

Tuesday, 13 July 2021

Te Hui o Te Kaunihera ā-Rohe o Heretaunga

Hastings District Council

Council Meeting

Kaupapataka

Attachments Under Separate Cover

Te Rā Hui:
Meeting date: **Tuesday, 13 July 2021**

Te Wā:
Time: **1.00pm**

Te Wāhi:
Venue: **Council Chamber
Ground Floor
Civic Administration Building
Lyndon Road East
Hastings**

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TE KAUNIHERA Ā-ROHE O HERETAUNGA

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Hastings District Council

Consolidated Bylaw 2021

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CHAPTER 1 INTERPRETATION AND GENERAL PROVISIONS

1.1 Purpose and authority

1.1.1 The purpose of this part of the Bylaw is to provide consistency in the interpretation of terms used throughout the Bylaw and to provide for general matters common to many parts of the Bylaw.

1.1.2 Unless otherwise stated every part of the Bylaw is made under s 145 of LGA 2002.

1.2 Commencement and revocation

1.2.1 Unless otherwise stated every part of the Bylaw will commence on the day following the date upon which Council publicly notifies its decision to adopt the Bylaw.

1.2.2 The revocation of a former bylaw will take effect the day following the date upon which Council publicly notifies its decision to revoke the former bylaw.

1.3 Definitions

1.3.1 The definitions in this clause apply to all parts of the Bylaw. Any definition specific to only one part of the Bylaw may be set out at the beginning of that part of the Bylaw. In the event of any conflict between a definition in this clause and the definition in another part of the Bylaw, the latter will prevail.

1.3.2 In this Bylaw:

“advertising device” has the same meaning as in the district plan

“animal” has the same meaning as in the Animal Welfare Act 1999 and, for the avoidance of doubt, includes poultry and stock

“approval” means an approval in writing granted by Council under clause 1.5 and, where the context requires, includes a resource consent granted by Council under the RMA

“berm” means the grass verge of a road

“Bylaw” means the Hastings District Council Consolidated Bylaw, any part of that Bylaw and any other bylaw made by Council from time to time under LGA 02 or any other enactment

“carriageway” means the part of a road intended for movement of vehicles, does not include the berm or footpath but does include a vehicle crossing

“constable” means a sworn officer of the New Zealand Police

“Council” means Hastings District Council and when the context requires extends to include:

- a committee of Council with delegated responsibility for the administration of the Bylaw
- an enforcement officer
- a Council officer with delegated responsibility for the administration of the Bylaw
- a parking warden and

- any other person with responsibility for administration of the Bylaw engaged by Council under s 179 LGA 02

“Council facility” means any premises owned, occupied, managed or otherwise controlled by Council

“cycle” has the same meaning as in Rule 1.6 of the Land Transport (Road User) Rule 2004.

“cycle path” means the part of a road physically separated from the roadway that is intended for the use of cyclists, but may also be used by pedestrians, and includes a cycle track formed under s 332 of the Local Government Act 1974

“district” means the district of the Council as defined in Part 2 of Schedule 2 of LGA 02

“district plan” means the plan made under the RMA for the district and includes both the operative district plan and any proposed district plan

“enforcement officer” means any person appointed by Council under s 177 LGA 02

“footpath” means that part of a road laid out or set aside for exclusive use by pedestrians and includes any berm

“hazardous substance” has the same meaning as in the district plan

“LGA 02” means the Local Government Act 2002

“LGA 74” means the Local Government Act 1974

“licence” has the same meaning as “approval”

“mobile advertising device” means an advertising device attached to a vehicle or trailer and includes a motor vehicle if the signwriting on the vehicle advertises goods or services but does not include a motor vehicle if the signwriting on the vehicle is limited to a business name, address, phone number and logo

“nuisance” means anything which is offensive or likely to be injurious to health and includes any of the nuisances deemed to be created by the circumstances listed in s 29 of the Health Act 1956

“occupier” means the person in possession of premises;

“organised event” means an assembly of people at a specific time for a specific purpose;

“owner”, in relation to premises, means the person for the time being entitled to receive the rent of the premises, whether on an own account or as the agent or trustee for any other person, or who would be so entitled if the premises were let at a rent and includes any person for the time being registered under the Land Transfer Act 1952 as the proprietor of the premises

“parking warden” means a person appointed by the Council under s 128D of the Land Transport Act 1998

“person” includes a corporation sole, a body corporate and an unincorporated body

“poultry” means all types of domestic fowls and includes geese, ducks, pigeons, swans, turkeys and roosters

“premises” means any land and/or building comprised in a single certificate of title or any self-contained and separately occupied part of any premises

“public place” means a place that, at any material time, is open to or is lawfully being used by the public, whether free or on payment of a charge, notwithstanding that any owner or occupier of that place is entitled to exclude or eject any person from that place and, for the avoidance of doubt, includes:

- a beach
- a road
- an aircraft, hovercraft, ship, ferry or vehicle carrying passengers for reward
- a cemetery or crematorium
- the foreshore
- a park
- a reserve under the Reserves Act and
- premises used by Council for the purposes of service delivery, including (but not limited to) an administrative office, community centre, swimming pool, library or art gallery

“public notice” has the same meaning as in s 5 of LGA 02 and “publicly notified” has a corresponding meaning

“RMA” means the Resource Management Act 1991

“road” has the same meaning as in s 315 of the Local Government Act 1974 and includes all land, including any berm, footpath, cycle path or carriageway, within the legal boundaries of the road

“rural area” means those parts of the district defined as “Rural Areas/Zones” in the district plan

“shared zone” means part of a road intended to be used by pedestrians and vehicles

“sports field” means any part of a public place which is laid or set aside for playing organised games or sports and includes an area used for practising a sport or game but, for the avoidance of any doubt, does not include an area beside a sports field used by spectators

“stock” means animal which may be farmed for the production of meat, milk, fibre or hides, extends to include a horse, donkey or mule and, for the avoidance of doubt, includes any animal kept as a pet

“urban area” means those parts of the district defined as “Urban Areas/Zones” in the district plan

“vehicle” has the same meaning as in the Land Transport Act 1998 and, for the avoidance of doubt, includes a bicycle, hovercraft, skateboard, in-line skates and roller skates

“working day” means a day of the week other than:

- a Saturday, Sunday or public holiday as observed throughout New Zealand
- Hawke’s Bay Anniversary Day and
- Any day in the period commencing with 20 December in a year and ending with 10 January in the following year

1.4 Interpretation

1.4.1 The Interpretation Act 1999 applies to this Bylaw.

1.4.2 The interpretation rules set out below apply to all parts of the Bylaw.

1.4.3 In this Bylaw:

- (a) Words referring to the masculine, feminine or neuter gender refer also to the other genders;
- (b) Singular words include the plural and vice versa;
- (c) The phrase “part of the Bylaw” refers to a Chapter of the Bylaw or to part of a Chapter, as the context requires;
- (d) In the event of inconsistency or interpretation conflict between this part of the Bylaw and any other part of the Bylaw, the latter prevails;
- (e) In the event of any inconsistency or conflict between the provisions of any part of the Bylaw and any rule in the district plan, the latter shall prevail;
- (f) In the event of any inconsistency or conflict between the conditions of an approval and the conditions of a resource consent granted under RMA relating to the same activity, the latter prevails.

1.5 Approvals and dispensations

1.5.1 A person proposing to do anything or to cause any condition to exist for which a licence, permit, approval or dispensation (however described) is required under the Bylaw must first obtain an approval.

1.5.2 A person seeking an approval must make application on the prescribed form (if any), supply any supporting information that may be required and pay the application fee.

1.5.3 An approval may be granted for a single event, on a temporary basis, for a fixed term or until further notice and upon such terms and conditions as Council thinks fit.

1.5.4 An application for an approval, or the payment of the application fee, does not confer any right, authority or immunity on the person making that application or payment. Council shall be under no obligation to grant an approval.

- 1.5.5 If Council believes that a condition of an approval has been breached or is being breached Council may, without the need to give any preliminary or warning notice:
- (a) prosecute the person responsible for the breach for an offence under the Bylaw; and
 - (b) suspend the approval for a specified period; or
 - (c) cancel the approval.
- 1.5.6 A person whose application for an approval was declined, or who is unhappy with a decision made under clause 1.5.3 or clauses 1.5.5(b) or (c) may apply to Council for a review of that decision.
- 1.6 Service of notices**
- 1.6.1 Any notice or document required to be given under the Bylaw may be delivered to that person either personally or by sending it to the person's last known address, place or abode or business, and in the case of a company to its registered office, by messenger or by ordinary post.
- 1.6.2 If the person to whom the notice or document is to be given is:
- (a) deceased; or
 - (b) absent from New Zealand,
- the notice or document may be sent to that person's personal representative, executor, attorney or other authorised agent.
- 1.6.3 If the person to whom the notice or document is to be given is not known, or is absent from New Zealand and has no known agent in New Zealand, and the notice or document relates to any premises, the notice or document may be served occupier of those premises or, if there is no occupier, may be affixed to some conspicuous part of the premises.
- 1.6.4 Where a notice or document is sent by post it shall be deemed to have been served at the time when the letter would be delivered in the ordinary course of post.
- 1.7 Offences**
- 1.7.1 Every person who acts contrary to any prohibition contained in the Bylaw, or to any condition of an approval, or any requirement or condition made by publicly notified resolution in accordance with the Bylaw, commits an offence against the Bylaw.

1.8 Fees and Charges

- 1.8.1 Council may by publicly notified resolution set or vary any fee or charge in respect of any matter provided for in this Bylaw. Where a fee or charge relates to the use of or entry to a public place, payment of the fee or charge shall be a condition of use or entry.

The Common Seal of the Hastings District Council was affixed on
in the presence of:

Mayor

Chief Executive

CHAPTER 2 PUBLIC PLACES

2.1 ACCESS WAYS

- 2.1.1 A person must not attempt to use or enter an access way (as defined in s 315 of LGA 74) which has been shut by locked gates in accordance with a publicly notified Council resolution.

2.2 ACTIVITIES

- 2.2.1 A person must not undertake any activity in a public place in a manner which may result in damage to property, injury to another person in that public place or unreasonably interfere with that other person's use and enjoyment of that public place. For the avoidance of doubt, this obligation applies notwithstanding that the activity might otherwise be able to be lawfully undertaken in a public place under this bylaw.
- 2.2.2 Notwithstanding clause 2.2.1, the safe operation of a RPA (as defined in clause 2.11.1) over an organised event in a public place with an approval and the consent of the organiser of the event will be deemed not to be an unreasonable interference of the use and enjoyment of that public place by another person
- 2.2.3 A person must not light a fire in a public place unless:
- (a) the fire is contained in a facility provided by Council; or
 - (b) the fire is contained in a portable gas barbeque in a Council controlled public place; or
 - (c) Council has given prior written approval

Any Fire and Emergency New Zealand Act 2017 provision, regulation or notice that restricts fires in a public place applies instead of subclause (1), for example a restricted or prohibited fire season.

2.3 ADVERTISING DEVICES

- 2.3.1 The provisions in this part of the Bylaw are in addition to any rules in the district plan dealing with advertising devices. In the event of conflict or ambiguity between a provision in this Bylaw and a rule in the district plan, the district plan rule will prevail.
- 2.3.2 Council may by publicly notified resolution on its own motion grant dispensation from the requirements of clause 2.9.1(b) for specified types of advertising device generally or in specified locations.
- 2.3.3 The owner of an advertising device erected or standing on a public place, whether under an approval or a dispensation granted under clause 2.3.2 must at all times ensure that:
- (a) the placement of the advertising device does not interfere with the free and safe passage of people and vehicles using the public place;

- (b) the advertising device is constructed of appropriate materials and is designed and maintained so that it is unlikely to cause injury to persons damage to vehicles using the public place;
- (c) the advertising content is suitable for display in a public place;
- (d) the advertising device is maintained in good order and condition and does not become a safety hazard to people or vehicles using the public place, an eyesore or otherwise detract from the amenity of the locality;
- (e) the advertising device is removed when the premises to which it relates are closed for business or is otherwise redundant.

2.4 BEACHES

2.4.1 A person must not:

- (a) drive a vehicle on any part of a beach from which vehicles have been banned by publicly notified resolution of Council;
- (b) except in the case of an emergency attempt to land an aircraft, microlight, motorised glider or glider on a beach;
- (c) swim from any part of a beach from which swimming has been banned by publicly notified resolution;
- (d) appear nude or insufficiently dressed on a beach, except for a beach which Council has designated as a "clothing optional" beach by publicly notified resolution;
- (e) obstruct, hinder or interfere with any person carrying out life-saving operations, or engaged in life-saving activities, practices or competitions.

2.4.2 Clause 2.4.1(a) is made under s 22AB(1)(f) of the Land Transport Act 1998.

2.5 CEMETERIES AND CREMATORIUM

2.5.1 This part of the Bylaw is made under s 16 of the Burial and Cremation Act 1964.

2.5.2 in this clause:

"cemetery" means any cemetery owned or operated by Council;

"crematorium" means any crematorium owned or operated by Council and extends to include the grounds surrounding the crematorium;

"plot" means a plot in a cemetery or crematorium and extends to include any niche provided in any structure for the interment of ashes.

2.5.3 A person must not:

- (a) undertake the burial or disinterment of any body, or the cremation of any body or the interment or disinterment of any ashes in a cemetery or crematorium;

- (b) install any fence, enclosure, tombstone, vault, headstone, other monument, inscription or memorial of any kind on a plot;
- (c) undertake any other work within a cemetery or the grounds of a crematorium;

without an approval.

- 2.5.4 An approval is not required under clauses 2.5.3(b) or (c) if the items to be installed or the work to be done will comply with specifications set by Council from time to time, by publicly notified resolution.
- 2.5.5 The owner, or the personal representative of the owner, of a burial plot must keep all fences, enclosures, tombstones, vaults, headstones and other monuments or memorials on any plot in good tidy order and repair.
- 2.5.6 Any items installed on a plot in breach of clause 2.5.3 and 2.5.4 may be removed by Council.
- 2.5.7 Subject to clause 2.5.8 a person must not bring any animal onto a cemetery or a crematorium without an approval.
- 2.5.8 An approval is not required under clause 2.5.7 to bring onto a cemetery or crematorium:
 - (a) a special purpose dog (as defined in clause 3.2.1); or
 - (b) a dog under leash control

2.6 COUNCIL FACILITIES

- 2.6.1 Council may by publicly notified resolution set conditions of entry and/or use of any Council facility.
- 2.6.2 A person who is admitted to a Council facility which is a swimming pool as the person having responsibility for the supervision of a child aged 8 years or younger accompanying that person, must be over the age of 16 years and must actively supervise that child at all times while in that facility.
- 2.6.3 Council may, or a constable at the request of Council may, exclude or remove any person from a Council facility:
 - (a) who has acted in a manner that is contrary to conditions of entry and/or use of that facility set under clause 2.6.1;
 - (b) who is not using the facility for its intended purpose;
 - (c) who has contravened any other provision of this Bylaw;
 - (d) for any reason relating to the efficient, reasonable and fair management of the facility.

2.7 SKATEBOARDS

- 2.7.1 A person must not use a skateboard on a footpath without exercising due care and with regard to the convenience and safety of pedestrians.
- 2.7.2 Notwithstanding clause 2.7.1, a person must not use a skateboard in a public place within the skateboard ban areas specified in Schedules A, B and C to this part of the Bylaw, or in any other part of the district designated by the Council by publicly notified resolution as a skateboard free area.

2.8 DAMAGE

- 2.8.1 A person must not:
- (a) dig up, disturb, damage or remove the surface of any public place;
 - (b) affix any signs or posters to any structure in or about a public place; without an approval.

2.9 ENCROACHMENTS

- 2.9.1 A person must not:
- (a) erect any building, fence, tent, temporary shelter, kiosk or stall;
 - (b) place or leave any hoarding, advertising device, furniture, material or thing; or
 - (c) hang any gate or door so that it opens; on or over a public place except as expressly provided in this Bylaw or in an approval.
- 2.9.2 Without limiting the generality of clause 2.9.1, Council may give approval to the following activities:
- (a) the erection of retail displays, kiosks or stalls on a public place;
 - (b) the provision of seating, tables or other furniture for use in association with trading activities being conducted from contiguous premises;
 - (c) the erection or construction of an advertising device, awning, verandah, balcony, window box or other device attached to a building on contiguous premises which does not obstruct free passage along or over the public place.

2.10 FENCES

- 2.10.1 A person must not incorporate barbed wire in a fence on the boundary between any premises within the urban area and a public place unless the barbed wire is at least 2 metres above ground level (when measured on the outside of the fence at a distance of 1 metre from the base of the fence).

2.11 FLYING ACTIVITIES

2.11.1 In this clause:

“aircraft” has the same meaning as in the Civil Aviation Rule and includes an aeroplane, balloon, glider, hang glider, helicopter or microlight

“RPA” means any remotely piloted aircraft and includes: an unmanned or free flight aircraft and a model aircraft under line control

2.11.2 A person must not take off or land, or attempt to take off or land, an aircraft in a public place except in the case of an emergency or with an approval.

2.11.3 A person must not operate an RPA over a public place in breach of clause 2.2

2.11.4 A person must not operate a RPA from or over a road, cemetery or crematorium without an approval.

2.11.5 Nothing in clause 2.11.4 applies to a person operating a RPA for the purposes of a civil defence, accident or other emergency service response, at the direction of the person in charge of that response.

2.12 HAZARDS

2.12.1 A person must not place or leave any hazardous substance, or any other material or substance which may cause injury to any person, in or about a public place.

2.12.2 The owner or occupier of premises contiguous to a public place must:

- (a) ensure that any advertising device, wall, fence, balcony, window box, awning or verandah on those premises does not fall into such a condition or state of disrepair that it constitutes a health and safety risk to persons using the public place;
- (b) ensure that no tree or shrub is allowed to grow from the premises into the public place, or overhang the public place, so as to obstruct passage over or along the public place or any lighting in the public place;
- (c) ensure that any railing, gate, fence or cover protecting the entrance to a cellar under the premises is maintained in safe condition and that appropriate steps are taken when the entrance is open for use to prevent any accident or injury to vehicles or persons using the public place;
- (d) not fail to remedy any non-compliance with clauses 2.12.2 (a), (b) or (c) within a reasonable time of service of a notice by Council specifying the matters of non-compliance and requiring that remedial work be undertaken.

2.13 EVENTS DEMONSTRATIONS COMPETITIONS PARADES PROCESSIONS OR OTHER PUBLIC MEETINGS

2.13.1 A person must not hold a public meeting or conduct a procession in a public place without an approval.

- 2.13.2 An approval under clause 2.13.1 will not be required for a public meeting held in any place within the district which is identified in a publicly notified resolution as suitable for the conduct of public meetings and forums, subject to compliance with any terms and conditions set out in the resolution.
- 2.13.3 A person must not expose to view in or from a public place any object or material which is lewd, indecent, or intended to give or likely to give offence.
- 2.13.4 A person must not display any placard, handbill or poster which is visible from or within a public place the contents of which are lewd, indecent or intended to give, or likely to give offence.

2.14 REFUSE DISPOSAL

- 2.14.1 A person must not dispose of any household refuse, hazardous substance, commercial waste or offensive matter in a Council refuse receptacle provided in a public place.

2.15 SPORTS AND GAMES IN A PUBLIC PLACE

- 2.15.1 A person must not use a sports field which has been closed for use by Council.
- 2.15.2 A person must not enter onto or remain on a sports field while any game, sport or practice is in progress.
- 2.15.3 A person must not use any part of a public place for planned team games and sporting activities, marching drill, musical or other group activity without an approval.

2.16 STREET NUMBERING AND PRIVATE ROAD SIGNS

- 2.16.1 In this clause:
- “private road” means a private road as defined in s 315 LGA 74 and extends to include an access way, access lot or right of way serving more than 5 premises.
- 2.16.2 An owner or occupier of premises must ensure that:
- (a) the premises are marked with the street number allocated by Council;
 - (b) the marking complies with the minimum dimensions and specifications set by Council by publicly notified resolution;
 - (c) the marking is suitably located upon or about the premises so that it is clearly visible from the road at all times.
- 2.16.3 Clause 2.16.2 is made under s 22AB(1)(x) of the Land Transport Act 1998.
- 2.16.4 An owner of premises served by a private road must ensure that all times the private road is adequately identified by signage which meets the requirements laid down by Council or such signage and that the sign is maintained in a good and legible condition at all times.

2.17 STOCK

2.17.1 A person in charge of stock must:

- (a) take all reasonable steps to ensure that they do not wander onto a public place;
- (b) ensure that they are under proper control and supervision at all times when driven or passing across or along a road;
- (c) not drive stock along or across a carriageway when a reasonable alternative is available;
- (d) not lead, ride or swim any stock on a beach in circumstances where a nuisance, danger or inconvenience is or may be created for other users of the beach;
- (e) not lead, drive or permit stock to go along or over any footpath, cycle path, or grass plot or flower bed within a public place;
- (f) not allow stock to graze on a public place without an approval from Council, or as permitted under clause 2.17.2;
- (g) immediately dispose of any droppings left in a public place;
- (h) in any case where stock are driven or pass across or along a road on a recurring basis, ensure that there is no buildup of mud or faecal matter on the carriageway over time;
- (i) immediately report any damage caused to road markers, road signs, culverts, water tables or other roading infrastructure and reimburse the reasonable cost of repair or replacement to Council.

2.17.2 An approval to graze stock on a road in the rural area is not required under clause 2.17.1(f) if:

- (a) grazing is undertaken on the berm contiguous to premises:
 - (i) owned or occupied by the person in charge of the stock; or
 - (ii) owned by some other person who has given consent to that grazing;
- (b) measures are taken (by means of tethering or the erection of temporary fences) to ensure that stock cannot graze within one metre of the carriageway;
- (c) all other reasonable precautions are taken to ensure the safety and convenience of neighbours, people driving stock on the road and any other persons or traffic using the road;
- (d) any other conditions, including the payment of grazing fees, laid down by Council by publicly notified resolution are observed.

- 2.17.3 For the purposes of clause 2.17.1(b) stock is deemed to be under proper control and supervision if the guidelines in the New Zealand Transport Agency publication “Stock under control (crossing and driving)”, or some other guideline approved by Council by publicly notified resolution, have been observed.

2.18 TRADING, BUSKING AND COLLECTIONS

- 2.18.1 The provisions in this part of the Bylaw are in addition to any rules in the district plan dealing with trading in public places. In the event of conflict or ambiguity between a provision in this Bylaw and a rule in the district plan, the district plan rule will prevail.
- 2.18.2 In this clause “mobile shop” means any vehicle from which goods or services can be purchased, hired or ordered.
- 2.18.3 A person must not:
- (a) carry on any business trade or profession;
 - (b) sell, or offer for sale or hire, any goods or services;
 - (c) sing or play any musical instrument;
 - (d) use or operate any broadcasting system or loud speaker;
 - (e) accept or solicit donations or gifts;
 - (f) undertake a street appeal or charity fundraiser;
- in a public place without an approval from Council.
- 2.18.4 A person holding an approval under clause 2.18.3(b) to operate a mobile shop must not conduct business from that vehicle:
- (a) within those parts of Hastings, Havelock North and Flaxmere which are zoned “Central Commercial” (including the Central Character Precinct) or Large Format Retail, Havelock North Village Centre Retail or Havelock North Village Centre Business, Flaxmere Commercial or Flaxmere Commercial Service in the district plan without an approval;
 - (b) from the berm, or premises adjoining the berm, of a road which has a speed limit of 70 km/h or more; and
 - (c) on any of the roads listed in Schedule D to this Chapter

2.19 VEHICLE CROSSINGS AND BERMS

- 2.19.1 The owner or occupier of premises must:
- (a) obtain an approval from Council before commencing construction, widening, alteration or removal of a permanent or temporary vehicle crossing serving those premises;

- (b) not use a vehicle crossing, or operate a vehicle on a footpath, cycle path or berm for construction purposes without an approval;
- (c) maintain the vehicle crossing in good repair at all times, in the manner and to the standard prescribed by Council from time to time by publicly notified resolution;
- (d) maintain the berm in front of the premises in a neat and tidy condition reasonably free from wind-blown litter and other rubbish and, but only if the berm is sown in grass, regularly mow the berm and remove the clippings;
- (e) repair any damage to the berm caused by the owner, the occupier or their invitees.

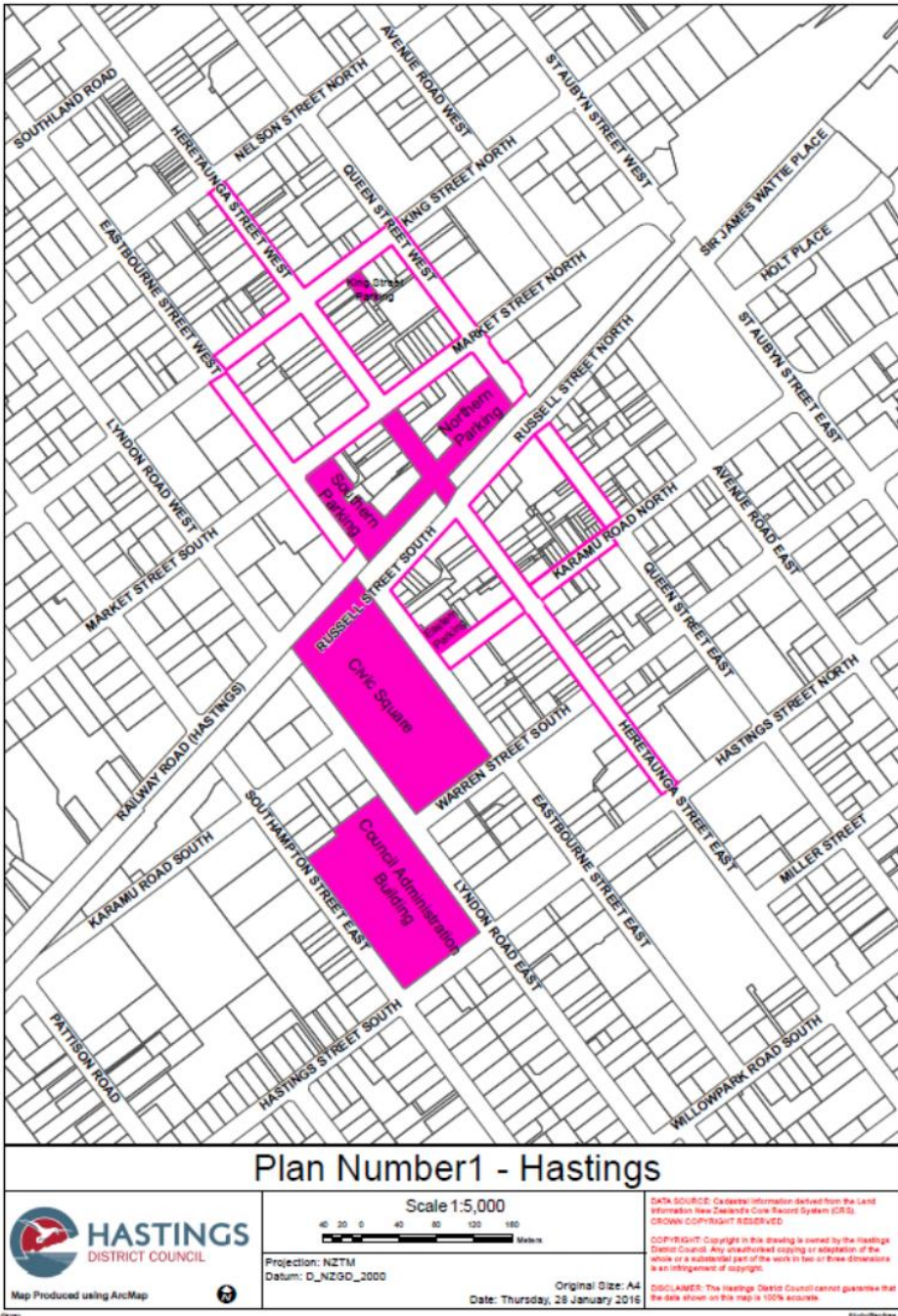
SCHEDULE A TO CHAPTER 2

(Clause 2.7.2)

Hastings skateboard ban area

Any part of the roads (including footpaths) and other public places listed below, as shown on the attached plan (number 1)

- Heretaunga Street (both sides) between Hastings and Nelson Streets
- The pedestrian mall in the Commercial area between Russell and Market Streets
- Queen Street between Karamu Road and King Street
- Eastbourne Street between Karamu Road and King Street
- King Street between Eastbourne Street and Queen Street
- Market Street between Eastbourne Street and Queen Street
- Railway Road between Eastbourne Street and Queen Street
- Russell Street between Eastbourne Street and Queen Street
- Karamu Road between Eastbourne Street and Queen Street
- Northern, Southern, Eastern and King Street parking areas
- Council Administration Building Lyndon Road East and associated grounds
- Civic Square
- "Hastings City Square" which includes the water feature and stage area.



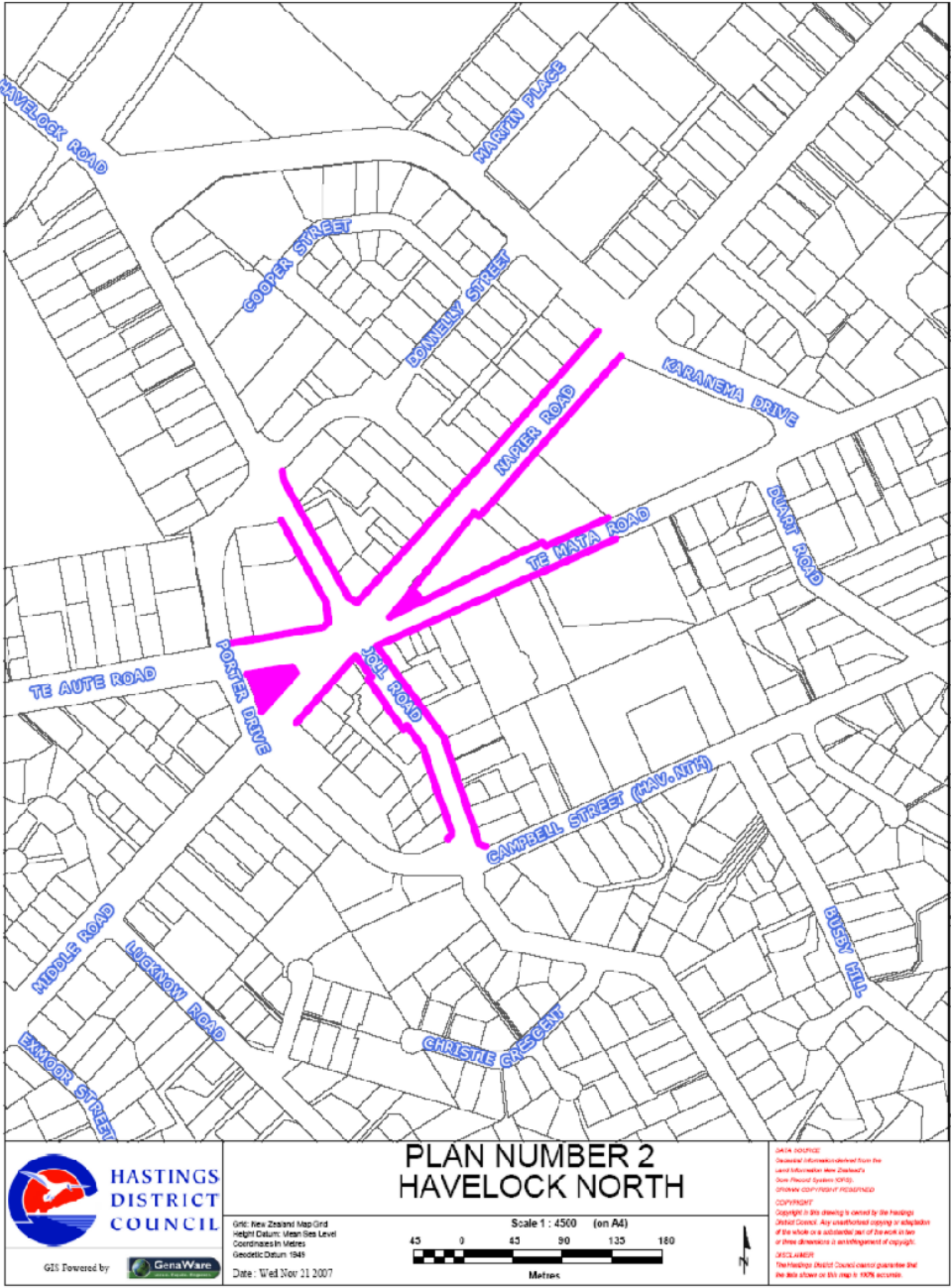
SCHEDULE B TO CHAPTER 2

(Clause 2.7.2)

Havelock North skateboard ban area

Any part of the roads (including footpaths) and other public places listed below as shown on the attached plan (number 2):

- Joll Road from the Central Roundabout to the intersection with Campbell Street
- Middle Road from the Central Roundabout to the intersection with Porter Drive
- Te Aute Road from the Central Roundabout to the intersection with Porter Drive
- Havelock Road from the Central Roundabout to the intersection with Porter Drive
- Napier Road from the Central Roundabout to the intersection with Karanema Drive
- Te Mata Road from the Central Roundabout to the boundary between the Havelock North Function Centre and 38 Te Mata Road
- Cenotaph and surrounding paved area
- The Village Green, including the paved areas surrounding the information site/ toilet block, water feature and surrounding paved area.



SCHEDULE C TO CHAPTER 2

(Clause 2.7.2)

Flaxmere skateboard ban area

All of the land described as Lot 2 DP 14853 and known as the Flaxmere Shopping Centre.

SCHEDULE D TO CHAPTER 2

(Clause 2.18.4)

Roads on which the conduct of business from a mobile shop is not permitted

Entire length

Pakowhai Road

Maraekakaho Road

Heretaunga Street

Omahu Road

Railway Road

Karamu Road North

Southampton Street

St Aubyn Street

Hastings – Havelock Road

Karanema Drive

Porter Drive

Columba Way

Te Mata Road

Without an approval.

Part only

Napier Road, Middle Road and Te Aute Road, from the end of the 80km/h or 100 km/h speed restriction to the Havelock North Village Centre zone boundary.

The Common Seal of the Hastings District Council was affixed on
in the presence of:

Mayor

Chief Executive

CHAPTER 3 DOG CONTROL

3.1 Authority

3.1.1 This part of the Bylaw is made under s 20 of the Dog Control Act 1996

3.2 Definitions

3.2.1 In this part of the Bylaw

“at large” means that the dog is not under leash control when required under this bylaw”

“DCA” means the Dog Control Act 1996

“dog exercise area” means an area within the district where dogs may be exercised off leash and includes the areas listed in Schedule A to this chapter and any other area of the district designated by Council, by publicly notified resolution as a dog exercise area.

“dog prohibited area” means an area within the district listed in Schedule B to this chapter, and any other area of the district designated by Council by publicly notified resolution as an area prohibited to dogs.

“leash controlled area” means:

- any public place or private way within the urban area of the district; or
- any park, reserve, beach, walkway or cycleway within the rural area of the district; or
- the beach front of the Ocean Beach settlement north to the surf club during daylight saving hours between 7.30am and 7.30pm and during the remainder of the year between 7am and 6pm; or
- the beach front at Waipatiki Beach Settlement, on the seaward side of the reserve, during daylight saving hours between 7.30am and 7.30pm and during the remainder of the year between 10.00am and 4.00pm; and

not otherwise being an area or place referred to in Schedules A or B to this Chapter)

“neutered” means spayed or castrated

“owner” has the same meaning as in s 2 of DCA

“private way” has the same meaning as in s 315(1) of the Local Government Act 1974

“road” has the meaning given to it in Chapter 1 but extends to include a state highway or a motorway

“special purpose dog” means all working dogs other than dogs kept principally for the purposes of herding or driving stock

“working dog” has the same meaning as in s 2 of DCA

3.3 Dog prohibited areas

- 3.3.1 An owner must not allow a dog to enter, or take a dog into, a dog prohibited area.
- 3.3.2 Nothing in clause 3.3.1 applies to the owner of a special purpose dog or disability assist dogs.

3.4 Leash control

- 3.4.1 An owner must keep a dog under leash control at all times when:
 - (a) within a leash controlled area
 - (b) the dog is in some other place and is causing or is likely to cause danger, distress or nuisance to a person or another animal
- 3.4.2 Nothing in clause 3.4.1 (a) applies to the owner of a special purpose dog or to the owner of a dog which is kept solely or principally for the purposes of herding or driving stock when the dog is engaged in that activity.
- 3.4.3 An owner must not leave a dog unattended within, or on the open tray of, a vehicle without ensuring that the dog is restrained by a leash, or some other effective means, from leaving the vehicle and lunging or snapping at people passing by the vehicle.

3.5 Limiting the number of dogs kept

- 3.5.1 A person must not keep, or allow to be kept, more than two dogs on any premises within the urban area, without an approval.
- 3.5.2 Nothing in clause 3.5.1 applies to a dog under the age of 3 months.

3.6 Dog fouling

- 3.6.1 An owner of a dog which fouls in a public place, private way or on premises which are not occupied by the owner must immediately remove the faecal matter and carry it away for sanitary disposal.
- 3.6.2 An owner who takes a dog outside the owner's premises must at all times carry a suitable receptacle to enable compliance with clause 3.6.1.
- 3.6.3 For the avoidance of doubt, placing a dog's faeces in a securely tied plastic or leak proof bag in a disposal bin or a litter bin provided in a public place by the Council will satisfy the owner's obligation under clause 3.6.1.

3.7 Bitch in season

- 3.7.1 An owner of every bitch in season must keep it confined, but adequately exercised, while in season.

3.8 Impounding and neutering

- 3.8.1 A dog found at large in breach of this bylaw may be impounded by Council.
- 3.8.2 Council may give written notice to an owner of a dog which has been impounded by Council under clause 3.8.1 on more than 3 occasions within a continuous period of 24 months, requiring that dog to be neutered at the owner's expense (whether or not the owner of the dog has been convicted of an offence against sections 52A or 53 of the Dog Control Act 1996).

- 3.8.3 An owner given notice under clause 3.8.2 must produce to Council, within one month after service of the notice a certificate issued by a registered veterinarian that the dog has been neutered.
- 3.8.4 An owner who fails to comply with clauses 3.8.2 and 3.8.3 commits an offence under this bylaw.
- 3.9 Care and accommodation of dogs**
- 3.9.1 An owner of a dog which is suffering from a communicable disease or infection must ensure that the dog is properly treated for the disease or complaint and, except for taking the dog for treatment, must ensure that the dog is confined to the owner's premises while it is so affected.
- 3.9.2 An owner of a dog must ensure that it is accommodated in a manner, and in a location, on the premises whereby the presence of the dog does not give rise to noises (other than barking) or smells which are a nuisance or annoyance to the occupier of adjoining premises.

Schedule A to Chapter 3

Dog Exercise areas

Havelock North

- Tainui, Tanner and Hikanui Reserves
- Tauroa Road Reserve
- Te Mata and Arataki Road Reserve
- Kingsgate Reserve from Te Mata Road to Reeve Drive, Ritchie Place, Fulford Place and Durham Drive
- The banks of the Karamu Stream, from a point adjacent to the southernmost edge of Anderson Park, Havelock North to the vehicle over bridge on Havelock Road
- The southern boundary walkway of Keirunga Gardens Havelock North, along the extent of the western boundary walkway accessed from Tanner Street, and including the open grass areas at the southern and northern ends of the Park.
- Te Mata Peak Park
- James Cook Street Reserve
- Palmbrook Reserve

Hastings

- Karamu Road South, from Pattison Road south to Murdoch Road
- Ebbett Park from 5.00pm to 8.00am
- Duke Street Reserve.
- Pakowhai Country Park.

Flaxmere

- Portsmouth Road, from Wilson Road, west to the end of Portsmouth Road
- The Flaxmere Green Belt to the west of Tarbet Street, Arklow Place and Frobisher Street between Kirkwood Road and Flaxmere Avenue.

Haumoana and Te Awanga

The Haumoana-Te Awanga coastal beach front area from the mouth of the Tukituki River south to the boundary of the Clifton No. 2 camp, Te Awanga, excluding the beach front between numbers 3 and 41 Clifton Road Haumoana.

Waimarama and Ocean Beach

- The beach front of the Ocean Beach settlement north to the surf club during daylight saving hours between 7.30pm and 7.30am the following day, and 6pm and 7am the following day during the remainder of the year
- Ocean Beach north of the surf life-saving club to 100m south of the predator proof fence
- Waimarama Beach north to the Puhokio Stream river mouth during daylight saving hours between 7.30pm and 7.30am the following day, and during the remainder of the year 6pm and 7am the following day
- Waimarama Beach north of the Puhokio Stream river mouth to Pututaranui Point at any time

Whirinaki and Eskdale

- The North Shore and Whirinaki to Tangoio Beach road reserve
- Eskdale Park along the southern or right-hand side of, and to the end of the park driveway.

Waipatiki Beach

The beach front of Waipatiki Beach Settlement, coast-wards of the reserve, during daylight savings hours between 7:30pm and 7:30am the following day, and during the remainder of the year. 4:00pm to 10:00am the following day
Wapatiki beach north and south of the area referred to above

Schedule B to Chapter 3

Prohibited Areas

1. The Hastings District Council Civic Building.
2. Public libraries.
3. Swimming pools and paddling pools.
4. Children's playing areas.
5. Sports fields.
6. Rangaiika Beach at Ocean Beach/Cape Kidnappers.

The Common Seal of the Hastings District Council was affixed on
in the presence of:

Mayor

Chief Executive

CHAPTER 4 ALCOHOL BANS

4.1 AUTHORITY

4.1.1 This part of the Bylaw is made under s 147 of LGA 02.

4.2 DEFINITIONS

4.2.1 In this part of the Bylaw: -

“alcohol” has the same meaning as in s 5(1) of the Sale and Supply of Alcohol Act 2012

“alcohol ban” means a ban:

- under clause 4.3.1; or
- made by resolution under s 151(2) of LGA 02, in accordance with clause 4.3.2.

“alcohol ban area” means an area from which alcohol is banned in accordance with 4.3

“licensed premises” has the same meaning as in s 5(1) of the Sale and Supply of Alcohol Act 2012

“public place” has the same meaning as in s 147(1) of LGA 02

“restricted place” means a public place where an alcohol ban is in force

4.3 ALCOHOL BANS

4.3.1 A person must not consume, bring into, or possess alcohol in a public place within the areas specified in Schedules A, B, C, D and E to this part of the Bylaw at the times and during the periods specified in the Schedules.

4.3.2 Council may at any time and from time to time by publicly notified resolution declare that alcohol may not be consumed, brought into or possessed in any other public place or area within the district, at the times and during the periods specified in the resolution.

4.3.3 A person who consumes, brings into, or possesses alcohol in an area for which alcohol is banned at any time when an alcohol ban is in force commits an offence against this Bylaw.

4.4 LICENCES AND DISPENSATIONS

4.4.1 For the avoidance of doubt, nothing in this part of the Bylaw restricts the ability of Council to grant:

- (a) a licence under the Sale and Supply of Alcohol Act 2012 to premises within an alcohol ban area; or

- (b) a dispensation under clause 1.5 of the Bylaw from the operation of an alcohol ban to a specified place for a special event.

SCHEDULE A TO CHAPTER 4

Havelock North alcohol ban area

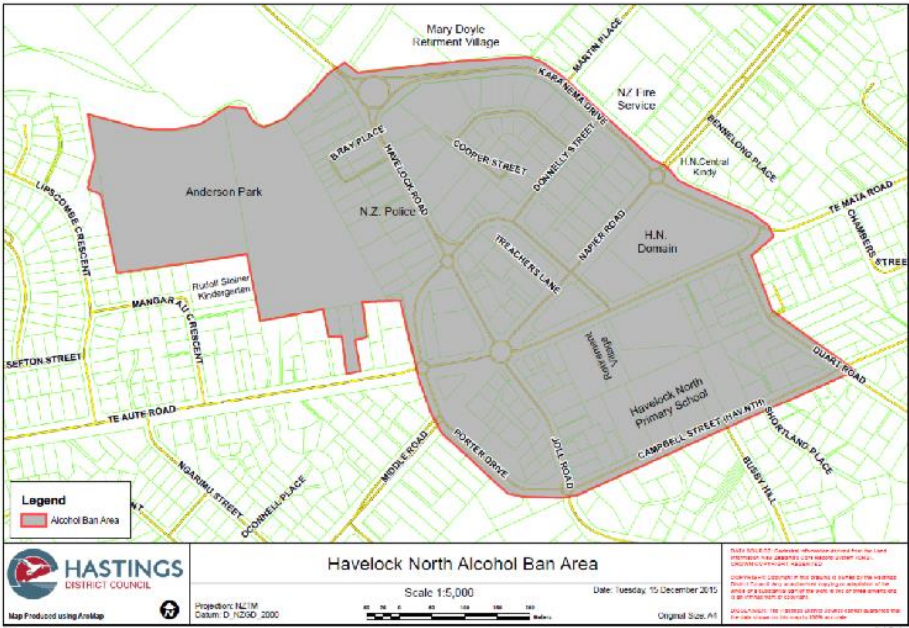
All public places in Havelock North, as shown on the attached plan, within the area bounded by:

- The northern side of Karanema Drive from the Havelock North Bridge over the Karamu Stream to and including the intersections of Martin Place, Havelock Road, Napier Road and Te Mata Road,
- The southern side of Te Mata Road to and including the intersections with Karanema Drive and Duart Road,
- The eastern side of Duart Road to and including the intersections of Te Mata Road and Campbell Street,
- The southern side of Campbell Street to and including the intersections with Duart Road, Shortland Place, Busby Hill, Joll Road and Porter Drive,
- The south western and western side of Porter Drive to and including the intersections with Campbell Street, Middle Road, and Te Aute Road to the pedestrian access way into Anderson Park off Porter Drive,
- The southern side of the pedestrian access way between Porter Drive and Anderson Park,
- The southern and western boundaries of Anderson Park, including the car park and environs of the Havelock North Rugby Club accessed from Te Aute Road,
- The Karamu Stream boundary of Anderson Park, and
- The intersection of Havelock Road and the Karamu Stream Bridge

- Te Mata Park, including all parking and associated roadways and walkways as indicated in below map

This ban prohibits the consumption, bringing into, or possession of alcohol within the ban area on every day and at any time.

Plan of the Havelock North Alcohol Ban Area





SCHEDULE B – CHAPTER 4

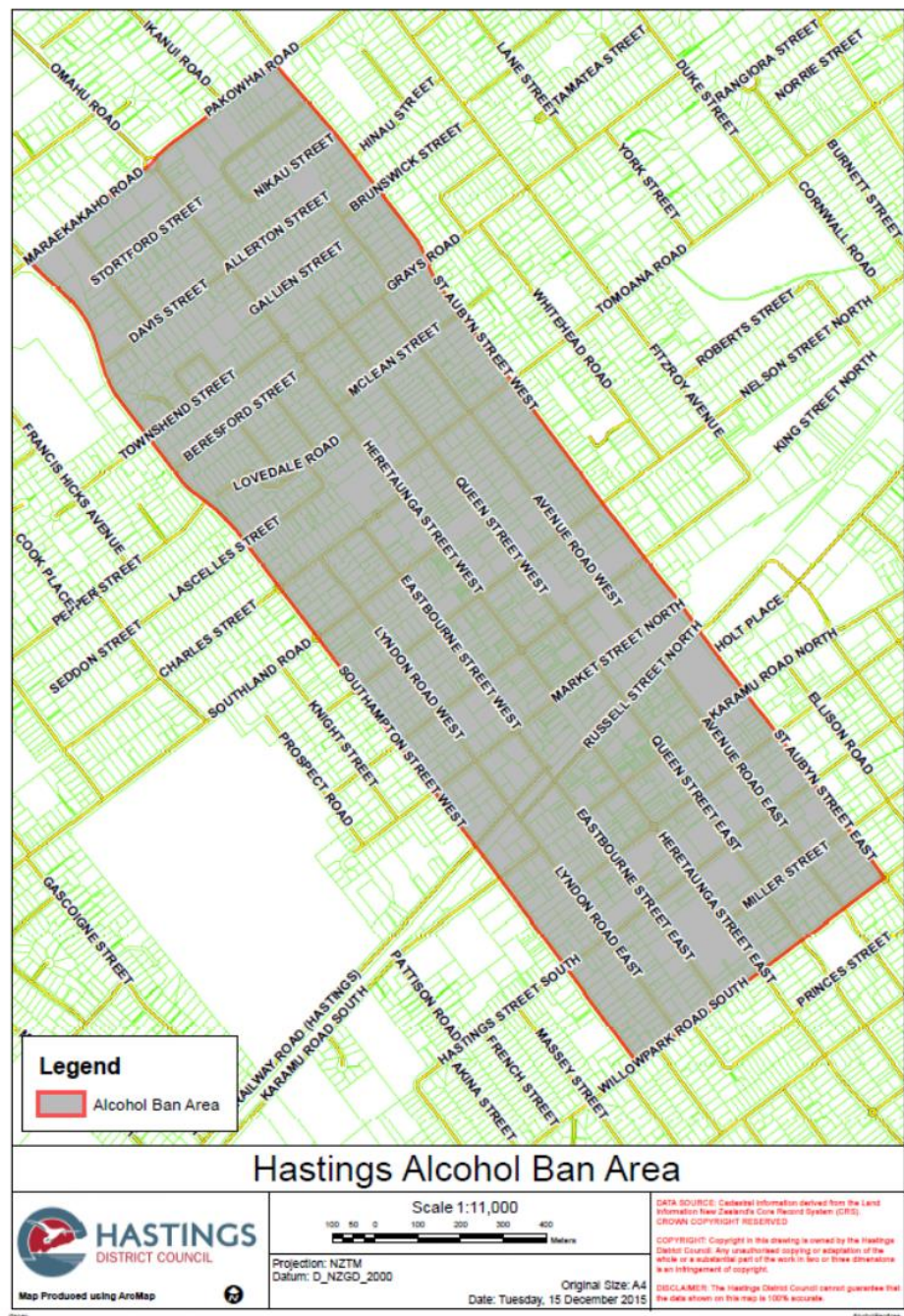
Hastings alcohol ban area

All public places in Hastings City, as shown on the attached plan, within the area bounded by:

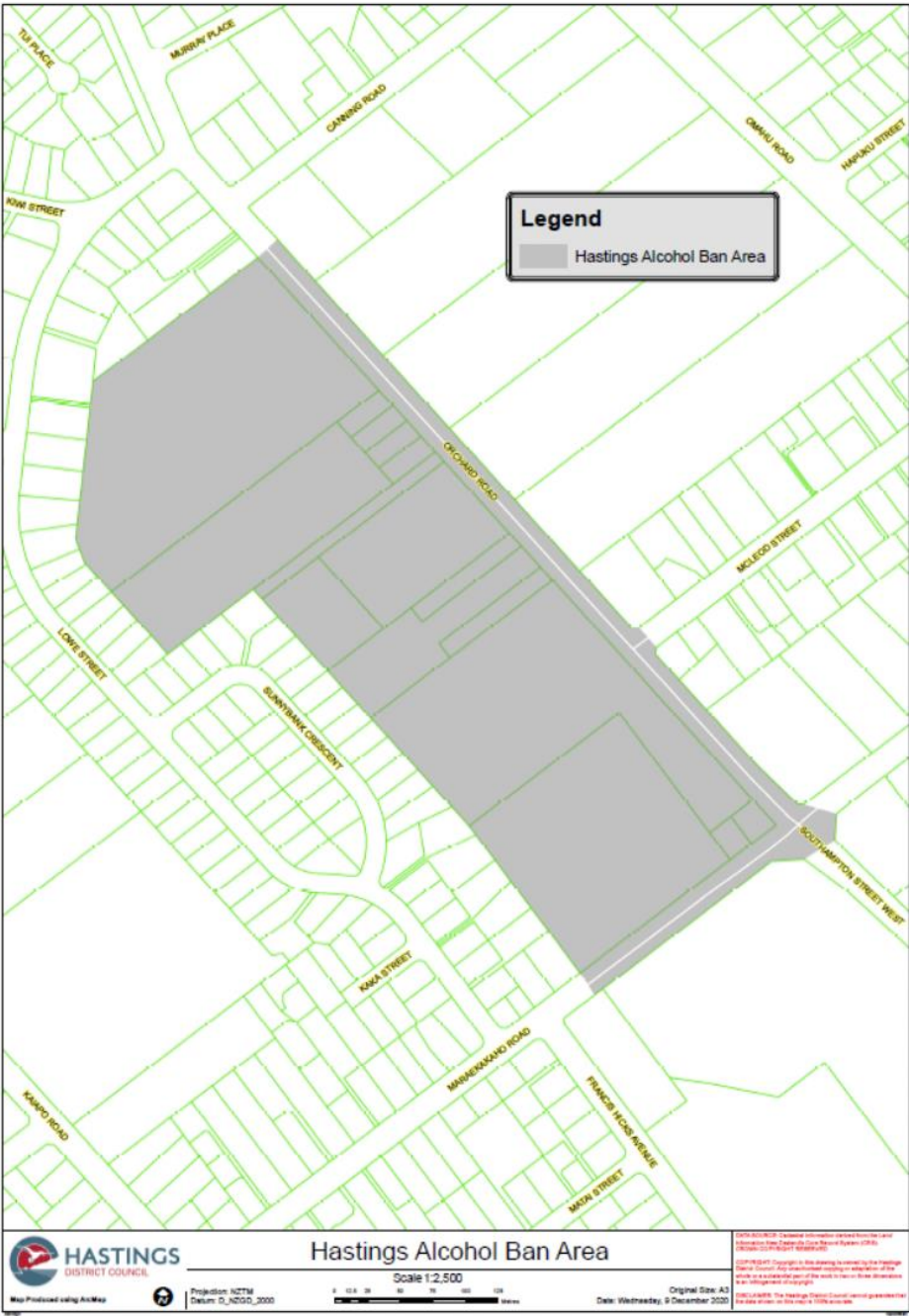
- The eastern side of Willowpark Road (North and South) up to the boundary of private property, from St Aubyn Street East to and including the intersection with Southampton Street East, including the intersections with Avenue Road East, Queen Street East, Heretaunga Street East, Maddison Street, and Buller Street,
- The southern side of Southampton Street (East and West) up to the boundary of private property, from Willowpark Road South to and including the intersection with Maraekakaho Road, including the intersections with Hastings Street South, Karamu Road South, Railway Road, Market Street South, King Street South, Nelson Street South, Southland Road, Charles Street, Lascelles Street, Pepper Street, and Townshend Street,
- The western side of Maraekakaho Road up to the boundary of private property, from Orchard Road to and including the intersection with Omaha Road,
- The western side of Pakowhai Road up to the boundary of private property, from Heretaunga Street West to and including the intersection with St Aubyn Street West, including the intersection with Ikanui Road,
- The northern side of St Aubyn Street (West and East) up to the boundary of private property, from Pakowhai Road to and including the intersection with Willowpark Road North, including the intersections with Hinau Street, Brunswick Street, Grays Road, McLean Street, Tomoana Road, Nelson Street North, King Street North, Sir James Wattie Place, Holt Place, Karamu Road North, Warren Street North, Hastings Street North, and Miller Street North,
- Hastings Cemetery and Crematorium as bounded by Maraekakaho & Orchard Roads and the eastern boundary of Heretaunga Intermediate School,

This ban prohibits the consumption, bringing into, or possession of alcohol within the ban area on every day and at any time.

Plan of the Hastings Alcohol Ban Area



Plan of the Hastings Cemetery & Crematorium Alcohol Ban Area



SCHEDULE C TO CHAPTER 4

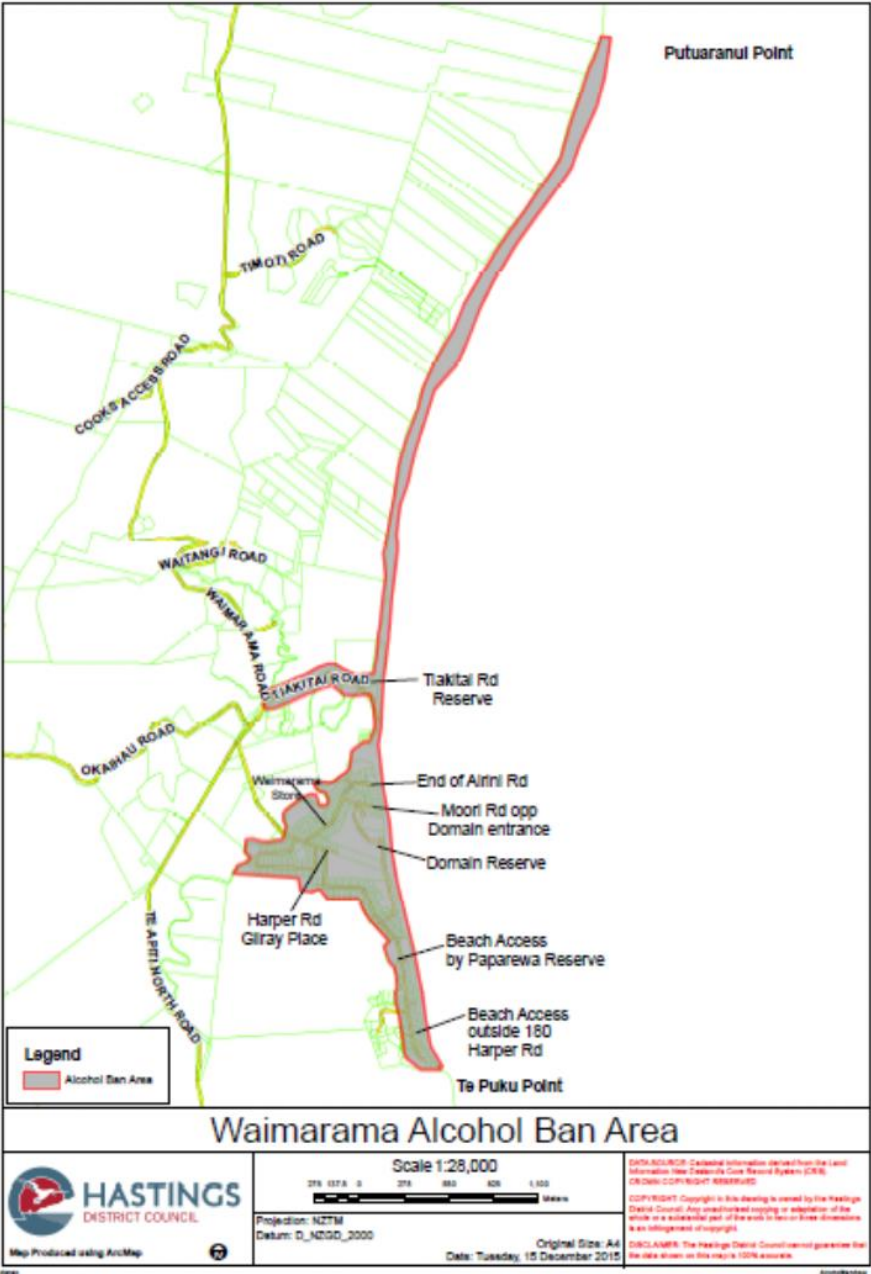
Waimarama alcohol ban area

All public places in Waimarama as shown on the attached plan, including

- All beaches and beach reserves from Pututaranui Point in the north to Te Puku Point in the south, and bounded to the west by land in private ownership and to the east by the water's edge;
- All roads, footpaths, carparks and parks within the residential area of Waimarama, from the Waimarama Bridge and the Puhokio Stream in the north to Te Puku Point in the south; and
- Tiakitai Road from its intersection with Waimarama Road.

This ban prohibits the consumption, bringing into, or possession of alcohol within the ban area at any time within the forty-two hour period commencing at 6.00 am on New Year's Eve 31 December and ending at 12 midnight on the following New Year's Day 1 January in each year.

Plan of the Waimarama Alcohol Ban Area



SCHEDULE D TO CHAPTER 4

Flaxmere alcohol ban area

All public places in Flaxmere, as shown on the attached plan, within the area bounded by:

- The western side of Caernarvon Drive up to the boundary of private property, from and including the more southern intersection with Swansea Road, to and including the intersection with Chatham Road, and including the intersections with Berwick Street and Tenby Terrace,
- The northern side of Chatham Road up to the boundary of private property, from Caernarvon Drive to a line level with the northwestern boundary of Flaxmere College, and including the intersections with Amundsen Avenue, Baffin Place, and the two intersections with Columbus Crescent,
- The western boundary of 105 Chatham Road, then the south-eastern boundaries of 105 and 103 Chatham Road, the north-eastern boundary of Flaxmere College from Chatham Road to Henderson Road along the western boundary of 36 Henderson Road,
- Henderson Road from a line level with the western boundary of 35 Henderson Road to the north-western boundary of Flaxmere Park,
- The north-eastern boundary of Flaxmere Park from Henderson Road up to and including the footpath running between Flaxmere Road and Plymouth Road, and including that area of Flaxmere Park which is bounded by Flaxmere Avenue,
- The footpath running through Flaxmere Park from between 95 and 101 Flaxmere Avenue to between 30 and 32 Plymouth Road,
- The south-western boundary of Flaxmere Park from the footpath running between Flaxmere Road and Plymouth Road, to Bristol Crescent, and including the grounds of Council owned property at 38 Bristol Crescent,
- The boundary of Flaxmere Park with the boundary of 40 Bristol Crescent to the intersection of Bristol Crescent and Swansea Road,

- The southern side of Swansea Road up to the boundary of private property, between and including the intersections with Bristol Crescent and Caernarvon Drive, and including the intersections with Peterhead Avenue and Sunderland Drive.

This ban prohibits the consumption, bringing into, or possession of alcohol within the ban area on every day and at any time.

Plan of the Flaxmere Alcohol Ban Area



SCHEDULE E TO CHAPTER 4

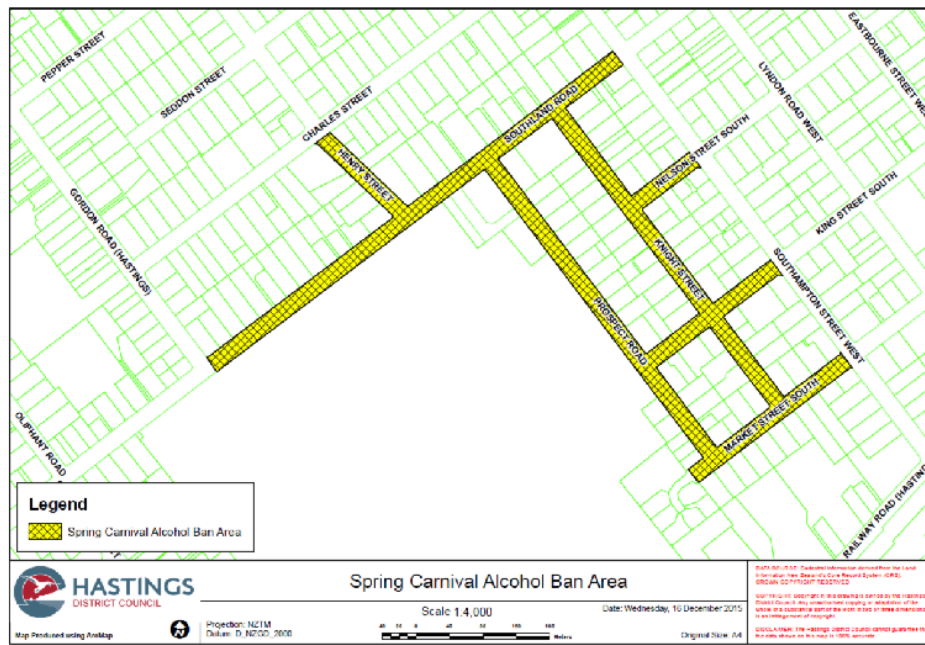
Spring Carnival alcohol ban area

The roads or parts of roads in Hastings City shown on the attached plan, being:

- All of Knight Street and Prospect Road
- Market Street South, from Southampton Street to the racecourse entrance
- King Street, from Southampton Street to Prospect Road
- Nelson Street, from Southampton Street to Knight Street
- Southland Road, between Southampton Street and Gordon Road
- Henry Street between Charles Street and Southland Road

This ban prohibits the consumption, bringing into, or possession of alcohol within the ban area on the first Saturday in October between 7.00am and 11.00pm.

Plan of Spring Carnival Alcohol Ban Area



The Common Seal of the Hastings District Council was affixed on
in the presence of:

Mayor

Chief Executive

CHAPTER 5 PARKING AND TRAFFIC

5.1 AUTHORITY

- 5.1.1 This part of the Bylaw is made under s 145 of LGA 02 and s 22AB of the Land Transport Act 1998.

5.2 DEFINITIONS

- 5.2.1 In this part of the bylaw

“container” means a shipping container or crate and extends to include any bin used for the temporary storage or disposal of demolition material, building material, soil or refuse

“emergency vehicle” has the same meaning as in rule 1.6 of the Land Transport (Road User) Rule 2004

“LGA 74” means the Local Government Act 1974

“mobility parking permit” means a current mobility parking permit issued by CCS Disability Action or any other permit approved or issued by Council

“parking” has the same meaning as in s 2 of the Land Transport Act 1998

“parking space” means an area marked out to indicate where a vehicle may be parked

“private road” has the same meaning as in s 315 of LGA 74

“private way” has the same meaning as in s 315 of LGA 74

“road” has the same meaning as in s 2 of the Land Transport Act 1998 and reference to “road” includes a reference to part of a road

“time expired” means that the permitted time limit has been exceeded or in the case of a parking space for which payment must be made means that the period for which payment has been made has been exceeded.

5.3 PARKING RESTRICTIONS AND CHARGES

- 5.3.1 Council may from time to time by publicly notified resolution:

- (a) limit, restrict or prohibit the parking of:

- (i) all vehicles;
- (ii) vehicles of any specified class or description;
- (iii) vehicles belonging to or used by particular persons or class of persons;
- (iv) vehicles used for particular purposes;
- (v) heavy vehicles in residential areas

on any road, public place or other land under the control of Council;

- (b) fix charges to be paid in connection with the use of any parking space, as measured by parking meters.

- 5.3.2 The limitations, restrictions or prohibitions imposed by Council under clause 5.3.1(a), and the charges fixed under clause 5.3.1(b), will apply on the days, for the periods or at the times specified in the resolution.

5.4 PARKING OFFENCES

- 5.4.1 A person must not:
- a) park a vehicle in contravention of any limitation, restriction, or prohibition imposed by the Council under clause 5.3.1(a);
 - b) fail to pay any charges fixed under clause 5.3.1(b) for a parking space, or spaces, occupied by the vehicle;
 - c) fail to remove a vehicle from a parking space before it becomes time expired;
 - d) park a vehicle in a parking space so that the vehicle is not entirely contained within the boundaries of the parking space, as near as reasonably possible to the middle of the space;
 - e) park a vehicle in a parking space or metered parking space which is already occupied by another vehicle;
 - f) park or place any container on a parking space which is the subject of a parking limitation, restriction or prohibition made under clause 5.3.1(a) or for which charges have been fixed under clause 5.3.1(b) without an approval
 - g) park or place any container on any other parking space, or on a road or public place in a manner which causes, or is likely to cause, a traffic safety hazard;
 - h) park a vehicle on a road or public place for a continuous period of more than 7 days;
 - i) display a "for sale" sign on a vehicle parked on a road or public place without an approval;
 - j) park a vehicle which is leaking oil, grease or fuel in a parking place or on a road, public place or other land under the control of Council;
 - k) park a cycle on the carriageway;
 - l) insert or attempt to insert in a parking meter or parking ticket machine where payment in a parking meter anything other than payment which is legal tender in New Zealand.
- 5.4.2 Nothing in clauses 5.4.1(a) or (b) or (c) applies to the driver of an emergency vehicle, the driver of a Council vehicle who is actively engaged in the enforcement of this Bylaw or the driver of any other vehicle for which a dispensation has been given by Council under clause 1.5 of the Bylaw.
- 5.4.3 Nothing in clause 5.4.1(e) applies to the parking of a vehicle which cannot be safely parked without encroaching over more than one parking space and, if charges are payable for the use of the parking spaces so occupied, a parking fee has been paid for every parking space occupied.

5.5 TRAFFIC MOVEMENT AND SAFETY

5.5.1 Council may from time to time by publicly notified resolution:

- (a) prohibit or restrict any specified class of traffic, or any specified vehicle or class of vehicle from using any road;
- (b) prohibit or restrict the use of vehicles on beaches;
- (c) regulate the type of vehicle that may use a cycle track or shared zone;
- (d) restrict the direction of travel on any road to one direction;
- (e) prohibit turning, or restrict the type of vehicle which may turn, from one road to another road or prohibit turning turnabout on a road (to face the other direction);
- (f) prohibit or restrict the display on private property of any advertisement, sign, notice or light which is visible from a road in the immediate vicinity of a pedestrian crossing or an intersection and is causing or is likely to cause confusion to persons using the road;

5.6 TRAFFIC OFFENCES

5.6.1 A person must not:

- (a) drive a vehicle in contravention of any regulation, restriction or prohibition imposed under clause 5.5.1(a) – (e) inclusive;
- (b) fail to comply with a prohibition or restriction under clause 5.5.1(f);
- (c) drive a vehicle in a manner which interferes with or obstructs a funeral procession or a procession approved by Council;
- (d) drive a vehicle over a fire hose which is in use unless a hose bridge has been provided or unless directed to do so by a constable, an enforcement officer or a fireman;
- (e) drive a vehicle which is leaking oil, grease or fuel on a road, public place or other land under the control of Council.

5.7 ENFORCEMENT

5.7.1 Any vehicle container or other thing (in this clause all referred to as “vehicle”) parked in contravention of this Bylaw may be towed away or removed by Council and impounded. An impounded vehicle may be recovered upon payment of all reasonable towing, removal and storage charges relating to that vehicle. If the vehicle has not been recovered within 14 days of impounding Council may proceed to sell or otherwise dispose of the vehicle in the same manner as if it was a vehicle removed by Council under s 356 LGA 74.

5.7.2 The power in clause 5.7.1 may be exercised in addition to any other enforcement action that Council may lawfully take.

5.7.3 The provisions of this bylaw may be enforced by a parking warden, an enforcement officer or a constable.

The common seal of the Hastings District Council was affixed on
in the presence of:

Mayor

Chief Executive

CHAPTER 7 WATER SERVICES

7.1 DEFINITIONS

7.1.1 In this part of the Bylaw unless the context otherwise requires:

“Controlled Stormwater” means stormwater with the characteristics listed in Schedule A to this Chapter. (Controlled Stormwater may only be discharged into the Network with an approval).

“Controlled Wastewater” means wastewater with the characteristics listed in Schedule B to this Chapter. (Controlled Wastewater may only be discharged into the Network with an approval).

“Contaminant” has the same meaning as in the Resource Management Act 1991.

“Culturally Offensive Characteristics” means those human wastes which, if discharged into the sea or other waters, are culturally offensive to Māori.

“Maximum Concentration” means the instantaneous peak concentration that may be discharged at any instant in time.

“Network” means the system of pipes, pumps, drains, treatment works, channels and water courses owned or used by Council for:

- (a) extracting, treating, conveying and supplying water (“Water Supply Network”);
- (b) managing, collecting, treating, conveying and disposing of Stormwater (“Stormwater Network”);
- (c) collecting, treating, conveying and disposing of Wastewater (“Wastewater Network”); and
- (d) collecting, treating, conveying and disposing of Trade Waste separately from Wastewater (Separated Trade Waste Network”);

within Council’s district. The Network does not extend beyond:

- in the case of water supply, the Point of Supply; or
- in the case of Stormwater and Wastewater, the Point of Discharge;

“Network Corridor” has the meaning as in Council’s Engineering Code of Practice.

“Point of Discharge” has the meaning as in Council’s Engineering Code of Practice.

“Point of Supply” has the meaning as in Council’s Engineering Code of Practice.

“Sewage” means human waste and includes septage and swimming pool and spa pool water.

“Stormwater” means surface water resulting from precipitation and any other water which is Controlled Stormwater.

“Tankered Waste” means Sewage or Trade Waste collected by tanker prior to discharge into the Wastewater Network or the Separated Trade Waste Network.

“Trade Waste” means any wastewater generated from activities which are not primarily residential in nature (but may include Sewage).

“Warning Notice” means a written notice given by Council to an Owner or Occupier when Council has reasonable grounds to believe that a condition of an Approval is being breached which specifies:

- the nature of the alleged breach;
- the steps required to be taken to remedy the breach; and
- the period within which the breach must be remedied.

“Wastewater” means Sewage, Tankered Waste and/or Trade Waste.

7.2 CONNECTION AND DISCONNECTION

7.2.1 No person may:

- (a) connect a pipe to any part of the Network; or
- (b) access any part of the Network by any other means; without an approval.

7.2.2 No person may disconnect a pipe from the Network without an approval.

7.2.3 Every person who fails to comply with:

- (a) clause 7.2.1 or clause 7.2.2; or
- (b) any condition of an Approval when undertaking work described in clauses 7.2.1 and 7.2.2;

commits an offence under this Bylaw.

7.2.4 For the purposes of section 163 of the Local Government Act 2002, Council is authorised to remove or alter any work undertaken in breach of clauses 7.2.1, 7.2.2 or 7.2.3(b) and to recover the costs of that removal or alteration from the responsible party.

7.3 NETWORK CORRIDOR

7.3.1 No person may:

- (a) erect any building, fence, retaining wall or other structure;

- (b) place any material or fill;
- (c) undertake any works or excavation; or
- (d) allow any tree or shrub to grow

within the Network Corridor without an Approval.

7.3.2 When the relevant Network Corridor is an open watercourse, no person may plant any vegetation, or allow any vegetation to grow, within the Network Corridor which may interfere with the free flow of water within the watercourse.

7.3.3 A person who fails to comply with:

- (a) clause 7.3.1; or
- (b) any condition of an Approval when undertaking an activity described in clause 7.3.1; or
- (c) a notice given by Council to remove vegetation which contravenes clause 7.3.2;

commits an offence under this Bylaw.

7.3.4 For the purposes of section 163 of the Local Government Act 2002, Council is authorised:

- (a) to remove or alter any work undertaken in breach of clauses 7.3.1 (a) (b) and (c); or clause 7.3.3(b);
- (b) to trim or remove any tree or shrub that contravenes clause 7.3.1(d);and
- (c) to remove vegetation specified in a notice given under clause 7.3.3(c) which has not been removed within the time specified in the notice;

and to recover the costs of that removal, alteration or trimming work from the responsible party.

7.4 DAMAGE TO THE NETWORK

7.4.1 Every person who causes damage to any part of the Network and who fails to immediately report that damage to Council commits an offence under this Bylaw.

7.5 OFFENCES IN RELATION TO WATER SUPPLY

7.5.1 Every person must comply with each and every restriction on the use of water from the Water Supply Network which may be Publicly Notified by Council from time to time.

7.5.2 No person may:

- (a) take water from a fire hydrant except:

(i) in the case of a fire emergency; and

(ii) for the purposes of that emergency; and

(iii) at the direction of Council or a member of the New Zealand Fire Service or Rural Fire Authority;

(b) use the pressure of water directly from the Water Supply Network for driving plant or equipment without an Approval;

7.5.3 No person may alter or remove a flow restrictor which has been fitted to the Water Supply Network by Council without an Approval.

7.5.4 Any person who fails to comply with

(a) clauses 7.5.1 – 7.5.3;

(b) any condition of an Approval given for work described in clauses 7.5.2 and 7.5.3;

commits an offence under this Bylaw.

7.6 OFFENCES IN RELATION TO WASTEWATER

7.6.1 No person may:

(a) discharge Controlled Wastewater into the Wastewater Network or the Separated Trade Waste Network without an Approval;

(b) discharge Wastewater containing Culturally Offensive Characteristics into the Separated Trade Waste Network;

(c) discharge Tankered Waste to the Wastewater Network or the Separated Trade Waste Network without an Approval;

7.6.2 Any person who fails to comply with

(b) clause 7.6.1; or

(c) any condition of an Approval for a discharge described in clause 7.6.1(a) or (c);

commits an offence under this Bylaw.

7.7 OFFENCES IN RELATION TO STORMWATER

7.7.1 No person may discharge Controlled Stormwater into the Stormwater Network without an Approval.

7.7.2 Any person who fails to comply with

- (b) clause 7.7.1;
 - (c) any condition of an Approval for making a discharge described in clause 7.7.1;
- commits an offence under this Bylaw.

7.8 APPROVALS

7.8.1 Without limiting the generality of Clause 1.5.3 of this Bylaw Council may grant an Approval for a discharge of Stormwater or Wastewater to the Network:

- (a) limiting the rate and volume of the discharge (assessed on a daily, weekly or monthly basis);
- (b) limiting the hours in each day during which a discharge may occur;
- (c) subject to the payment of charges for conveyance, treatment and disposal of the discharge by Council (at the rates prescribed by Council from time to time in accordance with the Local Government Act 2002);
- (d) on the condition that the applicant at its own expense:
 - (i) undertake on-site detention, screening or pre-treatment prior to discharge;
 - (ii) maintain equipment installed in clause 7.8.1(d)(i) to ensure correct operation at all times
 - (iii) monitor the discharge and provide the results of that monitoring to Council; or
 - (iv) provide an inspection chamber to enable Council to undertake sampling and monitoring of the discharge at any time and from time to time.

7.8.2 Without limiting the generality of clause 1.5.5 of this Bylaw an Approval may be cancelled by Council by notice in writing if:

- (a) the owner or occupier of the premises to which the Approval relates is convicted of an offence under this Bylaw; or
- (b) Council gives a Warning Notice and the Owner or Occupier of the premises to which the Approval relates fails to take the steps required by Council within the time period specified in the Warning Notice; or

- (c) Council has issued a Warning Notice on three (3) occasions in the previous 12 months, notwithstanding that on each occasion the steps required by Council have been taken within the time period specified in the notices.
- 7.8.3 Written notice of cancellation of an Approval given under clause 7.8.2 shall have immediate effect and any discharge to which that Approval relates must be immediately discontinued.
- 7.8.4 Any person who fails to discontinue making a discharge immediately upon service of notice of cancellation commits an offence under this Bylaw.

SCHEDULE A TO CHAPTER 7

(Controlled Stormwater)

Stormwater, and any other water which:

- (a) discharges from impervious areas that exceed the square metre per site requirement or such larger area as may be specified in Council's Engineering Code of Practice from time to time;
- (b) discharges exceeding the flow rate as may be specified in Council's Engineering Code of Practice from time to time;
- (c) discharges from premises on which activities are carried out that may result in the production of Stormwater containing Hazardous Substances or Contaminants;
- (d) contains:
 - (i) Hazardous Substances or Contaminants;
 - (ii) grease, oil and scum;
 - (iii) water from ground water systems, bores, water which has been heated or water from geothermal activity;
 - (iv) swimming or spa pool water arising from emptying or backwashing;
 - (v) detritus solids or silt in concentrations that will cause any build-up of sediment within the Network;
 - (vi) any other substance or characteristic which Council is required to manage as a condition of a discharge consent for the Network held by Council under the Resource Management Act 1991 from time to time.

Advisory Note:

The HDC Engineering Code of Practice provides guidance on the assessment of applications to discharge 'Controlled Stormwater' to the Stormwater Network. An Approval may require the applicant to comply with any conditions imposed as part of a resource consent and/or any applicable industry guidelines.

SCHEDULE B TO CHAPTER 7

(Controlled Wastewater)

Wastewater which has any one or more of the following characteristics;

- Flow volume exceeding 10 m³ in any 24 hour period;
- Peak Flow (the highest average flow rate in any 2 hour period during any 24 hour period) exceeding 1 litre per second;
- Temperature exceeding 40 ° Celsius;
- Non-faecal gross solids with a maximum dimension exceeding 15 mm.
- Suspended solids exceeding 2000 grams per m³;
- Settleable solids exceeding 50 milliliters per litre;
- Non-faecal gross solids which cannot be passed through a 2mm maximum gap size screen;
- Non-faecal gross solids with a quiescent settling velocity exceeding 50mm per minute;
- Colour or colouring substances that cause the discharge to be coloured to the extent that it impairs wastewater treatment processes or compromises the treated wastewaters discharge Consent;
- Fibrous, woven, or sheet film or any other materials which may interfere with the free flow of Wastewater in the Network;
- Floatable oil and grease exceeding 30 milligrams per litre for a grab sample and/or exceeding 15 milligrams per litre for a 24 hour flow proportional sample;
- Total Oil and Grease exceeding 100 grams per m³;
- The presence of a free layer (whether floating or settled) of solvents or organic liquids;
- Emulsions of paint, latex, adhesive rubber or plastic exceeding 1000 grams per m³;
- pH outside the range 6.0 and 10.0 at any time;
- Biochemical oxygen demand exceeding 1000 grams per m³;
- Any solid, liquid or gaseous substances which alone or in combination with any other matter will immediately or in the course of time interfere with the free flow of Wastewater within the Network or damage any part of the Network;

- Any solid, liquid or gaseous substances which alone or in combination with any other matter cause a health and safety risk to sewage workers;
- Any solid, liquid or gaseous substances which alone or in combination with any other matter will cause malodorous gases or substances to form which are of a nature or sufficient quantity to create a public nuisance;
- Solids, including dry solid wastes and materials which combine with water to form a cemented mass;
- Asbestos;
- Tin (as tributyl and other organo-tin compounds);
- Organo-chlorine pesticides;
- Genetically modified organisms wastes (except when discharged into the Wastewater Network in accordance with an approval given under the Hazardous Substances and New Organisms Act 1996);
- Health care waste prohibited for discharge to a Wastewater Network by NZS 4304 2002, or any pathological or histological wastes, and Trade Waste containing cytotoxic substances;
- Trade Waste containing liquid pharmaceuticals in excess of the following limits:

Volume Limit	Active Concentration
10 Litres	125mg / 5 ml
5 Litres	250mg / 5 ml
3 Litres	Above 250mg / 5 ml

- Any substance in concentrations which may cause Council to be in breach of any discharge consent for the Wastewater Network held by Council under the Resource Management Act 1991 from time to time; and
- Any substance exceeding any one or more of the maximum concentrations listed in the following tables 1, 2 and/or 3 below.

Table 1: General Chemical Characteristics

Characteristic	Maximum concentration (g/m ³)
MBAS (Methylene blue active substances)	500
Ammonia (measured as N)	
– free ammonia	50
– ammonium salts	200
Kjeldahl nitrogen	150
Total phosphorus (as P)	50
Sulphate (measured as SO ₄)	500 1500 (with good mixing)
Sulphite (measured as SO ₂)	15
Sulphide – as H ₂ S on acidification	5
Chlorine (measured as Cl ₂)	
– free chlorine	3
– hypochlorite	30
Dissolved aluminium	100
Dissolved iron	100
Boron (as B)	25
Bromine (as Br ₂)	5
Fluoride (as F)	30
Cyanide – weak acid dissociable (as CN)	5

TABLE 2: HEAVY METALS

Metal	Maximum concentration (g/m ³)	Metal	Maximum concentration (g/m ³)
Antimony	10	Manganese	20
Arsenic	5	Mercury	0.005
Barium	10	Molybdenum	10
Beryllium	0.005	Nickel	10
Cadmium	0.5	Selenium	10
Chromium	4	Silver	2
Cobalt	10	Thallium	10
Copper	10	Tin	20
Lead	10	Zinc	10

TABLE 3: ORGANIC COMPOUNDS AND PESTICIDES

Compound	Maximum concentration (g/m ³)
Formaldehyde (as HCHO)	50
Phenolic compounds (as phenols) excluding chlorinated phenols	50
Chlorinated phenols	0.02
Petroleum hydrocarbons	30
Halogenated aliphatic compounds	1
Monocyclic aromatic hydrocarbons	5
Polycyclic (or polynuclear) aromatic hydrocarbons (PAHs)	0.05
Halogenated aromatic hydrocarbons (HAHs)	0.002
Polychlorinated biphenyls (PCBs)	0.002
Polybrominated biphenyls (PBBs)	0.002 each
Pesticides (general) (includes insecticides, herbicides, fungicides and excludes organophosphate, organochlorine and any pesticides not registered for use in New Zealand)	0.2 in total
Organophosphate pesticides	0.1

The Common Seal of the Hastings District Council was affixed on
in the presence of:

Mayor

Chief Executive

CHAPTER 8

(Deliberately left blank)

Item 6

CHAPTER 9

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Item 6

CHAPTER 10 MISCELLANEOUS MATTERS

10.2 NUISANCES

- 10.2.1 This part of the bylaw is made under s 64 of the Health Act 1956.
- 10.2.2 A person must not cause a nuisance, or allow a nuisance to be caused, on any premises.
- 10.2.3 Without limiting the generality of clause 10.2.2, a person must not cause a nuisance, or allow a nuisance to be caused, by any of the following:
- (a) the burning of any matter or thing on any premises;
 - (b) the emission of offensive odours, smoke, fumes, dust, sawdust or other matter from any premises;
 - (c) the deposit or accumulation of rubbish, recyclable material, inorganic material, dead animals, dung, manure or fertiliser on any premises;
 - (d) the failure to control or eradicate the conditions on any premises giving rise, or conducive to giving rise, to breeding by rats and other vermin, flies, mosquitoes, mites, ticks or any other insect capable of causing or transmitting disease;
 - (e) the failure to eradicate an infestation of rats and other vermin, or flies, mosquitoes, mites, ticks, cockroaches or other insects, on any premises;
 - (f) the failure to cleanse any drain, water closet, septic tank or outbuilding, including any outbuilding used to house animals, any premises;
 - (g) the keeping of an animal on any premises, notwithstanding that the keeping of that animal may be in accordance with clauses 10.4.3 to 10.4.6 (inclusive) of this Bylaw, or the undertaking of an activity related to the keeping of that animal.

10.3 REFUSE

- 10.3.1 In this clause:
- “approved receptacle” means a receptacle approved by Council for storage and disposal of waste and includes receptacles for household refuse, green waste, recycling material or kitchen waste;
- “collection” means collection by Council or its contractor from the kerbside in accordance with any requirements for collection set by Council by publicly notified resolution from time to time
- “collection day” is a day nominated by council for the collection of refuse or recycling material from premises within any part of the district
- “green waste” means any compostable garden waste that Council accepts for collection
- “household refuse” means waste generated from domestic residential activities but does not include green waste, demolition material, building material, inorganic waste or recycling material
- “inorganic waste” means any inorganic material that is too large to be placed in an approved receptacle and includes demolition material and building material

“kitchen waste” means food scraps and other compostable materials that Council accepts for collection

“medical waste” means waste generated from any facility where illness and injuries are treated or medical procedures are carried out and includes hypodermic needles used for any purpose

“recycling material” means any material that Council accepts for recycling

“refuse” means household refuse, green waste and kitchen waste

10.3.2 A person must not:

- (a) put out for collection any hazardous substance or medical waste;
- (b) if the approved receptacle is a plastic bag, put out for collection a bag which contains any sharp objects;
- (c) dispose, or attempt to dispose, of any hazardous substance or medical waste at a facility provided by Council for the disposal of refuse or recycling material;
- (d) put out household refuse or recycling material for collection which is not entirely contained within, without overflowing, an approved receptacle;
- (e) put out an approved receptacle earlier than the day before the collection day for the area where the premises are located;
- (f) fails to remove an approved receptacle by the end of the day following the collection day for the area where the premises are located;
- (g) put out for collection as recycling material, material which is not accepted by Council;
- (h) put out inorganic waste for collection except at the times directed by Council
- (i) remove any item from an approved receptacle for recycling materials or from a pile of inorganic waste put out for collection in accordance with clause 10.3.2(h), unless that person is a resident of the premises from which the material originated

10.4 STOCK, POULTRY AND BEES

10.4.1 The provisions in this part of the Bylaw are in addition to any rules in the district plan dealing with the keeping of pigs, poultry, stock or bees. In the event of conflict or ambiguity between a provision in this Bylaw and a rule in the district plan, the district plan rule will prevail.

10.4.2 A person must not keep stock on premises within the urban area without an approval.

10.4.3 A person must not keep on premises within the urban area:

- (a) a rooster; or

- (b) more than 12 head of poultry.
- 10.4.4 If poultry are kept on premises within the urban area:
 - (a) the premises must be adequately fenced to prevent escape; or
 - (b) if confined to a poultry house or poultry run, the house or run must be located more than 2 metres from any boundary of the premises and adequately enclosed to prevent escape.
- 10.4.5 A person must not keep bees on premises if the keeping of those bees is, or is likely to become, a danger to the public or a nuisance.
- 10.4.6 A person must not keep, provide food to or provide shelter for, on any premises:
 - (a) if the premises are a stand-alone self-contained residential unit, more than four cats over the age of six months;
 - (b) if the premises are one of two self-contained residential units, more than two cats over the age of six months in each residential unit;
 - (c) if the premises are one of three or more self-contained residential units, more than one cat over the age of six months in each residential unit;
 - (d) subject to clause 10.4.7, if the premises are not used for residential purposes, more than four cats over the age of six months on those premises.
- 10.4.7 The prohibition in clause 10.4.6(d) does not apply to a veterinary clinic, a commercial cat boarding facility or an approved animal shelter.
- 10.4.8 A person who keeps a goat in the urban area must ensure that the goat is securely tethered at all times.
- 10.4.9 A person who grazes stock on any premises, or permits stock to graze on any premises, must ensure that the premises are fully enclosed by adequate stock proof fences and gates at all times.

The Common Seal of the Hastings District Council was affixed on
in the presence of:

Mayor

Chief Executive

DOGS POLICY 2021

(Made under s 10 of the Dog Control Act 1996)



LEG-02-3-20-457

PURPOSE

The purpose of this policy is to provide a framework for the care and control of dogs throughout Hastings District. The policy is made under s10 of the Dog Control Act 1996. Under s10(4) Council is required when adopting a policy to have regard to:

- “(a) the need to minimise danger, distress, and nuisance to the community generally; and*
- (b) the need to avoid the inherent danger in allowing dogs to have uncontrolled access to public places that are frequented by children, whether or not the children are accompanied by adults; and*
- (c) the importance of enabling, to the extent that is practicable, the public (including families) to use streets and public amenities without fear of attack or intimidation by dogs; and*
- (d) the exercise and recreational needs of dogs and their owners.”*

The anticipated outcomes of this policy are:

1. Minimising the potential for danger, distress, and nuisance to the community from dogs.
2. Promoting responsible dog ownership.
3. Promoting effective dog control, particularly in public places where children or families are present.
4. Minimising the risk of intimidation and attacks by dogs.
5. Promoting positive interaction between dog owners and members of the community.
6. Providing for the exercise and recreational needs of dogs and their owners.

POLICIES

POLICY 1 – Nature and Application of Bylaws

- 1.1 Council will make and enforce bylaws for the following matters covered by this policy:
 - Dog prohibited areas (Policy 2)
 - Leash control (Policy 3)
 - Dog exercise Areas (Policy 4)
 - Limiting the number of dogs kept (Policy 6.1)
 - Dog fouling (Policy 6.2)
 - Confining bitches in season (Policy 6.3)

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Explanation

Council may make Bylaws in accordance with the Local Government Act 2002 and Dog Control Act 1996. These bylaws give legal powers necessary to implement and enforce the Dogs Policy within Hastings District.

POLICY 2 – Dog Prohibited Areas

2.1 Council will make a bylaw prohibiting dogs from the following areas:

1. The Hastings District Council Civic Building.
2. Public libraries.
3. Swimming pools and paddling pools.
4. Children's playing areas.
5. Sports fields.
6. Rangaiika Beach at Ocean Beach/Cape Kidnappers.

2.2 For the avoidance of doubt, dog prohibited areas do not apply to special purpose or disability assist dogs.

Explanation

Dogs are prohibited from areas where the presence of dogs is likely to interfere with the use of public amenities or are frequented by children or are areas of high ecological sensitivity.

POLICY 3 – Leash Control

3.1 Council will make a bylaw which requires that dogs be under leash control:

- in all public places and private ways in the urban areas of the district and in parks, reserves, beaches walkways and cycle ways in the rural area which are not otherwise designated as a dog exercise area under the bylaw and
- in any other place if the dog is causing or is likely to cause danger, distress or nuisance to a person or another animal.

Explanation

Uncontrolled dogs can have a significant impact on the community. Leash control of dogs assists to minimise danger, distress and nuisance to the community generally and to achieve the other matters in s10(4)(b) and (c) of the Dog Control Act 1996 without affecting the exercise and recreational needs of dogs and their owners.

Allowing dogs to roam without owner control contributes to:

- Dog aggression, resulting in fear and intimidation of the public
- Faeces contamination of public places
- Traffic hazards
- Stock worrying

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- Dog fights
- Unwanted puppies
- The spread of disease
- Increased level of complaints requiring investigation.

The infringement penalties under the Dog Control Act 1996 are substantial. Infringement fees for offences relevant to this policy are set by Parliament:

- | | |
|---|-------|
| • Failure to carry a leash - s54A | \$100 |
| • Dog not controlled or confined on its own property – s52A | \$200 |
| • Dog not under control - s53(1) | \$200 |
| • Dog in a public place in contravention of bylaw – s20(5) | \$300 |
| • Dangerous or menacing dog at large – s32(2) & s33EC(1) | \$300 |

POLICY 4 – Dog Exercise Areas

- 4.1 Council will make a bylaw allowing the exercise of dogs off leash in the areas listed below. Two of the areas are time limited, depending on the time of year:

Havelock North

- Tainui, Tanner and Hikanui Reserves
- Tauroa Road Reserve
- Te Mata and Arataki Road Reserve
- Kingsgate Reserve from Te Mata Road to Reeve Drive, Ritchie Place, Fulford Place and Durham Drive
- The banks of the Karamū Stream, from a point adjacent to the southern most edge of Anderson Park, Havelock North to the vehicle over bridge on Havelock Road
- Keirunga Gardens along the extent of the western boundary walkway accessed from Tanner Street, and including the open grass areas at the southern end northern ends of the Park
- Te Mata Peak Road and Te Mata Peak Park
- James Cook Street Reserve
- Palmbrook Reserve.

Hastings

- Karamu Road South, from Pattison Road south to Murdoch Road
- Ebbett Park between 5.00pm and 8.00am the following day
- Duke Street Reserve
- Pakowhai Country Park.

Flaxmere

- Along Portsmouth Road, from Wilson Road West to the end of Portsmouth Road
- The Flaxmere Green Belt to the west of Tarbet Street, Arklow Place and Frobisher Street between Kirkwood Road and Flaxmere Avenue.

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Haumoana and Te Awanga

The Haumoana-Te Awanga coastal beach front area from the mouth of the Tukituki River south to the boundary of the Clifton No. 2 camp, Te Awanga, excluding the beach front between numbers 3 and 41 Clifton Road Haumoana.

Waimarama and Ocean Beach

- The beach front of the Ocean Beach settlement north to the surf club during daylight saving hours between 7.30pm and 7.30am the following day, and 6pm and 7am the following day during the remainder of the year
- Ocean Beach north of the surf lifesaving club to 100m south of the predator proof fence
- Waimārama Beach north to the Puhokio Stream river mouth during daylight saving hours between 7.30pm and 7.30am the following day, and during the remainder of the year 6pm and 7am the following day
- Waimārama Beach north of the Puhokio Stream river mouth to Pututaranui Point at any time.

Whirinaki and Eskdale

- The North Shore and Whirinaki to Tangoio Beach road reserve
- Eskdale Park along the southern or right-hand side of, and to the end of the park driveway.

Waipatiki Beach

- The beach front of Waipātiki Beach Settlement, coast-wards of the reserve, during daylight savings hours between 7:30pm and 7:30am the following day, and during the remainder of the year 4:00pm to 10:00am the following day
- Waipātiki beach north and south of the area referred to above.

Explanation

There are many areas where dogs can be exercised in the district. Council accepts that the majority of dog owners are responsible people. Dogs are able to be exercised off a leash in all public places in the district other than the prohibited areas and leash control areas.

POLICY 5 – Menacing Dogs

- 5.1 Council will require that all dogs classified by it as menacing under sections 33A or 33C of the Dog Control Act 1996 be neutered under section 33E(1)(b) of the Dog Control Act 1996.
- 5.2 Council will require that dogs classified as menacing under section 33A or 33C of the Dog Control Act 1996 by any other territorial authority are required to be neutered under section 33EB(2) of the Dog Control Act 1996 if the dog is transferred to the Hastings District.

LEG-02-3-20-457

Explanation

Section 33A(1)(b) of the Dog Control Act 1996 allows Council to classify dogs as menacing if it considers the dog *“may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of:*

- (i) *Any observed or reported behaviour of the dog.*
- (ii) *Characteristics typically associated with the dog’s breed or type.”*

Section 33C of the Dog Control Act 1996 requires that Council must classify the breeds or types of dogs listed in Schedule 4 of the Dog Control Act 1996 as menacing. Currently those breeds or types are:

Breeds:

Brazilian Fila
Dogo Argentino
Japanese Tosa
Perro de Presa Canario

Type:

American Pit Bull Terrier

Council believes it is appropriate that dogs classified as menacing be required to be neutered. Neutered dogs appear to feature less in reported dog bite statistics.

POLICY 6 – Other matters

- 6.1 Council will make a bylaw which limits the number of dogs over the age of 3 months that may be kept on any premises within the urban areas of the district.
- 6.2 Council will make a bylaw which requires a dog owner to remove, carry away and dispose of in a sanitary manner, any faeces which may be left in a public place, private way or other premises not occupied that owner.
- 6.3 Council will make a bylaw which requires the owner of a bitch in season to keep it confined, but properly exercised, while in season.

Explanation

Minimising nuisance to the community generally is one of the matters to which Council must have regard under s 10(4) of the Dog Control Act 1996. Each of the matters covered by this policy are addressed to that issue:

- The more dogs on an urban property the greater the potential for escape, complaints about barking and complaints about nuisance caused by smell and flies;
- The fouling of public places by dog faeces is a general community nuisance issue. It is also a public health issue, arising from the fouling of footpaths and sports fields and the insanitary disposal of dog faeces;
- If bitches in season are allowed to roam freely there is increased risk of aggressive behaviour from any male dogs which are also roaming at the same time. Many people find the sight of dogs coupling in public places to be offensive. If bitches remain confined the risk of unplanned pregnancies is largely removed. Again this policy is aimed at minimising nuisance to the community.

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POLICY 7 - Fees

- 7.1 Dog control fees will be set by Council resolution having regard to the levels of service in the Council's Long Term Plan and the costs actually incurred by Council to provide the dog control function.
- 7.2 Dog registration fees will be set based on the location where the dog is normally kept. Fees for dogs kept in the urban area will be higher than for dogs kept in the rural area.
- 7.3 The proportion of funding of Dog Control operations to be borne by rates, and the proportion to be borne by dog owners will be determined based on a public and private benefit assessment made by Council.
- 7.4 Pound fees will be set to recover costs and encourage retrieval of impounded dogs.
- 7.5 Pound fees will be increased for any subsequent impounding of that same dog to impose a greater penalty element.
- 7.6 Sustenance charges will be set to recover all the costs of feeding and care.
- 7.7 A lesser dog registration fee will be offered to those who register their dogs before 1 August.
- 7.8 A reduced dog registration fee will be offered to owners approved under the Selected Owner Policy.

Explanation

The dog control fees reflect the costs of the dog control service, less a small element of public good which is subsidised by rate funding.

Because the majority of the work undertaken by the Dog Control staff occurs in urban areas, it is considered fair and reasonable that a greater cost is carried by those dog owners.

Impounding fees and sustenance charges are user-pays charges and lie with the owner of the dog. These fees will not be subsidised by ratepayers.

POLICY 8 - Public Education

- 8.1 Council will encourage responsible dog ownership through education programmes and seminars which will be particularly targeted at dog owners and schools. Dog owners will be encouraged to attend puppy socialisation and dog obedience courses.
- 8.2 Media publicity and Council's website will be used to promote public awareness of dog registration obligations, this policy and the Dog Control Bylaw.
- 8.3 Counselling and consultation will be undertaken with alleged offenders by dog control staff.

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Explanation

A strong focus is placed on providing dog owners with the necessary knowledge to better manage their dogs. An education focus is a crucial first line approach to compliance, however there are some instances where enforcement action is required.

Through public and school education, people will be given the knowledge to deal with some of the situations and nuisances that they may come in contact with, including advice on "bite prevention". That education may also lead to a more responsible attitude towards dog ownership in the future.

POLICY 9 – Enforcement

9.1 Council will actively enforce the statutory obligations of dog owners under the Dog Control Act 1996 and the Dog Control Bylaw. When offences are committed infringement notices and/or prosecutions will be commenced of dogs which have been classified as menacing under the Dog Control Act.

9.2 The following infringements fees are set under the Dog Control Act. Council has no discretion to alter these fees:

Offence	Penalty
Wilful obstruction of a Dog Control Officer	\$750
Failure or refusal to supply information or providing false particulars	\$750
Failure to supply information or providing false particulars about a dog	\$750
Failure to comply with any Dog Control Bylaw	\$300
Failure to undertake education programme or obedience course	\$300
Failure to comply with obligations of probationary owner	\$750
Failure to comply with the effects of disqualification	\$750
Failure to comply with requirements of dangerous dog classification	\$300
Fraudulent sale or transfer of a dangerous dog	\$500
Failure to comply with requirements of menacing dog classification	\$300
Failure to advise person of muzzle and leashing requirements s33F(3)	\$100
Failure to implant a microchip transponder in dog	\$300
False statement relating to dog registration	\$750
Falsely notifying death of dog	\$750
Failure to register dog	\$300
Fraudulent procurement or attempt to procure replacement dog registration label or disc	\$500
Failure to advise change of dog ownership	\$100
Failure to advise change of address	\$100
Removal, swapping, or counterfeiting of registration label or disc	\$500
Failure to keep dog controlled or confined	\$200

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Failure to keep dog under control	\$200
Failure to provide proper care and attention, to supply proper and sufficient food, water, and shelter, and to provide adequate exercise	\$300
Failure to carry leash in public	\$100
Failure to comply with barking dog abatement notice	\$200
Allowing a known dangerous dog at large unmuzzled or unleashed	\$300
Failure to advise person of muzzle and leashing requirements s62(5)	\$100
Releasing dog from custody	\$750

POLICY 10 - Dog Adoption

- 10.1 The adoption of any dog from the Animal Welfare Centre will be subject to:
- the dog remaining unclaimed more than seven days after impounding;
 - the dog having a suitable temperament/potential for adoption and being healthy, neutered, vaccinated, wormed, flea treated, registered and micro-chipped;
 - approval of the new owner by Council;
 - Payment of an adoption fee.
- 10.2 No dogs will be released for research, testing or teaching purposes.

Explanation

The Dog Control Act 1996 allows Council to sell, destroy or otherwise dispose of an impounded, unclaimed dog after the expiration of seven days. Adoption fees will be set to recover the costs incurred under Policy 10.1(b), without deterring purchasers.

POLICY 11 - Unwanted Dogs

- 11.1 Council may accept unwanted dogs into the pound for disposal either by adoption or by euthanasia subject to a payment of the fee for the service

Explanation

This policy is intended to prevent the release of unwanted dogs into the community, or to solve a problem where the owner is having difficulties managing or caring for the dog. If euthanasia is the only option for disposal owners will be encouraged to use veterinary practices in the first instance.

POLICY 12 - Selected Owner Policy

- 12.1 Dog owners who demonstrate through a dog ownership scheme run by Council (the Selected Owner Scheme) that they are responsible owners will receive a reduction in registration fees payable for their dogs. The Selected Owner Scheme is not available to:
- An owner of a dangerous dog;

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- A dog owner who does not complete the requirements of the scheme and/or pay the scheme fee before 31 March in each year;
- A dog owner who has been disqualified under policy 12.2 within the preceding two registration years.

12.2 A dog owner will be disqualified from membership under the Selected Owner Policy immediately upon the occurrence of any of the following events:

- The owner is convicted of an offence under the Dog Control Act 1996 or the Dog Control Bylaw, or
- The owner is convicted of an offence under the Animal Welfare Act 1999 in respect of a dog, or
- A dog belonging to the owner is impounded, or
- A dog belonging to the owner is the subject of more than one complaint, which upon investigation by Council is found to be justified, in any registration year, or
- A dog belonging to the owner remains unregistered after the penalty date in any registration year.

Explanation

Owners who can demonstrate that they are responsible dog owners should be rewarded by a reduction in dog registration fees.

POLICY 13 – Tethering of Dogs

13.1 Council does not encourage restraining dogs by means of a chain or tether as a permanent means of controlling a dog.

Explanation

Chaining or tethering a dog poses serious threats to a dog's physical, psychological and emotional wellbeing. Research confirms that chained dogs are more aggressive. Chained or tethered dogs can feel threatened, fearful and frustrated, causing them to become antisocial and aggressive.

Other reasons why you should not chain or tether your dog for long periods:

- Without the physical barrier of a cage, tethered dogs can feel unprotected
- Natural instincts of survival, fight and flight are disengaged
- Dogs can easily tip over their food and water
- Have been known to die from accidental strangulation
- Can get easily tangled
- More likely to get parasites, disease, injuries and infections
- Lunging and pulling against the tether can cause abrasions to the neck
- Forced to defecate and urinate in the same place they sleep, eat and run
- Barking continuously from boredom and frustration

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Conservation Controlled Dog Areas and National Parks

There are currently no controlled dog or open dog areas under section 26ZS of the Conservation Act or national parks constituted under the National Parks Act 1980 in the Hastings District.

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HASTINGS DISTRICT & NAPIER CITY COUNCILS' LOCAL ALCOHOL POLICY

August 2019



LOCAL ALCOHOL POLICY

Item 7

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LOCAL ALCOHOL POLICY

1. INTRODUCTION

The Sale and Supply of Alcohol Act 2012 (the Act) was enacted on 18 December 2012. The Act allows territorial authorities to develop a local alcohol policy (LAP) and it allows two or more territorial authorities to develop a joint LAP. This is the joint Local Alcohol Policy for the Hastings District and Napier City territorial areas. This policy applies to any licensing application made to a District Licensing Committee within Hastings District or Napier City.

Under the Act a Local Alcohol Policy is to consist of a set of decisions made by Council in consultation with the Police, Medical Officers of Health and licensing inspectors as well as the community about the sale and supply of alcohol. Once the LAP is in place, the Council's District Licensing Committee and the Alcohol Regulatory and Licensing Authority will have to consider the policy when they make decisions on licence applications.

THE LOCAL ALCOHOL POLICY:

- May restrict the default maximum trading hours set out in the Act.
- May impose conditions on groups of licences such as one-way door conditions whereby a patron is allowed to leave a premise after a certain time but not enter or re-enter after a certain time.
- May specify restrictions on the location of licensed premises in particular areas or near facilities of particular kinds.
- May specify whether further licences (or licences of a particular kind or kinds) should be issued for premises in a particular area.
- May recommend discretionary conditions.

2. LAP OUTCOMES

This Local Alcohol Policy will guide decisions on alcohol licence applications by the District Licensing Committee in the aim of:

- Creating a safe and healthy community free from alcohol related harm
- Fostering safe and responsible drinking environments
- Reflecting community views on the sale and supply of alcohol within the district.

3. OBJECTIVES OF THE LAP

The objectives of the Sale and Supply of Alcohol Act (2012) are 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.

Beyond the objectives stated in the Act, the objectives of Hastings District and Napier City Council's Local Alcohol Policy are:

- To support the purpose and intent of the Sale and Supply of Alcohol Act 2012.
- To identify what types of harm caused by the excessive or inappropriate consumption of alcohol the community is concerned about and address those harms to the extent appropriate.
- To provide a framework for the District Licensing Committee and Alcohol Regulatory and Licensing Authority to guide their decisions on alcohol licence applications.
- To promote transparency and provide clarity for the public and applicants about whether an application will meet the provisions of the LAP.
- To demonstrate leadership to achieve a safe drinking culture.
- Work collaboratively with community and agencies on initiatives to reduce alcohol related harm.

4. POLICY PRINCIPLES

- The use of the discretionary conditions will seek insofar as is possible to meet the principles of Crime Prevention through Environmental Design (CPTED) and the preservation of good order and amenity.
- A preliminary review of the policy shall be initiated three years after the policy becomes operative to determine whether a full review is required earlier than the six year review required under s 97 of the Sale and Supply of Alcohol Act 2012.



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LOCAL ALCOHOL POLICY

5. HOURS

The following maximum trading hours apply to all licensed premises within the Hastings District and Napier City territorial areas.

5.1 ON-LICENCE HOUR

ON LICENSE TYPE	MAXIMUM TRADING HOURS
Taverns/bars/pubs/night-clubs	8.00am to 3.00am the following day Monday to Sunday One way door restriction: Mandatory at 2.00am
Cafes/restaurants/wineries/winery restaurants	8.00am to 2.00am the following day Monday to Sunday
Entertainment Venues	Licensing hours are to be consistent with the nature and activities of the premise and in general shall range from: 8.00am to 2.00am the following day Monday to Sunday

NOTE: The owner/operator of an on-licensed premise will be constrained by the hours defined by any resource consent or District Plan requirements. The above-stated hours do not imply any right to operate outside any requirements set under the Resource Management Act 1991.

5.2 OFF-LICENCE HOURS

OFF LICENSE TYPE	MAXIMUM TRADING HOURS
Grocery stores and supermarkets	7.00am to 10.00pm Monday to Sunday
All other off licenses	9.00am to 10.00pm Monday to Sunday

LOCAL ALCOHOL POLICY

5.3 CLUB LICENCE HOURS

CLUB LICENCE TYPE	MAXIMUM TRADING HOURS
	Licensing hours are to be consistent with the nature and activities of the club and in general shall range from: 8.00am to 1.00am the following day Monday to Sunday

6. SPECIAL LICENCES

Special Licences may be issued for the on-site or off-site consumption of alcohol for a special event or series of events. The Sale and Supply of Alcohol Act 2012 allows special licences to be issued for up to 12 months. Unlike other kinds of licences, special licences are not subject to the Act's default maximum trading hours so can apply up to 24 hours a day. Special licenses are to allow the sale and supply of alcohol at events and are not intended to be a substitute for an "on", "off" or "club" licence.

Applications for special licences should be filed 20 working days prior to the intended event. This time period is specified by statute to allow sufficient time for reporting by the Police, Medical Officer of Health and Licensing Inspector. Applications submitted with less than 20 working days available to the District Licensing Committee may not be processed in time for the event and are submitted at the applicant's risk.

All applications must comply with the provisions of the District Plan. Conditions may be imposed on any special licence to mitigate the potential for noise or other environmental effects. Where an objection to an application is received the application will be referred for a formal hearing to the District Licensing Committee for a decision.

7. LOCATION OF LICENSED PREMISES

From the date this LAP comes into force, no further off-licences are to be issued for any premises being a bottle store on land located within:

- Flaxmere - the Commercial Service or Suburban Commercial zone in Flaxmere, or any Precinct within the Flaxmere Village Centre Zone or Scheduled sites 1 and 2 within Flaxmere shown as identified in Map 1.
- Camberley - the suburban commercial zone in Camberley identified in Map 2.
- Maraenui – the Reserve, Suburban Commercial and Residential Zone in Maraenui identified in Map 3.

NOTE: In all areas not listed above the District Licensing Committee may grant an on, off or club licence for any premises located in any zone where the sale and supply of alcohol is a permitted activity under the relevant District Plan. Applications will not be considered in other areas unless resource consent has been granted.



HASTINGS DISTRICT & NAPIER CITY COUNCILS' LOCAL ALCOHOL POLICY | 9

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BOTTLE STORE RESTRICTION AREA MAP FLAXMERE



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BOTTLE STORE RESTRICTION AREA MAP CAMBERLEY



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BOTTLE STORE RESTRICTION AREA MAP MARAENUI



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8. DISCRETIONARY CONDITIONS

Section 117 of the Act permits a District Licensing Committee to issue any licence subject to any reasonable conditions not inconsistent with the Act.

Discretionary conditions are in addition to the mandatory conditions specified within the Act. This provision allows the District Licensing Committee a wide ranging discretion as to conditions that may be applied to a licence. In order to provide some guidance to the District Licensing Committee and some certainty to applicants, the following conditions are a list of those which may be imposed by the District Licensing Committee where they are considered appropriate. In using its discretion to apply conditions, the District Licensing Committee will be guided by the following:

- **CONNECTION** – whether there is a connection between the problem to be addressed and the proposed activity
- **IMPACT** – whether in the opinion of the District Licensing Committee the proposed condition will contribute to making the drinking environment safer and minimise harm
- **REASONABLENESS** – whether it is within the capabilities of the applicant or licensee to satisfy this condition.

NOTE: While the District Licensing Committee has the discretion to add any condition(s) that it deems to be appropriate, it is anticipated that an applicant would have the opportunity to submit comments to the District Licensing Committee prior to the imposition of any condition that may have a financial or management impact on their business.

LOCAL ALCOHOL POLICY

The following are examples of conditions which may be applied to alcohol licences by the District Licensing Committee:

ON-LICENCES

- CCTV cameras (location and number)
- Provision of effective exterior lighting
- No serving in glass containers at specified times
- Number of door-staff and provision of additional security staff after specified times
- Management of patrons queuing to enter the licensed premise
- Limit on the number of drinks per customer at specified times
- No shots or types of drinks to be served after specified times
- Limit on drink sizes after specified times
- Conditions relating to management: such as certificated staff required if the maximum occupancy exceeds a prescribed number or if recommended by Police or the Inspector, requirement for multiple managers etc
- One way door restrictions
- Provision of transport for patrons
- Restriction on the use of outdoor areas after a specified time

CLUB LICENCES

- Conditions relating to management: such as certificated staff required at all clubs unless the bar is staffed voluntarily and membership is below a prescribed number.

OFF-LICENCES

- Display of safe drinking messages/material

SPECIAL LICENCES

- Restriction on the type of drinks sold, the alcohol percentage of the drinks and the type of containers the drinks are served in
- One way door restrictions

DEFINITIONS

Alcohol	<p>means a substance—</p> <p>(a) that—</p> <p> (i) is or contains a fermented, distilled, or spirituous alcohol; and</p> <p> (ii) at 20°C is found on analysis to contain 1.15% or more ethanol by volume; or</p> <p>(b) that—</p> <p> (i) is a frozen liquid, or a mixture of a frozen liquid and another substance or substances; and</p> <p> (ii) is alcohol (within the meaning of paragraph (a)) when completely thawed to 20°C; or</p> <p>(c) that, whatever its form, is found on analysis to contain 1.15% or more ethanol by weight in a form that can be assimilated by people (refer section 5(1) of the Act)</p>
Alcohol related harm	<p>(a) means the harm caused by the excessive or inappropriate consumption of alcohol; and</p> <p>(b) includes-</p> <p> (i) 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</p> <p> (ii) 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 subparagraph (i) (refer section 5(1) of the Act)</p>
Bottle store	<p>means retail premises where at least 85% of the annual sale revenue is expected to be earned from the sale of alcohol for consumption somewhere else (refer section 31(1) of the Act)</p>
Bar	<p>in relation to a hotel or tavern, means a part of the hotel or tavern used principally or exclusively for the sale or consumption of alcohol (refer section 5(1) of the Act)</p>
Café	<p>has the same meaning as restaurant in terms of the licence</p>

LOCAL ALCOHOL POLICY

Club	means a body that- <ul style="list-style-type: none">(a) Is a body corporate having as its object (or as one of its objects) participating in or promoting a sport or other recreational activity, otherwise than for gain; or(b) Is a body corporate whose object is not (or none of whose objects is) gain; or(c) Holds a permanent club charter (refer section 5(1) of the Act)
Club licences	where the licensee (e.g. a club) can sell and supply alcohol for consumption on the club premises by authorised customers (see section 21 of the Act);
Entertainment Venue	means premises used or intended to be used in the course of business principally for providing any performance or activity such as but not limited to theatre, cinema, bowling, pool/snooker/billiard hall, brothel, function centre, wedding venue, live entertainment venue, strip club.
Grocery Store	means a shop that has the characteristics normally associated with shops of the kind commonly thought of as grocery shops such as but not limited to annual sales revenue, product range; and comprises premises where a range of food products and other household items are sold; but the principal business carried on is or will be the sale of food products (refer section 33(1) of the Act). In most cases grocery stores will be less than 1,000 m2 in size
Hotel	means premises used or intended to be used in the course of business principally for providing to the public- <ul style="list-style-type: none">(a) Lodging; and(b) Alcohol, meals, and refreshments for consumption on the premises (refer section 5(1) of the Act)
Night-club	has the same meaning as tavern in terms of the licence
On-licences	where the licensee can sell and supply alcohol for consumption on the premises and can let people consume alcohol there (see section 14 of the Act);

Off-licences	where the licensee sells alcohol from a premise for consumption somewhere else (see section 17 of the Act);
Pub	has the same meaning as tavern in terms of the licence
Restaurant	means premises that- <ul style="list-style-type: none"> (a) Are not a conveyance; and (b) Are used or intended to be used in the course of business principally for supplying meals to the public for eating on the premises (refer section 5(1) of the Act)
Special licences	can be either on-site or off-site special licences. With an on-site special, the licensee can sell or supply alcohol, for consumption there, to people attending an event described in it. With an off-site special, the licensee can sell the licensee's alcohol, for consumption somewhere else, to people attending an event described in it (see section 22 of the Act).
Supermarket	means premises commonly thought of as a supermarket with a floor area of at least 1000m ² , including any separate departments set aside for such foodstuffs as fresh meat, fresh fruit and vegetables, and delicatessen items.
Tavern	<ul style="list-style-type: none"> (a) means premises used or intended to be used in the course of business principally for providing alcohol and other refreshments to the public; but (b) does not include an airport bar (refer section 5(1)). (ie, an airport bar is not treated as a tavern for alcohol licensing purposes).
Winery	means an activity carried out on the same site as a vineyard involving wine making and cellar door sales (the retail sale of the wine produced on the site), and any related entertainment facilities including the serving of food and beverages (refer Hastings District Plan definitions section).

APPENDIX 1 – REASONS

Reasons for the key elements of the Local Alcohol Policy are provided as follows. The reasons outline the key considerations of the Local Alcohol Policy Joint Committee as a result of hearing and considering all of the submissions and the reporting officer’s report, as well as the appeals to the Provisional Local Alcohol Policy.

CLAUSE	REASONS
ON-LICENCE HOURS The maximum trading hours for: Taverns/bars/pubs/night-clubs are 8.00am to 3.00am the following day Monday to Sunday with a mandatory one way door restriction at 2.00am	<p>The opening hours of 8am for all on-licence venues are consistent with the default opening hours set out under the Act.</p> <p>The closing hours are consistent with historical closing hours outlined under previous Hastings and Napier Sale of Alcohol Policies as being 7am-3am.</p> <p>The Committee does not have evidence that the on-licence hours for taverns/ bars/pubs/ night-clubs should be further restricted in the territorial authority areas of Napier and Hastings.</p> <p>The Committee considered that because of the range of controls that apply to on-licences and the number of conditions and measures that on-licences are bound by to ensure they are operated responsibly that a 3.00am closure is appropriate. The Police and Medical Officer of Health while supporting a 2.00am close also recognised that licenced premises are a good place to consume alcohol in a safe way.</p> <p>The Committee considered that a one-way door should be mandatory at 2.00am as it provides an extra tool in the management of potential alcohol harm by reducing the likelihood of the movement of patrons between venues.</p> <p>From the submissions made by the Police and some licence holders, the evidence supports the implementation of a mandatory one-way door policy. Evidence indicated previous voluntary local trials of a one-way door policy were successful.</p>

CLAUSE	REASONS
Cafes/restaurants/wineries/winery restaurants are 8.00am to 2.00am the following day Monday to Sunday.	<p>The Committee determined that there should not be a differentiation between trading hours for taverns/bars/pubs/night-clubs and cafes/restaurants/wineries and that by having the same licence hours provides for more effective monitoring and enforcement.</p> <p>The Committee recognises that these businesses are commercial enterprises and market demand dictates closing time, and that these venues generally close at 11pm and only on occasion would go through to 2.00am.</p>
Entertainment venues licensing hours are to be consistent with the nature and activities of the premise and in general shall range from 8.00am to 2.00am the following day Monday to Sunday.	<p>The Committee recognises that the District Licensing Committee should have the ability to determine licence hours which are consistent with the nature and activity of the premises.</p>

APPENDIX 1 – REASONS

CLAUSE	REASONS
OFF-LICENCE HOURS The maximum trading hours for: Wineries, hotels, bars, taverns and bottle stores are 9.00am to 10.00pm Monday to Sunday	<p>The Committee determined the opening hours of 9.00am will assist in reducing alcohol related harm given that many of these premises are located in suburban or local communities and are more easily accessible to residential areas.</p> <p>Stopping the sale of alcohol at 10.00pm will also assist in reducing the incidences of pre-loading, side-loading and the further purchases of alcohol by people who have already been drinking throughout the evening and will therefore contribute to reducing the potential for alcohol related harm.</p>
Grocery stores and supermarkets 7.00am to 10.00pm Monday to Sunday	<p>The main purpose of supermarkets and grocery stores is to sell food, with alcohol sales being secondary to that. Having a 7.00am opening hour provides for the convenience of supermarket and grocery shoppers carrying out their normal grocery purchases at that time.</p> <p>Stopping the sale of alcohol at 10.00pm will assist in reducing incidences of pre-loading, side loading and the further purchases of alcohol by people who had already been drinking throughout the evening, and will therefore contribute to reducing the potential for alcohol related harm.</p> <p>There is no differentiation between closing hours for off-licences, as all alcohol can result in alcohol related harm. At this point in time, there is not sufficient local evidence to support a difference in the closing hours of different off-licences.</p>

CLAUSE	REASONS
<p>CLUB LICENCE HOURS</p> <p>Licensing hours are to be consistent with the nature and activities of the club and in general shall range from 8.00am to 1.00am the following day Monday to Sunday.</p>	<p>The start time for Club Licences at 8am is consistent with the default starting time set out in the Act.</p> <p>The finishing hours are consistent with historical operating hours of clubs in the territorial authority areas of Napier and Hastings with no evidence of alcohol related harm associated with these hours to justify imposing more restrictive hours. Further, the District Licensing Committee will be able to set licence hours which are consistent with the nature and activities of the club.</p>
<p>SPECIAL LICENCES</p> <p>Special Licences may be issued for the on-site or off-site consumption of alcohol for a special event or series of events. The Sale and Supply of Alcohol Act 2012 allows special licences to be issued for up to 12 months. Unlike other kinds of licences, special licences are not subject to the Act's default maximum trading hours so can apply up to 24 hours a day. Special licenses are to allow the sale and supply of alcohol at events and are not intended to be a substitute for an "on", "off" or "club" licence.</p> <p>Applications for special licences should be filed 20 working days prior to the intended event. This time period is specified by statute to allow sufficient time for reporting by the Police, Medical Officer of Health and licensing inspector. Applications submitted with less than 20 working days available to the District Licensing Committee may not be processed in time for the event and are submitted at the applicant's risk.</p> <p>All applications must comply with the provisions of the District Plan. Conditions may be imposed on any special licence to mitigate the potential for noise or other environmental effects. Where an objection to an application is received the application will be referred for a formal hearing to the District Licensing Agency for a decision.</p>	<p>No maximum trading hours for special licences are specified in this policy due to the uncertainty of types of events and when these may occur. Maximum trading hours for special licences are also not prescribed in the Act.</p> <p>The Committee considers that it is appropriate for the District Licensing Committee to consider each application on its own individual merits taking into account the statutory criteria that must be considered and that conditions may be imposed on a Special Licence to mitigate adverse effects.</p>

APPENDIX 1 – REASONS

CLAUSE	REASONS
<p>LOCATION OF LICENSED PREMISES</p> <p>From the date this LAP comes into force, no further off-licences are to be issued for any premises being a bottle store on land located within:</p> <ul style="list-style-type: none"> • FLAXMERE - the Commercial Service or Suburban Commercial zone in Flaxmere, or any Precinct within the Flaxmere Village Centre Zone or Scheduled sites 1 and 2 within Flaxmere shown as identified in Map 1. • CAMBERLEY - the suburban commercial zone in Camberley identified in Map 2. • MARAENUI – the Reserve, Suburban Commercial and Residential Zone in Maraenui identified in Map 3. <p>NOTE: In all areas not listed above the District Licensing Committee may grant an on, off or club licence for any premises located in any zone where the sale and supply of alcohol is a permitted activity under the relevant District Plan. Applications will not be considered in other areas unless resource consent has been granted.</p>	<p>The Committee determined that there was sufficient local evidence to justify the implementation of location restrictions.</p> <p>A number of submissions were in support of location restrictions for Flaxmere and Camberley and submissions from the Police and Medical Officer of Health also requested that there also be bottle store restrictions put in place in Maraenui.</p> <p>That Maraenui has similar demographic and social problems as Flaxmere and Camberley and the Committee considered that it was therefore appropriate for a 'no further bottle store restriction' to be applied to Maraenui.</p> <p>Evidence from the Medical Officer of Health also showed that the Hastings Regional Hospital Emergency Department alcohol-related injury presentations are more likely to occur in private residences than licensed premises and that young people particularly those from high deprivation areas are more at risk of presenting with alcohol-related injuries than those from less deprived areas.</p> <p>The Committee did not consider further restrictions in relation to proximity to premises or facilities of a particular kind or kinds were warranted as it considers the District Licensing Committee to be in the best position to consider this on a case by case basis with the criteria relating to amenity and good order contained in the Act.</p>
<p>DISCRETIONARY CONDITIONS</p>	<p>The Committee notes that by their nature, discretionary conditions may or may not be applied by the District Licensing Committee and that the intention of this element of the policy is to draw attention to the types of conditions that the District Licensing Committee could consider. Outlining such conditions in the policy also provides some guidance to applicants regarding the nature and scope of potential discretionary conditions.</p>

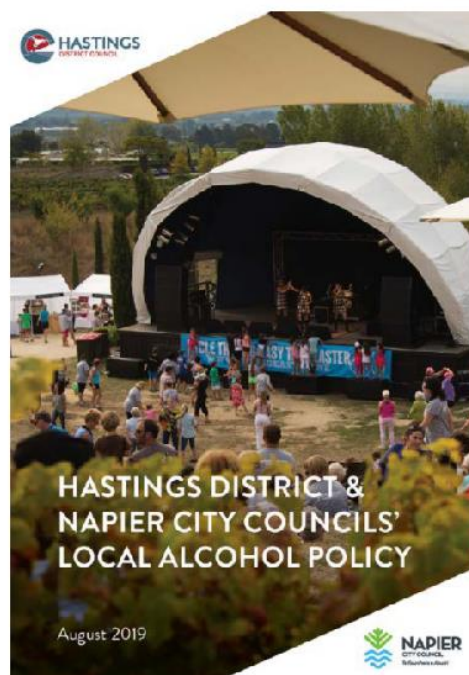


Item 7



Joint Local Alcohol Policy

Hastings Research Paper 2021



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1. INTRODUCTION

- 1.1. The purpose of this report is to analyse alcohol related harm data and the associated data required under Section 78 of the Sale and Supply of Alcohol Act 2012 (SSAA 2012) to help inform the review of the Hastings District Council (HDC) and Napier City Council (NCC) Local Alcohol Policy (LAP) and decide on a 3 or 6 year review period.
- 1.2. Section 2 of the report provides background information on the Sale and Supply of Alcohol Act 2012 (SSAA 2012) and specifically on the review of local alcohol policies; Section 3 provides an overview of the HDC and NCC LAP; Section 4 aligns with the information requirements for developing a local alcohol policy as set out in the Sale and Supply of Alcohol Act 2012; Section 5 summarises the policy specific details including legal advice and Section 6 is a summary and conclusion of findings.

2. SALE AND SUPPLY OF ALCOHOL ACT 2012

- 2.1. The object of The Sale and Supply of Alcohol Act 2012 is:
 - (a) That the sale, supply and consumption of alcohol should be undertaken safely and responsibly; and
 - (b) The harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- 2.2. Harm is defined very widely and includes any crime, damage, death, disease, disorderly behaviour, illness, or injury to individuals or the community either directly or indirectly caused by excessive or inappropriate alcohol consumption.
- 2.3. Under the SSAA 2012, Territorial Authorities are able to develop Local Alcohol Policies (LAPs) and Section 77 of the Act sets out the licensing matters that can be addressed through a LAP, these are:
 - Location of licensed premises by reference to broad areas
 - Location of licensed premises by reference to proximity to premises or facilities of particular kinds
 - Whether further licenses (or licenses of a particular kind or kinds) should be issued for premises in the district concerned, or any stated part of the district
 - Maximum trading hours
 - The issue of licences, or licences of a particular kind or kinds, subject to discretionary conditions.
 - One-way door restrictions.
- 2.4. LAP's cannot include policies on matters unrelated to licensing such as the price of alcohol, age limits for drinking or alcohol advertising and sponsorship.
- 2.5. Section 78 of the Act requires that if a territorial authority decides to develop a LAP it must have regard to:
 - The objectives and policies of its district plan

- The number of licences of each kind held for premises in its district, and the location and opening hours of each of the premises
 - Any areas where bylaws which prohibit alcohol in public places are in force
 - The demography of the district's residents
 - The demography of people who visit the district as tourists or holiday makers
 - The overall health indicators of the district's residents
 - The nature and severity of the alcohol-related problems arising in the district.
- 2.6. As per the SSAA 2012 Section 97 a Territorial Authority must review the policy utilising the Special Consultative Procedure no later than 6 years after it came into force and no later than the 6 years after the most recent review was completed.
- 2.7. When reviewing a LAP, the territory authority has to follow the process as if it were the adoption of a new LAP (Section 95 - SSAA 2012).

3. HASTINGS DISTRICT COUNCIL AND NAPIER CITY COUNCIL LAP BACKGROUND

- 3.1. A Council decision was made that Napier and Hastings Councils would develop a joint policy for the region to provide consistency and ease of enforcement under Section 76 of the SSAA 2012.
- 3.2. The joint LAP was developed over several years from 2012 to 2017 and the special consultative procedure (SCP) was completed as a part of this process in 2013.
- 3.3. The SCP attracted 313 submissions from the public and a public hearing was held by a joint committee consisting of an Independent Commissioner and Councillors from both the Hastings District Council and Napier City Council.
- 3.4. The LAP was then approved by both councils and became provisional and was appealed by three parties. After long negotiations a settlement was made and the LAP came into force in August 2019 with the hours provisions coming into force in November 2019.
- 3.5. The LAP included the following provisions:
 - **Hours for on licences**
 - Taverns / Bars / pubs – 8.00 am to 3.00 am Monday to Sunday
 - Cafes / restaurants / wineries – 8.00 am to 2.00 am Monday to Sunday
 - Entertainment venues - 8.00 am to 2.00 am Monday to Sunday
 - **Hours for Off licences**
 - Grocery Stores / Supermarkets - 7.00 am to 10.00 pm Monday to Sunday
 - All other off licenses – 9.00 am to 10.00 pm Monday to Sunday
 - **Hours for Club Licence** – 8.00 am to 1.00 am Monday to Sunday
 - **Hours for Special licences** – as per appropriate to the event
 - **Location of licensed premises – protection for vulnerable communities**
 - No further off-licenses are to be issued for any premises being a **bottle store** on land located within: Flaxmere Commercial Service or Suburban Commercial zone or Flaxmere Village Centre Zone / Camberley / Maraenui
 - **Discretionary conditions** - which are guided by the principles of
 - CONNECTION – whether there is a connection between the problem to be addressed and the proposed activity
 - IMPACT – whether in the opinion of the District Licensing Committee the proposed condition will contribute to making the drinking environment safer and minimise harm
 - REASONABLENESS – whether it is within the capabilities of the applicant or licensee to satisfy this condition.
 - Examples of discretionary conditions include – CCTV, Lighting, No glass serves, limit on drink sizes and type at events.
- 3.6. When the LAP was adopted, both councils resolved that a *“review be considered in three years after the policy becomes operative with a full review required within 6 years of the enforcement date.”* (Ref: 19/607).
- 3.7. This research paper will provide evidence to support a three or six year review and help to decide which review period is most appropriate.

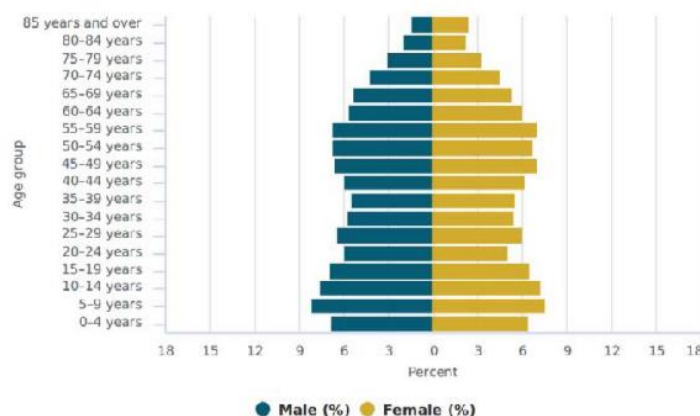
4. SPECIFIC INFORMATION REQUIREMENTS

Below details, as per the requirement of the SSAA 2012 Section 78 (d), the demographics of the district residents and (e) demographics of the people who visit the district.

4.1. Community Demographics

- 4.1.1. As at 2018 (Statistics NZ) there are 166,368 people who reside in Hawke's Bay.
- 4.1.2. The Hastings District covers a geographic area of 5226.61 square kilometres and has a population of 81,537 (Statistics NZ 2018) with estimated population calculated by Statistics New Zealand of 85,000 in 2019. Hastings population has increased by approximately 11 percent between 2013 and 2018.
- 4.1.3. Hastings District accounts for 1.7 percent of the NZ population ranking it the fourteenth in size out of the 74 Territory Authority's.
- 4.1.4. The median age in Hastings is 39.1 years and there are slightly more females than males (40,029 males / 41,511 females). (Statistics NZ, 2018).

Age and sex of people in Hastings District, 2018 Census



See metadata tab for information about variables and quality.

Stats NZ

Statistics New Zealand (2018)

- 4.1.5. There are a total of 22,269 Māori people residing in the Hastings District. Māori make up 27.3% of the population and this has increased year on year since 2006. Hastings has a higher percentage of Māori than the New Zealand population as a whole (NZ 16.5% / Hastings 27.3%). European make up the largest population group at 71.8%. (Statistics NZ, 2018).
- 4.1.6. Hastings District has 50.3% of the population in full time employment, 3.4% unemployed and 31.5% not in the labour force (not seeking work) which is very similar to the national statistics. 21.3% of the Hastings District are in full time study.
- 4.1.7. As at 2018, the median income of the Hastings District was \$28,400 and 12.9% of the population earns over \$70,000. (Statistics NZ, 2018).

4.2. Deprivation

4.2.1. The deprivation index shows the deprivation experienced by groups of people in areas throughout New Zealand. The deprivation index allocates scores of 1 to 10. Areas with a deprivation score of 10 are the most deprived, conversely those with a deprivation score of 1 are the least deprived.

4.2.2. The below table shows the deprivation (1-10) by census area for Hastings District (2018).

Census Area Unit	Decile	Population	Land Area (ha)
Twyford	4	950	3033
Karamū	5	973	1330
Whakatū	8	1026	1075
Clive	5	960	725
Haumoana	5	965	1368
Brookvale	2	919	1361
Irongate	4	948	895
Longlands South	2	921	1060
Tangoio	2	928	210
Eskdale	4	948	2608
Sherenden-Puketapu	2	919	66006
Ōmāhu	8	1044	1221
Waiohiki	2	925	842
Pakowhai	6	997	2560
Maraekākaho	3	929	36593
Bridge Pā	6	986	2714
Poukawa	4	955	35651
Pakipaki	5	961	1661
Waimarama	4	956	33856
Tūtira	6	980	126406
Puketitiri	3	937	97454
Whanawhana	2	914	67234
Mahora	8	1053	155
St Leonards	8	1039	31048
Frimley	5	968	163
Raureka	9	1060	183
Mayfair	8	1053	160
Parkvale	6	989	139
Hastings Central	9	1062	231
Ākina	9	1057	174
Woolwich	6	990	78
Camberley	10	1244	110
Kingsley-Chatham	10	1204	216
Lochain	10	1143	100
Flaxmere East	10	1141	166
Anderson Park	9	1068	67
Iona	2	924	259
Havelock North Central	1	907	181
Te Mata Hills	1	883	741

4.2.3. In Hastings District in 2018:

- Four area units (Flaxmere East, Kingsley-Chatham, Lochain and Camberley) had average deprivation scores of 10, putting them among the 10% most deprived areas in New Zealand.
- Another four area units (Ākina, Raureka, Hastings Central, and Anderson Park) had average deprivation scores of 9.
- At the other end of the scale, Te Mata Hills and Havelock North Central had average deprivation scores of 1, putting them among the 10% least deprived areas in the country.
- Seven area units (Iona, Sherenden-Puketapu, Longlands South, Tangoio, Brookvale, Waiohiki and Whanawhana) averaged out as decile 2.

4.2.4. Please see appendix 1 for a map showing the deprivation index by area for the Hastings District.

4.3. Tourists and Visitors

4.3.1. As per the requirement of Section 78 (e) of the SSAA 2012, the material below details tourist and visitor information for the Hawke's Bay.

4.3.2. The Hawke's Bay region attracts many tourists due to its many art deco buildings and associated festivals, and being a major wine and food producing region. Hawke's Bay is the second largest wine region in New Zealand, second only to Marlborough and is New Zealand's leading producer of red wines. The Hawke's Bay region is now established on the world stage, and recognised for award winning wines.

4.3.3. Within Hawke's Bay the visitor profile for the commercial accommodation visitor market for 2012 is 75% domestic tourists and 25% international tourists. The commercial accommodation market accounts for visitors staying one or more nights but does not cover the full range of commercial accommodation such as B&B users. Also "day" visitors (including cruise ship visitors) are not included. The Visiting Friends and Relatives (VFR) Accommodation Visitor Market accounts for 74% domestic visitors and 26% international visitors (Hawke's Bay Tourism, 2012).

4.3.4. The tourism spend in 2020 was 640 million, down 5% from the previous year.

4.4. District plan

4.4.1. Below details (as per the requirement of the SSAA 2012 Section 78 (a)) the objectives and policies of the district plan for the Hastings District.

4.4.2. The Hastings District Plan (the District Plan) provides the means for the people Hastings to manage the effects of the use, development and protection of the natural and physical resources within the district. It guides and controls how land is used, developed or protected in order to avoid or lessen the impact of any adverse effects.

Hastings District Plan (Partially Operative March 2020)

4.4.3. There is a distinction in the Hastings District Plan (the Plan) between the sale of alcohol as an 'on licence' and that related to an 'off licence'. The Plan uses the term "Premises Used for the Sale of Liquor" and this is defined in the Plan as "any premises used for the sale of liquor for consumption on site." In most cases an 'off' licence is considered as a commercial activity (under that definition).

4.4.4. The comparative table below is provided to show the differences in the rules. A 'Permitted activity' means no resource consent is required. 'Non-Complying', 'Discretionary', and 'Restricted Discretionary', are different activity status that apply for resource consents:

	On licence	Off licence
HASTINGS		
a) Central Commercial Zone	Permitted activity*	Permitted activity
b) Large Format Retail	Resource consent (non complying)	Resource consent (non complying)
c) Commercial Service Zone	Resource consent (non complying)	Resource consent (non complying)
d) Suburban Commercial Zone	Resource consent (restricted discretionary)	Permitted activity
e) Hastings Residential Commercial Zone	Resource consent (Discretionary)	Permitted activity
	* Providing that the standard requiring that the site be a minimum of 50 metres from a residential zone or the central residential zone is met.	
HAVELOCK NORTH		
f) Havelock North Retail Zone	Permitted activity*	Permitted activity
g) Business Zone	Resource consent (non complying)	Resource consent (non complying)
h) Mixed Use	Resource consent (Discretionary)	Resource consent (non complying)
	* Providing that the standard requiring that the site be a minimum of 50 metres from a residential zone or the mixed use zone is met.	
FLAXMERE		
i) Flaxmere Village Centre Commercial Zone	Resource Consent (Discretionary)	Permitted within supermarket Resource Consent for stand alone (non complying)
j) Flaxmere Village Centre Commercial Service Zone	Resource Consent (Discretionary)	Resource Consent (non complying)
k) Clive - Whakatū Suburban Commercial Zone	Resource Consent (restricted discretionary)	Permitted activity
l) Haumoana - Te Awanga Suburban Commercial Zone	Resource Consent (restricted discretionary)	Permitted activity
Isolated Commercial Activities and Scheduled sites	Resource consent (non complying)	Resource consent (non complying)

4.4.5. Wineries which include the vertical integration of other activities aligned with on-site wine making, such as the sale of wine produced on the site, are permitted but within specified limits in the following zones:

- Rural Zone
- Tuki Tuki Special Character Zone
- Plains Production Zone
- Te Mata Special Character Zone

4.4.6. There are some specific sites identified as Scheduled Sites in the District Plan that permit the sale of alcohol in existing buildings or when associated with the specific activities listed in the relevant schedule. These are:

- Hawke's Bay Racing Centre
- Hawke's Bay Showgrounds

4.4.7. There are other provisions in the District Plan that may include the sale of alcohol and these are called 'Temporary Events' (any event for which a Special Licence under the Sale and Supply of Alcohol Act is required, shall be deemed to be a temporary event). These are permitted in the following Zones but standards vary within these zones, in particular, the number of days permitted in any calendar year:

- Rural Zone
- Rural Residential Zone
- Tuki Tuki Special Character Zone
- Plains Production Zone
- Plains Settlement Zone
- Hastings General Residential Zone
- Hastings Character Residential Zone
- Iona Special Character Area Bull Hill Neighbourhood
- Hastings Central Commercial Zone
- Flaxmere Community Residential
- Clive Whakatū Residential Zone
- Haumoana - Te Awanga Residential Zone
- Coastal Settlement Zone
- Waimārama Settlement Zone
- Open Space Zone
- Regional Sports Park
- General Industrial Zone
- Nature Preservation Zone

4.5. Number and location of alcohol licences - Hastings District

4.5.1. As required under Section 78 (b) of the SSAA 2012; the number and location of alcohol licences for the District is detailed below.

4.5.2. As at 27 May 2021, the Hastings District has 257 alcohol licences, of those 112 are off licences, 118 on licences and 27 club licences and there have been 113 special licences approved for events in the Hastings District between 1 April 2020 and 1 April 2021.

4.5.3. Off licenses for the Hastings District are broken down as per below:

- 10 bottle stores
- 38 remote seller – internet based
- 13 supermarkets / grocery stores
- 33 cellar doors
- 7 Cidery / Breweries
- 11 other; off licence taverns, hotels, endorsed off licence.

4.5.4. On Licences consist of;

- 54 restaurants
- 9 Cellar doors
- 14 function centres or cinemas
- 6 Hotels
- 1 nightclub
- 22 Taverns – Brewery, Cidery, Gin distillers
- 12 other

4.5.5. The table below outlines the number of each type of licence within each census area unit within the Hastings District. Please see appendix 2 for a main area map showing licences in Hastings Town Centre, Flaxmere and Havelock North.

Census Area Unit	Decile	Population (2018)	Land Area (Ha)	Off-Licence	On-Licence	Clubs
Puketitiri-Tūtira	5	1839	243317	3	1	3
Sherenden-Crownthorpe	2	1317	76566	4	1	1
Maraekākaho	2	1392	82041	15	8	0
Puketapu-Eskdale	2	2673	24498	6	4	0
Ōmahū-Pakowhai	7	1434	4578	5	2	2
Poukawa	4	1365	33993	1	0	1
Flaxmere West	10	2631	92	0	0	0
Irongate	4	345	828	0	0	1
Frimley	4	2859	202	2	1	0
Raceway Park	8	1920	102	0	2	0
Parkvale	6	2160	124	2	0	0
Havelock North-Central	6	441	47	12	25	0
Havelock Hills	1	1530	299	0	0	0
Kahurānaki	4	1413	36796	6	4	0
Parkhaven	8	2880	102	1	0	0
Raureka	9	3033	106	0	0	0
Cornwall Park	8	3048	108	0	0	3
Tōmoana	8	306	327	0	2	0
Bridge Pā	8	1140	2324	6	4	3
Twyford	4	807	2601	2	3	0
Ōmahū Strip	6	177	194	1	3	0
Lochain Park	10	2940	94	0	0	0
Flaxmere Park	10	2604	135	3	1	1
Flaxmere South	10	2790	72	0	0	0
Camberley	10	2196	93	0	1	0
Tōmoana Crossing	7	2502	84	1	1	0
Clive	5	2247	1487	3	2	1
St Leonards	8	2646	103	3	3	2
Mahora	7	2556	94	1	0	0
Longlands-Pukahu	5	1908	3127	2	2	0
Ākina Park	9	2313	103	0	0	0
Queens Square	9	1968	60	1	0	0
Mayfair	10	2979	107	0	0	0
Karamū	6	1311	1329	1	2	0
Hastings Central	9	444	142	13	32	4
Mangateretere	1	1149	3722	5	5	0
Karanema-St Hill	4	1950	95	2	1	0
Haumoana-Te Awanga	5	1926	776	7	5	0
Lucknow	9	1461	58	1	0	2
Brookvale	1	2433	174	0	0	1

Iona	2	2667	147	1	0	2
Hereworth	1	2865	162	2	0	0
Te Mata Hills	1	984	1271	2	3	0

Hastings District Council Data base May 2021

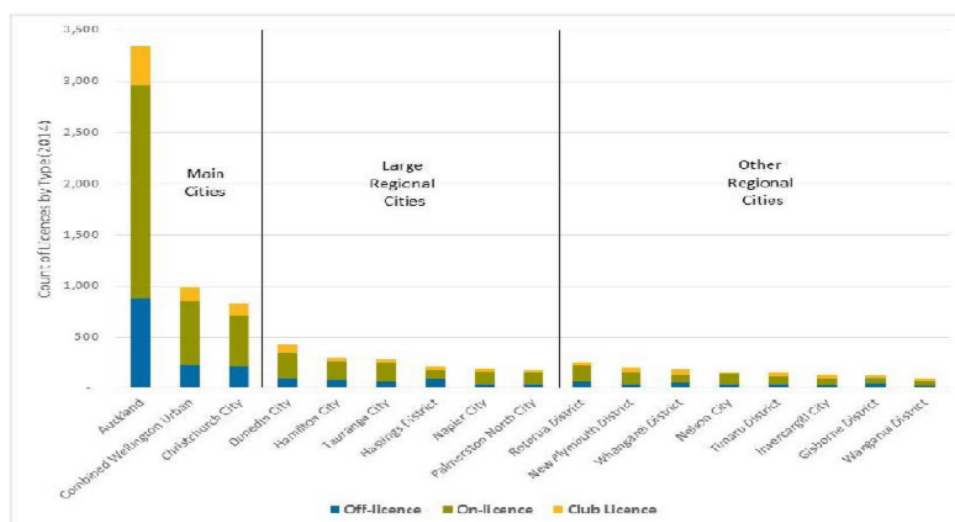
4.5.6. The population in each area unit was compared with the number of licensed premises inside that area unit. Across all areas units with a low deprivation (1-5) there was an average of 318 people per off-licence and 430 people per on-licence. In areas of high deprivation (6-10) there was an average of 472 people per off-licence and 515 people per on-licence.

4.5.7. The difference between the density of premises in relation to land area was more pronounced in areas of low and high deprivation. Across all low deprivation areas there was an average of 1 off-licence for every 5,617 hectares and 1 on-licence for every 7,590 hectares. Across all high deprivation areas there was an average of 1 off-licence per 4,628 hectares and 1 on-licence per 3875 hectares.

4.5.8. It is to be noted that there is little to be taken from looking at density of off or on licences in relation to deprivation or land mass, as on licences; (restaurants and bars etc) tend to naturally cluster in town centres where the deprivation is generally higher (lower socio economic). Licences also cluster in these areas due to District plan rules and the general nature of their businesses. This is similar for off licences. Lastly there is no ideal number or ratio for on or off licences to population or land mass.

Comparing licence numbers between regions

4.5.9. As seen in the graphic below, within the large regional city TAs, Hastings District sat in the middle when looking at total number of licences after Tauranga City. Hastings District stands out with a greater than average share of off-licences and an associated lower than average share of on-licences. The higher off-licence share is driven by the winemaker licence category (with Hawke's Bay being one of the country's wine producing areas). (ME Consulting, 2018).



Source: ME Consulting, 2018.

4.6. Opening and closing times of alcohol licences

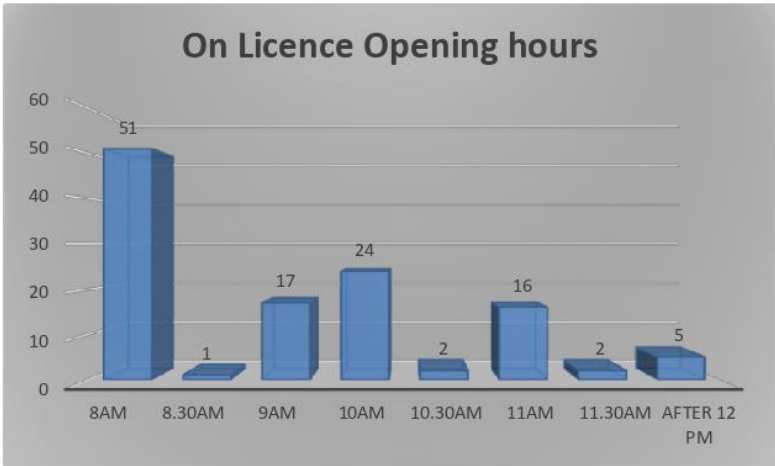
On licences

- 4.6.1.As seen in the graphic below, for on licenses the most common closing times are 12am midnight and 10.00 pm. Only 8 of the 118 on licences open to the maximum LAP hours of 3am and 35 stay open after 12am midnight.
- 4.6.2.Please note all licences that are open until 3am have a compulsory one way door policy from 2am as required under the LAP.
- 4.6.3.It is to be noted that although a licence may have legal licensing hours until a certain time, actual closing time may be earlier. This often changes from summer to winter or if there are a lack of patrons and demand to stay open.



Hastings District Council Database, 2021

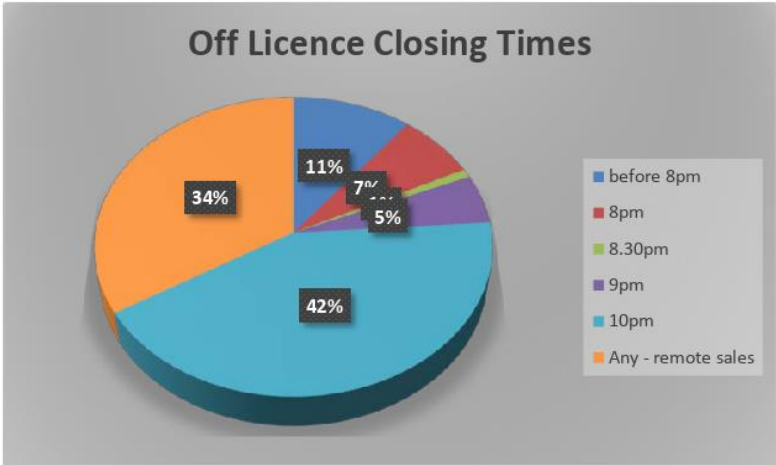
- 4.6.4.As detailed in the graph below, most premises open at 8am or 10am, however while these are their licensed hours, many premises will not open until later in the day.



Hastings District Council Database, 2021

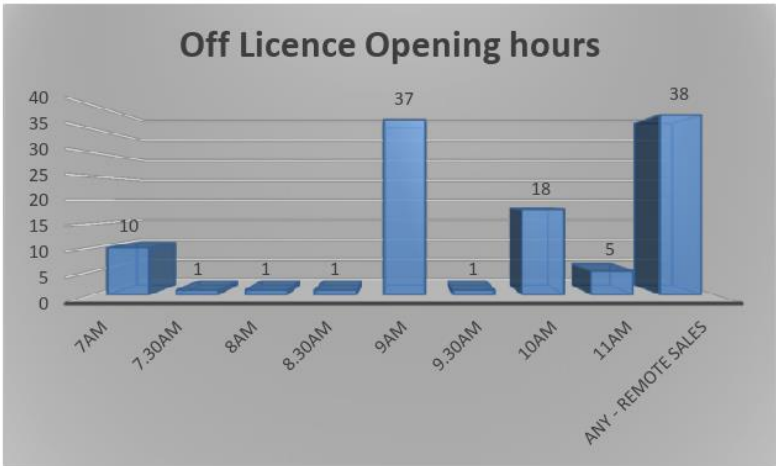
Off licences

- 4.6.5. Most off licences (as shown in the graph below) have licensed closing hours of 10pm followed by 'before 8pm' (12 licences).
- 4.6.6. Please note the licenses that close 'anytime' are remote sales off licences (online sales only) and sales can occur at any time of the day, any day of the week, but there are restrictions on the hours of delivery under the SSAA 2012.



Hastings District Council Database, 2021

- 4.6.7. As illustrated below, off licences (other than remote sales licences as explained above in section 4.6.6) mainly have opening hours of 9 am or 10 am.



Hastings District Council Database, 2021

Difference in hours pre / post LAP

4.6.8. Under the LAP 8 on licences had a reduction in hours and 24 off licences reduced hours. Most off licences affected by the LAP hours provision reduced their hours by 1 hour (either at the end of the day or start of the day).

New Alcohol applications lodged

4.6.9. There have been 16 new on licences applied for and granted in 2020, one up from 2019 (15) and 20 new off licences applied for and granted in 2020, up 6 from 2019 (14). Please note this number includes premises that are taken over by new companies and therefore require a new licence.

4.7. Alcohol Ban Areas

- 4.7.1. As per the requirements under Section 78 (c) the information below provides details pertaining to alcohol bans.
- 4.7.2. Hastings District has three alcohol ban general areas; Havelock North, Hastings City and Flaxmere. These are permanent alcohol ban areas where people aren't allowed to consume or have possession of alcohol at any time on any day of the week.
- 4.7.3. The fourth alcohol ban is for Waimārama, this ban is in place only for the 42 hour period commencing 6.00 am on New Year's Eve 31 December and ending at 12 midnight on the following New Year's Day 1 January in each year.
- 4.7.4. The fifth is a temporary alcohol ban between 7.00am and 11.00 for the Spring Carnival Racing day where this occurs on the first Saturday in October. Appendix 3 contains maps of the alcohol ban areas.
- 4.7.5. Lastly alcohol bans can and have been requested for specific events under section 4.3.2 of the Hastings District Council Consolidated Bylaw. The bylaw provides that Council may at any time and from time to time, by publicly notified resolution, declare that alcohol may not be consumed, brought into or possessed in any other public place or area within the district, at the times and during the periods specified in the resolution. There have been 2 temporary alcohol bans for events in the last calendar year.

4.8. Consumption

- 4.8.1. There were 495 million litres of alcohol available for consumption in New Zealand for the year 2020, up 0.8 percent from the previous year. The volume of spirits rose 5.2 percent to 89 million litres, wine rose 4.3 percent to 113 million litres and beer fell 1.7 percent to 293 million litres. (Statistics NZ, 2018).
- 4.8.2. From a regulatory perspective Hastings has seen a large increase in spirits based alcohol companies opening (gin primarily), and also many cidery / breweries. The largest increase has been in remote sellers of wine, somewhat reflecting the alcohol availability mentioned above.
- 4.8.3. The National Health Survey 2019/2020 states for NZ one in five adults are hazardous drinkers and men were 2.1 times more likely to be hazardous drinkers than women. The highest prevalence of hazardous drinking was among those aged 18–24 years, at 32.4 percent. Of Māori adults, 36.1 percent were hazardous drinkers in 2019/20. Māori adults were 1.8 times as likely as non-Māori adults to be hazardous drinkers.

4.8.4. The Attitudes and Behaviour towards Alcohol Survey (ABAS) is a national survey of people aged 15 years and over and includes discussions on alcohol consumption patterns, alcohol-related behaviour, consequences of consuming alcohol, and attitudes.

4.8.5. From the three surveys completed, there were 425 responses from the Hawke's Bay region and the information below summarises the main points for consumption attitudes and behaviours for Hawke's Bay.

- 64% of Hawke's Bay respondents reported consuming alcohol in the last four weeks.
 - One-third of these reported risky drinking behavior, higher than the rest of New Zealand (27%). This also increased year on year 2013/14 (22%) - 2015/16 (41%).
- 21% of respondents reported at least one negative/harmful experience from drinking alcohol, most commonly "spent too much money on alcohol" and "drove a vehicle while being unsure of how much you were under the influence of alcohol".
- In 2015/16, a significantly greater percentage of respondents reported that they "got drunk or intoxicated" (24%), compared with 2013/14 (10%).
- More respondents reported feeling "good, happy or relaxed" (90%) and "able to de-stress, wind down" (76%) when drinking alcohol, compared with the rest of New Zealand (83% and 70%, respectively).
- Supermarkets (72%), bottle or liquor stores (54%), and restaurants/cafés (31%) were where respondents most often purchased alcohol in the last four weeks.
- A greater proportion of Hawke's Bay respondents purchased alcohol at bottle or liquor stores (54%) and at vineyards (13%), compared with the rest of New Zealand (46% purchased at bottle or liquor stores; 4% at vineyards).
- A smaller proportion of Hawke's Bay respondents purchased alcohol from a bar/nightclub (17%), compared with the rest of New Zealand (23%).
- Nationally, there were gender differences in types of alcohol consumed. Similarly to national data, a significantly greater proportion of Hawke's Bay men reported consuming beer compared with women, and a significantly greater proportion of Hawke's Bay women reported consuming wine or sparkling wine than men.

4.9. Health Indicators

4.9.1. As per the requirements under Section 78 (f), this section analyses the overall health indicators of the district's residents.

4.9.2. Drinking responsibly is the key to reducing alcohol related impacts. However, within the health sector alcohol is seen as a major contributor to preventable disease, injury and accident. Alcohol is a contributory factor in many alcohol related hospital admissions including accidents, injuries, illnesses, attempted suicides and alcohol poisoning. Alcohol is medically classified as a class one carcinogen (along with tobacco and asbestos) and contributes directly to over 60 disorders and diseases and can ultimately result in death.

Emergency Department Admissions

4.9.3. The Hawke's Bay District Health Board has provided the following data on alcohol related Emergency Department Admissions (ED) in Hastings.

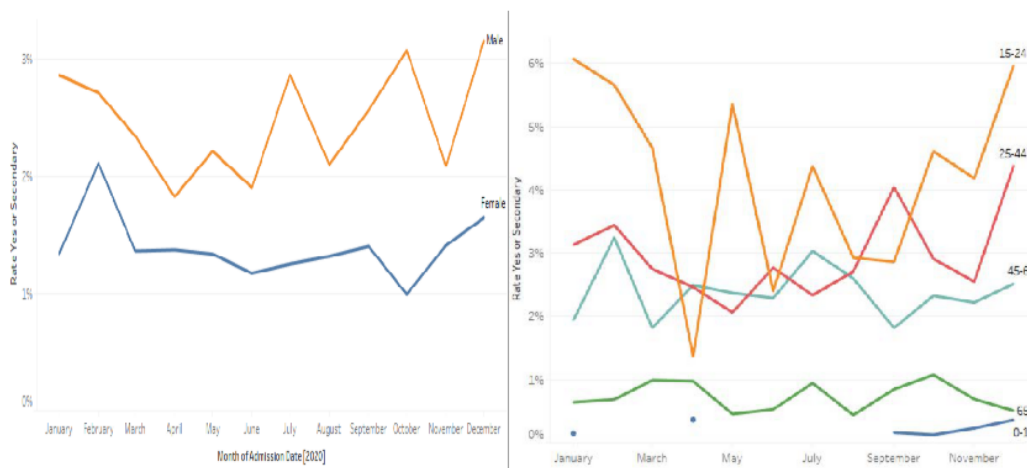
4.9.4. The following should be noted:

- Data is for hospital admissions only and does not include Private ED / after hours services or general practitioner practices.
- The data provided is for presentations not patient numbers. A patient can attend a hospital on several occasions in one year and each incident is recorded as a new presentation.
- Data is split into primary yes and secondary admissions,
 - Primary Yes - are those with alcohol in the system upon admission
 - Secondary - are those where alcohol is a contributor/cause to them coming in to ED but no alcohol detected on the patient presenting.

Number of presentations

4.9.5. In the calendar year 2020 – 2021 there were approximately 47,251 presentation to ED and of those 926 were alcohol related admissions (1.96%).

4.9.6. As seen in the graphic below males tend to present to ED more frequently than women and age 15 to 24 years have the highest rates of admissions, followed by 25 – 44 years of age.



Hawkes Bay District Health Board Business Performance & Intelligence, 2021

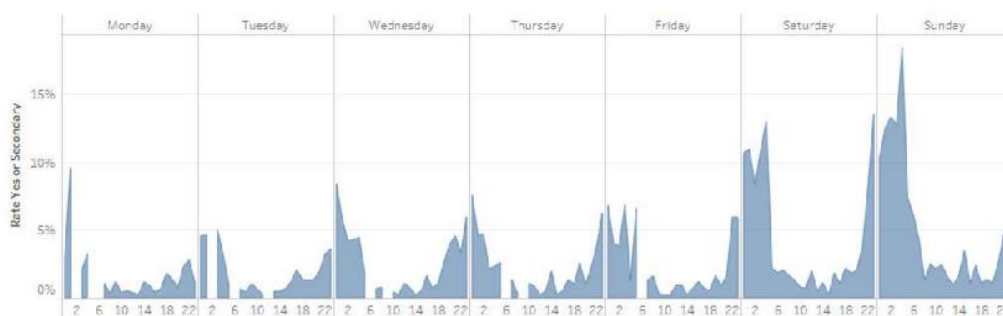
4.9.7. As seen below, generally Māori are over-represented in alcohol related harm statistics, this is true for the Hastings District also, other than in two months of the year where 'other' had higher presentations.



Hawkes Bay District Health Board Business Performance & Intelligence, 2021

Temporal analysis

4.9.8. Rates of alcohol related ED admissions peak Saturday and Sunday early hours of the morning (4am – Saturday night / Sunday morning) as illustrated in the graphic below. Rates start to rise from Saturday night 11pm through to 4am Sunday morning. Data shows that at the peak at 4am on a Sunday morning almost 20 percent of admissions are alcohol related (18.49%).



Hawkes Bay District Health Board Business Performance & Intelligence, 2021

4.9.9. Data shows that December has the highest rate of alcohol related presentations followed by February. Summer generally has higher rates of alcohol related presentations than winter with a random peak in July.

Severity

4.9.10. Below shows the top five diagnoses for alcohol related presentations to ED in Hastings for the year 2020 – 2021. Data shows that head injury was the most common cause for alcohol-related ED presentation.

Diagnoses	Number of presentations
Injury – Head	138
Injury – upper limb	97
Injury - multiple	89
Poison - intoxic	76
Medical Other	74

4.9.11. When people present to ED they are categorised based on severity;

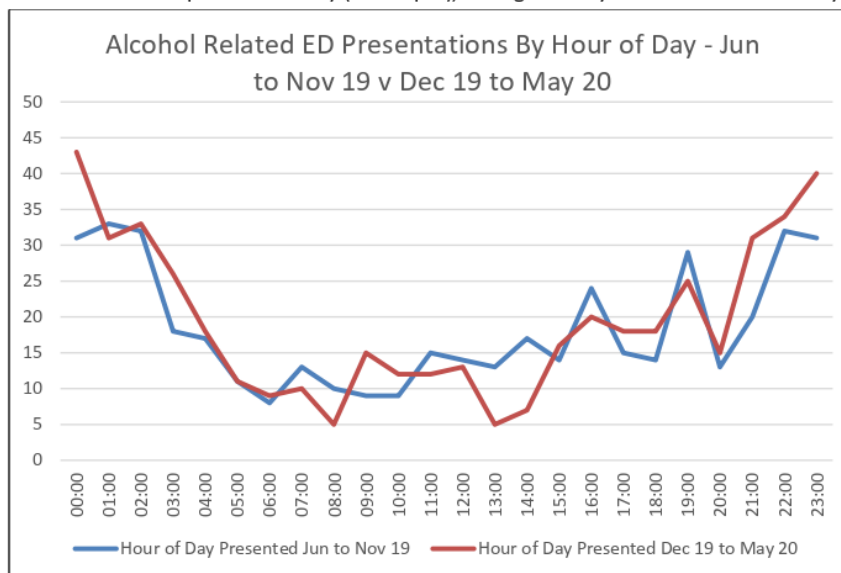
- Triage 1 – Resus
- Triage 2 – Emergency
- Triage 3 – Urgent
- Triage 4 – Semi Urgent
- Triage 5 – Non Urgent

4.9.12. Of all Triage two - Emergency ED presentations in 2020 - 2021 2.42% were alcohol related (6369 Emergency Presentations / 154 Alcohol Related) in Triage Three - urgent presentations to ED two percent were alcohol related (19,175 urgent presentations / 154 alcohol related) and 7.97 % of all Triage One - resuscitation ED admissions are alcohol related (364 ED resuscitation general / 29 Alcohol Related resuscitation).

ED presentations pre and post LAP adoption

4.9.13. When looking at admissions before and after adopting the LAP there were 442 Alcohol Related admissions (including secondary admissions) between June 2019 and November 2019 and 467 between December 2019 and May 2020. This shows alcohol related admission increased by 25 admissions (5.66%). The increase is most likely due to the time of the year, November / December, as this time of year usually has higher numbers than mid-year in winter. The increase is not statistically significant. It is also to be noted that the date period December 19 to May 20 included COVID19 which may also have impact on numbers.

4.9.14. As seen in the graphic below, alcohol related ED admissions are at their highest later in the evening steeply climbing between 8 pm and midnight then steadily dropping through the early hours of the morning. In the second period, there were noticeably more presentations in the later parts of the day (from 8pm), but again likely due to the time of the year.



Hawkes Bay District Health Board Business Performance & Intelligence, 2021

4.9.15. As seen below, when comparing the two time periods before and after the adoption of the LAP there is minimal change in alcohol related ED presentations by ethnicity. Māori decreased alcohol related ED presentations by 8.28% and 'other' ethnicity had the largest increase in the later period after the LAP came into force of 14.46%.

Ethnicity				
	Jun to Nov 19	Dec 19 to May 20	Variance	% Variance
NEW ZEALAND MĀORI	169	155	-14	-8.28%
NOT STATED	3	5	2	66.67%
OTHER	249	285	36	14.46%
PACIFIC ISLANDER	21	22	1	4.76%
Grand Total	442	467	25	5.66%
Age Group				
	Jun to Nov 19	Dec 19 to May 20	Variance	% Variance
0-14	4	2	-2	-50.00%
15-24	110	144	34	30.91%
25-44	151	152	1	0.66%
45-64	138	126	-12	-8.70%
65+	39	43	4	10.26%
Grand Total	442	467	25	5.66%

Gender				
	Jun to Nov 19	Dec 19 to May 20	Variance	% Variance
Female	174	181	7	4.02%
Male	268	286	18	6.72%
Grand Total	442	467	25	5.66%

Hawkes Bay District Health Board Business Performance & Intelligence, 2021

- 4.9.16. There is also minimal difference between the two time periods by gender.
- 4.9.17. Those aged 15- 24 had the highest increase (30% increase in the later period after the LAP).
- 4.9.18. When comparing a larger time period of 15 months (July 2017 to October 2019 and November 2019 to February 2021) the rate overall has changed very little between the two periods (second period greater by 0.01 percentage points (2.08% v 2.09%). There has also been very little change in presentations for men, women, all age groups and ethnicities between these two longer periods.
- 4.9.19. It is to be noted that there are a variety of factors that influence ED presentation numbers, COVID19 has to be considered and numbers generally fluctuate between seasons, there are also many external factors that come into play.

4.10. Nature and severity of Alcohol Related Harm – Alcohol related Offending

- 4.10.1. As per the requirements of Section 78 (g) of the SSAA 2012; the nature and severity of the alcohol-related problems arising in the district.
- 4.10.2. Alcohol contributes to a significant amount of committed offences both nationally and within Hawke's Bay. A significant proportion of police work involves responding to alcohol-related incidents including violent offending, homicides, drink-driving, family violence and ensuring the safety of intoxicated people or those around them.
- 4.10.3. Unfortunately there is little evidence and data that the NZ Police can provide at this point in time. Data has been requested from NZ Police National Headquarters.
- 4.10.4. The data below has been gathered from the NZ Police statistics database which is very limited and the Ministry of Justice website in relation to convictions. Some estimates have been made in relation to alcohol related crime utilising literature and general crime statistics for the Hastings area.

Alcohol related Traffic Offences – Drink driving

- 4.10.5. There were a total of 635 driving offences committed in the Hastings district in the year January 2020 – January 2021, these offences included driver licence offences, regulatory driving offences and vehicle registration and road worthiness offences.
- 4.10.6. Of those 635 driving offences 160 were for exceeding the legal limit of alcohol while driving (drink driving). (NZ Police Database, 2021)
- 4.10.7. Hastings had the highest number of drink driving offences for the Hawke's Bay region; although this may just reflect differences in population size;

Hastings	Napier	Central Hawke's Bay	Wairoa
160	136	15	16

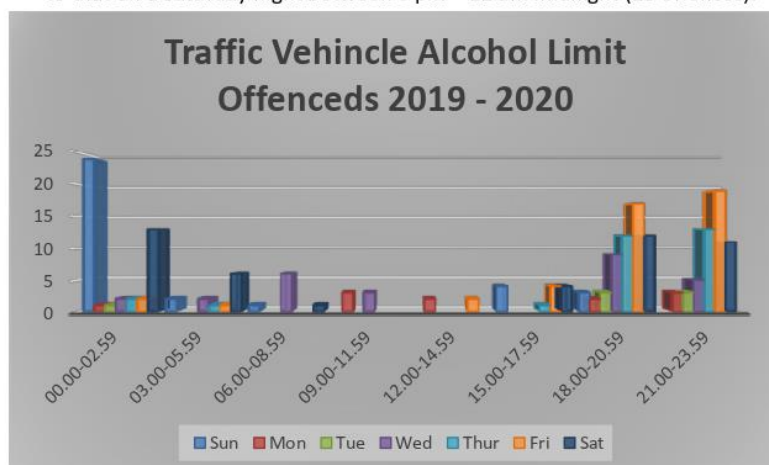
NZ Police Data, 2021

- 4.10.8. According to the NZ Justice website there were 347 convictions for Drink Driving in Hastings in the year 2020 – 2021 a decrease from 376 the previous calendar year.
- 4.10.9. Temporal analysis of the data from the NZ Police online database for 2020-2021 calendar year shows that the peak months are July, November and December for Drink Driving Offences.
- 4.10.10. As seen in the graphic below, for days and hours of the week, data shows peaks are on Friday between 6pm and 12.00 am midnight (on average 38 offences) and then on Sunday morning 12.00 am midnight to 3.00am (17 offences) closely followed by Saturday 9 pm to 12.00 am midnight (on average 15 offences).



NZ Police database, 2021

- 4.10.11. As seen below, for the calendar year January 19 to January 20 (prior to LAP - LAP came into force in November 2019) there were 202 drink driving offences. The highest number of offences occur on a Friday and Saturday night, with the highest number of offences typically being on a Friday between 6.00 pm and 12.00 am midnight (36 offences) second to that on a Saturday night between 6 pm – 12 am midnight (23 offences).



NZ Police database, 2021

- 4.10.12. While post LAP drink driving offence levels may have dropped slightly overall (202 pre LAP / 156 post LAP) this maybe from a number of factors, one being that numbers may be impacted by COVID19 as people were in lock down therefore there may have been less travel and less access to alcohol.
- 4.10.13. The only other noticeable shift is a temporal shift of highest number of offences – namely Friday night 9.00 pm to midnight (19 offences) for pre LAP and 6.00 pm to 9.00 pm Friday (22 offences) after the LAP. This may indicate that the reduction of hours for Off and on licences may have shifted drink driving offences earlier in the evening post LAP. However it is to be noted the temporal shift is not statistically significant and may be due to other external factors.

Breach of Alcohol Ban Offences

- 4.10.14. There were 59 recorded alcohol ban breaches (consumption of legal substances in prohibited areas and regulatory tobacco and alcohol offences) in Hastings for the calendar year January 2020 to January 2021.
- 4.10.15. It is important to note that Police may not always record the breach but instead just issue offenders with a warning or ask them to empty the drink and dispose of the rubbish and there may be no further action. The differences in enforcement and the ability for Police to use their discretion significantly limit the reliability of this data for measuring the effect of alcohol bans or the actual level of public drinking.
- 4.10.16. It is also noted that due to COVID19 the level may be lower due to less people being out in public during lock downs.

Alcohol Related Crime

- 4.10.17. There is no alcohol related crime data available for Hastings from NZ Police at this time, the below merely summarise crime rates in general for Hastings and Hawkes Bay as a region and utilises literature to extrapolate alcohol related crime numbers.
- 4.10.18. There were 9,929 crimes committed in the Hastings area for the calendar year 2020 – 2021 with the majority of those occurring in Hastings Central (1860 offences) followed by St Leonards (1057 offences) followed by Camberley (644 offences). Numbers may just reflect population size or the types of activities that occur in that area – i.e. Hastings Central is the main activity hub and town centre so would likely have the highest number of crimes. (NZ Police Data base, 2021)
- 4.10.19. Crime peaks on a Sunday 12.00 pm to 3.00pm (228 Offences) followed by Wednesday 12.00 pm to 3.00 pm (225 Offences).
- 4.10.20. There are 16 classifications for crime offences on the NZ Police Database online. The below 5 offence types tend to be more related to alcohol related use and abuse or increased by alcohol related use or abuse.
- 4.10.21. There were 1565 Public Disorder offences committed in the Hastings District in the calendar year 2020 – 2021. (NZ Police data base, 2021).
- 874 offences for acts causing injury
 - 592 damage to property or the environment
 - 138 Sexual assaults
 - 816 abduction / harassment offences.

- 4.10.22. Data for Hastings shows assault based offences typically occur more on a Saturday, Sunday or Monday, with the highest prevalence at 12.00 am midnight until 3.00 am Sunday morning or a Monday at 3.00pm to 6.00pm.
- 4.10.23. In a report “NZ crime and victims survey 2018-2019” victims reported that they were under the influence of alcohol and/or other drugs in 16% of offences by family members, and the offender was under the influence in almost half (47%) of incidents.
- 4.10.24. Police literature examined for this report indicate that anywhere between 15 – 35% of offending is alcohol related. Therefore extrapolating those percentages with crime statistics for the Hastings District for the calendar year 2020 - 2021 estimates that;
- 234-548 offences for public disorder may be alcohol related
 - 131 – 306 offences for causing injury / assault may be alcohol related
 - 89 – 207 offences for damage to property or environment may be alcohol related
 - 21 – 48 sexual assault offences may be alcohol related
 - 122 – 286 harassment offences may be alcohol related
- 4.10.25. Although NZ Police were not able to provide specific data about the proportion of criminal offences that involved alcohol at the Hastings level, national data and literature provides an indication of the extent of the issue for Hastings.

5. POLICY REVIEW COMMENTS

5.1. Are there any issues / administration issues with the current LAP?

- 5.1.1. From a regulatory perspective the LAP has the standard provisions that are required to assist the DLC with their process.
- 5.1.2. When looking at other LAP's around the country the provisions Hastings and Napier City Councils have are very good.
- 5.1.3. The policy balances minimising harm with people's right to consume a legal product.
- 5.1.4. The provisions as they stand don't appear to be having unintended consequences such as displacement (people travelling under the influence, from one place to another to purchase alcohol because they have no stores in their area).
- 5.1.5. There appears to be no issue with impractical provisions. Provisions within the policy seem to be fit for purpose.
- 5.1.6. There appears to be no large gaps that are in urgent need of fixing.

5.2. What are the views of the key stakeholder group?

- 5.2.1. NZ Police stated that one of the best features is the one way door restriction applied to on licensed premises. Additionally, eliminating the opportunity for new bottle stores in sensitive locations such as Flaxmere helps to keep a lid on accessibility. Changes brought about in hours for off licensed premises has not been noticeable from a Police perspective on the ground.
- 5.2.2. The Medical Officer of Health and DHB fully supports the LAP. They stated that *"the LAP is a package of measures which, when used comprehensively, can significantly minimise high rates of hazardous drinking and subsequent alcohol-related harm. A LAP which has the effect of reducing the overall availability of alcohol has significant potential to further minimise alcohol-related harm and improve community well-being."*
- 5.2.3. *"From the evidence compiled for NZ's Law Commission Review (2010) measures that reduce accessibility and availability of alcohol have particular benefits for those who experience significant inequities in harm (i.e. Māori and those socio-economically disadvantaged)."*
- 5.2.4. *"The LAP can support other harm reduction interventions in Hawke's Bay and assist in sending a strong signal to communities regarding the harms associated with alcohol consumption."*
- 5.2.5. The Medical Officer of Health stated that generally the absence of evidence for reduced alcohol related harm in a community post LAP implementation does not mean it doesn't exist. That there is no evidence of an effect or difference is quite different to saying that there is no effect or difference. It is more likely that there is not the evidence of the benefits from reduced harm and disease due to it being more diffusely distributed through the community, and /or that it is not being measured in a sufficiently nuanced way and /or the change hasn't been in place long enough to fully document any changes.
- 5.2.6. The Medical Officer of Health believes that over the past few years she has seen the positive effects of the LAP including; no new bottle stores in Flaxmere, Maraenui and Camberley; reduced trading hours - less than the default hours in the Act and a one way door policy in place.
- 5.2.7. The LAP also represents the voice of the community. The Medical Officer of Health supports the review and believe it is important that the LAP is maintained.
- 5.2.8. The stakeholder research group agreed more time is required to gather data and evidence to support the LAP.

5.3. Would there be any advantage to reviewing the policy now?

5.3.1. There is no strong evidence that indicates a policy review is required immediately.

5.4. Legal Advice

5.4.1. Is a SCP required if no changes are made to the LAP?

5.4.2. Very few councils have reviewed their LAP's and the starting point is Section 97 – "the territorial authority which has a LAP must review it using the SCP no later than 6 years after it came into force and no later than 6 years from the most recent review."

5.4.3. Therefore the baseline is that a SCP is required to do a review, irrespective if any changes are made or not. It is the simple fact of having a requirement to review that triggers needing the SCP.

5.4.4. Legal opinion on 3 vs 6 year review?

5.4.5. It seems more in line with what is intended by Section 97 to have the review at 6 years. While it is phrased as "no later than 6 years" and that could mean reviewing at 3 years, it seems relatively clear that the SSAA 2012 requires reviews conducted every 6 years just because of the wording of the section.

5.4.6. When developing or reviewing a LAP the evidential requirements developed in case law are more stringent than the Act might suggest at first blush. The evidential requirements are high.

5.4.7. Evidence to support the LAP review; Local Evidence

5.4.8. Local evidence is crucial (Tasman at [53]): *A LAP is just that. It is not a national policy and evidence of national characteristics will seldom be of value except to provide a background for evidence of local issues. It is a local policy prepared by local people who know and understand the local problems in their locality.* The criteria in s 78(2) reinforce this view.

5.4.9. The Wellington decision (*B & M Entertainment Ltd v Wellington City Council* [2015] NZARLA PH 21-28 20 January 2015) illustrates the extreme position taken on academic research on patterns of alcohol-related harm and the various types of policy response. The Authority considered that international or national evidence of the relationship trading hour restrictions, levels of alcohol consumption, and rates of alcohol-related problems was of "little relevance" and "minimal value" to a LAP: [45].

5.4.10. Accordingly, rigorous research demonstrating a link between trading hours or outlet density will not be sufficient to support a LAP which restricts trading hours or outlet locations/numbers unless that research was directed solely at the district to which the LAP is to apply.

5.4.11. Reasonable and proportionate

5.4.12. The LAP has to also be reasonable and proportionate in the light of the object of the Act.

5.4.13. The Authority noted in Tasman that case law under the Sale of Liquor Act 1989 will be relevant: [44]. Referring to that case law, the Authority noted at [45] that: ... *it will be an indicator that a particular element of a LAP is **unreasonable if those wishing to purchase or consume alcohol in a safe and responsible manner find that the element is a disproportionate response to possible alcohol-related harm.***

5.4.14. For an element of a LAP to be reasonable it must be proportionate. In Tasman the Authority held that [47]: *In essence, **proportionality involves the assessment of the interference with a public right, against the benefits sought to be achieved by the***

provision. One way that an element in a LAP may be **unreasonable is if it applies unequally to licence holders**. In Tasman the Authority noted at [55]: *If its proposed measures are partial or unequal in their operation between licence holders, then it is possible that the measures will be unreasonable. The issues will be whether there is a reasonable basis for the difference in treatment.*

5.4.15. In the Dunedin decision (*Foodstuffs South Island Limited v Dunedin City Council* [2017] NZARLA 21) the Authority stated that a policy may have as its emphasis the pursuit of the safe and responsible consumption of alcohol, but if that policy is pursued irrespective of harm minimisation, the element is likely to be unreasonable in light of the object of the Act. The Act seeks to **strike a balance that minimises excessive and inappropriate consumption without unduly impinging on safe and responsible consumption**. It is implicit in the concept of “safe and responsible consumption of alcohol” that “harm caused by inappropriate consumption is minimised”. The Authority noted at [55]: *The element needs to be linked to the object of the Act in the local context. Circumstantial evidence of the link between alcohol related harm and the proposed response is adequate but the strength of the circumstantial evidence must still be weighed against the adverse effects of the policy. The proposed measure cannot constitute a disproportionate or excessive response to the perceived local problem. ... If the element which is the subject of an appeal cannot be linked to evidence of harm, the element is unlikely to be unreasonable in light of the object of the Act ...*

5.5. Policy Review Process

5.5.1. The below details what would be involved in a full review.

1. Additional research and data collection specifically looking at;
 - Temporal shifts of harm – to inform hours provisions
 - Changes in census deprivation and harm statistics by census unit area – to inform location provisions
 - Discussion with DLC Chair and members to ascertain any additional discretionary conditions or provisions that may be required or suggested
 - NZ Police data
 - Any issues specific to licence type – to influence process or policy provisions.
2. Literature review – to inform all policy provisions.
3. Stakeholder engagement.
 - Continue quarterly meeting
 - Widen group to get feedback from additional stakeholders
 - Licensee engagement / feedback through Alcohol Accords / survey.
4. Draft Issues and Options Paper / Statement of proposal developed;
 - Requirements under the SSAA 2012 Section 78
 - Practical / admin changes to LAP
 - LAP Provisions – Preference in change – evidence to support – reason for change - level of risk
 - MoH / Police / Inspector / DLC – recommendations
 - Issues or gaps
 - Recommended changes.
5. Full council Meeting / Development of Committee.
6. First Draft of LAP based on above input.
7. Community engagement through SCP and hearings procedure.

8. Hearings Analysis.
9. Second Draft LAP Developed.
10. Legal feedback on LAP.
11. Full council meeting / Committee recommendations.
12. Final Draft LAP Completed.
13. Legal feedback.
14. Council approval of final LAP - Provisional LAP.
15. Notification / Appeals.
16. Notification – Adoption and effect.

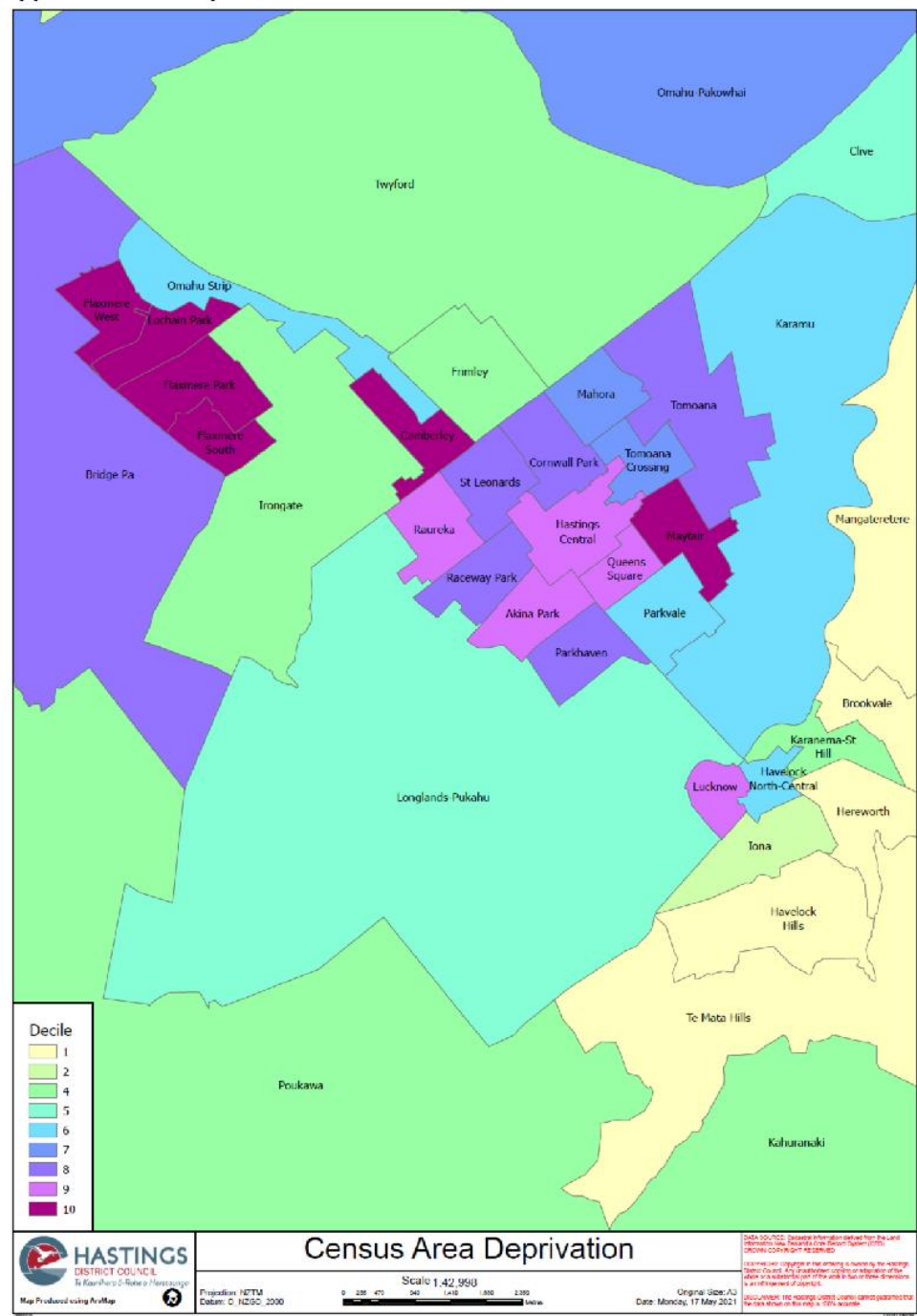
6. SUMMARY AND CONCLUSION

- 6.1. The evidence and data discussed in this report clearly confirms that there are still a wide range of alcohol-related issues in the Hastings District. The issues identified include:
- Patterns of heavy consumption of alcohol, especially among the young
 - Acute and chronic health problems
 - Alcohol related traffic and crime offences
 - Alcohol related issues and harm is more prevalent during the weekends, particularly Saturday nights and early Sunday morning.
 - Alcohol related harm generally increases in the summer months of the year.
 - Communities are aware of Hastings alcohol-related issues and recognise that the misuse of alcohol not only causes harm at an individual level but at a community level
 - Alcohol related harm has a high community cost.
- 6.2. Data suggests that there is currently minimal change in alcohol related harm for the Hastings District pre and post LAP. There may be the start of slight temporal shift in harm for drink driving post LAP due to change in hours for both on and off licences. However it has not been long enough since the adoption of the LAP to see real results or shifts in patterns or behaviours that are significant enough to indicate policy effectiveness or the need for policy provision changes.
- 6.3. Whilst many of the issues identified in this report cannot be directly addressed through the LAP, literature suggests that regulating the sale and supply of alcohol can indirectly address issues. An individual policy provision cannot directly make change, it is a collection of provisions, policies at both a national and local level as well as community projects that create change in harm.
- 6.4. Effects of any policy provision may also only make minor changes to overall harm levels due to the complex nature of alcohol related harm and the many external factors that come into play. The change in harm may be diffused through the community and the level and depth of evidence we can prepare may not show actual harm reduction levels to its true extent.
- 6.5. This report has shown that the quality of Health data has improved over time and there is a large gap in alcohol related crime data and general alcohol related offence data for Hastings from the NZ Police, this is required to review the LAP properly.
- 6.6. Further research and data is required as well as a literature review to investigate the effectiveness and merits of the different policy mechanisms, this will be completed as a part of the final policy review process.
- 6.7. The policy as it currently stands is fit or purpose and when compared to other TA's has some strong provisions to minimise harm in the Hastings District.
- 6.8. Stakeholders (Health, Police, Alcohol Licensing Inspectors) all agree that there are good policy provisions in the LAP and the LAP should be maintained. More time is required to gather data and

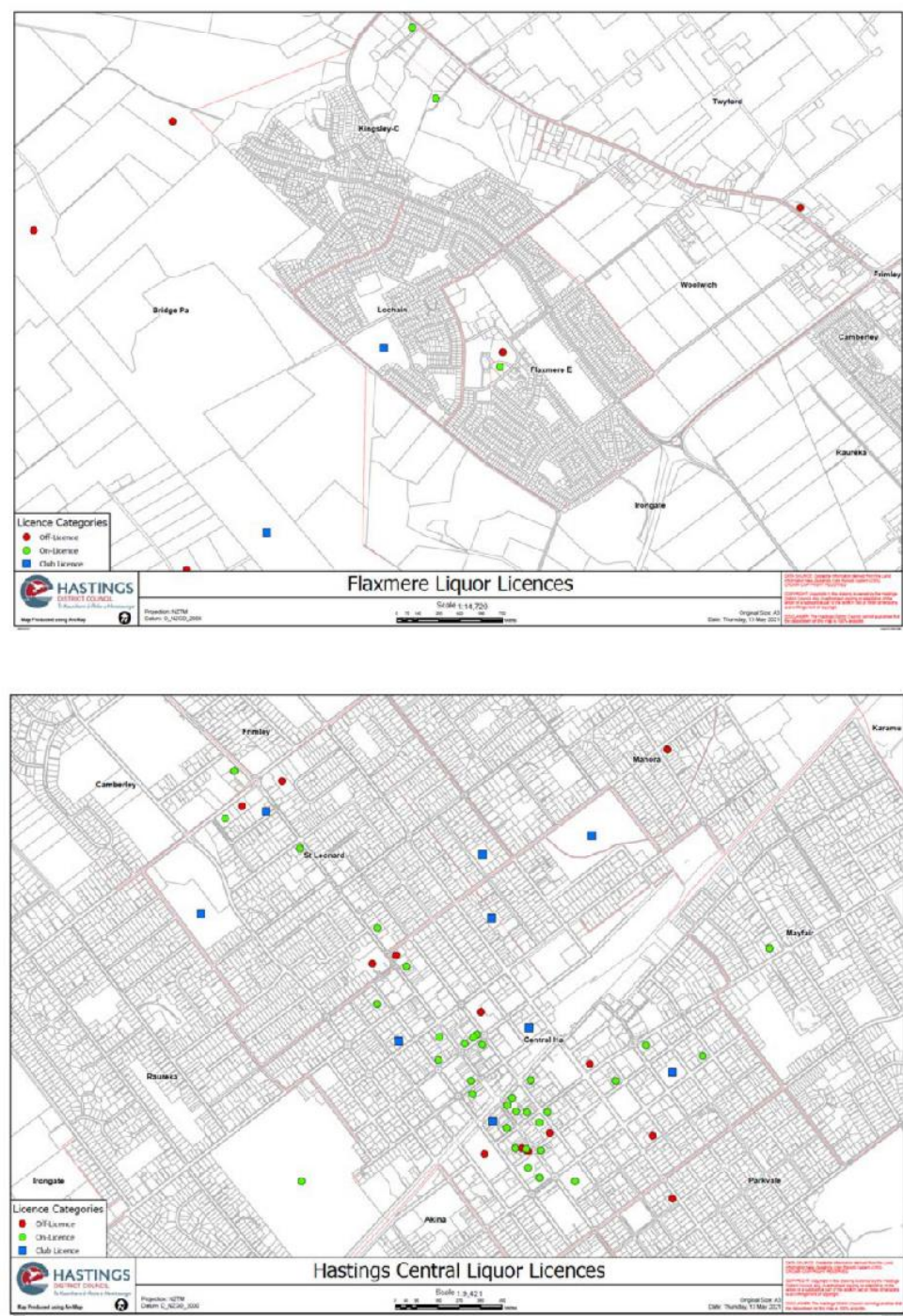
examine evidence to support the LAP. Currently there are no indications of major practical or administration issues with the policy which would suggest a earlier 3 year review.

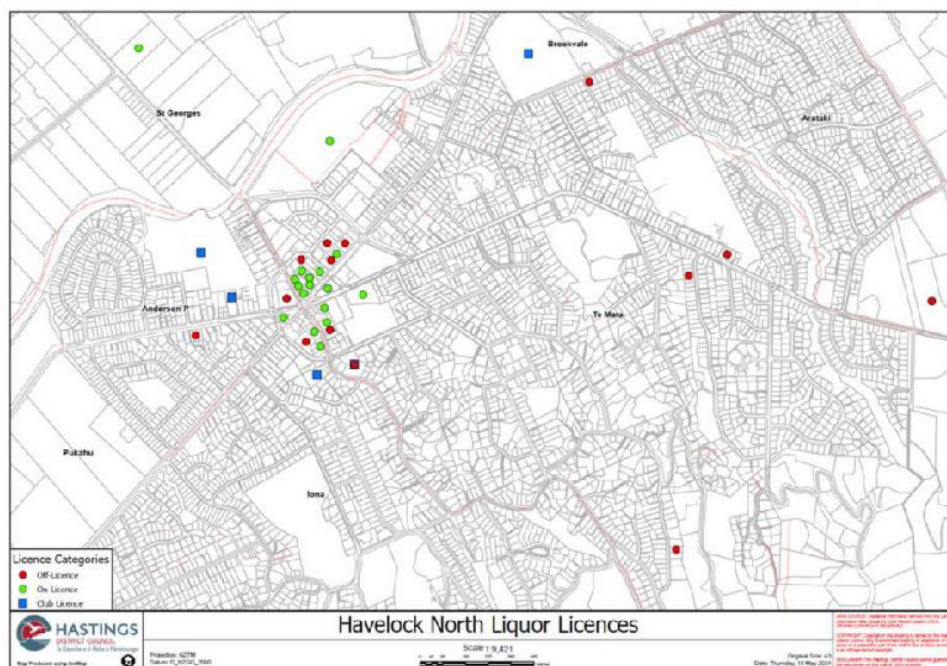
7. APPENDIX

Appendix One - Deprivation

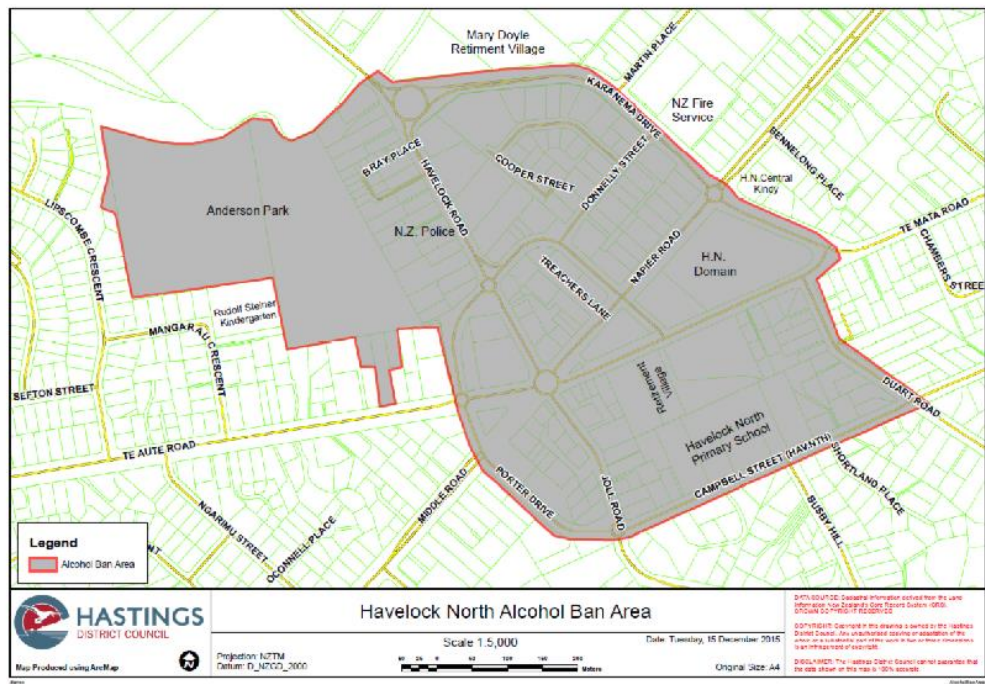


Appendix Two – Alcohol Licences – main centres

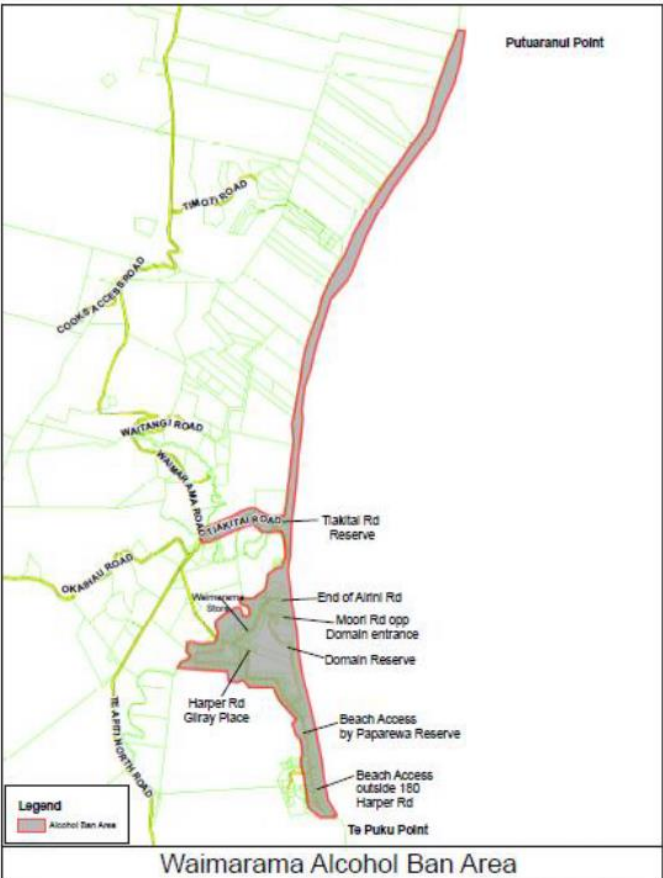




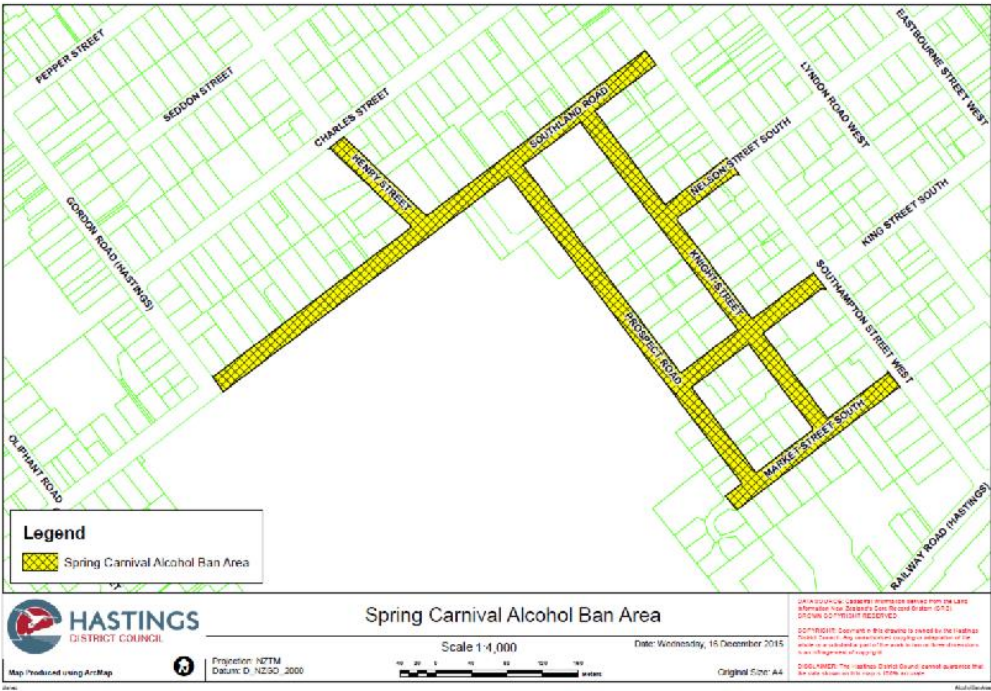
Appendix Three; Alcohol Ban Areas











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REVIEW AND RECOMMENDATIONS FOR THE CLIFTON TO TANGOIO COASTAL HAZARDS STRATEGY JOINT COMMITTEE

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The Issue to be considered

1. I have been engaged to review and deliver non-binding recommendations on the issue of which Hawke's Bay Local Authority should lead and fund the implementation of coastal hazard mitigation projects for the coast from Clifton to Tangoio. This extends to considering:
 - (a) Who should collect the rates that will fund the projects?
 - (b) Who should decide which rate payers should pay and in what amounts and proportions?
 - (c) Who should decide and control the projects to which the funds are applied?
 - (d) Who should be in charge of the implementation of the projects?

Summary of my recommendations

2. For the reasons I now set out below, I recommend that the Hawke's Bay Regional Council takes charge of all aspects of the prevention and mitigation of coastal hazards on the Clifton to Tangoio coast including deciding on preventative, mitigating or remedial works, making all decisions about rating for these works and collecting those rates, the implementation of all decisions including supervising works, and the control of all maintenance.
3. I recommend that there be an advisory committee including members of the Napier City Council, Hastings District Council and the Hawke's Bay Regional Council that has notice of, considers, and can comment on all significant proposals, but that it has no decision making powers, and no ability to delay the implementation of those proposals.
4. Therefore, the answer to each of the four questions listed above is that the Hawke's Bay Regional Council should carry out all the stated functions.
5. I now turn to my reasons for these recommendations.

The relevant local authorities

6. There are three local authorities in the Hawke's Bay area which are directly concerned with this issue of coastal hazards mitigation on the Clifton to Tangoio Coast. The first is the Hawke's Bay Regional Council (HBRC). The second and third are territorial authorities (TAs), being the Hastings District Council (HDC) and the Napier City Council (NCC). The HBRC is the only authority with jurisdiction over the whole stretch of coast between Clifton and Tangoio. The HDC and the NCC have responsibility for their individual territories, but do not have jurisdiction over the territories of each other.
7. The Resource Management Act 1991 sets out the functions of regional councils and territorial authorities. Under s 30, regional councils must achieve integrated management of natural and physical resources of the region. This relates to the natural environment including air, land, freshwater and the coastal marine area. Through policy statements and plans, regional councils must set objectives, policies and methods for controlling the use of land to avoid or mitigate natural hazards. Under s 31, territorial authorities must achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district. Through district plans, territorial authorities must control the effects of land use to avoid or mitigate natural hazards, as well as create rules for land use and subdivision.

The model choices

8. There are two broad choices for the implementation of coastal hazard mitigation projects for the coast from Clifton to Tangoio. First, a hybrid model involving all the relevant local authorities, each having responsibility for some of the tasks or sharing the tasks between them. The alternative is a single agency model, involving a single authority which would have to be the HBRC.
9. These two broad models can be broken down into six possible sub-models:

(a) **MODEL ONE: The present TA and HBRC set up continues**

No change to the present

(b) **MODEL TWO: HBRC Only**

HBRC acts as sole agency and the TA's have no further role in prevention of coastal hazards

(c) **MODEL THREE: HBRC + Advisory Forum**

HBRC leads and controls all Strategy implementation functions, supported by an advisory forum involving the TAs

(d) **MODEL FOUR: Council Controlled Organisation (CCO)**

HBRC establishes a new CCO whose composition could match the existing Coastal Hazards Committee, tasked with implementing and monitoring Strategy

(e) **MODEL FIVE: HBRC + Decision-making Forum**

HBRC rates for Strategy implementation, and funding decisions are delegated to a decision-making forum involving TAs

(f) **MODEL SIX: HBRC + TA**

Hybrid model / shared responsibility, where HBRC rates for the public good component of works, and the TAs rate for private good component.

10. The last three models can be seen as variations of a hybrid approach, involving some re-organisation and a greater role for the HBRC, while maintaining significant TA control. Before analysing these choices and which is best, it is necessary to place those options in their historical context to understand the present situation and the need for a report such as this.

The development of Regional Councils and Territorial Authorities in New Zealand

11. The history of the development of local government in New Zealand can offer some lessons which assist in determining the best way forward.

Early days

12. Māori, the indigenous people of New Zealand, did not have central or local governance in the European sense. Iwi and Hapū controlled their traditional lands, and the concept of absolute ownership was unknown.
13. Europeans brought with them a different concept of governance and land ownership, whereby the Crown held in fee simple all privately "owned" land following the Treaty

of Waitangi.¹ There were endeavours to apply the English local government structure consisting of provinces, towns/boroughs (municipal corporations), and counties (county councils).

14. In 1876 the central government created a new system of local government to be administered from the centre, due to the prevailing system that “hindered New Zealand’s social and economic development”.² Two new Acts were introduced, the Counties Act 1876 and the Municipal Corporations Act 1876, which provided the foundation for future local management.³ These Acts outlined the functions of these local bodies; to set rates and establish and maintain basic services, including streets, water drainage, street lighting and transport.⁴

15. At the same time, special-purpose boards, or “*ad hoc* bodies”, were introduced to efficiently administer singular functions within a geographic region, such as the control of rabbits, rivers, harbours, fire, electric powers, hospitals and schools.⁵

16. Justification for the use of such *ad hoc* bodies at this time was that existing territorial authorities were often inappropriate, and “cooperative action could be politically difficult”.⁶ In addition, the special expertise acquired by the special-purpose boards was considered “advantageous and efficient”.⁷ The result was a “myriad of general- purpose and special-purpose local authorities”.⁸

17. By the 1890’s, a proliferation of local authorities was evident and there was need for reform. There was a worry that New Zealand was becoming “over-governed”, with

¹ Hinde, McMorland & Sim *Principles of Land Law in New Zealand* (3rd edition, LexisNexis, Wellington, 2020) at [3.007].

² *Te Ara – The Encyclopedia of New Zealand* “Local and Regional Government” (online ed) <<https://teara.govt.nz>>.

³ Jean Drage *A Balancing Act: Decision-Making and Representation in New Zealand’s Local Government* (Institute of Policy Studies Wellington, 2008) at 58; and Kenneth Palmer *Local Authorities Law* (Thomson Reuters, Wellington, 2012) at [23.1.1].

⁴ Municipal Corporations Act 1876; Counties Act 1876.

⁵ Drage, above n 3, at 59.

⁶ Palmer, above n 3, at [23.1.1].

⁷ Ibid.

⁸ Drage, above n 3, at 59.

almost 2,135 territorial authorities in existence with a New Zealand population of only 630,000.⁹

First attempts at Regional Bodies

18. A Local Government Board was established by the early twentieth century to supervise a re-organisation of the system. The intention was to “reduce the number of local authorities and abolish *ad hoc* boards”,¹⁰ which were considered to be a waste of ability and money.¹¹ A further attempt at restructuring the system occurred in 1946.
19. In 1960, the Labour government began a major parliamentary inquiry into the structure and fragmentation of local government, in order to “examine whether it was capable of meeting the increasing demands of a rapidly developing population and economy.”¹²
20. A principal finding of the inquiry was that the “basic structure of local government was sound, but the tendency towards forming *ad hoc* boards was undesirable.”¹³ One solution to the failure of the current local authorities to coordinate management was to introduce a regional tier of local government, which would “assume strategic functions such as water services, sewage disposal and regional roading, and acquire other functions held by special purpose authorities”.¹⁴

The first Regional Council

21. In 1963, the concept of regionalism culminated in the formation of the Auckland Regional Authority. Its establishment came from the “inadequacy of the mess of territorial bodies to cope with rampant urbanisation.”¹⁵ Services such as drainage and waste collection had become uncoordinated, and a need for better urban and regional

⁹ At 59.

¹⁰ At 61.

¹¹ At 61, referencing GW Russell, the Minister for Internal Affairs.

¹² Drage, above n 3, at 63.

¹³ Graham Bush *Local Government and Politics in New Zealand* (Auckland University Press, Auckland, 1995) at 38.

¹⁴ Palmer, above n 3, at [23.1.2].

¹⁵ Bush, above n 13, at 39.

planning was required.¹⁶ As such, regional boundaries were delineated, and Auckland *ad hoc* boards abolished.¹⁷ This new regional body was given functions such as bulk water supply, sewerage, public transport, airport management, regional roads, civil defence and regional planning.¹⁸ Territorial bodies in Auckland were slowly discontinued, as any new function was required to be administered by the new regional authority.¹⁹

Local Government Act 1974 and the Local Government Amendment Act (No 2) 1989

22. The *Local Government Act 1974* directed New Zealand to be divided into regions within 5 years, with each region having a directly elected regional council.²⁰ Under this Act, urban and rural territorial bodies were consolidated and many of the historic *ad hoc* functions of local government were taken over by these new regional bodies.²¹
23. The most extensive reform in local government occurred under the *Local Government Amendment Act (No 2) 1989*. It abolished all territorial authorities and many of the *ad hoc* boards (including catchment boards, harbour boards, electric power and health boards).²² Approximately 850 bodies were consolidated into 86 multi-purpose local authorities, including regional councils with broad environmental responsibilities.²³
24. Regional councils continued to have responsibility for the duties of many of the previous *ad hoc* boards as well as regional planning and environmental management. The new district and city councils were to carry out the functions of the previous general-purpose authorities.²⁴
25. Under this Act, the purpose of local authorities was focused on the amalgamations of regions and districts, “to ensure recognition of different communities of interest, but

¹⁶ *Te Ara*, above n 2.

¹⁷ Bush, above n 13, at 40.

¹⁸ *Ibid*.

¹⁹ *Ibid*.

²⁰ Palmer, above n 3, at [23.1.3].

²¹ Drage, above n 3, at 64.

²² Drage, above n 3 at 64–65.

²³ *Te Ara*, above n 2.

²⁴ Drage, above n 3, at 65.

also to ensure the efficient and effective exercise of powers and functions”.²⁵ These purposes were appropriate in reducing the number of local authorities throughout the country to achieve efficiencies and to minimise duplication of resources and costs.

26. A review of the Local Government Act 1974 occurred in 2001. This led to the Local Government Act 2002, where broader purposes and powers were conferred equally on regional council and territorial authorities. This is the relevant Act today.

The Local Government Act 2002

27. Local authorities as they exist today, being regional councils or territorial authorities,²⁶ are created by the Local Government Act 2002 (LGA). Councils can create council-controlled organisations (CCOs), which are companies controlled by a local authority or authorities.²⁷ The role of local authorities is to give effect to the purpose of local government as stated in s 10 of the LGA. The purpose is to enable democratic local decision making by and on behalf of local communities. The “core services” to be considered in performing the role, (therefore both territorial and regional), include “*the avoidance or mitigation of natural hazards*”.²⁸
28. Section 14 of the LGA sets out principles relating to local authorities. A local authority should have regard to the views of all its communities,²⁹ and when making a decision should consider the interests of future as well as current communities.³⁰ In taking a sustainable development approach, a local authority should take into account the need to maintain and enhance the quality of the environment,³¹ and the reasonably foreseeable needs of future generations.³²
29. Importantly for the purposes of this report, a local authority should actively seek to *collaborate and co-operate* with other local authorities and bodies to improve the effectiveness and efficiency with which it achieves its priorities and outcomes.³³

²⁵ Palmer, above n 3, at [23.2.4]; and Local Government Amendment Act (No 2) 1989, s 37K.

²⁶ As defined under s 5 of the LGA.

²⁷ As defined under s 6 of the LGA.

²⁸ LGA, s 11A(d).

²⁹ Section 14(1)(b).

³⁰ Section 14(1)(c)(ii).

³¹ Section 14(1)(h)(ii).

³² Section 14(1)(h)(iii).

³³ Section 14(1)(e).

30. Part 2, sub-part 3 of the LGA is headed “Co-ordination of responsibilities of local authorities”. This part does not seek to delineate the responsibilities of *regional* and *territorial authorities*. If a *regional council* wishes to undertake the same significant new activity and 1 or more territorial authorities in the region of the regional council have already undertaken a significant new activity or notified their intention to do so in their long-term plans or annual plans, the *regional council* must advise all the *territorial authorities* within its region and the Minister of the proposal and the reasons for it.³⁴ It must adopt the consultative procedure set out in s 93A, and if agreement is not reached with affected territorial authorities there must be a mediation process.³⁵ If the mediation is unsuccessful, the territorial authorities may ask the Minister to make a binding decision on the proposal, who will do so in consultation with the Local Government Commission.

The Resource Management Act 1991

31. Like the LGA, the Resource Management Act 1991 (RMA) also makes no precise effort to delineate responsibilities between regional and territorial authorities. The RMA’s purpose is to promote the sustainable management of natural and physical resources, to manage the use and protection of natural and physical resources to sustain their potential to meet the reasonably foreseeable needs of future generations, and to safeguard and mitigate adverse effects on the environment.³⁶
32. Section 30 of the RMA is titled, “Functions of regional councils under this Act”. Under this section, regional councils are given the function of integrated management of regional natural and physical resources,³⁷ for matters of regional significance, in particular for water and coastal resource management.³⁸, and “the avoidance or mitigation of natural hazards”.³⁹ These functions are translated from a regional policy

³⁴ Section 16(2).

³⁵ Section 16(4).

³⁶ RMA, section 5.

³⁷ Section 30(a).

³⁸ Peter Salmon and David Grinlinton *Environmental Law in New Zealand* (2nd edition, Thomson Reuters, Wellington, 2018) at [9.6.2].

³⁹ Section 30(1)(c)(iv).

statement into regional plans.⁴⁰ Regional Councils also have the function, in conjunction with the Minister of Conservation, for the control of land and associated natural and physical resources,⁴¹ the occupation of space in the coastal marine area and *the avoidance of natural hazards*.⁴² The coastal marine area in s 3 is defined as including the foreshore, which is in turn defined as meaning land covered and uncovered by the flow and ebb of the tide at mean spring tides, (the mean high water mark).

33. Section 31 of the RMA is titled “Functions of territorial authorities under this Act”. Territorial authorities have the function of establishing policies and plans concerning land use, storage of hazardous substances, control of subdivision of land, control of the emission of noise, and control of activities on the surface of water in rivers and lakes. These functions are the basis of the district plan and district rules.⁴³
34. In contrast to regional council functions, territorial authorities have the function of controlling any *actual or potential effects on the use development or protection of land*, including for the purpose of the avoidance or mitigation of natural hazards.⁴⁴
35. Under s 33 of the RMA, the planning function of local authorities may be transferred to another local authority on the grounds of community interest, efficiency, or technical or special capability. The intention of s 33 is to facilitate coordination of functions between regional councils and territorial authorities and to allow for combined plans and administrative arrangements.⁴⁵ This enables cooperation between councils as to which should exercise a common function.
36. Under s 34(1) of the RMA local authorities can delegate to any Committee established in accordance with the LGA. This is relevant to the later discussion of CCOs.

⁴⁰ Palmer, above n 3, at [17.4.3], and RMA s 30.

⁴¹ Section 30(1)(d)(i).

⁴² Sections 30(1)(d)(ii) and 30(1)(d)(v).

⁴³ RMA s 31, and Palmer, above n 3, at [17.4.4].

⁴⁴ Section 31(1)(b)(i).

⁴⁵ Palmer, above n 3, at [17.4.5].

Overlap between the functions of regional councils and territorial authorities

37. The provisions of the RMA and the LGA mean that there are functional interactions between territorial and regional authorities. This has been described as “a paradigm of complementarity rather than hierarchy”.⁴⁶ The 11 regional councils have hallmarks of autonomy identical to territorial authorities (election, corporate status, powers to set rates etc.), but there is no statement of regional superiority. In sharing government locality, the two levels are said to be on equal footing.⁴⁷

38. As such, there is considerable scope for overlap and conflict between the roles of regional councils and territorial authorities. This is confirmed in the recent *Report of the Resource Management Review Panel (RM Review Report)*,⁴⁸ where it was said that this lack of clarification of roles and responsibilities in the legislation can lead to “unhelpful overlap”,⁴⁹ resulting in tensions between local authorities in resolving issues and achieving outcomes (including conflicting regional and district policies).⁵⁰ Generally, the RMA places territorial authorities “in a subsidiary role” to regional councils, as district plans are required to implement the policies set out at the regional level.⁵¹ The RM Review Report makes specific reference to the Clifton to Tangoio coastline as a case study,⁵² but expressed no view on which Council or Councils should take responsibility and set and collect rates for hazard mitigation purposes.

39. On a natural reading of ss 30 and 31 of the RMA, a regional council’s role is to have charge of policies to avoid or mitigate natural hazards in a region. Territorial authorities with regional councils have the function of controlling the actual or potential effects of the use development and protection of the land. It is my reading of sections 30 and 31 that it is regional councils who should develop the policy to avoid or mitigate coastal hazards, with the territorial authorities having a role with the regional council in controlling what is done in those areas. However, the legislation provides no

⁴⁶ Bush, above n 13, at 117-118.

⁴⁷ Ibid.

⁴⁸ *Report of the Resource Management Review Panel, “New Directions for Resource Management in New Zealand”* (June 2020) [RMA Report].

⁴⁹ Chapter 8, “Policy Planning and Framework”, at [2].

⁵⁰ Ibid, at [47].

⁵¹ RMA s 75(3)(c), and any district plan must not be inconsistent with any regional plan under s 75(4)(b); and Salmon, above n 38, at [9.6.2].

⁵² RMA Report, above n 48, Chapter 6, at [43].

clarification on who should implement such policies, including the construction of new infrastructure to reduce hazard risks.

40. The obligations on local authorities are not just imposed directly by the RMA. Under the New Zealand Coastal Policy Statement 2010, local authorities must consider and plan for coastal hazards risks. Under Policy 24(1), local authorities are required to:

Identify areas in the coastal environment that are potentially affected by coastal hazards (including tsunamis) giving priority to the identification of areas at high risk of being affected. Hazard risks, over at least 100 years, are to be assessed.

Summary of functions of local authorities

41. In summary, the Local Government Act framework gives all three relevant authorities in Hawke's Bay a role in avoiding or mitigating natural hazards. There is nothing to indicate conclusively that one has primacy over the other, and they have a duty to collaborate and co-operate.
42. As was noted in the RM Review Report in relation to climate change adaption, there is a lack of clarity under the RMA in regard to the roles and responsibilities of local authorities, and confusion as to where primary responsibilities lie.⁵³ The RM Review Panel in its careful and lengthy report considered limiting the primary responsibility of natural hazards response to regional councils only, as matters of regional significance. However, it preferred an approach where responsibility for reducing the risks of natural hazards is assigned to both regional councils and territorial authorities, given the broad implications of the issues for both levels of local government.⁵⁴
43. However, under the RMA some distinction can be seen in ss 30 and 31 between the power to be in charge of an integrated management of the natural and physical resources of a region, and the control of the use of land and avoidance of natural hazards. The former task is given to the regional councils, and the power to manage the effects of use and developments, which is given to the territorial councils.

⁵³ Above n 48, at Chapter 6, "Climate Change" at [32].

⁵⁴ Above n 48, at Chapter 8, "Policy and Planning Framework" at [45].

44. Legislation leaves it open to councils, both territorial and regional, to cooperate and allow one council to have the controlling role in an area of common jurisdiction.

Case law on the relationship of regional councils and territorial authorities relevant to coastal hazards

45. The element of hierarchy was noted by the Court of Appeal in *Canterbury Regional Council v Banks Peninsula District Council*.⁵⁵ It was observed that regional councils have the task of preparing policy as to any effects of the use of land which are of regional significance.⁵⁶ Territorial authorities have the function of establishing and implementing policies to achieve the integrated management of the effects of land and resources in their district and the control of the actual or potential effects of use including the avoidance or mitigation of adverse effects.⁵⁷

46. The Court of Appeal held that the RMA provides a:

“...hierarchy of instruments to the extent that...district plans must not be inconsistent with...a regional policy statement or regional plan [s 75(2)]. It does not follow, however, that there can be no overlap between the functions of regional authorities and territorial authorities...to the extent that matters have been dealt with by an instrument of higher authority, the territorial authority’s plan must not be inconsistent with the instrument.”

47. It was also stated that:⁵⁸

“A function of the regional council is to achieve integrated management of the resources of the region. It would be inconsistent with that function for...the decision as to the appropriate control to be carried out...on a regional basis, rather than by individual territorial authorities.”

48. The Court of Appeal concluded:

“It follows that the control of the use of the land for the avoidance of mitigation of natural hazards is within the powers of both regional councils and territorial authorities. There will no doubt be occasions where such matters need to be

⁵⁵ [1995] 3 NZLR 189 (CA).

⁵⁶ At 191.

⁵⁷ Ibid.

⁵⁸ At 196.

dealt with on a regional basis, and occasions where this is not necessary, or where interim or additional steps need to be taken by the territorial authority. Any controls imposed can be tested by appeal to the Planning Tribunal, and inconsistencies are precluded by s 75(2).”

[emphasis added]

49. It is stated in a leading text, *Brookers Resource Management*⁵⁹ that a territorial authority cannot control the use of land for purposes that are within the jurisdiction of the regional council. However, a territorial authority may exercise control for the purposes set out in s 31(1)(b), even if an incidental result falls within the function of the regional council.⁶⁰ That approach was applied to allow a city council to include controls on cell phone sites in its plan irrespective of whether the regional council had the power to control radio emissions, on the basis they were contaminants.⁶¹

50. There is one respect, however, in which the regional council has a power of importance in relation to coastal hazards that a district council does not have. It has the power to alter or terminate existing use rights in relation to land. This comment was made by the Chief Judge of the Environment Court in *Awatarariki Residents Incorporated v Bay of Plenty Regional Council*:⁶²

[10] *The District Council requested this change to the Regional Plan because it does not have any power to alter existing use rights arising under s 10 of the RMA. The Regional Council, under s 30(1)(c)(iv) of the RMA, has the function of controlling the use of land for the purpose of avoiding or mitigating natural hazards.* Under s 63(1) of the RMA, the purpose of a regional plan is to assist a regional council to carry out any of its functions in order to achieve the purpose of the RMA. A regional council may make rules under s 68(1) for carrying out its functions under s 30(1)(c). Under s 10(4) of the RMA, s 10 does not apply to any use of land that is controlled under s 30(1)(c). It is by that combination of functions and powers that the Regional Council may terminate existing use rights.

[emphasis added]

51. This statement is relevant to the issue to be determined of who should have charge of the task of managing coastal hazards to the Clifton to Tangoio coast, and the rating for it. It is only the HBRC that has the power, through the removal of existing use rights,

⁵⁹ (online loose-leafed, Thomson Reuters).

⁶⁰ At [A30.05(2)].

⁶¹ *Telecom NZ Ltd v Christchurch CC* EnvC C036/03.

⁶² [2020] NZEnvC 215 at [10] and [11].

to direct property owners to engage in a managed retreat. This cannot be done by the territorial authorities. It is some indication from the legal framework that the general defence of the coast, which can presage a managed retreat response in the long term in some parts of Hawke's Bay, is more naturally the responsibility of the HBRC.

Regional Plans

52. The Hawke's Bay Regional Resource Management Plan appears to recognise the primacy of the HBRC's role in RMA functions relevant to natural hazards. It records:

8.4.4.1 *Section 62 (1) (b) (h) of the RMA enables regional policy statements to set out the respective responsibilities of the regional council, and territorial authorities within the region concerned, for developing objectives, policies, and rules relating to the control of the use of land for:*

(a) *the avoidance or mitigation of natural hazards, and*

(b) *the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances.*

8.4.4.2 *If no responsibilities are identified in accordance with this provision of the Act, the regional council retains primary responsibility for natural hazards and hazardous substances.*

8.4.3.3 This section describes the respective functions of the HBRC, and of territorial authorities within Hawke's Bay, in relation to natural hazards and hazardous substances. This section is written in accordance with section 62 (1) (ha) of the RMA (and in keeping with the fact that this Regional Plan incorporates the role and provisions of a regional policy statement).

8.4.4.4 It is important that the HBRC and territorial authorities work together in the management of natural hazards and hazardous substances. To this end, the HBRC and territorial authorities have, through discussions and refinement of earlier arrangements set out in the former Hawke's Bay Regional Policy Statement (HBRC, 1995), reached the following agreements on their respective responsibilities.

NATURAL HAZARDS

8.4.4.5.1 *Both the HBRC and the territorial authorities within the Hawke's Bay region will be responsible for developing objectives and policies for managing the use of land for the purpose of avoiding and mitigating natural hazards. Territorial authorities will be responsible for developing methods controlling the use of land for the purposes of avoiding or mitigating natural hazards, except in relation to coastal hazards. In relation to coastal hazards, both the HBRC and territorial authorities may be responsible for developing methods controlling the use of land for the purpose of the avoidance or mitigation of coastal hazards.*

8.4.4.5.2 To support the territorial authorities in developing and implementing their plan provisions in relation to natural hazards, *the HBRC will be the key information provider.* The HBRC will provide relevant, up to date and accurate data in an appropriate form for the territorial authorities to use. The HBRC will also use this information itself for natural hazard management and

planning purposes, and for Civil Defence management in accordance with the Civil Defence Act 1983.

[emphasis added]

53. The district councils or city councils so far have tended to be the proponents of physical coastal protection works and associated resource consent applications. That is because it is usually a residential settlement within their city or district which is threatened by the coastal hazard or some infrastructure (such as a road) for which that territorial authority has responsibility. There can be a need to get consents from both the territorial and the regional authorities when works situated in both jurisdictions are required.
54. The combined Regional Coastal Environment Plan (RCEP), created in the mid 2000's, was one of the first coastal plans in New Zealand to include regional rules controlling land use activities for the purposes of tackling coastal hazard risks. Previously, land use controls were only included in district plans. The HBRC had a leading role in identifying regionally significant coastal natural hazards, in particular in funding an extensive assessment of inundation and coastal erosion carried out by Tonkin & Taylor Ltd in 2004 which highlighted coastal hazard zones along the entire Hawke's Bay regional coastline.
55. However, support from territorial authorities is recognised in the RCEP. For example, a pragmatic approach was taken concerning the Westshore/Bayview coast in Napier. To avoid multiple coastal hazard zones and multiple rules, the RCEP omitted this hazard zone, and the Napier District Plan continued to govern hazard management in this area of the Napier coast. On the other hand, in reviewing its own district plan, the HDC made a policy decision to omit land use controls in relation to its own coastal hazard zones, save for subdivision, to avoid duplicity of rules. This was because the RCEP featured appropriate land use controls in relation to coastal hazard zones within the Hastings territory.

Practicalities

56. Practical issues are discussed below under the following headings:
- (a) Public recognition of a need for urgent action on an integrated basis;

- (b) Protection can only work through an integrated approach to all of the Clifton to Tangoio coast;
- (c) The need for an integrated approach has been recognised already by the three local authorities;
- (d) Election by geographic area;
- (e) The HBRC has helpful experience in managing flood hazards in the Hawke's Bay;
- (f) Which authority has greater expert personnel?
- (g) Comparison to Civil Defence Management Groups;
- (h) Which body is best suited to work out fair rates and in particular targeted rates?;
- (i) Any indications as to the preference of ratepayers?;
- (j) The need for co-operation from the territorial councils; and
- (k) The future need for similar strategies for other parts of the coastline in the Hawke's Bay region.

Public recognition of a need for urgent action on an integrated basis

57. That there is a need for action held by the people of the Hawke's Bay is, to an extent, supported by the 'Climate Crisis Survey' which can be found on the Hawke's Bay Regional Council website. It noted:⁶³

- **41% of people associated the Regional Council as the main organisation responsible for actions on climate change in Hawke's Bay**
- 25% of residents believe climate change is one of the challenges facing New Zealand
- Drinking water was of the highest concern, followed by economic struggles then climate change
- **90% of people believe that climate change is already occurring**
- **62% of people are concerned about the impact of climate change in Hawke's Bay**
- Drought is seen as the main negative outcome of climate change
- **55% of residents were prepared to pay more in rates to minimise the impact of climate change**
- The most supported initiative that people were prepared to pay for was a reduction of carbon and erosion through tree planting (69%)
- Concern for future generations was the main driving force for taking part in environmental actions
- **80% of people said they have been moderately or greatly involved in environmental activities**

⁶³ <https://www.hbrc.govt.nz/environment/climate-actionhb/climate-crisis-survey/>.

- Lack of alternatives or resources and cost were the two main cited barriers to engaging in environment related activities
- The top four activities were recycling, reusable product purchases, energy saving household products, and composting
- Two-thirds of residents do not think the Council is doing enough to prevent and reduce the impact of climate change.

58. This is some indication that the people of Hawke's Bay are aware of, and concerned with, the impacts of climate change on the region. They are prepared to contribute more rates to prevent the adverse impacts of climate change. To some extent, it shows a public consensus on the need to prevent the impact of climate change on the region. If that is so, it follows that the body with jurisdiction over the whole coast is the logical leader. That body is the HBRC.

Protection can only work on an integrated approach to all of the Clifton to Tangoio coast

59. Until now, the steps taken by local authorities to protect the Clifton to Tangoio coast have been reactive responses of territorial authorities to specific damage arising from coastal hazards. Among the measures, there have been steps taken by the HDC to prevent coastal hazards at Waimarama Beach and Clifton through sea walls, and steps taken by the NCC to prevent coastal hazards at Westshore Beach (in conjunction with HBRC), and Whakarire Avenue. These have involved the territorial authority making applications for resource consents to the regional council for works on the coastal strip, and to themselves for land use or subdivision consent. This does not pose a conflict problem, as independent hearing commissioners may hear and determine the resource consent application.⁶⁴

60. However, it is accepted by all three Councils that an integrated approach to the whole coastline is needed, rather than a piecemeal approach turning on territorial authority boundaries. What can be done in one part of the coast to prevent coastal hazards can affect, possibly adversely, another part of the coast.

⁶⁴ RMA, s 100A, whereby an applicant may request in writing that a local authority delegate its functions and powers, under s 34A(1), to an independent hearing commissioner to hear and decide their application.

61. This scientific reality was confirmed in the report of Emeritus Professor Paul D Komar and Professor Erica Harris.⁶⁵ They note that the Clifton to Tangoio coast contains two littoral cells, being stretches of beaches not separated by rocky shores and headlands.⁶⁶ These do not correspond to territorial council areas but are both within the HBRC area. In the coast North of the Napier Port up to Tangoio, gravel moves northwards.⁶⁷ Again, it can be noted that this movement crosses the territorial council border line.
62. The same is true South of the Port, where sediment has a predominant northward mitigation along the coast in response to the prevailing wave direction. Natural coastal processes have no relationship to territorial authority boundaries. However, the actions of authorities to respond to coastal hazards by intervening in coastal processes can have a direct consequence for a neighbouring jurisdiction. HBRC is the only authority with jurisdictional boundaries that can accommodate these entire littoral cells, including the coastal marine area.
63. When they commented on the effects of the 1931 earthquake in relation to the whole coast, the authors stated:⁶⁸

“Prior to the uplift this coast in 1931, produced by the Hawke’s Bay earthquake, most of its beaches and backshore areas experienced chronic erosion and over wash flooding occurrences during storms, making it essentially impossible to develop. Even the downtown area of Napier was frequently inundated during the high water levels of storms. The character of this coast abruptly changed when the earthquake raised most of its shores by 1.5 to 2 metres, extending from Tangoio in the north to about the present-day communities of Awatoto and East Clive in the south. Elevated by that amount, those shores then exceeded the elevations of the tides plus the surge and wave runup of even major storms, their acquired stability permitting the development of homes and infrastructure found there today. Only the southernmost portion of this shore, extending along the present-day Haumoana, Te Awanga and Clifton, experienced subsided during the earthquake, increasing its hazards and in part accounting for its persistent problems with erosion and flooding. It is evident that any increase in the future levels of the sea and in the intensities storms, both being projected by climatologists to occur during the next 100 years, would result significantly enhanced threats to properties along the Hawke’s Bay coast.”

64. Earlier they had noted:⁶⁹

⁶⁵ *Hawkes Bay, New Zealand: Global Climate Change and Barrier-Beach Responses* (March 2014).

⁶⁶ At [1.1].

⁶⁷ At [1.2].

⁶⁸ At [1.5].

⁶⁹ At [1.3].

This pattern of shoreline erosion in the south versus accretion to the north is produced by there being a net northward longshore transport of the beach sediments, caused by the dominant waves arriving from the southeast, the gravel and sand supplied by the Tukituki River and erosion of Cape Kidnappers being rapidly carried to the north within this littoral cell.

65. This physical reality requiring an integrated approach to the whole coastline is a reason for the local body that has jurisdiction over that coastline to be the body that takes responsibility for controlling and managing coastal hazards.

The need for an integrated approach has been recognised already by the three local authorities

66. None of the three local authorities have determined which authority or authorities should take charge of implementing works to reduce coastal hazards risks along the Clifton to Tangoio coast. However, the need for an integrated approach can be seen in the creation in 2014 of a Clifton to Tangoio Coastal Hazards Strategy Joint Committee (the Joint Committee). This is a true joint committee established under the Local Government Act consisting of members of the three local authorities and local Iwi. The Joint Committee identified the extent of coastal erosion and coastal inundation hazards across the whole of the Clifton to Tangoio coast, adopted a bespoke decision-making process, created two assessment panels, and are in the process of developing an implementation plan for responding to coastal hazards.⁷⁰ Strategy monitoring and reviews would be ongoing for at least the next 100 years.

67. This report of the Northern and Southern Cell Assessment Panels is impressive in that it makes detailed findings of the hazards on the coast and provides precise recommendations on pathways for protection. The area is divided into a northern and southern cell, and within the cells into coastal units. The units are based on "...a combination of ward boundaries, land area units and topography".⁷¹ The coastal units are numerous and do not correspond to the territorial authority boundaries.

⁷⁰ *Report of the Northern and Southern Cell Assessment Panels* (14 February 2018) at [3.2].

⁷¹ At [7].

68. The work of the Northern and Southern Cell Assessment Panels as recorded in that report, reflects the need for this integrated approach. Their final report of 14 February 2018 dealt with the Clifton to Tangoio coast as a whole, without territorial demarcation. The strategy covered the whole area and included the goal, “to take into account the impact of coastal hazards responses on natural coastal processes, and any resulting impacts on other parts of the coast”.⁷²

69. This goal has been recognised by the Hawke’s Bay community and is a feature of the lead up to this report. The fact that the local authorities have themselves shown an admirable consensus through the use of a single body, the Joint Committee, to create an integrated response to coastal hazards, is itself a strong testimonial in favour of a single body being in charge of the actual rating and work.

Election by geographic area

70. It is significant that elected members of both territorial authorities and regional councils are elected by geographic districts with the authority area. Under the Local Electoral Act 2001 the members of territorial authorities are elected by ward,⁷³ and members of regional councils are elected by constituencies of the region.⁷⁴ This means that there is a specific member of each local authority with a particular interest in a particular part of the Clifton to Tangoio Coast.

71. This means that, while the NCC and the HDC will have particular geographic ties, so will the individual elected members of the HBRC. Within the HBRC, there is a member representing the northern part of the coast, a member representing the city of Napier, and a member representing the southern part of the coast. Therefore, the three relevant geographic areas in total encompass the relevant coastal area.

72. This means that, just as territorial councillors representing different wards will have a particular knowledge of and sensitivity of their particular ward area, so will the HBRC councillors to their particular constituencies.

⁷² At [3.1].

⁷³ Section 19C.

⁷⁴ Section 19E.

The HBRC has helpful experience in managing flood hazards in the Hawke's Bay region

73. It is useful to compare the management of flood hazards in the Hawke's Bay. The measures to prevent or control floods and provide protection in the Hawke's Bay are run by the HBRC. The HBRC decide what is necessary, rate for the cost, and manage the implementation of remedial measures. This has been the case as far as I can understand, since the creation of the HBRC. This is an indication that there has been a natural inclination to put the management of regional hazards in the hands of the HBRC.
74. What this means is that the HBRC has expertise in managing water encroachment. It has had to grapple with the need to calculate the movements and effects of water, the effects of extreme weather, the need to obtain permanent access to land to be used to prevent the damaging effects of water, and the creation and maintenance of structures on that land. It has had to deal with the issue that such expensive remedial measures will benefit some ratepayers far more than others, and on occasions to impose targeted rates that reflect this.
75. The territorial authorities have expertise in managing drainage and stormwater, but not in the creation of significant works to prevent water encroachment in specific vulnerable parts of their districts.

Which local authority has greater expert personnel?

76. Each territorial authority currently owns and maintains coastal structures. This means each territorial authority has a base level of capability. I understand that the NCC and the HDC have engineering and asset management teams dedicated to three waters (potable water supply, wastewater and urban stormwater), and many of these skills may be transferrable. They have large, dedicated project delivery teams to deliver a large and wide-ranging capital works programs. These capital works programs are in the \$50-\$100m per annum range, and include roads, bridges, Three Waters projects, and major buildings including museums, and those on reserves and parks.

77. HBRC has a smaller engineering and asset management team dedicated to flood control, drainage, and supporting coastal projects. HBRC employs a specialist dedicated to coastal modelling and analysis. HBRC currently actively monitors the extent of the coastline. HBRC holds expertise in modelling of drainage and rivers with two dedicated staff. They have additional flex and capability and frequently provide advice to the territorial authorities and Civil Defence.
78. HBRC has a small, dedicated project delivery team dedicated to delivering flood control and drainage projects, with a budget of around \$7m per annum.
79. I understand that the pending Three Waters reforms is likely to remove significant Three Waters engineering, asset management and project delivery resources from the territorial authorities, and amalgamate these into a single Three Waters entity, although no decisions have been made. This is a significant point as most of the transferable skills to coastal management will likely exit the territorial authorities over the next couple of years.
80. In considering the governance, rating, construction and maintenance of coastal strategy, the scale of the specialist resource required is a consideration. This is where there may well be a difficulty in putting control of the process in a Council Controlled Organisation (CCO). It would not have resources of its own and would have to use the resources of local authorities. It is difficult to see this as efficient, or economic. It would be difficult to develop a depth of expertise in managing coastal hazards over three local authorities, none of which controlled the works, the control being with a third body such as a CCO. It is difficult to see how such disparate expertise could be amalgamated into an efficient working unit. A model where all the expertise is in one organisation that collects the rates to pay for that expertise, and administers that expertise, seems preferable.
81. If there were one local authority in charge, then the right resources to deal with coastal hazards are likely to develop further, both as a group of staff members develops within the organisation, and through the use of independent consulting engineers and other expert professionals, who it would be expected would develop more expertise and a good working relationship with the local authority in charge. Members of that local

authority would develop knowledge of the best contractors and develop skills in dealing with them.

Comparison to Civil Defence Emergency Management Groups

82. During the course of my investigations, the analogy of the Hawke's Bay Civil Defence Emergency Management Group, which is a group created for the whole Hawke's Bay region, has been raised as an alternative to control by a single local authority or authorities. This group is created under the Civil Defence Emergency Management Act 2002 (CDEMA). Its members are the HBRC and all those territorial authorities that lie wholly within the boundaries of the Hawke's Bay region. There is a group controller and a group plan, under which effective civil defence management is carried out on a region-wide basis. Could a similar model be used for the creation of a CCO, which would take charge of managing coastal hazards?
83. Such civil defence groups *must* be created by local authorities under s 12 of the CDEMA. Such groups are designed to ensure civil defence co-ordination over a whole large area, and involve a number of concerned bodies and organisations in addition to local authorities, such as the Hawke's Bay District Commander of NZ Police, the Area Commander Hawke's Bay Fire and Emergency NZ, the Chief Executive Hawke's Bay District Health Board, the Hawke's Bay Medical Officer of Health the Group Welfare Manager the Group Recovery Manager, the Heretaunga Territory Manager, St John, the Chief Executive Officer of each Local Authority of the Group, the Chairperson of the Hawke's Bay Lifelines Group, and any other persons that may be co-opted by the Group.
84. Such groups are one-off, involving multiple administrative bodies in order to deal with the broad spectrum challenge of civil defence, and in particular emergency response. Inevitably, a group different from a local authority or authorities was required. The same statutory and practical imperatives do not arise with regard to coastal hazards which are typically slow moving and evolving over years and decades.
85. In summary, I do not think that the Hawke's Bay Civil Defence Emergency Management Group provides an appropriate template for a similar structure regarding

coastal hazard management. Therefore, I do not consider that the Civil Defence model should be applied to controlling coastal hazards.

Which body is best suited to work out fair rates and in particular targeted rates?

86. It is arguable that all people in the Hawke's Bay get some benefit from the protection of its coast, but it is also true that some will get far more benefit than others. The difficult question will arise of finding a fair way to rate for hazard protection measures that will greatly benefit those properties immediately on the threatened shore, with the benefits lessening the greater the distance of the rated property from that shore.
87. This was done in relation to the Waimarama revetment and to an extent with the Whakarire Avenue revetment. However, this was not done with the Clifton revetment, (which had no residences that were immediately affected). Different policies can be adopted therefore, from significant targeting of rates to none at all.
88. Who is best to decide? A territorial authority may well have the better knowledge of its local people, and the history and their concerns about a local hazard. On the other hand, they may not have the same understanding of how the coast benefits the Hawke's Bay as a whole, in terms of being an amenity for recreation, attracting tourists, and as a barrier to protect infrastructure such as roads cables and pipes. There may also be complexities where some benefits of a particular work (or adverse impacts) accrue outside of the rating jurisdiction of a given territorial authority from resulting 'downstream' coastal change. This could occur from, for example, a major beach nourishment programme in Westshore and Bay View (within the jurisdiction of NCC) potentially benefiting residents in Whirinaki (within the jurisdiction of HDC) as the nourishment material naturally migrates northwards.
89. It is also the case that the territorial authorities face the reality that infrastructure owned by them is threatened by coastal erosion, in particular coastal roads, cables and pipes under their control. Accepting that the territorial authorities could not be rated for any works, there is an advantage in having a body independent of the owners of that infrastructure, deciding on what should be done to protect it. If, say, a managed retreat and the destruction of a piece of territorial authority infrastructure was an option, the

HBRC as an independent organisation with no financial interest could be better suited to the tasks of decision-making, rating, implementation and maintenance, than the territorial authority itself.

90. For these reasons, I suggest that a regional council, the HBRC, is best suited for the task of responding to coastal hazards and setting rates. The task is best undertaken by an authority with pan-jurisdictional reach and a regional (rather than specific local) frame of reference.

Any indications as to the preference of ratepayers?

91. The ratepayers of Hawke's Bay voted against the creation of a single new body for all of Hawke's Bay, with local boards, in a poll conducted in 2015. In that poll, 34% of ratepayers were in support of such a body, and 66% against it. I see this as a poll requiring a multiplicity of considerations, and not an indication of any preference from the local population as to how to deal with the coastal hazards problem. I am not aware of any indications from ratepayers as to which Council they might wish to take charge of responding to coastal hazards to the Clifton to Tangoio coastline.
92. Thus, when this result is seen in conjunction with the results from the Climate Crisis Survey referred to earlier, the ratepayers can be seen as generally agnostic as to who does the work, but it is clear that they want it done and they want it done efficiently and effectively.

The need for co-operation from the territorial councils

93. Some of the work that will have to be done will fall within the coastal marine area which is the HBRC's bailiwick. Other works, on the landward side of the mean high water mark, fall within the territorial authority jurisdiction. The fact that regional councils have to deal with land which falls within their own jurisdiction but also within the jurisdiction of a territorial council is common, if not unusual. Regional councils have experience in designations, and in acquiring land under the Public Works Act 1981. For instance, some of the flood prevention works that have been carried out by

the HBRC have been on land which is not under HBRC control, and included private land and land owned by territorial authorities.

The future need for similar strategies for other parts of the coastline in the Hawke's Bay region.

94. Coastal hazards issues are of course not unique to the coastline between Clifton and Tangoio. Indeed, I understand that one of the objectives of the Clifton to Tangoio Coastal Strategy is to develop an approach and model to apply in future to other parts of the Hawke's Bay coastline. This introduces the prospect of involving additional territorial authorities in this work, namely the Wairoa District Council and Central Hawke's Bay District Council.

95. The Wairoa District Council and Central Hawke's Bay District Council have not been approached for comment, and it is not part of my specific brief to consider their position. However I comment that consistent with my analysis above, additional agencies can add complexity and inefficiency for little practical benefit. A single agency-model enables a regional roll out of strategic planning in ways that a multi-agency model cannot. This is a strong argument in favour of a single agency model for all of Hawkes Bay. However, I make this observation with diffidence, as I have no knowledge of the history and coastal erosion issues in those Council areas.

Summary of factors in favour of continuing the status quo, with each council dealing with coastal hazards (Model One)

96. The creation of the Joint Committee appears to me to constitute a recognition by all the local authorities that an integrated approach is required through all the local authorities working together.

97. Through discussions held as part of developing this review, some support was expressed for retaining the existing status quo (Model One) based on the concept that there should be a direct connection between the money being taken from ratepayers and those who could be held to account. The works and the ratepayers should be as closely joined as possible. It was suggested that the HBRC has no role to play in relation to

coastal hazards that are essentially community issues, and the HBRC's involvement should be limited to providing only an environmental point of view. It was observed that territorial authorities have the responsibility for the built environment. It was said that given the concern that a regional council should have for the environment, it was thought that a regional council was more suited to managing retreat, rather than hard engineering on the coast.

98. While these arguments have merit, they are not persuasive of a piecemeal approach corresponding to territorial boundaries, with the HBRC having a limited role. As I have set out, the problem of coastal hazards along the Clifton to Tangoio coast is physically problem of the whole coast, in particular the southern and northern sections, and does not correspond physically to the territorial authority boundaries. If responses are carried out from the point of view of just parts of that coast, the response may have adverse effects on other parts of that coast. In my assessment, coastal hazards are to be approached as a whole of coast issue, requiring a whole of coast response.

99. The various legislation and regional plans mentioned above give the regional and territorial authorities overlapping responsibility and powers in dealing with coastal hazards. However, it is clear from the interpretation of those instruments that a regional body, the HBRC, is higher in the hierarchy and therefore can be seen to have primacy.

100. As I have set out, the HBRC is better able to assess rates with a whole of region approach. The HBRC already has some of the skills and knowledge in dealing with the prevention of coastal hazards, having been in charge of managing and rating for flood prevention across the Hawke's Bay for many decades. This is not going to change, and the skill sets involved for both areas of flood prevention and coastal management overlap.

101. These issues were already in part at least recognised by the formation of the Joint Committee, which was set up by all the local authorities to proceed on a region-wide basis. This move to a whole of region approach can be said to have arisen in part as an organic response to the issues.

Summary of factors in favour of a single agency model (Model Two)

102. It should first be observed that the analysis earlier of the LGA and RMA, the relevant authorities interpreting those Acts, and the relevant plans, indicates primacy of the Regional Council in relation to policy on coastal hazards, and equality in relation to implementation. Only the Regional Council can in relation to coastal hazards direct managed retreat.
103. The Clifton to Tangoio Coast is not congruent with the boundaries of the territorial authorities. Neither the NCC nor the HDC has jurisdiction over the coast of the other. In contrast, the coast all falls within the boundaries of the HBRC. This is the most powerful reason for the HBRC to rate and manage coastal hazards. As mentioned, what happens on one part of the Clifton to Tangoio coast may adversely affect other parts. There is no other existing single suitable body with the power to plan for, rate for manage and implement measures to control coastal hazards other than the HBRC, (other than through the creation of CCO, which is discussed below). Thus, geographic logic supports a single agency implementing measures to respond to coastal hazards along this coast, and the reality of the boundaries of the territories of the councils supports that council being the HBRC.
104. This geographic logic, at least as a matter of fact if not law, is increasingly recognised by local body politicians and employees in all three local authorities. It is reflected in the work of the Joint Committee. In my discussions with the councillors of all three local authorities, there appeared to be a recognition by most that a single agency was the most practical option in terms of efficiency and cost.
105. Even with a single agency approach, local interests can be recognised and promoted by members of the HBRC, given that they are elected on a constituency basis.
106. There is a considerable body of experience in the area of coastal hazards in the HBRC, and the work has a connection with flood control. The HBRC has successfully carried out flood control throughout the region in recent years.
107. Further, the HBRC is well able to carry out the task of considering whether there should be targeted rating, and if so in what proportions, and the collection of those

rates. It already administers targeted rating in the area of flood control. The HBRC is experienced in identifying water hazards, coming up with a remedial concept, working out how to acquire or control required properties and implementing the acquisition of necessary land, and doing the construction.

108. It is true that if the HBRC carries out the rate collection exercise, this will result in a greater percentage increase in the HBRC rates than would be the case if the NCC and HDC did the rating, as the overall rates on household of the territorial authorities are much higher. An extra rate to pay for protection from coastal hazards may be less noticed by rate payers if it is made by the territorial authorities. However, this is not a valid reason for the task of collection of such rates to be left to the NCC and HDC. The same ratepayers more or less will end up paying for the cost of the works, they will simply be paying directly to the HBRC rather than to the NCC or HDC. Any cosmetic reason should be treated as irrelevant.

109. The only reasons why the single collection model may not be the best are that:

- (a) The territorial authorities know their ratepayers, and the history of their district and perhaps have a closer connection to their ratepayers than the HBRC. The HBRC covers a much wider area, and must take into account the interests of many more groupings of ratepayers;
- (b) The territorial authorities have the power to do these works under the LGA and the RMA (although, so does the HBRC);
- (c) The NCC and HDC will have a good institutional knowledge of the coastal hazards in their territories; and
- (d) In particular, both the NCC and HDC have had hands-on experience in taking successful measures to prevent coastal hazards, in particular at Waimarama, Clifton and Westshore and have skills in that area in their existing staff.

110. However, these are not persuasive in comparison to the reasons favouring a single agency model. Indeed, a single agency model can be constructed to still benefit from

the knowledge, experience and capability of territorial authorities through the formation of an advisory forum, which I discuss below. There are therefore powerful reasons why the single model approach should be adopted. I will traverse some other considerations to the contrary below.

Summary of factors in favour of HBRC and an advisory committee (Model Three).

111. This model involves the HBRC being the decision-maker and implementer of all functions including rating (model 2) but supported by an advisory committee, (it could be called a forum or group), involving the territorial authorities. This approach was favoured by a number of politicians in two of the Councils.
112. For the reasons I have set out, I recommend that the HBRC takes charge of all aspects of the prevention and mitigation of coastal hazards on the Clifton to Tangoio coast. I believe that the HBRC's ability to carry out this role would be strengthened by an advisory panel or committee. While, for reasons that I will set out, I do not favour a CCO or any option that compromises the HBRC as the decision-maker and rating body in relation to all aspects of the prevention and mitigation of coastal hazards on the Clifton to Tangoio coast, a committee that had only an advisory role could be a real benefit.
113. As I have set out, the territorial authorities have a close connection with the ratepayers on their coastlines. They will know the socio-economic circumstances of the ratepayers of particular areas. They have a history of dealing with their own coastal areas that the HBRC has not had. They will know their infrastructure, and how it may be affected by a coastal hazard. They will be aware of the cost and implications of not stopping damage to that infrastructure.
114. The territorial authorities have had to manage coast related issues for many years. Obvious examples are the works at Westshore and Whakarire Avenue. The NCC has a good knowledge of what has been done, and what its ratepayers think about it. The HDC has had the experience of Clifton, and the long running issues at Haumoana.

115. In relation to specific proposals and issues relating to their coasts, the territorial authorities through an advisory body can let the HBRC know of the wishes of ratepayers and the history of parts of the coast. The individual territorial authorities through an advisory body can have an exact knowledge of what is happening in relation to coastal hazards in their area and how they are being dealt with, so that not only can they comment, but they can report back and have a sense of participation. The territorial authorities will be in a position to provide advice or assistance to the HBRC on proposals for works and strategies. They will also be able to come up with their own suggestions as to what could be done.
116. I would recommend that this advisory committee be modelled in composition at least in part on the existing Joint Committee, so that there would be an equal number, (perhaps two), of representatives from each of the three local authorities, plus continued Iwi representation. The local authority representatives should be elected politicians, who can be seen as responsible to, and representative of, their district's ratepayers. It will also be important to have inputs from key personnel in the three councils, in the same way as the existing Joint Committee has had the benefit of the TAG Group. I recommend that the advisory committee have an associated group of experts who work with them, like the TAG group.
117. I think it important that the HBRC has its own elected members on this advisory committee, and that they have a role in the HBRC in the area of coastal hazards. This will allow them to inform the other members of the advisory committee of what is intended and what is happening, and debate and learn. The HBRC members and Iwi representatives can also be a counter-balance against any particular sectional pressures and conflicts that might arise between the NCC and HDC.
118. I would envisage that the advisory forum or committee is given advance notice by HBRC of significant new works or maintenance works, and of rating proposals, so that they could be debated and commented on by the advisory committee. The finalisation of such proposals should allow the advisory committee reasonable time to understand, debate and comment. However, the time frame for such debate and comment would have to be such that there was no significant delay. Moreover, the view

of the advisory forum or committee, even if opposed to a proposed measure, could not delay the implementation of that measure by the HBRC.

119. The effect would be, then, that the advisory committee could come up with its own proposals or respond to those of HBRC. It would have to be given prompt advice of HBRC proposals, and then meet on relatively short notice to discuss and give such advice if considered appropriate. There would need to be a time frame for this, and it would need to be measure in weeks more than months. Significant delay would defeat one of the key benefits of having a single deciding body.

Summary of factors in favour of a Council Controlled Organisation (CCO) (Model Four)

120. The fourth proposed model is that HBRC establishes new council-controlled organisation (CCO) whose composition could match the existing Joint Committee, tasked with implementing and monitoring strategy. The HBRC would collect the relevant coastal hazard rates, but the CCO would decide on allocation of rate contributions, targeting, the projects to be undertaken, how those projects are to be carried out, and who should carry out those projects.
121. This model is supported by a number of councillors in one of the local authorities. I understand that it was envisaged that there would be an equal number of representatives from each local authority in this CCO.
122. This model is effectively a single entity in charge, not the HBRC, but rather a hybrid body of the local authorities. This would have some of the advantages of Model 2, with a single body making all the decisions, and which would develop skills and expertise in managing coastal hazards.
123. The power to delegate to CCOs is set out at part 5 of the LGA, and the power is wide. I will assume that it includes the power to decide on works and who will own them to prevent or mitigate coastal hazards, and to rate or get the regional council to rate for them, and to have staff and carry out those works.

124. The key disadvantage of such a model is that there would be the opportunity for conflict and stalemate, as councillors from particular authorities sought to maximise the position of the ratepayers that they represent, rather than the good of the Clifton to Tangoio coast as a whole. The great advantage of the HBRC being in charge, is that its councillors from all constituencies have a duty to advance the interests of the whole region, rather than one part of it. They are better able to manage a coast which demands a whole of coast approach, rather than one dictated by the boundaries of territorial authorities.

125. Also, there would be overlap in the CCO's functions particular in the area of flood control, with the HBRC. Such a move would be against the overall trend in local government, which is to try to check proliferation of authorities, and thus duplication of costs and a more piecemeal approach. The general move in local government is to conflate rather than expand the multiplicity of local government organisations. This would be a step in the opposite direction. A CCO would mean the creation of another *ad hoc* local body, a coastal hazards board, a move similar to the move to multiple boards in the late nineteenth century, where there were boards for rabbits, rivers and harbours.⁷⁵ Such a proliferation proved costly and inefficient and was firmly reversed in the next century.

126. The HBRC has representatives of all the ratepayers that are represented by the territorial authorities. The HBRC has representatives for the ratepayers in the constituencies that are on the Clifton to Tangoio coast. Those ratepayers do not therefore need a say in decision making through a CCO, as they already have a say through their votes for HBRC members. The territorial authorities, therefore, do not have to have a direct say in what happens through a CCO, because the ratepayers that they represent are already represented on the HBRC.

127. Further, if a CCO was to take charge, it would not have any staff. It would have to use NCC, HDC or HBRC staff. As a result, there would be more of a possibility of conflict and duplication.

⁷⁵ Drage, above n 3, at 59.

128. The particular contributions that the NCC and HDC can make can be accommodated in an advisory committee as discussed in the preceding section. There is no need for the creation of a CCO, as the ratepayers affected by any coastal hazard works can have their democratic right to a say met through their votes for HBRC members. There is a significant downside in delegating all the coastal hazard functions to a CCO, in cost and delay and an unhealthy proliferation of the local government function. I do not recommend this model.

HBRC + Decision-making forum (Model Five)

129. Under this model, the HBRC would rate for strategy implementation, and funding decisions would be delegated to a decision-making forum involving the territorial authorities.

130. I do not support this concept for the reasons I have already set out. I favour the HBRC having all the decision making and rating functions, assisted by an advisory board which includes representatives of the NCC and HDC. If the HBRC's role was limited to rating and possibly implementation as well, this would involve its powers and functions being divided, which is undesirable for the reasons I have already set out. A decision making forum involving the NCC and HDC would be much like the CCO option, and could lead to division and stalemate, and the attendant delays and costs.

HBRC + TA (Model Six)

131. This proposal is for a hybrid model with shared responsibility between the HBRC, NCC and HDC. Under this model, the HBRC would rate for the public good component of works, and the NCC and HDC would rate for private good component.

132. Again, I do not support this for the reasons I have set out, where I favour the HBRC having all the decision making and rating functions, assisted by an advisory forum or committee which includes representatives of both territorial authorities. To split the rate collection function in relation to coastal hazards would lead to wrangles as to how the division should be made, and confusion among voters about to whom they are paying and for what. The advantages derived from the single authority option, which I have already set out, would be lost.

133. I have not sensed any particular enthusiasm for this option from any person or group.

Transition

134. The recommended single agency model represents a change to the status quo. This necessitates a comment on the successful transition to a new operational model.

135. If the Councils do accept my recommendation, they should record this in a joint memorandum or similar document as a first step. This would ensure that all parties are clear and agreed on the changes and their respective roles moving forward. I envision that this memorandum would include agreed positions on key matters, such as the ongoing role of the advisory committee and its membership, any financial contributions to operational costs from advisory committee members, and the future ownership and maintenance of existing coastal hazard assets.

136. On the issue of existing assets, I would envisage that all existing coastal hazard assets owned by the two territorial authorities (the NCC and the HDC), such as revetments (and including the resource consents held for structures that have not yet been built), be transferred to the HBRC. They are unlikely to have any open market value. This will allow for a fully integrated approach to managing coastal hazards risks at present and into the future; to do otherwise risks perpetuating the issues I have identified with the multi-authority options discussed above.

137. The next step will be for the HBRC, I suggest in conjunction with the Joint Committee, to prepare a Transition Plan to set out the timing and orderly process of transitioning to a single agency model in accordance with the terms set out in the agreement.

138. The Transition Plan should be prepared in consultation with the territorial authorities and set out procedures for the transfer of assets. A full transition plan would then be finalised and implemented.

Recommendation

139. For the reasons I have set out, I recommend that the HBRC takes charge of all aspects of the prevention and mitigation of coastal hazards on the Clifton to Tangoio coast including deciding on preventative, mitigating or remedial works, making all decisions about rating for these works and collecting those rates, the implementation of all decisions including supervising works, and the control of all maintenance. I recommend that there be an advisory committee which includes members of both the NCC and HDC, but that this advisory committee has no decision-making powers, and no ability to delay the implementation of proposals.

140. My recommendation is that the HBRC should take charge of:

- (a) The collection of the rates that will fund the projects;
- (b) Deciding which rate payers should pay and in what amounts and proportions;
- (c) Deciding and controlling the projects to which the funds are applied; and
- (d) Implementation of the projects.

Dated this 23rd day of April 2021

