

## REPORT

**TO:** Chief Executive

**FOR:** Council Meeting – 14 October 2015

**FROM:** Research and Policy Advisor

**DATE:** 5 October 2015

**SUBJECT:** **Consultation on the reconsidered policies of the provisional Local Alcohol Policy**

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### 1. RECOMMENDATION

That the Council approves:

- (a) the draft consultation document for the reconsideration of Policy 1.1 and Policy 3 of the provisional Local Alcohol Policy
- (b) the proposed consultation timeframe and methodology
- (c) that Councillors Alexander, Morten and Walters form the hearing panel for submissions on policies 1.1 and 3

### 2. PURPOSE

At Selwyn's provisional Local Alcohol Policy (pLAP) hearing on 18 May 2015 the Alcohol Regulatory and Licensing Authority (ARLA) asked the Council to reconsider two of the policies in Selwyn's provisional Local Alcohol Policy (pLAP). This report represents for consideration a consultation document seeking community feedback to revise two policies in the pLAP.

The consultation document in Attachment 1 provides an update on the pLAP and the process the Council must follow after the hearing.

### 3. SIGNIFICANCE ASSESSMENT/COMPLIANCE STATEMENT

This has been assessed against the Significance policy and is regarded as being of low significance under the policy for the reasons presented below.

The Council continues to follow the process under the Sale and Supply of Alcohol Act 2012 to adopt its provisional LAP. The pLAP was appealed when it was notified in January 2014. At the hearings in May 2015, ARLA asked the Council to reconsider its pLAP. As the Act is silent on the process to follow to reconsider a pLAP, the

Council sought legal guidance and has chosen to publicly consult on options to revise the pLAP. Although staff consider this process to be of low significance, it is possible that interest in this issue may increase as people may question why the Council is consulting again on a document that has already been consulted on.

This consultation method will allow those that may not have previously submitted a chance to comment on the suggested changes. A public consultation will also provide previous submitters and the community the opportunity to hear a range of views in a transparent manner.

#### **4. HISTORY/BACKGROUND**

The Council prepared its pLAP under the Sale and Supply of Alcohol Act 2012 and consulted on a draft LAP in June 2013. The Council received 67 submissions of which 50 submissions were received from national or regional stakeholders including, representatives of the retail and the hospitality industry, the New Zealand Police and public health providers. Thirty submissions were from individual local licensees such as clubs, wineries, taverns, restaurants and cafes. Seventeen submissions were received from the general public.

The majority of submitters agreed with most aspects of the draft LAP. Most submitters who did not state affiliation with specific licensed businesses, agreed with the draft LAP in general or sought further restrictions. In general, those submitting on behalf of a licensed business or association raised specific issues associated with parts of the draft LAP relevant to their business such as wanting longer operating hours.

The Panel, comprising of the full council, recommended several changes to the draft LAP provisions around licence hours, special licences, location and discretionary conditions which were adopted in late 2013. The pLAP was notified in early 2014 and was appealed by Foodstuffs South Island Limited, The Mill Retail Holdings and Independent Liquor Ltd, Progressive Enterprises, Lincoln Golf Club, Hospitality Association of New Zealand and Super Liquor Holdings Limited.

Prior to the hearing, the appellants and the Council discussed possible options for reconsideration of the pLAP. At the hearings held on 18 May 2015, ARLA asked the council to reconsider Policies 1.1 (maximum trading hours for on-licences) and Policy 3 (location of licensed premises). The other appeals against Policy 1.2 (maximum trading hours for off- licences) and Policy 4 (discretionary conditions) were dismissed.

##### *Reconsidering Policy 1.1 On-licence hours*

The Council had considered a range of information including a survey conducted on people's perception of alcohol, pre-consultation views of the Police, Medical Officer of Health, the Licensing Inspector and Selwyn licence holders as well as all the submissions received during public consultation. The Council agreed to the hours in the policy as the Council felt it provided the best balance between providing for people's need to have local places to socialise, eat and drink and minimising alcohol harm that could be attributed to on-licence venues. When the policy was drafted, on-licences had a variety of hours with some closing in earlier in the

evening (especially on weekdays) and some staying open much later (especially in the weekends). The majority of taverns had closing hours of 3am although most would not have used their full hours daily. Although there was a range of submissions supporting shorter hours and some supporting existing hours, there was support for consistent and similar hours for all types of on-licences.

Shorter hours for on-licences were supported by Police, Medical Officer of Health and health providers as shorter hours reduce the incidences of alcohol harm. The information obtained in the development of the draft LAP did not highlight any major concerns around alcohol harm generated from on-licences in Selwyn. The ACC Selwyn community profile 2011 indicated that the place where people had their last drink (prior to being arrested) was at a private residence. This was also supported by the 2013 Research First survey of "Community Perceptions of Alcohol" in Selwyn. Although many people thought pubs and bars were good places to socialise many also considered they should have shorter hours. However, when asked about drinking behaviour, most participants said they drank at home (90 per cent) or at family and friends houses (72 per cent), while about 50 per cent said they drank at cafes and restaurants and 42 per cent said they drank at pubs or bars. People who said they drank more than 4 times a week said they also drank most often at home while less frequent drinkers said they mostly drank at family and friends' houses.

This would seem to indicate that most people were purchasing alcohol at off-licences and drinking at home. Although there are not high rates of alcohol harm in Selwyn and little evidence to show a 1am closing would reduce harm, the Council chose to be proactive and supported shorter hours in line with the evidence provided by the Police and Medical Officer of Health.

The 1am closing for all on-licences was also seen as a compromise between the earlier closing hours originally provided for restaurants and cafés and the later closing hours provided to pubs and taverns in the draft LAP. The Council considered that the same hours for all licences would also provide clarity to licensees as well as the community. The 1am closing was also supported by the Licencing Inspector, Police and Medical Officer of Health as at that point in the development of the LAP neighbouring territorial authorities in Christchurch and Waimakariri (TAs) were also considering a 1am closing. The Police and Medical Officer of Health also supported consistent hours amongst TAs.

### *Reconsidering Policy 3 location provisions*

In the Council's original work to develop Policy 3 which prohibits stand-alone bottle stores from locating in the proposed neighbourhood and local centres, the Council had considered the nature and location of these centres, the results of the Research First Survey as well as the views of the Police, Medical Officer of Health and the district Licensing Inspector.

The neighbourhood and local centres are meant to provide a local shopping area for residents in some of the larger subdivisions. These shopping centres were meant to provide people with easily accessible services that might be required daily (such as a café, grocery store or kindergarten) rather than having to go to the main town centre. These centres were also seen to be areas where the community could gather for local events.

The Research First Survey also identified that the majority of people thought bottle stores should not locate close to community facilities and schools including early childcare centres. The Police and Medical Officer of Health also supported restricting bottle stores from these centres as they considered increased availability would increase the incidence of alcohol harm.

When the draft LAP was prepared there were two stand-alone bottle stores in Selwyn (one in Rolleston and one in Lincoln). No specific issues were raised by the Licensing Inspector, Police or Medical Officer of Health with regards to these bottle stores. No issues were raised in relation to other types of off-licences (such as tavern or supermarket off-licences). The Council had considered restricting all types of off-licences from these areas in its draft LAP. However when the Council deliberated on the submissions received on the draft LAP it considered some types of off-licences suitable to locate in these areas. As neighbourhood and local centres would be in the middle of residential areas, and close to community facilities the Council considered a restriction on stores that only sold alcohol (as opposed to supermarkets that also sold foodstuffs) in these areas would be in line with what the Medical Officer of Health submitted (that making alcohol easily available “normalises” it and increases alcohol harm).

## **5. PROPOSAL**

The Council has been asked to reconsider two of the policies in its pLAP. The Sale and Supply of Alcohol Act 2012 does not provide any guidance as to how a council should “reconsider” a pLAP. Legal advice provided to Council recommends that the Council seeks public feedback on options for reconsideration of the policies through public consultation including an opportunity for hearings.

To inform its reconsideration of the pLAP the Council reviewed the situation in Selwyn in the last 15 months with regards to on-licence hours and issues around location of bottle stores. This report presents a consultation document for adoption and includes an update of the council’s process so far and options to revise policy 1.1 and policy 3 of the pLAP. The consultation also seeks feedback on other options to revise the policies.

The consultation is proposed to run from 20 October to 20 November 2015 , with hearings scheduled in early December.

## **6. OPTIONS**

### *Policy 1.1 on-licence hours*

When the Council notified the pLAP, the on-licence hours were appealed by the Hospitality New Zealand (HANZ) which sought that on-licences retain the existing (longer) hours. In the time between the notification of the pLAP in February 2014 and the hearing in May 2015, several on-licence taverns have chosen to renew their licences for shorter hours and chose to close venues at 2am. The Licensing Inspector considers that most licensees have chosen shorter hours for a variety of reasons including the reduced fee (as they are assessed as being of lower risk by

closing at 2am) and that many licensees were not using the longer hours on a regular basis.

No issues related to tavern on-licences have been reported over this 15 month period that would inform if a 1 am closing and would make any difference from the 2am in practise. It is likely that as Selwyn has historically never had issues similar to that in Christchurch City (with large drunken crowds moving to different venues over the later hours) it can be assumed that the issues Selwyn faces now are similar to the issues it has always faced (issues around drink driving, underage drinking and drinking at private residences).

At present there are 15 tavern establishments in Selwyn, four of which have 3am closing (although one establishment is in liquidation and its future unclear). Seven venues have a 2am closing and three have a 1am closing.

There are 33 other types of on-licences including cafes, restaurants and function centres. Of these other on-licences, only eight have a closing of 1am. The rest of the on-licences have a range of different closing hours, with some on-licences closing later on the weekends.

Learnings from the hearings for other LAPs indicate that ARLA considers local based evidence a priority when deciding if a policy is unreasonable. In this case, the Council has no evidence to show there are issues arising from on-licences or that there are clear issues around a 1am closing compared to a 2am closing. It is also important to note that the hours provided by the LAP are the maximum a licensee can *apply for* to the District Licensing Committee (DLC) but not necessarily what the DLC will grant.

The Council is proposing two options to consider for Policy 1.1.

*Option 1 Retain the existing policy*

If the Council chooses to retain the existing policy it will need to provide clear reasons as to why a 1am closing would be better than another option and also how it would lessen alcohol harm. The difficulty the Council faces is that at present it does not have any evidence to show that a 1am closing would reduce alcohol harm as drinking behaviour in Selwyn seem to indicate there could be issues around people drinking at home rather than at on-licences. Anecdotally it also seems that the stricter drinking driving rules are also discouraging people from drinking too much at venues.

As explained above, the Council chose a 1 am closing time based on information provided by the Police and Medical Officer of Health, and in line with what neighbouring TAs were proposing. However the information provided by Police and the Medical Officer of Health did not relate specifically to Selwyn, in that there was no evidence to show that changing hours for on-licences in Selwyn would reduce incidences of alcohol harm.

The other issue faced by the Council at present is that the only TA that has adopted its LAP with a 1am closing for on-licences is the Waimakariri District Council which does not share a boundary with Selwyn. Ashburton District Council and Christchurch City Council are still waiting to have their policies heard by ARLA. The Ashburton policy is proposing a 2am closing for tavern on-licences and a 1am one-way door policy in the Ashburton urban area. Restaurants and cafes are proposed to have a 1am closing. The Christchurch policy is proposing a district wide 1am closing for restaurants and suburban taverns and pubs, while those in the city centre can have closing hours till 3am.

It is difficult to predict what those LAPs will contain until the appeals are heard. Concerns over people leaving Christchurch taverns that close at 1am coming to Selwyn have been raised by the Medical Officer of Health. The Council considers this to be an unlikely scenario as there are few venues within driving distance to make it worthwhile. It is likely that most people would choose to go to the city or go home rather than drive to Selwyn taverns for an additional 30 minutes at a venue. There are very few bus services to most of the Selwyn district so people would have to drive, which anecdotally people seem reluctant to do so under the stricter drink driving limits. Of the two towns (Rolleston and Lincoln) which have two taverns/pubs (as opposed to most other townships which only have one venue) and where there are regular bus services, three of the venues close at 1am.

For these reasons it is difficult for the Council to now support a 1am closing as the Council does not have any evidence to show there will be any reduction in alcohol harm if venues close at 2am. Option 1 is therefore not recommended.

*Option 2 Revise the policy to a 2am closing for on-licences taverns and hotels and retain the 1am closing for restaurants, function centres and cafes*

#### *Taverns and hotels on-licences*

Over the last 18 months, many of the tavern licensees have chosen to renew their licences with an earlier closing time. Most of the taverns would have had a 3am closing and have chosen to reduce their on-licence hours by 1 hour. As discussed above, it is likely that most licensees chose to reduce their opening hours to reduce their licence fee and because they were not using the extra hour.

It is unclear if there has been any change with regards to issues around alcohol consumption at tavern on-licences. It is also unclear if there have been major issues around alcohol consumption at these on-licences in the past.

However, as only two and a half years have passed since the Research First Survey was undertaken and anecdotally stricter drink driving limits are discouraging people from drinking at venues, it is likely that Selwyn residents are still choosing to drink mostly at home. A 2am closing for taverns therefore is perhaps a better option as it may encourage people to spend time socialising and eating while drinking rather than just drinking at home which could increase alcohol consumption as people do not have to consider how to get home. A 2 am closing may also encourage people to drink at local establishments rather than drive to the city and back under the influence.



The Council also has no evidence to show that a 1am closing would decrease alcohol harm compared to the 2am closing that is in practise at tavern on-licences. A 2am closing will still mean venues are closing earlier by 1 hour. If the Christchurch pLAP is adopted as is, the Council considers it unlikely that people will travel from Christchurch suburban venues to Selwyn venues to take advantage of the last 60 to 30 minutes. It is more likely that people will choose to go into the central city instead.

*Restaurants, function centres and cafes*

There are no restaurants, cafes or function centres closing after 1am. Since the notification of the pLAP, 12 of these types of on-licences renewed their liquor licence and none sought later hours than 1am. This is possibly because these licences do not need the later hours.

The Council does not consider a 2am closing necessary for these types of licences as out of the 33 restaurant and café type licences only 8 have hours till 1am at present and none sought later hours when renewing their licence. Similar licences in the Ashburton District Council and Christchurch City Council also have a 1am closing so retaining a 1am closing for these types of licences would make the Selwyn LAP consistent with neighbouring council's proposed LAPs.

For these reasons the Council considers Option 2 to be the best option to revise Policy 1.1

*Policy 3 location restrictions*

When the Council notified the pLAP, Policy 3 was appealed by Super Liquor Holdings Limited and The Mill Retail Holdings Limited and Independent Liquor. The appellants sought that Policy 3 be deleted to enable bottle stores to locate in neighbourhood and local centres.

Although the proposed neighbourhood and local centres have not yet been built, they will look like the high street of most of the town centres in Selwyn at present, in that they are likely to have between 5 to 15 stores and be in close proximity to residential areas and community facilities. The neighbourhood centre in the Farringdon subdivision is being planned at present and is likely to have about 8 shops.

As the Council does not have any evidence to show that stand alone bottles stores cause any issues or that bottle stores cause more alcohol harm than other off-licences, the Council is not able to provide evidence that supports the policy to prohibit bottle stores alone from the neighbourhood and local centres when they are currently able to operate in locations similar to neighbourhood and local centres.

*New off-licences for bottle stores in Selwyn*

In the time between the notification of the pLAP in February 2014 and the hearing in May 2015, a bottle store has opened in Leeston in early 2015 in an existing building.

In July another licence was granted for a “Thirsty Liquor” bottle store in Darfield. This application was opposed by the Police and Medical Officer of Health. The Police had opposed the application as the building had not yet been built. However, at the hearing in June, the Police withdrew their opposition when they heard the details around how the business would be managed. The Medical Officer of Health objected on the grounds that there were already off-licences in close proximity to the proposed venue and that the applicant had not provided enough information on the possible effects on the locality with an increase in alcohol availability. There were 8 public objectors although only one appeared at the hearing in support of his objection.

After considering all the information available to it, the District Licensing Committee (DLC) considered that there was no clear evidence provided to decline the application, in that the Police did not produce any relevant crime data, there was no evidence to show that there are any alcohol abuse problems in Darfield and that the general deprivation rating of the area is low. The DLC also felt that the 12 month period for which the licence would be granted would give the agencies and community the opportunity to monitor the licence.

Both bottle stores are located in the business part of the townships. However, because the town centres are small and back onto residential areas both bottle stores are close to homes, schools and community facilities. In both cases the DLC considered the effects of the stores on the general amenity of the locality and considered local evidence and concluded that there was no evidence to show that there would be negative effects.

As mentioned above, local evidence is a priority when ARLA decides if a policy is unreasonable. In this case, the Council has no evidence to show that the effect of stand-alone bottle stores in the proposed neighbourhood and local centres would be any different to the presence of grocery stores or the existing stand alone bottle stores in shopping areas, because at present the situation in the town centres are similar to what the neighbourhood and local centres could be.

The Council however does consider some locations more than others more appropriate for specific activities. The key Council document that does place restrictions on where activities may take place is the Selwyn District Plan. Unless the District Plan specifically prohibits an activity from taking place, if an activity can meet the requirements to mitigate any negative effects, it will likely be granted a resource consent (if needed) to operate. The fast growth in the district has meant that some business type activities have applied for and been granted resource consent to operate in residential areas. Some business activities have also set up in rural areas.

The Council therefore still considers that the LAP should have some type of location restriction to provide clarity to the businesses and community as to where these types of activities are deemed appropriate to locate.



The Council is proposing two options to consider for Policy 3.

*Option 1 Retain the existing policy*

If the Council chooses to retain the existing policy (to restrict stand-alone bottle stores from proposed neighbourhood and local centres) it will need to provide clear reasons as to how stand-alone bottle stores negatively affect this area as opposed to existing shopping areas and more than other types of off-licences.

As discussed above, the Council is unable to show that there are any differences between the different off-licences in Selwyn. The Police, Medical Officer of Health and the Licensing Inspector have not raised any specific issues with existing stand-alone bottle stores in Selwyn.

For these reasons, the Council is unable to continue to support Policy 3 as written and this option is not recommended.

*Option 2 Revise the policy to restrict new stand alone bottle stores to business zones*

This option recommends to restrict stand alone bottle stores to business areas in Selwyn. As neighbourhood and local centres will be assessed as business areas similar to the existing town centres and shopping areas, this will allow bottle stores to operate there similarly as to how they would operate in the other business zones at present.

This option would also ensure that bottle stores as a business activity do not locate in the other zones including residential or rural areas.

For these reasons the Council considers Option 2 to be the best option to revise Policy 3.

## **7. VIEWS OF THOSE AFFECTED/CONSULTATION**

### **a) Views of those affected**

The Council had considered a range of information including a survey conducted on people's perception of alcohol, pre-consultation views of the Police, Medical Officer of Health, the Licensing Inspector and Selwyn licence holders as well as all the submissions received during public consultation.

### **b) Consultation**

Public consultation is being proposed to seek feedback on options to revise the two policies the council must reconsider. This consultation will run from 20 October to 20 November 2015.

### **c) Maori implications**

No specific issues have been identified in Selwyn with regards to tangata whenua. MKT and Te Runanga O Ngai Tahu have been provided the opportunity to provide feedback throughout the process and will be provided another opportunity to comment on the options to revise the two policies.

## **8. RELEVANT POLICY/PLANS**

### *District plan*

The LAP cannot allow activities not permitted by the District Plan, although it can be more restrictive than the District Plan. The provisional LAP has been prepared having regard to the objectives and policies of the District Plan and is not inconsistent with these.

### *District Development Strategies and Plans*

The Council has prepared a number of plans and strategies to ensure future planning and development in the district take into consideration the existing towns, villages and Selwyn's rural setting. These plans have been considered in the preparation of the provisional LAP.

## **9. COMMUNITY OUTCOMES**

The provisions in the provisional LAP on maximum trading hours for on, off and club licences and restricting stand- alone bottle stores to business zones seek to contribute to the community outcome "Selwyn is a safe place in which to live, work and play". The LAP will provide clarity to new liquor licence applicants, existing licence holders and the public with regards to hours of operation and acceptable locations for stand- alone bottle stores.

## **10. NEGATIVE IMPACTS**

There are likely to be few negative impacts as the hours proposed by the LAP are similar to that which was proposed in the pLAP and are similar to what current licensees use in practise.

## **11. LEGAL IMPLICATIONS**

The provisional LAP has been prepared in accordance with section 77 and section 78 of the Sale and Supply of Alcohol 2012 as discussed in section 4 of this report. Staff have also sought a review of the draft LAP and the process undertaken to prepare it. Following preparation of the provisional LAP staff also sought legal advice on the recommended hours of operation for licences.

## **12. FUNDING IMPLICATIONS**

The cost of enforcing the LAP's provisions will be similar to that of enforcing the existing policy and will be met from existing staff resources (where possible) and rates.

**13. HAS THE INPUT/IMPACT FROM/ON OTHER DEPARTMENTS BEEN CONSIDERED?**

Initial discussions were held with relevant staff from all Units to improve understanding of the district's issues related to alcohol consumption and/or abuse. Greater input has been sought from the Planning Teams to ensure that the LAP is not inconsistent with the District Plan.



Mel Renganathan  
**RESEARCH AND POLICY ADVISOR**

**ENDORSED FOR AGENDA**



Tim Harris  
**MANAGER ENVIRONMENTAL SERVICES**