

# **FULL STATEMENT OF PROPOSAL**

## **HUTT CITY COUNCIL**

### **CONTROL OF ALCOHOL IN PUBLIC PLACES BYLAW 2016**

August 2016

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# 1. INTRODUCTION

The Council proposes to make a Hutt City Council *Control of Alcohol in Public Places Bylaw 2016*. This is to ensure that there are appropriate measures in place to control the possession and consumption of alcohol in public places in the Hutt City area, following the expiry of the previous prohibitions in Hutt City that were in place under the Control of Liquor in Public Places Bylaw 2004, made under the Local Government Act 2002 (LGA 2002).

This Statement of Proposal has been prepared in accordance with section 86 of the LGA 2002 and provides information about the review process and whether it is appropriate for the Council to have a *Control of Alcohol in Public Places Bylaw*.

# 2. BACKGROUND

## 2.1 RELEVANT LEGISLATION

The LGA 2002 sets out the general powers of territorial authorities to make bylaws. In addition the Bylaws Act 1910 applies and prevails over the LGA 2002 where applicable.

## 2.2 COUNCIL ROLE IN RELATION TO POSSESSION AND CONSUMPTION OF LIQUOR IN PUBLIC PLACES

Hutt City Council has a commitment to achieving city wide outcomes identified by the community. Community Outcomes set out on pages 7 and 25 of the Hutt City Council's *Long Term Plan 2015 – 2025* states that the city's goal over the next ten years is to provide "a safe community". To help achieve this goal it is considered necessary to have in place measures to discourage the offensive and dangerous behaviour that can arise out of alcohol consumption in public places.

It should also be noted that since 2012, Council has also published a series of major strategic documents. Council's vision for Lower Hutt is 'An Integrated Vision for Hutt City – making our city a great place to live work and play.' This vision and four supporting strategies now provide the basis for the city's Long Term Plan. On page 77 of the '*Integrated Vision for Hutt City*' is a quick reference section that notes a focus with community safety/public safety.

### 3. THE LOCAL GOVERNMENT ACT 2002

Part 8 of the LGA 2002 provides powers for local authorities for the making of bylaws. The Act contains general bylaw making provisions and provisions that are specific to bylaws controlling the possession and consumption of alcohol.

Under section 147, a territorial authority may make bylaws for its district for the purpose of prohibiting or otherwise regulating or controlling, either generally or for one or more specified periods, the consumption or possession of alcohol or the bringing of alcohol into in a public place and, in conjunction with such a prohibition, the presence or use of a vehicle in a public place.

A bylaw does not prohibit the transport of that alcohol in an unopened bottle or other unopened container to or from licensed premises, or to or from a person's residence.

Before making a bylaw local authorities must undertake the following analysis:

- 1) Determine whether a bylaw is the most appropriate way of addressing the perceived problem; and
- 2) Before making an alcohol ban bylaw a territorial authority must be satisfied that—
  - a) the bylaw can be justified as a reasonable limitation on people's rights and freedoms; and
  - b) a high level of crime or disorder (being crime or disorder caused or made worse by alcohol consumption in the area concerned) is likely to arise in the area to which the bylaw is intended to apply if the bylaw is not made; and
  - c) the bylaw is appropriate and proportionate in the light of that likely crime or disorder.

No bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act.

A local authority must follow the special consultative procedure set out in section 83 of the LGA 2002 when making a bylaw.

#### 3.1 THE PERCEIVED PROBLEM

Police have advised Council officers that consumption of alcohol in some public places in Lower Hutt is likely to lead to situations where there is a risk to the health and safety of users of those public places and offensive behaviour affecting users of those places and others who occupy areas near those public places. The purpose of the bylaw is to address concerns relating to potential criminal offending and safety concerns that are linked to the possession or consumption of alcohol in public places. It is a proactive restriction to limit alcohol in key public areas, to increase safety and to reduce offending.

The police have identified that the consumption of alcohol in public places has led to the following offences:

- Offences under section 3 of the Summary Offences Act 1981 (disorderly behaviour);
- Offences under section 4 of the Summary Offences Act 1981 (offensive behaviour or language);
- Offences under section 5A of the Summary Offences Act 1981 (disorderly assembly);
- Offences under section 7 of the Summary Offences Act 1981 (fighting in a public place); and
- Offences under section 9 of the Summary Offences Act 1981 (common assault);

What the proposed bylaw provides is a legal tool Police can use to effect early intervention before a situation escalates into a more serious situation, which may then be managed under other legislation like the Summary Offences Act 1981.

The bans in place previously have been a valuable early intervention tool for police to ensure that the groups exhibiting unruly behaviour and consuming alcohol in the CBD and other areas disperse.

Attached as **Appendix 1** is a letter from Police outlining the incidence of crime and disorder in Hutt City. In light of this evidence Police have recommended the following:

- i) A renewal of the alcohol ban areas established under the previous Control of Liquor in Public Places Bylaw 2004, namely:
  - Days Bay Beaches at Guy Fawkes night;
  - Norfolk Street Shopping Area, Wainuiomata – at all times;
  - Homedale Village Shops, Wainuiomata – at all times;
  - Queen Street Shops and Hugh Sinclair Park, Wainuiomata – at all times;
  - Stokes Valley Shopping Centre, Speldhurst Park and Delaney Park – at all times;
  - The designated area of Petone – at all times;
  - The designated area of the central business district but also include an extension of the Hutt River bank area to cover current crime and disorder issues – at all times;
  - Taita shopping area and Walter Nash Park – at all times; and
  - Naenae shopping area, the subway and Naenae Railway station, Walter Mildenhall Park and Naenae Park – at all times.
  
- ii) An Alcohol Free Zone also be established across all of Hutt City excluding Eastbourne and the Western Hills, from 9.00pm to 6.00pm each day.

In light of the evidence presented Council is proposing a city wide ban be effective from 9.00pm to 5.00am, 7 days a week. There are two options Council is now seeking public feedback on. Option 1 – should the city wide ban exclude Eastbourne and the Western Hills? Option 2 - should the city wide ban be established with no exceptions?

Attached as **Appendix 2** is a report from the City Safety Manager also a spreadsheet providing additional information gathered from Council staff and Community Patrol data, to help provide additional background information. This information relates only to the areas noted in i) above. It

should be noted that crime and disorder data is gathered by the Police. However Appendix 2 presents helpful information to add context to the data provided by Police.

Officers have had discussions with the Police who advise that while an event or gathering such as late night shopping evenings may conclude at 9pm (or, at Christmas, midnight in some cases), the consumption of alcohol continues as people then “hang around” or if they are older, go to bars. Later, as people leave licensed premises, they will often loiter, meet with friends and drink alcohol in public places before going home. This means the activity of consuming alcohol carries on in the CBD and other areas until as late as 6.00am the following day. Alcohol bans have been in places that have proven to be attractive for young people to congregate and supply minors – areas like the CBD and Speldhurst Park.

The need to maintain 24/7 bans in the proposed Alcohol Free Zones areas as noted in i) above is also required because drinking occurs at all hours of the day and night. Also a 24/7 ban is easy for the public to understand and for the Police to enforce.

In addition it is proposed to establish a city wide alcohol free zone as noted in ii) above to be effective 9.00pm – 5.00am every day (either excluding or including Eastbourne and the Western Hills). The evidence from Police to support this proposal is attached in Appendix 1. Having the proposed restriction starting at 9.00pm means by then most people have left public places. The proposed timing is also to provide the restriction when is most needed - to target the current problems of crime and disorder that involves the consumption of alcohol that occurs between 9.00pm and 5.00am every day.

## **3.2 MOST APPROPRIATE WAY TO ADDRESS THE PERCEIVED PROBLEM**

Consideration has been given to a range of options for addressing the problem. These include the following:

### *Non-regulatory options*

Non-regulatory options have been considered or already implemented.

There are ongoing national campaigns encouraging people to be responsible when consuming alcohol and to drink moderately.

There are public education measures such as interagency visits to liquor outlets and encouraging voluntary compliance.

Regular checks on under-18 year olds purchasing liquor at liquor outlets continues.

Surveillance of the CBD and other areas in the form of CCTV cameras and Community Patrols has been in place for some time now. However, on its own, these measures do not entirely deal with the problem.

### *Other regulatory options*

The Council has approved a Provisional Local Alcohol Policy (PLAP) pursuant to the Sale and Supply of Alcohol Act 2012. This policy enables Council to regulate the number, location and trading hours of licensed premises only.

Where this applies the Police can carry out enforcement activities under relevant legislation such as the Sale and Supply of Alcohol Act 2012. The issue that arises in those cases, however, is that this does not provide the opportunity to intervene at an early stage to prevent harm or loss before an offence may have been committed. For that reason, it is considered necessary to have in place measures that provide for intervention before a situation gets out of hand. Rules establishing

prohibitions in relation to possession and consumption of liquor in public places have previously proven effective in this regard.

Council Officers have identified that most other city and district councils have in place liquor prohibition bylaws for defined parts of their communities.

It is considered that the proposed Bylaw will put the appropriate controls in place to address the perceived problem outlined in section 3.1 and is consistent with the provisions of the LGA 2002 relating to the Council's Bylaw making powers. It will contribute to achieving the community outcomes identified in the Council's Long Term Plan.<sup>1</sup> It will also contribute to making Hutt City a great place to live work and play.

In conclusion, an Alcohol Ban Bylaw is considered to be the most appropriate way to address the perceived problems.

### **3.3 MOST APPROPRIATE FORM OF BYLAW**

The proposed Bylaw clearly states which activities constitute an offence under the Bylaw. The proposed Bylaw reflects community goals that have been identified by the Council and is also flexible in providing for areas that are subject to limits or prohibitions in relation to the consumption or possession of alcohol to be designated by Council resolution, thus allowing for changing circumstances to be recognised. Before specifying an alcohol free zone, the Council must take into account several matters that have been specified. In particular the Council must consider whether it is necessary to consult with the public on the proposed alcohol free zone.

The Bylaw is considered to be clear and easily readable and the style is consistent with other Parts of the Hutt City Council Bylaw. It incorporates legal advice that resolutions of Council can be used to identify the public places where an alcohol free zone can apply.

The proposed Bylaw is, therefore, the most appropriate form of Bylaw as it clearly identifies those activities constituting an offence while being sufficiently flexible (by allowing the Council to specify alcohol free zones by resolution).

### **3.4 NZ BILL OF RIGHTS IMPLICATIONS**

The Council must determine whether the proposed Control of Alcohol in Public Places Bylaw 2016 gives rise to any implications under the New Zealand Bill of Rights Act 1992 (BORA).

Consideration of the implications of the bylaw on people's rights in the BORA has been undertaken. In particular, the rights relating to freedom of movement and freedom of association are potentially relevant.

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<sup>1</sup> Refer Hutt City Council Long Term Plan 2015 – 2025 – Community Outcomes “A safe city” (Pg 7)

These rights are general rights and accordingly any claim that any aspect of the proposed Bylaw may breach these rights must be considered on its own facts. The Council must consider whether the proposed Bylaw will unreasonably limit any of these rights. Legal advice has confirmed that there is always the potential for a claim of breach of these rights by bylaw clauses that address or restrict any activities in public places such as beaches and reserves. However, given the restrictive nature of the bylaw clauses to certain areas where Council's interest or jurisdiction can be justified the Council's legal advice is that there is a sound prospect that a Court will conclude that the bylaw is not inconsistent with these rights.

In reaching a conclusion in relation to the BORA it is important to remember that under section 5 of the BORA, all rights can be impinged upon if it can be shown to be a reasonable limitation that is justified in a free and democratic society. Essentially, there will be no inconsistency with the Bill of Rights where there are good reasons to justify an alcohol free zone or where the alcohol ban imposes on individuals' rights only in so far as it is necessary. Legal advice is that the proposed Bylaw meets these requirements and is not inconsistent with the Bill of Rights.

## 4. THE BYLAW REVIEW

The proposed Control of Alcohol in Public Places Bylaw 2016 is a new Hutt City Council bylaw, based on the previous regulation of liquor in public places that existed under the Control of Liquor in Public Places Bylaw 2004. Information is provided below about enforcement and fees.

### 4.1 MODIFICATIONS

No modifications, apart from those required from changes in legislation since 2004, have been made in preparing the proposed Alcohol Ban Bylaw 2016. However it should be noted that the proposed Bylaw continues the provision that will allow Council to establish alcohol free zones by resolution after having regard to specified matters. This, along with provision to grant permits for individual functions, is considered to provide ongoing flexibility.

### 4.2 EXPLANATION OF THE PROPOSED BYLAW CONTENT.

The following outlines the rationale for the inclusion of each of the clauses in the proposed bylaw.

#### **Proposed clause 1 – Interpretation**

This clause is proposed so that the meaning of terms used in the bylaw is clear.

#### **Proposed clause 2 –**

This clause is proposed so it is clear what a person cannot do while in an alcohol ban area.

**Proposed clause 3 –**

This clause is proposed so it is clear what provisions of the Local Government Act 2002 must be met. Also other considerations Council may take into account when creating an alcohol free zone.

**Proposed clause 4 –**

This clause is proposed to identify premises or areas this bylaw does not apply to, such as licensed premises. It also notes exceptions listed under section 147 of the Local Government Act concerning the prohibition, regulation or control of alcohol in an unopened container.

**Proposed clause 5 –**

This clause is proposed to provide Council with the power to issue a permit to allow a function or event in a public place that would normally be subject to an alcohol ban. The clause also provides Police with enforcement powers associated with this permitted activity.

**Proposed clause 6 –**

This clause is proposed to advise the reader what powers the Police have to search a container or vehicle.

**Proposed clause 7 –**

This clause is proposed to make it clear that breach of a bylaw is an offence and to set out the legislation that determines the infringement fee for that offence.

## 4.3 ENFORCEMENT

The enforcement of matters in the proposed bylaw will generally be carried out by the Police as provided for by section 169(2) of the LGA Act 2002. This outlines a range of possible actions including search, seizure and removal of liquor and/or issue of an infringement notice to offenders. This can be done in conjunction with other powers the Police have under the Summary Offences Act 1981.

## 4.4 FEES

There are no fees payable under this bylaw, other than infringement fees for committing a breach of the Bylaw.

## 5. PROCESS FOR THE DEVELOPMENT OF THE PROPOSED BYLAW

The special consultative procedure will end 4.00pm on Friday 28 October. Hearings and meetings on the proposed bylaw will be open to the public, and people may speak to their submissions at the relevant committee meeting.

The relevant council committee will then prepare its recommendations and outline what, if any, changes should be made to the bylaw in light of submissions received. These recommendations will then be referred to the Council for consideration and adoption.

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