

STANDARD COUNCIL/COMMUNITY BOARD/COMMITTEE REPORT

Title of Report:	Report of the Hearings Panel on the Christchurch City Council Psychoactive Products Retail Locations Policy		
Meeting of:	Council		
Date of Meeting:	27 November 2014		
Date Required by Democracy Services:	N/A		
Community Board Consultation:	Needed:	N	Complete: Y
Public Excluded	N if PUBLIC EXCLUDED the section below MUST be completed		
REASON UNDER ACT	SECTION	PLAIN ENGLISH REASON	WHEN REPORT CAN BE RELEASED

No of Attachments (must be cited in report) :
Description of Attachments:
<ol style="list-style-type: none"> 1. Psychoactive Products Retail Locations Policy as recommended by the Hearings Panel 2. Psychoactive Products Retail Locations Policy: Map of Permitted Areas as recommended by the Hearings Panel (for the Policy) 3. Psychoactive Products Retail Locations Policy: Map of indicative sensitive sites (not part of the Policy) 4. Psychoactive Products Retail Locations Policy – copy of the original draft Policy with tracked changes 5. Knight Frank Retail Report of the central city area 6. Summary of Submissions

Confirmation of Statutory Compliance			
In accordance with Section 76 of the Local Government Act 2002, this report is approved as:			
(a) Containing sufficient information about the options and their benefits and costs, bearing in mind the significance of the decisions; and,			
(b) Is based on adequate knowledge about, and adequate consideration of, the views and preferences of affected and interested parties bearing in mind the significance of the decision.			
	Name and title of signatories	Signature	Date
Prepared by	Alan Bywater Strategic Policy Unit Manager		07/11/2014
Approved by Unit Manager	Alan Bywater Strategic Policy Unit Manager		07/11/2014

REPORT OF THE HEARINGS PANEL ON THE PSYCHOACTIVE PRODUCTS RETAIL LOCATIONS POLICY

Author:	Hearings Panel on the Psychoactive Products Retail Locations Policy
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1. PURPOSE AND ORIGIN OF REPORT

1.1 On 24 April 2014 the Council resolved to:

Adopt the draft Psychoactive Products Retail Locations Policy (a Local Approved Products Policy) 2014; the Statement of Proposal and Summary of Information and undertake community consultation through a Special Consultative Procedure by June 2014.

1.2 The consultation period on the draft Psychoactive Products Retail Locations Policy was from Thursday 3 July to Monday 4 August 2014.

1.3 The Hearings Panel on the Psychoactive Products Retail Locations Policy heard submissions and deliberated on 29 August, 5 and 26 September 2014.

2. EXECUTIVE SUMMARY

2.1 The Psychoactive Substances Act 2013 (the Act) came into force in July 2013 and regulates the importation, manufacture, sale, supply and possession of psychoactive substances, which are the active ingredients in party pills, energy pills and synthetic cannabis. The purpose of the Act (s3) is to regulate the availability of psychoactive substances in New Zealand and to protect the health of, and minimise harm to, individuals who use psychoactive substances.

2.2 The Act allows territorial authorities (s68) to develop a Local Approved Products Policy, referred to by the Council as the Psychoactive Products Retail Locations Policy (the Policy). The Policy may determine the permitted areas from which approved psychoactive products may be sold by retail outlets within the district, the proximity of a psychoactive products retail outlet to any other psychoactive substances products retail outlet within the district, and the proximity of a psychoactive products retail outlet to premises or facilities of a particular kind or kinds within the district (i.e. sensitive sites as determined by the territorial authority).

2.3 The Council's draft Policy proposed that:

- Retail premises from which approved products may be sold are permitted within the Central City Core and Central City Mixed Use zones.
- Retail premises from which approved products may be sold are not permitted within 50 metres of another retail premises from which approved products may be sold.
- Retail premises from which approved products may be sold are not permitted within 100 metres of a "sensitive site" existing at the time the licence application is made.

2.4 Fifty three submissions were made on the proposed Policy. Nineteen submitters requested to be heard but due to availability only 18 submitters were heard by the Hearings Panel on 29 August 2014.

2.5 The Hearings Panel met on 29 August, 5 and 26 September 2014. The Hearings Panel members were Councillors Andrew Turner (Chair) and Phil Clearwater and Community Board Member, Faimeh Burke. Following its deliberations, the Hearings Panel made amendments to the original Policy (the original Policy with tracked changes is shown in **Attachment Four**) by reducing the permitted area and adding further sensitive sites and unanimously recommended that the Psychoactive Products Retail Locations Policy be adopted by the Council as shown in **Attachment One**.

3. DEVELOPMENT OF THE PSYCHOACTIVE PRODUCTS RETAIL LOCATIONS POLICY

3.1 The Psychoactive Substances Act came into force on 18 July 2013. The Act allows for Councils to develop Local Approved Products Policies, referred to by the Council as the

Psychoactive Products Retail Locations Policy (the Policy). On 28 November 2013, the Council directed staff to investigate developing a Policy.

- 3.2 In consultation with stakeholders, staff developed a draft Psychoactive Products Retail Locations Policy. The Council adopted the draft Policy, statement of proposal, summary of information and map of permitted areas for public consultation on 24 April 2014.
- 3.3 On 8 May 2014 the Psychoactive Substances Amendment Act came into force. On 22 May, the Council resolved to pause the release of the draft policy until the impacts of the Amendment Act were clearer. On 12 June, the Council resolved to revoke the previous resolution, and continue to consult on the draft Psychoactive Products Retail Locations Policy.
- 3.4 Public consultation for the draft policy ran from Thursday 3 July to Monday 4 August 2014. The Statement of Proposal, Summary of Information and text of the draft Christchurch City Council Psychoactive Products Retail Locations Policy were available at Council libraries, service centres, online, and an email was sent to stakeholders about where to find the information. Drop in sessions were held from 4pm to 6pm on Monday 28 July at the New Brighton Boardroom, Tuesday 29 July at the Beckenham Service Centre and Wednesday 30 July at the Upper Riccarton Library. Staff also attended Community Board meetings to inform Community Board members of the draft policy and consultation process.
- 3.5 The Hearings Panel met on 29 August 2014, 5 and 26 September 2014 to hear submissions and deliberate on the submissions received. The oral submissions covered the same information provided in the written submissions.

4. THE SUBMISSIONS

- 4.1 Public consultation on the draft Policy took place from Thursday 3 July to Monday 4 August 2014 using the Special Consultative Procedure. Consultation documents were sent directly to a range of groups, organisations and individuals. Public notices were placed in The Press and The Star, and media releases provided for local community newspapers. The consultation documents were available at Council Service Centres, Council Libraries and on the Council's website.
- 4.2 A total of 53 submissions were received through the public consultation process, including four late submissions which were accepted by The Hearings Panel. The Hearings Panel heard from 18 submitters on 29 August 2014. The summary of submissions can be read in **Attachment Six**.
- 4.3 Submitters presented comments on all aspects of the Policy, with a number commenting on the central city area and the sensitive sites included in the Policy. Several submitters also commented on the distance between retailers and a small number submitted on the review period of the Policy. Some submitters noted that they do not support the sale of psychoactive products within Christchurch or New Zealand, and opposed the Policy on these grounds.

5. DELIBERATIONS

- 5.1 The Hearings Panel, made up of Councillor Andrew Turner (Chair), Councillor Phil Clearwater and Community Board Member, Faimeh Burke, considered the written and oral submissions on the draft Policy on 29 August and continued deliberations on 5 and 26 September 2014.
- 5.2 The Hearings Panel noted that submissions generally fitted within one of three categories:
 - Submitters that do not want products sold in the suburbs, and supported the central city locations.
 - Submitters that live or work in, or are concerned for the impacts on, the central city area.
 - Retailers of psychoactive products that are opposed to the additional restrictions on the location of sale of these products.

- 5.3 In deliberating on the Policy, the Hearings Panel balanced the purpose of the Act (“to regulate the availability of psychoactive substances in New Zealand to protect the health of, and minimise harm to, individuals who use psychoactive substances”) and the need to provide for locations for retailers of psychoactive substances, with community concerns about the sale and use of psychoactive substances.
- 5.4 In general through its deliberations the Hearings Panel aimed to achieve a balance of the following factors:
- Permitting retailers to locate only in suitable areas of the Central City
 - Avoiding the future presence of retailers adversely affecting the rebuild and functioning of the Central City.
 - Protecting vulnerable groups of people as much as possible
 - Developing a reasonable policy by providing sufficient opportunities for retailers to locate in the permitted areas.
- 5.5 In its deliberations the Hearings Panel needed to consider both the situation in the Central City now and how the Central City may develop in the next few years. Given that the area is subject to so much change in the relatively near future balancing, these two perspectives was particularly challenging. The provision of retail premises, the location of sensitive sites and the functioning of parts of the Central City are all likely to change significantly over the next few years. In its consideration of the current and future perspectives the Hearings Panel gave more weight to the current or very short-term future in the expectation that the Policy would need early and potentially frequent review to ensure that it remains aligned with the development of the Central City.
- 5.6 The Hearings Panel requested additional information be provided to analyse the retail real estate market within the proposed area to determine whether there were sufficient opportunities for retail to exist. This report is attached in **Attachment Five**, and was used to provide additional information to the Hearings Panel on the size of the area, number of sensitive sites that could be included, required distances between retailers and sensitive sites and required distances between retailers. The report identified current retail properties as well as identifying retail properties currently available for lease.
- 5.7 The Hearings Panel noted that although the Act prohibits the sale of approved products from any premises that are not a fixed permanent structure, a previous licensed retailer operated from the Re:Start mall. Indications from Ministry of Health staff is that it is likely that retailers could locate in containers or other similar structures, at a fixed address, on vacant sites in the central city while more retail buildings are built.
- 5.8 As interim licenses are no longer an available option for retailers the Hearings Panel agreed to remove any references to interim licences from the Policy. They also agreed it should be made clear that an application for the renewal of a licence application is intended to be covered in 4.2 of the Policy.

The Permitted Area

- 5.9 The Hearings Panel discussed the permitted area of psychoactive product retailers, in light of the comments made in submissions and additional information provided from a real estate analysis of the area.
- 5.10 The Hearings Panel considered the proposed permitted areas that were north of the Central City Core zone in the proposed Policy. The Hearings Panel determined that these proposed areas were unsuitable for retail trade of psychoactive products due to the largely residential nature of them and the number of sensitive sites in close proximity, and recommends removing these areas from the permitted areas map.
- 5.11 The Hearings Panel considered the proposed areas to the east of Madras Street and determined that this area had few opportunities for retail due to its industrial aspect. As a result of the limited opportunities and the proximity to schools, the Washington Way Skate Park and Phillipstown, the Hearings Panel determined that this proposed area was unsuitable for retail trade of psychoactive products, and recommends removing it from the permitted areas map.

- 5.12 The Hearings Panel considered the proposed areas to the west of Stewart Street. The Hearings Panel determined that as the area was very small and separated from the rest of the proposed area by the site of the Metro Sports Facility, the lack of Police¹ support of the area, as well as the proximity of the area to the Health Precinct and Hagley Community College, that this area should be excluded as a permitted area in the final Policy.
- 5.13 The Hearings Panel considered the remaining areas that were included as permitted areas in the proposed Policy. The Hearings Panel noted that the central city core area in the proposed Policy is the business zone of the central city, and this is where retailers of legal highs should be permitted to locate within. They noted that although there are some sensitive sites within the central city core area, a buffer around them should be sufficient to reduce harm associated with the sale of the products. In the remaining area of the central city mixed use zone (bounded by Stewart Street, Saint Asaph Street, Antigua Street, Tuam Street, Madras Street and Moorhouse Avenue), the Hearings Panel considered that the light industrial nature and retail opportunities of this area is similar to the environment in which some legal high retailers were operating in prior to the current ban on the sale of products. The Hearings Panel considered that this area had fewer sensitive sites than the rest of the proposed area, so retailers setting up in this area would have less impact on users of sensitive sites.
- 5.14 The Hearings Panel noted that parts of the proposed permitted area have had a significant loss of buildings following the earthquakes and that, as these are rebuilt, more retail space will become available. Also, it is likely that as A-grade retail space is rebuilt in the central city it will have high rents and, based on the types of premises that retailers were using before the ban, the retailers may choose not to locate in prime locations. The Hearings Panel therefore determined that it would not be appropriate at this point to reduce the permitted area any further. Any further reductions could be considered when the Policy is reviewed in two years time. The Hearings Panel noted that although the Act prohibits the sale of approved products from any premises that are not a fixed permanent structure, a previous licensed retailer operated from the Re:Start mall. Indications from Ministry of Health staff is that it is likely that retailers could locate in containers or other similar structures, at a fixed address, on vacant sites in the central city while more retail buildings are built.
- 5.15 After considering the permitted areas within the central city, the Hearings Panel decided to amend the draft Policy permitted area as shown in **Attachment Two**.

Sensitive sites

- 5.16 The Hearings Panel discussed the sensitive sites defined in the Policy, and suggestions by submitters of additional sensitive sites that they thought should be included in the Policy. The Hearings Panel determined that all of those sensitive sites identified in the draft Policy should remain as sensitive sites in the final Policy, but that some additional sites should be added to the list of sensitive sites. Schools, early childhood centres, tertiary institutions, Open Space 1 and 2 zones, and premises or facilities from which specialist treatment and support services are delivered were listed as sensitive sites in the draft Policy.
- 5.17 Additional sensitive sites, within the recommended permitted area, that the Hearings Panel suggested for inclusion are:
- The Avon River Precinct
 - The Bus Interchange and Bus Super Stops
 - The Justice and Emergency Services Precinct
 - The Health Precinct
 - The Washington Way Skate Park
 - The Margaret Mahy Family Playground
- 5.18 Rationale for the inclusion of these additional sites is discussed below.
- 5.19 The Avon River Precinct was added to the list of sensitive sites by the Hearings Panel. The Hearings Panel agreed that this area will behave like, and be treated by the public, in

¹ The Hearings Panel notes that there are other areas that it recommends that retailers be allowed to locate that are not supported by the Police.

the same way as the Open Space 1 and 2 zones which are included in the draft Policy. It added that the area will be used by families and young people. It also commented that if retailers are located close to the Avon River, it may become a desirable place for users to consume the product which could harm the desired family friendly atmosphere of the space.

- 5.20 The Hearings Panel agreed that the Bus Interchange and Bus Super Stops will be used by, among others, young and vulnerable people. Users of the sites are unable to move from these locations while they are waiting for transport. The Hearings Panel wishes to encourage the use of public transport and agrees that patrons should not have to endure anti-social behaviour that may occur as a result of the proximity to any retailers selling these products.
- 5.21 The Hearings Panel agreed that the Justice and Emergency Services Precinct will be used by vulnerable members of the community. The courts, support services and probation areas of the precinct are deemed to be the most sensitive. However due to the vulnerability of the clients, the entire Justice and Emergency Services Precinct should be included as a sensitive site.
- 5.22 The Hearings Panel agreed that the Health Precinct should be an area where retailers selling psychoactive products are not permitted to locate close by. Users of the Health Precinct are seeking services related to their health, and should be protected from the sale of psychoactive products, which may cause a level of harm to the health of users.
- 5.23 The Hearings Panel agreed that although the Washington Way Skate Park is outside of the permitted area and very close to the buffers of CPIT, it should be included as a sensitive site. Users of the skate park are often young, and can spend long periods of time at the park. The Hearings Panel decided that the users of the park should not be exposed to the sale of these products.
- 5.24 The Hearings Panel also agreed that the Margaret Mahy Family Playground should be included in the list of sensitive sites due to the users of this site being young people and families.
- 5.25 The Hearings Panel heard submissions from St Michael's School and Church. The Hearings Panel considered that by including the Justice and Emergency Services Precinct, the Bus Interchange and the Avon River as sensitive sites would provide additional protection to the young and vulnerable members of the St Michael's School Community by creating a greater distance between retailers and the school.
- 5.26 The Hearings Panel discussed removing tertiary institutes from the list of sensitive sites in the Policy. However due to a number of students using these sites being younger than 18 years old, it was decided that tertiary institutions should be protected in the same way as schools.
- 5.27 The Hearings Panel also considered the Central Library as a sensitive site, due to issues in the past. The Hearings Panel however decided that the Central Library should not be treated as a sensitive site in the Policy as its users could be expected to be similar in profile to the general population rather than being disproportionately used by members of vulnerable groups.
- 5.28 The Hearings Panel considered the Metro Sports Facility as being a sensitive site, but determined that users of the site would not be as vulnerable as users of other proposed sites. The site may be considered in a review of the Policy.

Distance between sensitive sites

- 5.29 The Hearings Panel considered increasing the distance between sensitive sites to retailers to 200 metres. Legal advice is that this would limit the location options for retailers and make the policy restrictive.
- 5.30 The Hearings Panel considered that the proposed distance of 100 metres between sensitive sites and retailers of approved products is appropriate, given the size of the permitted area and the currently limited amount and range of retail opportunities within

that area. The Hearings Panel considered 100 metres between retailers and sensitive sites provides a level of protection to users of sensitive sites.

Distance between retailers

5.31 The Hearings Panel considered reducing the distance between retailers to 25 metres. However, reducing the distance from 50 metres to 25 metres does not create significantly more location options for retailers in the proposed permitted area.

5.32 The Hearings Panel considered that the proposed distance of 50 metres between retailers of psychoactive products is appropriate, given the size of the permitted area that they propose retailers to be located within and the amount of retail opportunities in this area.

The review period of the Policy

5.33 The Hearings Panel understand that the permitted area that they propose is one that has a high degree of uncertainty associated with it in regard to redevelopment and recovery post-earthquakes. In light of this, the Hearings Panel agreed that the Council review the Policy in a shorter period than the five year period that is required under the Act. The Hearings Panel consider that a review of the Policy two years after the Ministry of Health Retail Regulations developed under the Act are in place is appropriate. The Ministry of Health expect these to be in place by mid-2015. A review would look at the permitted area, distance between retailers and sensitive sites to determine whether any changes should be made to the Policy.

6. LEGAL CONSIDERATIONS

6.1 A Policy Hearings Panel has no decision-making powers but, in accordance with its delegation, considers written and oral submissions and makes recommendations to the Council. The Council can then accept or reject those recommendations as it sees fit, bearing in mind that the Local Government Act 2002 requires that views presented during consultation should be given due consideration in decision making. The written submissions can be viewed on the Council web page at:

<http://resources.ccc.govt.nz/files/TheCouncil/meetingsminutes/agendas/2014/August/PsychosactiveHearingsPanel29August2014AGENDA.pdf>

6.2 Section 69 of the Psychoactive Substances Act requires that the Council provide a copy of the Policy to the Authority as soon as practicable after adopting or amending a policy. The Hearings Panel is recommending that the Council determine the date the Policy comes into effect and that this date be inserted in the Policy. The Hearings Panel also recommend that the public are made aware of the Policy through public notices.

6.3 The Legal Services Unit has considered the proposed changes being recommended by the Hearings Panel, and the reasoning of the Hearings Panel, and considers the Policy as now proposed provides for sufficient areas for potential retailers to locate their premises. There is a risk of judicial review of the decision to introduce this policy, which is quite difficult to assess due to the lack of case law around this new legislation, with the retail regulations not yet in place, and the changing environment in the Christchurch District. However, the Hearings Panel considers that the recommended Policy (including the two year review period) provides a reasonable balance between the needs of potential retailers and community concerns.

7. STAFF RECOMMENDATION

Staff recommend that the Council:

7.1 Resolve that the Psychoactive Products Retail Locations Policy come into force on 2 February 2015 and that the public are notified through public notices.

8. HEARINGS PANEL RECOMMENDATION

The Hearings Panel decided unanimously to recommend:

8.1 That the Council receives The Hearings Panel's report and adopts the recommended Psychoactive Products Retail Locations Policy with the amendments agreed by the Hearings Panel (**Attachment One**).

- 8.2 That the Council review the Psychoactive Products Retail Locations Policy two years after the Retail Regulations developed under the Act are in place.