

 Council – 18th November 2015		Agenda Item No. 13
Title	Current position of Late Night Levy's and the feasibility of introduction within Warwick District	
For further information about this report please contact	Marianne Rolfe, Regulatory Manager Tel: 01926 456320 Email: marianne.rolfe@warwickdc.gov.uk	
Wards of the District directly affected	All	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	Full Council 26 th March 2014 Licensing Committee 18 th February 2013 item 7.	
Background Papers		

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	Yes
Included within the Forward Plan? (If yes include reference number)	Yes
Equality Impact Assessment Undertaken	Yes/No (If No state why below)
Not relevant at this stage.	

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	3/9/15	Andrew Jones
Head of Service	3/9/15	Richard Hall
CMT	3/9/15	
Section 151 Officer	3/9/15	Mike Snow
Monitoring Officer	3/9/15	Andrew Jones
Finance	3/9/15	Mike Snow
Portfolio Holder(s)	3/9/15	Moira Ann Grainger
Legal	3/9/15	John Gregory
Consultation & Community Engagement		
Consultation with Economic Development and Regeneration Manager, Town Centre Development Officers, Town Centre Manager, Community Protection Team within Health and Community Protection.		
Final Decision?	Yes	
Suggested next steps (if not final decision please set out below)		

1. **Summary**

- 1.1 Further to the motion placed before the council on the 26th March 2014, this report seeks to update councillors regarding the current position of Late Night Levies (LNL), and the feasibility of such an introduction within Warwick District.
- 1.2 The report further requests a decision on whether to progress to a public consultation on the subject of a Late Night Levy (LNL) or Early Morning Restriction Order (EMRO) within Warwick District.

2. **Recommendation**

- 2.1 That the council agrees that a formal consultation regarding the introduction of a Late Night Levy or Early Morning Restriction Order is not conducted at this current time.

3. **Reasons for the Recommendation**

- 3.1 When considering a LNL or EMRO account must be taken of the financial risk involved. This included the possibility of lower than expected revenue or inadequate revenue generation to make the LNL or EMRO a viable option for the area. This also includes the potential for 20% businesses to vary their licences free of charge so that they can fall outside of the LNL. (Appendix B).
- 3.2 It is officer opinion that the value of the revenue generation to the council of a LNL or an EMRO is extremely limited due to the time consuming and resource hungry implementation phase. Estimates have been provided of the potential implementation costs. These estimates are based on the average costs incurred by other Local Authorities which have implemented these measures.
- 3.3 The estimated income is outlined in appendix A and B. These demonstrate the number of businesses that would be included in a LNL and the estimated gross income at the current time. Appendix B outlines the estimated income if 20% of business opted to vary their licence conditions to fall outside of the LNL.
- 3.4 There is a risk that the night time economy of the District may be adversely impacted by the introduction of extra fees. Business opinion has been that LNL and EMROs should be a last resort and are divisive by nature. By their nature the fees are contradictory to the prosperity growth agenda.
- 3.5 It is also likely that any decision to implement either the LNL or EMROs would be challenged by judicial review either by single premises or a group of premises.
- 3.6 It is possible that the good relationship that Warwick District Council has built with the licenced premises owners would be adversely impacted by the introduction of a Late Night Levy. A northwest council recently reported that the consultation process for a LNL/EMRO "drove a wedge between the licensees, Police and Council".
- 3.7 There are alternative methods to LNL and EMROs which are being piloted with success around the country. These include:
 - Early Evening Economy Groups
 - Crime and Disorder Working Groups
 - Partnership working & Social Responsibility approaches
 - Licensing Forums
 - Trade training events
 - Accreditation Schemes (Purple Flag, Best Bar None, Pub watch)
- 3.8 The Council is working towards a submission for Purple Flag accreditation.
- 3.9 Current staff capacity could not accommodate the increased administration, compliance and monitoring activities required by a LNL/EMRO.

4. Policy Framework

- 4.1 The introduction of a Late Night Levy and or Early Morning restriction orders allow a certain level of cost recovery. However, the nature of the fee is contrary to the council's ambitions to encourage economic growth.

5. Impact Assessments

- 5.1 If the recommendations of this report are followed there will be no impact on the business, residents and visitors to Warwick District. The Licensing team and community protection teams will continue to work proactively with the licenced community.
- 5.2 If the council determines that a LNL or EMRO is feasible and a consultation should be undertaken then all business venues which trade within the specified time period would be treated equally with application of the LNL or EMRO across of the boundaries of the district.

6 Budgetary Framework

- 6.1 The recommendations of the report will not have an impact upon the budgetary framework. However, should a formal consultation be agreed this will have a significant cost implication.
- 6.2 Both the consultation and any subsequent implementation would have significant impacts upon the licensing teams and finance teams in regard to the officer time spent on the administration, monitoring and compliance of the LNL/EMRO. This time could not currently be found with the capacity of the licensing team and would result in the need for extra staffing. The estimated costs of implementing the scheme included within the appendices, reflect the estimated costs of the additional work that would be required. Much of this work would initially fall upon existing officers, impacting upon their current workload. The additional funding from the scheme should generate some funding towards backfilling for the workload of these officers that has been displaced. However, there is concern that it may not be practicable and affordable to so appoint within the available resources.

7. Risks

- 7.1 The strong working relationships that have been built between the council and the licenced community will be significantly undermined. Undermining the current working relationships could have a detrimental effect on the good works that are the Regulatory (Licensing) and Community Protection Teams undertake. Much of the work that the teams undertake is done so with the full co-operation of the licensed businesses. An undermined relationship could negatively impact upon compliance activities and educational activities such as 'Your Town Your Choice'.
- 7.2 There is a risk that a decision to implement a EMRO or LNL will be challenged by way of judicial review. A judicial review can be potentially very costly. This risk is not, in itself, a reason not to proceed with a consultation and it can be mitigated by ensuring any decision is made properly and in accordance with public law principles. However, the risk of challenge is one that members need to be aware of, as there have been several similar challenges to implementation of these measures across the country.
- 7.4 An LNL or EMRO could have a divisive and counterproductive impact on the partnership with BID members, which in turn could make the revote of the BID's mandate difficult in future years.

8. Alternative Option(s) considered

8.1 The committee agree a formal consultation is undertaken with regard to the implementation of a LNL or EMRO to establish the level of feeling regarding such a process and which groups of businesses eligible for a discretionary exemption or reduction should be given such exemption or reduction under the scheme. It is believed that the income gained by such a scheme in the longer term would not be outweighed by the negative impacts, cost of implementation and monitoring outlined in this report.

9. Background

9.1 THE LATE NIGHT LEVY

9.2 The Act gives licensing authorities the power to raise a financial contribution from late opening alcohol-licensed premises towards the cost of policing the night time economy. In deciding whether to apply the Levy, the licensing authority must consider: "The costs of policing and other arrangements for the reduction or prevention of crime and disorder in connection with the supply of alcohol between midnight and 6.00 am" (PRSRA).

9.3 If adopted a Levy must be applied to the whole of the local authority area. This includes all village and rural licensed premises. The licensing authority select the period during which the levy would apply, i.e. 00:00 -06:00 and could decide, within the legislative parameters, what exemptions and reductions should apply.

9.4 The late night supply period must begin at or after midnight and end at or before 6am. The selected period cannot apply on different days or times. The selected period must be the same for every day of the week.

9.5 The licence holders are liable for the levy in accordance with their licensing hours regardless of their actual opening hours.

9.6 Licensing authorities would have discretion to exempt the following premises from the Levy. A group of premises cannot be exempt from the levy if they are not referenced in the legislation.

- Premises with overnight accommodation (e.g. hotels, guest houses). (An exemption can apply only where their licences only permit the sale of alcohol between midnight and 6.00 am (a) to a person who is staying at the premises (not their guests) and (b) for consumption on the premises.
- Theatres and cinemas
- Bingo halls
- Community premises (village halls and similar)
- Participants in Business Improvement Districts
- Community Amateur Sports Clubs
- Public houses entitled to rural rate relief
- Premises which are licensed to supply alcohol between midnight and 6.00 am on New Year's Eve – this will allow all premises licensed to sell alcohol after midnight to stay open on New Year's Eve without having to pay a levy.

9.7 The levy is not payable by a business selling alcohol between the levy operating hours under the authority of a Temporary Events Notice.

9.8 A minimum of 70% of the net proceeds generated by a Levy must go to the police, although there is no requirement for them to spend this income in Warwick District, or on the night time economy. The remaining 30% must be spent by the council to fund relevant crime prevention initiatives connected with the late night economy.

9.9 The levy rates have been set by central government and are dependent on the non-domestic rateable value of the premises. The fees must be paid in addition to the annual premises licence fee. The prescribed annual levy is shown below for some of the bands.

Rateable Value Band	Levy Charge
A £0 - £4,300	£229
B £4301 - £33,000	£768
C £33,001 - £87,000	£1,259
D* £87,001 - £125,000	£1,365 / £2730
E* Over £125,000	£1,493 / £4440

**there are two fees available in these Rateable Value Bands. The higher fee is applicable if the premises are used exclusively or primarily for the supply of alcohol for consumption on the premises.*

- 9.10 The regulations also permit the licensing authority to allow a reduction of 30% in the amount of the Levy for premises which are members of best practice schemes such as Pub watch (most town centre premises), Best Bar None etc., and licensed premises which are entitled to small business rate relief.
- 9.11 If a licensing authority decides to introduce a LNL, it must consult the Local Police Force, the Chief Officer of Police for the area and the holders of 'relevant late night authorisations' (premises licence holders). The Authority must also publish a notice of the proposal and send this to the above persons. In contrast to an EMRO, there is no provision for persons to make representations about a proposal to introduce the Levy. However, the Authority must fully consider all responses to the consultation before making an Order.
- 9.12 Licence holders who wish not to pay the Levy will be able to apply for a free minor variation, to reduce their alcohol licensing hours prior to the Levy coming into force. This would impact on the resources of the licensing team with regard to officer time and also income. The significance of which would be determined by the number of premises who wish to vary their hours to place them outside of the levy period. Other authorities have experienced 20% of businesses varying their hours free of charge.
- This would equate to approximately 30 businesses (00:00-06:00)
 - Max 2 hours of officer time per application (£1,863)
 - Income reduction of £89 per application (£2,652.20)
 - Maximum estimated cost to the authority of: £4,515.20
- 9.13 Other local authorities with a LNL in place have experienced a further 20-30% of businesses within the LNL scheme submitting variations to alter their hours so that they are no longer included in the scheme after the scheme has begun. Appendix C estimates the effect on income with a further 20% reduction in eligible businesses.
- 9.14 The Levy does not apply to premises licensed only for regulated entertainment or late night refreshment. Therefore 'take away' style premises are exempt. This would exempt 29-50% of businesses who operate within the hours that a LNL or EMRO would be applied. These include premises that have been 'flash points' for problems in the past thus making the scheme unequitable.

- 9.15 Any decision to introduce the LNL is for the licensing authority to make and any decision to introduce it must be put to full Council for approval. Local residents and business holders can use existing channels and forums to put forward views and call for the implementation or not, of the levy in their area.
- 9.16 The licensing authority can deduct the cost it incurs in connection with the introduction, variation, administration and enforcement of the levy prior to it being apportioned between the police and local authority. This carries a financial risk as the costs of the introduction, variation, administration, monitoring and compliance could be higher than the estimated cost or the actual income, i.e. business closure, variation in licences, failure to pay increasing estimated compliance costs etc.
- 9.17 It would be expected that the implementation and ongoing scheme management costs would be higher during the introduction period. It is difficult to identify the level of these costs at this time therefore the figures used in appendix A and B use the average costs as quoted by local authorities who have been through the process of implementation and or consultation.
- 9.18 The Council must publish estimates of expenses at the beginning of the Levy year and statements of receipts at the end of the Levy year. The council may be required to pay the police the full predicted share even if the council has been unable to collect this amount.
- 9.19 The Authority may amend or vary the Levy at any time after its introduction in accordance with Regulations. This includes the late-night supply period and any exemptions or reductions that may apply.
- 9.20 As with failure to pay an annual fee, non-payment of the Levy will result in suspension of licence/certificate.
- 9.21 There is no provision for appeal against a local authority's decision to apply the Late Night Levy. However, it is anticipated that several challenges to LNLs would be mounted by way of judicial reviews.
- 9.22 Should the Licensing Authority decide to consider a Levy option, the council would need to exercise great care to ensure the fairness of the consultation procedure, proper consideration of responses and the robustness of its decision-making process in order to avoid legal challenge.

9.23 EARLY MORNING RESTRICTION ORDERS

- 9.24 An Early Morning Restriction Order (EMRO) is a power which would enable a licensing authority to restrict the sale of alcohol if it considered this appropriate for the promotion of the licensing objectives. Unlike the Levy, the authority may make an Order for the whole or a part of its area. (This could extend to a town centre or a single street where problems associated with late night drinking have been identified).
- 9.25 An EMRO is intended to be a flexible tool which may be applied for any period between 0000 and 06.00 and may be for any length of calendar period. It may be made for the same period every day or for different periods on different days.
- 9.26 An EMRO may be applied for by a member of the public, an organisation or a statutory authority. However, it is for the licensing authority to justify an EMRO so any person applying for an EMRO would be expected to produce robust and extensive evidence in support of their application.
- 9.27 The Act sets out the procedural requirements for making an EMRO including the advertisement of a proposed Order for a period of no less than 42 days. A Responsible Authority and any person who is likely to be affected by an EMRO may make representations to the licensing authority about the Order and, provided they are

relevant, this will trigger a hearing. This could be potentially burdensome to a licensing authority if a high number of representations are received.

- 9.28 The only exceptions to an EMRO will be:
- Premises authorised to sell alcohol between 00:00 and 06.00 on New Year's Eve; and
 - Premises such as hotels or similar premises supplying alcohol to persons consuming alcohol in the privacy of their room.
- 9.29 A licensing authority may vary or revoke an EMRO at any time but must follow the same procedures as for making an Order
- 9.30 It is important to note that an EMRO restricts just the sale of alcohol and not consumption. A premises cannot be required to close at a specified time. Therefore a person may order alcohol prior to the commencement hour of the EMRO and consume it afterwards whilst the premises are permitted to stay open.
- 9.31 There is no provision for appeal against a local authority's decision to make an EMRO. Any challenge would be by way of Judicial Review, and the licensed trade in other areas has indicated its willingness to take such action as the process is inherently complex and, apparently, easily challenged. In addition, licensees may group together to challenge any EMRO put into force and delay its commencement for a considerable period of time.
- 9.32 In the case of the Levy, these costs can be recovered from the revenue generated but there is no similar provision for an EMRO. There will also be costs involved in making and advertising the necessary Orders.

9.33 THE CURRENT NATIONAL PICTURE AND LOCAL PICTURE:

- 9.34 The table below shows the current number of local authorities with LNL or EMROS :

LNL introduced	7
LNL rejected following consultation	2
EMRO introduced	7
EMRO discontinued following implementation	3
EMRO rejected following consultation	3

- 9.35 The table in appendix A shows the number of premises who would fall into the levy based upon their current Licensing Act license. An attempt has been made to give an estimate of those businesses who are part of an organisation that would potentially generate a reduced levy.
- 9.36 Appendix A show the estimates of implementation and scheme management costs based on the appropriate officer salary per hour with on costs.
- 9.37 The appendix does not take into account any increase in service complaints or increased failure to pay rate than is currently experienced in the annual licensing act fees.
- 9.38 Appendix C shows the estimated income in the second year. This includes a further 20% reduction in businesses whose licences would make them eligible for a LNL through minor variation after the LNL was implemented year. These businesses would not be eligible for a free of charge minor variation and would need to pay £89. The £89 covers the cost of the staff time and consumables involved in this process.

- 9.39 For Warwick District Council, if all eligible businesses were given a full 30% reduction, and the police were given the full 70% share of a levy income there appears to be only one feasible option for a LNL. That is to include all businesses licenced to operate between 00:00 and 06:00.
- 9.40 However, considered against the estimated income must be economic pressure of the levy on the business and therefore the loss of income caused by business closure; the cost of increasing staff resources in order to allow the effective implementation, monitoring and compliance of the system which have not been factored into the estimates; possibility of judicial review and loss of good will between the council and our business community.
- 9.41 It is officer opinion that the scheme is only of value if the following agreements can be sought with the Police and the Police and Crime Commissioner:
- That the police take a lesser share than 70% of the income generated.
 - That the police spend the income generated in Warwick District only
 - Or that a Late Night levy Board is formed, (including representatives of the Police, Community Protection, Licensing, Community Partners and Local Business Groups) to decide on how the full income (100%) is spent.

9.42 PURPLE FLAG ACCREDITATION

- 9.43 Purple Flag's aims are to raise standards and broaden appeal of town centres and are the benchmark for good night-time destinations. Town Centres that achieve a Purple Flag will be those that are safe, vibrant, appealing, well-managed and offer a positive experience to consumers.
- 9.44 The accreditation acknowledges that a town centre is a safe and welcoming place to visit, work and live. It recognises the work that is being done to assist businesses in becoming more lucrative enabling them to invest in their business; encourage more people to attract a diverse footfall into the town centre and the use initiatives to promote the Night time economy and tackle crime and disorder.
- 9.45 A report outlining the ambition to aim for Purple Flag accreditation was considered by the Executive on the 11th March 2015. It was resolved that the council would work towards gaining the accreditation.
- 9.46 It is officers view that this accreditation will go a long way to promote the licensing objectives and is more suited to doing so that an EMRO would be given the nature of the licensed trade in Warwick district.

Appendix A: Estimated income from LNL (current picture) Year 1

Number of business open between (accumulative)	00:00-06:00	01:00-06:00	02:00-06:00	03:00-06:00	04:00-06:00	05:00-06:00
Total	149	69	25	8	7	6
Rateable Value Band A	4	1				
Rateable Value Band B	88	44	23	4		3
Rateable Value Band C	34	16	3			1
Rateable Value Band D	7	3	2			
Rateable Value Band E	16	14	6		3	2
Percentage excluded (Regulated entertainment or late night refreshment)	29%	32%	56%	nil	nil	50%
Estimated percentage potentially to receive a 30% reduced levy	12%	18%	26%	nil	nil	50%
Estimated Gross Income (excluding costs of system introduction, administration, monitoring or contribution to police)	£166,021	£76,021	£6021	£4021	£3253	£1760
Estimated cost of system introduction, administration of the system, monitoring (excluding addition staffing costs & service complaints)	£43,000*	£43,000*	£43,000*	£43,000*	£43,000*	£43,000*
Estimated 70% proportion to Police	£86,114.70	£23,114.70	**	**	**	**
Estimated Net Income to WDC (excluding addition staffing costs & service complaints)	£36,906.30	£9,906.30	-£15,979	-£36,979	-£39,747	-£41,240

*Estimated on administration and monitoring costs of £22,000 per year + the first year of estimated implementation costs. (average of other local authorities costs)

** Proportion still may be payable to the police despite negative net income.

Appendix B: Estimated income from LNL – Current picture including estimated 20% businesses varying their hours to operate outside LNL hours in period during which a Variation can be made free of charge

Number of business open between (accumulative)	00:00-06:00	01:00-06:00	02:00-06:00	03:00-06:00	04:00-06:00	05:00-06:00
Estimated Gross Income (excluding costs of system introduction, administration, monitoring or contribution to police)	£132,816.80	£60,816.80	£4,816.80	£3,216.80	£2,602.40	£1,408
Estimated cost of system introduction, administration of the system, monitoring (excluding addition staffing costs & service complaints)	£43,000*	£43,000*	£43,000*	£43,000*	£43,000*	£43,000*
Estimated 70% proportion to Police	£62,871.76	£27,171.76	**	**	**	**
Minor Variations free of charge (income loss to service area and staff costs)	£4,515.20	£2,115.40	£755.50	£302.20	£151.10	£151.10
Estimated Net Income to WDC (excluding addition staffing costs & service complaints)	£22,429.84	-£11,470.36	-£38,938.70	-£40,085.40	-£40,548.70	-£41,743.10

*Estimated on administration and monitoring costs of £22,000 per year + the first year of estimated implementation costs. (average of other local authorities costs)

** Proportion still may be payable to the police despite negative net income.

Appendix C: Year 2 estimated income from LNL.

Current picture

Number of business open between (accumulative)	00:00-06:00	01:00-06:00	02:00-06:00	03:00-06:00	04:00-06:00	05:00-06:00
Estimated Gross Income (excluding costs of system introduction, administration, monitoring or contribution to police)	£166,021	£76,021	£6021	£4021	£3253	£1760
Estimated cost of system introduction, administration of the system, monitoring (excluding addition staffing costs & service complaints)	£22,000*	£22,000*	£22,000*	£22,000*	£22,000*	£22,000*
Estimated 70% proportion to Police	£100,814.70	£37,814.70	**	**	**	**
Estimated Net Income to WDC (excluding addition staffing costs & service complaints)	£43,206.30	£16,206.30	-£15,979	-£17,979	-£18,747	-£22,240

Current picture including 20% businesses with Free of charge Minor Variations in first year

Number of business open between (accumulative)	00:00-06:00	01:00-06:00	02:00-06:00	03:00-06:00	04:00-06:00	05:00-06:00
Estimated Gross Income (excluding costs of system introduction, administration, monitoring or contribution to police)	£132,816.80	£60,816.80	£4,816.80	£3,216.80	£2,602.40	£1,408
Estimated cost of system introduction, administration of the system, monitoring (excluding addition staffing costs & service complaints)	£22,000*	£22,000*	£22,000*	£22,000*	£22,000*	£22,000*
Estimated 70% proportion to Police	£77,571.76	£45,416.80	**	**	**	**
Estimated Net Income to WDC (excluding addition staffing costs & service complaints)	£33,245.04	£6,600	-£17,183.20	-£18,783.20	-£19,397.60	-£20,592

*Estimated on administration and monitoring costs of £22,000 per year. (average of other local authorities costs)

** Proportion still may be payable to the police despite negative net income.

Current picture including 20% businesses with Free of charge Minor Variations in first year and a further 20% businesses varying their hours in second year.

Number of business open between (accumulative)	00:00-06:00	01:00-06:00	02:00-06:00	03:00-06:00	04:00-06:00	05:00-06:00
Total number of businesses	100	42	16	5	5	4
Estimated Gross Income (excluding costs of system introduction, administration, monitoring or contribution to police)	£106,253.44	£48,653.44	£3,853.44	£2,573.44	£2,081.92	£1,126.4
Estimated cost of system introduction, administration of the system, monitoring (excluding addition staffing costs & service complaints)	£22,000*	£22,000*	£22,000*	£22,000*	£22,000*	£22,000*
Estimated 70% proportion to Police	£58,977.41	£18,657.41	**	**	**	**
Estimated Net Income to WDC (excluding addition staffing costs & service complaints)	£25,276.03	£7,996.03	-£18,146.56	-£19,426.56	-£19,918.08	-£20,873.6

*Estimated on administration and monitoring costs of £22,000 per year. (average of other local authorities costs)

** Proportion still may be payable to the police despite negative net income.