AGENDA ITEM 5

FALKIRK COUNCIL LICENSING BOARD

Subject:

Licensing (Scotland) Act 2005

Overprovision Assessment

Meeting:

Licensing Board 16 February 2011

Date: Author:

Clerk to the Licensing Board

1. PURPOSE

- 1.1 The purpose of this report is to update members on the requirement under Section 7 of the Licensing (Scotland) Act 2005, for the Board's Licensing Policy Statement to include a statement on the extent to which the Board considers the overprovision of either licensed premises, or a particular description of licensed premises, exists in any locality within the Board's area.
- 1.2 Members will recall a previous report presented at a Licensing meeting of 1 September 2010, to discuss the Overprovision Statement which set out the methodology for the approach to consultation on overprovision and the process for evaluating the evidence to establish whether there exists a robust and factual causal linkage between overprovision and localities, premises numbers and/or type of premises.
- 1.3 It is also the intention of this report to seek the Board's approval to move to the formal consultation phase and to agree the arrangements for the consultation programme.

2. BACKGROUND

- 2.1 A draft overprovision document was prepared for discussion with Members of the Board and the Licensing Forum on 27 January 2011, following which, the draft document was updated.
- 2.2 At that meeting a request for preliminary observations or comments was sought from the Forum. At the time of completing this report no additional feedback, other than the comments offered on 27 January, has been received from the Forum members. It is recognised, however, that the Forum has a formal role in the next stage of the consultation process and will be entitled to submit views as part of that process.

3. UPDATE

- 3.1 The appendices attached to this report, detail the information and findings in relation to the number, capacity and locality of licensed premises within Board's jurisdiction. They detail also the preliminary conclusion that robust factual evidence to support a finding of overprovision in any given locality or with regard to specific types of premises has not been found. Therefore, having considered all the relevant evidence available to date, Falkirk Council Licensing Board is satisfied that at present there are no identifiable issues with regard to overprovision within the Board's jurisdiction and this is the position taken prior to the commencement of the consultation process.
- 3.2 Those persons with whom the Board is required to consult are listed in s.7 of the Act. Subject to Board approval, it is intended to extend that list to include those persons consulted with regard to the Board's current policy.
- 3.3 On conclusion of the consultation period, all responses received will be analysed and reported to the Board for consideration prior to determining the nature of the statement to be included in the policy.

4. TIMETABLE

4.1 The following timetable is suggested for the consultation process.

OVERPROVISION CONSULTATION PROGRAMME – 2011	
ACTION	COMPLETION DATE
Present Overprovision Consultation Paper to the Board for approval and agreement to consult.	16 February 2011
Consultation documents issued and information placed on the Board's website.	21 February 2011
8 week consultation period	18 April 2011
Analysis of returns, by	10 May 2011
Report findings to Board	11 May 2011

5. RECOMMENDATION

5.1 It is recommended that Members note the preliminary conclusions reached in the draft overprovision statement and approve it for consultation in accordance with the timetable set out in the report analysis.

Clerk to the Licensing Board

Date: 11 February 2011

Contact Officer: Russell Cartwright,

Acting Head of Environmental & Regulatory Services

Ext. 4962

Falkirk Council Licensing Board

Consultation on the Draft Overprovision Assessment Licensing (Scotland) Act 2005

Responding to the Draft Overprovision Assessment

The Licensing (Scotland) Act 2005 requires Falkirk Council Licensing Board to take a pro-active position on overprovision and identify any localities in which it would not propose to grant new licences or licences for premises of a particular description. Following a pre-consultation exercise carried out earlier this year when the Board invited comments on the approach it should take to overprovision and suggestions as to any localities where overprovision may be an issue, the Licensing Board has now produced a draft document setting out its general approach to overprovision together with its provisional finding.

It is important to the Licensing Board to consult as widely as possible and it will consider very carefully all responses received. The Licensing Board is open to suggestions on both its general approach to overprovision and in relation to the localities identified in the assessment.

Written responses to the draft Overprovision Assessment should be submitted no later than **Monday 18 April 2011.**

Please send your response to:

By email: licensing@falkirk.gov.uk

By post: Falkirk Council Licensing Board District Court Offices

Municipal Buildings West Bridge Street

Falkirk FK1 5RS

If you have any queries regarding the consultation process, please contact the Clerk to the Licensing Boards officers on **01324 501005**.

Responses Received

It is not the Licensing Board's intention to publish the responses received during the consultation process, but it will produce a brief report summarising the responses to the consultation process and a list of those who provided a response. If you do not wish to be referred to by name in this report, please let us know when sending in your response. However, all respondents should be aware that Falkirk Council Licensing Board is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation.

Falkirk Council Licensing Board

Licensing (Scotland) Act 2005

OVERPROVISION ASSESSMENT AND GENERAL APPROACH TO THE CONSIDERATION OF OVERPROVISION CONSULTATION DOCUMENT

Introduction

The Duty to Assess Overprovision

Section 7 of the Licensing (Scotland) Act 2005 requires the Licensing Board to include in its Licensing Policy statement "a statement as to the extent to which the Board considers there to be an overprovision of –

- Licensed premises, or
- Licensed premises of a particular description, in any locality within the Board's area.

In determining if there is overprovision, the Licensing Board must have regard to the number and capacity of licensed premises in the locality. Whilst, in terms of data analysis and investigations for the purposes of overprovision members clubs are exempt from any conditions in an overprovision statement, they have been included in the statistical information to provide a complete overview and accurate picture of all licensed premises within the locality.

The assessment of overprovision must also seek to promote the five Licensing Objectives.

These being:

- Preventing crime and disorder:
- Securing public safety;
- Preventing public nuisance;
- · Protecting and improving public health; and
- Protecting children from harm.

Assessment of Overprovision

Guidance

The Guidance issued to Licensing Boards and Local Authorities on the Licensing (Scotland) Act 2005, by the Scottish Government, set out the principals and guidance on the methodology of how Licensing Boards should undertake the assessment on overprovision ("the Overprovision Guidance"). This guidance was adhered to in the development and preparation of this Overprovision Assessment.

Purpose

In terms of the Overprovision Guidance, the requirement to produce an Overprovision Assessment is designed to provide information and advice to applicants, the public and communities to:

- Provide potential entrants to the market with a clear signal that they
 may incur abortive costs if they intend to apply for a licence in a locality
 which the Licensing Board has declared to have reached overprovision.
- Improve public and trade confidence in the licensing system by setting out clear grounds on which overprovision should be determined.
- Recognise that halting the growth of licensed premises in localities is not intended to restrict trade but may be required to preserve public order, protect the amenity of local communities and mitigate the adverse health effects of increased alcohol consumption resulting from growing outlet density.

Pre-Consultation Exercise and Evidence Gathering

In accordance with the Overprovision Guidance, the Licensing Board carried out a pre-consultation exercise with the following interested parties in order to consider whether there are certain localities in the area where overprovision of licensed premises, or premises of a particular description, may be an issue:

- The Chief Constable of Central Scotland Police with a view to establishing localities where, for example, higher levels of crime and disorder can be associated with a higher concentration of licensed premises.
- Forth Valley Health Board with regard to information which may support a finding of overprovision in a particular locality, for example related to A&E hospital admissions where alcohol is a factor.
- The Council's Environmental Health Protection Unit in order to obtain information such as areas where there are large numbers of noise complaints and whether this can be associated with a high concentration of licensed premises.
- Representatives from the licensed trade represented on the Board's Licensing Forum.

Views were also sought from Elected Members within Falkirk Council and the Community Councils. A consultation letter was also available on the Licensing Boards section of the Council's website, to allow other groups, organisations

and members of the public an opportunity to express their views on overprovision.

Having carried out this pre-consultation exercise, the Licensing Board took into account the responses which were received and have listed all licensed premises both on and off premises sales for each individual Council Ward as detailed in Appendix 1, with the addition of a specific locality within Falkirk North relating to the town centre area of Falkirk.

Appendix 1 includes information as to the numbers, capacities and type of premises. In making these provisional findings, the Board has used its own local knowledge of the size of the areas and the nature of the locality (for example, residential, commercial or mixed use). It was also noted that the area of Falkirk Town Centre provided licensed premises that attract persons from the surrounding catchment areas of Falkirk Council and beyond the Councils boundaries due to the specific nature and services provided.

The Licensing Board then evaluated all of the responses against the evidence it had obtained from Central Scotland Police, NHS Forth Valley, and the Council's Environmental Health Protection Unit in order to determine whether there was robust and reliable evidence to suggest that a saturation point had been reached or is close to being reached in certain localities within the Falkirk area and if a causal link could be established between the evidence provided and the operation of licensed premises in those localities.

Following this exercise, and using its own local knowledge, the Licensing Board has identified the localities of the premises highlighted in Appendix 1, into each local Ward area and Falkirk Town Centre, as presented in Appendix 2, as localities where it has made a provisional assessment on overprovision in relation to the number and capacity of licensed premises, or licensed premises of a particular description

Appendix 1 and 2 contain information on which the Board has relied on in making its provisional finding.

Licensed Premises in the Falkirk Council area

As at January 2011, there are a total of 366 premises licences in the Falkirk Council area, including Private Member's Clubs. Which as stated previously are exempt from the conditions of overprovision but are included in general statistical data to provide the full extent of licensed premises in the area.

In terms of the Operating Plans forming part of these Premises Licences, these can be broken down as follows:

Description of Licensed Premises	Number of Premises Licences
Premises licensed for the sale of alcohol	150
for consumption on the premises	
Premises licensed for the sale of alcohol	84
for consumption on and off the premises	
Premises licensed for the sale of alcohol	132
for consumption off the premises only	

The total capacity for the Falkirk Board locality is:

Capacity	Total
On Sales	59,321 persons
Off Sales	2,785.85 m ³

When looking at the number of licensed premises per head of population, it is evident that the total number for the Falkirk area of licences (30 per 10,000) is well below the National Average of 42 licences per 10,000 population aged 18 years and over and in relation to off-sales (11 per 10,000) is again below the National Average of 15 off-sales licences in force for every 10,000 persons aged 18 years and over, as identified by the Scottish Governments Scottish Liquor Licensing Statistics, 2007.

The ratio of premises licensed both on and off against population, again falls below the national average across all of the Wards highlighted. The exception being the specific area within the Ward of Falkirk North being, Falkirk Town centre and the licensed premises located within the localities around Manor Street and Princes Street. The Town Centre locality has specific circumstances in relation to population ratios, as the locality is primarily a commercial zone and as such the correlation of premises to population would be provide a skewed relationship. The Town Centre locality and premises located therein, serve the wider community from all areas of Falkirk, visitors from across central Scotland attracted to the venues and the tourists trade. The lack of robust evidence to show causal linkage to the locality and premises with regard to any alcohol related incidents and being a contributory factor could not be established. The current culture of individuals or groups of individuals consuming alcohol at home, prior to visiting licensed premises, reduces the ability to establish a linkage between premises, location and number or type, as it is possible for individuals under the influence of alcohol within a locality to have arrived in that condition, especially in a town centre environment as individual migrate across the Falkirk area. Again, the lack of supporting evidence from Central Scotland Police or the Anti-social behaviour Unit of Falkirk Council to link specific incidents or trends in these localities limits the possibility to show a direct correlation.

The ratio of premises to population doesn't reflect the alcohol issues that an area may have at a Ward, settlement, or data zone level. Statistical evidence

shows that some areas are within the top 15% of deprived areas of Scotland, with the areas of Bainsford & Langlees, Camelon East and Grahamston having higher than the National average rate of 722.66 per 100,000 of population in Scotland for alcohol related hospital admissions within the Falkirk Health Inequalities Profile for 2009 (the overall average for Falkirk Council with regard to Alcohol related hospital admissions is 396.07 per 100,000, well below the National average) yet the average number of licences per population in those localities is significantly lower than the National average of 42 licences per 10,000 persons. The Falkirk Council area has an average of 30 licensed premises per 10,000 population aged 18 years or over..

Our current research shows that there is a drop in the number of licensed premises that may be operating from 1st September 2009 onwards and this is a trend that may continue due to the current economic climate. However, it is too soon to obtain relevant statistical evidence to suggest or support that this decrease in numbers of licensed premises would result in any significant decrease in alcohol consumption or misuse. A total of 59 premises, which had previously been licensed under the Licensing (Scotland) Act 1976, either did not apply to be licensed under the 2005 Act, withdrew their application following the initial submission or had their application refused.

While we are unable to demonstrate a causal link between the number of premises and any alcohol related issues within the Falkirk Council area, our research shows that there are some areas that have serious issues with alcohol misuse linked to various factors including deprivation and social attitudes, as referred to previously in the report, these localities being the areas of Bainsford & Langlees, Camelon East and Grahamston all of which have a higher than the National average of admissions to hospital relating to alcohol misuse although these areas have a concentration of licensed premises below the National average of 42 Licensed Premises per 10,000 and 15 off-sales premises per 10,000 and in addition no direct correlation to overprovision within those localities and licensed premises could be established.

The Environmental Health anti-social behaviour evidence provided indicates no direct causal link between alcohol misuse and anti-social behaviour with regard to direct linkage to licensed premises or any specific localities within the Falkirk area.

Central Scotland Police have confirmed that identified 'hot spots' in relation to crime statistics could not be reliably used as a basis for setting boundaries upon overprovision due to difficulties in establishing causal links to specific alcohol misuse or anti-social behaviour with licensed premises. Therefore taking this into account Central Scotland Police are of the opinion that each individual application requires to be determined on it's own merits and there may be exceptional cases (if overprovision was established) in which an applicant is able to demonstrate that grant of the application would not undermine the licensing objectives.

In conclusion, the Guidance for Licensing Boards and Local Authorities (paragraph 47) states that there must be robust and reliable evidence to substantiate that a saturation point has been reached or is close to being reached. Provided, that a dependable causal link can be established between relevant robust evidence and the operational criteria of licensed premises, in a given locality.

The submissions and evidence evaluated to date, following analysis, has been unable to confirm a direct causal link between individual or collective incidents and statistics in relation to a robust and direct causal link to the number, type or nature of licensed premises in any given area or locality.

Therefore having considered all the relevant evidence available, Falkirk Council Licensing Board is satisfied that at present there are no identifiable issues with regard to overprovision within the Boards jurisdiction.

Nevertheless, the Board recognises that each application for a premises licence will be considered on it's own merits and the case presented for consideration.

It should also be noted that whilst, there is currently a lack of finding with regard to overprovision within the Falkirk Boards jurisdiction, it does not mean that it is not possible for an objection or representation to be made on the grounds of overprovision. Neither does it mean that the Board cannot find that a ground for refusal of an application based on overprovision exists. If any party should seek to submit an objection or representation, in respect of a premises licence application, founded on the issue of overprovision then it is for that individual objector, group or representation to present their case for consideration by the Licensing Board.

Future Review

The Boards position will be reviewed following the consultation exercise, however consultation for the policy statement on overprovision is founded on the standpoint that overprovision within the Falkirk Council Licensing Boards jurisdiction is not an issue at present.

This position will be kept under review, with further scrutiny and evaluation being undertaken should evidence suggest that the determination of overprovision is being highlighted as an issue, this may be by intelligence, statistical data, information gathering through Licensing Standards Officers, external agencies or other means in relation to specific areas or localities.

Proposed Overprovision Policy Statement

Overprovision

Section 7 of the Licensing (Scotland) Act 2005 requires each Licensing Board to include in its policy statement: a statement as to the extent to which the Board considers there to be an overprovision of:-

- a) Licensed Premises, or
- b) Licensed Premises of a particular description, in any locality within the Board's area.

Falkirk Council Licensing Board has undertaken an assessment of overprovision and for the reasons stated in the overprovision assessment it has not been possible to identify any locality within the Falkirk Board's jurisdiction where data supports a robust and compelling argument that the prevalence of licensed premises has been reached, or is close to reaching saturation point.

Therefore, there is no presumption against the granting of new licences on the basis of overprovision within any locality within the Falkirk Licensing Board's area. Nevertheless, Falkirk Licensing Board recognise that each application for a premises licence will be judged on it's own merits. Neither does it mean that the Board cannot find that a ground for refusal of an application based on overprovision exists.

If any party should seek to submit an objection or representation, in respect of a premises licence application, founded on the issue of overprovision then it is for that individual objector, group or representative of those, to present their case for consideration by the Licensing Board.

APPENDIX 1

INDIVIDUAL COUNCIL WARDS AND CURRENT PROVISION OF LICENSED PREMISES

(All Licensing figures provided are taken as accurate as of 31 January 2011).

The latest population estimate (2008) for the Falkirk Council area, provided by the R&I Unit of Falkirk Council's Corporate & Neighbourhood Service is 151,570 persons (est.) with approx 81% (122,771) over 18 years of age.

The General Register Office for Scotland publishes small area population estimates for the 197 datazones in the Falkirk Council area. These figures have been used to estimate the population of the Wards for 2008.

The Falkirk Council area is divided into 9 Wards, the estimated population numbers since 2001, has indicated an increase in 7 out of the 9 Wards.

The population, number of licensed premises and capacities for each Ward is as follows:

WARDS 1 - 9

1. BO'NESS AND BLACKNESS - Population 15,297 persons (est.)

Description of Licensed Premises	Number of Premises Licences
Premises licensed for the sale of alcohol	15
for consumption on the premises	
Premises licensed for the sale of alcohol	6
for consumption on and off the premises	
Premises licensed for the sale of alcohol	13
for consumption off the premises only	

The total capacity for the Bo'ness and Blackness locality is:

Capacity	Total
On Sales	3,319 persons
Off Sales	354.23 m ³

2. GRANGEMOUTH - Population 17,245 persons (est.)

Description of Licensed Premises	Number of Premises Licences
Premises licensed for the sale of alcohol	11
for consumption on the premises	
Premises licensed for the sale of alcohol	9
for consumption on and off the premises	
Premises licensed for the sale of alcohol	18
for consumption off the premises only	

The total capacity for the Grangemouth locality is:

Capacity	Total
On Sales	6,446 persons
Off Sales	296.10 m ³

A map of the Ward area, indicating the localities of Licensed premises is attached in Appendix 2.

3. DENNY AND BANKNOCK – Population 17,908 persons (est.)

Description of Licensed Premises	Number of Premises Licences
Premises licensed for the sale of alcohol	13
for consumption on the premises	
Premises licensed for the sale of alcohol	11
for consumption on and off the premises	
Premises licensed for the sale of alcohol	15
for consumption off the premises only	

The total capacity for the Denny and Banknock locality is:

Capacity	Total
On Sales	4,453 persons
Off Sales	333.47 m ³

4. CARSE, KINNAIRD AND TRYST – Population 18,235 persons (est.)

Description of Licensed Premises	Number of Premises Licences
Premises licensed for the sale of alcohol	17
for consumption on the premises	
Premises licensed for the sale of alcohol	7
for consumption on and off the premises	
Premises licensed for the sale of alcohol	13
for consumption off the premises only	

The total capacity for the Carse, Kinnaird and Tryst locality is:

Capacity	Total
On Sales	5,612 persons
Off Sales	206.09 m ³

A map of the Ward area, indicating the localities of Licensed premises is attached in Appendix 2.

5. BONNYBRIDGE AND LARBERT – Population 16,283 persons (est.)

Description of Licensed Premises	Number of Premises Licences
Premises licensed for the sale of alcohol for consumption on the premises	13
Premises licensed for the sale of alcohol for consumption on and off the premises	6
Premises licensed for the sale of alcohol for consumption off the premises only	11

The total capacity for the Bonnybridge and Larbert locality is:

Capacity	Total
On Sales	4,876 persons
Off Sales	132.41 m ³

6. FALKIRK NORTH - Population 19,289 persons (est.)

Description of Licensed Premises	Number of Premises Licences
Premises licensed for the sale of alcohol	52
for consumption on the premises	
Premises licensed for the sale of alcohol	22
for consumption on and off the premises	- -
Premises licensed for the sale of alcohol	22
for consumption off the premises only	

The total capacity for the Falkirk North locality is:

Capacity	Total
On Sales	22,549 persons
Off Sales	956.36 m ³

FALKIRK TOWN CENTRE

Description of Licensed Premises	Number of Premises Licences
Premises licensed for the sale of alcohol for consumption on the premises	28
Premises licensed for the sale of alcohol for consumption on and off the premises	15
Premises licensed for the sale of alcohol for consumption off the premises only	10

The total capacity for the Falkirk Town Centre locality is:

Capacity	Total
On Sales	15,226 persons
Off Sales	275.12 m ³

FALKIRK TOWN CENTRE – Area around Manor Street / Princes Street

Description of Licensed Premises	Number of Premises Licences
Premises licensed for the sale of alcohol	14
for consumption on the premises	
Premises licensed for the sale of alcohol	10
for consumption on and off the premises	
Premises licensed for the sale of alcohol	3
for consumption off the premises only	

The total capacity for the Falkirk Town Centre area around Manor Street / Princes locality is:

Capacity	Total
On Sales	8,534 persons
Off Sales	113.72 m ³

A map of the Ward area, indicating the localities of licensed premises is attached in Appendix 2, including the inclusion of more focused plan areas for the Town Centre and the premises located in or near Manor Street and Princes Street information related to the town centre area of Falkirk.

7. FALKIRK SOUTH - Population 18,417 persons (est.)

Description of Licensed Premises	Number of Premises Licences
Premises licensed for the sale of alcohol for consumption on the premises	12
Premises licensed for the sale of alcohol for consumption on and off the premises	10
Premises licensed for the sale of alcohol for consumption off the premises only	16

The total capacity for the Falkirk South locality is:

Capacity	Total
On Sales	5981 persons
Off Sales	131.88 m ³

A map of the Ward area, indicating the localities of Licensed premises is attached in Appendix 2.

8. LOWER BRAES - Population 13,400 persons (est.)

Description of Licensed Premises	Number of Premises Licences
Premises licensed for the sale of alcohol	8
for consumption on the premises	
Premises licensed for the sale of alcohol	9
for consumption on and off the premises	
Premises licensed for the sale of alcohol	12
for consumption off the premises only	

The total capacity for the Lower Braes locality is:

	Capacity	Total
:	On Sales	3,968 persons
!	Off Sales	302.45 m ³

A map of the Ward area, indicating the localities of Licensed premises is attached in Appendix 2.

9. UPPER BRAES - Population 15,496 persons (est.)

Description of Licensed Premises	Number of Premises Licences
Premises licensed for the sale of alcohol	9
for consumption on the premises	
Premises licensed for the sale of alcohol	4
for consumption on and off the premises	
Premises licensed for the sale of alcohol	12
for consumption off the premises only	

The total capacity for the Upper Braes locality is:

Capacity	Total		
On Sales	2,117 persons		
Off Sales	72.87 m ³		

SUMMARY TABLE

WADD.	PREMISES DESCRIPTION			CAPACITY	
WARD	ON	ON and OFF	OFF	ON (persons)	OFF (cubic metres)
Bo'ness and Blackness	15	6	13	3319	354.23
Grangemouth	11	9	18	6446	296.10
Denny and Banknock	13	11	15	4453	333.47
Carse, Kinnaird and Tryst	17	7	13	5612	206.09
Bonnybridge and Larbert	13	6	11	4876	132.41
Falkirk North	52	22	22	22549	956.36
Falkirk Town Centre (included in figures for Falkirk North)	(28)	(15)	(10)	(15226)	(275.12)
Premises around Manor Street and Princes Street locality within Falkirk Town Centre (included in figures for Falkirk North and Town Centre)	(14)	(10)	(3)	(8534)	(113.72)
Falkirk South	12	10	16	5981	131.88
Lower Braes	8	9	12	3968	302.45
Upper Braes	9	4	12	2117	72.87
Total	150	84	132	59321	2785.85

APPENDIX 2

INDIVIDUAL COUNCIL WARD MAPS INDICATING LOCATION OF CURRENT LICENSED PREMISES

Maps Attached:

1.	BO'NESS	and BL	ACKNESS
----	---------	--------	----------------

- 2. GRANGEMOUTH
- 3. DENNY and BANKNOCK
- 4. CARSE, KINNAIRD and TRYST
- 5. BONNYBRIDGE and LARBERT
- 6. FALKIRK NORTH
- 7. FALKIRK TOWN CENTRE
- 8. FALKIRK SOUTH
- 9. LOWER BRAES
- 10. UPPER BRAES