

## Council Briefing Agenda

**Date:** Wednesday, 25 October, 2023

**Time:** 9:00 am

**Location:** Civic Centre, Te Iwitahi, 9 Rust Avenue

**Elected Members:** His Worship the Mayor Vince Cocurullo  
Cr Gavin Benney  
Cr Nicholas Connop  
Cr Ken Couper  
Cr Jayne Golightly  
Cr Phil Halse  
Cr Deborah Harding  
Cr Patrick Holmes  
Cr Scott McKenzie  
Cr Marie Olsen  
Cr Carol Peters  
Cr Simon Reid  
Cr Phoenix Ruka  
Cr Paul Yovich

For any queries regarding this meeting please contact the Whangarei District Council on (09) 430-4200.

1. **Apologies / Kore Tae Mai**
2. **Reports / Ngā Ripoata**
  - 2.1 Kaipara Moana Remediation Update 3
  - 2.2 Update on District Plan Reviews - Matters important to Māori 5
  - 2.3 Alcohol Control Bylaw review - Findings report and review options 9
3. **Closure of Meeting / Te katinga o te Hui**

## 2.1 Kaipara Moana Remediation Update

<b>Meeting:</b>	Council Briefing
<b>Date of meeting:</b>	25 October 2023
<b>Reporting officer:</b>	Dominic Kula – General Manager Planning and Development

### 1 Purpose / Te Kaupapa

To update Council on the progress made by the Kaipara Moana Remediation (KMR) programme.

### 2 Background / Horopaki

The Kaipara Moana Remediation Programme was established in response to prolonged and increasing environmental degradation of the Kaipara Moana. A Kaipara Moana Remediation Business Case was developed through the Kaipara Moana Working Party. This was a key document to securing central government funding for remediation initiatives.

In October 2020, the Ministry for the Environment, Kaipara Uri (Ngā Maunga Whakawhiti o Kaipara, Te Rūnanga o Ngāti Whātua, Te Uri o Hau), Northland Regional Council and Auckland Council signed a Memorandum of Understanding to jointly protect and restore the mauri of the Kaipara Moana. This established the programme and a pathway for a Joint Committee, and the establishment of KMR.

Whangarei District Council's position at that time was to support the remediation programme, but not to contribute funding or be party to the Joint Committee. This was in recognition that the scope of the remediation falls under the responsibilities of regional authorities. Through the development of the MOU it was recognised that the Kaipara District Council and Whangarei District Council should be briefed on remediation progress and have the ability to informally feedback through those briefings

In this Briefing an update and overview will be provided by Justine Daw and Pou Tātaki from KMR.

### 3 Discussion / Whakawhiti kōrero

Under a collaborative governance arrangement, KMR is a multi-year programme which invests in projects with the long-term aim of halving sediment flows into the Kaipara Moana. As Aotearoa's largest harbour restoration programme, genuine partnership is key to protecting waterways and erosion-prone land across a 6,000km<sup>2</sup> catchment. KMR also supports local, nature-based employment, training, and accreditation, with a particular focus on rangatahi.

KMR is currently funded until mid-2026 by central government (\$100 million from the *Jobs for Nature* fund), Auckland Council (\$10 million) and NRC (\$10 million).

The programme is building a catchment-scale approach with broad engagement and participation and has been fully operational since early 2022.

Today's presentation provides an update to WDC Elected Members about the progress KMR has made in 18 months of operations, and signals some of the areas of future opportunity for landowners in the Kaipara Moana catchment.

A presentation will be provided by Justine Daw and Pou Tātaki (KMR) on the day.

## 2.2 Update on District Plan Reviews – Matters important to Māori

<b>Meeting:</b>	Council Briefing
<b>Date of meeting:</b>	25 October 2023
<b>Reporting officer:</b>	Eden Wynne (Planner) Yvonne Masefield (Manager - District Plan)

### 1 Purpose / Te Kaupapa

To inform elected members of District Plan work of importance to Māori and seek feedback on the proposed approach to delivering this work in partnership with Hapū.

### 2 Background / Horopaki

The provisions of District Plans are required to be reviewed every 10 years under the Resource Management Act 1991 (RMA). In our District we carry out these reviews by topic/ chapter every 10-years (as “rolling reviews”), rather than undertaking a full plan review every 10-years. In addition, the RMA requires that a District Plan be updated as directed by National Policy Statements.

Considering these statutory requirements, work that is currently required to meet these statutory requirements includes the following topics/ chapters of the District Plan:

- **Sites and Areas of Significance to Māori**

In accordance with Section 6(f) of the RMA, a District Plan is required to recognise and provide for the protection of historic heritage (which includes sites of significance to Māori) from inappropriate subdivision, use, and development.

The current Sites of Significance to Māori chapter of the District Plan gives effect to Section 6(f) and was at the 10-year review point in May 2017. Previous attempts dating back to 2012 have been made to work with Hapū in developing mapping as part of the required plan review. However, these attempts have not resulted in a plan change having been notified.

This plan review is particularly important as current development pressures in the District can pose a risk to significant sites that are not mapped (scheduled) in the District Plan. In addition, it is acknowledged that gaps in the District Plan schedule of significant sites, has at times resulted in uncertain and inefficient resource consenting processes.

- **Ecosystems and Indigenous Biodiversity**

In accordance with Section 6(e) of the RMA, a District Plan is required to recognise and provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna. The current Ecosystems and Indigenous Biodiversity chapter of the District Plan gives effect to S6(e).

Under the National Policy Statement for Indigenous Biodiversity (NPS: IB) an Ecosystems and Indigenous Biodiversity plan change is required to be notified by July 2028 to give effect to specific policy direction in the NPS: IB. This timing also aligns with our 10-yearly review point for the current Ecosystem and Indigenous Biodiversity chapter of the District Plan.

Early work toward a plan change was carried out in 2018, which involved mapping significant natural areas. The gazetting of the National Policy Statement for Indigenous Biodiversity was pushed out by central government and so Council made the decision to put this work on hold until further direction was given by Central Government. As we now have this direction, we are required to work toward a plan change.

- **Tangata Whenua**

The District Plan currently includes a Tangata Whenua policies chapter. The chapter outlines significant issues faced by Māori in the Whangarei District and includes objectives and policies that seek to enable the exercise of rangatiratanga and kaitiakitanga of tangata whenua over their ancestral lands, waters, sites, wāhi tapu and other taonga within the district.

The chapter will be at the 10-yearly review point in 2026. Starting work on this now makes sense given the alignment with other work mentioned above.

In addition, a Tangata Whenua chapter within Part 1 of the District Plan is required to meet our statutory requirements under the National Planning Standards. This chapter must only include context and process-related provisions and is intended as a chapter that is used for information purposes. It will not contain within it any enforceable provisions.

As the current District Plan does not include a chapter that meets this requirement, the development of an Introductory Tangata Whenua chapter is required. Council must give effect to this standard by April 2024.

### 3 Discussion / Whakawhiti kōrero

To effectively deliver this work, we propose to undertake the plan reviews outlined above concurrently. In doing so it is hoped that this will reduce resourcing pressures for both Council and Hapū. In addition, the approach we propose would involve:

- **A partnered and co-designed approach to working with Hapū**

Given the relevance of this work to Māori, it is proposed that this work is progressed in partnership with Hapū.

A partnered / co-designed approach means that among other possible benefits:

- Both Hapū and Council staff take away learnings from doing the work together, with the potential for these learnings to be applied in other aspects of the work we do.
- The mapping components of the work may be used by Hapū to inform other aspects of their environmental work.
- The mapping can inform the development of a future Spatial Plan and Natural and Built Environment Plan for Northland under the new resource management system.
- Discussions at hui may usefully inform other projects or work of Hapū and Council.

This approach would align with mandatory direction under the NPS: IB, which requires Council to work with Tangata Whenua as partners (to the extent that they wish to be involved) on an Ecosystems and Indigenous Biodiversity plan change.

- **Careful Management of Data Sovereignty**

In delivering this work we are also mindful of the sovereignty of any data/ information shared by Hapū. As such Council staff acknowledge the need for agreements around the access and use of this data as part of the project.

- **Early Engagement with Landowners**

We propose that we would engage early with landowners to make them aware of this project. We would also consult with directly affected landowners regarding mapped sites prior to any formal notification processes.

### **Project Resourcing and Timeline**

We propose to resource Iwi/ Hapū in partnering with us to deliver this work with an indicative delivery timeline as follows:

- **September to March 2023**

Initial project discussions with Hapū; collation of known information; drafting of “Expression of Interest” documentation.

- **February to April 2024**

“Expression of Interest” process with Hapū.

- **April 2024 onwards**

Review work alongside Hapū; landowner engagement.

In recent years Council staff have received both formal and informal feedback from hapū, requesting that plan change drafting is done in a way that enables hapū to effectively participate in Resource Management processes. We are of the view that the approach to reviewing this group of plan changes considers this feedback and enables for early and meaningful input on this project.

## **4 Attachments / Ngā Tāpiritanga**

Attachment 1: Update on District Plan Change drafting – Matters important to Māori Presentation (to be distributed prior to meeting)





## 2.3 Alcohol Control Bylaw: Findings report and review options

<b>Meeting:</b>	Council Briefing
<b>Date of meeting:</b>	25 October 2023
<b>Reporting officer:</b>	Will McNab (Strategic Planner – Bylaws)

### 1 Purpose / Te Kaupapa

To present a findings report on the Alcohol Control Bylaw and seek direction on the proposed review process.

### 2 Background / Horopaki

#### 2.1 The Alcohol Control Bylaw is a skeleton bylaw that enables Council to make alcohol bans in public places by resolution.

Council's Alcohol Control Bylaw was made in December 2018. It is therefore due for review by December 2023.

The Bylaw is a skeleton bylaw that provides the mechanism for Council to pass resolutions to ban the consumption or possession of alcohol in specified public places. The schedule of "alcohol control areas" is documented in a separate register, which sits outside the Bylaw itself and can be amended independently of it. This approach is specifically provided for in the relevant legislation.<sup>1</sup>



<sup>1</sup> Sections 147B and 151(2) of the Local Government Act 2002 (LGA).

Council currently has 15 alcohol control areas in place, including the city centre, other neighbourhood centres, several coastal communities and a blanket coastal ban.

## **2.2 The definition of public place excludes licensed premises but can include some private property**

While the relevant definition of public place excludes licensed premises, it is otherwise broad and includes some private property that is open to or being used by the public, whether entry is free or on payment of a charge.

The Bylaw's potential reach therefore extends to diverse places like supermarket carparks, private schoolgrounds, conservation land and unlicensed club or community venues.

## **2.3 To retain the Bylaw, Council must be satisfied that it prevents crime and disorder caused or exacerbated by alcohol consumption in unlicensed public places**

To roll over the operative Bylaw, Council must be satisfied that "the level of crime or disorder experienced before the bylaw was made (being crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area concerned) is likely to return to the area to which the bylaw is intended to apply if the bylaw does not continue."<sup>2</sup>

# **3 Discussion / Whakawhiti kōrero**

## **3.1 Police strongly support the Bylaw, but Council needs more evidence before it can address the alcohol control areas**

Staff approached New Zealand Police in June 2023 to request data on alcohol-related offending in the Whangārei District. Requests for data from Police's Intelligence Section have a long lead time and this data is not yet available.

However, Police strongly support the Bylaw as a tool and would like some alcohol control areas expanded. These views are corroborated by the data on antisocial behaviour and alcohol vessels in the city centre recorded on weekend nights by Council's CitySafe Community Officers.

## **3.2 To meet statutory timeframes and avoid creating confusion for the community, staff propose a two-step review:**

In the absence of more complete evidence to meaningfully review the skeleton bylaw and associated alcohol control areas by the December 2023 review date, staff propose that Council split the review process into two steps.

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<sup>2</sup> Section 147A(2) LGA.

## 1. Make the necessary determinations about the Bylaw

First, meet statutory requirements<sup>3</sup> by determining before 13 December that:

- i. a bylaw is the most appropriate way of addressing the perceived problem (crime or disorder caused or made worse by alcohol consumption in public places); and that
- ii. the proposed Bylaw is:
  - a. the most appropriate form of bylaw
  - b. consistent with the New Zealand Bill of Rights Act 1990.

## 2. Consult on the Bylaw together with the alcohol control areas in the first half of 2024

The second stage of the review process would then be to:

- i. assess the need to amend, subtract or add to the alcohol control areas
- ii. adopt a Statement of Proposal; and
- iii. consult on the contents of the Bylaw together with the individual alcohol control areas.

In this way, Council would avoid creating confusion around the purpose of its consultation with the community.

Table 1 below is informed by the Findings Report (Attachment 1) and summarises Council's reasonably practicable options.

**Table 1: Alcohol Control Bylaw review options matrix**

Option 1	Option 2	Option 3	Option 4
<b>Let Bylaw lapse in December 2025</b>	<b>Replace Bylaw with an "alcohol-free policy"</b>	<b>Review Bylaw by December; consult on Bylaw and controls in 2024</b>	<b>Await District-wide evidence before reviewing Bylaw</b>
Saves on staff time and any legal fees	Communicates Council's stance on alcohol-related harm	Communicates Council's stance on alcohol-related crime and disorder	Communicates Council's stance on alcohol-related crime and disorder
Deprives Police of a tool to pre-emptively address antisocial behaviour in public	Deprives Police of a tool to pre-emptively address antisocial behaviour in public	Reduces crime and disorder by empowering Police to pre-emptively address alcohol-driven behaviours in public	Reduces crime and disorder by empowering Police to pre-emptively address alcohol-driven behaviours in public
Does not align with key stakeholder expectations	Not enforceable	Would not need to review again until 2034	Would need to review again in 2029

## 4 Attachments / Ngā Tāpiritanga

Attachment 1 – Alcohol Control Bylaw Findings Report  
Attachment 2 – Alcohol Control Bylaw 2018

<sup>3</sup> Section 160 LGA



# ***Alcohol Control Bylaw review***

## ***Findings report***

**October 2023**

**LICE**

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## 1 Executive summary

Section 147 of the Local Government Act 2002 (LGA) gives Council the power to ban or otherwise regulate the consumption and possession of alcohol in public places. The definition of public place excludes licensed premises, but can include diverse types of property such as supermarket carparks and community halls. The Alcohol Control Bylaw (the Bylaw) is just one of a limited set of tools available to Council to regulate alcohol consumption in Whangārei District.

New Zealand Police Officers enforce the Bylaw. They have other powers to address alcohol-related offending in public places, such as under the Summary Offences Act 1981 and the Litter Act 1979. However, the Bylaw gives Police a pre-emptive tool to intervene before offending has taken place. Police strongly support the Bylaw.

Northlanders, and especially young Northlanders, appear to be drinking less than five years ago. This reflects long-run national and international trends. But hazardous drinking patterns remain stubbornly prevalent, especially among adults. Moreover, a growing proportion of alcohol is consumed in off-licence locations, which gives the Bylaw a wider potential reach than otherwise indicated by the trend decline in consumption.

To retain the Bylaw, Council must be satisfied that the level of crime and disorder experienced before it was made would return without it. There are limitations to a data-driven approach, but strong Police support and CitySafe data on antisocial behaviour in the city centre provide a basis for Council to continue the Bylaw.

A bylaw remains the most appropriate way to reduce alcohol-related crime and disorder in public places. The operative Bylaw is structured optimally and its wording reflects modern drafting practices. The restrictions it imposes on people's freedoms are reasonable and fair in the interest of reducing alcohol-related crime and disorder in public places.

## 2 Introduction

Alcohol plays a large role in New Zealanders' lives. New Zealand Police estimate that one-third of all Police apprehensions involve alcohol and half of serious violent crimes are related to alcohol.

Council's operative Alcohol Control Bylaw (the Bylaw) provides one tool to combat the incidence of alcohol-related crime and disorder in public places.

This report summarises the statutory framework, key justifications and wider context for its review.

### 2.1 *The Bylaw is just one of a limited set of tools available to Council to regulate the use of alcohol in the Whangārei District*

The following table summarises Council's various obligations and options when it comes to regulating the supply and consumption of alcohol.

**Table 1: How councils must, may and may not regulate alcohol**

What councils must do	What councils may do under legislation	What councils may do in general	What councils cannot do (examples)
Administer the Sale and Supply of Alcohol Act 2012	Local Alcohol Policies	Control alcohol at Council venues	Control alcohol advertising standards
Issue, manage and monitor: <ul style="list-style-type: none"> <li>- On- and off-licences</li> <li>- Special licences</li> <li>- Manager's certificates</li> </ul>	<b>Alcohol control bylaws</b> to prohibit or limit alcohol consumption in public places; enforceable by New Zealand Police	Education and advocacy	Change the drinking age
		Urban design practices (CPTED)	Prohibit alcohol sales and consumption
		Submit to central government on alcohol-related issues	Change the drink-driving limit
		Through the District Plan, control activities such as retail, restaurants, nightclubs and bars along with the parameters that these activities must operate within.	

## 3 The Bylaw has a narrow scope

### 3.1 *Council is empowered to ban or otherwise regulate alcohol consumption and possession in in public place*

Section 147 of the Local Government Act 2002 (LGA) gives Council the power specifically to make a bylaw to prohibit or otherwise regulate the consumption, bringing in and possession of alcohol in public places.



### **3.2 Regulation or bans require evidence of crime and disorder caused or exacerbated by alcohol consumed in the area concerned**

The LGA sets a high evidential threshold for councils to make an alcohol control bylaw. Generally, Council requires evidence of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the public places targeted by the Bylaw.<sup>1</sup>

Further, the Bylaw must also be *reasonable*, *appropriate* and *proportionate* in the light of that crime or disorder.<sup>2</sup>

### **3.3 The definition of public place is vague and broad, but excludes licensed premises**

The relevant definition of public place is broad:

“Public place—

- (a) means a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it
- (b) does not include licensed premises.”<sup>3</sup>

The Bylaw’s reach can therefore extend to diverse types of publicly accessible property, such as supermarket carparks, private schoolgrounds, conservation land and even unlicensed club or community venues.

On the other hand, bars, restaurants and club venues that have been issued a licence to serve alcohol fall outside the scope of the Bylaw, even where their seating extends into the public realm (provided the licence allows for this).

The sale of alcohol by bottle stores and supermarkets also falls outside the Bylaw’s scope.

## **4 The role of Police and other agencies**

### **4.1 New Zealand Police Officers enforce the Bylaw**

Only constables can take enforcement action under alcohol control bylaws. Constables have powers of arrest, search and seizure and can ask someone to leave an alcohol control area and/or pour out alcohol from open alcohol vessel(s) in their possession.<sup>4</sup>

Constables have discretion over whether to enforce the Bylaw. It is the prerogative of Council to determine the areas *where* and *when* Police can exercise this discretion by defining alcohol control areas.

Under the Local Government (Alcohol Ban Breaches) Regulations 2013, constables can issue an infringement fine of \$250 to anyone who breaches the Bylaw.

### **4.2 Police also have powers under other legislation to enforce alcohol-related crime and disorder**

Constables have powers under other legislation to address antisocial behaviours related to alcohol consumption, mostly once the behaviour has occurred or offending has been committed.

<sup>1</sup> Section 147A(1)(b)(i) LGA

<sup>2</sup> Sections 147A(1)(a) and (1)(b)(ii) LGA

<sup>3</sup> Section 147(1) LGA

<sup>4</sup> Sections 169 and 170 LGA

#### 4.2.1 Summary Offences Act 1981

Police can use the provisions of the Summary Offences Act to address offending associated with alcohol consumption in public places, including:

##### 1. Disorderly conduct

Disorderly conduct involves behaving in a manner that is likely to cause violence, alarm, or distress to others. This can include fighting, using threatening language or acting aggressively in a way that disrupts public peace.

##### 2. Public nuisance

Public nuisance is defined as any behaviour that interferes with the reasonable comfort or convenience of any person in a public place. This can include things like excessive noise, offensive language, or actions that cause annoyance to others.

##### 3. Underage drinking

People aged under 18 years may not drink alcohol or have alcohol in their possession in a public place if they are not accompanied by their parent or guardian.

While the Summary Offences Act gives police powers to address the above offences that can be associated with alcohol consumption in public places, it provides limited powers for the Police to proactively stop problems in these places before they start. Also, arresting and processing offenders under this Act involves more Police time and resources compared with issuing fines or warnings under a bylaw.

#### 4.2.2 Litter Act 1979

Police officers can issue infringement notices under the Litter Act 1979 to people who dump litter such as alcohol bottles or cans in public places.

#### 4.3 **Police strongly support the Bylaw because it allows early intervention before crime has been committed**

Whangārei-based Police have expressed strong support for retaining the Bylaw and, in some cases, extending the boundaries of the alcohol control areas:

*The early intervention [provided for by the Bylaw] is key for Police in reducing victimisation and criminal offending caused by alcohol consumption. Liquor bans allow Police to intervene at a much earlier stage before people become intoxicated. It is an option we can use as a deterrent to combat overconsumption which often results in fighting, antisocial behaviour [...] and violence.*

*The people of Whangarei are accustomed to understanding that liquor ban areas do exist regardless where one may be whether on the beach or in the CBD. It would continually be beneficial that the existing control areas be affirmed and in some cases enhanced. The benefits to our community [...] improve the perception of safety and help the ability of Police to action that perception.*

Sergeant Tai Patrick, Alcohol Harm Prevention Officer for Whangārei and Kaipara

#### **4.4 Alcohol consumption on much conservation land is regulated by the Northland Reserves Bylaws 2007**

The Minister of Conservation can make bylaws to regulate activities on public conservation land, including to prohibit “the bringing into a reserve or the possession or consumption in a reserve of alcohol.”<sup>5</sup>

In the Whangārei District, the Northland Reserves Bylaws 2007 give rangers (and constables) the power to expel and/or confiscate any alcohol in the possession of a person who the ranger (or constable) reasonably believes:

- behaves in a disorderly, insulting, offensive, riotous or threatening manner likely to lead to violence against persons or property; or
- disturbs or interferes with any other person’s use or enjoyment of the reserve in any way, including by being intoxicated or using loud, abusive, foul, indecent, or obscene language.<sup>6</sup>

Failure to comply can result in a fine of up to \$400.

The Northland Reserves Bylaw applies to 18 reserves in the Whangārei District.<sup>7</sup>

### **5 Trends in alcohol consumption**

There is a lack of reliable, comparable data on alcohol consumption across age groups at a Whangārei District level. Data from Manatū Hauora/Ministry of Health suggest that Northlanders tend to consume more alcohol more hazardously than the national average. However, the national average is skewed by Auckland, which consumes much less alcohol than New Zealand’s other regions. Excluding Auckland, Northlanders drink about the same as other New Zealanders.<sup>8</sup> This section assumes that local trends in alcohol consumption can be inferred from nationwide trends.

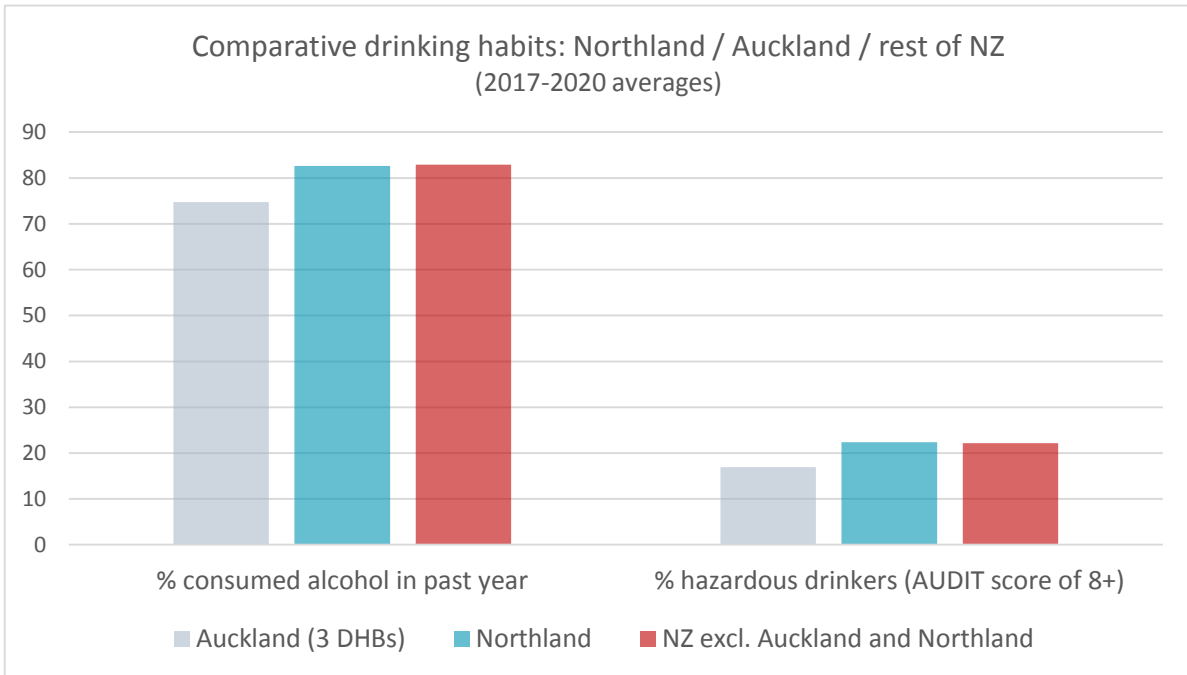
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<sup>5</sup> Section 106(3) of the Reserves Act 1977

<sup>6</sup> Clause 4 of Schedule 1 of the Northland Reserves Bylaws 2007

<sup>7</sup> Bream Head Scenic Reserve, Bream Tail Scenic Reserve, Manaia Ridge Scenic Reserve, Mimiwhangata Scenic Reserve, Motu Kauri Scenic Reserve, Motukiore Island Recreation Reserve, Motutara Recreation Reserve, Oakura Beach Domain Recreation Reserve, Ocean Beach Recreation Reserve, Otamure Recreation Reserve, Poupouwhenua Scenic Reserve, Purua Scenic Reserve, Riponui Scenic Reserve, Bream Islands Scenic Reserve, Ruakākā Scenic Reserve, Uretiti Recreation Reserve, Uretiti Scenic Reserve, Waipu Government Purpose (Wildlife Refuge) Reserve.

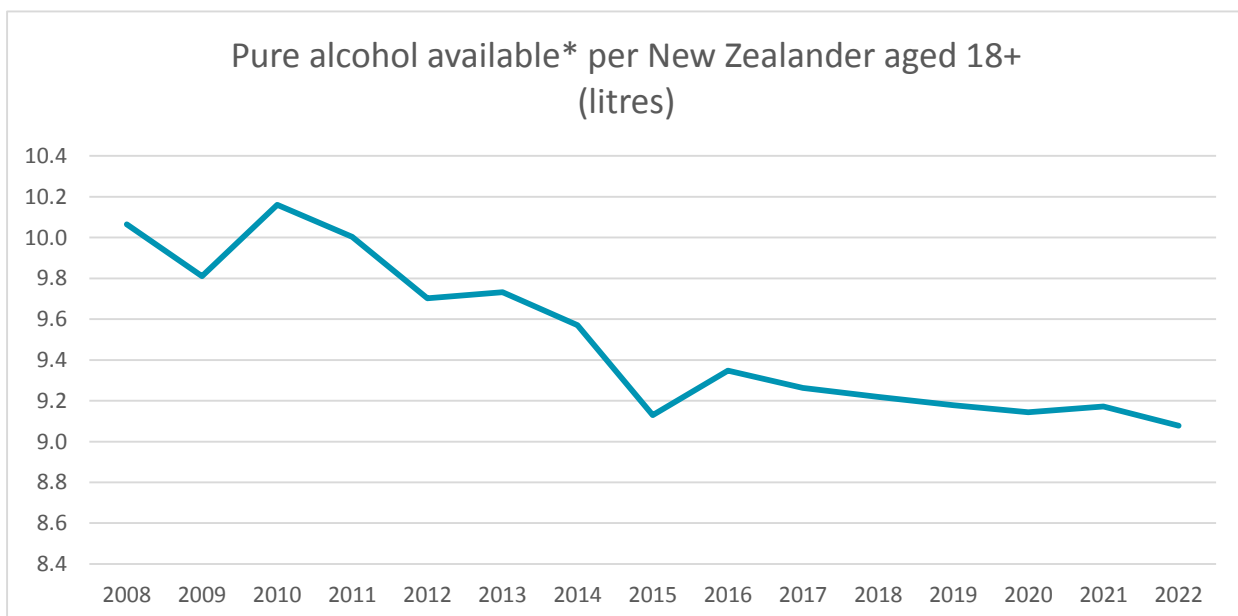
<sup>8</sup> See <https://minhealthnz.shinyapps.io/nz-health-survey-2017-20-regional-update/>.

**Chart 1: Northland drinks more heavily than Auckland, but the same as the rest of New Zealand**


Source: Manatū Hauora/Ministry of Health. <https://minhealthnz.shinyapps.io/nz-health-survey-2017-20-regional-update/>. The Alcohol Use Disorders Identification Test (AUDIT) is a 10-question survey that captures three aspects of alcohol use: consumption, dependence and experience of harm.

### 5.1 Alcohol consumption has declined in recent decades, especially among young people

Data from Statistics New Zealand indicate a clear trend decline in alcohol consumption among New Zealand adults over the past 15 years (Chart 2).

**Chart 2: Alcohol consumption in New Zealand is declining**


\* Alcohol available is calculated from production for domestic consumption, plus imports, less exports.  
 Source: Stats NZ

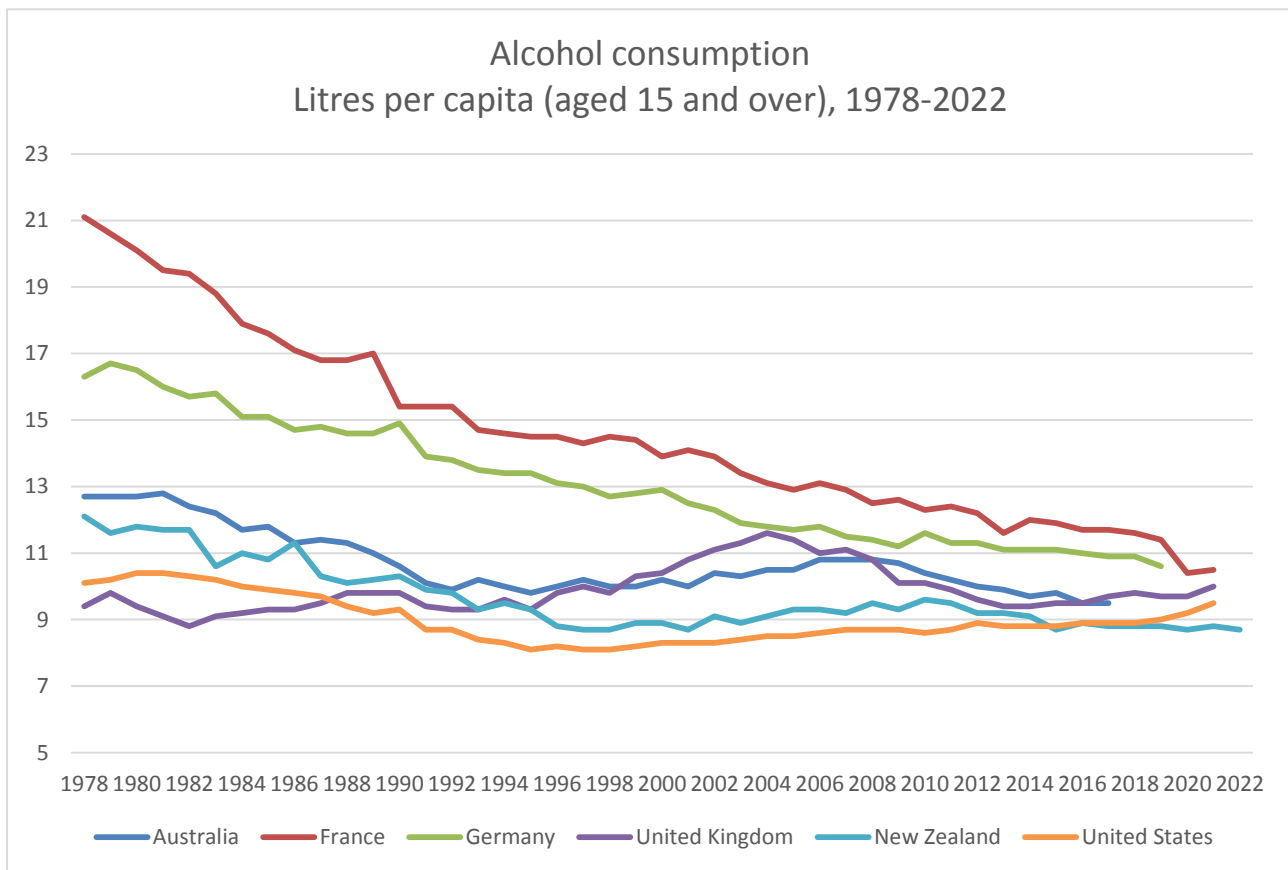
This recent trend decline in alcohol consumption appears to be even more pronounced among young people. For instance, one study on adolescent health found that the proportion of secondary students reporting binge-drinking in the past month (defined as five or more drinks in a session) declined from 42% in 2001 to 22% in 2019.<sup>9</sup>

Another qualitative study comparing drinking (and non-drinking) behaviours among teenage cohorts 20 years apart concluded that since the turn of the millennium, alcohol consumption has shifted from a near-compulsory part of teenage social life to an optional activity that many contemporary teenagers consider has high risks and few benefits.<sup>10</sup>

The authors attribute their findings to a higher value placed on personal choice and more acceptance of diversity; decreased face-to-face socialising and the emergence of social media as a central feature of teenage social life, potentially supplanting the primary roles of drinking and partying; increased prevalence of risk in public discourse; and increased awareness of the health and social risks of alcohol.

These nationwide trends echo a much broader trend decline in alcohol consumption in most Organisation for Economic Co-operation and Development (OECD) countries in recent decades (Chart 3).<sup>11</sup>

**Chart 3: Most of the OECD is drinking less**



<sup>9</sup> Fleming T, Ball J, Bavin L, Rivera-Rodriguez C, Peiris-John R, Crengle S, et al. 2022. "Mixed progress in adolescent health and wellbeing in Aotearoa New Zealand 2001–2019: A population overview from the Youth 2000 survey series". *Journal of the Royal Society of New Zealand*, 52:4. <https://doi.org/10.1080/03036758.2022.2072349>

<sup>10</sup> Ball, J, Pettie, MA, Poasa, L, Abel, G. 2023. "Understanding youth drinking decline: Similarity and change in the function and social meaning of alcohol use (and non-use) in adolescent cohorts 20 years apart." *Drug Alcohol Review*. <https://doi.org/10.1111/dar.13685>

<sup>11</sup> OECD. 2023. *Alcohol consumption (indicator)*. DOI: 10.1787/e6895909-en.

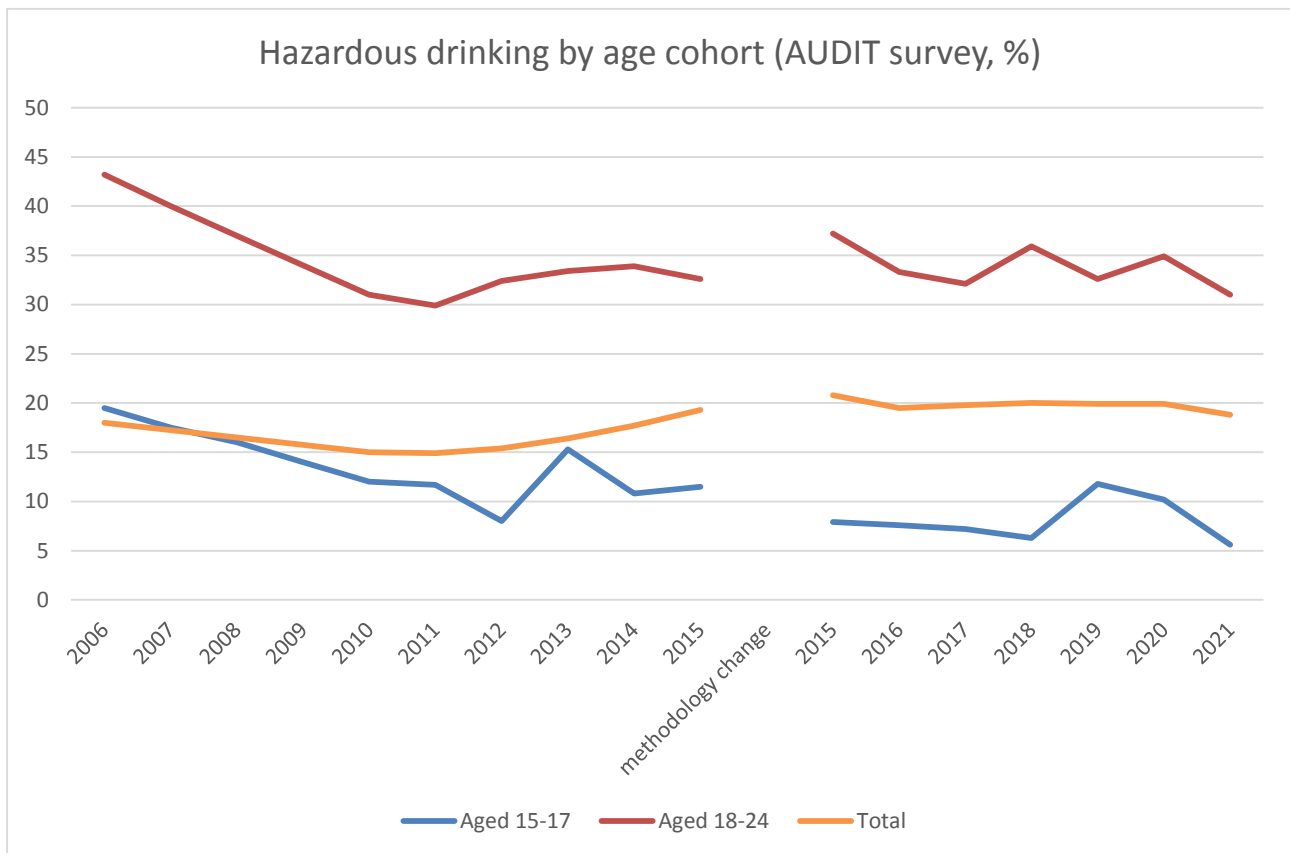
Source: OECD. Alcohol consumption is defined as annual sales of pure alcohol in litres per person aged 15 years and older.

## 5.2 Binge-drinking rates have been more stubborn, albeit declining among younger cohorts

According to the Alcohol Use Disorders Identification Test (AUDIT) survey developed by the World Health Organization and published in New Zealand by Manatū Hauora/Ministry of Health, 18.8 per cent of adult New Zealanders exhibited “hazardous” drinking behaviours in 2021.<sup>12</sup> While this compares favourably with the 20.8 percent recorded in 2015, when the current time series began, the rate of hazardous drinking had risen steadily in the five years prior to 2015.

However, the incidence of hazardous drinking has tended to decline over time among the youngest cohort. It has also declined in the case of 18- to 24-year-olds, but remains high in both relative and absolute terms.

**Chart 4: Hazardous drinking behaviours have been more stubborn among adults than younger cohorts**



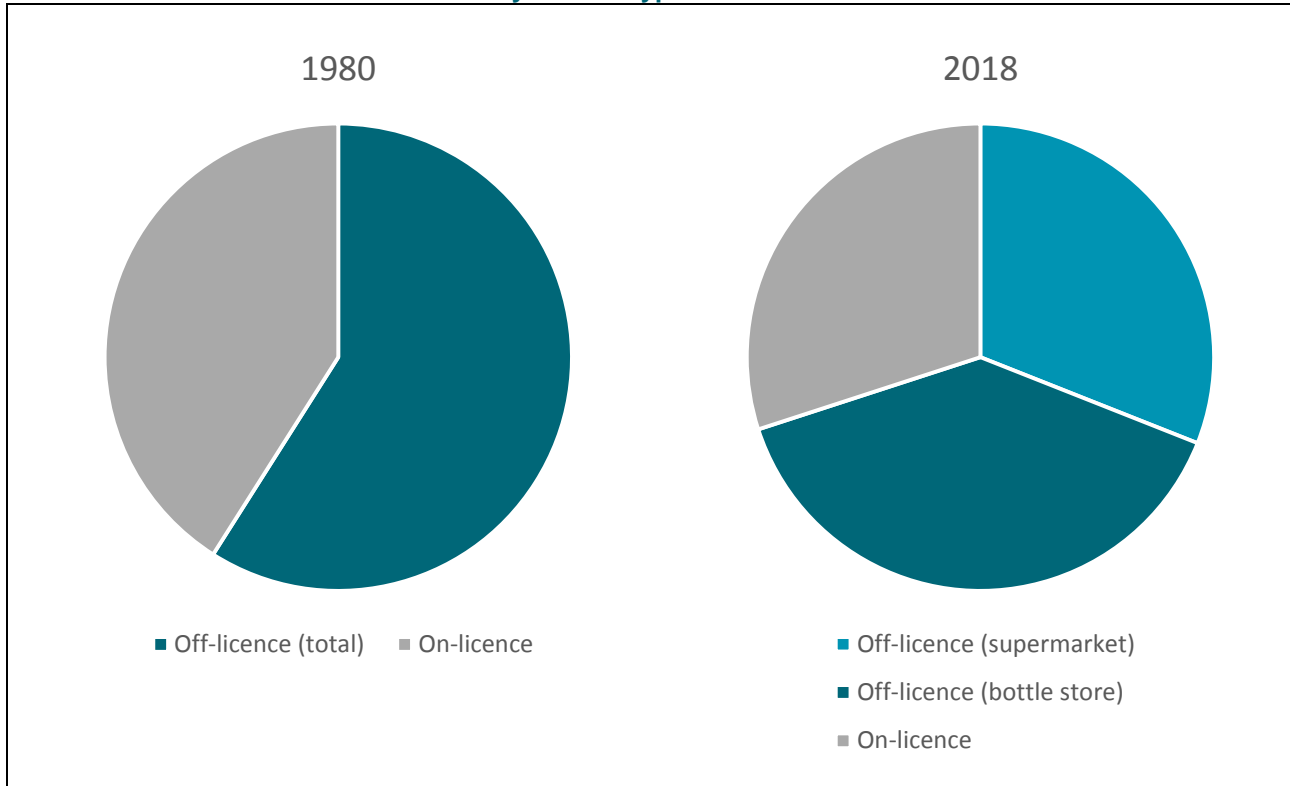
Source: Manatū Hauora/Ministry of Health. The Alcohol Use Disorders Identification Test (AUDIT) is a 10-question survey that captures three aspects of alcohol use: consumption, dependence and experience of harm.

<sup>12</sup> Manatū Hauora/Ministry of Health. *Annual Update of Key Results 2020/21: New Zealand Health Survey*. <https://www.health.govt.nz/publication/annual-update-key-results-2021-22-new-zealand-health-survey>

### 5.3 Meanwhile, the off-licence share of alcohol consumption has risen

In 1980, around 59 per cent of alcohol was consumed outside of licensed premises.<sup>13</sup> In 2018, this figure had risen to 70 per cent (39% was purchased from bottle stores and 31% from supermarkets).<sup>14</sup>

**Chart 5: Alcohol sales in New Zealand by licence type**



Sources: Law Commission (2010), M.E Consulting (2018)

This trend rise in the off-licence share of consumption suggests that the Bylaw's reach may be greater than the trend decline in consumption would otherwise indicate.

## 6 CitySafe data support retaining the Bylaw

Council's CitySafe Community Officers moderate antisocial behaviour in the city centre by virtue of their presence and by acting as the "eyes and ears" for Police through radio contact with volunteer CCTV operators at the Whangārei Central Police Station.

They also help to "enforce" the Bylaw by reminding those who breach the city centre alcohol ban of its existence and potential Police response.

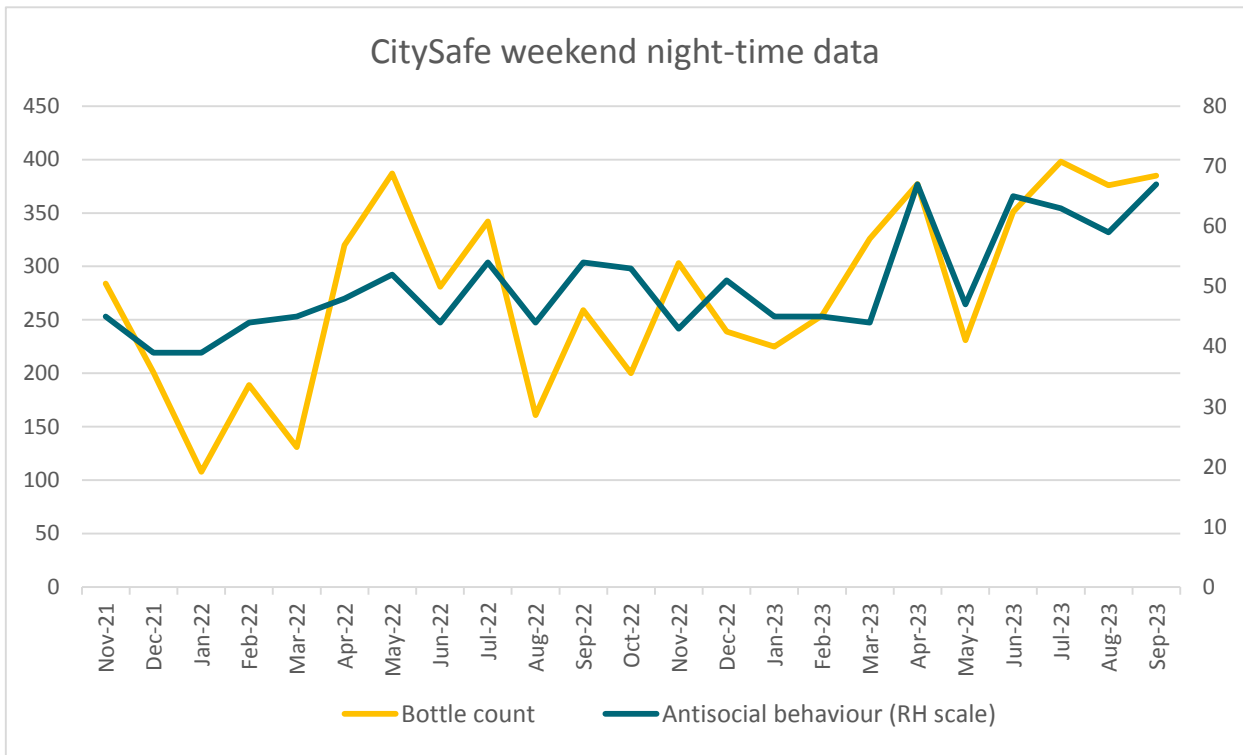
Since 2015, CitySafe Officers have recorded the number and types of antisocial behaviour they witness, including crime and disorder, between midnight and 4:00am on Friday and Saturday nights.

Chart 6 below plots the monthly number of alcohol bottles and cans picked up by CitySafe Officers in the city centre against the monthly incidence of antisocial behaviour reported by the Officers, scored on a scale of one to three, at the end of each five-hour shift.

<sup>13</sup> Law Commission. 2010. *Alcohol in our Lives: Curbing the Harm*. NZLC Report no. 114.

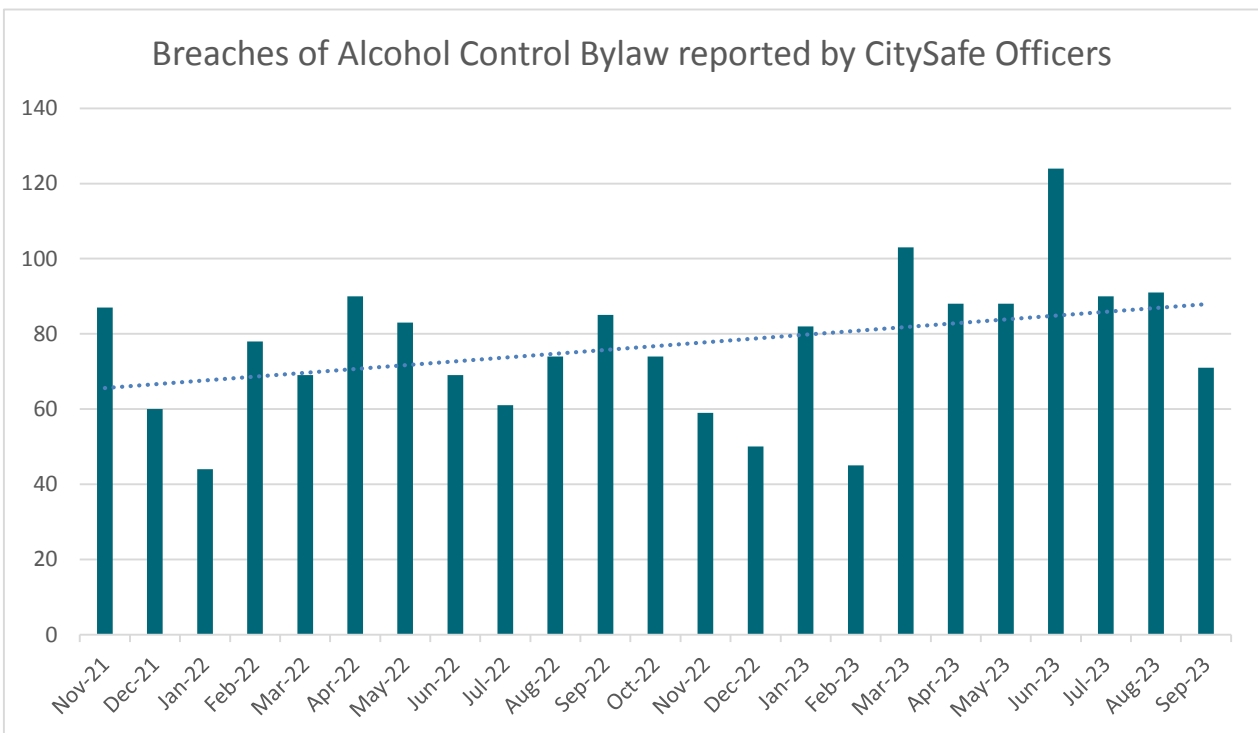
<sup>14</sup> M.E Consulting. 2018. *New Zealand alcohol supply and demand structures*. Research report for Health Promotion Agency.

**Chart 6: There is a high correlation between the night-time bottle count and antisocial behaviour reported by CitySafe Officers**



Contrary to wider trends in the volume of alcohol consumed, individual breaches of the Bylaw in the city centre have tended to rise over the past two years.

**Chart 7: Reported breaches of the Bylaw have trended higher in the city centre**



The CitySafe data show the continued occurrence of alcohol consumption in public places in the city centre and a high and positive correlation between this consumption and antisocial behaviour.



## 7 Content of the Bylaw and analysis

The 2018 Bylaw is a skeleton bylaw. It has been structured so that individual alcohol control areas can be made, changed or revoked by resolution of Council after consultation, rather than through a more cumbersome amendment to the Bylaw.

This section discusses the Bylaw's key provisions.

### 7.1 Clause 6.1 sets out Council's power to declare alcohol control areas by resolution

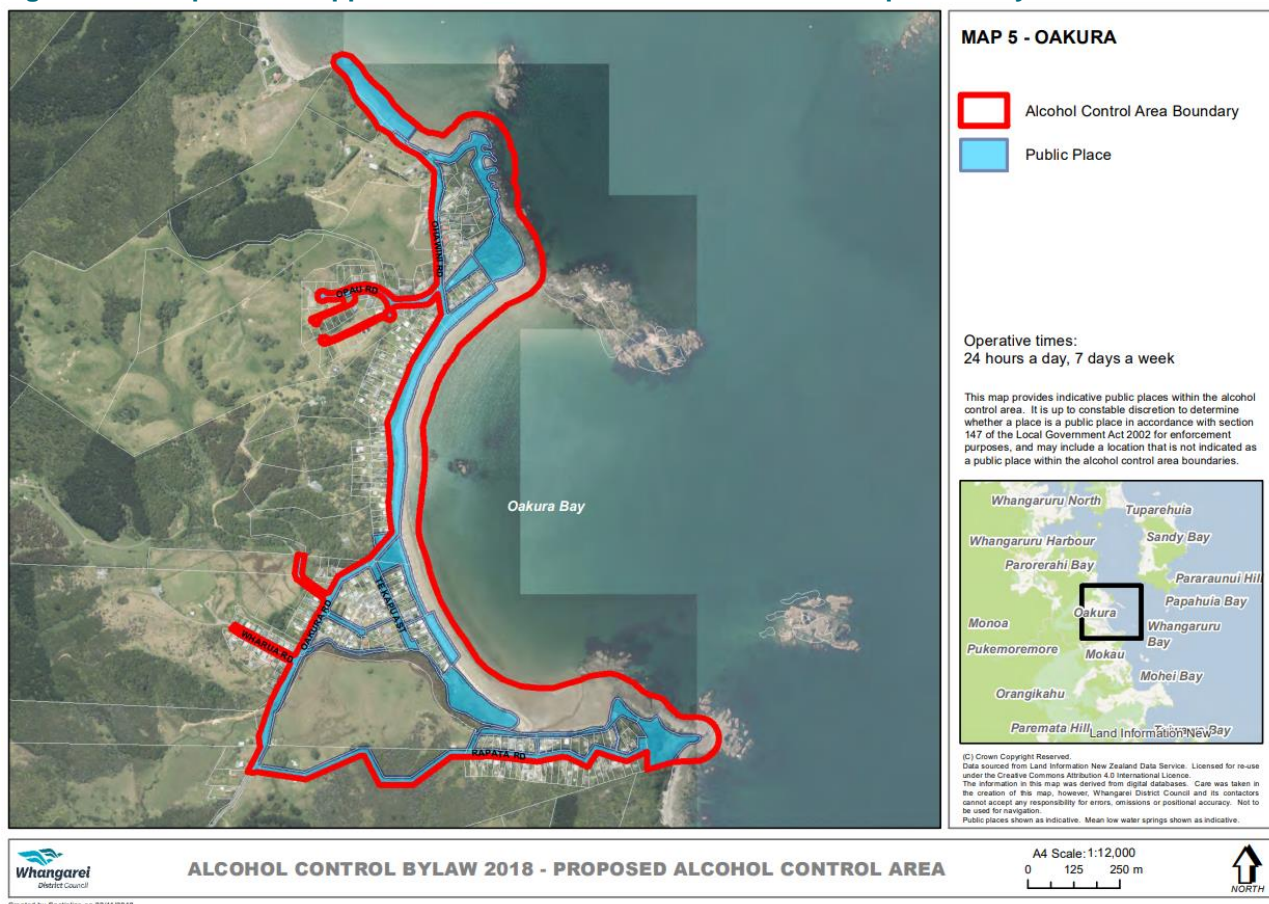
The operative Bylaw has been structured so that individual alcohol control areas can be made, changed or revoked by resolution of Council after consultation, rather than through a relatively more cumbersome amendment to the Bylaw.

Clause 6.1 has been used only once over the five-year lifespan of the Bylaw, when it was first made in December 2018.

Nevertheless, this approach does provide current and future Councils more freedom to respond to community demands over the anticipated 10-year lifespan of the reviewed Bylaw. It is also specifically provided for in sections 151(2) and 147B of the LGA.

Clause 6.2 requires any resolution made under 6.1 to include a map of the alcohol control area.

**Figure 1: Example of a mapped alcohol control area made under the operative Bylaw**



## **7.2 Council has declared temporary alcohol bans under clause 8 only once in five years**

Council can also declare temporary alcohol bans for a period of up to seven consecutive days.

This power has also been used only once, again when the Bylaw was made in December 2018. The decision of Council applied to three events held at the Northland Events Centre in early 2019 and was informed by a 10-page report, including feedback from New Zealand Police and Venues and Events staff and a map of the proposed alcohol control area.

Given the evidential requirements of sections 147A and B, it is difficult to envisage making this process more streamlined.

## **7.3 Clause 12 provides for exemptions for special events**

Feedback from Health and Bylaws staff suggests that this clause performs well. It provides Council with flexibility and offers a reasonable opportunity for the public to consume alcohol at special events in areas where an alcohol ban applies.

At the time of writing, Council had granted 112 exemptions in 2023, mostly for events such as weddings, birthday parties and club events. A total of 116 exemptions were granted in 2022; 100 were granted in 2019.

## **7.4 The Bylaw does not offer a carve-out for freedom campers, even though provided for in the legislation**

Section 147(3) of the LGA allows for councils to regulate or control “the presence or consumption of alcohol in vehicles, or vehicles of stated kinds or descriptions, in public places.”

Such an exemption could feasibly be applied to eligible vehicles camping in designated sites in accordance with Council’s Camping in Public Places Bylaw.

Council staff are not aware of any other councils in New Zealand that have used this provision to exempt certain types of vehicles from alcohol bans.

## **8 Legislative assessment**

Section 147A of the LGA sets out various criteria for continuing or amending an alcohol control bylaw.

### **8.1 To retain the Bylaw, Council must determine that the level of crime and disorder experienced before it was made would return without it**

To continue the Bylaw without substantive amendment, Council must be satisfied that:

the level of crime or disorder experienced before the bylaw was made (being crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area concerned) is likely to return to the area to which the bylaw is intended to apply if the bylaw does not continue.<sup>15</sup>

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<sup>15</sup> Section 147A(2) LGA

## ***8.2 It is not feasible to prove the level of alcohol-related crime or disorder before the bylaw was first made***

Council has had some form of alcohol control bylaw since at least as far back as 1996. It is not clear what data informed the bylaw at the time. Moreover, gathering reliable anecdotal evidence is complicated by the length of time that has elapsed since then.

There are also limitations to Police data. It is sometimes impossible to isolate data on offending related to alcohol consumed in licensed premises or at home from that related to consumption in public places.

Moreover, actions to enforce the Bylaw are often unreported, as they can be as simple as speaking to the individual(s) concerned and asking them to tip out their alcohol and dispose of empty bottles or cans.

Council staff have approached Police for data on alcohol-relating offending in the Whangārei District. Requests for data from Police's Intelligence Section have a long lead time and this data is not available at the time of writing.

Staff anticipate supplementing this data with area-specific anecdotal evidence from Police to inform the analysis of Council's alcohol control areas in the first half of 2024.

## ***8.3 Strong Police support and CitySafe data provide a basis for Council to continue the Bylaw under section 147A***

Police strongly support Council's Bylaw and would like some of the associated alcohol control areas expanded. These views are reinforced by Council's own Community Safety Officer and, in the case of the city centre, corroborated by the data recorded by Council's CitySafe Community Officers. This data, coupled with the pre-emptive, "soft" Police action made possible by the Bylaw, indicates a high likelihood that the Bylaw's existence prevents crime and disorder.

## ***8.4 Council must still make the usual determinations about the appropriateness of the Bylaw***

The next step for Council is to determine that:

1. a bylaw is the most appropriate way of addressing the perceived problem (crime or disorder caused or made worse by alcohol consumption in public places);
2. the proposed bylaw is the most appropriate form of bylaw; and
3. the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990.<sup>16</sup>

### ***8.4.1 A bylaw is the most appropriate mechanism for reducing crime and disorder related to alcohol consumption in public places***

Table 2 outlines Council's options for addressing the problem of crime and disorder related to the consumption of alcohol in public places.

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<sup>16</sup> Sections 155(1) and (2)(a) and (b) LGA

**Table 2: Alcohol Control Bylaw options matrix**

Option 1	Option 2	Option 3
<b>Let Bylaw lapse in December 2025</b>	<b>Replace Bylaw with a non-regulatory “alcohol-free policy”</b>	<b>Continue the Bylaw for alcohol control purposes</b>
Would not address perceived problem.  Police would have no tool to pre-emptively address alcohol-related antisocial behaviour in public	Would rely on voluntary compliance to address perceived problem.  Police would have no tool to pre-emptively address alcohol-related antisocial behaviour in public	Addresses perceived problem by empowering Police to pre-emptively address alcohol-related antisocial behaviour in public.

#### 8.4.2 The operative Bylaw is the most appropriate form of bylaw, but minor amendments may be proposed

The skeletal bylaw approach provides an optimal balance between meeting legislative requirements and giving Council a flexible tool to respond to evolving community demands. It also:

- reflects current legislation
- avoids unnecessary duplications of the legislation
- uses plain English.

Council may wish to consider making some minor improvements to the wording of the Bylaw, in addition to a savings clause to carry over the existing ban areas made under clause 6.1 pending a fuller review of their appropriateness.

Amendments to these individual alcohol control areas may be proposed in a second stage of the review process, but they will not alter the content of the Bylaw itself.

#### 8.4.3 The operative Bylaw is consistent with the New Zealand Bill of Rights Act 1990

The Bill of Rights protects the human rights and fundamental freedoms of all people in New Zealand, including the right to freedom of movement. The operative Bylaw, together with the associated enforcement provisions, provides that constables can ask people to leave public places that are subject to a permanent or temporary alcohol control, if they are in possession of alcohol.

The power the Bylaw gives Council to ban alcohol consumption in public places is fair and reasonable in the interest of reducing alcohol-related crime and disorder in public places. The Bylaw does not restrict the movement of people who are not in possession of alcohol or those drinking alcohol in private or licensed premises.

While constables have discretion over whether to exercise their powers to enforce the Bylaw, it is up to Council to decide where and when in the District this discretion may be exercised.



**Whangarei**  
District Council

# Alcohol Control Bylaw 2018



*Pursuant to the Local Government Act 2002, Whangarei District Council makes the following bylaw about alcohol control in public places*

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## 1. Title

This Bylaw is the Alcohol Control Bylaw 2018.

## 2. Commencement

19 December 2018.

## 3. Application

This Bylaw applies to the Whangarei District.

# Part 1 – Preliminary Provisions

## 4. Purpose

The purpose of this bylaw is to provide for prohibition and control of the consumption or possession of alcohol in public places (including vehicles in public places) to reduce alcohol related harm.

*Explanatory notes:*

*The provisions of the Act provide explicit details about what this type of bylaw can control. Generally, any transporting of alcohol in unopened containers within an alcohol control area is permitted, subject to certain conditions. See section 147 of the Act for further details.*

*Alcohol control areas do not apply to licensed premises, which can include situations where a special license has been issued for a specific event. Licensed premises can include areas of public places such as footpaths.*

*Under the Act only constables (New Zealand Police Officers) can take enforcement action under this Bylaw. Constables have powers of arrest, search and seizure under the Act and they can also issue infringement notices.*

## 5. Interpretation

- 5.1 Any word used in this Bylaw that is defined in section 5, 147, 169, 169A and 243 of the Act, or section 5 of the Sale and Supply of Alcohol Act 2012 has, for the purposes of this Bylaw, the same meaning as in those sections, unless otherwise provided for in this clause.
- 5.2 In this Bylaw, unless the context otherwise requires -
  - Act** means the Local Government Act 2002
  - Council** means the Whangarei District Council.
  - Whangarei District** means the area within the boundaries of the Whangarei District and includes all coastal areas to the line of mean low water springs.
- 5.3 Any explanatory notes and attachments are for information purposes only and do not form part of this Bylaw.
- 5.4 The Interpretation Act 1999 applies to this Bylaw.

# Part 2 – Control of alcohol

## 6. Alcohol control areas

- 6.1 Council may, by resolution, declare alcohol control areas in which the consumption, bringing in, and possession of alcohol in public places is prohibited or controlled.
- 6.2 Any resolution made under clause 6.1 must also:
- a. include a map of the alcohol control area
  - b. specify the time(s) that any prohibition or control applies, and whether the alcohol control area is permanent or temporary
  - c. if consumption, bringing in, and possession of alcohol is controlled rather than prohibited, specify the nature of the control.
- 6.3 No person shall consume, bring into, or possess alcohol in any public place (including inside a vehicle) in an alcohol control area in contravention of a resolution made under clauses 6.1 and 6.2.
- 6.4 Clause 6.3 does not apply to a person who is acting pursuant to, and in accordance with any conditions of, a consent granted under clause 12.1.

*Explanatory note: As at 01 April 2014, The Act defines a public place for the purposes of alcohol control as:*

*“a place that is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from it; but does not include licensed premises.”*

## 7. Permanent alcohol control areas

- 7.1 Council may under clause 6.1 declare an area to be a permanent alcohol control area at all times, or for specified, repeated periods of time.
- 7.2 Council will consult in accordance with section 82 of the Act on any proposal to declare, amend or revoke a permanent alcohol control area.

*Explanatory note: All resolutions of Council declaring alcohol control areas are contained within the additional information to Alcohol Control Bylaw 2018 - Register of Resolutions, attached to this Bylaw.*

## 8. Temporary alcohol control areas

- 8.1 Council may under clause 6.1 declare an area to be a temporary alcohol control area for a specific period not exceeding seven consecutive days.
- 8.2 Council will give public notice of a temporary alcohol control area at least 14 days before the temporary alcohol control area comes into force.

## 9. Matters to be considered before declaring alcohol control areas

- 9.1 Before declaring a permanent alcohol control area Council:
- a. must consider views presented to the Council through consultation on the proposal to declare a permanent alcohol control area
  - b. must consider the relevant criteria in sections 147A and 147B of the Act, as applicable
  - c. may consider any other matter it considers relevant.
- 9.2 Before declaring a temporary alcohol control area Council:
- a. must consider the relevant criteria in sections 147A and 147B of the Act, as applicable
  - b. where the temporary alcohol control area applies to an event, may consider:
    - i. the nature and type of the event



- ii. the history (if any) of the event
  - iii. the number of people expected to attend the event
  - iv. the area in which the event is to be held
  - v. whether the Police support the proposed temporary alcohol control area, and whether the Police will be present at the event to enforce it
- c. may consider any other information it considers relevant.

*Explanatory note: Records of resolutions made for temporary alcohol controls will not be included in the 'register of resolutions' but are permanently recorded through the appropriate Council records of meetings, minutes and resolutions.*

## Part 3: Enforcement Powers

### 10. Enforcement

- 10.1 A constable may use their powers under the Act enforce this Bylaw.
- 10.2 This Bylaw authorises a constable to exercise the power of search under sections 169(2)(a) and 170(2) of the Act for temporary alcohol control areas declared in accordance with clauses 6 and 8.

*Explanatory note: Section 170(2) provides constables with additional powers of search in relation to temporary alcohol controls that have been notified and indicated by signs in accordance with section 170(3) of the Act.*

## Part 4: Offences and Penalties

### 11. Bylaw breaches

- 11.1 Every person who breaches this bylaw commits an offence.
- 11.2 Every person who commits an offence under this bylaw is liable to a penalty under the Act.

*Explanatory note: As at 29 October 2013 the penalty for breaching an alcohol control bylaw is an infringement fee of \$250 under the Local Government (Alcohol Control Breaches) Regulations 2013.*

## Part 5: Exceptions

### 12. Exceptions

- 12.1 Council may issue a consent to any person, or class of persons, to allow the consumption, bringing in and possession of alcohol in a public place (including inside a vehicle) within an alcohol control area.
- 12.2 In considering an application for a consent under clause 12.1, Council will consider the following matters:
- a. The purpose of the exception
  - b. The proposed duration of the exception
  - c. The area of the proposed exception
  - d. Whether the area is under the control of, or managed by, Council
  - e. Whether any other permits are required from Council for the event
  - f. Any other matter Council considers relevant
- 12.3 Council may prescribe conditions for any such consent, including, but not limited to:
- a. the duration of the consent

- b. the exact location to which the consent applies
  - c. the maximum number of people the consent applies to.
- 12.4 Council may by resolution made after consultation that gives effect to the requirements of section 82 of the Act:
- a. prescribe a fee for receiving and processing an application and issuing a consent
  - b. determine situations when consent fees may be remitted, refunded or waived.
- 12.5 A consent may be cancelled by Council at any time.

*Explanatory note: Exceptions for events with special licences do not require consent under clause 11.1, as they are excluded from the definition of public places that applies to this Bylaw.*

# Additional information to Alcohol Control Bylaw 2018

This document is for information purpose only and does not form part of this Bylaw. It contains matters made pursuant to this Bylaw and information to help users to understand, use and maintain this Bylaw. The document may be updated at any time.

## Section 1: History of Bylaw

Action	Description	Date of decision	Commencement
Expire	Liquor Management Bylaw 2011 expires in accordance with Local Government (Alcohol Reform) Amendment Act 2012	NA	18 December 2018
Make	Alcohol Control Bylaw 2018	13 December 2018	19 December 2018

## Section 2: Related documents

Document	Description	Location	Date
<b>Reports to Council/Committee/Panels</b>			
Briefing	Overview of policy analysis, legislative requirements and consultation approach	<a href="#">Council meetings webpage - link</a>	31 July 2018
Adoption of Statement of Proposal	Statement of Proposal including draft Bylaw adoption for public consultation	<a href="#">Council meetings webpage - link</a>	30 August 2018
Hearing	Hearing for interested parties to share their views in person	NA – hearing cancelled	NA
Deliberations	Deliberations on submission issues raised	<a href="#">Council meetings webpage - link</a>	13 November 2018
Making of Bylaw	Council makes final Bylaw	<a href="#">Council meetings webpage - link</a>	13 December 2018
<b>Legislation</b>			
Local Government Act 2002	Provides the functions, duties, powers and penalties to make and enforce this Bylaw.	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>	NA
Sale and Supply of Alcohol Act 2012	Associated legislation	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>	NA
Local Government (Alcohol Ban Breaches) Regulations 2013	Regulations that determines the infringement fee for breaching an alcohol ban	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>	NA
Bylaws Act 1910	Provides for certain matters related to the validity of bylaws.	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>	NA
Interpretations Act 1999	Provides for certain matters related to the interpretation of bylaws.	<a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>	NA

## Section 3: Delegations

Clause	Function, Duty, Power to be delegated	Delegated Authority	Delegation date	Delegation active date
All	All of its responsibilities, duties and powers under this bylaw, except - (a) the power to set fees (b) the power to make a decision for which a Council resolution is required (c) the power to hear and decided on any appeal process	Chief Executive	13 December 2018	19 December 2018

## Section 4: Enforcement powers

Legislative provision	Description
Section 169 and 170 of the Local Government Act 2002	A constable has powers of arrest, search and seizure in relation to alcohol bans.

## Section 5: Offences and penalties

Provision	Description of offence	Maximum fine upon conviction	Infringement fee
cl 4*	Breach of bylaw	n/a	\$250*

\*Local Government (Alcohol Ban Breaches) Regulations 2013

## Section 6 – Register of resolutions for permanent alcohol bans

Map #	Area	Operative times	Decision date	Commencement date
1	Whangarei CBD	24 hours a day, seven days a week	13/12/2018	19/12/2018
2	Kamo		13/12/2018	19/12/2018
3	Marsden Village		13/12/2018	19/12/2018
4	Matapouri		13/12/2018	19/12/2018
5	Oakura		13/12/2018	19/12/2018
6	Onerahi		13/12/2018	19/12/2018
7	Otaika		13/12/2018	19/12/2018
8	Otangarei		13/12/2018	19/12/2018
9	Otuihau; Whangarei Falls		13/12/2018	19/12/2018
10	Pataua North & South		13/12/2018	19/12/2018
11	Tikipunga		13/12/2018	19/12/2018
12	Waipu		13/12/2018	19/12/2018
13	Whananaki – Moureeses Bay		13/12/2018	19/12/2018
14	Whananaki		13/12/2018	19/12/2018
NA	All public places 300 metres landwards from the line of mean low water springs		13/12/2018	19/12/2018