

**IN THE MATTER** of the Sale and Supply of  
Alcohol Act 2012

**AND**

**IN THE MATTER** of a hearing of the **HUTT CITY**  
**COUNCIL** Policy and  
Regulatory Subcommittee to  
hear submissions on the  
Draft Local Alcohol Policy  
Amendment (DALAP)

**BEFORE THE HUTT CITY COUNCIL POLICY AND REGULATORY**  
**SUBCOMMITTEE**

Mr E W Unwin	Chair, Independent Commissioner
Cr C Barry	Member
Cr J Briggs	Member
Cr S Edwards	Member
Cr T Lewis	Member

Hearing at Lower Hutt on 12 June 2017

**APPEARANCES**

Mr Graham Sewell	Principal Policy Advisor, Hutt City Council
Mr Raaj Govinda	Manager Environmental Health, Hutt City Council
Mr Casey Diver	
Ms Vicki Hirini	Salvation Army
Ms Tamara Howie	Student, Taita College, Salvation Army
Dr Nicki Jackson	Alcohol Healthwatch
Ms Lisa McGregor	
Mr Simon Gilbert	
Mr Gabriel Tupou	
Ms Cathy Bruce	Principal Advisor Local Government, Health
Promotion Agency	
Ms Giselle Bareta	Central Regional Manager, Health Promotion
Agency	
Ms Bridget Allan	Chief Executive, Te Awakairangi Health Network
Dr Philip Shirley	General Practitioner, Naenae, Te
Awakairangi Health Network	
Ms Andrea Boston	Regional Public Health
Inspector Terrence van Dillen	Prevention Manager, Hutt Valley Police
Sergeant Shane Bengé	Wellington District Police
Mr Iain Thain	Barrister and Solicitor, Foodstuffs North
Island Limited	
Ms Twiggy Johnston-Welsh	Pacific Sexual Health Advisor, Schools and Early
Childhood Settings, Regional Public Health	
Mr Paul Radich	Alcohol Responsibility Manager, Corporate
Affairs, Progressive Enterprises Limited	
Mr Daryl Green	Chair, Hutt City Youth Council
Mr Matthew Young	Hutt City Youth Council
Ms Bryana Jensen	Hutt City Youth Council

Mr Annatto Teni  
Ms Cellaise Tuita  
Mr Andy Mitchell

Hutt City Youth Council  
Hutt City Youth Council

## **REPORT OF THE POLICY AND REGULATORY SUBCOMMITTEE**

### **Summary of the Recommendation.**

[1] It is our unanimous recommendation that the Council adopt the proposed amendments and move to the next stage of a Provisional Amendment to its Local Alcohol Policy.

### **Introduction.**

[2] On 14 May 2013 the Hutt City Council (the Council) approved a Draft Local Alcohol Policy (DLAP). Public submissions were then invited. Just over 270 submissions were received and 33 submitters indicated a wish to speak. Public hearings took place on 22-23 August 2013. The Hearing Committee reported back (HCC2013/5/33) recommending that the policy be adopted as a Provisional Local Alcohol Policy (PLAP). The report was considered by the Council on 17 December 2013 and the PLAP was approved. Public Notice of the PLAP was given on 21 January 2014. Ten appeals were received. These were set down for hearing before the Alcohol Regulatory and Licensing Authority (ARLA) on 27 July 2015.

[3] Informal meetings were held with the parties leading to an agreement on licensing hours which was approved by ARLA in late July 2015. In October of that year, the proposed changes were approved by the Council and then by other non-appellant parties. The LAP was finally adopted by Council on 2 May 2016 with an effective date of 1 September 2016. On 24 May 2016 at a further Council public meeting, community concerns were expressed about the policy's lack of restrictive measures on the sale and supply of alcohol, particularly measures which might prevent the establishment of new off-licence outlets. The Council had received further public feedback during the two year period that the LAP was developed. At the meeting, the Council responded to these concerns and agreed to prepare and consult on an amendment to the LAP.

[4] The Council then requested a briefing paper from Regional Public Health and the Police. This was to inform the Council about alcohol related harms to health and crime in Lower Hutt. The 21 page document proceeded on the basis that alcohol is a well known causative factor in crime, violence and adverse health outcomes, and that the majority of alcohol that is consumed is purchased from off-licensed premises. Health and Police data was used with risk markers of deprivation, age and ethnicity to develop a risk profile for Hutt City communities. The Council also received a report from the City Safe Manager and a survey which had been undertaken to gauge attitudes of residents to alcohol use and regulation.

[5] After considering the information, the Council decided to take action in those communities that were shown as being at high risk, accepting the all communities have some degree of alcohol related harm. On 14 March 2017 the Council approved a draft LAP amendment, (DALAP) and called for public consultation as required by s.83 of the Local Government Act 2002.

[6] There are eight separate amendments in the DALAP as follows:

- **That function Centres be added to the LAP with the same conditions as Taverns, Hotels and Nightclubs.**
- **That cinemas hours be 7.00am – 3.00am the following day, Monday to Sunday, and licensed on the condition that their on-licences are linked to the business activity of a cinema.**
- **That the maximum number of off-licences permitted in the following areas:**  
**Naenae;**  
**Stokes Valley;**  
**Taita;**  
**Avalon;**  
**Hutt Central; and**  
**Wainuiomata;**  
**Shall be the number of off-licences in the area, at the time this policy is adopted.**

[7] In the first amendment 'function centres' are included with taverns, hotels, and nightclubs allowing them to trade to 3.00am or 1.00am depending on the locality in which they are situated. The second amendment deals with cinemas. These have been given a separate category, and are allowed to sell alcohol to 3.00am provided they are operating as a cinema.

[8] The remaining six amendments relate to off-licences in Stokes Valley (3), Taita (3), Avalon (2), Wainuimata (6), Naenae (4) and Hutt Central (12). The proposal is to cap the number of off-licences in those areas. These numbers will be fixed on the date of adoption of the DALAP. The current numbers (to the best of our knowledge) are shown in brackets. The Hutt Central figures include a florist and an auctioneer. In addition to the existing licenses, there are applications pending in Hutt Central and Naenae. Whatever the figures are at adoption will become the static number. In other words if the amendments are eventually approved and become part of the LAP, when an off-licence closes, another replacement off-licence may be granted.

[9] Public consultation resulted in the Council receiving 185 submissions. Some were anonymous, and most showed thought and interest. 18 of the submitters asked to speak on their submissions. Of these, two subsequently apologised for their absence, and one withdrew his submission. A late submission from a legal firm on the issue of whether a cap can prevent an application for a licence in excess of the 'cap' from being lodged and considered, was allowed and is dealt with separately. The overwhelming majority of the submitters (approximately 97%) were in favour of the amendments being adopted by the Council.

[10] The hearing of submissions took place on Monday 12 June 2017. Four Councillors were present plus an independent Chair. We see our role as fact finders, information gatherers, and reporters to the Council of the views and evidence and representations of the people who appeared before us. We also considered and will report on the other written submissions. Our legal duty is to weigh the concerns of

submitters as to the effects of the proposals upon them and their community, against the minimisation of alcohol-related harm in the locality.

[11] The members of the subcommittee had the benefit of specialist training in areas of the law and good decision making. The Committee was also taken on a tour of the six areas in question, and were able to observe at first hand most of the off-licences in those areas. It seemed to us that the advertising associated with bottle stores had been designed for maximum impact. This view was highlighted during the hearing when we heard one of the more moving submissions from five members of the Hutt City Youth Council. They argued that the 'blanket, 'in-your-face', alcohol advertising on the outside of most if not all bottles stores, affected young people on their way to and from school. They contended that the advertising tended to endorse alcohol with a degree of normalcy, encouraging experimentation prior to the age of 18, and in some cases leading to dependency and certainly harm.

### **The Hearing.**

[12] We set out below a summary of the evidence and the submissions that we heard. In general terms the Committee received an impressive volume of evidence, research material and argument. As indicated above, the majority of submitters favoured the proposed amendments. We thought that the evidence of harm resulting from the excessive or inappropriate use of alcohol in the six localities in question, was both credible and compelling. The combined arguments from experts, local doctors, health workers, young men and women, schoolchildren, concerned citizens and community workers was irresistible. At the end of the day it seemed to us that the inclusion of the proposed 'cap' was likely to help with the minimisation of such harm.

[13] Mr Graham Sewell, Principal Policy Advisor to the Hutt City Council elaborated on his report which included a briefing paper from Regional Public Health and the Lower Hutt Police (November 2016). The briefing paper provided a helpful summary of the changes made by the Sale and Supply of Alcohol Act 2012 (the Act) particularly in regard to giving communities a greater say in the adoption of a local alcohol policy, and the Council's right to limit the number of licences in a defined area. (S.77(1)(d) of the Act). Regional Public Health developed a risk profile based on deprivation, age and ethnicity and area population as well as health conditions known to be caused by alcohol, and relevant time spent in hospital. A list of areas that had the greatest risk of alcohol-related harm included Taita, Avalon, Naenae, and Hutt Central.

[14] The Police created a crime risk profile related to the arrests of persons affected by alcohol over a year to 30 June 2015, as against seven categories of offences. This showed the six suburbs in question are at a highest risk level. It was noted that Petone was included in the high risk category in the crime profile. However Mr Graham Sewell advised that the health data had rated Petone at a moderate level of health related harm. On that basis he advised that officers had excluded Petone from the proposal to cap the off-licence and it had not been included in the special consultative process and outside the Officer's consideration of the issues.

[15] Concerns were raised by the Subcommittee about whether there had been a rush of off-licence applications coming into Council prior to any pending cap being put in place. Mr Raaj Govinda, Council's Environmental Health Manager said that

there had been nothing out of the ordinary with regard to the number of applications coming in.

[16] In addition the Council had before it a report (June 2016) from Mr J Ballantyne, the City Safe Manager. The document noted a significant rise in incidents of public place drinking particularly in Central Lower Hutt as reported by the City Safe Ambassadors. Data collected from Safe City Ambassadors as well as security cameras (the majority of which are in Central Lower Hutt) in the six areas where there are liquor bans, Stokes Valley, Taita, Naenae, Hutt CBD, Petone and Wainuiomata) for a twelve month period 2015 to 2016 showed interesting results. 412 breaches of the liquor ban, 53 cases of antisocial behaviour, 29 incidents of violence, 48 cases of disorder, 12 drunk people, and 8 incidents where minors had alcohol.

[17] The Council was also presented with an executive summary of a 'Public Voice' survey showing attitudes of citizens to issues surrounding alcohol. We thought the survey suffered from a lack of supporting information.

[18] The reporting agencies, the Police and the Medical Officer of Health both supported the proposed cap on off-licences. They prepared a joint briefing report which contained health and crime data on alcohol-related harm. Ms Andrea Boston presented her submission on behalf of the Medical Officer of Health. She is the Public Health Advisor at Regional Public Health (RPH) and has worked in alcohol crime prevention for the past 10 years. She highlighted that the combination of a community view alongside quantitative data was an important consideration. She noted that the combination of data from Police and RPH had been used in ARLA decisions where licence applications had been declined.

[19] She noted that health data differed from Police data in that Police data was primarily concerned with amenity and good order. Matrix health data from the "Completed Risk Matrix Table" informed which Area Units, or Suburbs, could be targeted for maximum impact for reduction in alcohol consumption. The matrix data was concerned with health conditions caused "only by alcohol" or "partially by alcohol".

[20] Ms Boston contended that Māori and Pacific communities had higher tendencies for dangerous drinking, and most alcohol was purchased close to peoples' homes. Therefore, limiting the availability of alcohol close to peoples' homes would make a difference for the people who live in those areas. People aged 18-25 in Hutt City have the most health related harm, as do older age groups in more socially deprived areas. The matrix data was some of the best data available for basing decisions on.

[21] Inspector Terrence van Dillen and Sergeant Shane Bengé on behalf of the New Zealand Police, spoke to their submission. The six suburbs identified in the DLAP were the Police's priority areas for targeting crime and victimisation of which alcohol abuse was an important part. Alcohol contributed to at least 31% of all recorded crime. Of the violent offences committed in 2007/08 one third of the offenders had consumed alcohol. Eighty percent of all offenders appearing before the criminal court had alcohol and/or drug dependency or abuse issues. Half of all serious violent crimes and half of child homicides in New Zealand involve alcohol. There is a relationship between the density of off-licences and alcohol-related harm. A cap on the number of off-licences would be a tool to assist Police.

[22] Mr Casey Diver presented his submission. He holds a master's degree from Victoria University. He argued that alcohol-related harm data warranted extending the cap on off-licences to Petone. He submitted that the cap should also extend to the low risk areas and cover the entire city, and suggested that offending parties who wish to consume alcohol in a public place, would buy their liquor and then consume it where the cap is not in place.

[23] He produced the revised report from the Alcohol Advisory Council of New Zealand 2012, 'The Impacts of Liquor Outlets in Manukau City'. This report summarises the community stakeholder views of liquor outlets in Manukau City.

The most problematic outlet type was believed to be the smaller stand-alone outlets. Their role in increasing the incidence of alcohol-related harm in the community was attributed to a variety of factors that can be summarised as relating to three main themes:

- Density – which increases the availability of alcohol and concentrates alcohol-related harm in certain areas or locations.
- Co-location – liquor outlets were observed to be located in areas with vulnerable populations, particularly in areas of lower socioeconomic status. In addition, some respondents felt that behaviours that were not directly related to the consumption of alcohol but were undesirable on some dimension, such as the prevalence of street prostitution, increased in areas of high outlet density.
- Unscrupulous business practices – a number of respondents pointed to a widespread incidence of dubious business practices among small outlets, perhaps driven by competitive pressure in areas of high alcohol outlet density. These practices included the sale of alcohol to minors and the granting of credit to vulnerable persons.

[24] Mr Diver submitted that liquor stores have become a symbol if not a contributor to low decile, high-density populations where there is high risk of alcohol-related harm and offences. Mr Diver had personally been solicited by minors in Stokes Valley to buy alcohol for them from the New World supermarket.

[25] Dr Nicki Jackson is the Executive Director of Alcohol Healthwatch. Alcohol Healthwatch is an independent charitable trust working to reduce alcohol-related harm. In presenting her submission she contended that the DALAP is for minimising alcohol-related harm as far as reasonably possible and not about enhancing economic interest.

[26] She submitted that the New Zealand evidence shows that alcohol outlet density is associated with heavy drinking and harm in adults and adolescents. Alcohol outlet density and proximity has more harm on Maori and Pacific young males (15-24 years) and European young females (15-24 years). 75% of all alcohol sold in New Zealand is through off-licence supply.

[27] In Hutt City, Maori and high deprivation areas are at high risk of alcohol-related harm. The local impacts of licensed premises include violence and other alcohol-related harms in the vicinity of supermarkets and grocery stores. Police and Regional Public Health data showed a significant relationship to the outlet density of off-licences and violent offences throughout Hutt City.

[28] Dr Jackson added comments about other matters as follows: Club licences had not been included in the DALAP and the data supported adding a club license policy element in the LAP. The data set was taken in 2006-2011 and alcohol

consumption had increased every year since those dates. Other areas which Dr Jackson considered needed further protection, given the evidence of risk and harm, were Petone, Alicetown, Boulcott, Epuni, Fairfield, Moera, Waiwhetu and Waterloo.

[29] She suggested that the purpose of a LAP was to provide for communities to have a say in licensing decisions. Consistent with the policy nature of a PLAP, a respondent is entitled to trial a local control where it considers that the control will respond to a local problem, especially where it can be shown that a proposed control may have a positive effect locally, see *B H Williamson & Ors v Christchurch City Council 18 August 2016 NZARLA*. She noted that the New Plymouth District Council and Waikato District Council had both adopted an off-licence cap in their LAP, however, no data was yet available to assess the effect of the cap on alcohol-related harm. There was however evidence showed that reducing the off-licence closing time from 10pm to 9pm had resulted in a reduction of alcohol-related harm, particularly a significant reduction in alcohol-related hospital admissions for adolescents and young adults.

[30] Ms Cathy Bruce and Ms Giselle Bareta jointly presented their submission for the Health Promotion Agency. They acknowledged that the Council's wider community input into the development of the DALAP would provide it with the information it required to reflect the desires of the local community. In addition, the data provided by Regional Public Health and the Police would provide the Council with an excellent basis for making decisions about density controls for off-licences.

[31] They noted that the national default for opening trading hours was 8am and there was no benefit to having earlier trading hours starting at 7am. They also suggested that the DALAP closing trading hour for cinemas would be 1am rather than 3am because there was the potential for them to become destinations of choice for the consumption of alcohol after 1am.

[32] They noted that Club Licences did not have a trading hour's policy. The majority of councils have limited trading hours to 1am in their draft LAPs. It is unusual for clubs to have longer trading hours than other on-licence premises as clubs are not immune to alcohol-related harm.

[33] They suggested that limiting trading hours for the sale of alcohol is a key policy lever for reducing alcohol-related harm. Ministry of Justice research concluded that compared with expected offences when premises close at midnight, the rate is 1.6 times higher when they close at 1am rising to 8.9 times higher when they close at 5am. (Ministry of Justice (2013). Risk-based licensing fees. Identifying risk factors for the New Zealand context. Wellington: Ministry of Justice.) In addition they suggested that the Council should consider including a policy around the location of licensed premises near sensitive sites in the same way that other councils have done.

[34] Ms Bruce advised that the latest research from the University of Waikato concerning the number of alcohol outlets and social harms between 2014-2017 across all of New Zealand shows that off-licences have a direct "positive" relationship with events related violence, anti-social behaviour and sexual offending. Off-licences also have a "positive" relationship with drug and alcohol offences and motor vehicle crashes in low population areas.

[35] In March 2012 the Health Promotion Agency commissioned the National Institute of Demographic and Economic Analysis at the University of Waikato to undertake research into the geographically-specific relationships between outlet density (by type or outlet) and alcohol related harms in the North Island of New Zealand between 2006 and 2011. The research established a standard overall relationship between five types of alcohol licences, and eight alcohol related harms

(Anti-Social behaviour, Dishonesty Offences, Drug & Alcohol Offences, Property Abuses, Property Damage, Sexual Offences, Violent Offences and Motor Vehicle Accidents) in the North Island. This standard relationship was then measured alongside bottle stores in the Hutt City Council region including stores in Taita, Avalon, Naenae and Hutt Central. In almost all categories of harm, all areas in the region were well above the North Island average. The relationship between supermarkets and harm in the region was significantly better. It was argued that because violence and other harms are not always reported to the Police the figures suffered from under-estimation. (The Locally Specific Impacts of Alcohol Density in the North Island of New Zealand 2006-2011)

[36] Ms Bruce referred to the Law Commissions report that higher numbers of off and on licences are associated with higher numbers of total police events. In particular, off-licence density is associated with higher levels of anti-social behaviours, drug and alcohol offences, family violence, property abuse, property damage, traffic offences and motor vehicle accidents. (Alcohol in our Lives: Curbing the harm. A report on the review of the regulatory framework for the sale and supply of liquor.)

[37] Finally, Ms Bruce argued that waiting until the LAP is adopted before establishing the current number of off-licences in each area could mean that numbers grow substantially between now and then, and that the Waikato District Council had taken the approach of outlining the number of premises allowed for each suburb within its draft LAP.

[38] Ms Bridget Allan and Dr Philip Shirley presented their submission for Te Awakairangi Health Network (TeAHN). TeAHN is a primary health organisation with 21 general practices over 23 sites in Hutt City and Upper Hutt. In Hutt City it has 1,700 clients and it does assessments of its clients' alcohol use. 14% of adults in New Zealand have risky drinking behaviours. Risky drinking behaviour is having six drinks on any one occasion as defined in National Standards.

[39] Dr Shirley works in Naenae and educates his clients about the potential for health harms in the suburb. He advised that Naenae has a high number of cheap takeaway food outlets and lotto shops which target people who are poor. Furthermore some of the playgrounds are near liquor outlets. The overall environment in Naenae does not promote safe drinking. Naenae has four cheap liquor outlets and residents will buy a 24 pack of high volume alcohol to have in one sitting. They drink a box of alcohol once or twice per week and this is normal in Naenae. Some of the health problems which arise or are exacerbated by alcohol in Naenae are liver dysfunction, diabetes, mental illness, gastritis, abdominal pain, injuries, and family relationship problems. Out of the approximate 150 patients that he sees per week, 23-30 would be affected by alcohol, and his clients are largely drinking in their homes.

[40] Mr Daryl Green, Mr Matthew Young, Ms Bryana Jensen, Mr Annatto Teni, and Ms Cellaise Tuita jointly presented their submission for the Hutt City Youth Council. The Hutt Valley Youth Survey 2015 identified the consumption of alcohol as the second greatest issue for youth. Anecdotal evidence of alcohol-related harm which were related to the Subcommittee were:

- school-aged teenagers easily being able to buy alcohol in Taita,
- off-licence outlets being “in your face” and telling you to drink there, especially Naenae Liquor Spot which is by the train subway,

- a 15 year old cousin who made friends with people who could buy him alcohol had an event where he was admitted to hospital with alcohol poisoning,
- a cousin who committed suicide because his girlfriend broke up with him,
- working on the check-out at Stokes Valley New World, seeing families buy alcohol and cigarettes and then decide that they can't afford the weetbix and they put it back on the shelf,
- seeing people on the streets at night asking people for money to buy food.

[41] Their view was that supermarkets had better controls than other off-licence outlets which may not follow the guidelines about selling to minors. On the other hand they were aware that supermarkets had specials and sold double browns for \$20.00. Ms Jensen had seen someone steal alcohol from a supermarket by taking the bladder out of a cask and putting it down their top. Mr Green said that changing the opening hours of off-licences from 7.00am to after 9.00am would be a change for the better because the signs outside the shop would not be in your face on the way to school. Mr Green also asked Council to consider the proximity of off-licences to playgrounds, especially in Naenae.

[42] Mr Simon Gilbert has worked for 15 years working in youth spaces in Hutt City. He said that young people in the Hutt do uncontrolled experimentation with alcohol and he spent a lot of time pulling people out of toilets who had passed out from drinking too much alcohol. He also stated that young people steal bladders of wine from supermarkets and stuff them down their shirts so they couldn't be seen. In his view, young people do not have their frontal lobes developed properly, therefore do not necessarily have control over their cognitive reasoning. He argued that alcohol consumption affected mental health, suicides and family relationships. Also that the drinking culture in the city would be hard to change, however, it would be easier to change a rule. He considered that there was no need to see shops selling alcohol on every street corner.

[43] Mr Gilbert advised that youth who attended the youth spaces would travel from their suburbs into the city centre. Their preference was to be in the hub of the city. The youth who were affected by alcohol were a small proportion of those who attend the youth spaces, approximately 5-10 people out of 100. Their problematic behaviours included passing alcohol onto younger people, and non-attendance at school. Inevitably they become a problem for other social agencies.

[44] Ms Vicki Hirini and Ms Tamara Howie jointly presented their submission for the Salvation Army. They argued that vulnerable suburbs in the north and east did not have the ability to protect themselves and that the Council and the community had a responsibility to protect their treaty partners. They thought that the culture in Taita differed noticeably to the culture in for example, Belmont. In Belmont, residents didn't have the same concern about there being "a whole lot of people out there drunk", however the residents in Taita do have such concerns. When leaving the Walter Nash Centre late at night after playing sport there are usually people slurring their words and "have alcohol on them".

[45] Mr Gabriel Tupou presented his submission. He is a resident of Wainuiomata and a member of a number of volunteer groups. He recounted anecdotal evidence of the effects of alcohol on the community in Wainuiomata. A cousin committed suicide in 2014 where alcohol had been partly involved. He works with the Wainuiomata

Māori Wardens and there have been accounts of seeing young people drinking in Frederick Wise Park, not far from an off-licence. Senior citizens have had enough of broken glass on the streets. He appealed to the Council as kaitiaki, guardian, to prevent help harm to the residents of Wainuiomata.

[46] Ms Twiggy Johnston-Welsh presented her submission. The dairy owner in Pomare had been robbed two weeks after he started selling alcohol. Data from the Hutt Valley Youth Survey 2015 showed that 65% of young people who drank usually obtained alcohol from a parent or caregiver. Her son-in-law was introduced to alcohol at age 8 and now has an addiction to alcohol, as do his family members. She considered that Māori and Pacific people use alcohol because it gives them confidence.

[47] She believed that a lot of submitters to the DALAP were residents who live in Pomare with affiliations to the Community House and the Vegetable Co-op. There are a lot of unemployed people and Māori who live in Pomare for whom alcohol is paramount to buy on benefit day. It was her view that youth in Taita buy alcohol from the Four Square grocery store. They obtained alcohol by all putting money in, then finding someone to buy the alcohol. She contended that there are sexual health harms from alcohol mainly an increase in sexually transmitted infections and a lack of knowledge about alcohol and drugs.

[48] Mr Andy Mitchell spoke to his submission, he lives in Naenae with his young family. A Supersave Liquor Store had applied for an off-licence in Naenae and there are already over 240 submissions in opposition to the application. In his view, Naenae did not need any more off-licences and the community needed a “dry” supermarket. He submitted that the culture in Naenae had changed over the years, the greengrocers had gone and there was a proliferation of fast food takeaway stores. There were two off-licences, where people bought alcohol in bulk, both of which were close to playgrounds.

[49] Mr Paul Radich presented his submission for Progressive Enterprises Limited. He contended that the DALAP was unreasonable and inappropriate given the object of the Act, and there was an absence of trend data for alcohol-related harm in Hutt City. In his view, in the absence of any evidential basis the DALAP was inappropriate and unreasonable. (Foodstuffs et al v Dunedin City Council [2016] NZARLA PH 21- 26)

[50] Mr Radich submitted that the Council must achieve a balance between the social freedom to purchase and consume alcohol, and the minimisation of social harm from its excessive use. (Law Commission report, Alcohol in Our Lives: Reducing the harm (NZCL R114, 2010).

[51] He argued that supermarkets and bottle stores differed in the types of products they sold. Supermarkets were able to sell wine, beer, honey mead and cider whereas bottle stores were able to sell products with a higher percentage of alcohol than supermarkets. Therefore he suggested that there would be a measurable difference in the harm caused by wine and beer versus a higher alcohol product. He stressed that the harm needed to be demonstrated in the documentation. He submitted that the Council could differentiate between the different types of off-licence and exclude supermarkets and grocery stores from the cap.

[52] Mr Radich noted that the DALAP did not allow any provision for the relocation or expansion of existing stores within the specified areas. This presented a problem

for his employer in respect of its recent \$10M purchase of the Wainuiomata Mall where it planned to redevelop and relocate its supermarket. He suggested that the proposed move would trigger the licensee to put in an application for a new off-licence and this would not necessarily be granted by the DLC. He noted that Progressive Enterprises Ltd owned five stores in Hutt City and alcohol sales were a part of its business.

[53] Mr Radich stated that Progressive Enterprises Ltd had robust procedures and processes in place to ensure that alcohol-related harm was reduced. In addition it had a robust training regime to identify minors and intoxication. In stores where theft of alcohol was a problem, security guards were employed to manage the problem. Mr Radich did not have information about whether the theft of bladders of wine from casks was a problem in Hutt City.

[54] Finally, Mr Radich submitted that the Council's existing laws governing the sale, supply and consumption of alcohol were not being enforced adequately, and that Progressive Enterprises Ltd did not support the cap, it supported the enforcement of the existing laws.

[55] Mr Iain Thain presented his submission for Foodstuffs North Island Limited. He submitted that the wording of the Act is not absolute with regard to issuing licences when there is a LAP in place, and that a cap on the number of off-licences is unable to be an absolute cap. Further that in s.105 of the Act, the criteria for the issue of licences is that the DLC "must have regard to any relevant local alcohol policy". However the maximum trading hours must be adhered to.

[56] Mr Thain argued that the wording of the LAP must be consistent with the intent of the Act, which is to allow flexibility. He suggested that the Council needed to allow for growth and change within the City. Strict and rigid wording would not allow for any opportunity for licensees to show how they would manage risk in a way that is reasonable. Therefore the wording of LAP should give clarity for the DLC and licensees.

[57] In response to a question, Mr Thain did not have harm data on the difference between bottle stores and supermarkets. However, some of the differences which affected alcohol-related harm were as follows. Supermarkets had a limited range of alcoholic beverages compared to a bottle store. Bottle stores sold "Ready To Drinks" (RTDs), whereas beer and wine did not have such an immediate alcoholic effect as RTDs. Supermarkets did not have external advertising of alcohol whereas bottle stores did. Alcohol was not a supermarket's main business, whereas it was the primary product of a bottle store. Accordingly a stand-alone bottle shop had a greater incentive to put through a dodgy sale.

[58] In conclusion he submitted that a supermarket was where people went for their weekly groceries which could include some wine and beer. If a supermarket did not have an off-licence, it would lose trade in grocery sales because people would go elsewhere so as to include alcohol with their groceries.

### **The Written Submissions.**

[59] Hospitality New Zealand opposed the inclusion of the CBD in the 'cap', on the basis that it may create road blocks to the establishment of brewery bars which can assist with the rejuvenation of an area. A number of others suggested that the

Council exclude supermarkets and groceries from the 'cap'. In the remaining submissions there were comments about litter, broken bottles, drinking in car parks, people arriving at bottle stores at opening time, public drunkenness, violence, public drinking in front of children, theft of alcohol from supermarkets, property damage, tagging, harassment for money, protection of children, safety, supply of alcohol to minors, alcohol fuelled parties, normalisation of alcohol, 'in-your-face' advertising, anti-social behaviour, violent crime, easy access to alcohol, and domestic dysfunction.

### **Ancillary Issues Raised at the Hearing.**

[60] There were a number of ancillary issues raised at the hearing. These were considered by the Committee and we comment accordingly:

#### **Does the cap prevent applications being lodged in excess of the cap number?**

[61] The first issue was raised by a number of submitters and concerns the question whether the 'cap' can truly operate in the manner intended, or whether there is always a residual right not only to apply for an extra licence above the cap, but to have the application considered by a licensing committee. S. 108 of the Act states that a licensing committee MAY refuse to issue a licence if there is a relevant LAP, and in its opinion the issue of the licence, or the consequences of the issue of a licence, would be inconsistent with the policy. S. 105 of the Act states that in deciding whether to issue a licence, a licensing committee must have regard to a number of matters. One of those matters is 'any relevant local alcohol policy'.

[62] As we stated at the hearing, our view, (which is supported by legal opinion), is that as a matter of law a licensing committee can issue a new licence despite a 'cap' in an LAP. There would of course have to be compelling reasons linked to ss. 3 and 4 of the Act.

[63] Examples that come to mind would be the re-establishment of a supermarket in Naenae. There was evidence that since the closure of the New World Supermarket in 2014 (we believe for earthquake strengthening reasons), there are many residents who are hopeful that it will be replaced. Given that such a business employs many people, is unable to advertise outside the building, is restricted in its alcohol display to a single area, and provides a broad range of fresh and healthy food, such an application might well be granted.

[64] Another application that might not attract opposition would be a boutique brewery making craft beer. This is at the 'higher' end of the alcohol market, and in the event that the business plan included a cafe, such an enterprise could assist with the rejuvenation of an area, and even attract other like-minded businesses. In other words, the imposition of a 'cap' should not be viewed as a 'road block' putting new businesses off any worthwhile development.

#### **Can supermarkets and groceries be exempted from the cap?**

[65] This leads to the second issue suggested by the two leading supermarket operators as well as other submitters. Their proposal was to separate the supermarket and grocery store style off-licences from all other off-licences (including we assume off licences associated with on-licences such as brewery bars, as well as auctioneers, wineries, remote sellers, wine bars, and gift shops).

[66] Section 77(1)(d) of the Act is the section that needs to be interpreted. This reads:

***A local alcohol policy may include policies on any or all of the following matters relating to licensing (and no others):***

***(d) whether further licences (or licences of a particular kind or kinds) should be issued for premises in the district concerned, or any stated part of the district:***

[67] The argument from the supermarkets and groceries is that we should recommend that Council exempt them from the proposed 'cap' because they are a different kind of premises than bottle stores for example. Their argument is that a supermarket (because of the issues raised in paragraph [57] above is a different kind of off-licence than a bottle store. While the argument is superficially attractive there are three reasons why we are unable to recommend the idea to Council. The first is that the proposal is legally wrong. This is not the only instance where the words 'kinds of licence' are used in the Act. Section 4 of the Act reads:

**Kinds of licence**

***There are 4 kinds of licence: on-licences, off-licences, club licences, and special licences.***

[68] If Parliament has decreed that there are only four kinds of licence in New Zealand, then it is highly unlikely that we would recommend to Council that it creates any more. Furthermore it would be legally unreasonable for a DALAP to create an uneven playing field between licensees who hold the same kind of licence. There is no doubt in our minds that if we persuaded the Council not to cap supermarkets and grocery stores this aspect of the DALAP would be successfully challenged on appeal.

[69] Finally there is evidence that the relationship between supermarket and grocery stores density, and violent offences, is less than a similar relationship between other off-licences (bottle stores) density and violent offences. On the other hand it was also argued that given that the sales of alcohol from supermarkets and groceries were so much greater in volume than the bottle store competition, then it was likely that their respective contribution to alcohol related harm was the same. Indeed we heard evidence to that effect. So long as it is difficult to quantify their respective contributions to alcohol related harm in the community, then once again it would be unreasonable to favour one type of off-licensed business over another.

**How will the cap operate in circumstances where a 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.

### **Can the Council nominate the maximum number of off-licences which can operate in any one area?**

[72] We have considered this issue and report as follows. In theory Council can nominate the maximum number of off-licences in the six areas, rather than state that the maximum number will be whatever off licences exist at the time the policy is adopted. However, neither proposal can affect the right of any party to apply for a licence in the interim period, and have the application advertised, reported on and duly dealt with by the licensing committee prior to the adoption date. Due process must continue although it is worthy of note that such process under the new Act is not only costly but there is no longer any certainty of success.

[73] The period of time between public notification and adoption depends entirely on whether appeals are lodged against the Provisional Amendment. (S. 87 of the Act). It could be 30 days or it could be twelve months or more if appeals are taken to the High Court. The disadvantage of relying on numbers is that if licences are granted in the interim period, then there is a real probability that the scenarios referred to in paras [63] and [64] would be unsuccessful as the Licensing Committee may decide that it needs to decline any application in order to bring the number of licences back to the nominated starting point. That is why we make no recommendation to change the present wording.

### **The Report to Council.**

[74] The law in respect of any decision to amend an LAP is encapsulated in ss. 3,4,75,77 (1) (d), 78, and 79 of the Act. It has been further distilled by decisions from ARLA arising from appeals in respect of LAP's from other territorial Authorities. We refer to two such decisions. In **Foodstuffs South Island Limited & Ors V Dunedin City Council [2016] NZARLAA 21-26** the Authority stated at para [26]:

*.....as we said in the Tasman decision, the respondent does not need to justify its PLAP. As we further said in B H Williamson & Ors v Christchurch City Council [2016] NZARLA 284961/2016 PH, the purpose of a local alcohol policy (LAP) is to provide for communities to have a say in licensing decisions. Accordingly the Act recognises that LAP's are prepared by democratically elected councillors following a public consultation process and include a 'high policy' element. Consistent with the policy nature of a PLAP, a respondent is entitled to trial a local control where it considers that control will respond to a local problem. Where it can be shown that a proposed control may have a positive effect locally, the Authority will be reluctant to dismiss that policy.*

[75] In **Hospitality New Zealand Incorporated v Tasman District Council [2104] NZARLA PH 846** the Authority set the bench mark at para [51]:

*It follows that where an element of a PLAP can demonstrably (through evidence presented to the Authority) be linked to the object of minimising alcohol-related harm, the Authority will be slow to find that element to be unreasonable. The invasion of public or private rights would need to be significant to outweigh the benefit of such an element in terms of minimising alcohol-related harm. However, if an element of a PLAP cannot be shown to attempt to minimise alcohol-related harm, then the Authority will be more likely to find the element unreasonable for the purposes of ss. 81 and 83 of the Act.*

[76] Because of its importance in the establishment of an LAP we set out the objects contained in s.4 of the Act:

**(1) The object of this Act is that -**

- ***the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and***
- ***the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.***

**(2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes –**

- ***any crime, damage, death, disease, disorderly behaviour, illness, or injury directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and***
- ***any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).***

[77] We have consulted on the DALAP. After having regard to the matters stated in section 78(2) of the Act, it is our unanimous recommendation that the Council move to the next stage of a Provisional Amendment to the LAP. We have separately considered each of the eight amendments.

[78] With regard to the first two amendments concerning functions centres and cinemas, there was little public input. In our view it is reasonable to include a function centre as a potential on-licence holder, able to conduct such a licence with the same trading hours as pertain to a tavern or hotel. With regard to cinemas concerns were expressed about the trading hours to 3.00am. There was a suggestion that members of the public might resort to the bar to obtain a drink. But the trading hours are tagged to the operation of a cinema, and the evidence was that there are few occasions where a film is shown after midnight.

[79] In respect of the remaining six amendments we note that there is national and international research showing that alcohol is a well known causative factor in crime, and violence, and adverse health outcomes. Research has also established that the increased density of outlets results in increased harms. It is now established that in New Zealand the majority of alcohol that is consumed is purchased from off-licence premises.

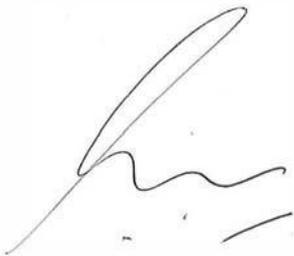
[80] The research information was supported and enhanced by the information and observations received from the submitters. They described in some detail the sorts of harm they had witnessed from the excessive or inappropriate use of alcohol in the areas in question. Of course not all harm is measureable. However where people are consuming alcohol in public in playgrounds and local parks it is realistic inference to say that such alcohol has come from off-licences. In many cases the submitters were able to provide the link between the harm that was reported on with alcohol purchased from off-licensed premises. No submitter argued that there was no harm in the six areas. No submitter suggested that such harm had not come from the excessive or inappropriate consumption of alcohol sold from off-licences.

[81] The six areas in question fall within the ambit of s.10 of the Local Government Act 2002 which states that the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

[82] Accordingly, to minimise the harm that is caused to these vulnerable communities by the excessive or inappropriate alcohol consumption, the Council has produced a plan to 'cap' the number of outlets. It is of course a matter for the Council under s.79 of the Act whether to adopt the amendment as a PALAP and proceed with the public notice, or abandon the development of the amendment or if it disagrees with an element in the proposed amendment, it may reject the relevant part of the recommendation and rehear submissions before making changes to the PALAP.

[83] Some submitters argued for a 'cap' for the entire area. There are a total of 61 off-licences in Lower Hutt. We thought that targeting the six areas said to be most at risk, was a restrained and reasonable response which in our opinion is likely to reduce the harm. It may not solve all the problems but it is a good start. This is why we have recommended that the Council proceed to the next stage.

On behalf of the Committee



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E W Unwin  
Chairman and Independent Commissioner  
23 June 2017