

# **Administrative amendment to Alcohol Control Bylaw 2018**

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<b>TO</b>	Thames-Coromandel District Council
<b>FROM</b>	Scott Summerfield - Policy and Planning Manager
<b>DATE</b>	29 November 2018
<b>SUBJECT</b>	<b>Administrative amendment to Alcohol Control Bylaw 2018</b>

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## **1 Purpose of report**

This report recommends that Council make an administrative amendment to the Alcohol Control Bylaw 2018 as per section 156 (2) of the Local Government Act 2002.

## **2 Background**

Section 147 of the Local Government Act 2002 (the Act), provides for local authorities to create alcohol control bylaws. This section was amended on 18 December 2013 by the Local Government (Alcohol Reform) Amendment Act 2012. The amendment requires that all alcohol control bylaws be reviewed under the new legislative requirements by 18 December 2018; otherwise the existing bylaw will be revoked.

Council first made a Liquor Ban Bylaw in 2004, reviewed this in 2009 and undertook a review in 2018 in order to meet the requirements set out by the Local Government (Alcohol Reform) Amendment Act 2012. A proposed bylaw was approved for public consultation by Council on 26 June, consulted on from 29 June to 30 July, and with a hearing of submitters held on 28 August 2018. Council then deliberated on submissions received on 8 October and adopted a reviewed Alcohol Control Bylaw 2018 (Bylaw) on 30 October. The Bylaw will take effect on 18 December 2018 and at that time will revoke the Liquor Ban Bylaw 2004.

In deliberating on the proposed bylaw, Council was mindful of the 47% of submissions in favour of retaining the provisions of the existing bylaw and intended to keep the effect of the existing bylaw as similar as possible going forward unless specifically noted otherwise.

The creation of an alcohol control bylaw enables the Police to enforce provisions of the bylaw within the local authority's area. This means that if someone is drinking alcohol or has alcohol on their person in a public place the Police are able to request that they stop, dispose of the alcohol, impose a fine, or take further action if required. This does not apply when someone has purchased alcohol and is carrying it in a public place, unopened, to a place which is licensed for liquor consumption or to a private place for its consumption, as long as it is promptly removed from the public place.

## **3 Issue**

In order to best enable enforcement of the intent of the Bylaw by the NZ Police, staff recommend that Council amend clause 6.1 of the Bylaw to specifically prohibit possession of alcohol in alcohol ban areas.

## **4 Discussion**

Following adoption of the Alcohol Control Bylaw 2018 on 30 October, Council has been approached by the Police with concerns that the Bylaw does not specifically prohibit possession of alcohol in alcohol ban areas. This is consistent with the submission on the

proposed bylaw received from the Police which sought that clause 6 of the bylaw make explicit mention of possession of alcohol.

The wording of clause 6 of the Bylaw is as follows:

**6. Permanent alcohol bans**

- 6.1. A person must not consume or carry alcohol in an alcohol ban area in Schedule 1, or in a motor vehicle within an alcohol ban area; unless an exemption or special licence applies.

While the proposed bylaw for consultation and the adopted Bylaw include a prohibition on people “consuming and carrying” alcohol within an alcohol ban area, Police do not agree with staff that this satisfactorily covers possession of alcohol by people in alcohol ban areas where a person is not physically holding the alcohol.

Staff recommend that Council make an administrative amendment to clause 6.1 of the Bylaw to explicitly include prohibit possession of alcohol in an alcohol ban area. Clause 6 of the Alcohol Control Bylaw 2018 is recommended to now read:

**6. Permanent alcohol bans**

- 6.1. A person must not consume, carry **or possess** alcohol in an alcohol ban area in Schedule 1, or in a motor vehicle within an alcohol ban area; unless an exemption or special licence applies.

Section 156 (2) of the Act states:

Despite subsection (1), a local authority may, by resolution publicly notified,—

- (a) make minor changes to, or correct errors in, a bylaw, but only if the changes or corrections do not affect—
- (i) an existing right, interest, title, immunity, or duty of any person to whom the bylaw applies; or
  - (ii) an existing status or capacity of any person to whom the bylaw applies:

This proposed change to the Bylaw is consistent with the purpose stated within the Bylaw, and with Council’s intention that both possession and consumption be prohibited within alcohol ban areas in making the Bylaw.

Inclusion of the word “possess” may materially change the effect of the Bylaw. However, as the Bylaw will not take effect until 18 December 2018, and until that point the Liquor Ban Bylaw 2004 which prohibits possession of alcohol in liquor ban areas is in effect, there is no existing right of any person that can be perceived to be affected.

As this is an administrative change, no consultation or engagement is required. The public will be notified of the change to be made as per section 156 (2) of the Act.

## **5 Suggested resolution(s)**

That the Thames-Coromandel District Council:

1. Receives the ‘Administrative Amendment to Alcohol Control Bylaw 2018’ report dated 29 November 2018.
2. Amends clause 6.1 of the Alcohol Control Bylaw 2018, in accordance with section 156 (2) of the Local Government Act 2002, to read:  
“6.1. A person must not consume, carry **or possess** alcohol in an alcohol ban area in Schedule 1, or in a motor vehicle within an alcohol ban area; unless an exemption or special licence applies.”
3. Direct staff to publically notify the amendment in accordance with section 156(2) of the Local Government Act 2002.