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**SUBMISSION ON REGULATIONS CONSULTATION - PSYCHOACTIVE SUBSTANCES REGULATIONS**

**To:** The Manager, Psychoactive Substances Regulatory Authority  
**Submission on:** Regulations Consultation – Psychoactive Substances Regulations  
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MidCentral Health's Public Health Service welcomes the opportunity to provide feedback on the Psychoactive Substances Regulations to minimise negative health and social impacts from the use or misuse of psychoactive substances. Robust regulations will be integral to the purpose of the Psychoactive Substances Act (2013) to regulate psychoactive substances in order to help protect the health, and minimise harm to, individuals who use these substances.

We would be happy to provide any points of clarification if required via the key point of contact as listed above.

**Licence Applications**

1 Is the list of proposed information requirements for licence applications comprehensive enough?  
If not, what else should be required, and why?

MidCentral Public Health Service recommends that the information sought clearly identifies the function of the applicant, i.e. whether they are the owner and/or manager of the business (researcher, manufacturer, importer, wholesaler or retailer). This should also include company and trading name details where available. In addition, we recommend that the premises is linked with the person who has applied for the licence. We are unclear whether the intention of this licensing process includes licensing of the premises in addition to the responsible person.

We recommend that there is a clear link between manufacturer, importer, wholesaler, to retailer so it is possible to identify the licence holder for a product at each point of distribution. This will support any requirement for trace back.

2 Should retail licence applications be accompanied by evidence of compliance with a local approved products policy if one is in effect in the applicant's area?

MidCentral Public Health Service agrees that an applicant should be able to demonstrate that they comply with their Council's Local Approved Products Policy (LAPP), where this exists. We recommend that the Regulations require a written statement from the Council that the applicant meets these conditions.

- 3 Should retail licence applications be accompanied by evidence of compliance with a generic local approved products policy if no policy is in effect in the applicant's area?

MidCentral Public Health Service supports that where the Local Authorities do not adopt a LAPP, the regulations should set a General Approved Local Approved Products Policy. We recommend the general policy adopts generic principles around appropriate locations for premises. In particular, restricting the location and proximity of premises selling approved products to 100 metres away from kindergartens, early childhood education centres, schools, places of worship, youth centres, mental health and addiction services or other community facilities, including children's playgrounds. This will reduce the exposure to young people and those people vulnerable to the harmful effects of these products. Premises should also be located in areas that are well lit and visible.

#### **Fit and proper person test**

- 4 Are the factors the Authority should take into account when determining whether a licence applicant is a fit and proper person or whether a body corporate is of good repute in section 16(2) enough?

The section 16(2) factors are:

- whether the applicant has been convicted of a relevant offence
- whether there has been a serious or repeated failure by the applicant to comply with any requirement of the Act
- whether there are other grounds for considering that the applicant is likely to fail to comply with any requirement of the Act
- any other matter that the Authority considers relevant.

If you think these factors are not enough, please give examples of additional factors the Authority should consider.

MidCentral Public Health Service recommends that the Fit and Proper person test should include whether or not the applicant has been convicted of a relevant offence in another piece of legislation, with particular reference to the Smoke free Environments Act and the Sale and Supply of Alcohol Act (or previous iteration). Convictions with particular reference to sales to those under the age of 18 years old are an indication that the applicant poses a risk of selling psychoactive substance to those under the age of 18 years old and is therefore not a suitable person to be selling psychoactive substances.

We agree with the proposed requirement for applicants to undergo a Police check (or Customs as appropriate), and this should include Infringement notices under the Smokefree Environments Act, Sale and Supply of Alcohol Act and the Psychoactive Substances Act.

We recommend that applicants with a history of being in breach of a Local Approved Products Policy, (including provision of warnings), should also be considered as relevant information to the fit and proper person test.

We recommend that the test for a fit and proper person should include those working on the premises, and not just the licence applicant. This could be similar to the requirement for duty manager licences under the Sale and Supply of Alcohol Act.

In addition we recommend the following:

- regarding “good repute” for a Body Corporate – to ascertain this it will be necessary to obtain names and identifications for officers, owners, and employees of the corporate body so that their history and status can be assessed to inform a decision on the “good repute” of the Body Corporate.
- for assessing applications we would recommend a similar process to Sale and Supply of Alcohol Act, where police and health are asked to comment on the applicant and whether granting this licence will contribute to harm in the community. This will potentially give a wider range of views and sources of information, and may act as a proxy for community concerns/objections, which may not otherwise be considered.

5 Should the regulations require applicants to provide details of their involvement in other regulatory regimes, such as alcohol licensing processes?

In addition to our recommendations in the previous section, information around withdrawal or failure to obtain a licence under another approval regime, will enable the Authority to explore the reasons behind this when deciding if they meet the fit and proper person test.

### **Licence conditions**

6 What records should the regulations require licence holders to keep?

MidCentral Public Health Service supports the proposed comments regarding sales records. In addition for retail sale the following information should also be kept and associated processes developed:

- Records of purchase i.e. invoices
- The quantity of products sold within each transaction (within the specified limit for retail sales, see Question 8)

- Batch number of products (to assist identification of manufacturer and wholesaler)
- Recall policy including how product is disposed when requested by the authority
- Adverse reaction reporting
- Policy regarding the sale to under age consumers
- List of employees
- Name of Courier number/receipts
- Training for staff and register of training (e.g. avoiding sales to those under 18 years old)
- A record of incidences similar to a Liquor Licence Incidence Record. This keeps track of specific incidences that occur when selling approved products. For example, how often those under 18 years old may attempt to purchase a product.

We would suggest aligning these requirements to other legislation, e.g. Sale and Supply of Alcohol and Smoke-free Environments Act. Records should be able to be readily retrieved when requested.

7 How long should licence holders be required to keep records for?

We recommend that seven years is an appropriate timeframe for auditing purposes.

#### **Discretionary conditions**

8 Do you think there are factors or issues that the Authority should consider when setting discretionary conditions?  
If so, please provide details.

MidCentral Public Health Service supports the proposal for the regulations to address restrictions on opening hours. We recommend that restrictions on opening hours for retailers of Psychoactive Substances are developed that limit the likelihood of access to those under the age of 18 years old.

We support the proposal for the regulations to address the degree of physical separation. We recommend that each retail outlet must be set up as a single entity, to reduce the risk of "split premises".

In addition, we recommend the following:

- limitations on the amount of stock held on premises to reduce the risk from theft/burglary, and limitations on the quantity sold to individual customers by retail to reduce the risk of on-selling, i.e. wholesaling or supplying others.
- individual applications being sent to police and health for feedback, so recommendations can be made, based on individual circumstances and local

knowledge, on any specific conditions that may be needed to prevent harm in regard to this proposed licence.

- 9 Should the regulations prescribe other matters the Authority must take into account when deciding on an application?  
If yes, what should these matters be?

MidCentral Public Health Service recommends a site visit report from an enforcement officer to accompany an application in order to provide context to the application for the regulatory authority. This pre-inspection (at cost) could be similar to that of a Food Hygiene pre-inspection prior to licensing in order to demonstrate that the applicant meets all required conditions.

If a retailer is applying to sell online we recommend that there is a requirement for a second licence. Licence applications for internet sales require a different set of requirements that include validation of the purchaser's age (See Question 27) and ensuring that the product is only delivered to the legal purchaser. A tracking system for internet sales would be needed, e.g. to support the need for trace back.

#### **Product approval applications**

- 10 Do you agree that a product approval application should include information on proposed manufacturing methods and how they will comply with the Psychoactive Substances Code of Manufacturing Practice?

MidCentral Public Health Service agrees with this proposal.

- 11 Do you think any further particulars, information, documents or other material should be prescribed in the regulations?  
If yes, what should these be?

MidCentral Public Health Service recommends that requirements for imported products should meet equivalent manufacturing standards to those in New Zealand. The process for assessing this compliance would require further exploration.

We recommend that the regulations consider development of an Offence for non-compliance with the Code of Manufacturing.

12 Do you agree with the proposal that the regulations require applications to contain information and data on the toxicity, pharmacology and related clinical effects of the psychoactive substance they are seeking approval for?

MidCentral Public Health Service agrees with this proposal.

13 Do you agree with the proposal that the regulations require product approval applications to contain information and data on:

- the psychoactive potential and related behavioural effects of the substance
- the addictive potential
- the proposed directions for use
- previous use, including use in clinical trials and in the wider population?

MidCentral Public Health Service agrees with the proposal. We also support provision of this information on any approved products in a format that is accessible to appropriate groups, such as clinicians. Availability of this information to potential users would support informed decisions on whether or not to use the products.

### **Labelling and packaging**

14 Are the proposed requirements and restrictions on labelling sufficient? If not, please make specific suggestions for further requirements and restrictions

MidCentral Public Health Service agrees with the proposed labelling requirements and particularly supports restrictions on labelling design so it is less appealing to those under the age of 18 years old.

Additional labelling should include a full list of ingredients rather than just a requirement for 'active ingredients'. Inactive ingredients may pose a risk to those with allergies.

We recommend that the regulations address repackaging by customers buying bulk product from retail outlets. Restriction on the amount of product per sale can minimise this risk (See recommendations for Discretionary conditions (Question 8).

15 Are the proposed requirements relating to health warnings sufficient? If not, please make specific suggestions for further requirements (for example, advice on what to do in the case of an overdose).

We agree with the proposed requirements including advice on what to do in case of an overdose and how to report adverse reactions. The current system of reporting adverse effects requires linkage, as CARM reporting is most likely to be associated with a health practitioner assessment, while National Poisons Centre data is more likely to capture direct contact from members of the public.

16 Are the proposed packaging requirements and restrictions sufficient? If not, please make specific suggestions for further requirements.

MidCentral Public Health Service supports the outlined packaging proposals and in particular proposals to reduce attractiveness to those under the age of 18 years old.

The packets need to be tamper proof to prevent additional substances being added to the packages, e.g. other drugs. We also recommend that products utilise plain packaging to reduce their visual appeal.

17 Do you agree with the proposal to restrict a packet to one dose? (Please give reasons for your answer.)

MidCentral Public Health Service supports in principle the proposal to restrict a packet to a single dose. However, it will be important to consider unintended consequences of this action, such as increased access to the product via improving affordability of products. This has been a consideration in not permitting single cigarette sales, particularly for reducing youth access to cigarettes.

18 Do you agree with the proposal that a dose, in whatever form the product takes, is split wherever possible?

MidCentral Public Health Service supports the proposal to split doses wherever possible to reduce the risk of accidental overdose. Lack of knowledge of appropriate and safe doses is likely to be associated with increased risk for severe adverse effects.

We recommend that the dose should be specified on the products packaging together with information outlining what is the maximum safe dosage permissible at any one time.

19 Do you think there should be restrictions on the form products can take?  
If so, what forms do you think should and shouldn't be allowed?

MidCentral Public Health Service recommends there be restrictions on psychoactive products containing tobacco, given the health risks of tobacco consumption and the national strategy to reduce tobacco harm. As tobacco contains the addictive substance nicotine there is an increased risk for dependency to develop with products containing tobacco.

We also recommend that approved products should not be pre-mixed with food and beverages as this poses a risk of accidental or un-intended consumption of psychoactive substances by children and youth, and may also encourage the attractiveness of these products to those under the age of 18 years old and at risk groups. For the same reasons products should not be sold in forms resembling food (including beverages), toys or any other product or item likely to contribute to these risks.

Finally we believe that any decisions made to regulate the form that products take should consider the potential for accidental overdose or exceeding maximum recommended dosages. Therefore, it is not suitable for psychoactive substances to be able to be delivered through means such as nasal sprays or atomisers, where the permissible dose can readily be exceeded by both intentional and unintentional usage.

20 Do you think there should be restrictions or requirements on the storage of psychoactive substances?  
If so, what should the restrictions or requirements be?

MidCentral Public Health Service recommends there should be restrictions around the maximum amount of psychoactive substance stored at a premise at any one time and transported in a vehicle at any one time. There is uncertainty around the chemical content and stability of these products therefore exposure to large amounts of product in a confined space may have unintended health effects.

Storage of large quantities might also increase the likelihood of theft and robbery. While this may be seen as primarily a concern for the manufacturer/retailer it might also increase risk of products reaching the black market and being supplied in an uncontrolled manner to prohibited persons.

21 Do you think restrictions or requirements should be set for the storage of approved products?  
If so, what should they be?



MidCentral Public Health Service supports restrictions on product being stored on residential property (or property where children are present) for wholesale or retail sale via the internet etc. We recommend that psychoactive substances are only stored on licensed premises. This reinforces the need for the licence granted to applicants to specify the associated premises.

22 Do you think restrictions or requirements should be set regarding the display of approved products?  
If so, what should they be?

MidCentral Public Health Service recommends the requirements of the Smoke-free Environments Act including product not being visible and advertising not permitted at the point of sale, be applied to the display of approved products. The minimum standard should be that products and advertising are not readily visible from outside of the premises.

23 Do you think restrictions or requirements should be set regarding the disposal of approved products?  
If so, what should they be?

MidCentral Public Health Service recommends that documentation needs to be kept of any disposal of approved products, especially when requested by the Authority. This will then ensure the process can be audited by enforcement officers.

24 Do you think there should be signage requirements in the regulations?  
If so, please give specific suggestions.

MidCentral Public Health Service supports signage requirements in the regulations. These could include:

- Display of the licence
- Name of the licensed "manager" who takes responsibility for the sales
- ID required
- No sales to under 18 years old.
- Health warnings
- Signage being "Easily read by people using the premises" (as per the Sale and Supply of Alcohol Act)

## Place of sale and advertising

25 Do you think the regulations should specify further places where approved products may not be sold?  
If so, please provide specific suggestions.

MidCentral Public Health Service supports the regulations specifying further places where approved products may not be sold. This needs to include discount shops and other similar type retail outlets where children and young people under the age of 18 years old are likely to be present. This is to help prevent the normalisation of the product to those under the age of 18 years old.

26 Do you think the regulations should prescribe restrictions or requirements for advertisements of approved products?  
If so, please provide specific suggestions.

MidCentral Public Health Service supports adherence to the Advertising Standard Authority's Advertising Code of Ethics. We also recommend prohibiting the use of sponsorship.

We also recommend that the Regulations should prohibit the encouraging of others advocacy/advertising of products on websites or social media, and prohibit advertising to mobile phones and similar devices.

27 Do you think the regulations should prescribe restrictions or requirements on internet sales of approved products?  
If so, please provide specific suggestions.

MidCentral Public Health Service has concerns that online purchasing of psychoactive substances increases the risk that those under the age of 18 years old and youth access these products.

To minimise this risk, we support the following requirements for the internet sale of approved products

- Age verification for those entering the site
- A signature from purchasers affirming they will not on-sell to those under 18 years old
- Health warnings
- Full list of ingredients
- List of potential side effects
- Contact numbers for CARM, The National Poisons Centre and Alcohol and Other Drug help lines

- Payment methods should be restricted to R18 methods of payment e.g. credit cards and PayPal, no direct debit options and no cash on delivery. Another option is to utilise systems such as TAB sites that require verified copies of Driver's Licences and/or Passports to verify age prior to an account being setup
- Age verification needs to occur when the products are delivered.

Enforcement Officers need to have ready access to records. All sales, including internet sales, should be from licensed premises and not residential premises. The rationale for this is that it is not appropriate for these products to be stored and traded from residential premises over the internet where children and young people are at risk of accessing and using these products.

28 Do you think the regulations should prescribe restrictions or requirements on the advertising of approved products?  
If so, please provide specific suggestions.

MidCentral Public Health Service agrees with the proposals in the consultation document.

#### **Fees and levies**

29 Do you agree with the proposed fees for the different licences?  
If not, please provide specific suggestions

MidCentral Public Health Service supports that all costs associated with enforcing the Act and its associated regulations and guidelines should be met fully by the licence holders. Any proposed fees regime set by the authority needs to be flexible to reflect previous, current, and future costs associated with the establishment and future enactment of this legislation, so that full cost recovery is achieved.

30 Do you support a fixed fee or an hourly charge for processing applications for product approvals?

No comment

31 Should fees be set for other specific functions?  
If yes, please state what they should be set for.

No comment

32 Do you agree with the proposed list of items and process for setting  
levies?  
If not, please provide specific suggestions.

No comment



Regulations Consultation

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to:  
psychoactives  
22/03/2014 02:21 a.m.  
Hide Details

From:  
To: psychoactives@moh.govt.nz,

This 'not pot' stuff...its changing peoples mind sets for the worst. I know of 2 ppl tht hav killed themselves in the last 12 months because they got so depressed after becoming hooked on not pot. Ppl lives an familys are being destroyed. Its bad news. Get rid of it plz.

Sent from Telecom's Smartphonetwork



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**Submission to the Psychoactive Substances Regulatory Authority – Regulations  
Consultation**

**21<sup>st</sup> March 2014**

This is a personal submission.

If we are to regulate the sale of synthetic psychoactive substances, an education campaign is needed for communities to deal with these new drugs alongside this legislation.

We spend health dollars on educating the harmful affects of nicotine and alcohol. These synthetic substances are no different, and will be the gateway for many into illegal drug addiction and the tool for many illegal drug operations.

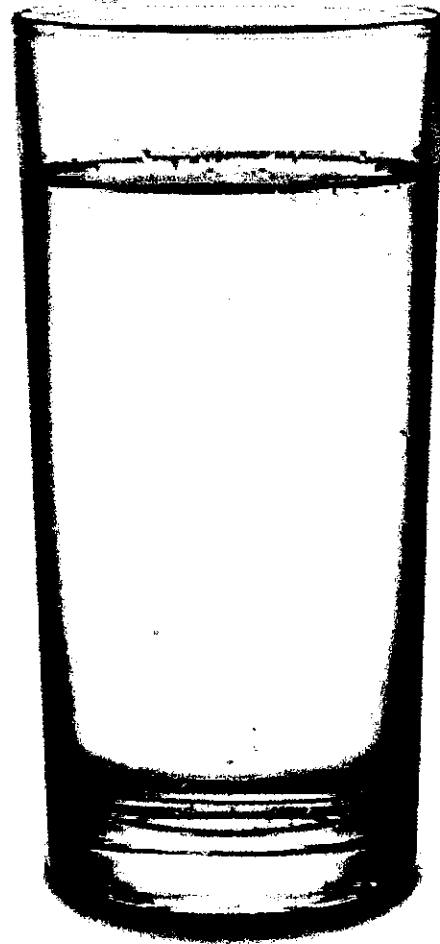
Education has to be put in place at the same time that regulation is developed otherwise our communities, our councillors, our parents and our teenagers will continue to be confused.

Government has legalised these psychoactive substances and we haven't been told why. Communities and families deal with the harm that psychoactive substances bring to our communities – the mental health issues, the suicides, the grief in family relationships, the economic issues and the employment challenges for our businesses. Our people will tell us their stories, we will listen and we need to provide them with answers.

Developing a LAPP through our Council formalities is a token gesture. These "social tonics" are readily available on the internet with no accountability for underage purchase. The online businesses supplying these products are not serving our communities like our local businesses do – they are providing product that take money out of our local economy and then let that same local economy deal with the consequences of psychoactive substance usage.

All our children are exposed to drugs at our schools and in our communities – they need education and a toolkit on how to deal with them.

I hope that this legislation is an opportunity that we can use to bring our communities drug's problem into the light and educate the people of New Zealand how psychoactive substances harm our society.



**Local Councils  
play an active  
role in keeping  
our communities  
healthy.**

## **Psychoactive Substances Regulations: a consultation document**

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Local Government New Zealand Submission to the Ministry of Health

SUBMISSION DATE 21 March 2014



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*DRAFT*



## INTRODUCTION

Thank you for this opportunity to provide input into the development of the psychoactive substances regulations. This submission has been prepared on behalf of New Zealand's 67 territorial authorities which have been given the statutory discretion to prepare and adopt locally approved products policies (LAPPs).

LGNZ is the national organisation of local authorities in New Zealand and all 78 councils are members. We represent the national interests of councils and lead best practice in the local government sector. LGNZ provides advocacy and policy services, business support, advice and training to our members to assist them to build successful communities throughout New Zealand. Our purpose is to deliver our sector's Vision: "Local democracy powering community and national success."

As an organisation we are committed to ensuring that councils have the policy levers and practical support to fulfil their statutory duties and meet community expectations in all aspects of their responsibilities. With regard to the regulation of psychoactive substances, further development of tools for councils is clearly required over and above than those flagged in the consultation paper and we look forward to working with the Ministry on how these might be reflected in the final regulations.

### **The need for better community information**

One of the challenges councils are facing is citizens' lack of awareness of the new legislation, the policy rationale behind it and a lack of knowledge about the nature of local governments' new regulatory responsibilities. Councils are perceived by many in the community as having a greater ability to regulate the sale of psychoactive substances than in fact they have. We believe that the Ministry of Health needs to develop a public-facing communications strategy to inform New Zealanders on the reasons behind the legislation, and the relative roles of the different agencies involved in the regulation of psychoactive substances.

Such a strategy could include but should not be limited to the development of material that councils can use to communicate with their communities. It is important that this is led by central government/agencies in the same way that changes to alcohol laws have been. LGNZ is happy to work with the Ministry on development of a communication strategy.

The ability to regulate the location of retail outlets selling psychoactive substances is new for councils and we comment elsewhere on how the policy and legislative process might have been undertaken differently. It is important for agencies involved in regulatory implementation to be involved in the design of this legislation and accompanying regulations, for both efficiency and effectiveness reasons.

We look forward to working with officials in the Ministry of Health on the development of regulations, a strategic communications strategy and guidance to councils to ensure effective implementation.

## KEY POINTS

### Communications

LGNZ recommends that the Ministry of Health develop a public-facing communications strategy to inform New Zealanders about the rationale for and the nature of the new Psychoactive Substances legislation and the relative roles of the different agencies involved in its implementation. LGNZ is happy to work with the Ministry on this.

### Collaboration

LGNZ recommends, in line with the recommendations of the Productivity Commission, that local government representatives should work alongside officials from the Ministry of Health, and other relevant agencies such as Police, on the analysis of submissions and the design of the final retail regulations. We recommend a cross-sector working group of appropriate parties is constituted for this purpose.

### Interim licenses

LGNZ recommends that interim licenses should be subject to an adopted LAPP, noting that interim licenses holders who cannot continue to operate will be able to apply for a full license in a designated area once regulations are notified.

### Evidence of compliance

LGNZ agrees that applicants for a retail licence must show that their application complies with the relevant LAPP. We believe strongly that the Regulatory Authority must not grant a license to any applicant who fails to so comply.

### Fit and proper test

LGNZ recommends that the Authority consult with the relevant local authority to ascertain the nature of any relevant experience the council might have with the applicant.

### Discretionary provisions

LGNZ recommends that:

- Regulations specify both minimum and maximum amounts of an approved substance that might be purchased in a single sale;
- An excise tax on approved products is introduced to reflect the cost of consumption on the NZ health system and the local community; and
- Councils are provided with the ability in the regulations to recommend opening and closing hours.

### Place of sale

LGNZ recommends that shops licensed to sell approved products should specialise in the sale of these substances and should not be able to sell forms of merchandise not related to the consumption of psychoactive substances, particularly those that may appeal to a youth market.

## SUBMISSION

LGNZ accepts that Parliament has determined to legalise the production and consumption of certain approved psychoactive substances. However, many councils have found that communication and the regulatory tools provided in the Psychoactive Substances Act are insufficient to meet the expectations of communities for the effective control of retail outlets. We address these gaps at appropriate places throughout the submission.

The proposal that the implementation of the regulations should take place in two phases is supported. LGNZ had previously expressed concern at the prospect of the retail regulations being gazetted before councils had the opportunity of adopting their LAPPs. Should this have happened there would have been no way policies could have influenced the location of outlets until licenses came up for their three year review. We are therefore very pleased that regulations governing retail licenses have an expected implementation date of early 2015. This should provide ample time for those councils that wish to adopt LAPPs to do so before regulations come into force.

### Some compliance issues

As noted above LGNZ is pleased that the Government is considering a two-phase implementation of the regulations to allow councils time to develop and adopt appropriate policies. There are a number of specific issues which we wish to mention.

#### Changing premises

The consultation document raises the issue of how retail premises operating in areas that are outside the provisions of an adopted LAPP should be dealt with. It is assumed that these are premises operating under an interim license prior to the notification of retail regulations in 2015. The options appear to be:

1. To continue to operate outside the legal zone in a council's LAPP until the interim period concludes and permanent licenses within the designated area are secured, at which point the licensed premise shifts in order to comply with the policy;
2. To retain the license to operate but the premise is obliged to shift to a position within the designated zone while still an interim license, presumably within a defined period; and
3. The premise closes down until the end of the interim period and a permanent license applied for within the appropriate zone when that option becomes available.

It appears that most councils expect that option three will apply where a premise with an interim license finds itself outside the designated LAPP zone once a policy is adopted but before regulations are notified. This expectation is also shared by many citizens as well. LGNZ fully supports option three.

#### Providing evidence of compliance with a LAPP

LGNZ agrees that applicants for a retail policy must show that their policy complies with the relevant local approved products policy. We believe strongly that the Regulatory Authority must not grant a license to any applicant which fails to so comply.

The immediate question for councils concerns the nature of the paper-work required for confirming whether or not an application is consistent with a council's LAPP, and how this might be handled in an efficient manner, for both the council itself and the applicant. The model that might be most appropriate for this purpose is that used in the Gambling Act, in which an applicant seeks from their council written confirmation that their application is consistent with the council's LAPP. LGNZ recommends that the Authority should provide a standard template for providing this level of proof.

**Place of sale**

With regard to place of sale, LGNZ wishes to reinforce a point made above that shops licensed to sell approved products should specialise in the sale of these substances and should not be able to sell forms of merchandise not related to the consumption of psychoactive substances themselves, particularly products that may appeal to youth. We believe that this would provide an important deterrent to casual users who are only prepared to access licensed premises because they also sell merchandise not related to the approved products.

**Local government policies for approved products**

This section of the consultation document describes the minimum range of matters a council can take into account in the development of an LAPP as provided for in the Psychoactive Substances legislation. It also notes that phase two of the implementation process has been timed to allow councils to put policies in place before retail regulations are notified.

There are a number of matters in the statute that are still to be determined in detail, resulting in councils having to make a number of assumptions, for example:

- What does the phrase "facilities of a particular kind" mean? Would it include, for example, sites where people congregate while waiting for public transport?
- What does "broad areas" mean? For example, would a broad area include a series of specific but non-contiguous streets?

An additional matter is the status of an LAPP which has the unintended effect of effectively banning sales by preventing the location of a retail outlet within a particular jurisdiction. This could occur, for example, in a smaller community where there are multiple places of a particular kind. We recommend that the Ministry ask the Crown Law Office for a view on the legal status of any policy that inadvertently results in such a situation.

We submit that the regulations are specific so that councils would know the full extent of their authority, that is the matters they can take into account, before beginning to consult on and adopt a regulatory plan, such as an LAPP. The problem is that some councils may over-prescribe and expose their policy to legal challenge on *ultra vires* grounds, while others may under-prescribe and fail to fully meet community expectations. Both may face a policy amendment process once the final regulations are announced - a costly process for both councils and communities.

If local variation is acceptable then the Ministry, in the first instance, needs to articulate the reasons for this from a policy perspective. LGNZ is very happy to work with Ministry officials on developing appropriate strategies.

**COMMUNICATIONS**

We noted in the introduction the problem created by a lack of awareness by citizens about the new legislation and the way in which responsibility is distributed between central and local government. Many perceive councils as having a greater ability to regulate the sale of psychoactive substances than is the case. As a result we are recommending that the Ministry of Health should develop a public-facing communications strategy to inform New Zealanders about the nature of the new Psychoactive Substances legislation and the relative roles of the different agencies involved in its implementation. LGNZ is happy to work with the Ministry and related agencies on this, which could include:

- Public relations, such as factual and feature based articles, including background, the policy, results to date, vision and next steps, as well as interviews with the Minister, a selection of our mayors, Police and other associated parties;
- Forums for community education, feedback and response, including online options;
- Website information, such Q & As; and
- Printed collateral and advertising.

The communication needs to include a strong evidence base outlining why the changes have occurred and what further changes will occur, and why, along with clear communication of the policy response to date and planned for the future.

Councils will want to see that the policy response is being led and communicated by central government, and accordingly the Ministry needs to be clear about the policy position and the role of LAPPs.

## CONCLUSION

The need to prepare local approved product policies is a new requirement that was approved by Parliament with little or no prior knowledge by councils, one of the agencies charged with implementation. Because of community interest in the availability, location and type of stores selling these products many councils have had to quickly learn about the new regulatory regime and develop policies. This has been made more difficult because the regulations are yet to be adopted - these are expected in early 2015. While the additional time for councils to develop and adopt policies is appreciated, without knowledge of the full regulatory framework councils are developing local policies without guidance. It may be that once regulations are adopted some councils may need to amend their policies so as to be consistent with the regulations, leading to cost and inefficiency.

LGNZ believes it is important that local government representatives have the opportunity to work with officials from the Ministry of Health on the design of the final retail regulations and guidelines for councils. This would be in line with the recommendations of the Productivity Commission, which called for Government agencies to work closely with local government on the design of new regulations. Consequently we are pleased that the Ministry wishes to work with local government officials on the development of regulations on psychoactive substances. We are happy to facilitate this and to pull together representatives from the sector to form a working group.

## MAKING A SUBMISSION

## Consultation questions

- 1 Is the list of proposed information requirements for licence applications comprehensive enough?

If not, what else should be required, and why?

Additional information might include:

- Previous convictions and issues the council may have with the applicant and/or associates: this would enable the Authority to more fully assess the suitability and character of the potential licensee.
- Any known associates.
- Detailed information on the physical/approved address of the retail outlet and surrounding retail precinct/premises.

- 2 Should retail licence applications be accompanied by evidence of compliance with a local approved products policy if one is in effect in the applicant's area?

Yes. We would go further and insist that any application must have evidence that the application complies with a council policy - such evidence must be verified by an official from the relevant council. The Regulatory Authority should NOT grant a license to any applicant that does not so comply.

LGNZ suggests that the process under the Gambling Act to show that Class 4 gaming machine operators comply with a council's policy might be a good model to replicate.

- 3 Should retail licence applications be accompanied by evidence of compliance with a generic local approved products policy if no policy is in effect in the applicant's area?

LGNZ supports a generic policy however we note that not all of our members agree and we do see some drafting problems. If a council chooses to exercise its discretion and not have a policy then clarification is needed if a generic policy can have statutory authority under the Act.

For example, should a council choose not to adopt a policy then it is likely it will choose not to provide information to the Authority on whether or not a prospective retail license conforms to the generic policy.

Perhaps a better option would be for the Authority to establish a list of "particular places" and create a minimum distance within which retail outlets may not operate.

- 4 Are the factors the Authority should take into account when determining whether a licence applicant is a fit and proper person or whether a body corporate is of good repute in section 16(2) enough? The section 16(2) factors are:

- whether the applicant has been convicted of a relevant offence;
- whether there has been a serious or repeated failure by the applicant to comply with any requirement of the Act;
- whether there are other grounds for considering that the applicant is likely to fail to comply with any requirement of the Act; and
- any other matter that the Authority considers relevant.

If you think these factors are not enough, please give examples of additional factors the Authority should consider.

Any history of failure or non-compliance with other similar regulatory regimes should be a consideration. The Authority may wish to consult with local councils to ascertain whether they have any previous history with an applicant in relation to council business that might be relevant.

Other factors might include any potential conflicts of interest, in a trading sense, and any known associates.

If the licence applicant is a body corporate there should be a screening of the board members to ensure all involved are of good character with no previous convictions.

LGNZ supports Christchurch City Council's suggestion that evidence of the number of people committing crimes while using products supplied by a particular retail outlet might be taken into account when a retail outlet's license is up for review.

- 5 Should the regulations require applicants to provide details of their involvement in other regulatory regimes, such as alcohol licensing processes?

Yes.

- 6 What records should the regulations require licence holders to keep?

Licence holders should maintain a register of substances that they sell and also maintain a stocktaking system to ensure they know what substances they have in stock at any time. This should be audited by the Ministry – this could be conducted when a licence is renewed, or at any other time. Sufficient information must be provided so that products and substances can be traced to the point of sale.

Some members have recommended that a record of all purchasers is kept. LGNZ believes that this could apply to customers who purchase bulk amounts (the Authority to determine the amount) to reduce the likelihood of illegal sales.

- 7 How long should licence holders be required to keep records for?

We support seven years as a reasonable balance between accessibility and efficiency.

8 Do you think there are factors or issues that the Authority should consider when setting discretionary conditions? If so, please provide details.

The Authority should set minimum and maximum limits for the amount of an approved substance that might be purchased in a single sale;

The Authority should also consider:

- An excise tax on approved products to reflect the cost of consumption on the NZ health system and the local community;
- A limit on the range of non-related products, such as clothing, which is be able to be sold in retail premises licensed to sell approved products;
- A limit on the hours a retail premise selling approved products may operate;
- A probationary period for new retail operators with full licenses provided after a satisfactory performance;
- Forbidding any food, alcohol or gambling from sale at a licensed premise;
- Ensuring sales staff are 20+ years of age;
- Requiring the provision of fact sheets setting out the health risks associated with consumption of the products;
- Ensuring premises have information on health and addiction services that people with problems related to consumption can seek help; and
- Given the flexibility in many home occupation rules in district plans, the regulations should make it clear that psychoactive substances are not to be sold from any building the primary purpose of which is a residential dwelling.

In addition it should be made clear in the license conditions that it applies to a particular premise, not just the person who is the license holder. Licenses should also be reviewed whenever a council LAPP is reviewed to ensure that retail outlets are operating in accordance with any amendments made to a policy.

9 Should the regulations prescribe other matters the Authority must take into account when deciding on an application? If yes, what should these matters be?

Licenses should be inspected same as a food premises – at least once a year.

The Authority should audit their records and review performance each time licences are renewed.

Account should be taken of other licensing and non-compliance issues both within the application district and in other areas of the applicant is operating in various council jurisdictions.

10 Do you agree a product approval application should include information on proposed manufacturing methods and how they will comply with the Psychoactive Substances Code of Manufacturing Practice?

Yes.



11 Do you think any further particulars, information, documents or other material should be prescribed in the regulations? If yes, what should these be?

-

12 Do you agree with the proposal that the regulations require applications to contain information and data on the toxicity, pharmacology and related clinical effects of the psychoactive substance they are seeking approval for?

-

13 Do you agree with the proposal that the regulations require product approval applications to contain information and data on:

- the psychoactive potential and related behavioural effects of the substance;
- the addictive potential;
- the proposed directions for use; and
- previous use, including use in clinical trials and in the wider population?

-

14 Are the proposed requirements and restrictions on labelling sufficient? If not, please make specific suggestions for further requirements and restrictions.

We suggest that labels also contain the emergency phone number 111.

15 Are the proposed requirements relating to health warnings sufficient? If not, please make specific suggestions for further requirements (for example, advice on what to do in the case of an overdose).

LGNZ agrees that advice on what to do in case of an overdose is important. Information should also specify that the products are not to be used by people under the age of 18 and that they contain psychoactive substances.

Consideration should be given to including a warning that, for people with a genetic predisposition, consumption may trigger permanent psychosis.

16 Are the proposed packaging requirements and restrictions sufficient? If not, please make specific suggestions for further requirements.

LGNZ supports plain packaging except for the required information regarding health risks etc.

17 Do you agree with the proposal to restrict a packet to one dose? Please give reasons for your answer.

We do not agree with a single sale. LGNZ has proposed that a prescribed minimum amount should be set so that 'opportunistic' sales are discouraged – single doses may make the product more affordable/accessible.

18 Do you agree with the proposal that a dose, in whatever form the product takes, is split wherever possible?

See above.

19 Do you think there should be restrictions on the form products can take? If so, what forms do you think should and shouldn't be allowed?

One of the problems a number of councils are already experiencing involves people congregating near a retail outlet smoking approved substances. If the substances were in the form of tablets the risk of anti social behaviour is less likely to occur.

20 Do you think there should be restrictions or requirements on the storage of psychoactive substances? If so, what should the restrictions or requirements be?

Retail outlets should have a low stock management system, perhaps keeping no more than two week's worth of stock at any one time.

21 Do you think restrictions or requirements should be set for the storage of approved products? If so, what should they be?

22 Do you think restrictions or requirements should be set regarding the display of approved products? If so, what should they be?

Yes – out of the reach of children and customers. Products should not be visually displayed and rules should be modelled on those used for the sale of tobacco.

23 Do you think restrictions or requirements should be set regarding the disposal of approved products? If so, what should they be?

Yes – expiry dates should be observed and stock out of date disposed of. Adopted rules should be consistent with the provisions of the Hazardous Substances and New Organisms Act.

24 Do you think there should be signage requirements in the regulations? If so, please give specific suggestions.

Yes. R18 signs plus health warnings should be displayed within retail outlets. No external signage should be permitted.

25 Do you think the regulations should specify further places where approved products may not be sold? If so, please provide specific suggestions.

Within designated areas any premises where gaming licenses are in place should be premises where psychoactive substances cannot be sold. Clarity is required about the exact definition of “fixed permanent structures” (s.52f.)

26 Do you think the regulations should prescribe restrictions or requirements for advertisements of approved products? If so, please provide specific suggestions.

No advertising of approved products should be permitted. The aim of the Act is to minimise harm, advertising would work against the purpose of the Act. We suggest similar rules to those imposed on the tobacco industry.

27 Do you think the regulations should prescribe restrictions or requirements on internet sales of approved products? If so, please provide specific suggestions.

Products should only be available on R18 websites and only ‘registered’ users should be able to access websites selling these products. Sites should be registered with the Ministry of Health and all sales should be regulatory monitored by the Authority.

28 Do you think the regulations should prescribe restrictions or requirements on the advertising of approved products? If so, please provide specific suggestions.

See the answer to Q. 26.

29 Do you agree with the proposed fees for the different licences? If not, please provide specific suggestions.

In the case of an operator with more than one premise each premise should be licensed and be subject to a fee.

30 Do you support a fixed fee or an hourly charge for processing applications for product approvals?

No opinion

31 Should fees be set for other specific functions? If yes, please state what they should be set for.

Yes, councils would like to have the ability to either set a fee or have a fee set by the Authority for the time taken to process an application for a retail license. The tasks to be undertaken by councils involves:

- Verifying that applicant's meet the local policy's conditions; and
- Research and providing any information on the council's previous history with an applicant.

32 Do you agree with the proposed list of items and process for setting levies? If not, please provide specific suggestions.

In addition to the specific costs incurred when process applications for licenses, councils incur costs of developing, adopting and monitoring a LAPP. This involves:

- The cost of research;
- The cost of policy development;
- The cost of the special consultative procedure; and
- The governance cost of adopting a policy.

Any levy set by the Authority could include an amount to be paid to the relevant local authority to offset the costs of developing, adopting and monitoring an LAPP.

Please return only *one* copy of your submission no later than **5pm on Friday 21 March** to:

The Manager  
Psychoactive Substances Regulatory Authority  
Ministry of Health  
PO Box 5013  
WELLINGTON  
Email: [psychoactives@moh.govt.nz](mailto:psychoactives@moh.govt.nz)

Alternatively, electronically complete the submission form available at the back of this document, add your comments and email to:

[psychoactives@moh.govt.nz](mailto:psychoactives@moh.govt.nz)

Please put 'Regulations Consultation' in the subject line.



Submissions From

to:

psychoactives@moh.govt.nz

21/03/2014 01:58 p.m.

Hide Details

From:

To:

"psychoactives@moh.govt.nz"

<psychoactives@moh.govt.nz>,

History: This message has been replied to and forwarded.

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Dear Officer,

**Location:** Location is not important for the shops selling legal highs. In my opinion, the shop selling legal highs are R18 shop which is not allowed under age people come into our shop and we do not serve those people. Our shop even doesn't serve those people who are obviously sick or pregnant. The good example is AK47, some people are in hospital because they smoke AK47 which is even not sold in our shop which means the people can buy legal high from any shop which distance is big issue.

Our shop does not put the sign or advertisement outside of the shop or on the window about what we sell in the shop. Those under age people don't even know what we sell in the shop so they are not even allowed come in. This is even better than liquor shop. The more important thing is our shop's philosophy.

**Communication:** Local council and police are welcome to visit our shop to communicate with us and let us know what we should do and what they need to help. We are happy to support the community.

In the meeting, we talked about how to change the sole trader to company name. Please let us know, Thank.



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20<sup>th</sup> March 2014

H A U R A K I  
D I S T R I C T C O U N C I L

• FROM THE MAYORS OFFICE •

The Manager  
Psychoactive Substances Regulatory Authority  
Ministry of Health  
PO Box 5013  
Wellington

Dear Sir/Madam

### PSYCHOACTIVE SUBSTANCES REGULATIONS – A CONSULTATION DOCUMENT

Hauraki District Council would like to thank you for the opportunity to make a submission on the development of regulations to give effect to the Psychoactive Substances Act, 2013 (the Act).

#### **Background**

The Hauraki District Council has yet to develop a draft Local Approved Products Policy (LAPP) due to the uncertainty in the Act about a LAPPs legal application to the retail licensing decision making process undertaken by the Regulatory Authority. The Hauraki District does not have any interim licences issued for the retail sale of psychoactive substances, but has programmed to have a policy in place prior to the issuing of full licences in the District.

The consultation document on the regulations has a broad scope and deals with a number of matters that extend beyond the normal focus of councils, such as manufacturing, labelling and importation. Council has a view on a number of these issues, for example place of sale, which we raise as appropriate throughout this submission.

The consultation document has been used as a guide for this submission. Council has focussed its response on the following areas:

- General comments
- Generic Local Approved Products Policies
- Local Approved Products Policies
- Interim licences
- Licence application requirements
- Fit and proper person test
- Discretionary conditions
- Health warnings - Labelling and Packaging
- Place of sale
- Advertising
- Fees and levies
- Other matters.

### **SUBMISSION**

#### **1. General Comments**

Council would first like to express its concern over the short period of time provided to make a submission to the proposed regulations. This has made it difficult for elected members to have meaningful input to the submission document.

Making policies without knowing the full extent of council's powers or the range of national regulations that the Authority itself might apply (such as hours of operating) has made the local policy making process more difficult than perhaps it needed to be. Especially for those Councils that have already engaged in Policy development. The result is that councils are in something of a 'catch-22' because the regulations that are meant to guide the development of LAPPs are yet to be finalised and notified (expected in early 2015). Circumstances now dictate that policies need to be in place before the regulations are notified otherwise councils may not be able to influence the location of shops once licences cease to be interim licences.

Consequently councils have been obliged to make a pragmatic response and face the risk that once regulations are notified the LAPPs might need to be amended to conform to the finalised regulations.

## **2. Generic Local Approved Products Policies**

Council agrees that generic policies should apply in jurisdictions where councils have not adopted LAPPs. Council is of the view that applications for retail licences should contain evidence of compliance with generic policies where LAPPs do not exist.

Council considers a generic policy to be a sound approach to avoid a retailer setting up on the boundary between a Council with a policy, and one without, potentially contradicting a community's view about the appropriate location of retail premises selling psychoactive substances.

## **3. Local Approved Products Policies**

Council suggest that the Regulations clarify the relationship between the LAPP and district plans. An example can be found in the Sale and Supply of Alcohol Act, 2012, section 93(1), which states that *'a local alcohol policy may contain a policy more restrictive than the relevant district plan'*.

## **4. Interim Licences**

The consultation document raises the issue of how retail premises operating in areas that are outside the provisions of an adopted LAPP should be dealt with. It is assumed that these are premises operating under an interim licence prior to the notification of retail regulations in 2015.

The options appear to be that they:

- a) Continue to operate outside the legal zone in a council's LAPP until the interim period concludes and permanent licences within the designated area are secured, at which point the licensed premises shifts in order to comply with the policy;
- b) Retain the licence to operate but are obliged to shift the premises to a position within the designated zone while still under an interim licence, presumably within a defined period;
- c) To close down until the end of the interim period and apply for a permanent licence within the appropriate zone when that option becomes available.

It appears that most council's in the Waikato expect that option three will apply where a premises with an interim licence finds itself outside the designated LAPP zone once a policy is adopted but before the regulations are notified. While option 3 is the more stringent approach the Hauraki District Council supports option 2, noting that in some circumstances consideration needs to be given to flow-on effects of suspending or cancelling interim licences, such as those created by users then travelling to a retail premises in a nearby District. Anecdotal evidence suggests that our neighbouring Thames-Coromandel District is now facing consequences associated with the suspension of the interim licences in Hamilton City. This may be exacerbated even further when Waipa District Council adopts its LAPP next week.

## **5. Licence Application Requirements**

Council agrees that applicants for a retail licence must show that their licence application complies with the relevant LAPP. Council has a strong view that the Regulatory Authority must not grant a licence to any applicant which fails to comply with a relevant LAPP.



The proposal is for retail licence applications to be accompanied by some information showing compliance with a Council's LAPP. Council envisions that this will take the form of a letter or certificate of some type from the Territorial Authority (TA) confirming compliance with the LAPP. Council supports this concept and makes the following points:

- a) Where there is a LAPP in force, licence applications should be seen as incomplete without the document from the TA, and be unable to be lodged with the Psychoactive Substances Regulatory Authority or progressed until the relevant documentation is provided.
- b) Councils should be provided with the mechanism to recover any costs of the investigation and reporting required in providing this documentation. It would not be appropriate for this activity to be funded or subsidised by ratepayers as Council will not be the issuing agency.
- c) Council submits that when licences come up for renewal every three years, there should be a process in place where Councils can report on any matters to the Authority concerning the past operation of the licensed premises.

#### **6. Fit and proper person test**

Council agrees with the proposal in the consultation document that the Authority should consider the following factors when assessing the fitness of a retail applicant:

- Whether the applicant has been convicted of a relevant offence;
- Whether there has been a serious or repeated failure to comply with any requirements of the Act;
- Whether there are grounds for considering the applicant is likely to fail to comply with the requirements of the Act; and
- Any other relevant matters.

Council submits that all licences and approvals should be made to an individual not a body corporate. This is to ensure proper and appropriate accountability. The personnel of a body corporate can change over time and there is no mechanism to apply the fit and proper test retrospectively.

Council submits there should be a zero tolerance approach for complying with the requirements of the Act. One substantive incident should be enough for the Authority to take remedial action which could include suspending and/or revoking licences rather than relying on serious or repeated failure. However, the incident would have to be a deliberate action of some type that has basis in fact rather than accusations or innuendo.

#### **7. Discretionary Conditions**

Council agrees with the proposed discretionary conditions outlined in the consultation document including, but not limited to:

- a requirement to display the licence on the premises
- prohibiting the sale of food (with some limited exceptions), confectionery, soft drinks and other household goods at the licence location
- reasonable restrictions on opening hours

Council suggests that the opening hours of stores are limited to standard business trading hours in the Hauraki District of 9am to 5pm. Council would fully support this requirement being imposed on licences.

Council would also support the requirement for a store to provide security staff and CCTV surveillance if there is real security issues associated with the store as confirmed by the Police.

## **8. Health warnings - Labelling and Packaging**

Council agrees with the proposed regulations on labelling and packaging and in addition requests that:

- a) Labelling should be consistent and clear, including listing the content, analysis and concentration of the active ingredients.
- b) Regulations should require product identification only packaging that does not promote the use of the product.
- c) It is suggested that the use of words such as "Legal", "Natural", "High" or "Cannabis" be banned due to the association of these words (that is, Legal or Natural implies that it is safe; High or Cannabis implies that it is desirable).

## **9. Place of sale**

The consultation document suggests that the regulations could place further restrictions on the types of places where approved products can be sold. Council supports any mechanism that restricts the availability and "normalisation" of approved products, or where the provision of other goods and services may be used to mask the sale of products to otherwise prohibited persons. Council would suggest adding the following places to those prohibited:

- a) Cafes / restaurants / bakeries
- b) Takeaway food outlets.

## **10. Advertising**

Council is supportive of the requirement that on-site advertising is restricted to the inside of premises where approved products are offered and limited to communicating only product information, such as active ingredients.

## **11. Fees and levies**

Council submits that any levies taken from the industry for the Ministry to fund its functions should be set at a level that covers the costs of doing so. This industry should not be subsidised by the tax payer.

Council acknowledges that the development of a LAPP in its District allows it to have an on-going input into the social and health matters for the District and this constitutes a public good. However, where any process arising from a LAPP that involves input from the Council and/or staff then provision must be made for the full recovery of these costs from the applicant/licence holder.

## **12. Other matters**

We note there is a lack of awareness by citizens about the new legislation and the way in which responsibility is distributed between central and local government. Many perceive councils as having a greater ability to regulate the location of retail outlets than is the case. As a result Council is recommending that the Ministry of Health should develop a public-facing communications strategy to inform New Zealanders about the nature of the new Psychoactive Substances legislation and relative roles of the different agencies involved in its implementation.

## **Conclusion**

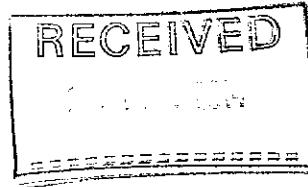
The Hauraki District Council would like to thank you for the opportunity to provide feedback on the proposals and hopes that these comments are useful in your deliberations.

Yours sincerely



J P Tregidga, MNZM JP  
Mayor

THE MANAGER  
PSYCHOACTIVE SUBSTANCES REGULATORY  
AUTHORITY.  
MINISTRY OF HEALTH  
PO BOX 5013  
WELLINGTON 6145



19-3-2014

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TO WHOM IT MAY CONCERN

FIRSTLY WE WOULD LIKE A TOTAL BAN ON THE SALE OF PSYCHOACTIVE SUBSTANCES, BECAUSE OF THE IMPACT IT IS HAVING ON OUR COMMUNITY. BEING ADDICTION & SIDE AFFECTS OF THESE DISGUSTING DRUGS.

OUR STORE IS NEXT TO ADULT SELECTIONS IN NAPIER WHICH IS IN THE C.B.D. OF NAPIER. THIS HAS HAD A HUGE AFFECT ON ALL SURROUNDING BUSINESSES WHICH HAVE A HUGE INVESTMENT IN BUILDINGS & STOCK, AND SERVICES.


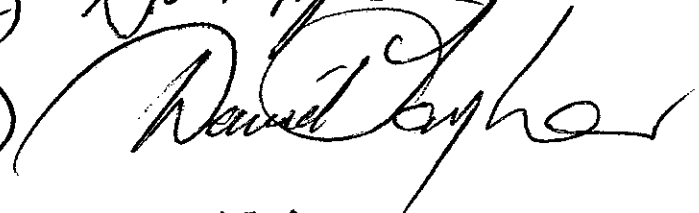
1 - LIMITED TRADING HOURS AS IS NOW OPEN FROM ABOUT 8 am TO 10 pm. WE CONSIDER HOURS SHOULD BE FROM 8 am TO 6 pm.

2 - INTIMIDATION OF STAFF & CUSTOMERS TO OUR BUSINESS IS A REGULAR OCCURANCE WITH GROUPS OF PEOPLE LOITERING OUTSIDE OUR SHOP BLOCKING OFF FOOTPATHS WHICH INTIMIDATES PEOPLE WALKING UP FOOTPATH OR COMING INTO OUR SHOP. THEIR LANGUAGE IS ALSO OFFENSIVE

- 3 - ONGOING SALES TO ADULTS BEING PURCHASED FOR MINORS AND STREET SALES.
- 4 - ALL SALES SHOULD BE REGISTERED & LIMITED TO STOP ON SALES AS ABOVE.
- 5 - SALES TAX SHOULD BE ADDED TO ALL SALES TO ALLOW FOR DAMAGE TO HEALTH & COMMUNITY, SIMILAR TO TOBACCO.
- 6 - EACH STORE SHOULD HAVE SECURITY GUARDS TO STOP ON GOING PROBLEMS OUTSIDE STORES & POSSIBLE ROBBERY AS STORES HOLD LARGE SUMS OF MONEY & DRUGS.
- 7 - ALL LICENCE HOLDERS & STAFF SHOULD HAVE PROPER CHECKS & BE OF STABLE MIND & BODY WITH YEARLY CHECKS & FEES TO COVER COSTS OF SUCH.
- 8 - SURROUND BUSINESSES & STAKE HOLDERS SHOULD HAVE A SAY OR CONSULTED BEFORE DESIGNATION OF STORE POSITION, AS WE ARE THE MOST AFFECTED.

MOORS FATHFULLEY  
(SCOTT TAYLOR)

(DAVID TAYLOR)

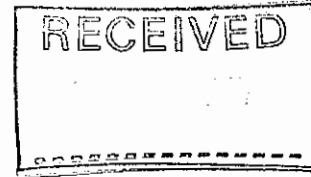
OWNERS.



**Western Bay of Plenty  
District Council  
Office of the Mayor**

Head Office Barks Corner, Greerton, Tauranga  
Private Bag 12803, Tauranga Mail Centre, Tauranga 3143  
P 07 571 8008 (24 hours) • F 07 577 9820  
Freephone 0800 WBOPDC - 0800 926 732  
E customerservice@westernbay.govt.nz  
www.westernbay.govt.nz

20 March 2014



The Manager  
Psychoactive Substances Regulatory Authority  
Ministry of Health  
PO Box 5013  
Wellington

148

Dear Sir/Madam

### **PSYCHOACTIVE SUBSTANCES REGULATIONS – CONSULTATION DOCUMENT**

Western Bay of Plenty District Council would like to thank you for the opportunity to make a submission on the development of regulations to give effect to the Psychoactive Substances Act 2013 (the Act).

#### **Background**

Western Bay of Plenty District Council adopted a draft Psychoactive Substances Policy (Local Approved Products Policy (LAPP)) for consultation on the 13 February 2014. The draft Policy was open for consultation between 19 February and 19 March 2014. A total of 29 submissions were received with hearings on 7 April 2014. The Policy is due to be adopted by Council on 14 April 2014. Council also received a petition with 1953 signatures from across the District advocating that local councils should hold the power to issue licences for such sales including the right to ban sales altogether.

A number of Waikato and other councils have been putting together submissions on the regulations, and this submission reflects a collaborative approach, including LGNZ's submission, while also focussing on points that are of most concern to our Council.

The consultation document on the regulations has a broad scope and deals with a number of matters that extend beyond the normal focus of councils, such as manufacturing, labelling and importation. Council has a view on a number of these issues, for example place of sale, which we raise as appropriate throughout the submission.

A885377

## **General Comments**

In recognition of feedback from communities (evidenced by community meetings, protests and the petition with 1953 signatures referred to above), Council does not support any sale of psychoactive substances for consumption. Elected members generally consider these products to be dangerous and addictive and are concerned, along with local health professionals, about the short and long term effects of these products.

Council would also like to register concern about the short period of time provided to make a submission to the proposed regulations. This makes it difficult for elected members to have meaningful input to the submission document.

Making policies without knowing the full extent of their powers or the range of national regulations that the Authority itself might apply, such as hours of operation, has made the local policy making process more difficult than perhaps it needed to be. The result is that councils are in something of a 'catch-22' because the regulations that are meant to guide the development of LAPPs are yet to be designed and notified (expected in early 2015). On the other hand policies need to be in place before the regulations are notified otherwise they may not be able to influence the location of shops once licenses cease to be interim licenses.

Consequently councils have been obliged to take a pragmatic response and face the risk that once regulations are notified the LAPPs might need to be amended to conform to the new regulations.

The consultation document has been used as a guide for this submission. Council will focus its response on the following areas:

- Generic policies
- Interim licences
- Licence requirements
- LAPPs
- Fit and proper person test
- Compulsory and Discretionary conditions
- Health warnings
- Place of sale
- Advertising
- Fees and levies
- Other matters.

## **Licence applications**

### **Generic Policies**

Council agrees that generic policies should apply in jurisdictions where councils have not adopted LAPPs. Council is of the view that applications for retail licenses should contain evidence of compliance with generic policies on the grounds that the desired effect of restrictions in one area that has a LAPP will be reduced if neighbouring area/s do not have a LAPP in place. Council considers a generic policy to be a good idea to avoid a retailer setting

up on the boundary between a Council with a policy and one without so they can easily reach both markets.

### **Interim Licences**

The consultation document raises the issue of how retail premises operating in areas that are outside the provisions of an adopted LAPP should be dealt with. It is assumed that these are premises operating under an interim license prior to the notification of retail regulations in 2015. The options appear to be that they:

1. Continue to operate outside the legal zone in a council's LAPP until the interim period concludes and permanent licenses within the designated area are secured, at which point the licensed premises shifts in order to comply with the policy;
2. Retain the license to operate but are obliged to shift the premises to a position within the designated zone while still under an interim license, presumably within a defined period;
3. To revoke the interim licence and apply for a permanent license within the appropriate zone when that option becomes available.

In recognition that community feedback favours the most restrictive conditions possible, Council supports Option 3, noting that interim licenses holders who cannot continue to operate will be able to apply for a full license in a designated area once regulations are notified.

### **Licence Requirements**

Council strongly supports the proposal for retail licence applicants to show that their licence application complies with the relevant LAPP.

Council envisions that this will take the form of a letter or certificate of some type from the Territorial Authority (TA) confirming compliance with the LAPP. Council supports this concept and makes the following points:

- a) Where there is a LAPP in force, licence applications should be incomplete without the document from the TA, and be unable to be lodged with the Psychoactive Substances Regulatory Authority or progressed until the document is provided.
- b) Councils must be provided with the mechanism to recover any costs of the investigation and reporting required in providing this documentation. It will not be appropriate for this activity to be funded or subsidised by ratepayers as Council will not be the issuing agency.

### **Local Approved Products Policies (LAPPs)**

An additional matter is the status of a LAPP that has the unintended result of effectively banning sales by preventing the location of a retail outlet within a particular jurisdiction. This could occur, for example, in a smaller community where there are multiple places of a

particular kind (sensitive sites). We recommend that the Ministry ask Crown Law for a view on the legal status of any policy that inadvertently results in such a situation.

In an ideal world councils would know the full extent of their authority, that is the matters they can take into account, before beginning to consult on and adopt a regulatory plan, such as a LAPP. The problem is that some councils may over-prescribe and expose their policy to legal challenge on ultra vires grounds, while others may under-prescribe and fail to fully meet community expectations. Both may face a policy amendment process once the final regulations are announced - a costly process for both councils and communities.

### **Fit and proper person test**

The factors that the Authority should take into account when determining whether a licence applicant is a fit and proper person is not considered to be comprehensive enough. The Authority should consider any conviction not just a 'relevant offence'. Any conviction provides an indication of good repute.

Any information on record from other regulatory regimes should be provided by the applicant and considered by the Authority. This might also include IRD information. This will help build a fuller picture of the applicant's history and repute.

When determining whether there might be additional matters, or whether there are other grounds for believing an applicant might not comply with the Act's requirements, Council recommends that the Authority consult with the relevant TA to ascertain the nature of any relevant experience the council might have with the applicant (e.g. liquor licensee). It is possible that applicants will have a history of contact with a local authority that either shows them to be either good corporate citizens or, at the other extreme, serial non-compliers. It is also recommended that Council be able to charge a fee to recover costs associated with collecting this information.

Council submits there should be a zero tolerance approach to comply with the requirements of the Act, one mistake should be enough to take action to suspend and/or revoke licenses rather than relying on serious or repeated failure. One failure can cause significant harm.

### **Licence Conditions**

#### **Compulsory conditions**

Council strongly supports the proposed additional sales record keeping under the regulations to determine if any product leakage is occurring i.e. whether products are being diverted to the illegal market.

#### **Discretionary Conditions**

Council believes that the statutory tools in the Act may not go far enough to meet community expectations for the regulation of retail sites. Council would like to see any licence applications that may apply within the district publicly notified within the district that it would apply to. This could mean that there is a requirement in the regulations for the applicant to demonstrate that they have consulted with the community or communities they



wish to establish their business/es in as a compulsory part of the application process, akin to the local liquor licensing process.

Feedback from the community indicates support for restrictions on the opening hours of stores to be limited. Council is proposing 9:00am – 5:00pm 6 days a week inclusive of Monday-Saturday to align with the hours of operation of most other retailers.

Council would also support the requirement for a store to provide security staff and CCTV surveillance if there are security issues with the store.

Council is also strongly of the view that the regulations should specify a maximum amount of an approved substance that might be purchased in a single sale to restrict the on-selling of the product.

### **Labelling and Packaging**

#### **Health warnings**

Council agrees with the proposed regulations on labelling and packaging and requests that:

- a) Labelling should be consistent and clear, including listing the content, analysis and concentration of the active ingredients.
- b) Regulations should require plain packaging that does not promote the use of the product.
- c) It is suggested that the use of words such as "Legal", "Natural", "High" or "Cannabis" be banned due to the association of these words (that is, Legal or Natural implies that it is safe; High or Cannabis implies that it is desirable).
- d) Inclusion of 'R18' wording on the product to assist parents and caregivers of minors should they discover any products in the minors possession.

#### **Place of sale and advertising**

##### **Place of sale**

The consultation document suggests that the regulations could place further restrictions on the types of places where approved products can be sold. Council supports any mechanism that restricts the availability and "normalisation" of approved products, or where the provision of other goods and services may be used to mask the sale of products to otherwise prohibited persons. Council would suggest adding the following places to those prohibited:

- a) Cafes/restaurants
- b) Takeaway food outlets.
- c) Gambling venues

## **Advertising**

Council supports the requirement that on-site advertising is restricted to the inside of premises where approved products are offered and limited to communicating only product information, such as active ingredients.

## **Fees and levies**

Council submits that any fees or levies taken from the industry for the Ministry to fund its functions should be set at a level that covers the costs of doing so. This industry should not be subsidised by the tax payer.

Council submits that each Council that develops a LAPP should be able to recover its policy development and review costs (e.g. carrying out the special consultation procedure) and should be included in the calculation of the levy with the relevant portion of the levy to go to Councils with a policy.

Similarly, a fee needs to be charged if the Council is required to "sign off" or approve a licence application as being compliant with the Council's LAPP and, as proposed, 'vet' retail licence applicants for the 'fit and proper person' test. Council should either be able to charge a fee or all territorial authority costs are included in the calculation of licences application fees and that portion of the fee goes to the Council that the licence applies to.

Council also advocates that the levy include funds to undertake research and providing treatment for people experiencing issues with the consumption of psychoactive substances, akin to levies collected for alcohol and gambling. There appears to be very little international, national or local research about the incidence of use of psychoactive substances and the impact of psychoactive substances on users.

## **Other matters**

Although not mentioned in the consultation document, it is recommended that regulations be used to set the minimum level of training required by a seller of approved products. This would be similar to the General Manager requirements of the Sale and Supply of alcohol Act 2012. Such a trained Manager of a retail outlet would be responsible for ensuring that sales conditions are met.

**Conclusion**

Western Bay of Plenty District Council would like to thank you for the opportunity to provide feedback on the proposals. We hope that these comments are useful in your deliberations.

Yours sincerely



Ross Patterson  
**Mayor**