

14 August 2017

Memorandum

To:	Mayor, Councillors, IMSB Members, Local Board Members
Subject:	Decision from the Alcohol Regulatory and Licensing Authority as to appeals against the Provisional Local Alcohol Policy
From:	Kataraina Maki, General Manager, Community & Social Policy

Purpose

1. To provide an update on the recent decision received from the Alcohol Regulatory and Licensing Authority (Authority) with regards to the appeals against the Provisional Local Alcohol Policy (Alcohol Policy).

Key Messages

- The council was successful in its defence of the Alcohol Policy.
- The Authority has required the council to reconsider five elements of the Alcohol Policy:
 - the maximum trading hours for off-licence premises, specifically the 9am opening restriction
 - restriction for the hours of delivery for remote sellers
 - the requirement for a Local Impacts Report when an off-licence is renewed
 - two discretionary conditions for off-licences to restrict single sales and to require closing in the afternoon if the off-licence is located near education facilities.
- For each of the elements, the council must decide whether to:
 - delete, amend or replace the element or
 - appeal to the High Court the Authority's finding that the element is unreasonable.
- Council can also decide to discontinue the development of the local alcohol policy.
- A decision report is being prepared for the 14 September 2017 Regulatory Committee meeting.
- Information will be provided to Local Boards to enable their views to be considered.
- When the local alcohol policy would come into force is dependent on the chosen course of action.

Background

Successful defence of major alcohol policies and a need to reconsider five elements

1. The Authority released its decision on the appeals against council's Alcohol Policy on 19 July 2017. The council has been successful in defending the majority of its policies and has been asked by the Authority to reconsider five policy elements.
2. A high level summary of policy elements of the Alcohol Policy is contained in Attachment A. The elements highlighted in yellow are those which the council has been asked to reconsider.
3. Council needs to reconsider the elements of the Alcohol Policy (refer table 1) before a local alcohol policy is adopted and comes into force.

Table one: Elements for council decision making and whether to delete, amend, replace or appeal

Element to be reconsidered	Original reason for inclusion	Authority's reasoning for the element being unreasonable
<p><i>Clause 4.3.1 - Off-Licence Maximum Trading Hours</i></p> <p>Maximum trading hours for off-licence premises. This is the proposed 9.00am restriction on opening and the 9.00pm restriction on closing.</p>	<p>Restricting trading hours for off-licences from 9.00am until 9.00pm was to:</p> <ul style="list-style-type: none"> • limit the availability of alcohol • reduce young people's exposure to alcohol in the morning and • address 'pre-loading', 'side-loading', 'post-loading' and violence in the home. 	<p>The 9.00am opening hour restriction was found unreasonable. The Authority stated that there was an absence of strong evidence to support an opening hour restriction.</p> <p>The Authority indicated that it did not consider it was established that the closing hour restriction of 9.00pm was unreasonable in light of the object of the Sale and Supply of Alcohol Act 2012, however as it formed part of the same element as the opening hour restriction, the Authority has directed the council to reconsider the entire element.</p>
<p><i>Clauses 4.3.2 and 4.3.3 - Remote Sellers</i></p> <p>Restrictions for the hours of delivery of alcohol for remote sellers.</p>	<p>To reduce the availability of alcohol, it could not be delivered outside the hours of 6.00am to 9.00pm, Monday to Sunday.</p>	<p>It was found by the Authority that these elements were beyond the legal authority of the Act. If an element is beyond the legal authority of the Act, it will be found unreasonable.</p>
<p><i>Clauses 4.2.2 and 4.2.3 - Renewals of Off-Licences Requiring a Local Impacts Report</i></p> <p>A requirement for the District Licensing Committee and the Authority to have regard to a Local Impacts Report when an off-licence is renewed for certain premises.</p>	<p>The purpose of higher-risk licence renewals in Priority Overlay areas requiring a Local Impacts Report was to provide decision-makers with additional information about matters such as:</p> <ul style="list-style-type: none"> • local demographics • local land uses and • sensitive sites in the area (such as education facilities, treatment facilities and maraes). <p>This information was to assist decision-makers with conditions to include on licence renewals to mitigate impact of the alcohol licence.</p>	<p>These elements were subject to the consent order process. The Authority, after hearing the evidence, was satisfied that there were shortcomings with this element and that the council should reconsider it.</p>
<p><i>Clause 4.5.1(c) – Discretionary Condition for Off-Licences – Single Sales</i></p> <p>Consideration of a discretionary condition for off-licences regarding single sales being included for certain premises.</p>	<p>This condition to be included in certain circumstances, particularly in a Priority Overlay area. It aimed to limit the availability of alcohol in areas with higher risk of alcohol-related harm.</p>	<p>This element was subject to the consent order process. The Authority, after hearing the evidence, was satisfied that there were shortcomings with this element and that the council should reconsider it.</p>
<p><i>Clause 4.5.1(d) – Discretionary Condition for Off-Licences – Afternoon Closing</i></p> <p>Consideration of a discretionary condition for off-licences to be closed in the afternoon if located near education facilities.</p>	<p>This condition to be included in certain circumstances, particularly in a Priority Overlay area. The purpose was to reduce the visibility of alcohol to children and young people.</p>	<p>This element was subject to the consent order process. The Authority, after hearing the evidence, was satisfied that there were shortcomings with this element and that the council should reconsider it.</p>

Next Steps

Appeal extension being sought for decision making by Regulatory Committee in September 2017

2. Staff are currently making an application to the High Court to extend the appeal date from 16 August 2017 to 28 September 2017.
3. Council will need to decide its approach to the elements the Authority has asked the council to reconsider including whether to:
 - delete the unreasonable element from the Alcohol Policy
 - amend or replace the unreasonable element in the Alcohol Policy
 - appeal to the High Court against the Authority's finding that the element is unreasonable.
4. Council may also decide to discontinue the development of a local alcohol policy.
5. A report is being prepared for decision making at the 14 September 2017 Regulatory Committee meeting. Information will be provided to Local Boards to enable their views to be considered during decision making.
6. If council decides to delete amend or replace an element from the Alcohol Policy, it will be need to be considered by the Authority. All persons who have previously provided a submission on an amended element are required to be notified of the council's intent. This could result in additional appeals.

Provisional Local Alcohol Policy



<p>Policy Elements</p>	<p>General policies for Auckland region, with special rules for:</p> <ul style="list-style-type: none"> • “City Centre” – as per Unitary Plan • “Priority Overlay” – areas with highest alcohol-related harm <p>Some special provisions for Neighbourhood Centres and Metropolitan Centres (Unitary Plan zoning)</p>																														
<p>Policy areas</p>	<p>Priority Overlay areas:</p> <table border="0"> <tr> <td>• Avondale</td> <td>• Hunters Corner</td> <td>• Ōtāhuhu</td> <td>• Pukekohe</td> </tr> <tr> <td>• Glen Eden</td> <td>• Māngere</td> <td>• Ōtara</td> <td>• Takanini</td> </tr> <tr> <td>• Glen Innes</td> <td>• Māngere East</td> <td>• Panmure</td> <td>• Weymouth (Clendon)</td> </tr> <tr> <td>• Helensville and Parakai</td> <td>• Manukau</td> <td>• Papakura</td> <td>• Wellsford and Te Hana</td> </tr> <tr> <td>• Henderson</td> <td>• Manurewa</td> <td>• Papatoetoe</td> <td>• Wiri</td> </tr> <tr> <td></td> <td>• Mt Wellington</td> <td>• Point England</td> <td></td> </tr> <tr> <td></td> <td>• Oranga</td> <td></td> <td></td> </tr> </table>			• Avondale	• Hunters Corner	• Ōtāhuhu	• Pukekohe	• Glen Eden	• Māngere	• Ōtara	• Takanini	• Glen Innes	• Māngere East	• Panmure	• Weymouth (Clendon)	• Helensville and Parakai	• Manukau	• Papakura	• Wellsford and Te Hana	• Henderson	• Manurewa	• Papatoetoe	• Wiri		• Mt Wellington	• Point England			• Oranga		
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<p>Location by:</p> <ul style="list-style-type: none"> • broad area • proximity to facilities <p>Density: whether further licences should be issued</p>	<p>Regulate location and density of NEW OFF-LICENCES as follows:</p> <table border="0"> <tr> <td data-bbox="400 819 778 904"> <p>Two-year freeze in City Centre and Priority Overlay</p> </td> <td colspan="2" data-bbox="794 819 1465 1055"> <p>Local Impacts Report</p> <ul style="list-style-type: none"> • Required for all other applications except Very Low Risk under regulations. • Report to be prepared by the Inspectorate • Report covers objective matters: existing licences; sensitive sites; surrounding land uses; levels of alcohol-related harm; applicant’s proposals to minimise alcohol-related harm </td> </tr> <tr> <td data-bbox="400 916 778 1039"> <p>Rebuttable presumption against new off-licences in Neighbourhood Centres; and after the freeze in City Centre and Priority Overlay</p> </td> <td colspan="2"></td> </tr> </table> <p>Regulate location and density of NEW ON-LICENCES:</p> <p>Local Impacts Report – required for the following types of applications:</p> <ul style="list-style-type: none"> • all applications in the Priority Overlay, regardless of risk rating. • all High and Very High Risk applications, regardless of location • Medium risk applications, except where located in City Centre, City Fringe Centres and Metropolitan Centres • Low Risk applications in Neighbourhood Centres. 			<p>Two-year freeze in City Centre and Priority Overlay</p>	<p>Local Impacts Report</p> <ul style="list-style-type: none"> • Required for all other applications except Very Low Risk under regulations. • Report to be prepared by the Inspectorate • Report covers objective matters: existing licences; sensitive sites; surrounding land uses; levels of alcohol-related harm; applicant’s proposals to minimise alcohol-related harm 		<p>Rebuttable presumption against new off-licences in Neighbourhood Centres; and after the freeze in City Centre and Priority Overlay</p>																								
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<p>Renewals</p>	<p>Applications for RENEWAL:</p> <p>Local Impacts Report to be completed for the following applications for the purpose of setting appropriate conditions</p>	<p>Medium, High or Very High Risk OFF-LICENCES in the Priority Overlay</p>	<p>High or Very High Risk ON-LICENCES in the Priority Overlay</p>																												
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<p>Discretionary Conditions</p>	<p>ON, OFF and CLUB LICENCE conditions:</p> <p>Approach: Three “tiers” - conditions that should be applied widely; conditions that should be applied on a case by case basis; and other matters to consider for conditions.</p> <p>Conditions: Range of recommended conditions within each tier. Two conditions to be reconsidered for off-licences – single sales and afternoon closing if located near education facilities.</p> <p>Approach to SPECIAL LICENCE conditions: Range of conditions recommended, depending on size of event.</p>																														