

## **PROPOSED COUNCIL BYLAW TO DEAL WITH EFFECTS OF LAND BASED ACTIVITIES ON WATERCOURSES**

### **1. Issue**

Friends of the Whau Inc, a community based river restoration group and National Green Ribbon Award winner for Urban Conservation (2002), have noticed an increasing amount of waste material deposited in and around watercourses and streams within the Whau catchment. Present methods of cleaning up streams rely upon volunteer labour and some education through local media, local schools, community groups and interested groups of residents who participate in the WAICARE water quality monitoring programme. This only reaches a minority of residents.

2. Two recent spillage events on a Titirangi stream revealed two matters for further action. (see clipping) First, it was encouraging that the spillages were phoned into ARC Pollution Hotline by concerned neighbours. This suggests that the Pollution Hotline is working in terms of the community reacting to immediate pollution events. However ARC data indicates only 20% of all pollution incidents are reported to them. Further education through Council publications and notices may add to this awareness.

Second, these spillages were both done by contractors operating on behalf of landowners adjoining the stream. This suggests poor practices by contractors and insufficient supervision and care by landowners over their adjacent stream or watercourse.

Other streams within the catchment show consistently poor stream side habitat (Boffa Miskell Report 2002), and streams are becoming clogged with waste material brought down by floods and by dumping of waste material in or next to watercourses.

### **3. Proposed Remedies**

Friends of the Whau are proposing to help set up stream care groups of concerned residents. This action works well if all neighbours see some advantage in creating better environments for themselves and in enhancing local bio-diversity. In some areas level of interest and awareness is sufficient for this to be a viable strategy. In other areas interest and awareness is low - for example in Portage Road, and co-operation will be difficult to obtain.

For these areas and for problem sites where dumping of material is widespread by residents, it would be useful to have legislative backing to enforce a measure of personal responsibility. Use of an enforceable bylaw would assist in a more pro-active approach to stream and watercourse care instead of a reactive strategy of responding to acute pollution incidents. Also, many streams and watercourse are degraded because of a longer term deterioration in adjacent land-based management.

The key to cleaner streams throughout Waitakere City is to encourage better practice in caring for these streams and their immediate riparian margins on private land.

### **4. How a Bylaw Would Work**

Because resources are limited, and voluntary groups have no enforceable powers, it is proposed that a bylaw would be enforced by means of streamside "blitzs". This would operate in a similar way to the industrial "blitzs" or surveys of industrial premises presently carried out by the ARC Pollution Control team on behalf of Waitakere City. Bad practices can then be discovered and investigated, and appropriate remedies applied.

A requirement for education and restoration as well as rehabilitation and a fine (if appropriate), can encourage a sense of responsibility for stream and streamside health by adjacent land-owners. Education can be delivered by local stream care groups such as Friends of the Whau and Project Twin Streams and local stream care initiatives and replanting, weed removal and water quality monitoring encouraged.

This would complement Council programmes delivered through the Green Network Team and the 3 Waters responsibilities of EcoWater and be part of an integrated approach to the management of Waitakere's natural environments.

#### 5. Authority for a Bylaw

The Council has the power under the recently passed Local Government Act 2002 to pass bylaws for the following reasons. This power is contained in clauses 145 and 146 which gives Council general competency to make bylaws and also for bylaws to control for specific instances. The relevant clause for this type of bylaw is clause 146 (b) "**managing, regulating against or protecting from damage, misuse or loss...of land, structures or infrastructure associated with i) water races, iii) wastewater, drainage and sanitation and iv) land drainage** "

Under Clause 151(1) Council may require "**anything to be done in any manner, or within any time, that is required by a local authority...** and under 151 (2) "**a bylaw may leave any matter or thing to be regulated, controlled or prohibited by the local authority...for any specified classes of cases, or in a particular case.**"

To promulgate such a bylaw, Council must invoke a special consultative procedure under Clause 86 of the LG Act 2002.

#### 6. Form of Bylaw (draft)

1. *It is an offence to deposit or to have caused to deposit any substance, organic or inorganic, within a stream, watercourse or drain or within a 5m riparian area adjoining a water course, which may have a detrimental effect on the healthy functioning of that stream or watercourse., unless there is a current trade waste permit or discharge resource consent to do so.*
2. *Any person committing an offence within the meaning of this bylaw can be subject to all or any of the following penalties;*
  - a) *a fine not exceeding \$500*
  - b) *rehabilitation and clean-up costs of removing the damaging substance*
  - c) *compulsory attendance at a 2 day stream care workshop*
  - d) *submission of a streamside restoration plan for their property to the Green Network programme of Council.*
3. *Any person committing an offence under this bylaw has 28 days to comply with the penalties imposed or to file a defence against the imposition of such penalties. If there has been no compliance with the penalties imposed within 28 days, Council may undertake the required remedial works itself and recover the costs from the liable party/parties. [see s 176 of LGA Act 2002]*

Submitted by

Douglas John Craig M. Plan Prac (Hons)  
Qualified Planner  
on behalf of

Friends of the Whau Inc  
Po 15-215  
New Lynn  
Waitakere City

## CLASSIFIED ADVERTISING ORDER REQUEST

### CONTROL OF DRINKING IN PUBLIC PLACES BYLAW

Waitakere City Council proposes to make a bylaw imposing a liquor ban from 5pm-5am at Piha beach areas during holiday periods as defined in the bylaw, and permitting special event liquor bans to be imposed by Council resolution. Submissions are invited to be made on the draft bylaw.

For further information on the draft bylaw and making a submission, please refer to the formal Public Notice given in the New Zealand Herald on Monday 29 September, visit Waitakere City Council's Counter Services at the Civic Centre, 6 Waipareira Ave Henderson, phone the Call Centre on 839 0400, email info@waitakere.govt.nz, or go to: http://www.waitakere.govt.nz/HavSay/index.asp.

The closing date for submissions is 31 October 2003.

Newspaper:	Western Leader	Date(s):	Thursday 2 October 2003
Classification:	Public Notices	Columns:	Single
Charge Code:	15-1710-20980-082	Authorised by:	Denis Sheard
		Requisition no:	
<b>Records only</b> E-mailed to Haines: Proofed: Composite:		Cancellations: Re-runs: Credits:	
<b>Accounts only</b>			

**A78**

## **SUMMARY OF INFORMATION**

### **DRAFT CONTROL OF DRINKING IN PUBLIC PLACES BYLAW 2003**

#### **Introduction**

1. At Council's meeting of 24 September 2003 the above draft bylaw was approved for public consultation. Sections 83, 86 and 89 of the Local Government Act 2002 set out the special consultative procedure requirements for making a bylaw, including that a Statement of Proposal and Summary of Information be prepared for the purposes of public consultation.
2. For a Statement of Proposal (including draft bylaw and Submission Form) for the Control of Drinking in Public Places Bylaw 2003, please visit Waitakere City Council's Counter Services at the Civic Centre, 6 Waipareira Ave, Henderson, phone the Call Centre on 839 0400, visit the website: <http://www.waitakere.govt.nz/HavSay/index.asp> or email [info@waitakere.govt.nz](mailto:info@waitakere.govt.nz).
3. Submissions on the draft bylaw should be made by sending a completed Submission Form (attached to the Statement of Proposal) before the closing date of 31 October 2003, to Waitakere City Council, Private Bag 93109 Henderson (or fax: 836 8001, email [info@waitakere.govt.nz](mailto:info@waitakere.govt.nz) or visit <http://www.waitakere.govt.nz/HavSay/index.asp>). Submissions will be considered by Council's Environmental Management Committee from 9.30am on 11 November 2003.

#### **Draft Bylaw**

4. The Control of Drinking in Public Places Bylaw 2003 will impose a liquor ban at Piha beach areas during holiday periods as defined in the bylaw, between 5pm and 5am. This follows previous years where liquor bans were imposed pursuant to the now repealed section 709C of the Local Government Act 1974. Special event liquor bans will also be allowed as previously, by Council resolution with the appropriate public notification. Please note that this is only an interim measure; Council will be giving this matter wider consideration in early 2004 in respect of a city-wide alcohol strategy.
5. Although not stated in the bylaw, note that section 147(3) of the Local Government Act 2002 allows an exemption for transporting unopened alcohol through a public place to licensed premises or private residences.
6. Section 169 and 170 of the Local Government Act 2002 allows for Police powers to search, confiscate, and make arrests as necessary without warrant in relation to a bylaw prohibiting liquor in a public place.
7. Public notification of any liquor ban imposed under the bylaw will be given by newspaper and on-location signage.



# Waitakere City Council Submission Form

## Draft Control of Drinking in Public Places Bylaw 2003

Office Use Only	
Submission No:	_____
Date Received:	_____
File No:	LSU 149 / 03

To: Waitakere City Council, Private Bag 93-109 Henderson, Waitakere City  
 Fax : 836 8001 Email : [info@waitakere.govt.nz](mailto:info@waitakere.govt.nz)  
 Website : <http://www.waitakere.govt.nz/HaySay/index.asp>

**Submissions must be received by the closing date of 31 October 2003**

**Submitter Details**

Name:	_____
Address:	_____
Address For Notices: <i>(if different from above)</i>	_____
Phone:	<u>Business</u> _____ <u>Home</u> _____ <u>Fax</u> _____

**Submission Details**

- I / We support  or oppose  *(tick one box only)*  
 the Draft Control of Drinking in Public Public Places Bylaw 2003
- The particular parts of the bylaw which I support or oppose are:  
*(clearly indicate parts of the bylaw you support or oppose, or which you desire to have amendments made)*

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*(continue on a separate sheet if necessary)*

3. The reasons for making my submission in support or opposition are:  
(state in summary the nature of your submission giving clear reasons)

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(continue on a separate sheet if necessary)

4. I / We seek the following decision from Council:  
(give details, including the nature of any amendments sought to the bylaw)

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(continue on a separate sheet if necessary)

5. I wish to be heard at the Environmental Management Committee from 9.30am 11 November 2003  
(please indicate approximate length of time required \_\_\_\_\_) Yes  No

6. If others made a similar submission, I would be prepared to consider being heard jointly with them  
Yes  No

7. I have attached separate sheets / additional information Yes  No

Signed \_\_\_\_\_ Date \_\_\_\_\_  
(Submitter)

**Completion Instructions**

**Submissions must be received by the closing date of 31 October 2003**

By Post : Waitakere City Council, Private Bag 93-109 Henderson      By Fax : 836 8001  
Website : <http://www.waitakere.govt.nz/HavSay/index.asp>      By Email : info@waitakere.govt.nz

**WAITAKERE CITY COUNCIL**  
**DRAFT CONTROL OF DRINKING IN PUBLIC PLACES BYLAW 2003**



**Title and Commencement**

1. This Bylaw is the Control of Drinking in Public Places Bylaw 2003 made pursuant to section 147 of the Local Government Act 2002.
2. This Bylaw comes into force on the date on which it is approved by Council resolution.

**Interpretation**

3. In this Bylaw:
  - (a) **Act** - means the Local Government Act 2002
  - (b) **Council** - means Waitakere City Council
  - (c) **Holiday Period** - subject to Clause 4, means any day in any year during the periods beginning with:
    - (i) 24 December and finishing with the second Sunday in January of the following year ("Christmas/New Year Holiday");
    - (ii) the Friday immediately preceding Auckland Anniversary Day and finishing with Auckland Anniversary Day;
    - (iii) 5 February and finishing with 6 February ("Waitangi Day");
    - (iv) the Thursday immediately preceding Good Friday and finishing with the following Tuesday;
    - (v) 24 April and finishing with 25 April ("Anzac Day");
    - (vi) the Friday before Queen's Birthday and finishing with Queen's Birthday;
    - (vii) the Friday before Labour Day and finishing with Labour Day;and 5 November in any year.
  - (d) **Liquor** - has the meaning given to it in the Sale of Liquor Act 1989
  - (e) **Public Place** - means a place within Waitakere City:
    - (i) That is under the control of the Council; and
    - (ii) That is open to, or being used by, the public, whether or not there is a charge for admission; and includes
    - (iii) A road, whether or not the road is under the control of the Council; and
    - (iv) A part of a Public Place;but does not include any part of a Public Place which is the subject of a licence issued under the Sale of Liquor Act 1989.
  - (f) **Special Event** - means any event, function or gathering of defined duration to be held in whole or in part in a Public Place.

4. In any year where:
- (a) The Christmas/New Year Holiday falls to begin:
    - (i) on a Friday, the Holiday Period will begin on the preceding Thursday;
    - (ii) on a Saturday, Sunday, Monday or ~~Tuesday~~, the Holiday Period will begin on the preceding Friday.
  - (b) Waitangi Day, Anzac Day or 5 November falls on a Friday or a Monday, the relevant Holiday Period will extend to include the immediately following, or preceding, Saturday and Sunday.

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**Holiday Period Liquor Bans**

5. No person may, between the hours of 5.00pm on any day in a Holiday Period and 5.00am on the following day bring liquor into, possess liquor in or consume liquor in any Public Place within those parts of Marine Parade South, Piha South Road Reserve, Piha Domain, Lion Rock, Marine Parade North, North Piha Strand, Piha Esplanade Reserve, Les Waygood Park, North Piha Road and North Piha Esplanade at Piha outlined in black on the plan attached at Schedule 1 of this Bylaw.

**Special Event Liquor Bans**

6. The Council may at any time by ordinary resolution resolve to prohibit any person from bringing liquor into, possessing liquor in, or consuming liquor in any Public Place or part of a Public Place specified in that resolution for the purposes of a Special Event at such times or for such periods as may be specified in that resolution.
7. Before passing a resolution under clause 6 the Council must be satisfied that the benefits, in terms of the safe and effective conduct of the Special Event, of the proposed ban outweigh any disadvantages from the imposition of the ban upon the rights of the public.

**Police Powers**

8. For the purposes of section 170(4) of the Act, it is recorded that the police may exercise powers of search and seizure under section 170(2) of the Act:
- (a) on any day in a Holiday Period during the hours specified in clause 5 of this Bylaw;
  - (b) during any Special Event to which a ban under clause 6 of this Bylaw applies.

**Breach of Bylaw**

9. Any person who acts in breach of any provision of this Bylaw commits an offence and is liable to penalty.


**THE COMMON SEAL** of )  
**WAITAKERE CITY COUNCIL** )  
 was hereunto affixed pursuant to )  
 resolution [ ] dated [ ] )  
 in the presence of : )

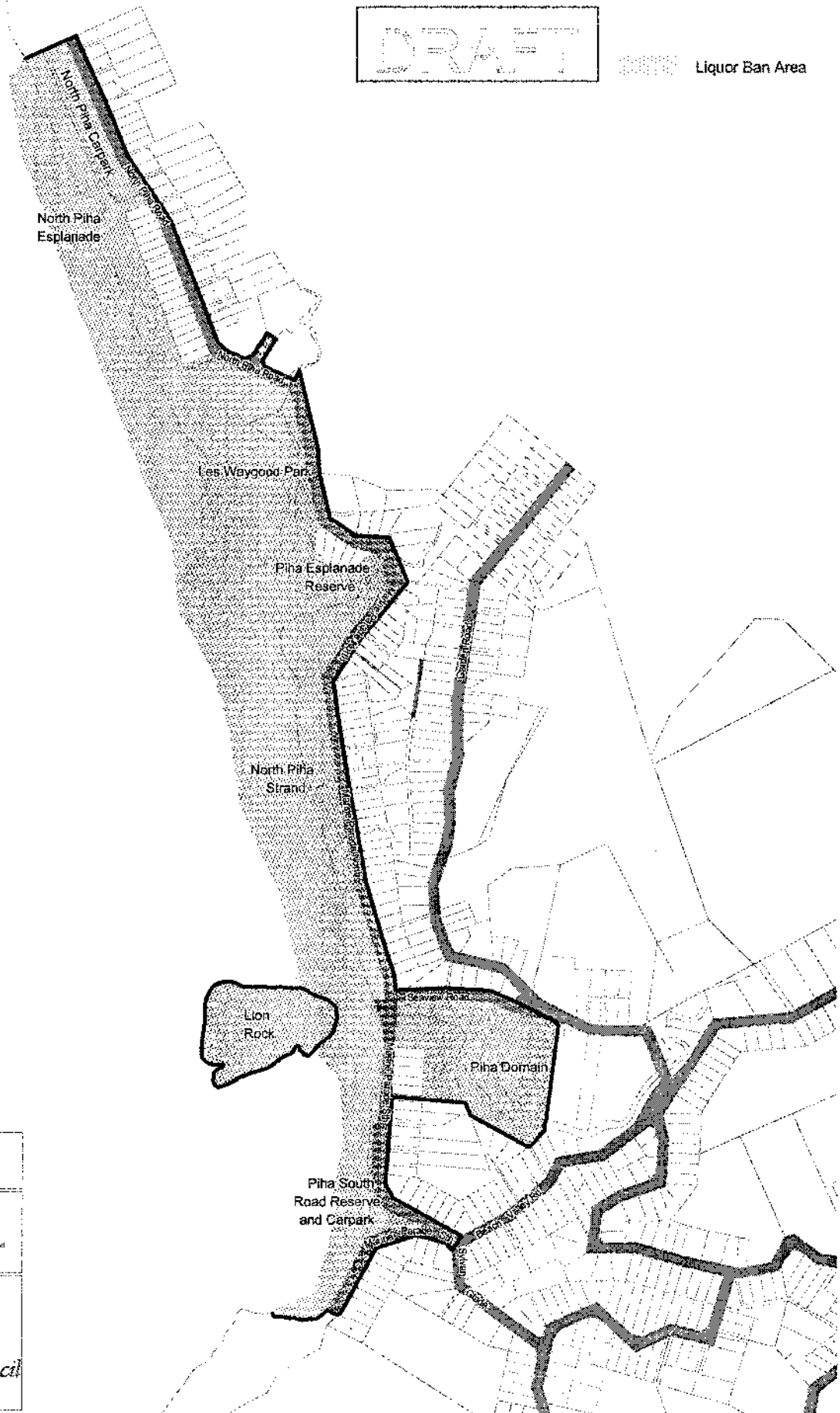
\_\_\_\_\_  
 Mayor/Deputy Mayor

\_\_\_\_\_  
 Chief Executive

# Liquor Ban - Piha

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 Liquor Ban Area



Created: 18/09/2003 \*  
Scale 1:10000 @ A4

Map Compiled by GIS Group,  
Waitakere City Council,  
Copyright Waitakere City Council

Coloured Information from Land Information New Zealand  
Digital Databases Edition: 1/2008  
Source: Copyright Reserved Digital Licence AK/27419/06



ABS

## LOCAL GOVERNMENT ACT 2002

### 83 Special consultative procedure

- (1) Where this Act or any other enactment requires a local authority to use or adopt the special consultative procedure, that local authority must-
  - (a) prepare-
    - (i) a statement of proposal; and
    - (ii) a summary of the information contained in the statement of proposal (which summary must comply with section 89); and
  - (b) include the statement of proposal on the agenda for a meeting of the local authority; and
  - (c) make the statement of proposal available for public inspection at-
    - (i) the principal public office of the local authority; and
    - (ii) such other places as the local authority considers necessary in order to provide all ratepayers and residents of the district with reasonable access to that statement; and
  - (d) distribute in accordance with section 89(c) the summary of the information contained in the statement of proposal; and
  - (e) give public notice, and such other notice as the local authority considers appropriate, of the proposal and the consultation being undertaken; and
  - (f) include in the public notice a statement about how persons interested in the proposal-
    - (i) may obtain the summary of information about the proposal; and
    - (ii) may inspect the full proposal; and
  - (g) include in the public notice a statement of the period within which submissions on the proposal may be made to the local authority; and
  - (h) ensure that any person who makes a submission on the proposal within that period-
    - (i) is sent a written notice acknowledging receipt of that person's submission; and
    - (ii) is given a reasonable opportunity to be heard by the local authority (if that person so requests); and
  - (i) ensure that the notice given to a person under paragraph (h)(i) contains information-
    - (i) advising that person of that person's opportunity to be heard; and
    - (ii) explaining how that person may exercise that person's opportunity to be heard; and
  - (j) ensure that, except as otherwise provided by Part 7 of the Local Government Official Information and Meetings Act 1987, every meeting at which submissions are heard or at which the local authority, community board, or committee deliberates on the proposal is open to the public; and
  - (k) subject to the Local Government Official Information and Meetings Act 1987, make all written submissions on the proposal available to the public.
- (2) The period specified in the statement included under subsection (1)(g) must be a period of not less than 1 month beginning with the date of the first publication of the public notice.
- (3) This section does not prevent a local authority from requesting or considering, before making a decision, comment or advice from an officer of the local authority or any other person in respect of the proposal or any submission or both.

### 86 Use of special consultative procedure in relation to adoption or review or amendment of bylaws

- (1) This section applies in relation to the following activities:
  - (a) the making of a bylaw under section 156;
  - (b) the making of an amendment of a bylaw (other than an amendment to which section 156(2) applies);
  - (c) the review of a bylaw under section 158;
  - (d) the revocation of a bylaw.
- (2) Where the special consultative procedure is used in relation to an activity to which this section applies, the statement of proposal referred to in section 83(1)(a) is-
  - (a) a draft of the bylaw as proposed to be adopted, amended, or continued without amendment; or
  - (b) if it is proposed that the bylaw be revoked, a statement to that effect.
- (3) A statement of proposal to which subsection (2) applies must include-
  - (a) the reasons for the proposal; and
  - (b) as the case requires, a report of-
    - (i) the local authority's consideration under section 155 of the problem being addressed by the proposal; or
    - (ii) the review carried out by the local authority under section 158.

### 89 Summary of information

A summary of the information contained in a statement of proposal must-

- (a) be a fair representation of the major matters in the statement of proposal; and
- (b) be in a form determined by the local authority; and
- (c) be distributed as widely as reasonably practicable (in such manner as is determined appropriate by the local authority, having regard to the matter to which the proposal relates) as a basis for general consultation; and
- (d) indicate where the statement of proposal may be inspected, and how a copy may be obtained; and
- (e) state the period within which submissions on the proposal may be made to the local authority.

#### **147 Power to make bylaws for liquor control purposes**

(1) In this section,-

**liquor** has the meaning given to it in the Sale of Liquor Act 1989

**public place-**

(a) means a place-

(i) that is under the control of the territorial authority; and

(ii) that is open to, or being used by, the public, whether or not there is a charge for admission; and

(b) includes-

(i) a road, whether or not the road is under the control of a territorial authority; and

(ii) any part of a public place.

(2) Without limiting section 145, a territorial authority may make bylaws for its district for the purpose of prohibiting or otherwise regulating or controlling, either generally or for 1 or more specified periods,-

(a) the consumption of liquor in a public place:

(b) the bringing of liquor into a public place:

(c) the possession of liquor in a public place:

(d) in conjunction with a prohibition relating to liquor under paragraphs (a) to (c), the presence or use of a vehicle in a public place.

(3) A bylaw made under this section does not prohibit, in the case of liquor in an unopened bottle or other unopened container,-

(a) the transport of that liquor from premises that adjoin a public place during any period when, under the Sale of Liquor Act 1989, it is lawful to sell liquor on those premises for consumption off the premises, provided the liquor is promptly removed from the public place:

(b) the transport of that liquor from outside a public place for delivery to premises that adjoin the public place, provided the premises are licensed for the sale of liquor under the Sale of Liquor Act 1989:

(c) the transport of that liquor from outside a public place to premises that adjoin a public place-

(i) by, or for delivery to, a resident of those premises or by his or her bona fide visitors; or

(ii) from those premises to a place outside the public place by a resident of those premises, provided the liquor is promptly removed from the public place. *[Compare: 1974 No 66 s709A]*

#### **169 Powers of arrest, search, and seizure in relation to bylaw prohibiting liquor in public place**

(1) In this section and in section 170,-

**liquor** has the meaning given to it in the Sale of Liquor Act 1989

**offence** means an offence under section 239 that is a breach of a bylaw prohibiting-

(a) the consumption or possession or both of liquor in, or the bringing of liquor into, a public place; or

(b) in conjunction with a prohibition relating to liquor, the presence or use of a vehicle in a public place.

**public place** means a public place as defined in section 147(1) in respect of which there is a bylaw prohibiting-

(a) the consumption or possession or both of liquor in, or the bringing of liquor into, that place; or

(b) in conjunction with a prohibition relating to liquor, the presence or use of a vehicle in that place.

(2) A member of the police may, without warrant,-

(a) for the purpose of ascertaining whether liquor is present, search-

(i) a container (for example, a parcel, package, bag, or case) in the possession of a person who is in, or entering, a public place:

(ii) a vehicle that is in, or is entering, a public place:

(b) seize and remove liquor and its container if the liquor is in a public place in breach of a bylaw:

(c) arrest a person whom the member of the police finds committing an offence:

(d) arrest a person who has refused to comply with a request by a member of the police-

(i) to leave the public place; or

(ii) to surrender to a member of the police the liquor that, in breach of a bylaw, is in that person's possession.

(3) Liquor or a container seized under subsection (2)(b) is forfeited to the Crown if the person from whom the liquor or container is seized is convicted of breaching the bylaw.

#### **170 Conditions relating to power of search**

(1) Before exercising the power of search under section 169(2)(a) in relation to a container or a vehicle, a member of the police must-

(a) inform the person in possession of the container or the vehicle, as the case may be, that he or she has the opportunity of removing the container or the vehicle from the public place; and

(b) provide the person with a reasonable opportunity to remove the liquor or the vehicle, as the case may be, from the public place.

(2) However, on specified dates or in relation to specified events, notified in accordance with subsection (3), a member of the police may, immediately and without further notice, exercise the power under section 169(2)(a) to search a container or a vehicle.

(3) Before a member of the police may exercise the power of search under subsection (2), the territorial authority must-

(a) specify the public place (within the meaning of section 169(1)) where, and the period when, this power may be exercised by the police by public notice given 14 days in advance in accordance with this Act; and

(b) indicate the location of the public place by 1 or more clearly legible notices affixed in 1 or more conspicuous places on, or adjacent to, the place to which the notice relates, unless it is impracticable or unreasonable to do so.

(4) Subsection (2) only applies if the member of the police is authorised to exercise that power by a bylaw made under section 147. *[Compare: 1974 No 66 s709H]*

## LOCAL GOVERNMENT ACT 1974

### Prohibition of vehicles and consumption or possession of liquor in public places

#### 709A Prohibition of vehicles and consumption or possession of intoxicating liquor in public place

(1) In addition to the powers conferred on the council by sections 319, 342, and 366(2) of this Act or by regulations made pursuant to section 77(1)(u) of the Transport Act 1962 or by rules made under section 157 of the Land Transport Act 1998, the council may, in any case where it considers that on the occasion of the holding in any public place or part of a public place (in this section referred to as the specified public place) of any public event, function, or gathering, - [Section 366 was repealed on 1 July 1992]

- (a) The use of ordinary vehicular traffic in the specified public place should be prohibited; or
- (b) The consumption of liquor in the specified public place during that period or those periods, the bringing of liquor into the specified public place during that period or those periods, and the possession of liquor in the specified public place during that period or those periods should be prohibited; or
- (c) That both the prohibition referred to in paragraph (a) of this subsection and the prohibitions referred to in paragraph (b) of this subsection should apply, -  
the council may, not later than the day before the day of the public event, function, or gathering, but sooner so as to be able to comply with subsection (5) of this section unless the council considers there are special circumstances, -
- (d) Prohibit the use in the specified public place of ordinary vehicular traffic for any period or periods specified in the resolution; or
- (e) Prohibit the consumption of liquor in the specified public place during that period or those periods, the bringing of liquor into the specified public place during that period or those periods, and the possession of liquor containers in the specified public place during that period or those periods; or
- (f) Do both the matters specified in paragraphs (d) and (e) of this subsection.

(2) The council may delegate its powers under subsection (1) of this section to any committee of the council appointed under section 104 of this Act that comprises only members of the council, but may not delegate those powers to any committee that has any members who are not members of the council or to any officer of the council under section 715 of this Act. [Section 104 was repealed on 1 November 1989]

(3) A prohibition of ordinary vehicular traffic under subsection (1)(d) must not have effect for more than 12 hours in any consecutive period of 24 hours.

(4) No prohibition relating to liquor under this section shall be deemed to prohibit-

- (a) The transport of liquor from premises on land having a frontage to the specified public place during any period while pursuant to the [Sale of Liquor Act 1989] liquor may lawfully be sold on those premises for consumption off the premises, provided the liquor is promptly removed from the specified public place;
- (b) The transport of liquor from outside the specified public place for delivery to premises on land having a frontage to the specified public place, being premises licensed for the sale of liquor pursuant to the Sale of Liquor Act 1989;
- (c) The transport of liquor from outside the specified public place to premises on land having a frontage to the specified public place by or for delivery to a person residing on those premises or by his bona fide visitors, or from such premises to a place outside the specified public place by a person residing on the premises, provided the liquor is promptly removed from the specified public place.

(5) The council shall give public notice of every decision under this section in a newspaper circulating in the district on at least 3 occasions during the period of 21 days immediately preceding the day on which the prohibition or prohibitions are to have effect, or, where the prohibition or prohibitions are to have effect on 2 or more days, the first of those days.

(6) Notwithstanding subsection (5) of this section, where it is not practicable to give any or all of the notices required by that subsection because the decision of the council was made in special circumstances within a short period before the date of the prohibition or prohibitions, the council shall comply with subsection (5) of this section so far as is practicable and shall ensure that similar notices are displayed in the specified public place and given to the public in whole or in part by such other means as the council, after consultation with the Police, considers appropriate.

(7) Every notice required to be given or displayed under subsection (5) or subsection (6) of this section shall-

- (a) Describe clearly the specified public place and the proposed event, function, or gathering;
- (b) Specify whether or not the use of ordinary vehicular traffic is prohibited in the place, and shall specify the classes of vehicles (if any) to which the prohibition does not apply;
- (c) Specify any prohibitions relating to consumption of liquor and the bringing or possession of liquor that are to apply;
- (d) Specify the day or days on which any prohibition or prohibitions are to have effect, and the hours of each day during which the prohibition or prohibitions are to have effect;
- (e) Set out the powers conferred on the Police by this section;
- (f) Set out the maximum penalty for offences against this section.

(8) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$500, who, knowing that any prohibition under subsection (1) of this section is in force in respect of the specified public place, -

- (a) Consumes liquor in the specified public place in breach of any prohibition imposed under subsection (1) of this section; or
- (b) Brings liquor into any specified public place in breach of any such prohibition; or
- (c) Is in possession of liquor in any specified public place in breach of any such prohibition; or
- (d) Drives or rides any motor vehicle, being ordinary vehicular traffic, in any specified public place in breach of any such prohibition.

(9) Nothing in subsection (8)(d) of this section shall apply to the driving or riding of a motor vehicle by a person residing in premises on land having a frontage to the specified public place or by his bona fide visitors.

(10) Any constable may, without warrant, -

- (a) Arrest any person whom he finds committing an offence against this section;
- (b) During the period of the prohibition or prohibitions, arrest any person whom he has reasonable cause to suspect of having committed such an offence;
- (c) But subject to subsections (11) and (12), search any-
  - (i) Vehicle in, entering, or about to enter any specified public place in respect of which any prohibition relating to liquor under subsection (1) is for the time being in force, for the purpose of ascertaining whether or not the vehicle contains any liquor.

- (ii) Parcel, package, bag, case, or other container in the possession of any person in, entering, or about to enter any specified public place in respect of which any prohibition relating to liquor under subsection (1) is for the time being in force, for the purpose of ascertaining whether or not the parcel, package, bag, case, or container contains any liquor.
- (11) Before exercising the power of search conferred by subsection (10)(c), the constable must inform the person in possession of the vehicle or parcel, package, bag, case, or other container of the provisions of subsection (12), and in any case where the person is in possession of the vehicle or item in the specified public place, give the person a reasonable opportunity of removing the vehicle or item from the specified public place.
- (12) No constable may exercise the power of search conferred by subsection (10)(c) if the person in possession of the vehicle or parcel, package, bag, case, or other container removes it from or, as the case may be, refrains from taking it into the specified public place and leaves it outside the public place until the period of the prohibition ceases.
- (13) Any constable may seize and remove any liquor and its container or any other container that he has reasonable cause to believe would be evidence of the commission of an offence against this section.
- (14) Any liquor or container seized under subsection (13) of this section and in respect of which any person is convicted of an offence under this section, together, in the case of any liquor, with the container of the liquor, shall be deemed to be forfeited to the Crown.
- (15) In this section,-  
 liquor has the same meaning as in the Sale of Liquor Act 1989:  
 public place means any place that, at any material time, is under the control of the council and is open to or being used by the public, whether free or on payment of a charge; and includes any road whether or not it is under the control of the council:  
 ordinary vehicular traffic, in relation to any specified public place, means all vehicular traffic other than traffic of any kind (if any) that pursuant to the decision of the council under subsection (1) of this section is permitted to use the specified public place during the period of the prohibition.  
*[Compare: 1974 No 66, s346; 1978 No 43, s2] [s709A: Inserted on 14 December 1984 by 1984 No 18, s2]*  
*[For authorisation to extend until 30 April 2002 the powers as exercised before 22 December 2001 see 2001 No 106, s10]*  
*[s709A(1)(b)&(e): Words "or empty liquor containers" omitted after "liquor" on 10 September 1999 by 1999 No 108, s10(1)]*

**709B Interpretation** *[s709B - s709H: Inserted on 10 September 1999 by 1999 No 108, s11]*

In sections 709C to 709H, unless the context otherwise requires,-

"liquor" has the same meaning as in the Sale of Liquor Act 1989:

"prohibition" means a prohibition under section 709C:

"public place"-

(a) Means a place that is-

- (i) Under the control of a council; and
- (ii) Open to or being used by the public, whether admission is free or on payment of a charge; and

(b) Includes-

- (i) A road, whether or not the road is under the control of a council; and
- (ii) One or more parts of a public place:

"specified day" means a day or any days specified by a territorial authority in a resolution under section 709C(2) as a day or days in respect of which one or more powers under that subsection are to be exercised

"vehicle"-

(a) Has the same meaning as in section 2 of the Land Transport Act 1998; but

(b) Does not include an ambulance, fire engine, or police vehicle.]

*["specified day": Definition repealed and substituted on 22 December 2001 by 2001 No 106, s9: "(a) Waitangi Day: (b) The seventh of February: (c) A day in the period beginning on Good Friday and ending on the close of the following Easter Monday: (d) A day in the period comprising the Sovereign's birthday and the Saturday and Sunday immediately before it: (e) A day in the period comprising Labour Day and the Saturday and Sunday immediately before it: (f) The fifth of November: (g) The sixth of November: (h) A day in the period beginning on 24 December and ending on the close of 2 January in the following year"]*

**709C Further power to prohibit vehicles and liquor in public places**

(1) A council may exercise the power in subsection (2), if the council-

(a) Is satisfied on reasonable grounds that-

- (i) Liquor will be present in a public place on a specified day; and
- (ii) The presence of liquor in the public place on the specified day is likely to lead to the commission in the public place of a number of offences against 1 or more of the following sections of the Summary Offences Act 1981:
  - (A) Section 3 (disorderly behaviour);
  - (B) Section 4 (offensive behaviour or language);
  - (C) Section 5A (disorderly assembly);
  - (D) Section 7 (fighting in a public place);
  - (E) Section 9 (common assault); and

(b) Has used the special consultative procedure in section 716A.

(2) A council may prohibit 1 or more of the following:

- (a) The use of vehicles in a public place during a specified day;
- (b) The consumption of liquor in a public place during a specified day;
- (c) The bringing of liquor into a public place during a specified day;
- (d) The possession of liquor in a public place during a specified day.

*[For extension until 30 April 2002 of the application of powers exercised before 22 December 2001 see 2001 No 106, s10]*

(3) The power in subsection (2) may be exercised-

- (a) In respect of 1 or more periods of time in a specified day;
- (b) In respect of the whole of a specified day.

(4) The power in subsection (2) may be exercised in respect of 2 or more specified days, whether consecutive or not.

(5) A council must not delegate its power in subsection (2) to-

- (a) A committee of the council under section 114Q unless all the members of the committee are members of the council; or
- (b) A member or officer of the council under section 715.

(6) The power in subsection (2) is in addition to the powers conferred on a council under-

- (a) Sections 319 and 342:

(b) Regulations made under section 167 of the Land Transport Act 1998.

#### **709D Exceptions to prohibition for residents and their visitors**

A prohibition does not apply to-

- (a) The use of a vehicle by a person residing in premises on land having a frontage to the public place concerned or by genuine visitors of the person;
- (b) The transport of liquor from premises on land having a frontage to the public place concerned if:
  - (i) The liquor is being delivered by a person residing on the premises or by the person's genuine visitors to a place outside the public place; and
  - (ii) The liquor is promptly removed from the public place;
- (c) The transport of liquor from outside the public place concerned if:
  - (i) The liquor is being delivered to a person residing on premises having a frontage to the public place or to the person's genuine visitors; and
  - (ii) The liquor is promptly removed from the public place.

#### **709E Exceptions to prohibition for licensed premises**

A prohibition does not apply to-

- (a) The transport of liquor from premises on land having a frontage to the public place concerned if:
  - (i) The liquor has, under the Sale of Liquor Act 1989, been sold on the premises for consumption off the premises; and
  - (ii) The liquor is promptly removed from the public place;
- (b) The transport of liquor from outside the public place concerned for delivery to premises on land having a frontage to the public place concerned if:
  - (i) The liquor may, under the Sale of Liquor Act 1989, be sold on the premises; and
  - (ii) The liquor is promptly removed from the public place.

#### **709F Public notice**

(1) A prohibition has no effect unless public notice of the prohibition is given in accordance with this section.

(2) Public notice of a prohibition must be given-

- (a) By displaying the notice in the public place concerned on the date it comes into force and before the time it comes into force; and
  - (b) In a newspaper circulating in the district concerned on at least 3 occasions during the period of 21 days immediately before-
    - (i) The specified day on which the prohibition comes into force; or
    - (ii) If the prohibition applies to 2 or more consecutive specified days, the first of the specified days on which the prohibition comes into force.
- (3) However, if it is not practicable to give public notice of a prohibition in accordance with subsection (2)(b) because the decision of the council was made in special circumstances within a short period before the date of the prohibition, the council must-
- (a) Comply with subsection (2)(b) so far as is practicable; and
  - (b) Ensure that similar notices are given to the public in whole or in part by such other means as the council, after consultation with the police, considers appropriate.
- (4) A notice required to be given or displayed under subsection (2) or subsection (3) must-
- (a) State the specified day or days on which the prohibition is in force and the hours of the specified day or days during which the prohibition is in force; and
  - (b) Describe clearly the public place concerned; and
  - (c) State whether or not the use of vehicles is prohibited in the public place concerned and, if it is, state the classes of vehicles (if any) the prohibition does not apply to; and
  - (d) State any prohibitions relating to the consumption of liquor and the bringing or possession of liquor that apply; and
  - (e) State the powers conferred on the police by section 709H; and
  - (f) State the maximum penalty for offences against section 709G.

#### **709G Offences**

Every person commits an offence and is liable on summary conviction to a fine not exceeding \$500 who, knowing that a prohibition is in force, contravenes the prohibition.

#### **709H Powers of arrest, search, and seizure**

(1) A member of the police may, without a warrant,-

- (a) Arrest a person whom the member of the police finds committing an offence against section 709G;
  - (b) While a prohibition is in force, arrest a person whom the member of the police has reasonable cause to suspect of having committed an offence against section 709G.
- (2) A member of the police may, without a warrant, search-
- (a) A vehicle in, entering, or about to enter a public place, in respect of which a prohibition under 1 or more of paragraphs (b) to (d) of section 709C(2) is in force, for the purpose of ascertaining whether or not the vehicle contains liquor;
  - (b) A container (for example, a parcel, package, bag, or case) in the possession of a person who is in, entering, or about to enter a public place, in respect of which a prohibition under 1 or more of paragraphs (b) to (d) of section 709C(2) is in force, for the purpose of ascertaining whether or not the container contains liquor.
- (3) Before exercising the power of search in subsection (2), a member of the police must-
- (a) Inform the person in possession of the vehicle or container of the provisions of subsection (4); and
  - (b) If the person is in possession of the vehicle or container in the public place, give the person a reasonable opportunity to remove the vehicle or container from the public place.
- (4) A member of the police must not exercise the power of search in subsection (2) if the person in possession of the vehicle or container removes it from, or refrains from taking it into, the public place concerned.
- (5) A member of the police may seize and remove liquor and its container or any other container that the member of the police has reasonable cause to believe would be evidence of the commission of an offence against section 709G.
- (6) Liquor or a container seized under subsection (5) is forfeited to the Crown if the person from whom the liquor or container is seized is convicted of an offence against section 709G.



Waitakere City Council  
*Te Itiao o Waitakere*

### **DRAFT CONTROL OF DRINKING IN PUBLIC PLACES BYLAW 2003**

Section 147 of the Local Government Act 2002 gives Council the power to make bylaws for liquor control purposes. At Council's meeting of 24 September 2003 a draft Control of Drinking in Public Places Bylaw 2003 was approved for public consultation.

The draft bylaw imposes a liquor ban from 5pm-5am at Piha beach areas on the following days:

- (i) Christmas/New Year: 23/24 December – 2nd Sunday in January
- (ii) Auckland Anniversary Weekend: Friday – Monday
- (iii) Waitangi Day Holiday: 5-6 February (including any long weekend)
- (iv) Easter Period: Thursday – Tuesday
- (v) Anzac Day Holiday: 24-25 April (including any long weekend)
- (vi) Queen's Birthday Weekend: Friday – Monday
- (vii) Labour Weekend: Friday – Monday
- (viii) Guy Fawkes: 5 November (including an attached weekend)

The draft bylaw also permits special event liquor bans to be imposed by Council resolution.

Public notification of any liquor ban imposed under the bylaw will be given by newspaper and on-location signage. When imposed the liquor bans will confer upon the Police the rights of search and seizure described in sections 169 and 170 of the Local Government Act 2002.

For a Summary of Information, Statement of Proposal (including draft bylaw) and/or Submission Form for the Control of Drinking in Public Places Bylaw 2003, please visit Waitakere City Council's Counter Services at the Civic Centre, 6 Waipareira Ave, Henderson, phone the Call Centre on 0-9-839 0400, visit the website: <http://www.waitakere.govt.nz/HavSay/index.asp> or email: [info@waitakere.govt.nz](mailto:info@waitakere.govt.nz)

Public submissions on the draft bylaw should be made by sending a completed Submission Form before the closing date of **31 October 2003** to Waitakere City Council, Private Bag 93-109, Henderson (or fax: 0-9-836 8001, email: [info@waitakere.govt.nz](mailto:info@waitakere.govt.nz) or website: <http://www.waitakere.govt.nz/HavSay/index.asp>).

Submissions will be considered by Council's Environmental Management Committee from 9.30am on 11 November 2003.

**H V O'Rourke**  
*Chief Executive*

*"SUSTAINABLE, DYNAMIC, JUST"*