

# HUTT CITY LOCAL ALCOHOL POLICY



OCTOBER 2018

Division	Strategy and Planning
Date created	May 2016
Publication date	October 2018
Review period	October 2024
Owner	Principal Policy Advisor
Approved by	General Manager, City Transformation

Version	Author	Date	Description
V 1.0	Graham Sewell	24/05/2016	Approved by Council.
V 2.0	Graham Sewell	09/10/2018	Reviewed.

# CONTENTS

<b>Background: purpose and objectives of the sale and supply of alcohol act 2012.....</b>	<b>3</b>
<b>1. Density, location, hours and one-way door policy(s) of licences.....</b>	<b>5</b>
1.1 On-licences.....	5
1.2 Off-licences.....	6
1.3 One-way door restrictions.....	6
<b>2. Discretionary .....</b>	<b>7</b>
2.1 On-licences.....	7
2.2 Off-licences.....	8
2.3 Special licences.....	8
2.4 Licensed outdoor areas .....	9
<b>3. Review .....</b>	<b>10</b>
<b>4. Appendix 1 .....</b>	<b>11</b>
<b>Local Alcohol Policy – Explanatory Document .....</b>	<b>12</b>

## BACKGROUND: PURPOSE AND OBJECTIVES OF THE SALE AND SUPPLY OF ALCOHOL ACT 2012.

The Sale and Supply of Alcohol Act 2012 (the Act) puts in place a new system of control over the sale and supply of alcohol. The key characteristics of this new system are that:

- it is reasonable; and
- the administration of the Act will help achieve the Acts objects.

The objects of the Act are to:

- a. ensure that the sale, supply, and consumption of alcohol is undertaken safely and responsibly; and
- b. minimise the harm caused by the excessive or inappropriate consumption of alcohol .

The Act has five policy objectives underpinning it. These are:

- To reduce excessive drinking by adults and young people
- To reduce the harm caused by alcohol use, including crime, disorder, public nuisance, and negative public health outcomes
- To support the safe and responsible sale, supply and consumption of alcohol
- To improve community input into local alcohol licensing decisions
- To improve the operation of the alcohol licensing system

### **Local Alcohol Policy (LAP) – what is it and what does it cover?**

The government wants to improve community input into local alcohol licensing decision making. Under Section 75 of the Act territorial local authorities have the discretion, to establish a Local Alcohol Policy (LAP). Hutt City Council decided at a meeting held on 26 March 2013, to establish a LAP.

Section 77 of the Act prescribes what a LAP can cover. In summary these are:

- a. The location of licensed premises by reference to broad areas
- b. Location of licensed premises by reference to proximity to premises of a particular kind or kinds
- c. Location of licensed premises by reference to proximity to facilities of a particular kind or kinds
- d. Whether further licences (or licences of a particular kind or kinds) should be issued for premises in the district concerned, or any part of the district
- e. Maximum trading hours
- f. The issue of licences, or licences of a particular kind or kinds, subject to discretionary conditions
- g. One-way door restrictions.

Clauses (e) to (g) above apply to special licences, or premises for which a special licence is held or has been applied for.

A local alcohol policy cannot include policies on matters unrelated to licensing.

Section 78 of the Act outlines the matters that a Council must have regard to when producing a draft policy. These are:

- a. the objectives and policies of its district plan;
- b. the number of licences of each kind held for premises in its district, and the location and opening hours of each of these premises;
- c. any areas where bylaws prohibiting alcohol in public places are in force;
- d. the demography of the district's residents;
- e. the demography of people who visit the district as tourists or holidaymakers;
- f. the overall health indicators of the district's residents; and
- g. the nature and severity of the alcohol-related problems arising in the district.

Outlined below is the Local Alcohol Policy adopted by the Council at its meeting on 9 October 2018. Pursuant to section 90 (2) (a) and (b) of the Sale and Supply of Alcohol Act 2012, this policy will come into effect as follows:

Originally adopted by Council: 24 May 2016.

Date of adoption of amendment: 28 September 2017.

On Licences: Clause 1.1 as it relates to Function Centres being permitted to operate with the same conditions as Taverns, Hotels and Nightclubs, effective 25 January 2019.

On Licences: Clause 1.1 as it relates to Cinemas, effective 25 January 2019.

Off Licences: Clause 1.2 (a), (b) and (c) effective 19 October 2018.

# HUTT CITY LOCAL ALCOHOL POLICY (LAP)

## 1. DENSITY, LOCATION, HOURS AND ONE-WAY DOOR POLICY(S) OF LICENCES

### 1.1 ON LICENCES

Lower Hutt CBD and Jackson Street, Petone (from Te Puni Street to Cuba Street)

Taverns/Hotels/Nightclubs/Function Centres:

7.00am – 3.00am the following day, Monday to Sunday.

A one year probation period with closing at 1.00am for new licensees. However on renewal (after the probation period of 12 months) these applicants may apply to extend their licences to 3.00am closing as long as all criteria as outlined in Section 105 of the Sale and Supply of Alcohol Act 2012 is met.

Outside Lower Hutt CBD and Jackson Street, Petone Taverns/Hotels/Nightclubs/Function Centres:

7.00am – 1.00am the following day.

After an initial period of 12 months new licensees will be subject to an assessment of their managerial and host responsibility management for their premises. Subject to satisfactory performance a 3 year licence may be issued.

For existing licences with licences to trade up to 3am, they are permitted to continue their trading hours as long as all criteria as outlined in Section 105 of the Sale and Supply of Alcohol Act 2012 are met.

Restaurants/Cafes:

Subject to the provisions of the District Plan 7.00am – 1.00am the following day, Monday to Sunday.

Caterers:

If event being catered is in Lower Hutt CBD and Jackson Street - 7.00am - 3.00am the following day, Monday to Sunday.

If event being catered is outside the Lower Hutt CBD and Jackson Street 7.00am - 1.00am.

Hotel and Motel mini bars:

24 hours a day, Monday to Sunday.

Brothels:

Licensed on the condition that their on-licences are linked to the business activity of a brothel.

Cinemas:

7.00am- 3.00am the following day, Monday to Sunday.

Licensed on the condition that their on-licences are linked to the business activity of a cinema.

## 1.2 OFF LICENCES

All off-licences to be permitted to sell between 7.00am and 10.00pm.

a. the maximum number of off-licences permitted in the following areas:

Naenae	4
Stokes Valley	3
Taita	3
Avalon	1
Hutt Central	11
Wainuiomata	6

b. shall be the number of off-licenses in the area, at the time this policy is adopted, and

c. the areas are outlined on the map, as attached as Appendix 1.

## 1.3 ONE-WAY DOOR RESTRICTIONS

In respect of one-way door restrictions, the legal power to establish such restrictions across the entire City lies with the District Licensing Committee (DLC). The Police and Licensing Inspectors may lodge with the DLC an application to establish a one-way door restriction on a case by case basis. The DLC

will hear the application and make a decision. The Police and Licensing Inspectors will have the on-going responsibility to monitor and report as appropriate to the DLC and enforce such restrictions.

## 2. DISCRETIONARY

Section 77(1)(f) of the Act enables Council to include “the issue of licences, or licences of a particular kind or kinds, subject to discretionary conditions” in its LAP.

### 2.1 ON-LICENCES

The following discretionary conditions relating to On-Licences are indicative of the types of discretionary conditions the DLC may consider when issuing a licence:

- more restrictive trading hours taking into account neighbouring land use (Section 116(3) of Sale and Supply of Alcohol Act 2012)
- the licensee will ensure the operation of closed circuit television of a quality and at a location that will assist in the identification of alcohol-related offending
- no glass drinking vessels permitted in any outside area past (specify hour)
- the licensee must ensure at all times a minimum of XX security staff are employed on the premises after (specify hour)
- the licensee must ensure at (all times/or specify times) security staff are positioned at the principal entrance and exit to the premises
- the licensee is required to notify the Police of any violent incidents that occur on the premises
- the licensee is required to maintain a register of incidents available for inspection by enforcement authorities at any time during trading hours
- prior to closing the premises, the licensee will ensure all litter is removed from outside premises in the area defined as: XXX
- at (specify hour) the licensee will remove all temporary outside furniture

- a minimum of XX qualified duty managers on the premises between (insert trading hours)
- the licensee must at all times comply with the conditions set out in the Noise Management Plan for the premises particularly adequate control of amplified equipment used outside of the premises
- the licensee will ensure that at all times a queue is formed; a dedicated staff member is required to manage the queue and ensure it does not impede the general public or use of the pavement
- outside areas are to be monitored at all times
- high visibility vests to be worn by staff operating at the principal entrance and/or outside the premises
- licensee is required to provide effective exterior lighting
- a one way door applies from (insert trading hours)

## 2.2 OFF-LICENCES

The following discretionary condition relating to Off-Licences is supervised designation of all bottle stores to ensure unaccompanied minors do not enter the premises.

## 2.3 SPECIAL LICENCES

The following discretionary conditions relating to Special Licences are as follows:

- No glassware is to be taken outside the club/building or where the event is on a grass or artificial grass surface.
- Plastic containers or cans must be used for any event (except when it is being served and remains within the club/building).



- Areas must be clearly defined, cordoned off/demarcated where liquor is being sold/consumed outside of the club/building e.g. beer tent. Where appropriate, people are to remain within the defined area.
  
- Any applicant for a Special Licence must adhere to Hutt City Council policies or bylaws regarding the use of public land.
  
- Hutt City Council Control of Liquor in Public Places Bylaw bans the possession and consumption of liquor in specific places during particular hours.
  
- The responsible use of liquor at events where liquor is permitted is to be promoted by the event organiser. In that regard:
  - Security may be required and duties of such staff should include (but not limited to): checking ID's, ensuring BYO alcohol is not brought into event, monitoring and clearing up immediate environs to remove nuisances arising from event.
  
  - Licensees who wish to apply for a special licence for functions on sacrosanct days must prove the function is bona fide by providing guest lists, copies of invitations/tickets, and /or promotional material. A special licence must be for a legitimate occasion(s) or events(s) or social gathering(s) and not merely for an extension of hours.
  
  - Special licences for conveyances where the conveyance returns within a 24 hour period will only allow sale and consumption of liquor on one leg of the journey i.e. only on the outward or the return trip.
  
  - In general a maximum of 12 events (where one event can be for no longer than 24 hours) per 12 month period will be considered for a special licence. However a maximum of 24 events may be permitted annually for small social gatherings of 20 persons or less with a maximum duration of 4 hours per event (where one event can be for no longer than 24 hours)

## 2.4 LICENSED OUTDOOR AREAS

The following discretionary conditions relating to licensed outdoor areas are as follows:

- Holders of an On-licence can apply to use the area outside their premises on Council owned footpaths for dining and the consumption of liquor. Applicants must obtain a Street Encroachment Licence from the Hutt City Council.

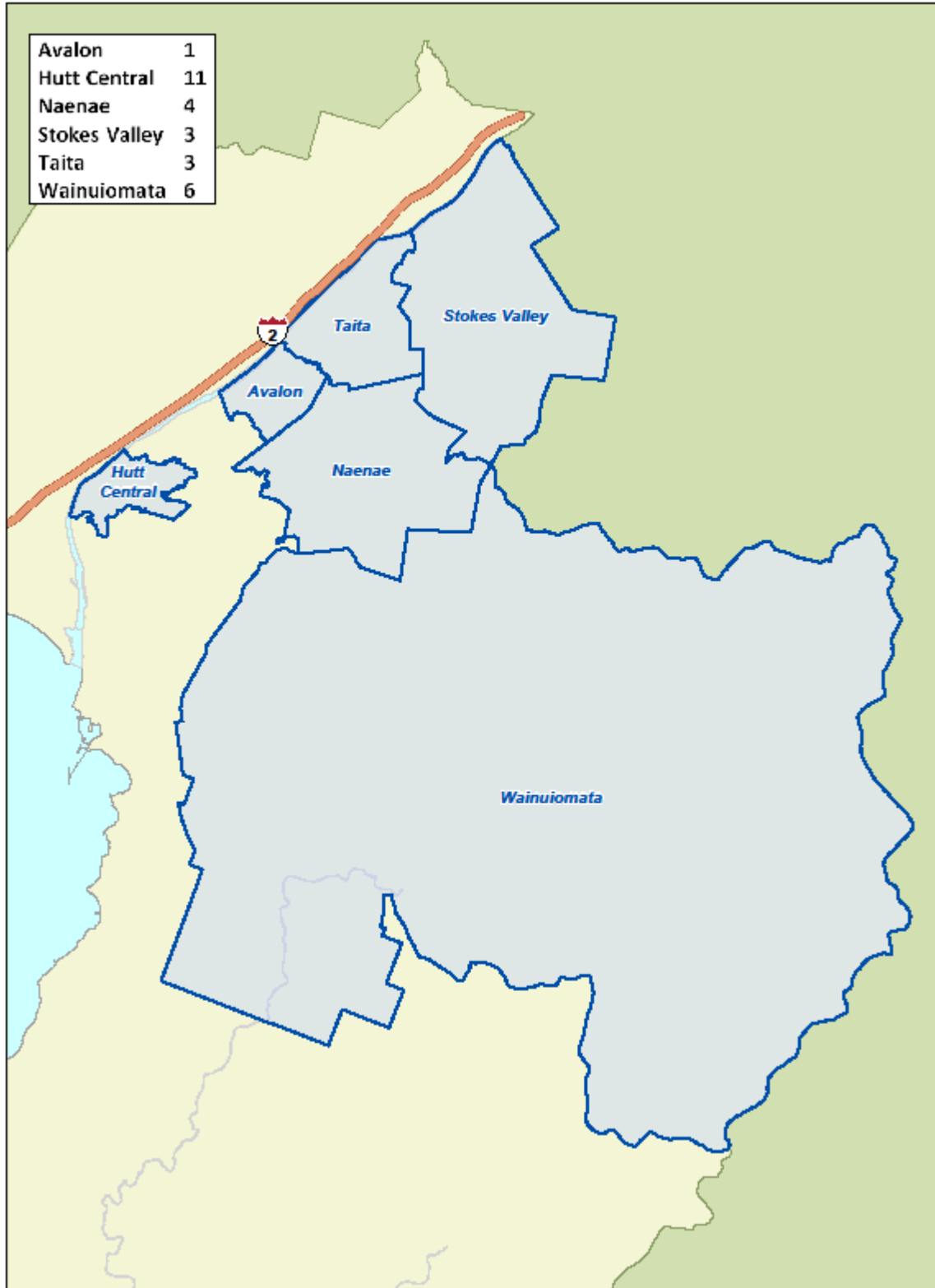
- Holders of an On-licence can apply to use an outdoor area directly adjacent to their premises on private land or on Council owned footpaths for dining and the consumption of liquor. If applying for the use of council-owned land, applicants must obtain a Street Encroachment Licence from the Council.
  
- Hours for outdoor areas outside CBD and Jackson Street are limited to 10am to 11pm.
  
- Outside areas within CBD and Jackson Street:  
To 11.00pm but with a Noise Management Plan may be extended to 12.00 midnight.

### 3. REVIEW

Section 97 of the Act requires the Council to review this LAP no later than six years after it comes into force and no later than 6 years after the most recent review of it was completed.

## 4. APPENDIX 1

Appendix 1: Local Alcohol Policy - Clause 1.2



# LOCAL ALCOHOL POLICY – EXPLANATORY DOCUMENT

How will the cap operate in circumstances where an off-licence is sold or an operator wishes to move the premises?

## 1. Introduction

On 1 September 2016 the Hutt City Local Alcohol Policy came into force.

This document provides an overview of the reasoning informing the ‘cap’ of the Provisional Amendment to the Hutt City Council Local Alcohol Policy (“Amended LAP”), developed pursuant to the Sale and Supply of Alcohol Act 2012 (“the Act”). It should be read in conjunction with the Amended LAP and supplements the Recommendation of the Policy and Regulatory Sub Committee recommendation dated 23 June 2017 (“Recommendation”).

In relation to the cap’s application to relocation of off-licences, the Recommendation stated:

***How will the cap operate in circumstances where an off-licence is sold or an operator wishes to move the premises?***

*[70] One submitter requested clarification of the status of the sale of existing businesses within the cap area even if the business is not currently trading. We recommend that if the DALAP is adopted in its present form that it be made clear, (perhaps by the creation of a policy by the Licensing Committee) that the cap is not intended to interfere in any way with commercial contracts. So long as a business has an existing licence, the business can be sold, and in our view it will be up to the purchaser to obtain a temporary authority and establish criteria such as suitability with the local Licensing Committee. Given that the completion of the contract would not change the status quo in any way, there can be no suggestion of the cap being invoked.*

*[71] A supermarket operator stated that it was considering relocating its supermarket in one of the proposed ‘cap’ localities. The question was raised whether a licence could be issued without breaking the cap rules. Once again we recommend that if the DALAP is adopted in its present form, that the Council or the Licensing Committee consider whether to issue a policy ensuring that in the event of a decision to change location, that the opportunity to utilise a new licence consequent upon the surrender of the existing licence, can only be taken up by the existing licence holder or its nominee.*

Consistent with this recommendation, it is intended that this explanatory document be read alongside the LAP to understand the rationale behind the cap in section 1.2 of the LAP. Having reflected on the Recommendation further and the concerns of the community, the Council considers that it would be better that it clarify its intention with respect to these matters.

## 2. Explanation: A ‘cap’ not a ‘sinking lid’

The Amended LAP was proposed taking into account a wide range of factors, including the objectives and policies of the district plan. In relation to the Lower Hutt City’s commercial centres, the objective in section 1.10.4 of the District Plan is particularly relevant:

*To promote an integrated and hierarchical approach to commercial centres as community focal points.*

The Amended LAP is not intended to undermine the existing operation of the Hutt's commercial and urban centres. The Council (and the district plan) is supportive of the need to revitalize existing commercial and urban centres through redevelopment, particularly where those centres have suffered long term decline, such as Wainuiomata, which is reflected in:

- The Amended LAP including a cap, not a sinking lid;
- The Recommendation clearly signaling that off-licence renewals (pursuant to sections 125 to 135 of the Act) within the sensitive areas are entirely consistent with the LAP;
- The Recommendation clearly signaling that off-licence relocations within the sensitive areas are entirely consistent with the LAP. This will particularly be the case where they are associated with a major redevelopment or rejuvenation of a commercial area in a manner consistent with the objective in section 1.10.4 of the District Plan.

An Amended PLAP with a 'sinking lid' approach would have required a completely different assessment by the Hearings Panel and the Council. That assessment was not required because the Amended LAP imposes a cap and not a sinking lid.

### **3. Explanation: The LAP does not distinguish between kinds of premises**

The Amended LAP does not seek to control the kinds of off-licences that can be held within the cap. The Council intends that this approach will facilitate the on-going redevelopment and rejuvenation of commercial and urban centres by allowing, for example, the following types of development within the cap:

- The redevelopment of a site in an Area where an existing bottle store off-licence was surrendered in the same Area (with a commitment not to re-establish in reliance on the existing off-licence) and a new and different kind (pursuant to section 32 of the Act) of off-licence (such as a supermarket) was established.
- The development of a site where a new premises is proposed, in reliance on the surrender of another off-licence (whether of the same or a different kind) on a different site in the same Area.

### **4. Resolutions**

Pursuant to section 48 of the Local Government Act 2002 and clause 30(3) of the 7th Schedule to the Local Government Act 2002 the Council resolves that:

1. The DLC and licensing inspectors shall, as necessary, establish and implement suitable mechanisms and procedures to enable the reasonable and fair administration of clause 1.2 of the LAP so that, subject to any application appropriately fulfilling the requirements of section 105 of the Act (and any other sections of the Act relevant to the DLC's decision-making):
  - a. existing businesses seeking to relocate within an Area can do so;
  - b. new businesses seeking to establish within an Area in reliance on an existing off-licence in the Area being surrendered can do so.
2. Where an application for a new off-licence in an Area is made on the basis that it is a relocation (i.e. associated with the surrender of an existing off-licence in the same Area), the Council directs the DLC to act reasonably and prudently in:

- a. ensuring that the DLC has sufficient evidence that the off-licensee for the existing and the new off-licence is the same entity or that there is sufficient other control over the off-licence which is proposed to be surrendered to ensure that the proposed surrender occurs following the grant of a new off-licence;
  - b. ensuring that no more than one new off-licence is granted in an Area for the relocation of each existing off-licence in the same Area; and
  - c. any overlap of having both the new premises and the existing premises in an Area open is minimised, while recognising that a reasonable overlap might be reasonably necessary depending on the particular circumstances which are involved.
3. Where the surrender of an off-licence occurs prior to (but in association with) an application for a new off-licence, the DLC and Licensing Inspector shall act reasonably and prudently in:
- a. ensuring that appropriate records are kept of the surrender of the existing off-licence and its association (if any) with the proposed new off-licence for the Intervening Period including keeping records of the following information (where it is known):
    - (i) the proposed site of the new premises;
    - (ii) the proposed kind of off-licence which is intended to be applied for; and
    - (iii) the name of the company or person who is intended to make the application for the new off-licence.
  - b. ensuring that, where a new off-licence application within the same Area is filed during an Intervening Period, the Licensing Inspectors and the DLC are properly and accurately informed whether that new off-licence application is, or is not, the future off-licence application anticipated to be lodged in association with the surrender of an existing off-licence.
4. None of the above provisions are intended to enable the relocation of an off-licence from one Area to another Area in a manner that would breach the maximum number of off-licences described in clause 1.2 of the LAP.
5. For the purpose of this resolution the following words have their respective meanings:
- a. "Area" means each individual Area listed in clause 1.2 of the LAP and outlined in Appendix 1 of the LAP; and
  - b. "Intervening Period" means the period between the surrender of an existing off-licence and the point at which the replacement consent is finally determined, being the point at which no further appeals against the decision of the DLC (or subsequent Court decisions) are available.