

Local Alcohol Policies

Guidance for Local Government



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This KnowHow Guide

Introduction This LGNZ KnowHow Guide is designed to assist territorial authorities considering the development of a Local Alcohol Policy (LAP). In particular, it sets out guidance concerning:

- whether a territorial authority ('council') should develop a LAP;
- legal principles from the Alcohol Regulatory and Licensing Authority (ARLA) decisions;
- preliminary data and information collection for LAPs (such as producing a Local Alcohol Research Report and undertaking a Community Survey);
- consulting with the Police, Inspectors and Medical Officers of Health (and other stakeholders) and seeking any information they hold in preparing a LAP;
- developing and adopting a Draft LAP;
- consulting on the Draft LAP using the Special Consultative Procedure;
- adopting a Provisional LAP ('PLAP');
- responding to any appeals to the PLAP; and
- adopting and bringing into effect a final LAP.

Internet links are also provided to a number of reports and documents that may be useful guides as councils draft their own LAP. In particular, links have been provided to the Tasman District Council and Waimakariri District Council LAPs that have been through appeals and come into effect (see below).

Some very good general guidance for those new to this policy area has been provided on-line by the [Health Promotion Agency](#), the [Ministry of Justice](#) and [Local Government New Zealand](#).

The experience of the following councils who now have a LAP in place may also provide useful guidance. Links to their LAPs are included here – for reference in terms of the content and drafting of a LAP: [Ruapehu District Council](#); [Tasman District Council](#); and [Waimakariri District Council](#).

Of course, there will also be a wealth of experience available from a council's own policy staff and alcohol licensing inspectors.

Councils looking to adopt LAPs should factor in the likelihood their PLAP will be subject to appeals.

Key Points

- Key points**
- The Sale and Supply of Alcohol Act 2012 (the 'Act') gives councils the option of developing a Local Alcohol Policy.
 - While LAPs are not mandatory, once in force, they may set local restrictions on alcohol licences.
 - On the other hand, the experience has been that most PLAPs are being appealed, with appeals being both expensive and time consuming for councils to defend.
 - The contents of LAPs must keep within the ambit of the Act and may only include policy elements covering:
 - the location of licensed premises;
 - the density of licensed premises;
 - whether further licences should be issued;
 - maximum trading hours; discretionary conditions; and
 - one-way door restrictions.
 - A LAP must be reasonable in light of the object of the Act. The object of the Act is to encourage the safe and responsible consumption of alcohol so that alcohol-related harm caused by excessive or inappropriate consumption is minimised.
 - A LAP should be a short and clear expression of the policies for the district and not include any matters extraneous to alcohol licensing. Ideally, they should be only 1-2 pages long.
 - A LAP should be a local policy prepared by local people who know and understand the local alcohol-related problems in their district.
 - Reasons should be provided for each policy element in the PLAP showing that the council carefully considered the reasons for each element. These reasons might best be set out in a document accompanying the PLAP when it is adopted.
 - A precautionary approach can be taken to a policy element in a LAP as long as it is justified by the evidence.
 - Although Joint LAPs may be adopted between neighbouring councils, the experience has been that single LAPs are preferable. This still allows for collaboration between neighbouring councils in a less formal way.
 - There is no provision in the Act for a council to reconsider any element that has been appealed until the element has been referred back to it by ARLA. The process for reconsidering any elements of a PLAP is contained in a [Practice Note](#) issued by ARLA dated 19 March 2015.
 - Adopting a LAP also involves decisions being made under the Local Government Act 2002 ('LGA'). Consequently, councils must also adhere to the procedures and principles of consultation and decision-making under the LGA.
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1. Introduction

SSAA

In December 2012, Parliament enacted the Sale and Supply of Alcohol Act 2012.

It followed a significant Report by the Law Commission titled *'Alcohol in our Lives: Curbing the Harm'* that considered a broad range of issues concerning alcohol consumption in New Zealand and made 153 recommendations for reform.

The Act introduced a new national framework for regulating the sale and supply of alcohol, putting into statute many of the Law Commission's recommendations.

One of the key drivers behind the new Act was an increased focus on local decision-making. In particular, the Act introduced the ability for territorial authorities to tailor some of the new national provisions, such as maximum trading hours, to their own local circumstances through the development of a LAP. In making and adopting a LAP, councils must follow the requirements set out in the Act.

LAP GUIDANCE DOCUMENT

KEY POINT

A key driver of the Act is increased local decision-making.

2. Should the Council develop a LAP?

Introduction Councils are not required to adopt a LAP. They are optional.¹

When making a decision about whether to begin the process of adopting a LAP, the council should turn to its own decision-making framework under section 79 of the LGA as well as having regard to the Sale and Supply of Alcohol Act. In particular, different options should be identified and assessed. The benefits and costs should be quantified and a judgment made of resources needed. The diversity of community interests should be taken into account.

Overall, a beneficial outcome from adopting a LAP is that the sale, supply and consumption of alcohol will be undertaken more safely and responsibly in the district and harm caused by excessive or inappropriate consumption of alcohol is reduced.

More specifically, the benefits of having a LAP are that it can:

- set local maximum trading hours for all licences in the district rather than the default national maximum trading hours (section 45 of the Act); and
- impose a one-way door restriction requiring on-licence or club licence holders to comply with the restriction (section 50 of the Act).

A LAP can also include policy elements about:

- the density and location of licensed premises,
- whether further licences should be issued; and
- it may suggest discretionary conditions.

As a result the relevant District Licensing Committee (DLC) and ARLA:

- must have regard to those policy elements and the LAP more generally in deciding whether to issue, renew or vary a licence (sections 105, 120, 131 and 142);
- may refuse to issue a licence if it was going to be inconsistent with the LAP (section 108); and
- may issue a licence subject to particular conditions - if doing so without those conditions would be inconsistent with the LAP (section 109).

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¹ [See *Hospitality New Zealand Incorporated v Tasman District Council* \[2014\] NZARLA PH 846, para \[7\]](#)

2. Should the Council develop a LAP?, continued

Introduction, continued

There are disadvantages, however. These can include the cost and time involved in developing a LAP and especially the cost of defending any appeals.

Overall, a council must judge whether the advantages to the district of adopting a LAP outweigh the disadvantages.

The process for developing a LAP

The provisions of the Act that govern development of a LAP are set out in sections 75 to 97. The process includes taking such steps as:

- project organisation and governance;
 - producing a Draft LAP, including perhaps:-
 - preparing a Local Alcohol Research Report;
 - undertaking a Community Survey;
 - consulting with the Police, Inspectors and Medical Officers of Health;
 - preparing the Draft LAP;
 - consulting the public using the Special Consultative Procedure;
 - hearing submissions;
 - adopting the PLAP;
 - addressing any Appeals;
 - adopting a final LAP; and
 - implementation.
-

The contents of a LAP

Section 77 of the Act restricts the contents of a LAP to the following matters:

- the location of licensed premises by reference to broad areas;
- the location of licensed premises by reference to proximity to premises or facilities of a particular kind or kinds;
- whether further licences (or licences of a particular kind or kinds) should be issued for premises in the district concerned or any stated part of the district;
- maximum trading hours;
- the issue of licences, subject to discretionary conditions; and
- one-way door restrictions.

No other matters may be included and a LAP must not include policies on any matter not related to licensing.

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2. Should the Council develop a LAP?, continued

Other matters Other matters that councils may wish to consider when deciding whether to produce a LAP include:

- The background to the enactment of the Act, including reference to the Report by the Law Commission '[Alcohol in our Lives: Curbing the Harm](#)'.
- The purpose and object of the Act and its policy drivers (such as an increased focus on local decision-making).
- The option, under section 76 of the Act, to prepare a Joint LAP as well as the advantages and disadvantages of such an approach.

While some councils have decided to develop a Joint LAP (e.g. Tauranga/Western Bay of Plenty; [Gore/Invercargill/Southland](#); Napier/Hastings; and Masterton/Carterton/South Wairarapa), it appears these councils already had close working relationships. A number of other councils have considered Joint LAPs, but have instead decided to work collaboratively with neighbouring councils in a less formal way (perhaps using similar drafting formats, sharing information and taking common approaches) – than to have to manage the complexities of developing, adopting and defending appeals for a formal Joint LAP (e.g. Tasman/Nelson/Marlborough; [Hauraki](#)/Matamata-Piako/Waipā/Thames-Coromandel and Waikato). It might be noted that Tauranga/Western Bay of Plenty have stated there were unforeseen challenges in developing a Joint LAP.

- The effect of a LAP (e.g. when a LAP must be considered by licensing decision-makers, such as the DLC and ARLA), and the effect that it can have on the outcomes of different types of applications (e.g. off-licences, on-licences and club licences) and on new applications or renewals.
- The relationship between a LAP and the district plan (i.e. a LAP may contain a policy more restrictive than the district plan, but may not authorise anything forbidden by the district plan), any resource consents and the requirements that a LAP must be consistent with the Act and the general law (e.g. it cannot be discriminatory).
- The requirement to show that the reasons for each policy element in a LAP relied on evidence and considered the effects of each policy against the goal of minimising alcohol-related harm in a reasonable way.

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2. Should the Council develop a LAP?, continued

Other matters, continued

- Administrative matters (such as financial considerations, obligations under the Local Government Official Information Act 1987 as well as significance and consultation requirements).
- Other matters, such as the time and resourcing required to develop a LAP and build expertise in issues concerning sale, supply and consumption of alcohol, the challenges in managing diverse community expectations, deliberating and deciding on policy, and addressing any appeals.

Following an initial briefing workshop with councillors who will be involved in developing the LAP, it may also be useful to consider 'field trips' to various licensed premises, especially any 'hotspots', or the A&E Department and Police.

Council staff should liaise with local Police, Medical Officers of Health and council inspectors to assist with any field trip.

NB: Video footage or photographs of any hotspot issues may also be useful to take to the initial workshop to raise awareness of concerns early in the process.

An **example** of a Committee Report setting out the process to develop and adopt a LAP is that of [Tasman District Council](#).

KEY POINTS

LAP GUIDANCE DOCUMENT

- LAPs can set local maximum trading hours for all licences in the district (section 45 of the Act).
 - A one-way door restriction maybe imposed by a LAP (section 50 of the Act).
 - A LAP can affect the outcomes of different types of applications, e.g. off-licences, on-licences and club licences.
-

3. Legal Principles

Introduction As of 1 March 2015, there had been two appeal hearings of a PLAP that had been heard and decided by ARLA. Those were the appeals concerning the PLAPs of Tasman District Council and Wellington City Council.

The main appealed element in the Tasman District Council case was the maximum trading hours for all on-licences, being *“Monday to Sunday 8.00am until 2.00am the following day”*.²

In the case of the Wellington City Council, a number of elements were appealed, although it was the appeals to the on-licence and off-licence hours that were a particular focus in that decision.³

These two decisions are important milestones for the development of a LAP and it is useful to summarise some of the key legal principles identified by ARLA in these Decisions.

Elements of the LAP

Elements of the LAP must not be outside the ambit of the Act

In the Wellington Decision, ARLA raised concerns that the PLAP covered many matters it considered outside the ambit of the Act.⁴ Of particular concern was Part 5 of the Wellington PLAP or its *‘strategic setting’*. This included consideration of *‘the promotion of a dynamic night time economy, the creation of a safe and welcoming city, and the building of an accessible city.’*⁵

ARLA responded, saying that: *“The PLAP contains policies not authorised by s.77 of the Act. In particular, there are policies contained in Part 5 being the strategic setting ... Indeed, almost everything contained in Part 5 is ultra vires s. 77. These ultra vires policies recorded in the PLAP are evidence that the [elements] appealed against were introduced into the PLAP for the wrong reasons ... Section 77 makes it clear that a PLAP is a very limited document ... a PLAP should not be based upon such considerations; but only upon an attempt to further the object of the Act as set out in s.4.”*⁶

While such *‘strategic settings’* are common features in other local government policies, in light of ARLA’s comments, it is suggested they be avoided in a LAP.

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² [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846](#)

³ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, paras \[4\] to \[10\]](#)

⁴ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, para \[3\]](#)

⁵ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, para \[13\]\(e\)](#)

⁶ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, para \[67\]\(d\)](#)

3. Legal Principles, continued

PLAP

The PLAP must be reasonable in light of the object of the Act

The only ground on which an element of a PLAP may be appealed is that it is unreasonable in light of the object of the Act.⁷ “On an appeal, the Authority is required to compare the challenged PLAP element against the object of the Act and determine whether the challenged element is an unreasonable response in the circumstances.”⁸

“... when construing the object of the Act a balance should be struck between the purchase of alcohol for responsible consumption and the minimisation of alcohol-related harm resulting from excessive or inappropriate consumption ... The Act is intended to encourage the safe and responsible consumption of alcohol so that alcohol-related harm caused by excessive or inappropriate consumption is minimised.”

“It follows that where an element of a PLAP can demonstrably (through evidence presented to the Authority) be linked to the object of minimising alcohol-related harm, the Authority will be slow to find that element to be unreasonable. The invasion of public or private rights would need to be significant to outweigh the benefit of such an element in terms of minimising alcohol-related harm. However, if an element of a PLAP cannot be shown to attempt to minimise alcohol-related harm, then the Authority will be more likely to find the element unreasonable for the purposes of ss. 81 and 83 of the Act.”⁹

“... the reasonableness test [is] referred to in *Meads Brothers Limited v Rotorua District Licensing Agency* [2002] NZARLA 308. It recognises the applicability of the proportionality principles used in bylaw cases. The “reasonable person” test applies. All of these matters which go to “reasonableness” are governed or qualified by the words “in the light of the object of the Act”. Thus, unreasonableness must always be cross-checked against the object of the Act if the dual requirements of s.81(4) of the Act are to be met.”¹⁰

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⁷ [See section 81\(4\) of the Act](#)

⁸ [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, para \[20\]](#)

⁹ [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, para \[51\]](#)

¹⁰ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, para \[16\]; Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, para \[55\]](#)

3. Legal Principles, continued

PLAP, continued

“Accordingly, when preparing a PLAP, the territorial authority must consider what must be incorporated in the PLAP to achieve the object of the Act in its locality.¹¹ If:

- (a) the proposed measures constitute a disproportionate or excessive response to the perceived problems; or
- (b) its proposed measures are partial or unequal in their operation between license holders; or
- (c) an element of a PLAP is manifestly unjust or discloses bad faith; or
- (d) is an oppressive or gratuitous [interference] with the rights of those affected;

then it is likely that the new measures will be unreasonable in the light of the object of the Act.”

Short

Keep it short

In the Wellington Decision, ARLA noted that: “... it is clear that a LAP is intended to be a relatively short and clear expression of the policies ... There is no need for it to contain any matters extraneous to licensing and, indeed, to do so may contravene s. 77 of the Act. It needs to be the sort of document that any member of the industry or any regulator can pick up and immediately discover the policy ... applicable to a particular situation.”¹²

Local

Keep it local

ARLA made it clear in the Tasman Decision that a LAP “is not a national policy and evidence of national characteristics will seldom be of value except to provide a background for evidence of local issues. It is a local policy prepared by local people who know and understand the local problems in their locality.”¹³

This was reinforced in the Wellington Decision, where ARLA stated that: “... evidence of research undertaken in other countries or even on a national basis in New Zealand, is unlikely to be of assistance ... What is of assistance is what happens in the relevant district. The national or international research evidence needs to have a connection with what occurs in the district ... it is the local issues that are relevant.”¹⁴

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¹¹ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, para \[19\]](#)

¹² [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, para \[15\]](#)

¹³ [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, para \[52\]](#)

¹⁴ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, paras \[30\] and \[31\]](#)

3. Legal Principles, continued

Reasons *Providing reasons*

In both the Wellington and Tasman decisions, ARLA made it clear that the ‘reasons’ for the policy elements in the PLAP must be recorded.

In the Wellington Decision, ARLA stated that: “ ... a PLAP should contain the reasons for its policies. They provide transparency and should indicate that the authors of the PLAP took into account the object of the Act and the matters set out in s.78(2) of the Act when preparing the PLAP. To include such reasons in a PLAP would be of great assistance to those interested parties considering whether or not to appeal under s.81 of the Act is warranted. They would also explain to this Authority what was in the mind of a territorial authority ...”¹⁵

Further guidance might be taken on this point from the fuller explanation ARLA gave for these views in the Tasman Decision:

“... If, in its PLAP, the territorial authority is able to provide reasons for each element of the policy, then it is those reasons that will be scrutinised in any appeal. If the reasoning of the territorial authority shows that the territorial authority has carefully weighed concerns of submitters as to the effects of the policies upon them and the general community, against the minimisation of alcohol-related harm in the locality, then it is unlikely that the Authority will determine that the PLAP is unreasonable in the light of the object of the Act.”¹⁶

“In this decision it has been suggested that when preparing a PLAP reasons for each element of it are contained in the policy document itself. This was not the case with the [Tasman District Council’s] ... PLAP. However, if the reasons (they need not be lengthy) are contained in the policy document itself then this transparency may have the effect of reducing criticism of the policy.”¹⁷

“It is important that a LAP set out rules clearly and concisely. If the rules are interspersed with the reasons for each element of the policy then the document will become virtually unintelligible. Accordingly the Authority suggests that the reasons for each element be contained in a separate part of the policy document.”¹⁸

“The Authority appreciates that the creation of PLAP is a democratic process. Not all councillors of any territorial authority will agree on the reasons for any particular element of the policy. Nevertheless, when preparing the documentation for consideration by councillors in respect of the PLAP, it must be possible for Council officers to suggest appropriate reasons. These can be adopted by the councillors if they agree with them. They can always add to them or decline to adopt them. This technique should assist territorial authorities when preparing their PLAP.”¹⁹

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¹⁵ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, para \[15\]](#)

¹⁶ [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, para \[52\]](#)

¹⁷ [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, para \[69\]](#)

¹⁸ [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, para \[70\]](#)

¹⁹ [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, para \[71\]](#)

3. Legal Principles, continued

Approach ***A precautionary approach may be used (provided it is evidentially based)***

In the Tasman Decision, ARLA recognised that: “The territorial authority does not need to be sure that a particular element of its PLAP will minimise alcohol-related harm ... A precautionary approach can be used to see if it will achieve the statutory object.”²⁰

This statement was further qualified in the Wellington Decision, with ARLA stating that a precautionary approach can be used “provided there is an evidential basis supporting it.”²¹

The concept of a precautionary approach arises out of the Court of Appeal decision in *My Noodle*,²² where the Court stated that: “In our view, the [decision-maker] is not required to be sure that particular conditions will reduce liquor abuse. It is entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective ... then [the decision-maker] is entitled to test whether that possibility is a reality.”

In that case, the Queenstown-Lakes District Council developed a Liquor Licensing Policy which substituted a 21 hour trading period (7am to 4am the following day) for on-licences in the CBD rather than 24 hours. While it was accepted that there was no evidence of specific problems related to 24 hour trading, the Council’s Policy was upheld on the basis that the Council believed, on the information it had available following consultation, that Queenstown would be safer if licensed premises closed at 4am. The situation was also to be monitored and the Policy reviewed within 12 months to determine its efficacy.

Trading hours ***Trading Hours***

A very important aspect of a LAP is that once in force, section 45 of the Act provides that the maximum trading hours permitted for premises in a district become those stated in the LAP (rather than the national maximum trading hours).

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²⁰ [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, para \[54\].](#)

²¹ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, paras \[18\] and \[80\].](#)

²² [My Noodle Ltd v Queenstown-Lakes District Council \[2009\] NZCA 564; \(2010\) NZAR 152 at para \[74\].](#)

3. Legal Principles, continued

Trading hours, continued

ARLA observed in the Wellington Decision that: "... [an] accurate interpretation in the context of s.43 is that the default hours are by the statute itself deemed to be reasonable; as default maximum hours. The Authority is not convinced that this constitutes a presumption. Rather in the absence of a LAP with its own local considerations, the default hours are reasonable. They provide a useful guide or starting point as to those maximum hours that are reasonable in light of the object of the Act."²³

ARLA then decided that: "In many cases (such as in Tasman) there are no on-licences exercising hours as extensive as the default hours. In such a situation, as was done in the Tasman decision, the existing trading hours (as distinct from licensed hours) applying in the district will prove a starting point."²⁴

Consequently, if a LAP is going to have a policy that departs from the default national maximum trading hours, local evidence must be shown to justify why this is reasonable in light of the object of the Act.

Roles

The distinct roles of the Council and the District Licensing Committee

In its Wellington Decision, ARLA noted the distinct roles of the Council and the District Licensing Committee regarding a LAP.²⁵

The drafting language used in LAP should recognise this distinction. Of particular importance here is that any discretionary conditions suggested by the Council in the LAP must be drafted as recommendations to the DLC or ARLA and not as compulsory conditions that must be applied by those bodies.²⁶

In this regard, it might be noted that section 109 of the Act provides that both ARLA and the relevant DLC may issue a licence subject to particular conditions if in their opinion, the issuing of the licence or the consequences of issuing the licence without those conditions would be inconsistent with the LAP.

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²³ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, paras \[26 and 27\]](#). See also [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, paras \[26-27\]](#)

²⁴ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, para \[28\]](#). See also [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, paras \[57-68\]](#)

²⁵ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, para \[13\]\(g\) and \[63\]](#).

²⁶ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, para \[13\]\(h\) and \[67\]\(a\)](#).

3. Legal Principles, continued

LAP GUIDANCE DOCUMENT

KEY POINTS

- The elements of the LAP must **not** be outside the ambit of the Act.
- The PLAP must be reasonable in light of the object of the Act.
- Keep it short and local.
- Record the reasons for each policy element.
- A precautionary approach may be used (providing it is evidentially based).
- Changes to reduce trading hours must be backed-up by local evidence.
- The council and the DLC have distinct roles regarding a LAP.

4. Local Alcohol Policy Research Report

Research report

Section 78(2) of the Act requires councils, when producing a Draft LAP, to have regard to a range of information.

To pull all of this information together in one place, many councils have developed a Local Alcohol Policy Research Report. These reports have tended to include:

- an overview of the district's demographic profile, as well as information about the people who visit the district as tourist and holidaymakers;
- a review of the objectives and policies of the District Plan;
- an analysis of the number, location, opening hours and licensing hours of the district's licensed premises;
- information about the district's liquor ban policy;
- overall health indicators of the district; and
- an analysis of various other indicators (including crime, safety and traffic data) to contribute to understanding the nature and severity of alcohol related problems.

Examples include:

- the [Waimakariri District Council Local Alcohol Policy Research Report](#) (May 2013);
- the [Porirua City Council Local Alcohol Policy Issues Paper](#) (2013); and
- the [Auckland Council Local Alcohol Policy Research Report](#).

It is important for these documents to identify the relevant local issues, using local information.²⁷ The information included should also keep to the matters set out in section 78(2).

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²⁷ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, paras \[30\] and \[31\]](#)

4. Local Alcohol Policy Research Report, continued

Research report, continued

Some good sources of local data and information include:

- the NZ Police (offence data, breaches of liquor control bylaws, drink drive information and general behavioural trends in the district);
- the Medical Officer of Health for the district;
- the District Health Board Emergency Department clinicians;
- the local Ambulance Service;
- the local NZ Fire Service;
- the Accident Compensation Corporation (community profiles which include alcohol-related injuries);
- the council call centre – service calls and, complaints (e.g. for noise, graffiti, vandalism, extra rubbish collections); and
- the New Zealand Transport Agency Road Crash data.

The Health Promotion Agency has also prepared a useful set of suggestions for data and information - <http://www.alcohol.org.nz/legislation-policy/sale-and-supply-alcohol-act-2012/local-alcohol-policies/local-alcohol-policy-guide>

One of the difficulties for councils is that local information (especially statistically based information) may be very hard to come by. Often this kind of information relevant to a LAP is only derived at national or regional levels. Council boundaries and other factors can also make analysing this statistical information difficult or lead to weak conclusions at a local level. Often the sources above will only provide ‘raw data’ and the hard yards of analysing it will fall to the council.

Perhaps in recognition of this, ARLA has made it clear that it will be satisfied when considering appeals with the evidence of local experienced professionals, such as the Police, Medical Officer of Health, emergency department medical officers, and ambulance officers. Local information from residents has also been relied upon by ARLA.²⁸

In its Wellington Decision, ARLA observed that “[while] the statistical evidence was weak ... the evidence of those police witnesses who actually saw [alcohol-related harm incidents] week in and week out was strong” and “the Authority disagrees with the solely data approach and prefers to use the best evidence available which includes both personal experience and data”.²⁹

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²⁸ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, paras \[30\] and \[31\]](#)

²⁹ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, paras \[42\]\(f\) and \[66\]](#)

4. Local Alcohol Policy Research Report, continued

International and National Information

With regard to information or research undertaken in other countries or even on a national basis in New Zealand, ARLA has been clear that this is unlikely to be of assistance unless it has a connection with what occurs in the district. It is the local issues that are relevant.³⁰

KEY POINTS

LAP GUIDANCE DOCUMENT

- It is important to identify local issues using local information – it's the local that counts!
 - Use the best local evidence available. You can include both statistics and personal experiences.
-

³⁰ [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, paras \[30\] and \[31\]](#)

5. Local Information and Community Surveys

Local information and Surveys

More anecdotal information or ‘stories’ from local sources, such as iwi, local communities, Maori wardens, community patrols, ‘Mainstreet Ambassadors’, taxi companies and others working in the community may also contribute to the body of information contained in the Local Alcohol Policy Research Report.

In addition, some councils have also undertaken community surveys, but these are not a requirement under the Act.

An **example** is the [Tasman District Council Community Survey](#) (May/June 2013).

The Tasman District Council Community Survey was a random sample of voters registered in the Tasman District conducted in May/June 2013 to determine community attitudes towards the sale and consumption of alcohol.

The survey was also designed and used by each of the three ‘Top of the South’ Councils (Tasman District, Nelson City and Marlborough District) in gathering data about their communities’ wishes relating to alcohol. In Tasman, an abbreviated form of the survey was also sent to other groups identified as key stakeholders. The results of the survey were examined and discussed by Committee members of the Tasman District Council at a Draft LAP councillor workshop.

In the Tasman Decision, ARLA had this to say about the Tasman Community Survey: “A rather unsophisticated poll of residents supported the PLAP element [of on-licence closing hours being reduced from 3.00am to 2.00am]. Not much weight can be placed on this; although it was another tool that caused the [Council] ... and its officers to focus on the Act’s object.”³¹

Having regard to this criticism, councils may wish to invest in a more sophisticated poll of residents to support the policy choices being made for the LAP. Further **examples** of community surveys include those prepared by Hutt City Council and Christchurch City Council.

However, if resources do not extend to running a more sophisticated poll, a simple community survey can be used, bearing in mind that the results should only be given limited weight by the council in adopting its LAP. Other reasoning should be relied upon as well to make policy decisions.

KEY POINT

LAP GUIDANCE DOCUMENT

Community surveys are just **one** method of gathering information on your community’s view.

³¹ [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, para \[65\]](#)

6. Consulting the Police, Inspectors and Medical Officers of Health

Consultation In accordance with section 78(4) of the Act, councils must not produce a Draft LAP without having consulted the Police, Inspectors, and Medical Officers of Health. These officers must make reasonable efforts to give the council any information they hold relating to any of the matters stated in section 78(2).

In light of ARLA's Wellington Decision, where the evidence of police and medical witnesses (based on personal experiences) was considered strong, councils may look to record the information provided by the local Police, Inspectors, and Medical Officer of Health against each of the policy elements being proposed in the Draft LAP and have that clearly available as the Draft LAP is adopted.

The Police have established a Protocol for a Data Request Process. This involves:

- A council submitting a request to a local Police 'Alcohol Harm Prevention Officer' ('AHPO').
- There is a single point of contact in each council district, with Local Police Commanders providing AHPO's with relevant direction.
- The AHPO sends the Council Data Request to New Zealand Police Headquarters and a data-set is provided back to the council in Excel format.
- The data-set will be similar in format for each council, and will include a data-dictionary and appropriate explanations for councils to understand the data provided (e.g. an explanation of the area covered by Scene Station, having tabs clearly labelled in the spreadsheet and how the data should be referenced by the council).
- While the council will then need to interpret the data themselves, the local AHPO will be available to help explain the variables.
- In addition, local Police will also work with councils to provide input to the development of LAP.

The key thing for councils to remember is that any requests to Police for data should be submitted at the earliest possible time, to ensure the data can be made available by the desired date – hopefully it will be within a few weeks.

As well, councils should be clear about what information they need and ask the 'right' questions. Local Police AHPO's should be able to help with this before the request is made.

LAP GUIDANCE DOCUMENT

KEY POINTS

- The Police have established Alcohol Harm Prevention Officers (AHPO's) to assist in the data collection process of a LAP.
- Record the information provided against each of the proposed policy elements and have that clearly available.

7. Draft Local Alcohol Policy and Special Consultative Procedure

Procedure

An important step in the process of developing a LAP is for the council to prepare and approve a Draft LAP, and then formally consult on the draft using the special consultative procedure under the LGA.

In doing so, as is typical of all consultation under the special consultative procedure, the council must prepare a Statement of Proposal and consider a Summary of Information for the consultation. The Statement and Summary must be made publicly and widely available for consultation, together with a description of how submitters can present their views. A period of not less than one month, but preferably longer should be given for written submissions to be made. Following that, the council must provide an opportunity for submitters to present their views to the council in a manner that enables spoken (or New Zealand sign language) interaction between the submitter and the council. Submitters must be informed about how and when they may take up this opportunity.

With the amendments made to the special consultative procedure under the Local Government Act 2002 Amendment Act 2014 and the introduction of the 'Significance and Engagement Policy', councils will be able to use a variety of mechanisms to engage their community in making submissions on the Draft LAP beyond the traditional submission and hearings processes used in the past. Digital approaches such as e-newsletters and social media can be used. Advertisements and articles in the media, information and displays in libraries and service centres, on-line survey-based feedback as well as traditional hearings are also options.

For some practical examples of the various types of engagement possible for both initial engagement and through the more formal special consultative procedure, see the approaches of [Auckland Council](#), Christchurch City Council, [Hauraki District Council](#), [Tasman District Council](#), Thames-Coromandel District Council and [Wellington City Council](#).

Care also needs to be taken to manage the potential for consultation fatigue, especially on the part of the general community, that may arise through multiple periods of engagement.

Subsequent to this engagement phase, deliberations of the submissions by Councillors must then be held.

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7. Draft Local Alcohol Policy and Special Consultative Procedure, continued

Procedure, continued

It is worth noting again that section 77 of the Act restricts the scope of the draft LAP to those matters set out in that section. In addition, although section 87 of the Local Government Act 2002 provides that the Statement of Proposal only needs to be a draft of the proposed Draft LAP, it is suggested that council provide other explanatory material to accompany the Draft LAP.

Care should be taken by councils to closely follow the principles and procedures of consultation and decision-making set out in the LGA when undertaking the special consultative procedure and deliberations. While ARLA has not focused on this aspect of the process of adopting a LAP in its decisions to date, councils need to be mindful of these obligations and comply with them.

An **example** of a Committee Report on a Statement of Proposal for a Draft Local Alcohol Policy may be found at [Tasman District Council](#).

Further, an **example** of a Hearings Report of Submissions on the Draft Local Alcohol Policy may be found at [Tasman District Council](#).

LAP GUIDANCE DOCUMENT

KEY POINT

Councils can use a variety of mechanisms to engage with their community in making submissions to the Draft LAP.

8. Provisional Local Alcohol Policy

Provisional LAP

Following deliberations, if the council continues to pursue a LAP, the next step is to adopt a Provisional Local Alcohol Policy ('PLAP').

As noted above, a critical part of developing the PLAP is that careful attention be paid to ensuring that all policy elements in the PLAP are reasonable in light of the object of the Act.

Where an element of a PLAP can demonstrably (through evidence) be linked to the objective of minimising alcohol-related harm in the district, it will likely be found to be reasonable. However, if an element of a PLAP cannot be shown to attempt to minimise alcohol-related harm in the district, then it is more at risk of being seen to be unreasonable.

When deliberating on and adopting a PLAP, the reasons for each policy element should be recorded by the council. The reasoning must show that the council has carefully weighed-up the concerns of submitters as to the effects of the policies upon the general community, against the minimisation of alcohol-related harm.

An **example** of a Report adopting a PLAP may be found at [Tasman District Council](#).

An **example** of a Document setting out the Reasons for a Policy Element in a PLAP is set out in the Appendix of this Guidance.

Once a PLAP has been adopted, section 80 of the Act requires the council to give public notice of the PLAP, the rights of appeal against it and the ground on which an appeal may be made.

KEY POINTS

LAP GUIDANCE DOCUMENT

- Pay careful attention to ensure all policy elements in the PLAP are reasonable in the light of the object of the Act.
 - Demonstrate clearly, through evidence, that an element of the PLAP is linked to the object of minimising alcohol related harm.
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9. Appeals and Adoption/Entry into Force of Local Alcohol Policy

Appeals and adoption/Entry

The statutory framework concerning appeals to a PLAP are set out in sections 81 to 86 of the Act.

The right of appeal is set out in section 81, allowing submitters to the draft LAP to appeal against any element of a notified PLAP that they consider unreasonable in light of the object of the Act. 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. An appeal must be made in accordance with the Sale and Supply of Alcohol Regulations 2014. The council concerned is the respondent in an appeal.

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.

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.

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.

As noted by ARLA: "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."³²

Although the appellant has no right of further appeal against a decision of ARLA, it does have the option of considering judicial review.

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³² [B & M Entertainment & Anors v Wellington City Council \[2015\] NZARLA PH-21-28, paras \[40\] and \[70\].](#)

9. Appeals and Adoption/Entry into Force of Local Alcohol Policy, continued

Appeals and adoption/Entry, continued

If, after hearing the appeal, ARLA asks the Council to reconsider an element of a PLAP, the Council must either:

- (a) resubmit the PLAP to ARLA with the element deleted; or
- (b) resubmit the PLAP to ARLA with the element replaced with a new or amended element; or
- (c) appeal to the High Court against ARLA's finding that the element is unreasonable in light of the object of the Act; or
- (d) abandon the PLAP.

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:

- resubmit the policy to ARLA with the element deleted; or
- resubmit the policy to ARLA with the element replaced with a new or amended element; or
- abandon the PLAP.

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. However, these appeals on the resubmission may be dealt with in private, rather than at a public hearing.

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9. Appeals and Adoption/Entry into Force of Local Alcohol Policy, continued

Addressing appeals

While councils will be more familiar with resource management hearings before the Environment Court, in many ways the hearings of appeals of the PLAP before ARLA are not too dissimilar. Both are formal court processes. Both are costly and require professional support. Key council staff involved in the development of the PLAP will need to give evidence as witnesses to defend the PLAP.

Observations from the hearings held to date are that:

- Professional local experts (such as the Police, medical officers, addiction experts and emergency department clinicians) can make very good witnesses providing strong evidence to support a PLAP, as they typically bring to the hearing years of local 'real life' experience of how alcohol affects their work and the local community;
- Any statistical data or applied research relied upon by the council must be flawless and well understood by witnesses. The accuracy of such data or research is often focused on by appellants;
- Keep it local. Any national or international evidence needs to have a connection with what occurs in the district;
- Council witnesses need to be very clear about the reasons for any changes in policy that were made as the LAP was being developed (for example, if changes were made to the policy element concerning maximum trading hours, the witnesses need to be very familiar with the reasons for the changes);
- With cross-examination being permitted in these appeal hearings, witnesses need to be prepared and comfortable with being cross-examined on any aspect of their evidence.

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9. Appeals and Adoption/Entry into Force of Local Alcohol Policy, continued

Settling appeals

In the case of some appeals, councils and appellants have 'settled' these by way of a consent order without a hearing.³³ To clarify the procedure for settling appeals, ARLA has issued a [Practice Note](#), dated 19 March 2015.

The Practice Note begins by noting that, following an appeal, some councils have agreed with appellants that an element of the PLAP is unreasonable in light of the object of the Act. It then notes that in terms of sections 82 and 83(2) of the Act, ARLA is required to ask the council to reconsider the element appealed against. After the council has reconsidered the element and has resolved to amend or replace it, then it is resubmitted to ARLA for further consideration.

The Practice Note then provides that on a resubmission if:

- all parties to the original appeal proceedings (including any section 205 parties) are in agreement as to the terms of the resubmitted element; and
- ARLA is satisfied that the council has informed all those who made submissions to it on the original element in the Draft LAP of the terms of the proposed agreed element and of their rights under section 205(2)(d) of the Act; and
- no persons have entered an appearance opposing the proposed element either in terms of section 205(2)(d) or (e) of the Act; and
- ARLA is satisfied that the resubmitted element is not unreasonable in light of the object of the Act ...;

then ARLA may deal with the resubmitted element in private on the papers. In all other cases there will be a public hearing. In that case, the original appellants will be deemed to be appellants and the council will remain the respondent.

An important point to note is that under this Practice Note, if any person who made a submission to the Draft LAP enters an appearance opposing the proposed resubmitted policy element, then it appears that the appeal will have to proceed to a public hearing.

LAP GUIDANCE DOCUMENT

KEY POINT

ARLA has issued a [practice note](#) that clarified the procedure to settling appeals.

³³ [Progressive Enterprises Ltd & anors v Waimakariri District Council, Consent Order \(11 December 2014\)](#)

Appendix – Reasons for policy elements in a provisional local alcohol policy

Reasons for policy elements

[As suggested by ARLA, councils should include the reasons for the policy elements set out in their PLAP. It may be most useful to include this as an Attachment to the Council Report adopting the PLAP. The following reasons, given by way of an example, relate to the ‘Hours for On-Licences’ Policy Element subject to the appeal to ARLA in Hospitality New Zealand Incorporated v Tasman District Council [2014] NZARLA PH 846].

Policy Element

2.2 On-licences

2.2.1 Maximum Trading Hours

The Policy of the Council is that the following maximum trading hours apply to all on-licensed premises in the district:

Monday to Sunday	8.00am to 2.00 am the following day
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Reasons for Policy Element

In determining this Policy, the Council considered and applied the following reasons:³⁴

- Most of the time, even though many on-licensed premises in the district are able to, under their current licences, to close at 3.00am, most do not use all those hours. It is seldom that any of the on-licensed premises remain open until 3.00am.
- However, it is recognised that during the summer holiday period in some cases the closing time of 3.00am is used to its full extent and it is during this summer period that the element of the PLAP will impact to some extent on both on-licensees and patrons.
- In one part of the district, the proposed closing time of 2.00am has applied to on-licensed premises for some years. This part of the district experienced considerable alcohol-related harm problems in the late 1990s. As a result of a “gentleman’s agreement” between the Police and the licensees in this part of the district, on-licensed premises in this area close at 2.00am. Consequently, there has been a proven reduction in alcohol-related harm in that area.

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³⁴ See [Hospitality New Zealand Incorporated v Tasman District Council \[2014\] NZARLA PH 846, paragraphs \[57\] to \[68\]](#).

Appendix – Reasons for policy elements in a provisional local alcohol policy, continued

Reasons for policy elements, continued

- While presently this part of the district seems relatively calm, if the PLAP permitted more extensive hours than the “gentleman’s agreement”, it is inevitable that pressure would be brought to overturn the voluntary accord. In those circumstances it is likely that alcohol-related harm would increase.
 - It would be unwise for places other than this part of the district to have longer hours as this would create migratory problems with associated alcohol-related harm. This does not occur at present, but this is because for most of the year most on-licensed premises do not remain open beyond 2.00am.
 - The second main reason is that the district encompasses a large rural area and inevitable difficulties can be experienced in ensuring that the provisions of the Act are observed. The longer on-licensed premises can remain open in the more distant parts of the locality, the more difficult enforcement becomes. Resources of both the Inspectorate and the Police are limited. Enforcement of the alcohol laws are an integral part of achieving the Act’s object. Data provided by the Medical Officer of Health shows the locality is not free from alcohol-related harm.
 - The Community Survey shows that residents of the district support this Policy Element.
 - The economic and other disadvantages likely to be sustained by those very few on-licences affected by the proposed change are not significant.
 - While patrons will be affected, again their interests are not so substantially disadvantaged as to outweigh the importance of the object of the Act being achieved.
-