
Council

OPEN MINUTES

Minutes of a meeting of the Council held in Council Chamber, Municipal Building, Garden Place, Hamilton on Thursday 15 March 2018 at 9.45am.

PRESENT

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| Chairperson | Mayor A King |
| Deputy Chairperson | Deputy Mayor M Gallagher |
| Members | Cr M Bunting |
| | Cr S Henry |
| | Cr D Macpherson |
| | Cr G Mallett |
| | Cr A O’Leary |
| | Cr R Pascoe |
| | Cr P Southgate |
| | Cr G Taylor |
| | Cr L Tooman |
| | Cr R Hamilton |

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| In attendance: | Richard Briggs - Chief Executive |
| | David Bryant – General Manager Corporate |
| | Sean Hickey – General Manager Strategy and Communication |
| | Blair Bowcott – Executive Director Special Projects |
| | Kelvin Powell – Acting General Manager City Growth |
| | Helen Paki – Business and Planning Manager |
| | Karen Saunders – Group Business Manager |
| | Luke O’Dwyer – Economic Growth and Planning Unit Manager |
| | Eeva-Liisa Wright – Business Manager |
| | Sarah Ward - Programme Manager |
| | Jen Baird – Unit Manager Communication |
| | Nigel Ward – Team Leader Communication |
| | Jason Howarth – Advisor to the Mayor |
| | Riki Manarangi – Corporate Policy Specialist |

Mark Renner - Legal Advisor Tompkins Wake
Charles Ma and Mark Tollemache - Rotokauri North Development

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| Governance Staff: | Lee-Ann Jordan – Governance Manager |
| | Becca Brooke – Governance Team Leader |
| | Amy Viggers - Committee Advisor |

Reverend Stephen Black carried out a blessing and a bible reading to open the Council Meeting.

The Chief Executive noted the passing of former Hamilton City Council Chief Executive and Freedom of the City Holder Bob Eyeington. He asked that the meeting observe a minutes silence in recognition of the contribution Mr Eyeington had made to Hamilton. Deputy Mayor Gallagher made a brief statement, acknowledging the positive contribution Mr Eyeington had made to the city.

1. Apologies

Resolved: (Cr Macpherson/Deputy Mayor Gallagher)

That the apologies from Cr Casson are accepted.

2. Confirmation of Agenda

Resolved: (Crs Macpherson/Taylor)

That the agenda is confirmed noting the following:

- the debate will be 2 minutes with an extension of 1 minute if required;
- Item 8 (*Chair's Report – 15 March 2018*) is to be taken after item 4 (Public Forum) to accommodate members of public in attendance; and
- the late report item 14 (*Rotokauri North Proposed Special Housing Area Update*) be accepted and taken after Item 8 (*Chair's Report – 15 March 2018*) to accommodate members of public in attendance; this item was late due to ongoing discussions with the developer currently taking place and the need to provide an update and to seek direction from Elected Members.

3. Declarations of Interest

No members of the Council declared a Conflict of Interest.

4. Public Forum

Warrick Michey (Resident) – Spoke to item 8 (*Chair's Report – 15 March 2018*) regarding subsection 5 (*Kirikiroa*). Mr Litching expressed his views that consultation should have occurred with rate payers prior to this matter being brought to the table and that more thought should have been given to Hamilton's farming history.

Jordan Williams and Louis Houlbrooke (Taxpayers Union)- Spoke to item 8 (*Chair's Report – 15 March 2018*) regarding subsection 5 (*Kirikiroa*). They urged council to think about the cost associated with such a proposal which, in their view, was frivolous.

Minute Note: The outcome sought in the petition, 'Propose name change of Hamilton City Council', that the Council not consider changing the name of Hamilton City Council to Kirikiroa City Council, was achieved by Mayor King's withdrawal of the item in question, and as such the petition would not be validated.

Brian Burne (Resident) – He spoke to item 8 (*Chair's Report – 15 March 2018*) regarding subsection 5 (*Kirikiroa*). Mr Burne spoke against a name change.

5. Chair's Report - 15 March 2018

Mayor King spoke to his report. He and staff responded to questions from Elected Members concerning the following:

- Elected Member Briefings structure.
- The deferral of the Te Rapa Sportsdrome Management Contract report due to contract negotiation timings.

- The Verandah Café Lease Report was deferred due to contract negotiation timing and ensuring accuracy of financials.
- The 'balancing the books' financial strategy that Council adopted in December 2017 was to be better explained in the 10 Year Plan consultation document so that there was a greater understanding in the Community of the financial strategy
- The definition of affordable housing in relation to Special Housing Areas would be determined by the Kiwibuild policy which was being developed by Central Government.

Elected Member Briefings:

Resolved: (Crs Mallett/Taylor)

That the Council receives the report.

Deferred Reports:

Resolved: (Crs Mallett/Bunting)

That the Council:

- a) defers the report on the management contract for Te Rapa Sportsdrome to the 24 May 2018 Council meeting; and
- b) defers the report on Verandah Café Lease to the 19 April 2018 Council meeting.

Amenity/Community Infrastructure Development Levies

Resolved: (Crs O'Leary/Macpherson)

That the Council:

- a) supports the Government with the introduction of Amenity/Community Infrastructure Development levies;
- b) complete any consultation required for the Amenity/Community Infrastructure Development levies through the Development Contribution Policy consultation; and
- c) includes a statement in the draft 10-Year Plan consultation document stating Council is supportive of introducing an Amenity/Community Infrastructure Development levies.

Cr Mallett Dissenting.

Financial Strategy:

Resolved: (Crs Hamilton/Mallett)

That the report is received.

Cr O'Leary Dissenting.

Special Housing Areas:

Resolved: (Mayor King/Cr Taylor)

That the report is received.

Kirikiroa:

Mayor King withdrew his recommendation in relation to this matter.

The meeting adjourned 11.30 – 11.50am.

14. Rotokauri North Proposed Special Housing Area Update

The Executive Director Special Projects apologised for the late delivery of the report to the Elected Members. He and the Economic Development and Planning Unit Manager provided a brief update on discussions with the developer (Charles Ma and his consultant Mark Tollemache). The developers presented their plans and vision for the development. They responded to questions from Elected Members concerning the design of the Rotokauri North Proposed Special Housing Area. They advised the development would be community focused and they planned to address affordability through good design. It was confirmed that the recommendation in the report would give no legal commitment to continue with the process but would provide confirmation to the developers' shareholders that the process was continuing.

Resolved: (Mayor King/Cr Mallett)

That the Council:

- a) receives the report;
- b) approves the Chief Executive to work with the applicant of the proposed Rotokauri North Special Housing Area to finalise the evaluation of the expression of interest, including infrastructure funding matters; and
- c) notes, that upon completion of the matters contained in recommendation b), a report will be received at the next appropriate Council meeting.

6. Confirmation of Council Minutes - Open - 8 February 2018

It was noted that in relation to the resolution concerning fuel tax on page 9 of the agenda, the resolution was no longer required to be actioned due to the Governments change of direction.

Resolved: (Mayor King/Deputy Mayor Gallagher)

That the Council confirm the Open Minutes of the Council Meeting held on 8 February 2018 as a true and correct record.

7. Confirmation of Extraordinary Council Minutes - Open - 22 February 2018

Resolved (Deputy Mayor Gallagher/Cr Taylor)

That the Council confirm the Open Minutes of the Extraordinary Council Meeting held on 22 February 2018 as a true and correct record noting that Cr Pascoe was an apology for the briefing.

8. Confirmation of the Elected Member Briefing Notes - 13 February 2018

Resolved: (Crs Bunting/Tooman)

That the Council confirm the Open Minutes of the Council Meeting held on 22 February 2018 as a true and correct record.

9. Recommendation from the Community and Services Committee - Upgrade of Dame Hilda Ross Place/Plaza

Motion: (Deputy Mayor Gallagher/Mayor King)

That the Council approves up to \$50,000 be allocated to complete this project and that this be added to Risks and Opportunities, noting this could be covered by a saving from a capital project.

Amendment: (Crs Mallett/Hamilton)

That the Council approves up to \$25,000 be allocated to complete this project and that this be added to Risks and Opportunities, noting this could be covered by a saving from a capital project.

The Amendment was put.

Those for the Amendment: Councillors Mallett, Macpherson, Taylor and Hamilton.

Those against the Amendment: Mayor King, Deputy Mayor Gallagher, Councillors Pascoe, Tooman, O'Leary, Bunting, Henry and Southgate.

The Amendment was declared lost.

The Motion was then put.

Those for the Motion: Mayor King, Deputy Mayor Gallagher, Councillors Pascoe, Macpherson and Southgate.

Those against the Motion: Councillors Mallett, Tooman, O'Leary, Bunting, Henry, Taylor and Hamilton.

The Motion was declared lost.

10. Recommendation from the Community and Services Committee - Central City Safety Strategy 2018-21

Resolved: (Crs Mallett/Bunting)

That the Council:

- a) approves the Central City Safety Strategy 2018-21; and
- b) requests that staff report back with a twelve-month action list at the 2 August 2018 Council meeting.

11. NZ Food Innovation (Waikato) Ltd Spray Dryer Two

Executive Director Special Projects introduced the report. He and Mark Renner, from Tompkins Wake, responded to questions from Elected Members concerning the structure of the proposed Council Controlled Organisation (CCO) makeup and the allocation of costs.

Resolved: (Crs Macpherson/Pascoe)

That this item of business be adjourned to be discussed at a future Elected Member Briefing and brought back to the 19 April 2018 Council Meeting for decision.

12. Elected Members Code of Conduct

The Governance Manager took the report as read. She responded to questions from Elected Members concerning roles, responsibilities and expected behaviours of Elected Members and clarified the process to make complaints.

Resolved: (Mayor King/Deputy Mayor Gallagher)

That the Council:

- a) adopts the revised Code of Conduct (Attachment 1) in accordance with clause 7, Schedule 7 of the Local Government Act 2002; and
- b) notes that the newly adopted Code of Conduct will replace the current Code of Conduct and take effect immediately.

Cr Macpherson Dissenting.

13. Resolution to Exclude the Public

Resolved: (Mayor King/Deputy Mayor Gallagher)

Section 48, Local Government Official Information and Meetings Act 1987

The following motion is submitted for consideration:

That the public be excluded from the following parts of the proceedings of this meeting, namely consideration of the public excluded agenda.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution follows.

| General subject of each matter to be considered | Reasons for passing this resolution in relation to each matter | Ground(s) under section 48(1) for the passing of this resolution |
|---|---|--|
| C1. Confirmation of Council Minutes - Public Excluded - 8 February 2018 |) Good reason to withhold information exists under Section 7 Local Government | Section 48(1)(a) |
| C2. Provisional Local Alcohol Policy - Options |) Official Information and Meetings Act 1987 | |

This resolution is made in reliance on section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 6 or Section 7 of that Act which would be prejudiced by the holding of the whole or relevant part of the proceedings of the meeting in public, as follows:

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| Item C1. | to enable Council to carry out commercial activities without disadvantage | Section 7 (2) (h) Section 7 (2) (i) |
| Item C2. | to enable Council to carry out negotiations to maintain legal professional privilege to enable Council to carry out negotiations | Section 7 (2) (g) Section 7 (2) (i) |

The meeting went into a Public Excluded session at 2.10pm.

During the Public Excluded session of this meeting, a decision was made to release the resolution and report in relation to item C2 (Provisional Location Alcohol Policy – Options) into the open. The report and decision are attached to these minutes as appendix 1.

The meeting was declared closed at 3.35pm.

Appendix One:

C2. Provisional Local Alcohol Policy – Options

Resolved: (Crs Macpherson/Taylor)

That the Council:

- a) in light of what has occurred with the PLAPs of various other Councils, abandons the current PLAP process and commences development of a new Local Alcohol Policy (**LAP**) that reflects the political will of the current Council (as informed by community views);
- b) actively reflect its current draft policy position in respect of any applications for licences made before the District Licencing Authority (see Attachment 3 – Functions of the DLC and the objection process) which it has a right to participate in; and
- c) approve the decision and report in relation to this matter be released to the public following the meeting.

Crs Pascoe and Mallett Dissenting.

Council Report

Item C2

Committee: Council **Date:** 15 March 2018
Author: Karen Saunders **Authoriser:** Kelvyn Eglinton
Position: Group Business Manager - City Growth **Position:** General Manager City Growth
Report Name: Provisional Local Alcohol Policy - Options

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| Report Status | <i>This report is taken as a publicly excluded item to maintain legal professional privilege; AND to enable Council to carry out negotiations.</i> |
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Purpose

1. To seek a decision from the Council on how to proceed with the Provisional Local Alcohol Policy (PLAP) (see Attachment 1).

Staff Recommendation

2. That the Council:
 - a) determines to maintain the status quo and proceed to a hearing of the appeals before the Alcohol Regulatory and Licensing Authority (ARLA) on 7 May 2018;

Or

- b) in light of what has occurred with the PLAPs of various other Councils, abandons the current PLAP process and commences development of a new Local Alcohol Policy (**LAP**) that reflects the political will of the current Council (as informed by community views);

And

- c) actively reflect its current draft policy position in respect of any applications for licences made before the District Licensing Authority (see Attachment 3 – Functions of the DLC and the objection process) which it has a right to participate in.

Executive Summary

3. A hearing of the three appeals against the PLAP is set down to commence on 7 May 2018 before ARLA.
4. The experiences of other councils that have appeared before ARLA seeking its determination on appeals against their PLAPs indicates that the appeal process under the Act is not designed to swiftly achieve finality of outcome (see Attachment 2 – Appeal process under the Sale and Supply of Alcohol Act 2012).

Item C2

5. Accordingly, the ability to incorporate any further controls in the PLAP in a timely manner as perhaps envisaged by the Council in the meeting of 8 February 2017 is likely to be frustrated.
6. In light of these developments, staff seek a decision from Council on whether it wishes to proceed with the current PLAP or abandon it and start developing a new PLAP which includes any additional controls it seeks to incorporate into the policy.

Background

7. The PLAP was adopted on 26 November 2015 under the previous elected Council. The PLAP is Attachment 1 to this report.
8. The PLAP was publicly notified on 27 January 2016. Following notification, three appeals were filed with ARLA from:
 - a) Progressive Enterprises Limited (**Progressive**);
 - b) Foodstuffs North Island Limited (**Foodstuffs**); and
 - c) Te Whanau Roopu o Aotearoa-Komiti Maaori (**Te Whanau**).
9. The Council resolved on 28 April 2016 to enter into negotiations with the three appellants in an effort to resolve the appeals without the need for a lengthy and costly hearing process before ARLA.
10. Despite Council's best efforts, given the limited parameters for settlement that it set itself, settlement could not be achieved.
11. At the meeting on 8 February 2017, the newly elected Council debated the inclusion of a one-way door policy but as Council does not have jurisdiction under the Sale and Supply of Alcohol Act 2012 (**the Act**) to introduce new elements to the PLAP at this stage of the process, it opted to consider the issue again once the appeals were resolved and a LAP adopted.
12. A hearing before ARLA to determine the PLAP appeals is set down to commence on 7 May 2018. Other council experiences indicate that the hearing of the PLAP appeals in May 2018 may still not mean that Council has a LAP adopted until 2019.
13. A number of other councils around the country have come before ARLA to have their appeals determined. Of particular note is what has occurred with the PLAPs of the Auckland and Christchurch Councils:
 - a) **Auckland Council PLAP:**
 - i. The hearing of the Auckland PLAP appeals took place over four weeks in February/March 2017. Following the issue of ALRA's decision in July 2017, one element of the PLAP was amended and four deleted.
 - ii. The amended PLAP was resubmitted to ARLA in October 2017. Since then, three appeals have been filed with ARLA against the amended PLAP including from Progressive and Foodstuffs. These appeals have yet to be heard. ARLA is currently considering the scope of any hearing against the appeals and has set down a date for mid-April for that issue to be heard.
 - iii. However, the three appellants have also each filed a Judicial Review of ARLA's decision on the PLAP. It is anticipated that progress of the appeals before ARLA will be delayed pending finalisation of the Judicial Reviews. There is no date for the hearing of the Judicial Reviews at present. It is estimated by Auckland Council that it will not be in a position to adopt a policy until at least mid-2019.
 - iv. The cost of the Auckland PLAP process is not known.

v. It is of note that one of the elements under further appeal (and possibly under Review) is the maximum trading hours of off-licenses which was 9am to 9pm in the original PLAP.

b) Christchurch City Council PLAP:

i. Hospitality New Zealand filed a successful Judicial Review in relation to the Christchurch City Council PLAP arguing that the Council should have considered the new District Plan in its decision-making. This review gave rise to a delay in the PLAP appeals before ARLA being progressed.

ii. Following the issue of the Judicial Review decision, the Christchurch City Council resolved to abandon the current PLAP and start a new policy development process.

iii. Christchurch City Council spent over \$1 million dollars on the policy process before it was abandoned.

14. In light of the potential for a protracted appeal process, as has been experienced by other councils that have sought to have appeals determined by ARLA, it is likely that if Council wishes to introduce a one-way door policy, or tighter hours of operation for on-licenses in the CBD, this policy debate may not be able to occur until a LAP is finally in place, which could be at least a year away.
15. Accordingly, staff seek a decision from the Council on whether to proceed with the current PLAP, or to recommence a new PLAP process which includes all of the policies this current Council wishes to see introduced.

Options

16. Staff have assessed that there are two reasonable and viable options for the Council to consider.

Option 1: status quo

17. Option 1 is to maintain the status quo and proceed to a hearing before ARLA for determination of the appeals against the PLAP.

Option 2: abandon the PLAP and start afresh

18. Option 2 is to abandon the current PLAP and immediately start a new policy development process that reflects the political will of the current Council (as informed by community views).

Further options:

19. While not recommended, it also remains open to the Council to:
 - a) Resume negotiations with the appellants with the aim of resolving the appeals through agreement (which are unlikely to be successful given the current stance of all parties);
 - Or
 - b) Abandon the PLAP and have no PLAP. In the absence of a PLAP, the relevant provisions of the Act apply.

Discussion

20. It is clear that even when ARLA issues its decision on appeals against a PLAP, there is no clear end point because of the potential for further appeals to be filed on any resubmitted PLAP and the demonstrated willingness on the part of Progressive and Foodstuffs to initiate a Judicial Review of ARLA's decision on the PLAP.
21. The pathway to adoption of a LAP is even less expeditious than envisaged when it was determined at the Council meeting on 8 February 2017 to revisit the issue of a one-way door policy once the appeals were resolved and following adoption of the LAP.
22. If the Council wishes to explore the inclusion of additional controls in the policy in a timely fashion, the experience of other Councils indicates that the current course (proceeding to hearing) is going to frustrate that objective, with a public conversation about such a proposal unlikely to occur until at least mid-2019 when a LAP might finally be brought into force.
23. If that delay is not palatable to the Council, the most viable option is to abandon the current PLAP in accordance with section 88 of the Act and immediately start a new policy development process that reflects the political views of the current Council.
24. Should Council decide that the community is best served by a fresh policy approach, it is also an opportunity for the Council to source more robust local evidence to support the elements of the new policy, putting Council in a stronger evidential position should it be appealed.
25. Once the LAP is adopted, the Council may participate in the decision-making process with respect to individual applications for licences to the DLC by lodging an objection to the application. Attachment 3 sets out the functions of the DLC and the objection process.
26. The Council may also explore opportunities to partner with other councils and local government bodies (such as LGNZ) to start conversations with central government about the issues experienced with the LAP process and potentially be involved in any lobbying for amendments to the Act.

Financial and Resourcing Implications

27. This is a regular operating activity funded through the 10-Year Plan. The cost of the development of the PLAP to date is estimated at \$202,582. This includes \$102,582 for legal costs and \$101,000 for staff time.

Legal and Policy Considerations

28. Staff confirm that the options presented comply with the Council's legal and policy requirements.

Risk

29. Should the Council approve Option 1 to proceed to hearing, there is a risk that further appeals or Judicial Reviews will be lodged following the decision of ARLA on the PLAP. Should this occur, the Council may not be in a position to adopt a LAP until mid-2019.
30. Legal advice confirms that, given the evidential requirements developed in case law, particularly the need for local evidence to support the elements of the policy and the lack of local data available, the Council's case has some weaknesses. There is a risk that ARLA will determine the appealed elements of the PLAP to be unreasonable.

Significance & Engagement Policy

31. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the matters in this report have a medium level of significance.

Engagement

32. Community views and preferences about the current PLAP are known to the Council through the Special Consultative Procedure (SCP) that was undertaken on the draft LAP.
33. Given the medium level of significance determined, the engagement level is medium. No engagement is required as an extensive engagement process was undertaken through the SCP on the draft LAP. However, if Council starts a new PLAP process, another SCP will need to be undertaken as required by the Act.

Attachments

Attachment 1 - Provisional Local Alcohol Policy

Attachment 2 - Appeal Process Under the Sale and Supply of Alcohol Act 2012

Attachment 3 - Functions of the DLC and the objection process

Functions of the DLC and Objections against a liquor licence application

1. **Functions of the District Licencing Committee (DLC)**
2. The DLC is set up under the Act and the DLC is an independent decision-making body to the Council. The DLC is required to work within the restrictive provisions in the Act.
3. The DLC's functions entail (s187, the Act):
 - a) determining applications for licences, managers' certificates and renewals
 - b) determining temporary authority applications (on/off-licences)
 - c) varying, suspending or cancelling special licences
 - d) referring applications to ARLA
 - e) conducting inquiries and making reports as required by ARLA
 - f) other functions conferred on it by any Act
4. In deciding whether to issue a licence, the DLC must have regard to the following matters (s105, the Act):
 - a) the object of the Act
 - b) the suitability of the applicant
 - c) any relevant provisions in any local alcohol policy that exists and is in force
 - d) the proposed days and hours of sale
 - e) the design and layout of the premises
 - f) the sale of other goods such as non-alcohol and low-alcohol drinks and food
 - g) the provision of other services
 - h) how the 'amenity and good order' of the area would be affected if the licence were or were not granted
 - i) whether the applicant has systems, staff and training to comply with the law
 - j) any matters in reports by the Police, the licensing inspector or the Medical Officer of Health.
5. The DLC have to consider 'amenity and good order' when deciding whether to grant a new licence or renew an existing one.
6. For a new licence the DLC must consider whether granting the application would reduce the amenity and good order of the locality to more than a minor extent (s105(1)(h), the Act).
7. For a renewal the DLC have to consider whether declining to renew the licence would increase the amenity and good order of the locality by more than a minor extent (s131(1)(b), the Act).
8. Amenity and good order is described in the Act (s5) as the extent to which, and ways in which, the locality in which the premises is situated is pleasant and agreeable.
9. In deciding whether amenity and good order would be reduced or increased by more than a minor extent, the decision-makers must take into account (s106, the Act):
 - a) current, and possible future, levels of noise, nuisance and vandalism
 - b) the number of other licensed premises in the area

Functions of the DLC and Objections against a liquor licence application

- c) the compatibility of the proposed use with the current and future use of surrounding properties.
10. In deciding whether amenity and good order would be reduced or increased by more than a minor extent, the decision-makers must take into account (s106, the Act):
 - a) current, and possible future, levels of noise, nuisance and vandalism
 - b) the number of other licensed premises in the area
 - c) the compatibility of the proposed use with the current and future use of surrounding properties.
 11. **Objections against a liquor licence application**
 12. An objection can be made to a licence to sell or supply alcohol to the DLC.
 13. Anyone can object to an application for a new or renewed alcohol licence, as long as they can show that they have a 'greater interest' in the application than the public generally (section 102(1), the Act).
 14. This usually means that they live near the proposed or existing premises to which the licence will apply, or have a direct link with alcohol-related harm in their community.
 15. A person with a greater interest could be:
 - a) someone who lives 'within close proximity' to the proposed or existing premises (PH 826/2013 Janhurst Holdings Limited' and 'Decision No. PH 1189/2009 Liquor World Limited)
 - b) a member of the board of trustees of a marae or youth or education facility that is located nearby
 - c) a person or group who works in the area of alcohol-related harm in the community, such as the Salvation Army or a nurse working in the local hospital emergency department.
 16. Someone who is concerned about the effects of alcohol on the community in general but lives in a different area is unlikely to meet the criteria for 'greater interest'.
 17. The DLC decides whether a person has a 'greater interest' so that the person has what is referred to as 'standing' to make a public objection to an application.

Appeal Process under the Sale and Supply of Alcohol Act 2012

1. The statutory framework concerning appeals to a Provisional Local Alcohol Policy ("PLAP") are set out in sections 81 to 86 of the Sale and Supply of Alcohol Act ("the Act").
2. Appeals are limited to any person(s) or agency that made submissions on the draft LAP appealing against any element of the PLAP. The Police or a Medical Officer of Health also has a right of appeal. Any appeal must be made within 30 days of public notification of the PLAP.
3. If there are no appeals, section 87 of the Act deems that the LAP is adopted 30 days after public notification of the PLAP. Once adopted, the Council must, under section 90 of the Act, give further public notice of the adoption of the LAP and may bring it into force on a day stated by resolution of the Council. However, where the LAP contains elements setting local maximum trading hours or a 'one-way door' restriction these may only be brought into effect 3 months after the date of the public notice.
4. If appeals are received, the process for adopting and bringing into force the LAP will have to be delayed pending the outcome of the appeals.
5. In considering any appeal, under section 83 of the Act, ARLA may either dismiss the appeal or ask the Council concerned to reconsider an element of the PLAP appealed against.
6. As noted by ARLA in its decision on the Wellington City Council PLAP: "This Authority does not have the power to make any recommendations ... all it can do if satisfied that the element appealed against is unreasonable in light of the object of the Act, is to ask the [territorial authority concerned] to reconsider the element appealed against."
7. If, after hearing the appeal, ARLA asks the Council to reconsider an element of a PLAP, the Council must either:
 - (i) Resubmit the PLAP to ARLA with the element deleted; or
 - (ii) Resubmit the PLAP to ARLA with the element replaced with a new or amended element; or
 - (iii) Appeal to the High Court against ARLA's finding that the element is unreasonable in light of the object of the Act; or
 - (iv) Abandon the PLAP.
8. Only Councils may appeal to the High Court. In an appeal to the High Court, every person who appealed to ARLA becomes a respondent. If the High Court overturns ARLA's finding, the element will stand as part of the LAP. If, however, the High Court upholds ARLA's finding, then the Council must either:
 - (i) Resubmit the policy to ARLA with the element deleted; or
 - (ii) Resubmit the policy to ARLA with the element replaced with a new or amended element; or
 - (iii) Abandon the PLAP.

- 2 -

9. If the Council opts to resubmit the policy to ARLA with the element replaced with a new or amended element, ARLA must deal with this as if it were an appeal against every new or amended element that has replaced an earlier element. In other words, the cycle begins again, with any person who made submissions on the Draft LAP able to appeal.
10. Several Councils and appellants have 'settled' appeals by way of a consent order without a hearing.

Item C2

Attachment 2

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|-------------------------|-------------------------------------|
| First adopted: | Notified on 27 January 2016 |
| Revision dates/version: | Final |
| Next review date: | No later than January 2021 |
| Engagement required: | SCP required |
| Document number: | D-1990960 |
| Associated documents: | Sale and Supply of Alcohol Act 2012 |
| Sponsor/Group: | General Manager City Environments |



DRAFT PROVISIONAL LOCAL ALCOHOL POLICY

Purpose and scope

1. The Sale and Supply of Alcohol Act 2012 allows territorial authorities to develop a Local Alcohol Policy (LAP). The purpose of a LAP is to set a clear framework for the District Licensing Committee and Alcohol Regulatory Licensing Authority when making decisions on licence applications in Hamilton City and to provide a guide to those applying for a licence in the city.
2. The objective of this policy is to balance the reasonable needs of residents of Hamilton City regarding the sale, supply and consumption of alcohol, while addressing the statutory requirements of the Sale and Supply of Alcohol Act 2012, including the object of the Act to minimise the harm caused by excessive or inappropriate consumption of alcohol.
3. The policy applies to the issue of new licences and on renewal of existing licences.
 - *An off and/or on-licence that changes ownership but continues to be licenced on the existing premises consistent with the licence type issued under the previous ownership, is not subject to the location provisions of the policy.*
 - *Pursuant to section 133 of the Act, the District Licensing Committee or Alcohol Regulatory and Licensing Authority cannot take into account any inconsistency between this Policy and the renewal of an existing licence; or the consequences of its renewal.*
 - *The provisions in this policy regarding maximum trading hours come into force three months after the day on which public notice is given of the adoption of this policy.*
4. This policy has been developed pursuant to section 75 of the Act, which empowers territorial authorities to develop Local Alcohol Policies for their District. The Act stipulates a number of conditions, requirements and restrictions that may apply to licence applications, not all of which are stated in this Policy. Therefore this Policy should be read in conjunction with the Act.

Definitions

When interpreting this policy use the definitions set out below unless the context requires otherwise.

Alcohol licences - There are 4 kinds of alcohol licences

| | |
|-------------|---|
| Club | Means licensed for the sale and supply of alcohol to customers who are members, invited guests or visitors to the club concerned. |
| Off-licence | Means licensed for sale of alcohol from the premises for consumption somewhere else. Licenced for the sale of alcohol from the premises for delivery elsewhere. |
| On-licence | Means licensed for the sale and supply of alcohol on the premises and can permit alcohol to be consumed on the premises. |
| | Endorsed on-licence – Means an on-licence for a caterer to deliver alcohol from their |

- premises and sell it on any other premises for consumption by people attending a reception, function or other social gathering.
- Special Licence** Off-site special: Means licenced for the sale and supply of alcohol for consumption elsewhere. The licensee is also able to supply alcohol free, as a sample, for consumption on the premise.
- On-site special: Means licenced for the sale and supply of alcohol for consumption there, to people attending an event described on the licence.

Other definitions

- Conveyance** Means an aircraft, coach, ferry, hovercraft, ship, train or other vehicle used to transport people. Includes part of a conveyance.
- District Licensing Committee** Means the Hamilton City District Licensing Committee appointed pursuant to section 186 of the Act.
- Outdoor dining area** Means an area of a premises holding an on-licence or club licence that is outside of the building which includes any part of a public footpath, pavement or other public place. (See section 5(1) of the Act for a full list of exempt persons)
- Premises** Includes a conveyance, part of any premises and, in relation to a licence, means the premises it was issued for.
- Remote seller** Means off-licence premises that conduct 'remote sales', as defined by the Sale and Supply of Alcohol Act 2012.
- Speciality Retailers** Means retail premises where the sale of alcohol is low volume and forms a minor portion of sales, such as, but not limited to, gift basket retailers and specialised delicatessen/ food stores. For clarity, this does not include supermarkets or grocery stores as defined in the Act).
- The Act** Means the Sale and Supply of Alcohol Act 2012.

Policy

ON-LICENCES AND CLUB LICENCES

5. **Maximum trading hours** applicable to on-licences in Hamilton City are as follows:

| Area | Maximum Trading Hours |
|--|--|
| Central City Zone <i>as outlined in the Proposed District Plan (or the resulting Operative District Plan).</i> | Monday to Sunday 7:00am to 3:00am the following day |
| Other | Monday to Sunday 7.00am to 1.00am the following day |

6. The sale and/or consumption of alcohol in any permitted outdoor dining area will not exceed 1am on any day.
7. The gaming floor within The Hamilton Casino (currently at 340 to 348 Victoria Street) is exempted from the above trading hour restrictions pursuant to section 173 of the Gambling Act 2003.
8. Maximum trading hours are subject to section 47 of the Act regarding restrictions for on-licences on the sale and supply of alcohol on Anzac Day morning, Good Friday, Easter Sunday and Christmas Day.

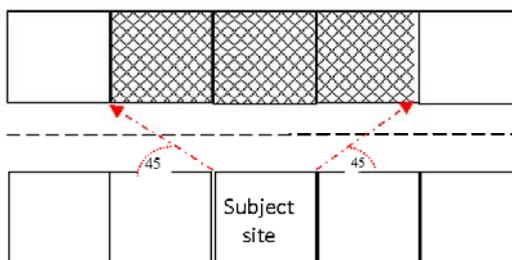
9. Caterers endorsed and conveyance on-licences will be subject to the maximum trading hours for the area in Hamilton that they are operating in at the time of the event.

OFF-LICENCES

10. **Maximum trading hours** applicable to off-licences in Hamilton City are as follows:

| | |
|------------------|------------------|
| 7.00am to 9.00pm | Monday to Sunday |
|------------------|------------------|

11. **From the date this policy comes into force, no further** off-licences shall be issued for any premises unless that premises is located in the Central City Zone, Major Facilities, or Business Zones 1-6 of the Proposed District Plan (or the resulting Operative District Plan).
12. The location provision in clause 11 does not apply to premises for which a remote sale off licence is held (pursuant to section 40 of the Act) and the premises of specialty retailers.
13. From the date this LAP comes into force, no further off-licences shall be issued for a premises that directly borders any school or early childcare facility existing at the time the licence application is made. "Directly borders" includes across any road from such facility as shown in the graphic below.



SPECIAL LICENCES

14. No more than twenty (20) events or series of events of a similar nature will be authorised by special licence(s) to a single licensee or applicant in one 12 month period.
15. Special licences for premises that already hold an on, off or club licence or premises that are not otherwise licensed will be issued on a case by case basis with regard to the nature and location of the event or series of events by the District Licensing Committee.