

**QLDC Council**  
**24 March 2015**

**Report for Agenda Item: 7**

**Department:**

**Legal and Regulatory**

**Psychoactive Substances – Local Approved Products Policy**

**Purpose**

- 1 To consider the approval of a proposed Local Approved Products Policy to enable the special consultative procedure to commence.

**Recommendation**

2 *That Council:*

- a. **Approve** the proposed Queenstown Lakes District Council Local Approved Products Policy (LAPP) for public consultation using the special consultative procedure;
- b. **Defer** consideration of the consumption of psychoactive substances in public places as part of the programmed review of the Control of Activities and Obstructions in Public Places Bylaw 2010 (scheduled for review in 2015 - 2016);
- c. **Appoint** three Councillors (to be named) to hear and consider submissions on the proposed Queenstown Lakes District Council Local Approved Products Policy (LAPP), and recommend to Council the form of the policy to be adopted.

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9/03/2015

Reviewed and Authorised by:



Adam Feeley  
Chief Executive

10/03/2015

**Background**

- 3 The Psychoactive Substances Act 2013 ("Act") provides the ability for Council to develop a policy regarding the retail sale of approved products (i.e. psychoactive products approved by the Psychoactive Substances Regulatory Authority) within the Queenstown Lakes District. These products cannot be sold to anyone under the age of 18.

- 4 In May 2014, Central Government placed a 'temporary' ban on all psychoactive products (known as legal highs), until the product has been shown to have a 'low risk of harm' through a testing regime that is yet to be determined. It is anticipated that this regime may be established by mid-2015 onwards.
- 5 Although psychoactive substances cannot currently be sold, having a LAPP in place before licences are granted and sales become approved, will give Council the strongest influence over where sales should take place in our community.
- 6 These products would need to be approved and licensed by Central Government i.e. the Authority (which is part of the Ministry of Health) to be legally sold. The scope of the LAPP is for the purpose of controlling the location of sales only.
- 7 The Psychoactive Substances Regulations 2014 (which commenced on 3 November 2014) prescribes a number of restrictions concerning approved products regarding their sale, labelling, packaging, storage and how they are displayed.
- 8 The Chief Executive's performance plan also requires a review of the options regarding psychoactive substances.

## **Comment**

- 9 There has been significant media regarding the issues surrounding psychoactive substances following Royal Assent of the Act on 17 July 2013, and the Government's subsequent interim amendment, which prevented the sale of any psychoactive substance.
- 10 The importance of this matter was raised by sectors of the community with various Councillors, and particularly Councillors Ferguson (Ferg), Gilmour and Aoake. This led to pre-consultative community service and public meetings to discuss if these products were an issue in our community and what potential options available to deal with psychoactive substances.
- 11 The comments received provided a clear indication for a desire to restrict the availability of these products, as far as the law allows. i.e. to control the location of sales undertaken only.
- 12 It is recognised that the response to the pre-consultation was relatively low and may not reflect the wider community view. However, any Council decision to proceed with the recommendations would follow the special consultative procedure, providing a formal opportunity for the wider community to respond.

## **Options**

- 13 Consideration has been given to the options available to control the sale of psychoactive substances in the Queenstown Lakes District:

### Option 1 - Education

- 14 Public education is a useful and necessary tool, which is used in various enforcement situations. However, Council has no enforcement or licensing responsibilities regarding psychoactive substances, and therefore this option would not assist in controlling the sale of these products, but is a positive additional tool when used with other regulatory and enforcement provisions.

### Option 2 - Legislation

- 15 Central Government has not yet established the testing regime to be undertaken to enable a product to be approved by the Authority (Ministry of Health) that will enable the sale of the product, which must provide a 'low risk of harm' to the consumer. However, if such a testing regime comes into effect there are a number of restrictions in the current legislation regarding the sale of these products.
- 16 The current Act and associated regulations provide a degree of control regarding the form that the sale of psychoactive substances can be undertaken i.e. products cannot be sold in injectable, liquid or power form (excluding tablet form) or where it resembles food.
- 17 It prohibits approved products from being sold from residential premises, vending machines or any location that by its nature is likely to be frequented by minors or from grocery stores, supermarkets, convenience stores, service stations, licensed premises, vehicles (including mobile street carts) or temporary buildings.
- 18 A licensed retailer will also not be allowed to sell any person more than two approved products (whether the same or different products) at any one time or sell to the same person consecutively.
- 19 A retailer must also ensure that the products for sale are displayed inside the premises, and in manner that the products are not visible from outside the premises.

### Option 3 - Local Approved Products Policy (LAPP)

- 20 The legislation also provides the ability for Council to further control the location from where approved products can be sold through a Local Approved Products Policy.
- 21 A Local Approved Products Policy can include details to further control the location of premises which are licensed to sell approved products with reference to broad areas e.g. Town Centre, the proximity to other premises from which approved products are sold and the proximity to premises or facilities of a particular kind e.g. - kindergarden, school, place of worship.
- 22 An LAPP cannot ban approved products outright or be so restrictive that is prohibitive. Should any product(s) meet the testing regime, without an LAPP there would be no local controls on where approved products could be sold, outside of the legislation which specifies where these products cannot be sold.

- 23 A LAPP (Attachment A) would assist in reducing wider community harms from approved products; and would provide a clear guide for the Psychoactive Substances Regulatory Authority, when considering applications for a licence to sell approved products within Queenstown Lakes District.

Following pre-consultation, comments indicated that the preferred broad area for approved products to be sold is within the Central Business District primarily for safety reasons i.e.

- a) be near a 24 hour Police Station and an Emergency Department;
- b) increased visibility, lighting, and passive surveillance (e.g. foot and vehicle traffic throughout the day and evening); and
- c) Increased Police and public presence.

- 24 The pre-consultation requested that the distance between premises able to sell approved products should be maximised, in addition to the distance between such premises and sensitive sites, without being so restrictive it is prohibitive.

- 25 The pre-consultation also identified a number of sensitive sites to be considered as a greater visibility of retail outlets may 'normalise' approved products among young children, and the desire to reduce the influences on users.

- 26 This reflects a proposed 200m distance from schools, childcare facilities etc, 30M from a licensed premises and 25m from all other sensitive sites identified, to identify where potential retail sales for approved products could be located in the Queenstown Central Business District. If these criteria are adopted, this would restrict sales of psychoactive substances to Queenstown only.

- 27 It is also proposed that although the areas identified could permit the retail sales, there would also require a minimum distance of 50 metres between each retail business. The attached policy provides the general area where the retail sale of psychoactive products is proposed to be permitted, however the policy does not identify the specific premises locations, as this is a dynamic matter as there may be a change in the location of a sensitive site, which will need to be considered at the time of an application, however the permitted area will remain the same.

- 28 There is a lack of evidence regarding the effect of distance between a premises that is licensed to sell an approved product to an identified sensitive site, with the aim to reduce harm to users or the community, this distance has been maximised without being prohibitive. This is particularly given that any future approved substances would (supposedly) have a 'low risk of harm'.

- 29 A LAPP could not control:

- on-line purchase of approved products over the internet; or
- consumption of approved products; or
- opening hours of premises licensed to sell approved products; or
- the maximum numbers of premises directly (e.g. through a cap or sinking lid).

- 30 There is no legal requirement to have an LAPP, however it is recommend the Council acts to reflect the wishes of the majority of people to proactively placing some local restrictions on where potentially mind-altering products (albeit hopefully lower risk) may be sold in the future.

#### Option 4 - Bylaw

- 31 The Local Government Act 2002 provides Council the power to develop bylaws for the following purposes:

- a. protecting the public from nuisance:
- b. protecting, promoting, and maintaining public health and safety:
- c. minimising the potential for offensive behaviour in public places

- 32 However, the Psychoactive Substances Act 2013 provides a specific ability to develop a policy to control the retail sales of approved products, in addition to the legislative restrictions. This does not control the manufacturing of substances or any potential offensive behaviour for customers ingesting approved substances in a public place.

- 33 A bylaw could control these aspects, and could be considered as part of Council's review of its Control of Activities and Obstructions in Public Places Bylaw 2010, which is programmed for 2015/2016.

#### Option 5 - District Plan

- 34 There is a possibility to use the District Plan to assist in the regulation of retail sales of psychoactive substances. However, the advice received from Matthew Paetz, District Plan Manager is that this option is problematic for a number of reasons.

- 35 The Resource Management Act 1991 ("RMA") is 'effects based' planning legislation, concerning the environmental effects of activities. It is difficult to see how the environmental effects generated by the retail sale of psychoactive substances would differ in any material way from the retailing of other goods and services.

- 36 Retail activities in the Town Centre zone are a permitted activity in the District Plan. To consider regulating a specific 'type' of retail activity, when there are no materially different 'environmental' effects would be difficult to establish. This may be difficult to justify in terms of a cost / benefit analysis required by Section 32 of the RMA.

- 37 It is arguable that this could be contemplated, as social and cultural effects are considered under the RMA. However, this is not considered the most an appropriate method of controlling the retail sale of psychoactive substances, as there are other more cost effective and robust methods to deal with matter.

- 38 Table one shows the advantages and disadvantages of each option regarding the sale of psychoactive substances in our community.

Table 1 - Option Advantages and Disadvantages

| <b>Advantages and Disadvantages</b>  | <b>Option 1</b>  | <b>Option 2</b>    | <b>Option 3</b> | <b>Option 4</b>          | <b>Option 5</b>      |
|--|------------------|--------------------|-----------------|--------------------------|----------------------|
|  | <b>Education</b> | <b>Legislation</b> | <b>LAPP</b>     | <b>Bylaw (new/amend)</b> | <b>District Plan</b> |
| Assists Council in protecting, promoting, and maintaining public health and safety.                        | Yes              | Yes                | Yes             | Yes                      | Partially            |
| Provides increased awareness of the issues and controls regarding psychoactive substances in the district. | Yes              | Partially          | Partially       | Partially                | Partially            |
| Enables voluntary compliance of the law and rules.   | No               | Yes                | Yes             | Yes                      | Yes                  |
| Restricts where the sale of psychoactive substances can take place.  | No               | Yes                | Yes             | Yes                      | Yes                  |
| Provides a restriction on the number of products that can be sold to a person at any one time.             | No               | Yes                | No              | No                       | No                   |
| Provides restrictions regarding the displaying and storage of products.                                    | No               | Yes                | No              | No                       | No                   |
| Enables the banning of psychoactive substances   | No               | No                 | No              | No                       | No                   |

### Financial Implications

39 There are minimal cost implications if Council resolve to consult on the proposed LAPP, which will be met through existing budgets and staff resources. The enforcement and implementation of an LAPP is undertaken by the Police and Ministry of Health.

## **Local Government Act 2002 Purpose Provisions**

40 Section 10 of the LGA2002 identifies a key purpose of local government is to enable democratic decision-making and action by and on behalf of the community and to undertake good-quality regulatory functions in the most cost-effective way.

## **Council Policies**

41 The following Council Policies were considered:

- **Significance and Engagement:** it is considered that the proposed policy will have little impact on the environment, culture and people in consideration of the importance to the Queenstown Lakes District, given the level of response from the pre-consultation. However, there is likely to be greater community interest through the special consultative procedure, particularly from the sectors of the community who are involved in the issues relating to psychoactive substances.
- **Enforcement Strategy:** the provision of a policy is consistent with the strategy in clearly establishing the rules to determine where retail sales can be undertaken. The proposed policy, would clearly determine the locations permitted, to enable self-compliance. The pre-consultation also supported the development of a policy, with clear parameters of the locations where sales can/cannot take place.

42 The proposed policy is not inconsistent with any current policies or strategies; and is consistent with the objectives set out in the Financial Strategy, Ten Year Plan and Annual Plan.

## **Consultation**

43 Significant pre-consultation has been undertaken with various community networks in Queenstown and Wanaka, in addition to two public meetings regarding psychoactive substances.

44 The pre-consultation covered the above options available and the community's views on each option. It was also stressed that there was no ability to ban these products.

45 It is envisaged that further consultation would be undertaken in accordance with the special consultative procedure, as required by the Psychoactive Substances Act 2013, should Council resolve to proceed with a LAPP.

## **Attachments**

- A Proposed Queenstown Lakes District Council Local Approved Products Policy
- B Statement of Proposal
- C Summary of Statement of Proposal