

# Part 4: DRAFT Local Alcohol Policy

## 1.0 INTRODUCTION AND EXPLANATORY MATERIAL

- 1.1 The Sale and Supply of Alcohol Act 2012 (the Act) has the following objects:
- (a) that the sale, supply and consumption of alcohol should be undertaken safely and responsibly; and
  - (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- 1.2 Alcohol related harm is defined very widely and includes any crime, damage, death, disease, disorderly behaviour, illness or injury, and harm to individuals or the community, either directly or indirectly caused by excessive or inappropriate alcohol consumption.
- 1.3 The Act allows territorial authorities to make a local alcohol policy (LAP). The LAP is a set of policies, made by the Council in consultation with its community, about the sale and supply of alcohol in its geographical area. Marlborough District Council has decided to develop a LAP for its district and to set restrictions and conditions for licensed premises within the district.
- 1.4 Once the LAP comes into force, Council's District Licensing Committee (DLC) and the Alcohol Regulatory Licensing Authority (ARLA) must have regard to the policy when they make decisions on licence applications.
- 1.5 Through a LAP the community is able to:
- Limit the location of licensed premises in particular areas or near certain types of facilities, such as in specific neighbourhoods or near schools or churches;
  - Limit the density of licensed premises by specifying whether new licences or types of licences should be issued in a particular area;
  - Impose conditions on groups of licences, such as a "one-way door" condition that would allow patrons to leave premises but not enter or re-enter after a certain time;
  - Recommend discretionary conditions for licences;
  
  - Restrict or extend the default maximum trading hours set in the Act, which are:

- 8am - 4am for on-licences (such as taverns and restaurants)
- 7am - 11pm for off-licences (such as bottle stores and supermarkets).

- 1.6 Where the LAP does set maximum trading hours, the District Licensing Committee has discretion to set the permitted trading hours as more restrictive than the maximum trading hours in the LAP.
- 1.7 The LAP can be more restrictive in its provisions relating to licensed premises, but cannot permit activities not allowed by the District Plan. The Wairau Awatere Resource Management Plan and the Marlborough Sounds Resource Management Plan provide for licensed premises either within the Central Business Zones or by resource consent.
- 1.8 Section 117 of the Act permits the District Licensing Committee and the Alcohol Regulatory Licensing Authority to issue any licence subject to “any reasonable conditions not inconsistent with this Act”. The LAP includes policies to guide the District Licensing Committee and Alcohol Regulatory Licensing Authority as to the discretionary conditions that may be appropriate.

## **CRITERIA FOR CONSIDERING LICENSING APPLICATIONS**

- 1.9 The purpose of the LAP is to provide local guidance for the Council’s District Licensing Committee in deciding whether to issue or renew a licence.
- 1.10 Under section 105 of the Act, the District Licensing Committee has to have regard to a range of matters in addition to any relevant local alcohol policy when considering a licence application. The types of matters include:
- the object of the Act;
  - the suitability of the applicant;
  - the design and layout of any proposed premises;
  - whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the licence;
  - whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences but—
    - it is nevertheless desirable not to issue any further licences.

1.11 The Act says that a licence may be refused or conditions applied if the issue of the licence, or the consequences of the issue of the licence, would be inconsistent with the LAP (section 108 and 109). Where a licence is renewed and it will be inconsistent with the provisions of the LAP, conditions may be imposed (section 133).

## **GOALS OF THE LAP**

1.12 The Local Alcohol Policy provides direction for the District Licensing Committee so that licensing decisions:

- Contribute to Marlborough being a safe and healthy District;
- Reflect local communities' character and amenity and their values, preferences and needs;
- Encourage licensed environments that foster positive, responsible drinking behaviour and minimise alcohol-related harm

## **OBJECTIVES OF THE LAP**

1.13 The objectives of the LAP are to provide a policy which:

- Reflects the views of local communities as to the appropriate location, number, hours and conditions that should apply to licensed premises within their communities;
- Provides certainty and clarity for applicants and the public as to whether a proposed license application will meet the criteria of the LAP;
- Provides effective guidance for the decisions of the District Licensing Committee and the Alcohol Regulatory Licensing Authority.

## **DEFINITIONS USED IN THIS LAP**

1.14 When reading this LAP, the following words and phrases have been used. For further details refer to the section of the Act referenced.

### **Types of licences**

- **on-licences** where the licensee can sell and supply alcohol for consumption on the premises and can let people consume alcohol there (see section 14 of the Act);
- **off-licences** where the licensee sells alcohol from a premises for consumption somewhere else (see section 17 of the Act);
- **club licences** where the licensee (e.g. a club) can sell and supply alcohol for consumption on the club premises by authorised customers (see section 21 of the Act); and

- **special licences** which can be either on-site or off-site special licences. With an on-site special, the licensee can sell or supply alcohol, for consumption there, to people attending an event described in it. With an off-site special, the licensee can sell the licensee's alcohol, for consumption somewhere else, to people attending an event described in it (see section 22 of the Act).

**Notes:**

Some premises hold more than one licence – for example a tavern may also hold an off-licence and be able to sell alcohol which is consumed off the premises.

The Act allows special licences to be issued for up to 12 months. Unlike other kinds of licence special licences are not subject to the Act's default maximum hours so can apply up to 24 hours a day. Special licenses are to allow the sale or supply of alcohol at events and are not intended to be a substitute for a “Club”, “on” or “off” licence.

**1.15 Other terms**

**airport bar** means premises that are within or attached to an airport; and used or intended to be used in the course of business principally for selling or supplying alcohol to air travellers arriving at or departing from the airport (refer section 5(1))

**bottle store** means retail premises where (generally speaking) at least 85% of the annual sale revenue is expected to be earned from the sale of alcohol for consumption somewhere else (refer section 32(1))

**bar** in relation to a hotel or tavern, means a part of the hotel or tavern used principally or exclusively for the sale or consumption of alcohol (refer section 5(1))

**café** has the same meaning as restaurant in terms of the licence

**club** means a body that—

- is a body corporate having as its object (or as one of its objects) participating in or promoting a sport or other recreational activity, otherwise than for gain; or
- is a body corporate whose object is not (or none of whose objects is) gain; or
- holds a permanent club charter (refer section 5(1))

**grocery store** means a shop that—

- has the characteristics normally associated with shops of the kind commonly thought of as grocery shops; and
- comprises premises where—
  - a range of food products and other household items is sold; but
  - the principal business carried on is or will be the sale of food products (refer sections 5(1) and 33(1))

**hotel** means premises used or intended to be used in the course of business principally for providing to the public—

- lodging; and
- alcohol, meals, and refreshments for consumption on the premises (refer section 5(1))

**night-club** means a place of entertainment open at night which normally provides music and space for dancing and may provide a show e.g. of comedy or other 'acts'

**restaurant** means a premises that—

- are not a conveyance; and
- are used or intended to be used in the course of business principally for supplying meals to the public for eating on the premises (refer section 5(1))

**RTD** means a ready-to-drink alcoholic beverage that is sold in a prepared form, ready for consumption

**supermarket** means premises with a floor area of at least 1000m<sup>2</sup> (including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items) (refer section 5(1))

**tavern** means premises used or intended to be used in the course of business principally for providing alcohol and other refreshments to the public; but

- does not include an airport bar (refer section 5(1)). (i.e., an airport bar is not treated as a tavern for alcohol licensing purposes).

## 2.0 LICENCE CONDITIONS

### 2.1 Off-Licences

#### 2.1.1 Hours for off-licences

The following maximum trading hours apply to all off-licensed premises in the Marlborough District territorial area (other than hotel in-bedroom (mini-bar) sales):

|                       |  |
|-----------------------|--|
| Maximum trading hours | All off-licence sales including over the counter sales, except for mini-bars |
| Monday to Sunday      | 7am to 9pm   |

The following hours apply to hotel in-bedroom (mini-bar) sales:

|                  |                  |
|------------------|------------------|
| Monday to Sunday | 24 hours per day |
|------------------|------------------|

#### 2.1.2 Location of off-licences

From the date this LAP comes into force, no further off-licences are to be issued for any premises unless that premises is located on land zoned Central Business, or a Resource Consent has been granted by Council for its operation.

#### 2.1.3 Discretionary conditions for off-licences

Conditions relating to the following matters may be appropriate for off licences:

- Supervised designation of all bottle stores to ensure unaccompanied minors do not enter bottle stores
- Display of safe drinking messages/material
- No single bottle sales of beer or alcoholic ready-to-drink (RTD) beverages

### 2.2 On-licences

#### 2.2.1 Hours for On-licences

The following maximum trading hours apply to all on-licensed premises that are restaurants or cafes in the Marlborough District territorial area:

|                       |  |
|-----------------------|--|
| Maximum trading hours | Restaurants/Cafes  |
| Monday to Sunday      | 8am to midnight except New Year's Even when sale, supply or consumption of alcohol may continue until 1am the following day. |

Note: Restaurants and cafes may operate outside of their trading hours to provide meals and beverages to the public, as long as no sale or supply or consumption of alcohol takes place.

**2.2.2** The following maximum trading hours apply to all on-licensed premises that are taverns/bars/pubs/nightclubs located in Marlborough:

| Maximum trading hours | Taverns/bars/pubs/night-clubs |
|-----------------------|-------------------------------|
| Monday to Sunday      | 8am to 2am the following day. |

### **2.2.3 Designation of On-licences:**

Premises where the principal purpose of the business is the sale of liquor and there are no restaurant facilities will be designated as restricted.

Premises where the principal purpose of the business is the sale of alcohol and there are restaurant facilities will be designated as supervised.

*In premises where the principal purpose is the sale of alcohol and they also have restaurant facilities, for the restaurant area to be undesignated it must:*

- *have a physical barrier between it and any area designated.*
- *access to the restaurant area and toilets cannot be through any designated area.*

Premises where the principal purpose of the business is the sale of food (but the premises also sell alcohol), will be undesignated.

### **2.2.4 Location of On-licences:**

From the date this LAP comes into force, no further on-licences are to be issued for any premises unless that premises is located on land zoned Central Business, or a Resource Consent has been granted by Council for its operation.

### **2.2.5 Discretionary conditions for On-licences:**

Conditions relating to the following matters may be considered generally appropriate for on-licensed premises such as night-clubs and late-night bars:

- 'One-way door' restrictions
- A time that entertainment is to finish
- Provision of additional security (staff) after 'x' hour
- The installation and operation of CCTV cameras on the exterior of, and within a premises
- Provision of effective exterior lighting
- Restrictions on the size of servings (e.g. 'doubles') and time of 'last orders'
- Management of patrons queuing to enter the licensed premises
- Restriction on the use of outdoor areas after 'x' hour

The following conditions may be appropriate for on-licensed premises such as BYO restaurants:

- The holder of a manager's certificate to be on duty during busy periods e.g. Thursday, Friday and Saturday nights

## **2.3 Special licences:**

### **2.3.1 Hours for Special Licences**

The hours (opening and closing) and duration of a special licence are set at the discretion of the District Licensing Committee for each event, having regard to the nature of the event or series of events.

Generally a special On-licence will not be issued for an event to be held on Ministry of Education land if persons aged 18 or under will be in attendance.

| Maximum trading hours              | Special Licences |
|------------------------------------|------------------|
| Discretionary up to 24 hours a day |                  |

### **2.3.2 Number of Events**

Any special licence for a series of events will not be for a period exceeding 6 months.

For an application for a series of events, all events must be related and of the same nature.

No premises shall have more than 10 events in any special licence.

### **2.3.3 Discretionary Conditions**

In addition to the discretionary conditions in Section 147 of the Act, the following conditions may be considered appropriate for special licences:

- 'One-way door' restriction to apply from a specified time
- No glassware is to be taken outside the building or onto grass or artificial grass surfaces
- Plastic containers or cans to be used for any event (except when it is being served and remains within the building)
- Areas to be clearly defined/ cordoned off/ demarcated where liquor is being sold/consumed outside of the building e.g. Beer tent.
- Alcohol to be sold by the glass only and no bottle sales shall occur.
- The holder of a manager's certificate to be present when alcohol is available for sale, or the number of manager's certificate holders required may be specified.
- The maximum number of alcoholic drinks per sale transaction may be specified.



## **2.4 Club Licences**

### **2.4.1 Hours for Club Licences**

The following maximum trading hours apply to all club-licensed premises:

| Maximum trading hours | Clubs           |
|-----------------------|-----------------|
| Monday to Sunday      | 8am to midnight |

### **2.4.2 Discretionary conditions for club licences:**

Conditions relating to the following matters may be appropriate for Club licensed premises depending on the size and nature of the club:

- A requirement for the holder of a managers certificate to be present when alcohol is available for sale during busy periods e.g. more than 100 people are on the Club premises.

## ***PART 5: Other policy options considered by the Council***

During development of the draft LAP the Council considered a range of options. Those that were not preferred, include:

**Status quo** – i.e. have no LAP; rely on the provisions in the Sale and Supply of Alcohol Act 2012 (the Act) and provisions in the Resource Management Plans relating to closing hours to guide licensing decisions.

Reasons for rejecting this option:

- The Wairau Awatere and Marlborough Sounds Resource Management Plans do not address the full range of issues that may be covered by a LAP or that local communities have indicated they would like covered in the LAP.
- Not developing a LAP means local communities have less opportunity to influence licensing decisions.
- Not having a LAP may result in applications to trade to later hours than is currently the norm throughout Marlborough District.
- A LAP will also provide guidelines and certainty for both District Licensing Committees and potential applicants for licenses.

### **Location restrictions**

(i) Restrictions on the location of licensed premises e.g. on bottle stores close to schools

Reasons for not including this policy:

- Whilst some restriction to appropriately zoned land is included in the draft LAP, the provisions of the Act are considered adequate to address such issues of location. Under the Act the District Licensing Committee is required to consider the effects of a proposed licensed premises e.g. the effects of a bottle store on the amenity and good order of 'the locality' and consider also the purposes for which land near the premises concerned is used.
- General restrictions on the location of premises may lead to unintended and undesirable consequences such as a 'cluster' of licensed premises located just outside an area where premises are not permitted.
- There may also be considerable difficulties in establishing a robust and workable definition of 'proximity' particularly given the relatively small size of many communities and the close proximity of sensitive sites to areas appropriately zoned for bottle stores in Marlborough District.

(ii) Restrictions on the density of licensed premises

Reasons for not including this policy:

- The provisions of the Act and the criteria for assessment of licensing applications that the District Licensing Committee must have to regard to are considered adequate to address density matters.

- Confounding issues also exist with the high number of holiday makers that visit seasonally. Official data on premises density from the Ministry of Justice does not take into account visitors to the district. High visitor numbers can cause a dramatic short term increase in the populations of some communities in the Marlborough District.

### **Restriction on trading hours**

- (i) Much more restrictive provisions relating to hours and location for on-licensed premises, generally and specifically:

Reasons for not including this policy, generally and specifically:

- Some variation of licensing hours has been included, although not to the full extent that some of survey respondents requested.
- Some mixed messages were received, particularly from stakeholders that were surveyed or otherwise contributed.
- Negative economic consequences need to be considered.

- (ii) Less restrictive provisions than proposed in the LAP with regard to off-licensed premises:

Reasons for not including this policy:

- Would not contribute to meeting the policy goal of reducing alcohol-related harm.
- Evidence/views presented by Police/Medical Officer of Health supported reducing trading hours
- The community survey supports an earlier closing time.
- Preference for consistency between all off-licences' hours to ensure fair trading environment between types of off-licences (e.g. supermarkets and liquor stores)

- (iii) Much more restrictive provisions than proposed in the LAP with regard to off-licensed premises' hours, specifically:

Reasons for not including this policy:

- Off license hours have been reduced from the national maximum default hours, in line with the survey results.
- Unreasonable restriction on shopping opportunities, lifestyle and commercial activity

### **Discretionary conditions**

- (i) Mandatory one-way door policy taverns and hotels

Reasons for not including this policy, generally:

- International and local evidence varies regarding on the success of one-way door policies in reducing alcohol-related harm.
- The Act already enables District Licensing Committees to include a one-way door policy as a condition of a licence. This has been reiterated in the draft Local Alcohol Policy to make it clear that it is something that needs to be considered by the DLC when assessing a licence application.

(ii) Inclusion of mandatory CPTED (Crime Prevention Through Environmental Design) conditions

Reasons for not including this policy, generally:

- No clearly demonstrable problems associated with Marlborough premises.
- Doubt about the legal certainty of including such matters in the LAP.
- The Act already enables District Licensing Committees to include discretionary conditions in a licence. This has been reiterated in the draft Local Alcohol Policy to make it clear that it is something that needs to be considered by the DLC when reviewing a licence application.

(iii) Mandatory restrictions on advertising

Reasons for not including this policy, generally:

- No clearly demonstrable problems associated with Marlborough premises.
- Doubt about the legal certainty of including such matters in the LAP.
- Control provided in the Act in relation to discounting and displays in supermarkets.
- Some aspects of CPTED could be applied to advertising as a discretionary condition.