

Alcohol Ban Bylaw

Statement of Proposal

Background

The Public Places Liquor Control Bylaw 2009 expires in 2018 and must be replaced.

The Council can make bylaws to control the consumption, bringing into and possession of alcohol in public places to reduce alcohol related harm under the Local Government Act 2002. These include:

- Extending the definition of “public place” to include land generally open to the public (but excluding licensed premises) from the previous definition which covered only land that was owned or controlled by the council (and so excluded areas such as private car parks, schools and reserves managed by trusts)
- Providing that an alcohol ban does not apply to alcohol in an unopened container being transported through a public place (such as from a bottle store to a car);
- The requirement that council be satisfied that:
 - the bylaw can be justified as a reasonable limitation on people’s rights and freedoms; and
 - a high level of crime or disorder (being crime or disorder caused or made worse by alcohol consumption in the area concerned) is likely to arise in the area to which the bylaw is intended to apply if the bylaw is not made; and that
 - the bylaw is appropriate and proportionate in light of the crime or disorder;
- The ability for the police to issue an infringement fine (\$250) for alcohol ban breaches as well as the power of arrest.

To assist the Council, the Police prepared a report which concludes that there is a considerable amount of alcohol related offending that occurs in non-residential locations (public places) in Rotorua. A significant amount of alcohol-related offending is detected in the current Liquor Ban Zones.

Council proposes making an Alcohol Ban Bylaw that prohibits the consumption of alcohol and restricts the possession and transport of alcohol in some public places within the Rotorua district (called Alcohol Ban Areas). Council proposes to retain all the liquor ban areas made under the Public Places Liquor Control Bylaw 2009 as Alcohol Ban Areas and for these to remain 24 hours a day, seven days a week.

Consultation Process - How can I have my say?

The Council must use the special consultative procedure to make a new bylaw. Section 83(1)(a) of LGA 2002 requires the Council to prepare a Statement of Proposal. Section 86(2) requires the Statement of Proposal to include: a draft of the bylaw and the reasons for the proposal; and a report on the relevant determinations by the Council under section 155 of the LGA 2002.

Submissions are welcomed on the proposed bylaw, especially on the specific Alcohol Ban Areas and the proposal for these being 24 hours a day, seven days a week.

You can submit your opinions online via an electronic submission form on the Council website. You may post or fax submissions to the Council. You also need to indicate whether you wish to appear in person before the Council to speak in support of your submission.

To get your submission to us, either:

Email to: submissions@rotorualc.nz

Fax: 07 346 3143

Visit our website: rotorualakescouncil.nz/letstalk or rotorualakescouncil.nz/koreromai

Post to: Rotorua Lakes Council, Private Bag 3029, Rotorua Mail Centre, Rotorua 3046

The submission period runs from 30 August 2018 until 10 October 2018.

Submissions on the Bylaw are available to the public and the media. This includes your personal information. All submissions will be acknowledged. Submitters who wish to speak to their submission will be advised of the Council meeting date following the closure of submissions.

For further information on the Bylaw, please phone the Council on 07 348 4199 or email us at mail@rotorualc.nz

Relevant Legislation

Public Places Liquor Control Bylaw 2009

The Council is empowered by sections 145, 147 and 147A-C of the Local Government Act 2002 to make bylaws to control the consumption, bringing into and possession of alcohol in public places to reduce alcohol related harm.

Officers have assessed the Public Places Liquor Control Bylaw 2009 and propose to replace it with an Alcohol Ban Bylaw that meets the requirements of sections 147 and 147A-C of the Local Government Act 2002 and better enables the Council to control the possession and consumption of alcohol in public places to reduce alcohol related harm.

Considerations under sections 147 and 147A-C of the Local Government Act

A number of substantial changes have been made to the legislative framework for alcohol bans since the Public Places Liquor Control Bylaw 2009 was made. These have been introduced alongside the Sale and Supply of Alcohol Act 2012 that brought in many changes to the way that alcohol is sold, supplied and consumed in New Zealand. These provisions were introduced by the Local Government (Alcohol Reform) Amendment Act 2012 and include:

- Replacing references to the word liquor with the word alcohol
- A requirement to review current liquor ban bylaws and liquor bans
- Extending the definition of “public place” to include land generally open to the public (but excluding licensed premises) from the previous definition which covered only land that was owned or controlled by the council (and so excluded areas such as private car parks, schools and reserves managed by trusts)
- Providing that an alcohol ban does not apply to alcohol in an unopened container being transported through a public place (such as from a bottle store to a car);
- The requirement that, before making a bylaw that is intended to replace an expiring bylaw, council be satisfied that -
 - The bylaw can be justified as a reasonable limitation on people’s rights and freedoms; and
 - A high level of crime or disorder (being crime or disorder caused or made worse by alcohol consumption in the area concerned) is likely to arise in the area to which the bylaw is intended to apply if the bylaw is not made; and that
 - The bylaw is appropriate and proportionate in light of that likely crime or disorder
- The ability for the police to issue an infringement fine (\$250) for alcohol ban breaches as well as the power of arrest.

Criteria for replacing an expiring bylaw under section 147A(3)

Of particular note is the requirement that, before making a bylaw that is intended to replace an expiring bylaw, council must be satisfied it meets the criteria in section 147A(3) of the Local Government Act 2002:

(3) Before making under section 147 a bylaw that is intended to replace an expiring bylaw and is to the same effect (or to substantially the same effect) as the expiring bylaw, a territorial authority must be satisfied that -

(a) the bylaw can be justified as a reasonable limitation on people’s rights and freedoms; and

(b) a high level of crime or disorder (being crime or disorder caused or made worse by alcohol consumption in the area concerned) is likely to arise in the area to which the bylaw is intended to apply if the bylaw is not made; and

(c) the bylaw is appropriate and proportionate in the light of that likely crime or disorder.

Of key importance is the requirement that, before making a bylaw that is intended to replace an expiring bylaw, Council be satisfied that a high level of crime or disorder (being crime or disorder caused or made worse by alcohol consumption in the area concerned) is likely to arise in the area to which the bylaw is intended to apply if the bylaw is not made.

Examples of crime or disorder associated with alcohol in public places include offensive behaviour (use of anti-social language and urinating in public), assault, property damage (vandalism and graffiti), fighting, trespass, theft, littering, noise and reckless use of vehicles.

Regard must also be had to whether the bylaw is appropriate and proportionate in light of that likely crime or disorder for each area. Proportionality may be influenced by whether the alcohol ban is in place at all times (24 hours a day, seven days a week), or perhaps only overnight (7pm or 10pm to 7am). Then, overall, consideration must be given to whether the bylaw can be justified as a reasonable limitation on people's rights and freedoms.

Further considerations

In making any bylaw, the Council must also follow the general procedure for making bylaws under the Local Government Act 2002:

- Officers have concluded that the proposed Alcohol Ban Bylaw better enables the Council to control the possession and consumption of alcohol in public places to reduce alcohol related harm than having no bylaw, relying only on education/information or general legal requirements. As a consequence, officers recommend that the proposed Alcohol Ban Bylaw is the most appropriate option as it provides for greater certainty and is enforceable by the Police.
- Officers recommend that the Alcohol Ban Bylaw is the most appropriate form of bylaw.
- The Alcohol Ban Bylaw is considered to be consistent with the *New Zealand Bill of Rights Act 1990* and does not raise any implications under this Act. The Bylaw does not place any unjustified limitations on freedom of movement, expression or association. Serious offences against the Bylaw require a judicial process through a summary conviction, which provides alleged offenders with opportunities for defence.
- In terms of the four general requirements for making a valid bylaw, the Local Government Act 2002 empowers the Council to make alcohol ban bylaws. The proposed Alcohol Ban Bylaw is not repugnant to the general laws of New Zealand. It will impose reasonable restrictions that afford better outcomes for the health and safety of the general public and the protection of Council's assets.
- In light of decision-making under sections 77, 78, 79, 80, 81 and 82 of the Local Government Act 2002, as noted above, although other options, such as having no bylaw, relying only on education/information or general legal requirements are possible, the benefits of a bylaw as an option outweigh the costs in terms of the present and future interests of the district. A bylaw also better promotes or achieves community outcomes (such as health and safety) as expressed in the Rotorua 2030 Goals in a more integrated and efficient manner than having no bylaw. In terms of the impact of these options on the Council's capacity to meet present and future needs in relation to any statutory responsibility, Council and the Police have the capacity and resources to monitor and enforce the proposed bylaw.
- The views and preferences of certain stakeholders and the Police who are affected by, or have an interest in, the Bylaw have been considered.