
ORDINARY MEETING

OF

COMMUNITY, SPORT AND RECREATION COMMITTEE

AGENDA

Time: 9.15am
Date: Thursday, 3 March 2016
Venue: Committee Room 1
Ground Floor, Council Offices
101 Wakefield Street
Wellington

MEMBERSHIP

Mayor Wade-Brown
Councillor Ahipene-Mercer
Councillor Coughlan
Councillor Eagle (Chair)
Councillor Foster
Councillor Free
Councillor Lee
Councillor Lester
Councillor Marsh
Councillor Pannett
Councillor Peck
Councillor Ritchie
Councillor Sparrow
Councillor Woolf
Councillor Young

Have your say!

You can make a short presentation to the Councillors at this meeting. Please let us know by noon the working day before the meeting. You can do this either by phoning 803-8334, emailing public.participation@wcc.govt.nz or writing to Democratic Services, Wellington City Council, PO Box 2199, Wellington, giving your name, phone number and the issue you would like to talk about.

AREA OF FOCUS

The focus of the Community, Sport and Recreation Committee is to build strong, safe, healthy communities for a better quality of life. It will be responsible for social infrastructure (including social housing), social cohesion, encourage healthy lifestyles, support local community events, protect public safety, and provide a wide range of recreation and sporting facilities for residents and visitors to use and enjoy.

Quorum: 8 members

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1 Meeting Conduct

1.1 Apologies

The Chairperson invites notice from members of apologies, including apologies for lateness and early departure from the meeting, where leave of absence has not previously been granted.

1.2 Conflict of Interest Declarations

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a member and any private or other external interest they might have.

1.3 Confirmation of Minutes

The minutes of the meeting held on 3 February 2016 will be put to the Community, Sport and Recreation Committee for confirmation.

1.4 Public Participation

A maximum of 60 minutes is set aside for public participation at the commencement of any meeting of the Council or committee that is open to the public. Under Standing Order 3.23.3 a written, oral or electronic application to address the meeting setting forth the subject, is required to be lodged with the Chief Executive by 12.00 noon of the working day prior to the meeting concerned, and subsequently approved by the Chairperson.

1.5 Items not on the Agenda

The Chairperson will give notice of items not on the agenda as follows:

Matters Requiring Urgent Attention as Determined by Resolution of the Community, Sport and Recreation Committee.

1. The reason why the item is not on the agenda; and
2. The reason why discussion of the item cannot be delayed until a subsequent meeting.

Minor Matters relating to the General Business of the Community, Sport and Recreation Committee.

No resolution, decision, or recommendation may be made in respect of the item except to refer it to a subsequent meeting of the Community, Sport and Recreation Committee for further discussion.

2. General Business

WAY FORWARD FOR WELLINGTON LOCAL ALCOHOL POLICY

Purpose

1. The purpose of this paper is to seek the Committee's resolution on the way forward for the Council's Local Alcohol Policy (LAP).

Summary

2. The Wellington City Council's provisional local alcohol policy (PLAP) was adopted in October 2013 and notified in January 2014. It was appealed by eight parties. The Alcohol Regulatory and Licensing Authority (ARLA) heard the case in late 2014 and upheld several of the appeals in early 2015.
3. The items that ARLA asked the Council to reconsider are:
 - Maximum trading hours for on-licences in the central city – PLAP stated 7am-5am the following day for late-night traders, ARLA stated the Council needs to prove why the default hours (8am-4am the following day) are not sufficient.
 - The conditions the policy included were determined by a risk assessment tool (RAT), which ARLA held could not be part of the PLAP. This meant that conditions for on-licence late night trading, density and proximity, discretionary conditions for off-licences in the central area and southern zone and automatic triggers for hearings of the District Licencing Committee (DLC) were held to be outside the scope of a LAP.
4. The Sale and Supply of Alcohol Act 2012 (Act) requires the Council to either appeal ARLA's decision on the LAP, resubmit the LAP to ARLA (with the elements we have been asked to reconsider deleted or amended), or abandon the LAP.¹
5. The Community, Sport and Recreation Committee resolved in March 2015 not to appeal ARLA's decision.
6. The Council is asked to decide if it now wishes to re-engage with an alcohol policy for Wellington, or to remain operating under the parameters set in the Sale and Supply of Alcohol Act 2012 (the Act).
7. This paper presents the Committee with three options for the way forward with the LAP:
 - a. Re-consider each of the elements in respect of which appeals were upheld by ARLA and resubmit the PLAP once those elements have been amended or deleted.
 - b. Not engage further with the PLAP at this time, and remain under the current default hours and other provisions listed in the Act.
 - c. Begin work on a new LAP.
8. The Council needs to consider if it finds the current management of alcohol in Wellington under the Act's default provisions appropriate, or if there is a need for a Wellington-specific policy to set different parameters regarding alcohol. This paper

¹ Section 84(1) of the Act.

does not explore the potential content of a Wellington LAP but focusses on whether to resubmit the LAP or not. Discussions with key stakeholders have found that views regarding alcohol in Wellington City have not changed dramatically since the work carried out for the PLAP. At this time, there is limited new evidence regarding alcohol related harm in Wellington and lessons are still being learned from ARLA appeals on other LAPs.

Recommendations

That the Community, Sport and Recreation Committee:

1. Note the options for moving forward with the LAP.
2. Agree that the Council should not resubmit the LAP, and should instead continue to monitor alcohol-related data in Wellington, work with key stakeholders, and consider future ARLA decisions on other PLAP appeals prior to determining if the Council requires a local alcohol policy.

Background

9. The Sale and Supply of Alcohol Act 2012 (the Act) came into effect on 18 December 2013. S75 of the Act states that any territorial authority may elect to have a local alcohol policy but it is not mandatory. The Council was one of the first in the country to develop a LAP.
10. If a Council chooses to have a LAP, it may contain policy on a limited number of matters² relating to the sale, supply or consumption of alcohol within its district. It can be appealed only on the grounds that an element of the provisional policy is unreasonable in light of the object of the Act.³
11. The Wellington City Council's provisional local alcohol policy (PLAP) was notified and appealed by eight parties. Appeals were lodged by the New Zealand Police, Medical Officer of Health, Capital and Coast District Health Board, Wellington Inner City Residents and Business Association Incorporated, Food Stuffs North Island Limited, Progressive Enterprises Limited, Super Liquor Holding Limited, and B & M Entertainment Limited. Hospitality New Zealand Incorporated, The Mill Retail Holdings Limited, and Independent Liquor (NZ) Limited also appeared at the hearing as interested parties.
12. ARLA heard the case during October and November 2014 and handed down their decision in January 2015. It upheld several of the appeals, finding the elements that were challenged to be outside the scope of what it determined the legislation stipulated could be contained in a LAP, and asked that the Council reconsider some of the elements. These included:

Appeal issue	What the WCC PLAP included	What ARLA decided
On-license trading hours in the central city	7am-5am the following day (for certain traders)	Appeal upheld – Council asked to look more closely at impact of default hours

² Set out in s77 of the Act.

³ The object of this Act is that the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and the harm caused by the excessive or inappropriate consumption of alcohol should be minimised. ARLA has defined "minimised" to mean "reduced to the smallest amount, extent or degree."

Conditions on late trading/ risk assessment tool (RAT)	PLAP included RAT to determine which venues were eligible for 5am closing	Appeal upheld – RAT is outside the scope of a LAP. LAPs should not attempt to guide the DLC.
Density and proximity	Parameters in the RAT triggering public hearings of DLC	Appeal upheld – RAT outside of the scope of LAP. LAPs should not attempt to guide the DLC.

13. The main implication of ARLA’s decision was that it determined the scope of a LAP was much narrower than how the Council interpreted the legislation. A LAP can only be concerned with setting broad parameters, like maximum trading hours, and not concern itself with providing guidance on how a DLC exercises its licensing powers.

Discussion

14. It has been three years since the Act received ascent (December 2012), just over two years since the PLAP was notified (January 2013), and a year since ARLA’s decision. This paper seeks to examine differences from pre- and post-legislative changes that could influence the Council’s decision for a LAP. Ultimately the Council is deciding if the current management of alcohol in Wellington is appropriate under the legislation, or if there is a need for a local policy to set local parameters.

Pros and cons for a Wellington LAP

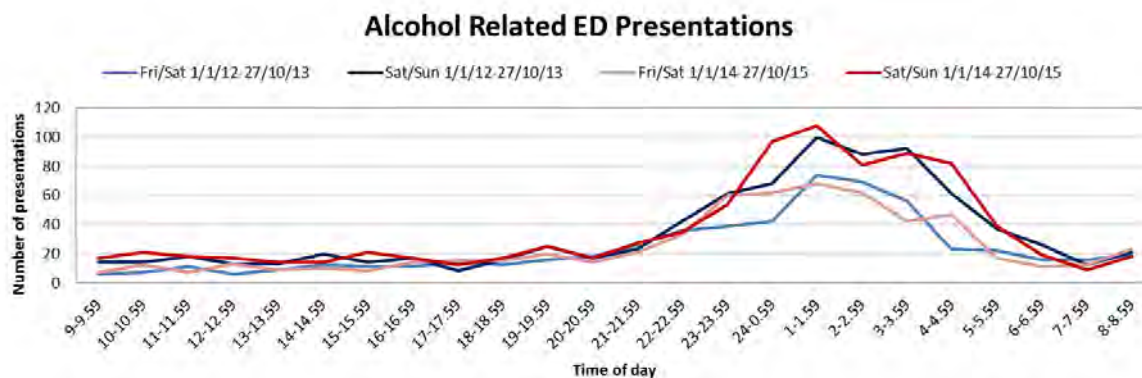
15. A key benefit of a LAP is the ability to make locally relevant policy regarding alcohol licencing. A LAP is an opportunity for the Council to consider all of the varying opinions and concerns of its key stakeholders, including the community, public agencies and industry, and arrive at the best outcome for the city. The Council went through this process, and it was noted in ARLA’s decision: “There is no doubt that the research and consultative process undertaken by the WCC was comprehensive and appropriate. The consultation and development of the PLAP took approximately 12 months and throughout WCC was concerned that it should be a local policy for the local people having taken into account local concerns.”
16. That said, despite the PLAP being the result of a comprehensive and thoughtful consultation process, it was strongly appealed and the risk of appeal on a new or resubmitted LAP is likely to remain high. Other Councils’ have also faced numerous appeals. The main element councils seek to adjust in their LAPs, and therefore the main issue at LAP appeal hearings, is with regard to opening hours (usually amounting to changes of an hour or two). Therefore a major deterrent of going through the LAP process again is the risk of appeals and the associated costs (the legal cost alone for the Wellington PLAP appeal was \$105,000).
17. Officers have met with the Medical Officer of Health, emergency department staff, and the Police. Those parties have stated their commitment to reducing alcohol related harm and their support for a blanket reduction of opening hours, particularly for off-licences. It is unclear if these agencies, due to their statutory responsibility to reduce alcohol-related harm, will place further scrutiny on whatever maximum trading hours are established in a PLAP.
18. Currently, both the Police and Medical Officer of Health spend a significant amount of time and resource preparing and presenting reports for the DLC to consider when a licensee is applying for a licence with hours that they oppose.

19. Officers have also met with Hospitality New Zealand to discuss the LAP. Hospitality New Zealand is supportive of continued information gathering and analysis to inform policy settings.
20. Other key stakeholders to the PLAP (Inner City Residents Association, Foodstuffs and Progressive) were also informed of the drafting of this paper.

New information/changes since the ARLA hearing

21. ARLA highlighted the importance of generating and analysing locally specific data to determine maximum trading hours that deviate from the default national trading hours in the Act. Officers have been in contact with appellants to see whether they wish to provide new data that could inform the Council’s decision on whether to pursue a LAP. The data was largely supplied from health professionals.
22. Emergency Department (ED) data received states that alcohol-related presentations increased 7.3% during the period 1 January 2014-27 October 2015, as compared to the same timeframe for 2012-13.
23. Ministry of Health requirements have recently been put in place (July 2015) that require EDs to identify all patients who have had alcohol involvement, not just those that are injured. ED staff record a presentation as ‘alcohol involved’ if the patient is intoxicated at the time of the incident, and/or has consumed any amount of alcohol within 6 hours of the incident or presentation.
24. Wellington Hospital ED staff state that in their experience, in the vast majority of cases when the patient presents to ED s/he was actively intoxicated or still consuming alcohol at the time. The 6 hour criterion is mainly used for screening purposes and if the patient cannot remember the exact time of the incident.
25. Police made improvements in October 2015 to the standards with respect to severely intoxicated people. That change saw Police automatically prompted to take a person in custody to hospital if they are considered to be partially responsive or unresponsive. Police stated that they did not anticipate this creating a significant change in practice.
26. ED presentations peak between 1-2am on Friday and Saturday nights (Figure 1). The trend in presentations appears to be consistent across the time periods when comparing the same twenty-two month time period for Friday and Saturday nights, pre- and post- the changes from the Act coming into force.

Figure 1

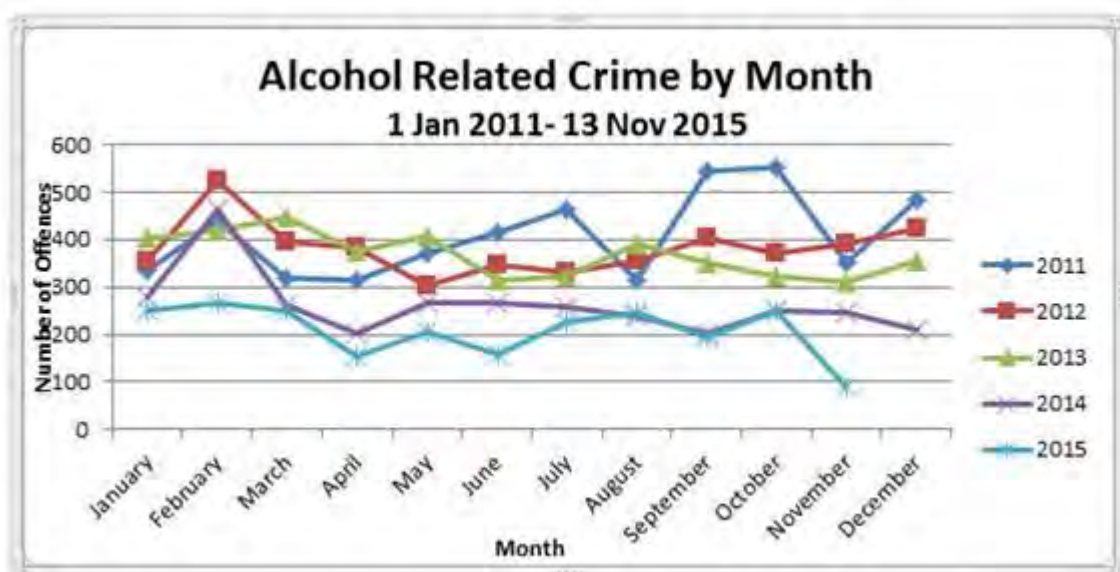


27. Officers have met with the Medical Officer of Health who is working to increase the availability of alcohol-related data in the region. The Medical Officer of Health spends a significant amount of time preparing for DLC hearings and is supportive of a LAP that

reduces opening hours (particularly for off-licences). He is currently working on analysis of ED data that focusses on a number of areas, including high-risk age groups and regions.

28. Police provided officers with a graph (Figure 2) that shows alcohol-related crime by month over the past five years. It shows that, with the exception of February 2014, alcohol-related crime in Wellington has decreased since changes to the Act came into force.

Figure 2⁴



Options

29. ARLA's decision on Wellington's PLAP suggested that a LAP should consist of on- and off-licence opening hours as well as density and proximity provisions.

Option 1: Resubmit the LAP with the upheld items adjusted/deleted

30. If the Council wishes to continue with the current PLAP, it must either delete or amend the sections that ARLA found were to be unreasonable in the light of the object of the Act. That would mean reconsidering how the density and proximity parameters are managed, as well as reconsidering the on-licence hours, the discretionary conditions for off-licences in the central area and southern zone, and the automatic triggers for hearings of the DLC.
31. The process for resubmitting the PLAP is set out in the Act. If a territorial authority has reconsidered the element and resolved to amend or replace it, then it is resubmitted to ARLA for consideration. The Act requires ARLA to deal with the resubmitted element as if it were an appeal, and any party who made a submission on the draft LAP may appear and be heard.

4 An Official Information Act request was lodged with the Police however the OIA request required clarification. Another request was submitted that specifically referenced and requested the alcohol-related harm data that the Police referenced in their evidence during the ARLA hearing. That information has yet to be received.

32. If all parties in the original appeal are in agreement about the resubmitted element, ARLA is satisfied that the Council has informed everyone who made a submission on the original element in the draft LAP, and ARLA is satisfied the resubmitted item is not unreasonable in light of the object of the Act, then ARLA may deal with the resubmitted item in public or private.
33. In all other cases instances there will need to be another public hearing.

Option 2: Do not resubmit the PLAP and remain with the default hours in the Act

34. LAPs are not compulsory. The DLC has the ability to operate under the default parameters in the Act. This option would mean that there are no locally specific rules in place. This has been the arrangement for Wellington since 18 December 2013 when the Act came into effect.
35. The parameters in the Act are currently 8am-4am for on-licences, and 7am-11pm for off-licences. The DLC considers and determines all applications for new and renewed licences and can set licensee's hours within those timeframes in line with relevant case law and on the basis of the specific facts of each application. The DLC take a principled approach to applying the law in each case.
36. There is no further consultation (or potential appeals) required to remain under the default parameters in the Act.

Option 3: Do not resubmit the PLAP and draft a new LAP

37. The Council may decide to abandon the PLAP and start over. This would require re-doing the entire process, including using the special consultative procedure.
38. The amount of work and consultation that went in to the current PLAP was thorough, and highlighted differences of opinions between stakeholders – ie there is no simple solution. Going back to the drawing board with the PLAP would be a comprehensive exercise for stakeholders who were committed and highly active throughout the original PLAP. In the absence of any compelling new information, the success of any LAP for the Council relies on these key stakeholders reaching a consensus on the content of a LAP.

Upcoming information

39. During any re-engagement with the LAP, caution needs to be given to ensure that the stakeholders are still feeling valued and listened to, that ratepayer money is being spent effectively and efficiently, and that the benefits of having a LAP will outweigh the costs.
40. Although this paper seeks Council direction on its interest for a LAP, it does not propose what the content of that may be. However, it is important to note the Wellington-specific information currently being collected, as it may provide useful information in the future.
41. ED staff have noted that they will be publishing this year about their alcohol screening data.
42. The Medical Officer of Health is working on an analysis which attempts to quantify the harm caused by alcohol in the city. This analysis was still being worked through at the time of the drafting of this paper, though officers and the Medical Officer of Health are in regular communication.

43. The Health Promotion Agency is publishing a report on alcohol related harms in a specifically Wellington context sometime in the first half of 2016.
44. Auckland Council's PLAP was appealed by nine parties, including many of the same or similar parties that appealed the PLAP in Wellington. The Auckland PLAP appeal decisions are of particular interest to Wellington not only given its metropolitan status, but the Auckland PLAP includes a Local Impacts Report, which shares similarities with the Risk Assessment conditions in Wellington's PLAP. The Auckland appeals and ARLA's decision will provide useful information in further determining the scope of a LAP.
45. The Ministry of Justice have advised that there are currently no PLAP appeals set, but this is likely to change in the (relatively) near future.

Alcohol Management Strategy

46. Wellington has an Alcohol Management Strategy (AMS), with a number of initiatives and tools to manage alcohol in the city. The LAP is only one tool for alcohol management in the city, and as determined by the ARLA appeal, a tool more limited tool than the Council originally anticipated.
47. The AMS covers a number of Council work programmes. This section highlights a few.

Alcohol control areas/Liquor bans

48. The Community, Sport and Recreation Committee agreed in late 2015 to the review of the Wellington City Alcohol Ban Bylaw to begin in mid-2016. A number of communities have approached the Council with regard to wanting a liquor ban in their suburb. The review of the bylaw will look at existing and new alcohol ban areas.
49. The review will require the special consultative procedure, and has already received interest from a number of communities.

Off-licence accord

50. This initiative saw stakeholders from the major off-licences, Police and health agencies around the table to discuss a potential voluntary reduction of hours in Wellington City so that research in consumption and purchasing patterns could be studied.
51. The accord did not go ahead as originally planned, however after attending several of the accord steering group meetings, HPA conducted its own research that looked at alcohol-related harm related to off-licence purchasing. That report should be out later this year and will provide Wellington-specific information.

Street cleaning

52. Improvements to street cleaning and rubbish collection were put in place when the hours changed as a result of the Act coming into force. Cleaning begins at 5am, and contractors stated that the decrease in foot traffic around this time makes for more efficient cleaning. Contractors also noted that given the earlier start time for cleaning, there was less risk of early morning people coming across any potential mess left from the night before.

Other monitoring

53. In addition to the data mentioned explicitly in this report, the Council continues to monitor alcohol-related complaints through:

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- its contact centre
 - work with public agencies through the Trauma Intelligence Group
 - ambassadorship and monitoring through the Local Host programme
 - increased smart technology with the NEC and CCTV monitoring.

Recommendation

54. Officers recommend that the Council should not resubmit the PLAP, and should instead continue to monitor alcohol-related data in Wellington (in line with ARLA's direction that LAP evidence should be location-specific), work with key stakeholders, and consider decisions on other PLAP appeals soon to be heard by ARLA, prior to determining if the Council wishes to re-engage with/requires a LAP.

Attachments

Nil

Author	Macaela Flanagan, Snr Srvc Dev Proj & Plan Offcr
Authoriser	Greg Orchard, Chief Operating Officer

SUPPORTING INFORMATION

Consultation and Engagement

Officers have met with the Medical Officer of Health, Police and Hospitality New Zealand during the drafting of this paper. Officers have corresponded with Food Stuffs, Progressive, Wellington Emergency Department, and the Inner City Residents Association.

Treaty of Waitangi considerations

There are no Treaty of Waitangi considerations regarding this paper, however considerations will need to occur should Committee decide to go forward with a LAP.

Financial implications

Financial considerations were included regarding the legal fees that the Council had during the last appeal process. Should the Committee wish to go forward with resubmitting or redrafting a LAP, there is a risk of legal action and therefore legal fees.

Policy and legislative implications

LAPs are allowed under the Sale and Supply of Alcohol Act 2012. There are a number of requirements territorial authorities must consider when creating a LAP. This paper focuses on the process to either abandon, resubmit, or redraft a LAP. There will be varying legislative requirements to follow through with dependent on the Committee's resolution.

Risks / legal

If the Council determines it wants to go forward with a LAP there will be legal requirements to consider.

Climate Change impact and considerations

There are no Climate Change impacts with regard to this paper.

Communications Plan

Key messaging will need to be drafted regarding the Council's resolution.

