

Alcohol Control Bylaw 2022

Explanatory Note

The objective of the Alcohol Control Bylaw is to help minimise the potential for offensive behaviour in public places, to protect the public from nuisance in public places, and to protect, promote and maintain public health and safety in public places.

This Bylaw is made by the Western Bay of Plenty District Council under the powers given to it by the Local Government Act 2002 and the Sale and Supply of Alcohol Act 2012 and their respective amendments.

Western Bay of Plenty District Council

Alcohol Control Bylaw 2022

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Western Bay of Plenty District Council

Alcohol Control Bylaw 2022

Authority

Pursuant to the powers vested in it under Section 147 of the Local Government Act 2002, the Western Bay of Plenty District Council makes this Bylaw.

Title

This Bylaw may be cited as the Western Bay of Plenty District Council Alcohol Control Bylaw 2022 and shall come into force on 6 May 2022.

Repeal

The Western Bay of Plenty District Alcohol Control Bylaw 2016 is repealed

Bylaw Structure

This Bylaw comprises the document including Schedule 1.

Scope

This Bylaw shall apply within the boundaries of the Western Bay of Plenty District. The provisions shall apply to the areas as detailed in Schedule 1, and any temporary areas as made by Council from time to time.

The purpose of this Bylaw is to prohibit or control the consumption of, bringing into and possession of alcohol into restricted places, and also to:

- (a) Protect the public from nuisance in public places;
 - (b) Protect, promote and maintain public health and safety in public places;
- and
- (c) Minimise the potential for offensive behaviour in public places.

Validation

The Western Bay of Plenty District Council Alcohol Control Bylaw 2022 was duly made at a meeting of the Western Bay of Plenty District Council held on 6 April 2022, after completion of the Special Consultative Procedure, and will come into force on 6 May 2022.

Savings

All approvals, permits, and other acts of authority (including any resolutions of the Council) which originated under the Western Bay of Plenty District Council Alcohol Control Bylaw 2016, and all applications, and other acts of parties and generally all documents, matters, acts, and things which so originated and are continuing at the commencement of this Bylaw, continue for the purposes of this Bylaw to have full force and effect.

The revocation of the Western Bay of Plenty District Council Alcohol Control Bylaw 2016 does not prevent any legal proceedings, criminal or civil, being taken to enforce that bylaw and such proceedings continue to be dealt with and completed as if that bylaw had not been revoked.

1. Definitions

Alcohol

As defined in section 5 of the Sale and Supply of Alcohol Act 2012, means a substance –

- (a) That –
 - a. Is or contains a fermented, distilled, or spirituous liquor; and
 - b. At 20°C is found on analysis to contain 1.15% or more ethanol by volume; or
- (b) That –
 - a. Is a frozen liquid, or a mixture or a frozen liquid and another substance or substances; and
 - b. Is alcohol (within the meaning of paragraph (a)) when completely thawed to 20°C; or
- (c) That, whatever its form, is found to contain 1.15% or more ethanol by weight in a form that can be assimilated by people.

Alcohol Control Area

Means public place(s) specified in Schedule 1 of this Bylaw, and in respect of which the prohibitions and controls in this Bylaw will apply at any specified time, day or event. It does not include any part of a public place for which an alcohol licence has been issued under the Sale and Supply of Alcohol Act 2012.

Event

As defined in section 5 of the Sale and Supply of Alcohol Act 2012, includes an occasion or gathering, and any of a series of events

Licensed premises

As defined in section 5 of the Sale and Supply of Alcohol Act 2012, means any premises for which a licence is held (where premises may include a conveyance, or part of any premises).

Public Place

As defined in section 147 of the Local Government Act 2002,

- (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 and person from it; but
- (b) Does not include licensed premises.

Restricted Place Means a public place where an Alcohol Control Area or Temporary Alcohol Control Area is in force.

Temporary Alcohol Control Area

Means public place(s) specified by Council resolution publicly notified where the same prohibitions and controls as for Alcohol Control Areas will temporarily apply, due to the occurrence of a specific event.

2. Alcohol Control Areas

- 2.1 This Bylaw makes permanent alcohol bans in specified Alcohol Control Areas in Waihi Beach, Katikati and Te Puke. Subject to clause 6 of this Bylaw, the following actions are prohibited at all times in any place within the Alcohol Control Areas detailed in Schedule 1:
- (a) The consumption of alcohol in an Alcohol Control Area;
 - (b) The bringing of alcohol into an Alcohol Control Area;
 - (c) The possession of alcohol in an Alcohol Control Area; and
 - (d) In conjunction with the alcohol controls under paragraphs (i) to (ii) above, the presence or consumption of alcohol in vehicles within any Alcohol Control Area is also prohibited.
- 2.2 Alcohol Control Areas can only be made, amended or revoked through a review of this Bylaw, using the Special Consultative Procedure as required by section 156 of the Local Government Act 2002.
- 2.3 Aside from regular reviews required by sections 158 or s159 of the Local Government Act 2002, Council will only initiate a review of this Bylaw (for the specific purpose of proposing new Alcohol Control Areas) where it considers that the requirements of section 147A of the Local Government 2002 have been satisfied (i.e. where there is sufficient evidence to justify the making of a new Alcohol Control Area).

3. Temporary Alcohol Control Areas

- 3.1 Council may from time to time, by way of resolution publicly notified, impose temporary alcohol bans. A Temporary Alcohol Control Area may be made for a particular time period related to a specific event, for a period not exceeding seven (7) consecutive days.
- 3.2 The same prohibitions and controls in clause 2.1 (which apply to Alcohol Control Areas with permanent alcohol bans) will apply for the period of the temporary ban.
- 3.3 Before Council makes a Temporary Alcohol Control Area, it will consider:
- (a) the nature and duration of the expected event;
 - (b) the number of people expected to attend;
 - (c) the history of the event (if any);
 - (d) the area in which the event is to be held;
 - (e) the nature and history of alcohol-related problems usually associated with the area, together with any anticipated alcohol-related problems;
 - (f) whether the benefits to local residents and to the community would

outweigh the restrictions the resolution would impose on local residents and other people, including those who may be attending any events, in the area covered by resolution;

- (g) whether the Police support the proposed Temporary Alcohol Control Area; and
- (h) any other information the Council considers relevant.

3.4 Where a Temporary Alcohol Control Area is made, public notice shall be given for a minimum of seven (7) days prior to the event or particular time of the year, specifying the areas and the time periods when the provisions of this Bylaw shall apply. Public notices shall be affixed in or adjacent to these specified public places for such times that the provisions of this Bylaw apply.

4. Offences and Penalties

4.1 Every person commits an offence under the Local Government Act 2002, and is liable upon summary conviction to a fine not exceeding \$20,000, who:

- (a) Fails to comply with or acts in contravention to any alcohol ban or any provision under this Bylaw;
- (b) Fails, refuses or neglects to comply with any notice duly given to that person under this Bylaw; or
- (c) Breaches the conditions of any dispensation or exemption granted under clause 6 this Bylaw.

4.2 Breaches of this Bylaw are also Infringement Notice offences under s245 of the Local Government Act 2002.

5. Powers of the Police

5.1 In accordance with the powers of arrest, search and seizure set out in sections 169, 169A and 170 of the Local Government Act 2002, a member of the Police may, without warrant, for the purpose of ascertaining whether alcohol is present, search a container (such as a parcel, package, bag or case) in the possession of a person who is in, or entering, a Restricted Place; or a vehicle that is in or is entering a Restricted Place; and seize and remove any alcohol (and its container) that is in a Restricted Place in breach of an alcohol ban.

5.2 A person must be informed that they have the opportunity to promptly remove a container or a vehicle containing alcohol from a Restricted Place, and the person shall be given reasonable opportunity to do so. For the

avoidance of doubt, if the person has removed alcohol from the Restricted Place and returns to that Restricted Place with alcohol (within a period when it could be deemed that the person has been informed prior to remove the alcohol), then this clause shall not be interpreted as requiring the member of Police to provide the person with a further opportunity to remove the alcohol from the Restricted Place prior to search.

5.3 A member of the Police may arrest:

- (a) any person whom the Police find committing an offence against this Bylaw;
- (b) arrest a person who has refused to comply with a request made by Police:
 - (i) to leave the Restricted Place; or
 - (ii) to surrender to a constable the alcohol that, in breach of an alcohol ban, is in the person's possession.

5.4 Alcohol or a container seized under section 169(2)(b) of the Local Government Act 2002 is forfeited to the Crown if the person from whom the alcohol or container is seized pays the infringement fee.

6. Exemptions and Dispensations

6.1 As provided for in section 147(4) of the Local Government Act 2002, this Bylaw does not prohibit, regulate, or control, in the case of alcohol in an unopened container,—

- (a) the transport of the alcohol from licensed premises next to a public place, if—
 - (i) it was lawfully bought on those premises for consumption off those premises; and
 - (ii) it is promptly removed from the public place; or
- (b) the transport of the alcohol from outside a public place for delivery to licensed premises next to the public place; or
- (c) the transport of the alcohol from outside a public place to premises next to a public place by, or for delivery to, a resident of the premises or his or her bona fide visitors; or
- (d) the transport of the alcohol from premises next to a public place to a

place outside the public place if—

- (i) the transport is undertaken by a resident of those premises; and
- (ii) the alcohol is promptly removed from the public place.

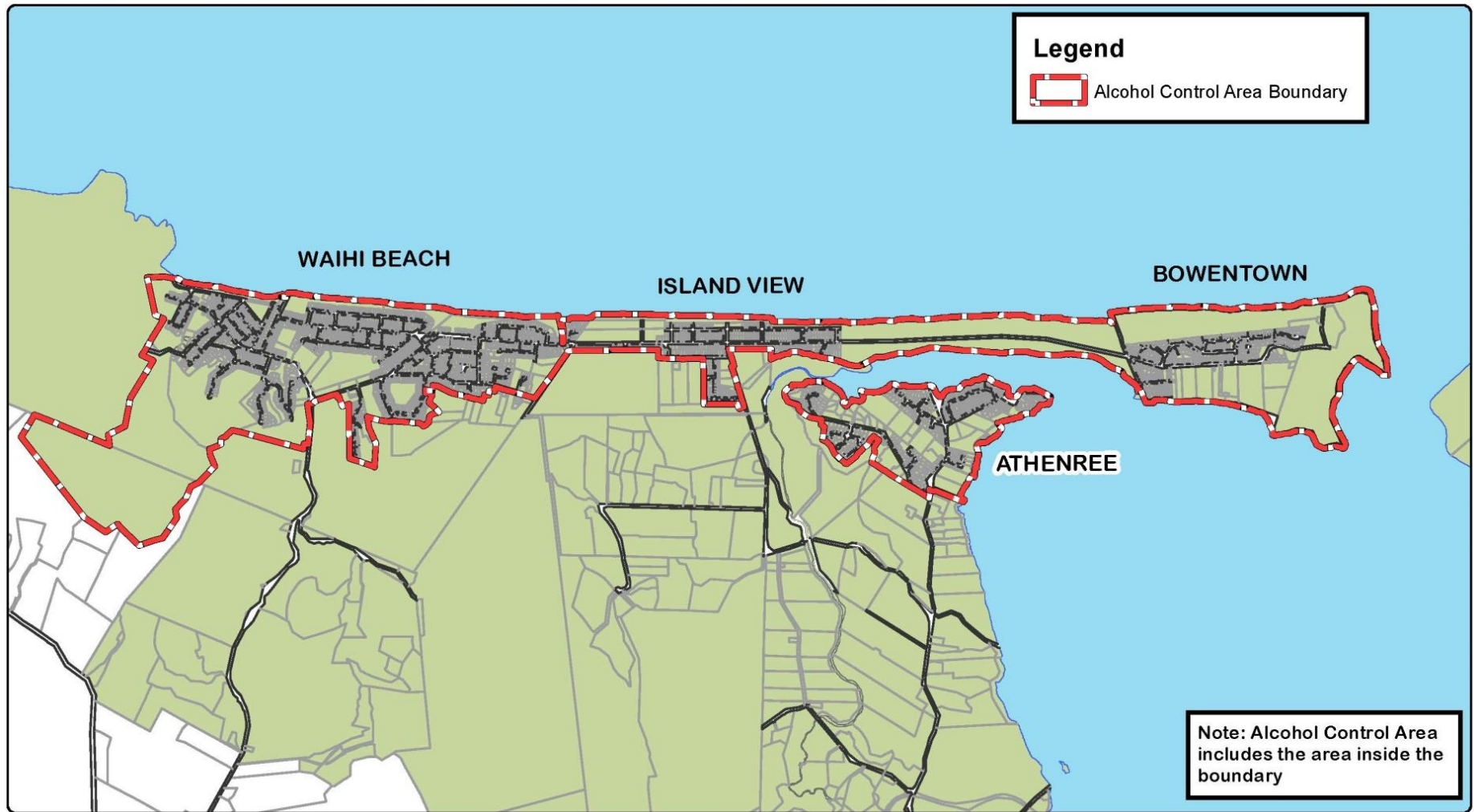
- 6.2 This Bylaw does not limit any individual or organisation (corporate or otherwise) from obtaining a Special Licence pursuant to section 137 of the Sale and Supply of Alcohol Act 2012, for any event to be held in a Restricted Place.
- 6.3 The Chief Executive of the Western Bay of Plenty District Council or a delegated staff member may, on application by any person (including a territorial authority employee), grant a dispensation to do or refrain from doing anything that would otherwise be in breach of this Bylaw for the purpose of enabling possession and/or consumption of alcohol in a Restricted Place at anytime for a specific event. Such dispensation will only be granted for the specific time periods and specific locations associated with the event, and may be subject to conditions or requirements as the delegated staff member determines necessary to meet the objectives of the Local Government Act 2002 and the Sale and Supply of Alcohol Act 2012.
- 6.4 This Bylaw does not prohibit the possession and/or consumption of alcohol at any premises within a Restricted Place in compliance with the conditions of a license for the sale and/or consumption of alcohol under the Sale and Supply of Alcohol Act 2012. This includes footpath areas that are licenced as part of those premises and are clearly defined on an approved plan of a current and appropriate licence. The operating hours permitted by the licence must also apply at the time alcohol is being possessed or consumed within the licensed area. Such footpath areas will be required to comply with all other relevant Western Bay of Plenty District Council Bylaws.

Schedule 1: Alcohol Control Areas

Public places within the following areas of the Western Bay of Plenty District are Alcohol Control Areas for the purpose of this Bylaw, as shown on the maps attached for:

- Waihi Beach (Map A)
- Katikati (Map B)
- Te Puke (Map C)

Map A – Waihi Beach



Produced using ArcMap by the Western Bay of Plenty District Council GIS Team.
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Location of services is indicative only. Council accepts no liability for any error.
Archaeological data supplied by NZ Archaeological Assoc/Dept. of Conservation.

Email: gis@westernbay.govt.nz
Date: 14/07/2016
Operator: mlb
Map: E:\Shape\MLB\2016\Alcohol Control Areas\Alcohol Control Area - Waihi Beach.mxd

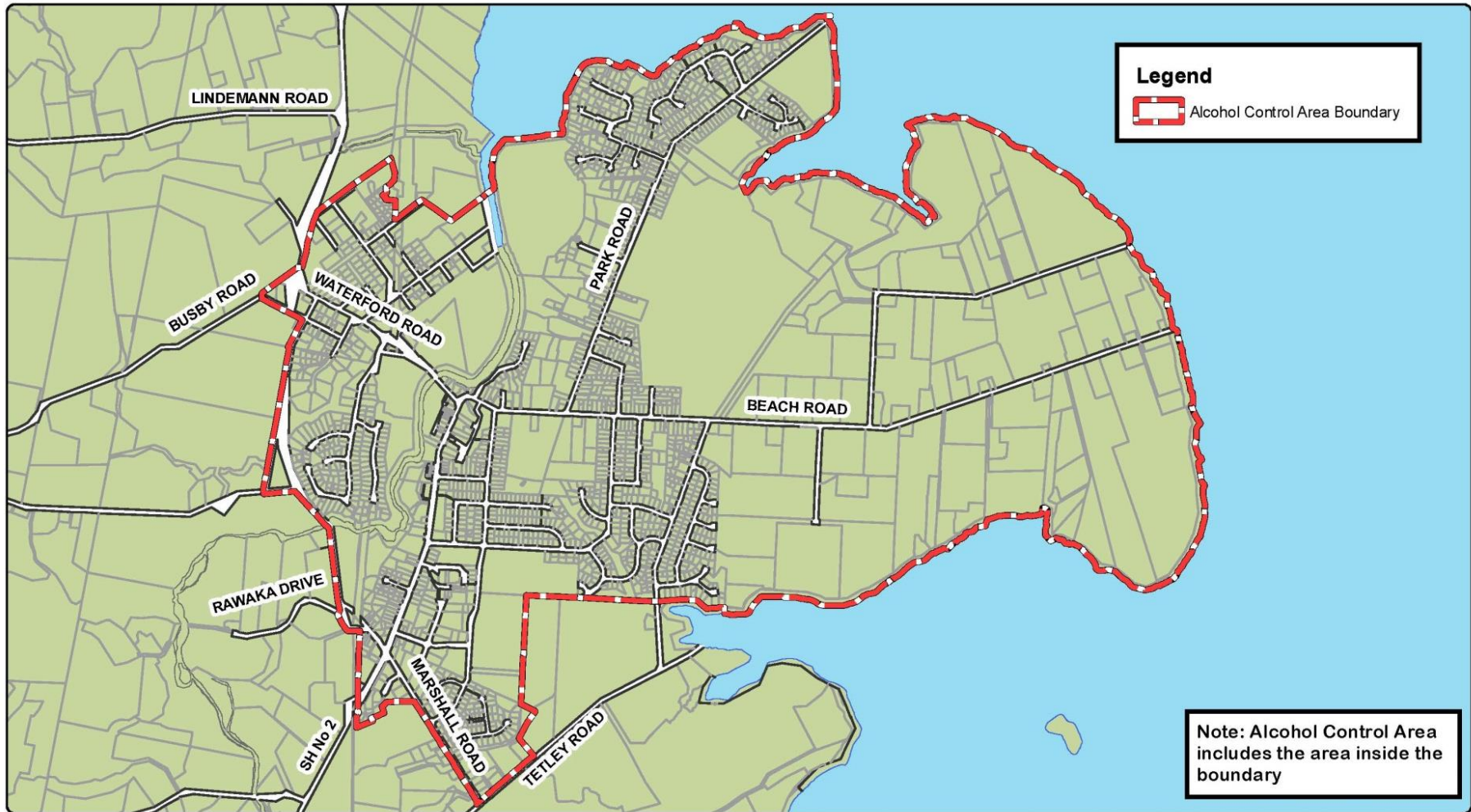
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0 0.5 1 2 3 Kilometers



**ALCOHOL CONTROL AREA
WAIHI BEACH**



Map B – Katikati



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Email: gis@westernbay.govt.nz
Date: 14/07/2016
Operator: mlb
Map: E:\Shape\MLB\2016\Alcohol Control Areas\Alcohol Control Area - Katikati.mxd

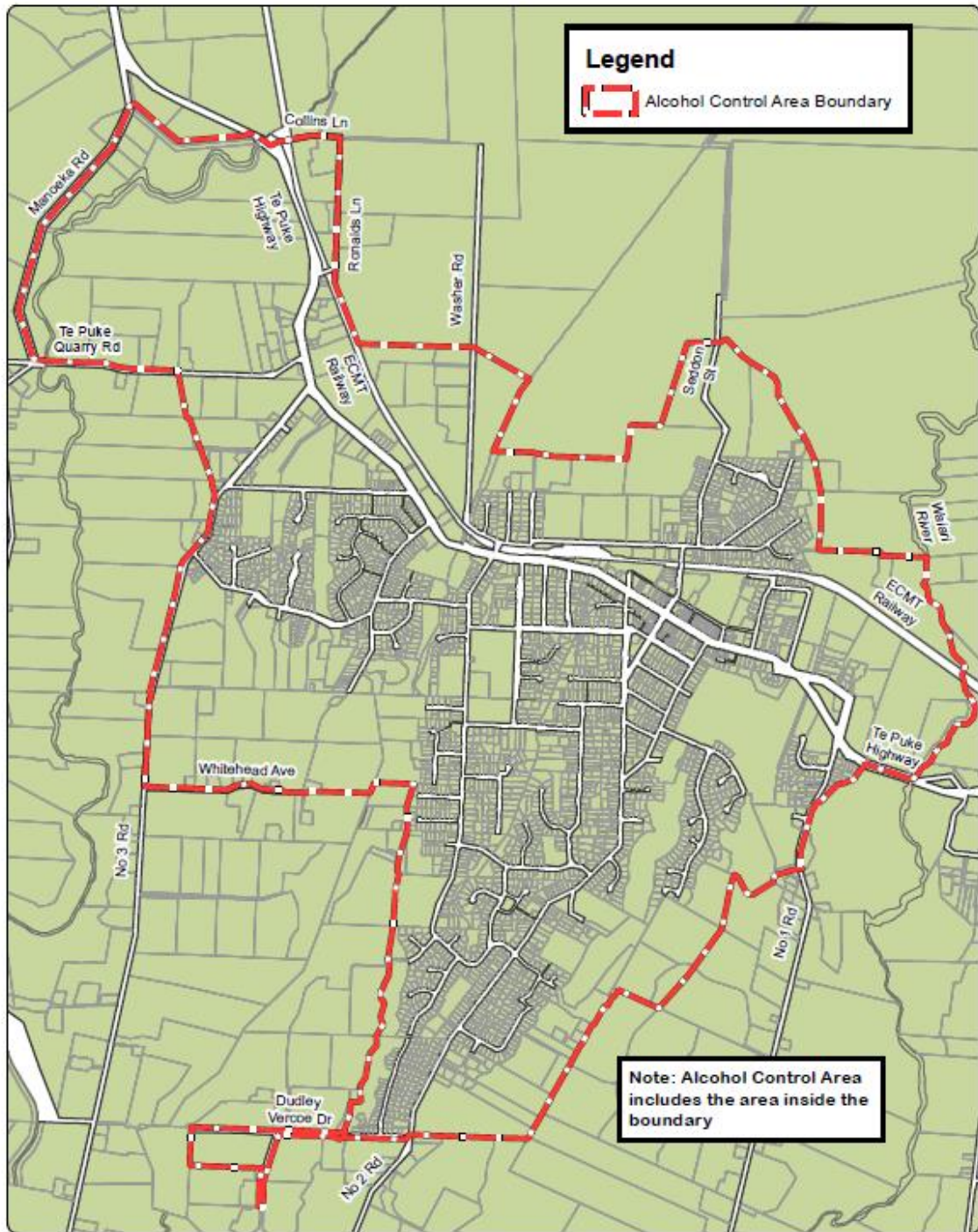
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0 250 500 1,000 1,500 2,000 Meters



**ALCOHOL CONTROL AREA
KATIKATI**



Map C – Te Puke



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 Archaeological data supplied by NZ Archaeological Assoc/Dept. of Conservation.

Email: gis@westernbay.govt.nz
 Date: 26/10/2021
 Operator: mlb
 Map: 0:\Shape\MLB\2016\Alcohol Control Areas\Alcohol Control Area - Te Puke - Updated

Scale A4 - 1:22,000
 0 100 200 400 600 800 1,000 Metres



**ALCOHOL CONTROL AREA
 TE PUKE**

