

WEST DUNBARTONSHIRE LICENSING BOARD

Report by the Clerk to the Licensing Board

Licensing Board – 11 October 2023

Subject: New Statement of Licensing Policy

1 Purpose

1.1 To allow Members of the Licensing Board to consider the responses received in relation to the public consultation on its draft Statement of Licensing Policy and Assessment of Overprovision and to finalise the said documents.

2 Recommendations

2.1 It is recommended that Members of the Licensing Board:-

- a) review and consider the responses received as a result of the recent public consultation exercise;
- b) approves the revised new Statement of Licensing Policy (see Appendix 1) and Assessment of Overprovision (see Appendix 2) subject to any amends as a result of their consideration of the aforementioned responses; and
- c) to delegate authority to the Clerk to finalise the draft Statement of Licensing Policy (including the Assessment of Overprovision) including finalising the foreword in consultation with the Convenor, the content of paragraph 7 and all other typographic and typesetting matters.

3 Background

3.1 The Licensing Board has, since 1 November 2022, been developing a new Statement of Licensing Policy and Assessment of Overprovision.

3.2 At the Licensing Board meeting of 9 May 2023, Members considered the outcome of a pre-consultation exercise and authorised the Clerk to the Licensing Board to prepare a new Statement of Licensing Policy and Assessment of Overprovision. These foregoing documents had regard to the responses received throughout the pre-consultation exercise.

3.3 At the following Licensing Board meeting of 27 June 2023, Members authorised the Clerk to the Licensing Board to consult on the new Statement of Licensing Policy and Assessment of Overprovision. Members were advised that a public consultation exercise would be carried out involving a range of stakeholders. Members were further advised that the Licensing (Scotland) Act 2005 (“the 2005 Act”) requires

certain parties to be consulted and that this would be done.

4 Main issues

4.1 A public consultation was carried out in relation to both the Statement of Licensing Policy and the Assessment of Overprovision with a range of stakeholders. These stakeholders included:-

- Police Scotland;
- NHS Greater Glasgow and Clyde;
- West Dunbartonshire Health and Social Care Partnership;
- West Dunbartonshire Alcohol and Drug Partnership;
- Alcohol Focus Scotland;
- Elected members;
- all Community Councils;
- tenant groups;
- the Local Licensing Forum;
- the Citizen Panel;
- Unite;
- premises licence holders;
- Building, Planning and Environmental Health Services of the Council;
- Various industry trade bodies; and
- Fire Scotland.

The link to the consultation document was made available via the Council's website and social media.

In addition, additional modes of consultation were utilised, for example:

- questions relating to the development of the Statement of Licensing Policy were asked through a telephone survey; and
- a workshop was held with representatives of the licensed trade to discuss the practical impact of the draft Statement of Licensing Policy and Assessment of Overprovision.

Public responses – Statement of Licensing Policy

4.2 24 responses were received from members of the public. In addition, one response was received from an elected member of West Dunbartonshire Council. The responses received are detailed in full at Appendix 3. The changes proposed by the Licensing Board were by and large welcomed by members of the public responding to the consultation. For example, 79% of respondents agreed with the proposal to tighten the terms of access of Children to pre-booked functions, 75% of respondents supported the addition of bespoke conditions where a licensed premises proposes to carry out home deliveries of alcohol and 88% of respondents felt that the additional information around the Licensing Board procedure

was either very, fairly, or a little useful.

- 4.3** A member of the public suggested that it would be useful for more information to be given as to the role and function of the Licensing Forum. Further wording clarifying the Forum's role has been inserted at paragraph 3 for Members' approval with the existing paragraph relating to the Forum being moved to the introductory part of the Policy for ease of reference.

Public responses – Assessment of Overprovision

- 4.4** The public were supportive of the Licensing Board's position in relation to overprovision with 83% of respondents agreeing with the Licensing Board's approach to identifying the new localities and the data used to do so. A majority agreed with the proposal to clearly capture variations in the Assessment. Varying responses were received in relation to the impact of licensed premises in the localities with no clear consensus as to their impact. There was, however, widespread support from 83% of respondents for the inclusion of licensed hours in the consideration of overprovision and 75% of respondents either agreeing or strongly agreeing to include variation applications in the Assessment of Overprovision. Comments are at Appendix 4.

Trade responses – Statement of Licensing Policy

- 4.5** 13 responses were received from members of the trade (see Appendix 5) including two from trade associations and one licensing agent (see Appendix 6). There was broad support for the Licensing Board's proposals with no negative comment around the conditions proposed in relation to Children and Young Persons access and home deliveries. There was a comment around relaxed Children and Young Persons access for premises catering for tourists. The Clerk suggests that this is something that the Licensing Board can deal with on a case-by-case basis.

- 4.6** The responses from trade associations and a licensing agent have been analysed (along with all other responses) and the following comments are highlighted:-

- A licensing agent expressed concern in relation to the wording of condition 4 of Part D (Outdoor area). It is now proposed to remove the requirement for a member of staff to be present in an outdoor area at all times as this may be overly onerous; instead the premises should make sure that they are satisfied that management of the outdoor area is adequate.
- The Scottish Grocers Federation raised concerns with the Licensing Board's policy in relation to licensed hours for off-sales hours and in particular the requirement for additional control measures post 2000 hours. It is suggested by the Clerk that this

long-standing policy remains fit for purpose.

- A trade association requested that entertainment is deemed sufficient reason for Children and Young Persons to be on premises with reference being made to tourism. It is suggested by the Clerk that this is a matter for Licensing Board members to consider on a case by case basis.

Trade responses – Assessment of Overprovision

4.7 Trade members responses are at Appendix 7. Trade association respondents (see Appendix 6) expressed concern that an Assessment of Overprovision that identifies large parts of the authority's area as overprovided for may restrict trade and deter investment. For example, the Scottish Grocers Federation wrote *"Convenience stores provide a range of key services for their customers, and this includes that ability to be able to offer their customers a full range of products...Therefore, a consequence of overprovision is that new entrants to the market are unable to obtain premises licences...and are therefore, disadvantaged."* This point was also made by licence holders in the localities to be declared as overprovided for premises of a particular type during the aforementioned workshop session. Attendees at this workshop expressed concern around overprovision potentially restricting their ability to expand. Members will be aware that the Licensing Board is entitled to introduce a rebuttable presumption against the grant of a licence by way of an overprovision policy provided that it is lawful and evidence based and further, all applications will be considered on their own merits.

4.8 In relation to the Licensing Board's proposal to make clear within the Assessment of Overprovision that increasing the capacity of a licensed premises in an area of overprovision will face a rebuttable presumption against grant, a member of the trade asked *"How does a responsible alcohol retailer increase or his alcohol offering if he is sited within a current overprovision zone. Refits [usually involve] increasing or decreasing popular retail categories...the policy appears to suppress the normal means of business improvement."* Notwithstanding confirming that a variation triggers a rebuttable presumption against grant in terms of the Assessment, it would be open to an applicant to argue that their application should be treated as an exception to policy and further increasing the capacity of premises within the overprovision locality is a material consideration for the Licensing Board given that they had regard to the capacity and licensed hours when preparing their Overprovision Assessment.

External bodies

4.9 Responses were received from:-

- Police Scotland;
- a joint response from the Environmental Health service of the

- Council; and
- a joint response from NHS Greater Glasgow and Clyde, West Dunbartonshire Health and Social Care Partnership, and the West Dunbartonshire Alcohol and Drug Partnership.

All responses are at Appendix 8.

- 4.10** Police Scotland's response indicates that they are broadly content with the terms of the document and does not advocate any amends in relation to either the Statement of Licensing Policy or the Assessment of Overprovision.
- 4.11** Having considered the joint response from Environmental Health Services, minor amends are proposed at paragraphs 15.3, 16.1, and 24.2 of the draft Statement of Licensing Policy so to clarify matters around the Licensing Board's approach to the licensing objective of preventing public nuisance and the updated statutory position in relation to single use plastics.
- 4.12** The joint response from NHS Greater Glasgow and Clyde, West Dunbartonshire Health and Social Care Partnership, and the West Dunbartonshire Alcohol and Drug Partnership submits that the new Statement of Licensing Policy very effectively promotes the licensing objectives and supports various amends to the Policy including the tightening of the terms of Children's access to licensed premises, the proposed standard conditions in relation to Children and Young Persons' access, requirement for a refusal register and the inclusion of an expanded section on attendance at Licensing Board meetings.
- 4.13** The foregoing response does express concern in relation to a number of matters including (but not limited to):-
- it is suggested that delivery staff must have appropriate training to make sure that the Challenge 25 scheme is complied with; the relevant condition has been updated to address this concern (see Condition 1 of Part C (Home deliveries));
 - concern is expressed around the Policy narrating a 10pm terminal hour for unattended Young Persons in licensed premises with it being suggested that this *"serves to promote this legality rather than consider the impact the policy will have..."*; it is the Clerk's view that it is important that applicants have certainty around the Licensing Board's expectations in relation to Children and Young Person's access;
 - the response posits that the standard conditions in relation to occasional licences are *"alone are unlikely to be sufficient to offset the risk that occasional licenses may generate harms in terms of the licensing objectives (particularly if they are used recurrently and are subject to less scrutiny)."*; Members will be aware that the Licensing Board has limited powers under the 2005 Act in relation

to the determination of occasional licences and that this is a matter that the Scottish Government are considering having regard to the impact of *Keasim Ltd v City of Glasgow Licensing Board*; and

- it is noted within the response that the Licensing Board has not refused an application on the grounds of overprovision. The Licensing Board has refused applications on the grounds of overprovision, most notably an application for a premises licence for a convenience store in Clydebank (see *Martin McColl Limited v West Dunbartonshire Licensing Board*) and furthermore, the Assessment of Overprovision has a deterrent effect as Officers heard when consulting with the trade.

West Dunbartonshire Licensing Forum

- 4.14** The West Dunbartonshire Licensing Forum wrote to the Clerk to commend the recommendations it made during the Licensing Board’s pre-consultation exercise (see Appendix 9).

Licensed trade workshop

- 4.15** On 16 August 2023 a workshop was held with members of the licensed trade. The principle aim of the workshop was to identify practical issues that may arise as a result of the draft Statement of Licensing Policy and Assessment of Overprovision. There was broad support for the amendments in the draft Statement of Licensing Policy. Attendees did identify potential technical issues with the wording in relation to conditions for home deliveries and the requirement for a refusal book and the updated draft Statement of Licensing Policy has been revised to reflect this feedback. Members of the on-sales licensed trade requested that consideration be given to recognising both the Scottish Pipe Band Championships and Highland Games as significant events where the grant of an extended hours application would be delegated to the Clerk. The Clerk is of the view that sufficient discretion is already contained within the Policy to determine this type of application in the appropriate circumstances.

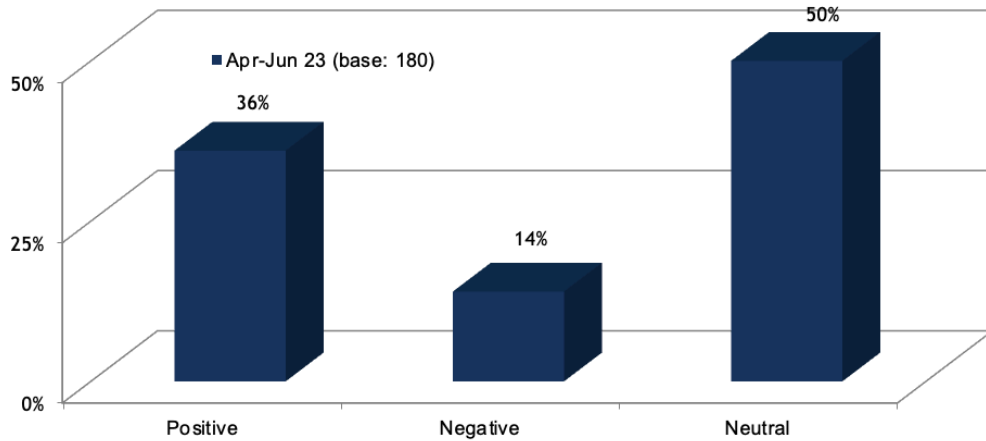
Telephone survey

- 4.16** Respondents were asked to comment on various licensing matters.

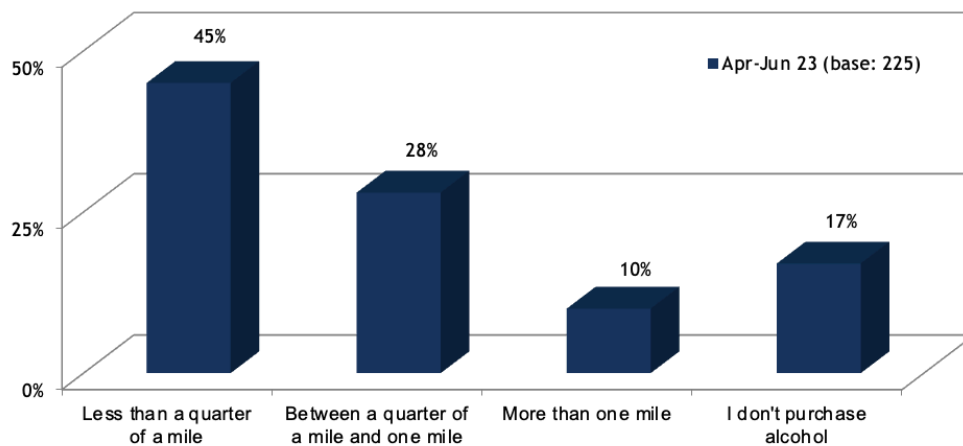
Premises selling alcohol:

	Too many	About right number	Too few
Off-licence Premises (Apr to Jun 23 base: 203)	17%	78%	5%
On-licence Premises (Apr to Jun 23 base: 184)	10%	67%	24%

Perceived impact that licensed premises have on the local area:



Distance usually travelled to purchase alcohol:



4.17 It is suggested that these survey results reinforce the Licensing Board's understanding that the Statement of Licensing Policy is broadly fit for purpose.

Miscellaneous amends

4.18 Various amends have been made to the Statement of Licensing policy. All changes are highlighted. In particular Members should note:-

- paragraphs 32.5 and 32.6 have been amended to clarify that the later terminal hour for restaurants and premises offering significant entertainment facilities are part of the Licensing Board's policy in relation to licensed hours albeit will only be granted to particular types of premises;
- paragraph 7 has been updated to reflect the work carried out by the Licensing Board since the draft copy was prepared; and
- amends at paragraph 32.4 clarifies that where an early commencement hour is granted then it must be linked to the activity taking place on the premises.

- 4.19** The Assessment of Overprovision has been amended as highlighted in the document. These amends have been made to clarify various matters within the Assessment and the Licensing Board's position.

Next steps

- 4.20** The new revised Statement of Licensing Policy including the Assessment of Overprovision – subject to any amends Members instruct – will take effect from November 2023. It is open to the Licensing Board to revisit its Statement of Licensing Policy by way of a Supplementary Statement of Licensing Policy. It is expected that the Local Licensing Forum will alert the Licensing Board to any matters that it thinks requires to be considered by way of a Supplementary Statement of Licensing Policy.

5 People implications

- 5.1** The work involved in gathering evidence and preparing the Policy has workload implications for the Board during 2023 but this can be accommodated within existing staffing resources.

6 Financial and Procurement Implications

- 6.1** The Policy will allow applicants to assess whether there are sufficient prospects of success should they proceed with an application. A clear policy will therefore assist applicants in avoiding unnecessary expenditure on lodging applications and legal fees.

- 6.2** A Policy that is legally unsound or based on erroneous material is more likely to be legally challenged. Such a challenge, should it be successful, will leave the Board liable to possibly substantial legal fees. A well-evidenced Policy will diminish the chances of a successful legal challenge.

7 Risk analysis

- 7.1** It is a legal requirement to adopt a new Policy. This requires to be done by November 2023. Failure to do so would result in reputational damage for the Board. Furthermore, the lack of a Policy could undermine the Board's ability to scrutinise applications.

8 Equalities Impact Assessment (EIA)

- 8.1** EIA 786 refers to the EIA in relation to the Statement of Licensing Policy and concludes that the Policy promotes the licensing objectives and is underpinned by probative evidence. The development of the Policy has been informed by an extensive pre-consultation exercise and then a public consultation exercise. All

material ingathered has been carefully considered by the Licensing Board in formulation of the new Policy.

- 8.2** EIA 785 refers to the EIA in relation to the Assessment of Overprovision. The Licensing Board's Assessment of Overprovision is an important tool in mitigating the health harms and anti-social behaviour caused by alcohol (where it can be shown that there is a link between these factors). The Assessment is based on evidence provided by Police, NHS and LSOs as well as taking into account the views of a wide range of stakeholders. The consultation responses suggested broad support for the Overprovision Assessment.

9 Environmental Sustainability

- 9.1** The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals.

- 9.2** Under the provisions of the Local Government in Scotland Act 2003, the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. In terms of the Climate Change Act, the Council has a general duty to demonstrate its commitment to sustainability and the community, environmental and economic impacts of its actions.

- 9.3** The information contained within this report has been considered under the Act however no action is required as the Act does not apply to the matters presented in this report.

10 Consultation

- 10.1** As set out in this Report, an extensive consultation process has been carried out when developing the Statement of Licensing Policy and Assessment of Overprovision. The Licensing Board's statutory obligations around consultation, as set out in the 2005 Act (primarily sections 6 and 7) and Statutory Guidance issued further to section 142 of the 2005 Act, has been discharged.

Alan Douglas
Clerk to the Licensing Board
15 September 2023

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Appendices:

Appendix 1: Statement of Licensing Policy

Appendix 2: Assessment of Overprovision

Appendix 3: Public comments re: Statement of Licensing Policy

Appendix 4: Public comments re: Assessment of Overprovision

Appendix 5: Trade comments re: Statement of Licensing Policy

Appendix 6: Trade representatives comments

Appendix 7: Trade comments re: Assessment of Overprovision

Appendix 8: Comments from external bodies

Appendix 9: Licensing Forum response

Appendix 10: EIA 786 - Statement of Licensing Policy

Appendix 11: EIA 785 - Assessment of Overprovision