

# Have your say on where psychoactive products could be sold in Wellington

## Local Approved Products Policy - Summary of Information

**Proposal:** Wellington City Council (the Council) is consulting on policy options for restricting where (Ministry of Health (MoH) approved) psychoactive products can be sold in our district in future (should any such products ever come onto the market).

**Your chance to have a say**

Before making any final decisions, we'd like to know your views.

**The closing date for submissions is 5pm, 12 December 2014.**

Use the attached form to make your submission.

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# Background Summary

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## What are psychoactive products?

Psychoactive products are sometimes known as ‘legal highs’. For example, party pills. These products contain psychoactive substances that some people consume. Some previously legal products, such as synthetic cannabis smokes, are unlikely to be legal again in future.

A psychoactive substance is defined as a substance, mixture, preparation, article, device, or thing capable of inducing a psychoactive effect (by any means) in an individual who uses the psychoactive substance.

## Why might this Council have a policy on psychoactive products?

Since May 2014, there has been a temporary ban on previously legal psychoactive products. Central Government plans to lift this temporary ban and make it legal for certain psychoactive products to be sold from mid-2015 onwards if they pass new, more stringent tests (for health risks, potential for misuse and other harms).

The Council wants to be proactive, and ensure there is a policy to control where future approved products can be sold before they can appear on the market. If Council had no policy, sellers may locate anywhere in the District.

That said, a Council policy would have marginal impacts compared to new central Government laws, but would add some further restrictions to those laws.

## What are the main laws that govern psychoactive products and a local policy?

The main laws are the Psychoactive Substances Act 2013 (the Act) and the Psychoactive Substances Regulations 2014.

Under these laws, all sellers of approved products need to be licensed (the Ministry of Health).

To be legal, any products would need to pass new tests for health, potential for misuse, and other harms. The Ministry of Health (MoH) believes that most readily available alcoholic drinks and cigarettes would fail if they were subjected to the same tests.

No injectable or pure powder, and probably no smokeable products (such as synthetic cannabis smokes) will be approved for sale. Approved products (if there are any in future) would likely be in pill, capsule, vaporiser, or e-cigarette forms.

Sections 66 to 69 of the Act allow Councils to have a (local) approved products policy (LAPP) controlling where approved products are sold. A LAPP informs whether or not the MoH accepts applications for licences to sell approved products.

More facts about the laws and what they mean for future approved products are explained in the Statement of Proposal.

## How restrictive can we make a policy?

There are many people in the community who want approved products banned from being sold anywhere within the Wellington District (even in their hopefully less harmful forms). However, national laws (described above) prevent the Council from being able to do this or from having policy that is overly-restrictive. National laws are outside the control of Council.

For example, Hamilton City Council has already faced a threat of legal action by the approved products industry for having a policy that is more restrictive than intended by central government, and because of this, is revisiting its policy. If a LAPP was found to be too restrictive and overturned, there might be no local controls on sales of approved products.

The Council policy would have marginal impacts in that it could not (legally) control consumption or internet sale of approved products, or hours of shops selling approved products. It would inform decisions by the licensing body (MoH).

## Preferred Policy Option - Widest space between sellers

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The Council currently favours a policy option that is as restrictive as possible without risking legal challenge. A legal challenge could potentially make a policy invalid, resulting in no controls on where future approved products could be sold. Part of reducing the risk of a legal challenge is basing the policy on robust (rather than anecdotal) evidence.

The Council (through the Statement of Proposal) is consulting on several policy options. The most preferred option is currently that (MoH approved) retail premises (selling approved products) are:

- only permitted within a defined area of Wellington's southern Central Business District (CBD) in map 1
- at least 200 metres away from all of the following sensitive sites in Wellington: high schools and Wellington's YMCA
- at least 50 metres away from all of the following sensitive sites in Wellington: primary schools, pre-schools, and kindergartens
- spaced at least 200 metres apart from each other.

Map 1 shows this preferred option. More details (including the justification for this option) are in the Statement of Proposal.

Full copies of the Statement of Proposal that details the options are available from:

- <http://wellington.govt.nz/have-your-say/consultations>
- Council libraries
- the Council's service centre, 101 Wakefield Street
- or phoning 499 4444.

For further information, you can email us at [lapp@wcc.govt.nz](mailto:lapp@wcc.govt.nz)

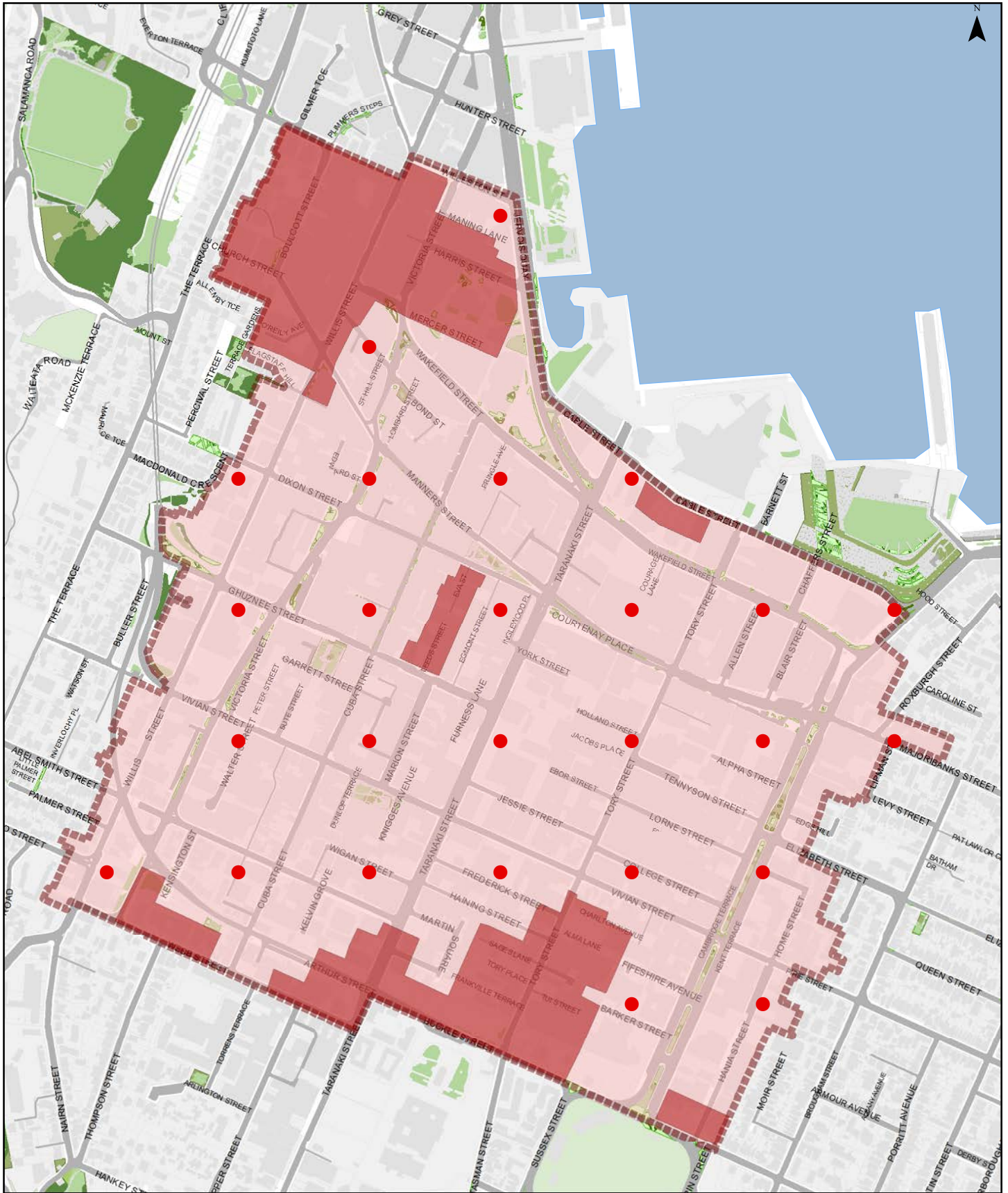
There are several ways you can have your say. You can make a submission :

**Online:** [wellington.govt.nz/have-your-say/consultations](http://wellington.govt.nz/have-your-say/consultations)

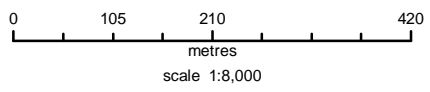
E-mailing us your thoughts: [lapp@wcc.govt.nz](mailto:lapp@wcc.govt.nz)

Phoning: 499 4444

Filling out the submission form (on the back of this document) or writing a letter and posting it to Free Post Wellington City Council, PO Box 2199, Wellington 6140, or drop it off at our service centre (101 Wakefield Street).



# MAP 1 - Option 1



- Maximum density of licensed retail premises (hypothetical guide and not reflecting current use of premises)
- Defined boundary for the area of the southern CBD where premises may locate
- Prohibited buffer from sensitive sites

Property boundaries, 20m Contours, road names, rail line, address & title points sourced from Land Information NZ. Crown Copyright reserved. Property boundaries accuracy: +/-1m in urban areas, +/-30m in rural areas. Census data sourced from Statistics NZ. Postcodes sourced from NZ Post. Assets, contours, water and drainage information shown is approximate and must not be used for detailed engineering design. Other data has been compiled from a variety of sources and its accuracy may vary, but is generally +/- 1m.

MAP PRODUCED BY:  
Wellington City Council  
101 Wakefield Street  
WELLINGTON, NZ

ORIGINAL MAP SIZE: A4  
AUTHOR: Sean Audain  
DATE: 13/10/2014  
REFERENCE:

**Absolutely Positively**  
**Wellington City Council**  
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# Statement of Proposal: Local Approved Products Policy

(restricting where any legal psychoactive products may be sold in future)

This Statement of proposal has been prepared to fulfil the purposes of s.83(1)(a) and s.87(2)(a) of the Local Government Act 2002, and s.69 of the Psychoactive Substances Act 2013 (the Act).

## BACKGROUND:

### About psychoactive products

Psychoactive products are sometimes known as 'legal highs'. For example, party pills. These products contain psychoactive substances that some people consume. Some previously legal products, such as synthetic cannabis smokes, are unlikely to be legal again in future.

A psychoactive substance is defined as a substance, mixture, preparation, article, device, or thing capable of inducing a psychoactive effect (by any means) in an individual who uses the psychoactive substance.

### Important Facts

- New national laws prevent any Councils from banning (or effectively banning) all sales of psychoactive products within their districts.
- Despite a temporary ban (that started in May 2014), central government will allow some psychoactive substances to be sold from mid-2015 onwards, if they pass new stricter tests for 'low risk of harm' (for the potential for misuse, health, interactions with alcohol and for other harms).
- Only psychoactive products approved by the MoH (approved products) would be legally sold.
- The MoH regards any future approved product as posing a 'low risk of harm' and expects that "the addictive nature of the products, as previously seen [before this temporary ban], will not be there with low risk approved products".
- Under the Act (section 52) approved products **cannot** be sold in any of the following places:
  - grocery stores (dairies), supermarkets, convenience stores, service stations, places selling alcohol, vehicles (including mobile street carts), or temporary buildings.
- It will remain illegal for approved products to be sold to (or possessed by) people under 18.
- It will only be legal for premises to sell approved products if they are granted a licence to do so.
- Licences will be issued and decided upon by the MoH (through its office of the Psychoactive Substances Regulatory Authority).
- The regulation of premises selling approved products (including locations) will be enforced by the Police and MoH.
- The Council has no role in issuing or enforcing licences.
- The Council's Local Approved Products Policy would be part of several considerations that inform MoH's decisions on whether or not to grant licences to sell approved products.

## **New national laws to restrict psychoactive substances**

Central Government introduced new laws to substantively restrict the type and nature of legal psychoactive products that may be legally sold. Those laws are the Psychoactive Substances Act 2013 (the Act) and various Psychoactive Substances Regulations (the Regulations).

Those new laws are expected to take full effect from mid-2015. Currently (since May 2014) there is a temporary ban on the selling of all psychoactive products (as defined by the Act). However, from mid-2015, certain psychoactive substances may be approved for sale by MoH. The emphasis, though, will be on the manufacturer needing to prove that new or existing products are ‘low risk’ before they become legal.

## **Desired impacts of new legislation and testing requirements**

To be approved for sale by the MoH, those **(approved products)** will need to pass more tests (than before this temporary ban). Any product testing as higher than posing a ‘low risk of harm’ will not be approved for sale.

MoH advises that “no synthetic cannabinoids will be able to pass the approval process”. It will also be illegal for psychoactive products to be sold in injectable or powder form. Approved products (if there are any in future) would likely be in pill, capsule, vaporiser, or e-cigarette forms.

MoH also advises that if most readily available alcoholic drinks and cigarettes were subject to the same tests as any future approved products, they would fail (scoring as higher-than-low risk of harm).

## **The Council wants to further restrict where psychoactive products are sold on behalf of Wellington’s communities**

Despite assurances by MoH on the ‘low risk’ nature of any future approved products, the Council is aware that many people in the community want sales of these products to be as restricted as possible.

The purpose and intent of the Act only give the Council limited influence around restrictions. However, the Council is keen to adopt a policy (local approved products policy or LAPP) to allow Wellington’s communities some control around where approved products might be sold.

## **What the Council could influence through a LAPP**

Local councils are not obliged to develop a LAPP but can do if they choose. Under sections 66 to 69 of the Act, a LAPP could determine:

- the areas within the Wellington City District where approved products may be sold (eg suburbs versus the central business district or residential versus industrial versus shopping areas)
- the minimum distance between shops selling approved products
- the minimum distance between shops selling approved products and sensitive sites (eg schools)
- different conditions for retail premises to conditions for premises used for wholesale or for internet purchase.

People who can prove they are over 18 will still be able to purchase approved products over the internet. A LAPP could also not control consumption of approved products.

## OBJECTIVES OF A LAPP

The objectives of a Wellington District LAPP are to:

- (a) **be legal** - ie align with the purpose and intent of the new laws that “regulate the availability of psychoactive substances in New Zealand to protect the health of, and minimise harm to, individuals who use psychoactive substances” in a way that still enables approved products to be sold in the Wellington District
- (b) **be based on robust evidence** - to withstand any legal challenge or review.  
  
For example, if a Wellington District LAPP was found to be too restrictive for products that the Ministry of Health deems as ‘low risk’ and overturned, there might be no local controls on where approved products can be sold.
- (c) **help reduce wider community harms** from approved products
- (d) **reflect community preferences as far as possible** for where approved products may be sold (while aligning with the purpose and intent of the Act)
- (e) **provide a clear guide** for the Psychoactive Substances Regulatory Authority for decisions on licence applications within the Wellington District.

These objectives and the policy options that follow have been developed after consultation with non-government organisations, charities, residents, retailers, the Police, Regional Public Health, the approved products industry, and after obtaining legal advice.

## POLICY OPTIONS FOR A LAPP

### Preferred - Option 1 - Widest spacing between licensed premises - Map 1 - Page 5

Retail premises licensed to sell approved products (including premises for internet sales) would only be permitted:

- 1.1 within the southern area of Wellington’s central business district (CBD) as shown within the solid red boundary of map 1; and
- 1.2 at least 200 metres away from all of the following sensitive sites in Wellington: high schools/ colleges and Wellington’s YMCA; and
- 1.3 at least 50 metres from all of the following sensitive sites in Wellington: primary schools, pre-schools or kindergartens; and
- 1.4 at least 200 metres from all other retail or internet sales premises that are licensed to sell approved products.

**Definition of separation distances** - For the purposes of parts 1.2 to 1.4 above, the separation distances are to be measured from the external legal boundary of each premises. Minimum separation distances would be based on premises that exist when a licence is applied for.

**New Developments Clause:** If a new premises (of the type identified in 1.2 or 1.3) opens within the minimum distance of an already licensed retail premises (that seeks to renew its licence), the Council would work with that licensed retail premises to find an alternative suitable location. For as long as a suitable alternative location is not available, the current location would be deemed to comply with the LAPP.

**Map 1 (page 5)** provides a visual guide to the areas where licensed retail premises would be permitted under this option, although those areas would change over time as new premises (eg schools or licensed retail premises) open, close or relocate.

### Reasons why Option 1 is currently preferred

**Area of CBD chosen** - Many organisations (including the Police and Regional Public Health) prefer approved products to be sold in the CBD, primarily for safety reasons. The Council also believes that individuals buying and selling approved products are safer in this area, because (compared to most other geographical areas) there is greater visibility, lighting, passive



surveillance (eg foot and vehicle traffic throughout the day and evening), and greater Police and public presence.

Limiting premises that sell approved products to this area also keeps those premises away from the city's larger residential neighbourhoods and from the more deprived areas of the city (as measured by the NZ Index of Deprivation). There is evidence that potentially mind-altering substances can create greater problems among some people on lower incomes.

The southern area of the CBD that is currently favoured by the Council (see map 1) is broadly the city's main entertainment area. This area is also large enough for the Council to ensure that premises are spaced further away from each other (through the LAPP having larger minimum separation distances to prevent premises clustering around each other).

Previous incidences of several sellers being close together on particular streets would not be allowed under this option because of the 200 metres minimum distances between premises.

In a recent survey of 307 representative residents, the most preferred areas in the (District Plan zoned) CBD for licensed retail premises to locate were in the southern CBD, including Cuba Street and Courtenay Place and surroundings. The least preferred areas in the CBD were the waterfront and northern (Lambton) areas of the CBD. Those factors have also determined the area chosen.

Additionally, the southern CBD area chosen is well policed by a City Policing Team of a Sergeant and four Constables, on a full time basis. These police will be exclusively devoted to this Southern CBD area, particularly around Cuba Street, Courtenay Place and surrounding streets. They have an approach of problem-oriented policing, identifying specific problems and working with local southern CBD communities to resolve those problems.

**At least 200 metres from high schools/colleges and YMCA** - There is evidence that potentially mind-altering substances can create greatest problems among under-age users (some teenagers under 18 years old). This evidence is based on a scientific understanding of the development of the human brain at various ages, data from Emergency Department admissions, and discussions with the YMCA and youth service organisations. Some teenage people can also arguably be mistaken (by sellers) as being over 18.

The above premises are:

- often where teenagers spend relatively long periods during the week (rather than simply being where those people might sometimes go); and
- easily defined (for legal purposes).

In the residents' survey, 200 metres was the preferred minimum distance from premises regarded as sensitive.

**At least 50 metres from primary schools, pre-schools or kindergartens** - There is limited evidence that licensed retailers of approved products locating next to these institutions for younger children would cause harm to users. Children of primary school age and below could also not be reasonably mistaken (by sellers) as being over 18. However, greater visibility might 'normalise' approved products among young children.

A distance of 50 metres would help reduce this visibility from premises where young children spend relatively long periods during the week. Those premises can also be easily defined (for legal purposes).

**At least 200 metres between premises** - There is evidence that spacing premises (that sell potentially mind-altering substances) further apart reduces the convenience of buying the substances and reduces overall problems associated with those substances.

The 200 metre spacing is approaching the greatest distance we are confident aligns with the intent of the Act - ie needing to allow some licensed premises to sell approved products within the southern CBD area.

## Alternative Option 2 - Widest spacing from sensitive sites

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Retail premises licensed to sell approved products (including premises for internet sales) would only be permitted:

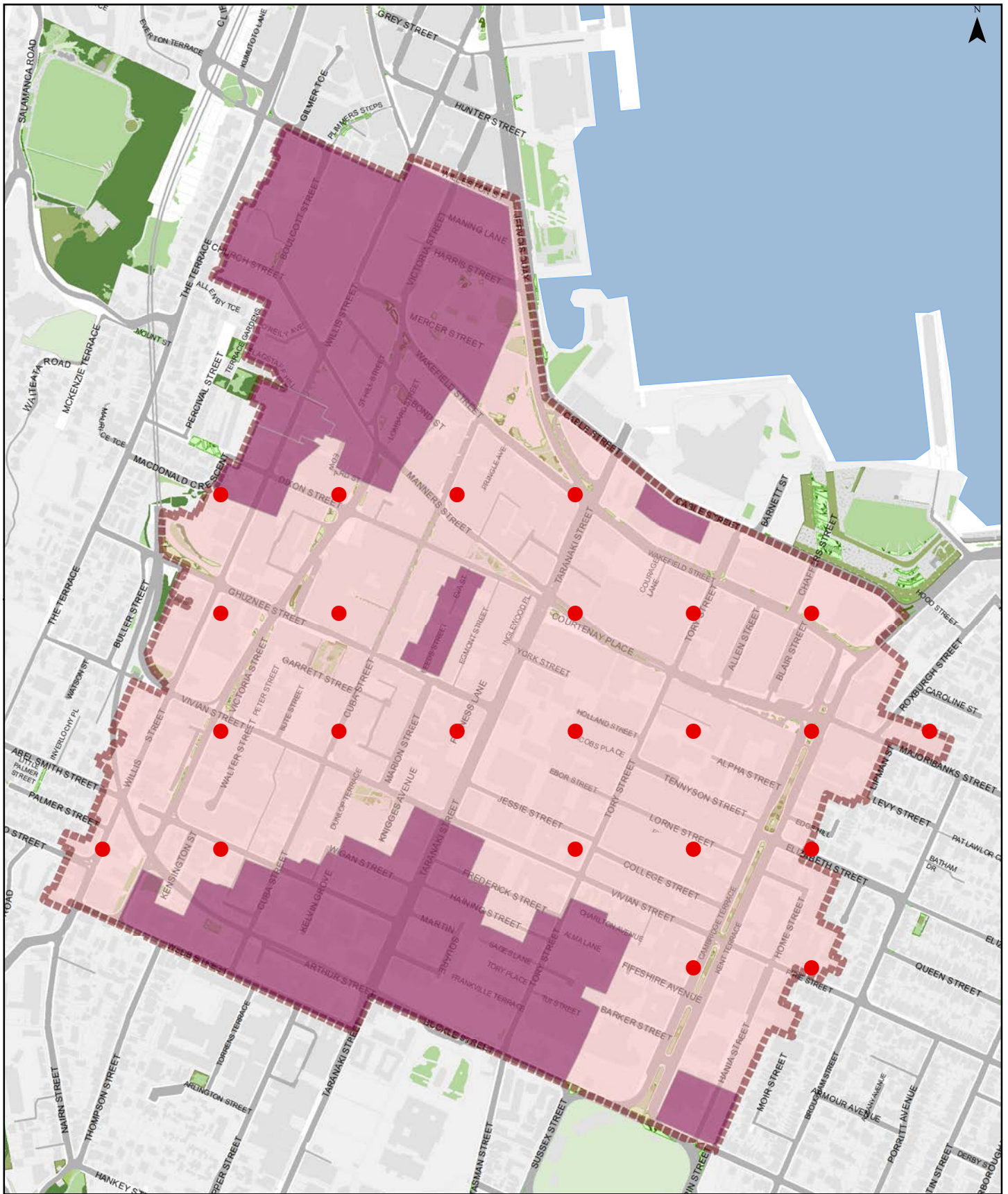
- 2.1 within the same southern area of Wellington's central business district (CBD) as Option 1 - shown on map 2; and
- 2.2 at least 400 metres from all of the following sensitive sites in Wellington: high schools/ colleges, and Wellington's YMCA; and
- 2.3 at least 50 metres from all of the following sensitive sites in Wellington: primary schools, pre-schools or kindergartens; and
- 2.4 at least 180 metres from all other retail or internet sales premises that are licensed to sell approved products.

The same definition of separation distances and New Developments Clause for Option 1 would apply for this option.

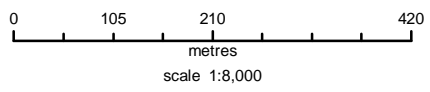
To align with the intent of the Act (ie to reasonably allow some licensed premises to sell approved products within the southern CBD area), increasing minimum distances from sensitive sites (to 400 metres instead of 200 metres in option 1) would mean reducing minimum distances between premises (to 180 metres from 200 metres in option 1).

A benefit of this option would be potentially harder access to approved products to some under-age teenage users for most of the day. However, this option is not currently preferred because licensed retail premises would be closer together under this option, providing easier access to potentially mind-altering substances within the areas that they are sold.

**Map 2** provides a visual guide to the areas where licensed retail premises would be permitted under this option, although those areas would change over time as new premises (eg schools or licensed retail premises) open, close or relocate.



# MAP 2 - Option 2



- Maximum density of liscened retail premises (hypothetical guide and not reflecting current use of premises)
- Defined boundary for the area of the southern CBD where premises may locate

Property boundaries, 20m Contours, road names, rail line, address & title points sourced from Land Information NZ. Crown Copyright reserved. Property boundaries accuracy: +/-1m in urban areas, +/-30m in rural areas. Census data sourced from Statistics NZ. Postcodes sourced from NZ Post. Assets, contours, water and drainage information shown is approximate and must not be used for detailed engineering design. Other data has been compiled from a variety of sources and its accuracy may vary, but is generally +/- 1m.

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## Alternative Option 3 - Clustered sellers

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Retail premises licensed to sell approved products (including premises for internet sales) would only be permitted:

- 3.1 within the areas of Cuba Street, east Dixon Street, east Manners Street, and Courtenay Place shown in Map 3, where there is generally a higher density of premises with a liquor licence, restaurants and other evening entertainment; and
- 3.2 at least 200 metres from all of the following sensitive sites in Wellington: high schools, and Wellington's YMCA (as in Option 1); and
- 3.3 at least 50 metres from all of the following sensitive sites in Wellington: primary schools, pre-schools or kindergartens (as in Option 1); and
- 3.4 at least 60 metres from all other retail or internet sales premises that are licensed to sell approved products.

The same definition of separation distances and New Developments Clause for Options 1 and 2 would apply for this option.

To align with the intent of the Act (ie reasonably allow some licensed premises to sell approved products within this significantly smaller area), minimum distances between premises would need to be significantly reduced (to 60 metres from 200 and 180 metres in options 1 and 2 respectively).

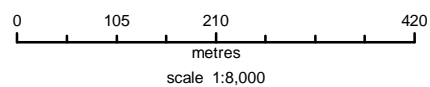
A benefit of this option may be that a smaller area may be more easily policed, and people will know exactly where to expect to see (or avoid) approved products being purchased or sold.


However, this option is not currently preferred because licensed retail premises would be significantly closer together under this option, providing easier access to potentially mind-altering substances, and potentially encouraging greater congregations of people wanting psychoactive substances in those areas.

**Map 3** provides a visual guide to the areas where licensed retail premises would be permitted under this option, although those areas would change over time as new premises (eg schools or licensed retail premises) open, close or relocate.



# MAP 3 - Option 3



 Higher Density Entertainment Area- Density Guide

Property boundaries, 20m Contours, road names, rail line, address & title points sourced from Land Information NZ. Crown Copyright reserved. Property boundaries accuracy: +/-1m in urban areas, +/-30m in rural areas. Census data sourced from Statistics NZ. Postcodes sourced from NZ Post. Assets, contours, water and drainage information shown is approximate and must not be used for detailed engineering design. Other data has been compiled from a variety of sources and its accuracy may vary, but is generally +/- 1m.

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## **Alternative Option 4 - Having no policy**

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Having no LAPP is a legal option under central government legislation. This option is not preferred. The Council wants to reflect the wishes of large sections of the community in proactively placing some extra local restrictions on where potentially mind-altering (albeit hopefully lower risk) products may be sold in the future.

## Glossary of Terms used in the LAPP

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<b>Approved Product</b>	Means a psychoactive product approved by the Authority under Section 37 of the Psychoactive Substances Act (the Act).
<b>Authority (or PSRA)</b>	Means the Psychoactive Substances Regulatory Authority (within the Ministry of Health) established by Section 10 of the Act.
<b>Licence</b>	Means a licence, as defined by the Act.
<b>Licensed internet sale premises</b>	Means premises for which a licence to sell approved products online has been granted under the Act.
<b>Licensed retail premises</b>	Means premises for which a licence to sell approved products by retail has been granted under the Act.
<b>Licensed wholesale premises</b>	Means premises for which a licence to sell approved products by wholesale has been granted under the Act.
<b>Minimum separation distance</b>	Means the separation distance as measured from the external legal boundary of each premises, based on premises that exist when a licence is applied for.
<b>Psychoactive Product</b>	Means a finished product packaged and ready for retail sale that is a psychoactive substance or that contains one or more psychoactive substances.
<b>Psychoactive Substance</b>	Means a substance, mixture, preparation, article, device, or thing that is capable of inducing a psychoactive effect (by any means) in an individual who uses the psychoactive substance.
<b>Regulations</b>	Means regulations made under the Act.
<b>Sensitive Sites</b>	Means sites that are used for long periods of time during the week by people who are, or may be, particularly vulnerable to the influence of the sale of psychoactive products, the sites can be legally defined, and the sites are known to the Council.
<b>Schools, kindergartens, early childhood centres</b>	Means “institutions” as defined by the Education Act 1989 and amendments.
<b>The Act</b>	Means the Psychoactive Substances Act 2013.

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### **LAPP (Policy) Review Clause**

Any WCC LAPP would be reviewed every five years as required by the Psychoactive Substances Act 2013, or at the request of Council, or in response to changed legislative and statutory requirements.



# Proposal: Draft Local Approved Products Policy: SUBMISSION FORM

(restricting where any legal psychoactive products may be sold in future)

## Section one - details for the submission form

Wellington City Council would like your feedback on the proposals

You can have your say:

- submitting **online** at **Wellington.govt.nz/have-your-say/consultations**
- emailing **lapp@wcc.govt.nz**
- making a submission on this form or in writing and posting it to us - Free Post, PO Box 2199, Wellington 6140
- phoning us on 04 499 4444.

## Enter your name and contact details

Mr  Mrs  Ms  Miss  Dr

First name\*

Last name

<input type="text"/>	<input type="text"/>
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Street address\*

Phone/mobile

Email

<input type="text"/>	<input type="text"/>
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\* Mandatory fields

I am making a submission  As an individual  On behalf of an organisation

Name of organisation

I would like to make an oral submission to the City Councillors.  Yes  No

If yes, provide a phone number above so that a submission time can be arranged.

### Privacy statement

All submissions (including name and contact details) are published and made available to elected members of the Council and the public. Personal information supplied will be used for the administration and reporting back to elected members of the Council and the public as part of the consultation process. All information collected will be held by Wellington City Council, 101 Wakefield Street, Wellington. Submitters have the right to access and correct personal information.

## Section two - questions

1. Do you think the Wellington City Council needs a local approved products policy (LAPP) for where premises are licensed to sell approved products?

2. Which of the proposed options for a LAPP do you prefer? Why do you prefer that option?

3. Do you think the appropriate area has been chosen for where approved products may be sold (eg the section of the southern Central Business District in options 1 and 2)? If possible, please identify the evidence to support your views.

4. Do you think the options have included the appropriate sensitive sites for licensed premises to be located away from? If possible, please identify the evidence to support your views.

5. Do you have any comments on the minimum proposed distances between sensitive sites and licensed premises?

6. Do you have any comments on the minimum proposed distances between premises licensed to sell approved products?

7. Do you have any other comments?

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**Absolutely Positively  
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Proposal: Draft Local Approved Products Policy (COP01)  
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