

Draft Psychoactive Product Retail Location Policy report

TO	Thames-Coromandel District Council
FROM	Scott Summerfield - Strategic Planning Team Leader
DATE	28 January 2015
SUBJECT	Draft Psychoactive Product Retail Location Policy

1 Purpose of report

Staff seek Council approval to initiate public consultation on a proposed policy to provide areas in the Thames-Coromandel district where psychoactive products may be sold.

Council has been advised that in May 2015 it is likely the NZ Government will start to process licences allowing approved psychoactive products to be sold by retailers throughout New Zealand. It is currently illegal to sell any psychoactive substances in New Zealand. A Psychoactive Product Retail Location Policy will give the licensing Authority working on behalf of the NZ Government a clear view from the Thames-Coromandel District Council and our communities of where these retailers may be located.

In order to be able to influence the decision making of the licensing Authority this Policy should be in place by the time that the Government will begin processing licences in May 2015.

This Policy is not able to ban the sale of psychoactive products, but can provide areas to the licensing Authority (run through the Ministry of Health) where licences may be issued.

Should Council approve the contents of the Policy, the Policy will then be released for public consultation for a month commencing in February. Following consultation and deliberations a finalised Psychoactive Product Retail Location Policy will be put to Council for adoption in May 2015.

2 Background

Psychoactive products have been sold in New Zealand for 12 years and before 2010 the market was unregulated with psychoactive substances allowed if they were not on statutory lists. Since then, registered psychoactive substances have doubled each year and government officials have advised that it was not possible to ban them if they couldn't be named. There was also concern about black market risks. The Law Commission reviewed the legal regime and advised that change was necessary.

On 17 July 2013, the Psychoactive Substances Act (the Act) received royal assent. The purpose of the Act is to regulate the availability of psychoactive substances in New Zealand to protect the health of, and minimise the harm to, individuals who use psychoactive substances. Council has been advised that in May 2015 it is likely the NZ Government will start to process licences allowing approved psychoactive products to be sold by retailers throughout New Zealand.

Sections 66-69 of the Act give territorial authorities the ability to adopt a local approved product policy. These policies are similar to local alcohol policies and class 4 gaming machine policies and give the ability to specify areas of a town or city where the sale of

approved products is permissible. The Act also allows authorities to specify that retail outlets be a minimum distance away from a variety of types of sensitive sites, such as schools, playgrounds and places of worship.

As this is a new issue, Council does not have existing policies on locations where psychoactive substances can be sold. However this policy has been informed by existing Council policies in other areas, for example, the proposed sensitive sites in this policy have some alignment with the sensitive sites in Council's proposed local alcohol policy where those sites are defined as any early childhood centre, kindergarten, kohanga reo, school or playground. Neighbouring councils (Hauraki District Council (HDC) and Matamata-Piako District Council (MPDC)) have existing local approved products policies under the Act which have guided development of this policy. Where relevant this report will refer to the policies of HDC and MPDC for comparison.

It is not possible for Council to ban the sale of psychoactive products outright or to adopt a policy which would in effect prevent retailers from establishing in any location in the district. Other councils, including Hamilton City Council, faced legal challenges to their proposed policies in early 2014 on the basis that they were too restrictive. However, following the government passing emergency legislation in May 2014 which restricted the sale of all psychoactive substances, these legal challenges did not progress to hearing and so existing jurisprudence on local approved products policies is limited. Adopting an overly restrictive policy in the Thames-Coromandel District could lead to future legal challenges and management of this litigation risk has influenced the development of this policy.

Council is unable to include anything in the policy around which products are approved for sale, how the retailer will operate once the licence has been issued, or through the issuing of the licences themselves. This is provided for in legislation and is a function that NZ Police and the licensing authority will perform. For example, the sale of approved psychoactive products from certain types of premises such as dairies, convenience stores, grocery stores, supermarkets, service stations, premises where alcohol is sold or supplied, temporary structures such as tents and marquees, and vehicles or conveyances are prohibited. There are also strict rules around advertising and marketing.

While it is not mandatory for Council to adopt a locally approved products policy under the Act, without this policy there is a potential for retailers to be located anywhere in the district.

3 Issue

Under the Act local authorities are able to adopt a policy which provides restrictions on psychoactive product retail locations in three ways:

- Provide for broad areas where psychoactive products may be sold, such as the pedestrian core zone;
- Provide 'buffers' between where psychoactive products may be sold and sensitive community sites, such as schools and playgrounds; and
- Provide 'buffers' between the locations of two or more retailers of psychoactive products.

This policy proposes that psychoactive product retail locations be limited to the pedestrian core zones of Thames, Whangamata and Whitianga, that retailers be located 50 metres from sensitive sites, and that retailers be located 300 metres from each other.

The attached indicative maps show which areas within these town centres that retailers would be able to establish in, and the impact of buffers around sensitive sites on that area.

4 Discussion

Proposed psychoactive product retail location policy

1. *Broad area: restrict retailers to the pedestrian core zones of Thames, Whitianga and Whangamata*

Council is proposing to use the pedestrian core zone as defined in the Proposed District Plan (the Operative District Plan refers to the zone as the pedestrian frontage zone) of our three largest town centres to define a broad area to for the location of retailers. This is because there are high levels of pedestrian and vehicle activity, and therefore more public surveillance, as well as a strong police presence in these broad areas. Police have advised that pedestrian surveillance is an important element of reducing crime in town centre areas. Buffers around sensitive sites define these areas further.

It is not considered appropriate to include the town centres of Coromandel, Matarangi, Cooks Beach, Tairua and Pauanui as these smaller townships do not have the same high frequency of pedestrian activity and are not patrolled as regularly by police.

HDC and MPDC have both taken the approach of restricting the locations where retailers may establish in designated town centres: HDC have restricted this to Paeroa and Waihi and MPDC have restricted this to Matamata, Morrinsville and Te Aroha. Additionally HDC limited their town centre definition to buildings which have frontage onto the main streets, excluding side streets where they consider that pedestrian surveillance will be lower and MPDC provided a defined area within the town centre covering four blocks with street frontages onto the main street.

2. *Sensitive sites: placing a 50 metre buffer around sensitive sites*

The policy proposes a 50 metre buffer around sites it considers sensitive to minimise harm to at-risk people in our communities. These sites are consistent with the Act and include:

- Education facilities, schools, early childhood centres, kohanga reo, kindergartens and youth facilities
- Council administered playgrounds and swimming pools
- Skate parks
- Libraries including toy libraries
- Community halls
- Sports fields
- Medical centres and community health providers
- Social welfare and support centres
- Places of worship

The use of a buffer around sensitive sites aligns with Council's Local Alcohol Policy and ensures that a retailer will not be next door or across the road from these sites.

A 25 metre buffer would mean a retailer could establish directly across the road from a sensitive site and therefore is not considered an appropriate option. A 75 metre buffer would be overly restrictive on where a retailer may establish, potentially meaning a retailer would be unable to establish within one of the designated town centres, and so is also not considered an appropriate buffer area.

The HDC policy restricts retailers from establishing within 50 metres of a defined sensitive site and the MPDC policy restricts retailer from establishing within 25 metres of a defined sensitive site.

3. *Other retailers: retailers must be at least 300 metres away from other retailers*

The policy proposes a distance of 300 metres between retailers of psychoactive substances. This ensures separation between retailers which will help prevent people from

congregating in an area. Congregation could attract other harm activities to cluster in that area which can unintentionally change the character of that particular area.

HDC have adopted a policy where new retailers may not establish within 750 metres of an existing retailer while MPDC have adopted a policy where new retailers may not establish within 300 metres of an existing retailer.

Public consultation and communication strategy.

Should Council approve the draft policy for consultation at this meeting, public consultation will begin on 9 February and conclude on 9 March. Hearings for the policy will take place in mid-April with deliberations and adoption scheduled for mid-May.

A draft communication strategy is attached outlining the proposed approach to prompt a conversation about the issues raised by this policy between Council and the residents and ratepayers in the district.

Staff propose to hold public meetings in Thames, Whangamata and Whitianga to gauge public opinion on this policy and to provide information to the public on the opportunities and limitations of the Council's policy within the legislative framework. The NZ Police and other stakeholders will be invited to attend these meetings with the option of making a presentation. In developing the draft policy staff have met with local police representatives to inform them of Council's intent to develop a policy and seek their input.

The Act requires territorial authorities to adopt any local approved products policy in accordance with the special consultative procedure in the Local Government Act 2002 and to undertake any amendment or replacement of their policy in accordance with the special consultative procedure.

5 Suggested Resolution(s)

That the Thames-Coromandel District Council:

1. Receives the 'Draft psychoactive product retail location policy' report, dated 28 January 2015.
2. Approves the attached draft psychoactive product retail location policy and statement of proposal for public consultation.

References-Tabled/Agenda Attachments

Attachment A *Statement of Proposal - Draft Psychoactive Products Retail Location Policy*

Attachment B *Draft Psychoactive Products Retail Location Policy*

Attachment C *Communications Strategy for psychoactive products retail locations policy, gambling venue policy*

Attachment A

Attachment A - Statement of Proposal - Draft Psychoactive Product Reta...

Attachment B - Draft Psychoactive Product Retail Location Policy

Attachment C - Draft communications strategy for psychoactive products...