appeals and associated legal costs,
- 37 This may impact on some business opportunities, but the positive associations would outweigh this e.g. reduced alcohol related harm, enforcement and health care costs.
- 38 The development of a LAP on a generic basis without local details and reasoning is likely to be appealed, which has associated costs. However, focused consideration of the need and justification of an LAP for our specific community will mitigate the likelihood and success of any appeal.
- 39 Option 3 Undertake further investigation

- 40 Advantages: Establishes a greater base of local information to demonstrate the need for an LAP, or a case for it to be reconsidered in a specified period; increased consultation with the community to inform decision making; more case law will be available from appealed PLAPs.
- 41 ARLA decisions have provided guidance to TAs nationally to assist in the development of a LAP. These decisions clarify the need for local justification of a LAP that fulfils the objects of the Act. Further consultation to demonstrate the need to develop an LAP in 2015/2016 will ensure the Council makes an informed decision for our community.
- 42 If the Council nominates three Councillors to participate in a working party, this will send a clear signal of intent. It will allow the Council to invite representatives from external stakeholders to take part and provide a basis for further consultation and the collation of information.
- 43 Disadvantages: More time without an LAP.
- 44 Undertaking further investigation may be considered by some as a disadvantage as there remains no LAP, which could lead to more licences being granted in the interim.
- 45 This report recommends Option 3 for addressing the matter.

Significance and Engagement

- 46 This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy because the high level of community interest regarding the alcohol in our community, the impact of a LAP (or lack of one) on the culture, businesses and people in district, the potential inconsistency of not having a LAP with the enforcement strategy, which identifies alcohol as a priority focus area to reduce alcohol related harm and to protect the image of Queenstown Lakes District.
- 47 Further consultation is necessary to establish additional local information regarding alcohol related harm and how the Council can reduce this and meet the object of the Act. Further consultation with the Police and Medical Officer of Health is needed, as well as the liquor and hospitality industry and other stakeholders e.g. taxi companies and musicians (who work in licensed premises) to enable a research/issues report to be developed with a recommendation to the Council for the need for a LAP (or not currently) and what a LAP for our Community would look like.

Risk

- 48 This matter related to the operational risk OR004 – serious risk to members of the community, as documented in the Council's risk register. The risk is classed as moderate. This matter relates to this risk because alcohol is a primary area of focus in the Council's Enforcement Strategy.
- 49 The recommended option considered above mitigates the risk by 'treating the risk – putting measures in place which directly impact the risk.'

50 The recommended option will enable the Council to implement a LAP (when the Council deems necessary) which will directly assist in reducing alcohol related harm, e.g. through reduced density of licensed premises or licensing conditions.

Financial Implications

51 The level of financial implication is unknown, as there is further scoping needed, which may have research cost implications.

52 The current investigation costs can be met out of existing budgets. If additional costs are necessary that cannot be met from existing budgets, a further report to the Council will be provided.

Council Policies, Strategies and Bylaws

53 The following Council policies, strategies and bylaws were considered:

- Enforcement Strategy
- Curbing Alcohol Related Violence Strategy (Project CARV)
- Alcohol Ban Bylaw 2014

54 The recommended option is consistent with the principles set out in the named policy/policies.

55 This matter is included in the 10-Year Plan/Annual Plan

- Volume 1 Overview and Activities – Regulatory Functions and Services

Local Government Act 2002 Purpose Provisions

56 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by determining the details within an LAP or that Council is not undertaking to have an LAP for a specified period, until later reviewed; and
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from Council.
- If additional resourcing is needed through, a further report will be provided to Council with options to address the issue.

Consultation: Community Views and Preferences

57 The persons who are affected by or interested in this matter are the whole community, including residents/ratepayers, community groups, licensees, Police

and the Medical Officer of Health, in addition to tourists of the Queenstown Lakes District.

- 58 The Council has undertaken initial consultation with the Police and Medical Officer of Health as the Act requires. The Council also undertook an online survey to determine the wider community views regarding alcohol in our community and the need for an LAP.
- 59 These results highlighted the strong, mixed views regarding alcohol in our community, with a general view that an LAP is not necessary.
- 60 Workshops with focus groups of licensees e.g. restaurant style licences, Hotels, taverns etc, have also been undertaken to obtain and understand licensees' views regarding alcohol related harm and their thoughts regarding a LAP.
- 61 The overarching opinion from Licensees acknowledged alcohol related harm in our community, but did not feel that a LAP was needed currently, and that the Council should wait to see the effects the Act has when fully utilised and implemented from the District Licensing Committee, in addition to Council and Police enforcement.
- 62 Further 'local' information is needed to enable the Council to make an informed decision to support the need for a LAP in 2015/2016 or at a specified point in time, and where a LAP is necessary now, what details are needed to support this.
- 63 It is recommended that a working party is established, which should include three elected members, agency representation, licensees, policy planners and a Council solicitor to determine if a LAP is needed in 2015/2016 or if the development should be further delayed, while further appeals to PLAPs are heard and the Act is utilised through the District Licensing Committee and enforced by Police and Alcohol Licensing Inspectors.