

Alcohol Control Bylaw 2014 Review

2018 Options report

Introduction

This report analyses the options available to Auckland Council in response to the statutory review of the Auckland Council Alcohol Control Bylaw 2014 (Bylaw). It draws on findings contained in the “Alcohol Control Bylaw 2014: 2018 Review Findings Report”.

Executive summary

To enable Auckland Council to decide how to respond to the findings from the statutory review of the Auckland Council Alcohol Control Bylaw 2014 (Bylaw), staff assessed the following options using Local Government Act 2002 criteria:

- **Option one:** status quo – retain Bylaw that makes alcohol bans by resolution
- **Option two:** amend the current Bylaw – improve the status quo
- **Option three:** replace the current Bylaw – new bylaw that contains all alcohol bans
- **Option four:** revoke Bylaw – no bylaw and instead rely on other existing methods.

Staff **recommend Option two** (amend the current Bylaw) because it:

- retains a regulatory tool that (to varying degrees) can help reduce crime or disorder in certain public places caused or made worse by alcohol consumed there
- improves on the status quo (Option one) by including event venue alcohol bans, clarifying adoption of temporary alcohol bans, removing clauses that duplicate legislation and making the Bylaw easier to understand
- retains delegated decision-making of alcohol bans by resolution with local boards.

Option one (status quo) and **Option three** (replace the current Bylaw) both provide a preventative regulatory tool. Compared to Option two (amend the current Bylaw), however:

- Option one is less effective, contains unnecessary provisions, is hard to follow, and does not include event venue alcohol bans
- Option three is less efficient because any future alcohol bans would require a bylaw amendment which is less responsive than a resolution.

Option four (revoke Bylaw) is the least effective option because it removes a regulatory tool that helps reduce crime and disorder in over 700 alcohol ban areas where there is evidence of high levels of crime or disorder caused or made worse by alcohol consumed there.

Status quo (current Bylaw) and problem definition

Status quo (current Bylaw)

The current Bylaw provides a framework (refer Figure 1 on page 4) that:

- enables alcohol bans to be made by resolution of delegated authorities (Regulatory Committee, Auckland Domain Committee and all 21 local boards)
- sets out decision-making criteria, some of which is legislative
- identifies exceptions
- enables signage requirements to be made by resolution.

Alcohol bans made by resolution are recorded in a register, can be viewed on council's [website](#) and are attached to the Bylaw as information only.

Original problem statement

When the Bylaw was made, staff defined the original problem as “crime or disorder caused or made worse by the consumption of alcohol in public places.”

Current and future problem

The current and future problem remains “crime or disorder caused or made worse by the consumption of alcohol in certain public places”, for example:

- noise nuisance
- litter
- public urination
- vandalism
- theft, such as mugging
- intimidation
- violence.

Scale and magnitude of the problem

There is no reliable data available about the scale and magnitude of public drinking in Auckland. However, on-going demand for alcohol bans and stakeholder narratives show crime and disorder still occurs in certain public places that are associated with frequent, heavy drinking. Stakeholders also consider the scale of the problem may increase in the future as Auckland's population and urban density increases.¹

Who the problem affects

Police find larger groups of people drinking for longer periods of time, especially late at night are more likely to cause crime and disorder problems. Especially when this takes place in public places that are not designed for recreation, such as streets and carparks.

Stakeholders agree certain large-scale events in certain locations are predisposed to alcohol-related problems, because they bring concentrations of drinkers into an area. For example, night-time concerts or music festivals.

¹ Refer sections 2.5, 4.1 and 4.2 of the Alcohol Control Bylaw 2014: 2018 Review Findings Report.

These problems affect nearby residents and users of the space by interrupting sleep, reducing the recreational or visual amenity of the space, placing them in direct danger of physical harm and making people feel unsafe more generally. They also require resource from Police, Council staff, hospital staff, emergency services and the justice system.

Objectives

The objectives of a regulatory response to this problem are to:

- reduce crime or disorder in certain public places caused or made worse by alcohol consumed there
- meet legislative requirements under the Local Government Act 2002 including:
 - giving effect to its identified priorities and desired outcomes in an efficient and effective manner (section 14)
 - ensuring any bylaw is appropriate and does not give rise to any implications with the New Zealand Bill of Rights Act 1990 (sections 155 and 160).

The objectives align with the Auckland Plan 2050 (Belonging and Participation, Focus area 1) and Auckland Council Whānau Internal Strategy to Minimise Alcohol-Related Harm 2016.

Outcome

The key desired outcome is that the public are protected from crime or disorder in public places caused or made worse by alcohol consumed there.

Options

Staff identified the following options to achieve the outcome sought:

- **Option one:** status quo – retain Bylaw that makes alcohol bans by resolution
- **Option two:** amend the current Bylaw – improve the status quo
- **Option three:** replace the current Bylaw – new bylaw that contains all alcohol bans
- **Option four:** revoke Bylaw – no bylaw and instead rely on other existing methods.

A more detailed description of the options is provided below.

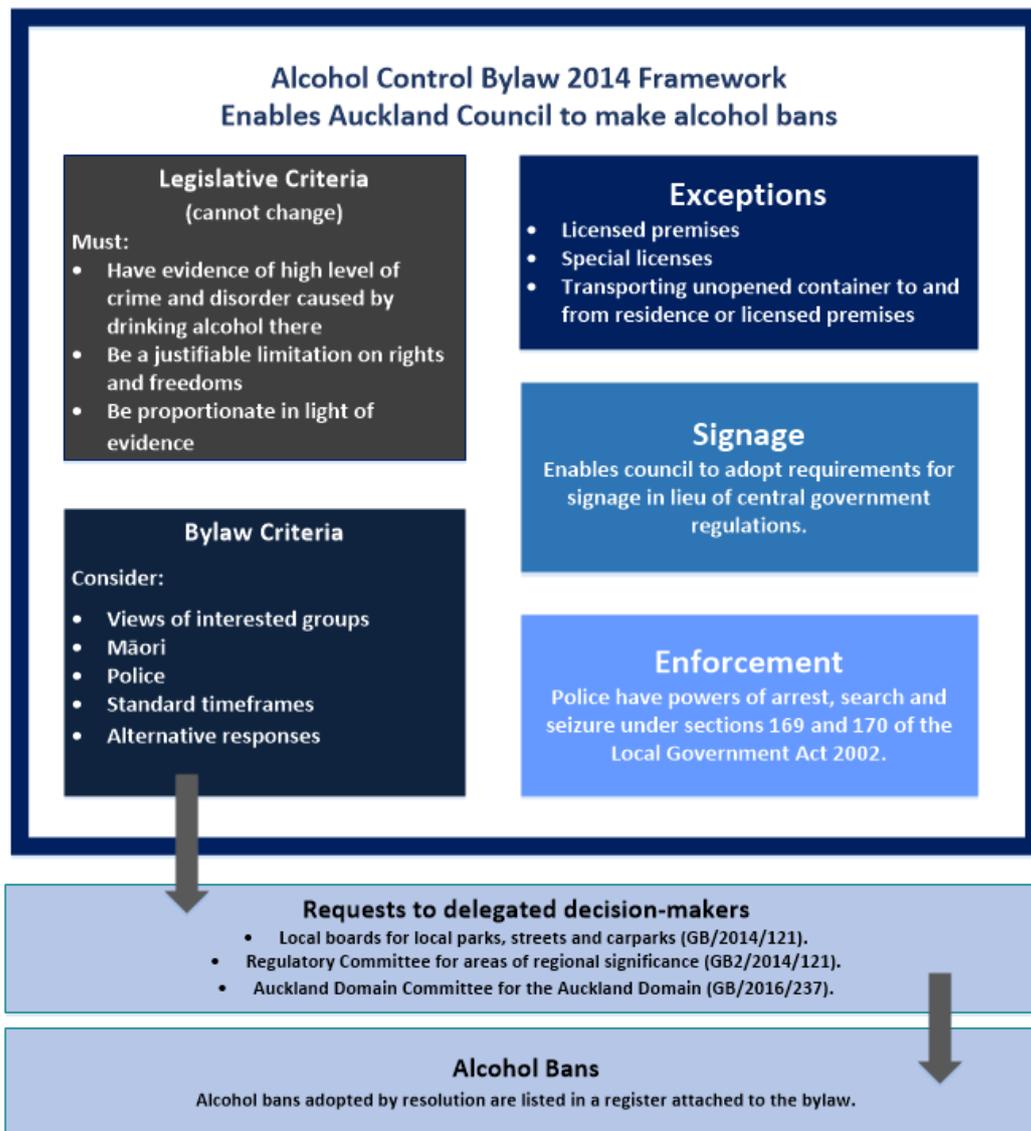
Option one: status quo – retain Bylaw that makes alcohol bans by resolution

Description

Retains the current framework Bylaw (Figure 1) that:

- enables alcohol bans to be made by resolution of delegated authorities
- sets out decision-making criteria, some of which is legislative
- identifies exceptions
- enables signage requirements to be made by resolution.

Figure 1: Current Bylaw framework



Implementation

Alcohol ban requests are processed by Auckland Council’s Social Policy and Bylaws unit. Requests are reported to the relevant delegated authority for a decision when certain minimum information requirements are met.

If an alcohol ban is adopted, signage is installed. Signage is funded from various sources. Local boards fund signage of new permanent alcohol bans which are then maintained by Community Facilities. Event planners like Auckland Tourism, Events and Economic Development fund temporary alcohol ban signage for events through event licensing fees.

Alcohol bans made by resolution are recorded in a register. They can be viewed on council’s [website](#) and are attached to the Bylaw as information only.

Police are responsible for enforcing alcohol bans.

Pros

- Provides a preventative regulatory tool to reduce crime or disorder in certain public places caused or made worse by alcohol consumed there.
- Enables responsive decision-making at the most appropriate level of local government.

Cons

- Alcohol bans have differing levels of effectiveness linked to how an alcohol ban is enforced, whether alcohol is the primary reason for people going to a location, and how strongly incidents of crime or disorder are linked to drinking.²
- Limits freedom of people to drink responsibly in alcohol ban areas.
- Does not easily enable a preventative approach for large scale events at event venues.
- Bylaw could be more clearly and concisely drafted.

Risks

- May displace alcohol-related crime or disorder to other public places.
- May further marginalise vulnerable Aucklanders who drink in public places to more dangerous places.

Mitigation

- These risks can be mitigated by considering displacement when making decisions.

Option two: amend the current Bylaw to improve the status quo

Description

Improves on the current Bylaw framework in Option one by:

- including recurring temporary alcohol bans for events at event venues in the Bylaw on public places surrounding:
 - Mount Smart Stadium
 - Western Springs Stadium
 - Eden Park (including Fan Trail)
 - the Auckland Domain and the domain itself.
- clearly stating council's ability to adopt temporary alcohol bans
- removing clauses that duplicate legislation about decision-making criteria with related information
- removing clauses about signage requirements with related information.

A more detailed assessment of the above amendments is contained in Table 2.

General improvements would also be made to implement current best practice drafting to make the Bylaw easier to understand and consistent with other recently reviewed bylaws.

Implementation

Same as Option one.

Pros

- Provides a preventative regulatory tool to reduce crime or disorder in certain public places caused or made worse by alcohol consumed there.

² Refer sections 4.3.4 of the Alcohol Control Bylaw 2014: 2018 Review Findings Report.

- Enables responsive decision-making at the most appropriate level of local government.
- Provides a preventative approach to alcohol-related disorder associated with large-scale events at event venues.
- Would remove unnecessary bylaw clauses and be easier to understand.

Cons

- Alcohol bans have differing levels of effectiveness linked to how an alcohol ban is enforced, whether alcohol is the primary reason for people going to a location, and how strongly incidents of crime or disorder are linked to drinking.³
- Limits freedom of people to drink responsibly in alcohol ban areas.

Risks

- Same as Option one.

Option three: replace current Bylaw – new bylaw that contains all alcohol bans

Description

Makes a new bylaw that contains all current and future alcohol bans.

Implementation

Same as Option one, except that decisions will be made by the Governing Body of Auckland Council and all requests would be processed as an amendment to the bylaw using the formal consultative process under section 82A or 83 of the Local Government Act 2002.

Pros

- Provides a preventative regulatory tool to reduce crime or disorder in certain public places caused or made worse by alcohol consumed there.
- Provides a preventative approach to alcohol-related disorder associated with large scale events at event venues.
- Would remove unnecessary bylaw clauses and be easier to understand.
- A wider range of people will be invited to have their say about alcohol ban locations.

Cons

- Alcohol bans have differing levels of effectiveness, linked to how an alcohol ban is enforced, whether alcohol is the primary reason for people going to a location, and how strongly incidents of crime or disorder are linked to drinking.⁴
- Limits freedom of people to drink responsibly in alcohol ban areas.
- Governing Body makes decisions that are of local significance.
- Adopting alcohol bans through a bylaw amendment is less responsive than by local board resolution.

Risks and risk mitigation

- Same as Option one.
- Public are harmed by crime and disorder that occurs while going through the longer process to amend bylaw compared to a delegated authority decision by resolution.

³ Refer sections 4.3.4 of the Alcohol Control Bylaw 2014: 2018 Review Findings Report.

This risk cannot be mitigated as the process to make alcohol bans by bylaw will always take longer than that by resolution.

Option four: revoke Bylaw – no bylaw and instead rely on other existing methods

Description

Current Bylaw and all current alcohol bans revoked. Council would instead rely on other existing methods.

Implementation

Council would continue to use other existing methods, for example alcohol licensing, locking park gates at night and Police use of Summary Offences Act 1981 and Crimes Act 1961.

Pros

- No future costs associated with processing and implementing alcohol bans.

Cons

- Precludes the use of a preventative regulatory tool to reduce crime or disorder in certain public places caused or made worse by alcohol consumed there.
- It would expose the public to an increased risk of alcohol-related harm in over 700 alcohol ban areas where there is evidence of high levels of crime or disorder.

Risks

- There is a reputational risk from potential public criticism in response to reduced protection from alcohol-related crime and disorder.

Mitigation

- Advise public of existing methods that will be utilised and ability to complain to Police.

Options assessment

Preliminary legal assessment

Bylaws must comply with certain legal requirements, not be beyond the powers of the council (*ultra vires*) and not contradict the general laws of New Zealand (repugnant) or be unreasonable. Staff consider all options meet these preliminary legal requirements.

New Zealand Bill of Rights Act 1990 assessment

There are no implications and Options one (*status quo*), two (amend Bylaw) and three (revoke Bylaw) are not inconsistent with the New Zealand Bill of Rights Act 1990.

These three options raise potential limitations to the freedoms of expression, peaceful assembly and movement, to be secure against unreasonable search and seizure, and not to be arbitrarily arrested. Staff consider these potential limitations are justified because council's ability to make alcohol bans is limited by legislative criteria, and alcohol bans help prevent harm to the public.

Option four (revoke Bylaw) does not require the preparation of a bylaw and therefore a New Zealand Bill of Rights Act 1990 assessment is not required.

Assessment against criteria

Staff completed a comparative assessment against two criteria that reflect the objectives of a regulatory response to the problem:

- effectiveness – how well the option will reduce crime or disorder in certain public places caused or made worse by alcohol consumption there
- efficiency – how easily the option will reduce crime or disorder in certain public places caused or made worse by alcohol consumption there.

The criteria and a summary of the assessment is shown in Table 1. The “✓” and “x” reflect the impact of the option against each criterion relative to other options. For instance, the more “✓”, the better the option.

Table 1: Summary of assessment of options against stated objectives

	Effectiveness at reducing crime or disorder in certain public places caused or made worse by alcohol consumption there	Efficiency at reducing crime or disorder in certain public places caused or made worse by alcohol consumption there
Option one: status quo	<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> • Retains ability to make alcohol bans to reduce crime or disorder in certain public places caused or made worse by alcohol consumed there. • No improvements to include temporary alcohol bans for large-scale events in Bylaw (refer Table 2 for further details). 	<p style="text-align: center;">✓</p> <ul style="list-style-type: none"> • Retains ability to make alcohol bans by resolution which is more efficient than using the formal consultative processes in sections 82A and 83 of the Local Government Act 2002. • No improvements to remove unnecessary provisions and make the Bylaw easier to understand.
Option two: amend the current Bylaw Recommended	<p style="text-align: center;">✓✓</p> <ul style="list-style-type: none"> • Improves status quo by including temporary alcohol bans for large scale events in the Bylaw (refer Table 2 for further details). 	<p style="text-align: center;">✓✓</p> <ul style="list-style-type: none"> • Improves status quo by removing unnecessary provisions and making the Bylaw easier to understand.
Option three: replace the current Bylaw	<p style="text-align: center;">✓✓</p> <ul style="list-style-type: none"> • Same as Option two. 	<p style="text-align: center;">xx</p> <ul style="list-style-type: none"> • Processing alcohol ban requests as an amendment to a bylaw would take longer and require more resources for consultation than when decided by resolution.
Option four: revoke Bylaw	<p style="text-align: center;">xx</p> <ul style="list-style-type: none"> • Removes a regulatory tool that helps reduce crime or disorder in over 700 alcohol ban areas where there is evidence of high levels of crime or disorder. 	<p style="text-align: center;">xx</p> <ul style="list-style-type: none"> • Council would be likely to incur extra costs to clean up litter and repair damage caused by alcohol consumed in public places.

Table 2: Detailed assessment of potential Option two bylaw amendments

Stakeholders suggested bylaw improvement	Pros	Cons	Risks
<p>1. Include in the Bylaw recurring temporary alcohol bans for events at event venues on:</p> <ul style="list-style-type: none"> • public places surrounding Mount Smart Stadium • public places surrounding Western Springs Stadium • public places surrounding Eden Park (including Fan Trail) • the Auckland Domain and surrounding public places. <p>Existing resolutions about the above temporary alcohol bans would be rescinded after the Bylaw is amended.⁴</p> <p>Recommended</p>	<ul style="list-style-type: none"> • Less risk of successful legal challenge. • Temporary alcohol bans in a bylaw are allowed to be made as a preventative measure.⁵ In contrast, temporary alcohol bans by resolution must be based on evidence about the public place. Obtaining this evidence is difficult at venues where alcohol bans have previously been used as a preventive measure and where the risk to public safety outweighs the risk of legal challenge. 	<ul style="list-style-type: none"> • Any changes to a temporary alcohol ban in a bylaw would be processed as a bylaw amendment which is less efficient than by resolution. This can be mitigated by continuing to enable temporary alcohol bans to be made by resolution. 	<ul style="list-style-type: none"> • Confusion from having alcohol bans made in a bylaw and by resolution. <p>Mitigation</p> <ul style="list-style-type: none"> • Public-facing register of all alcohol bans • Related information notes in Bylaw referring to alcohol ban register.
<p>2. Clearly state council's ability to make temporary alcohol bans.</p> <p>Recommended</p>	<ul style="list-style-type: none"> • Bylaw easier to understand. 	<ul style="list-style-type: none"> • None. 	<ul style="list-style-type: none"> • Could increase requests for temporary alcohol bans. <p>Mitigation</p> <ul style="list-style-type: none"> • Risk is low because main requesters are aware of ability to request a temporary ban, for example Police, local boards and event planners.

⁴ Relates to resolution numbers MT/2017/144 (Mt Smart); AE/2015/118 Eden Park); RBC/2015/41, RBC/2015/41, WTM/2016/110 and ADC/2017/43 (Auckland Domain).

⁵ [Section 147A\(1\)\(b\) of the Local Government Act 2002.](#)

Stakeholders suggested bylaw improvement	Pros	Cons	Risks
<p>3. Replace statutory provisions about decision-making criteria with a related information note.</p> <p>This relates to sub-clause 7(2)(a), (b), (c), (e), (f), (g) and (h).</p> <p>Sub-clause 7(2)(i) about consideration of standard alcohol ban durations would remain.</p> <p>Recommended</p>	<ul style="list-style-type: none"> Removes unnecessary provisions that duplicate statutory requirements. Statutory requirements and how Council implement them can be conveyed as a related information note. Consistent with other recently reviewed Auckland Council bylaws. A related information note meets the stakeholder consensus view that criteria is helpful and appropriate and can accommodate suggested improvements where appropriate. 	<ul style="list-style-type: none"> None. 	<ul style="list-style-type: none"> Perception that related information is seen as less important and has less weight in decision-making. <p>Mitigation</p> <ul style="list-style-type: none"> Highlight the importance in the related information note and include links to information about the decision-making criteria, including its implementation (for example a process guide).
<p>4. Replace provisions about signage (Clause 8) with a related information note.</p> <p>Recommended</p>	<ul style="list-style-type: none"> Removes unnecessary provisions. Council does not require a bylaw to develop signage guidelines. The existence of the current guidelines can be conveyed as a related information note. 	<ul style="list-style-type: none"> None. 	<ul style="list-style-type: none"> None.
<p>5. Enable Council to make special exemptions.</p> <p>These would allow people to bring and consume alcohol in an alcohol ban area during certain events, if criteria were met.</p> <p>Not recommended</p>	<ul style="list-style-type: none"> People will be able to drink alcohol responsibly at gatherings and events in more public places not already provided for through a special licence under the Sale and Supply of Alcohol Act 2012. Mitigates some risk that some people are unnecessarily restricted by an alcohol ban. 	<ul style="list-style-type: none"> Inconsistent with council's strategic approach to minimise alcohol related harm⁶, for example alcohol-free events Special licences already provide appropriate exemptions. Cost to resource the exemption process. 	<ul style="list-style-type: none"> Council perceived to favour certain groups or people. Exemption used for commercial interests, for example by giving alcohol to promote a product. <p>Mitigation</p> <ul style="list-style-type: none"> Continue to provide for appropriate exemptions through the special licence process.

⁶ [Auckland Council Whanau Alcohol Harm Reduction Strategy](#)

Analysis and recommendations

Option two - amend Bylaw scores most favourably against the assessment criteria.

Based on analysis against assessment criteria and the pros and cons of each option, staff recommend **Option two** (amend the current Bylaw) because it:

- retains a regulatory tool that (to varying degrees) can help reduce crime or disorder in certain public places caused or made worse by alcohol consumed there
- improves on the status quo (Option one) by including event venue alcohol bans, clarifying adoption of temporary alcohol bans, removing clauses that duplicate legislation and making the Bylaw easier to understand
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