

**Ministerial
Guidelines
on
Alcohol - Free
Zones**

February 2009

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FOREWORD

The NSW Government has made clear its determination to tackle the growing problem of anti-social behaviour and alcohol-related violence in our community. The Government has introduced a comprehensive package of initiatives to help address this issue, including amendments to the alcohol-free zone provisions in the *Local Government Act 1993* to give Police and local council enforcement officers more power to enforce alcohol-free zones.

These Ministerial Guidelines have been prepared under section 646(1) of the *Local Government Act*. The Guidelines take effect on 5 February 2009 replacing the previous Guidelines issued in 1995.

The principal object of an alcohol-free zone is to prevent disorderly behaviour caused by the consumption of alcohol in public areas in order to improve public safety.

Alcohol-free zones are most effective if they form part of a larger program in which the local community is actively involved directed at irresponsible alcohol consumption. Used in isolation they may only move the problem from one place to another.

The Guidelines provide councils with detailed procedures to be followed when considering the establishment of alcohol-free zones. The guidelines include details on the application process, consultation and operational requirements, as well as guidance on enforcing alcohol-free zones. Councils are encouraged to establish a good working relationship with their Police local area command to enhance the effectiveness of alcohol-free zones.

There is evidence that when alcohol-free zones are established in appropriate areas and operated with the required level of resources to promote and enforce the zones, they are an effective tool in assisting Police and councils manage public safety.

I encourage all councils to consider the appropriate use of alcohol-free zones to manage alcohol related anti-social behaviour in their community.



The Hon. Barbara Perry, MP
Minister for Local Government
5 February 2009

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INTRODUCTION

The object of alcohol-free zones is an early intervention measure to prevent the escalation of irresponsible street drinking to incidents involving serious crime.

The drinking of alcohol is prohibited in an alcohol-free zone that has been established by a council. Public places that are public roads, footpaths or public car parks may be included in a zone. Alcohol-free zones promote the use of these roads, footpaths and car parks in safety and without interference from irresponsible street drinkers.

Any person living or working within an area, the local police or a local community group may ask a council to establish an alcohol-free zone or a council itself may decide to do so. A proposal to establish an alcohol-free zone must in all cases be supported by evidence that the public's use of those roads, footpaths or public car parks has been compromised by street drinkers. For example, there could be instances of malicious damage to property, littering, offensive behaviour or other crimes.

The council must undertake a consultation process to decide if an alcohol-free zone is appropriate. Once established by council resolution, the roads, footpaths and public car parks within the zone must be signposted and notice of the zone must appear in the local press. The maximum duration of an alcohol-free zone is four years, although it may be re-established at the conclusion of the original period, following a review by council of its continuing applicability. Alcohol-free zones may also be established for special events only.

Alcohol-free zones are enforced by the police or by council enforcement officers where the Commissioner of Police gives written authorisation. Any person observed to be drinking in an alcohol-free zone may have the alcohol in their possession immediately seized and tipped out or otherwise disposed of.

Alcohol-free zones are most effective if they are part of a larger program directed at irresponsible alcohol consumption in which the local community is actively involved. Used in isolation they may only move the problem from one place to another.

These Ministerial Guidelines provide local councils with detailed procedures which must be followed in the establishment of an alcohol-free zone. They supplement the relevant provisions of the *Local Government Act 1993*.

Each of the paragraphs of these Guidelines are accompanied by the relevant section reference in the Act. As set out in section 646 of the Local Government Act, the Ministerial Guidelines must be used by councils when establishing an alcohol-free zone.

The Commissioner of Police may separately issue directions relating to the enforcement of alcohol-free zones.

GUIDELINES FOR COUNCILS

VALID ESTABLISHMENT OF AN ALCOHOL-FREE ZONE

sections 644, 644A, 644B, 644C and 646

To validly establish an alcohol-free zone a council must comply with the procedures in sections 644 to 644C of the Local Government Act as well as those set out in these Guidelines.

The Act identifies that alcohol-free zones can be established in those areas which have identified problems with regard to street drinking.

APPLICATION FOR AN ALCOHOL-FREE ZONE

section 644 (1) and (2)

One or more of the following people may make application to a local council to establish an alcohol-free zone:

- a person who is a representative of a community group active in the area,
- a police officer, or
- a person who lives or works in the area.

An application to the relevant council is to be made in the form set out at Appendix 1 to these Guidelines. A council may adapt the form, provided the same information is required as a minimum. Councils may consider making the application form available on their website.

An application fee is not appropriate.

If council receives more than one application referring to the same roads, footpaths or public carparks, they may be joined in a single alcohol-free zone proposal.

PROPOSAL FOR THE ESTABLISHMENT OF AN ALCOHOL-FREE ZONE

section 644

A council may prepare a proposal for the establishment of an alcohol-free zone. In this case, receipt of an application is not necessary as the council itself is initiating action for a zone.

A proposal must be prepared in respect of every proposed alcohol-free zone.

An alcohol-free zone is a means by which a council may limit the locations within its area where the consumption of alcohol is permitted. Because it will impose restrictions on the personal freedom of citizens, a proposal to establish a zone must adequately address the following matters:

1 Reasons to Support an Alcohol-Free Zone

The irresponsible consumption of alcohol on roads and footpaths and in public car parks can compromise their safe use by members of the public without interference. Each individual zoning is to be considered according to its particular circumstances.

Reasons for supporting alcohol-free zones must be included and must reflect the fact that irresponsible behaviour arising from the consumption of alcohol is occurring on those roads and footpaths and in those public car parks included in the proposal. This could involve instances of obstruction, littering, the actual commission of, or police intervention to avoid the commission of, more serious offences under the *Law Enforcement (Powers and Responsibilities) Act 2002*, *Summary Offences Act 1988* or the *Crimes Act 1900*, such as malicious damage, etc.

It is not appropriate to consider an alcohol-free zone for reasons that are unrelated to the irresponsible behaviour of drinkers, for example, the congregation of drinkers where irresponsible behaviour does not occur, general conduciveness to business or tourist activities or the personal beliefs of particular citizens.

2 Location of an Alcohol-Free Zone

An alcohol-free zone may only be established to include a public road, footpath or a public place that is a car park (ie car parks on public land or Crown land). Private car parks (being on private land and not under the control of the council) may not be included.

Generally, an alcohol-free zone should be as small as is possible and must only extend to areas which can be supported by reasons as set out in point 1 above. However, larger alcohol-free zones, sometimes known as 'whole-town' alcohol-free zones may be effective in some rural and remote towns where they are supported generally by all stakeholder groups in that community. There are legal issues that need to be considered by councils when such 'whole-town' zones are proposed, as some relevant areas of a town will not be public roads, footpaths or public car parks.

Large alcohol-free zones need to be established in a way which is complementary with public places signposted under section 632 of the *Local Government Act 1993*. It is not usually appropriate to establish an entire local government area, or a substantial part of that area, as an alcohol-free zone. Similarly, it would usually be inappropriate to zone the greater part of a town, suburb or urban area as alcohol-free.

Alcohol-free zones should primarily be located adjacent to outlets supplying alcohol where drinkers congregate. In the absence of such an outlet a zoning should be considered only in exceptional circumstances. For example, a known hot spot for inappropriate street drinking may be in a public car park adjacent to a beach or public reserve, but which is many kilometres from an outlet supplying alcohol.

Alcohol-free zones and alfresco dining

In some circumstances an alcohol-free zone may be proposed for an area that includes footpath alfresco dining areas for cafés and restaurants which fall within the zone. When a council issues a licence for the use of public footpaths for such dining use in an alcohol-free zone, it must impose conditions on the licensee (eg restaurant operator) about the requirements of the zone, including clear delineation and control of the licensed area from the alcohol-free zone.

3 Duration of an Alcohol-Free Zone

An alcohol-free zone may be established for a maximum period of four years. Once established, it applies twenty-four hours per day.

Where a problem with irresponsible street drinking exists only in relation to a special event within the local area, an alcohol-free zone may be established only for that special event. A “special event” is not defined in the Local Government Act. It could be applied to any event that is of significance to the local area, for example, a local show day, a cultural event such as Tamworth’s Country Music Festival, or a particular time of year such as New Year’s Eve celebrations. It is for the relevant council to decide what is a “special event” for the purposes of establishing an alcohol-free zone.

An alcohol-free zone declared for a special event also has a maximum duration of four consecutive years. The proposal and related signage needs to define the special event that the alcohol-free zone relates to.

The duration of an alcohol-free zone established prior to 3 December 2008 is not extended.

4 Consultation with the Police

In preparing a proposal to establish an alcohol-free zone a council must consult with the relevant Police Local Area Commander about the appropriate number and location of alcohol-free zones.

COUNCIL CONSULTATION WITH INTERESTED PARTIES

section 644A

After preparing a proposal to establish an alcohol-free zone a council is required to undertake a public consultation process. The process under the Act involves all of the following:

1. Publish a notice of the proposal in a newspaper circulating in the area of the proposed alcohol-free zone, allow inspection of the proposal and invite representations or objections within 30 days from the date of publication. The notice should state the exact location of the proposed alcohol-free zone, and the place and time at which the proposal may be inspected.

Ministerial Guidelines on Alcohol-Free Zones

2. Send a copy of the proposal to:

- a) the Police Local Area Commander and the officer in charge of the police station within or nearest to the proposed zone,
- b) liquor licensees and secretaries of registered clubs whose premises border on, or adjoin or are adjacent to, the proposed zone,

and invite representations or objections within 30 days from the date of sending the copy of the proposal, AND

3. Send a copy of the proposal to the NSW Anti-Discrimination Board, if the local area is listed in Appendix 2 to these Guidelines, and invite representations or objections within 30 days from the date of sending the copy of the proposal. Other councils have the option of advising the Board if they wish to seek the Board's views on the proposed alcohol-free zone.

In addition to these statutory requirements there are other consultative avenues that may enhance the effectiveness of any alcohol-free zone that is subsequently established. Accordingly, a council is also required to:

4. Send a copy of the proposal to any known organisation representing or able to speak on behalf of an identifiable Aboriginal or culturally and linguistically diverse group within the local area and invite representations or objections within 30 days from the date of sending the copy of the proposal.

A council is to give proper consideration to any representations, submissions or objections received and as a result may amend or withdraw a proposal to establish an alcohol-free zone. However, any amendment that extends the location of the proposed alcohol-free zone must be supported by reasons (as outlined above).

COUNCIL RESOLUTION TO ESTABLISH AN ALCOHOL-FREE ZONE

section 644B (1) and (2)

After complying with the procedures a council may, by resolution, adopt a proposal to establish an alcohol-free zone. The resolution itself will establish the zone.

After resolution, a council's usual administrative processes would apply in informing interested parties including any applicant, the Anti-Discrimination Board (if applicable), the relevant police Local Area Commander and officer in charge of the local police station (if different), affected liquor licensees and club secretaries and other organisations advised of the original proposal.

OPERATION OF AN ALCOHOL-FREE ZONE

section 644B (3) and (4)

A council must publicly advise the establishment of an alcohol-free zone by notice published in a newspaper circulating in the area that includes the zone.

An alcohol-free zone will not operate until 7 days after publication of the notice AND until the roads, footpaths and public carparks affected are adequately signposted.

Signage for Alcohol-Free Zones

A council is required to consult with the police regarding the placement of signs.

As a minimum, signs are to be placed at the outer limits of the zone, at the site of specific trouble spots (as indicated by the police) and at other suitable intervals within the zone.

Signs designating an alcohol-free zone must indicate that the drinking of alcohol is prohibited in the zone. Signs should note that alcohol may be seized and disposed of if alcohol is being consumed in the zone. Starting and finishing dates for the operation of the zone should also be included.

It is recommended that signs use consistent, easily recognisable symbols and include a map of the area defining the location of the zone. Some councils may choose to complement erected notices with spray-painted no-alcohol symbols on the footpaths.

Graphic representation on signs is an option. However, Standards Australia does not have an internationally recognised symbol for alcohol and considers that depiction of a bottle, glass AND can would be ideal to avoid confusion. The International Organisation for Standardisation (ISO) provides advice on methods that can be used to create different types of prohibition signs (ISO 7010-2003 *Safety Signs used in Workplaces and Public Areas*). This can be read with ISO 3864.3-2006 (*Design Principles for Graphical Symbols for use in Safety Signs*) which is used to ensure symbols and signs have the intended meaning and can be comprehended by persons as they enter the area the sign applies to. The Standard provides sizing requirements and font sizes for letters used in symbols.

Councils are encouraged to utilise symbols on their signage which don't rely on high levels of literacy.

The local Aboriginal community may be engaged to design signs which are also appropriate for their community.

Ministerial Guidelines on Alcohol-Free Zones

The content of the sign below is considered a minimum standard.



** Insert appropriate directional arrow or map*

On such signs the dates may be inserted in a manner that allows re-use of the sign, provided the dates cannot be removed during the period of operation.

Signs are to be removed as soon as practicable, but no longer than 30 days, after the end date of an alcohol-free zone.

SUSPENSION OR CANCELLATION OF AN ALCOHOL-FREE ZONE

section 645

The power to suspend or cancel an alcohol-free zone during its period of operation is provided so that a council may respond to more immediate situations that arise within the area of the zone.

A council must pass a valid resolution to suspend or cancel a particular alcohol-free zone. Such action may be taken as a result of a request received from any person or body, or at a council's own initiative.

Liaison with the local police, before and after the council resolution, is essential to ensure that both groups are informed and action is coordinated. Additionally, a council may undertake any other consultation that it considers necessary.

A council must publish notice of a suspension or cancellation as required under section 645 (1) and (3). In the case of cancellation of an alcohol-free zone the signs should be removed immediately.

Ministerial Guidelines on Alcohol-Free Zones

A council is not limited in the reasons for which it may suspend or cancel an alcohol-free zone. A suspension would not usually be appropriate for any period longer than one month, and generally would be of a much shorter duration eg. to accommodate a specific community event. Alcohol-free zone signage should be removed for the duration of any suspension of the zone.

The four year operation of an alcohol-free zone is not extended by any suspension occurring within that period.

RE-ESTABLISHMENT OF AN ALCOHOL-FREE ZONE

section 644B(4)

An alcohol-free zone is essentially a short-term control measure and in many instances a zone will achieve the desired objectives within its operational period.

There is no general provision for an alcohol-free zone to be extended. However, the roads, footpaths or public car parks comprising a zone may be included in another alcohol-free zone of the same or different configuration, immediately following the cessation of the existing zone or at any future time.

All the requirements for the valid establishment of a zone apply whether or not any of the roads, footpaths or car parks concerned have previously been zoned as alcohol-free.

Where a proposal for an alcohol-free zone includes roads, footpaths or public car parks that have previously been zoned as alcohol-free, a council is to have regard to that previous zoning.

The evaluation criteria that councils use when considering the re-establishment of an alcohol free zone should include the following:

- what were the factors which originally supported a zoning in that area?
- how successful was the previous alcohol-free zone in achieving a reduction in unacceptable street drinking?
- what do police statistics indicate about the value of re-establishing an alcohol-free zone in that area?
- what other measures may need to be considered (eg a community education program) if unacceptable street drinking is still of concern in that area?
- has the community's perceptions of safety improved?

The re-establishment procedure provides a council with the opportunity to focus again on any community problems associated with irresponsible alcohol consumption and the range of strategies that may be implemented to address these problems.

RECORDING OF ALCOHOL-FREE ZONES

The maintenance of appropriate records is essential for established alcohol-free zones. As a minimum, records need to be kept in sufficient detail:

- to document that all the steps for valid establishment have been undertaken
- to provide for removal of signs at the conclusion of the zone's operation
- to identify suspensions or cancellations of alcohol-free zones
- to avoid overlap in the establishment of alcohol-free zones
- to provide a reference base where re-establishment of an alcohol-free zone is sought.

ENFORCEMENT OF ALCOHOL-FREE ZONES

sections 642 and 648

Alcohol-free zones may be enforced by any officer of the NSW Police Force or an enforcement officer. An enforcement officer means an employee of a council authorised in writing by the Commissioner of Police to be an enforcement officer for the purpose of section 642 of the Local Government Act.

The legislation applies to all persons, including minors.

The power to seize and tip out or otherwise dispose of alcohol without the need to issue a warning applies within an alcohol-free zone.

Where a council has authorised enforcement officers, the council will be required to adopt a procedure regarding the disposal of any alcohol that is seized.

A Police officer or authorised council enforcement officer may use their discretion to issue a warning to a person who is drinking in an alcohol free zone, for example, where the person may be unaware of the zone.

It should also be noted that in circumstances where a person does not co-operate with a Police officer or authorised council enforcement officer, they can be charged with obstruction under section 660 of the Local Government Act which carries a maximum penalty of \$2,200.

The Commissioner of Police has the power to authorise council officers to enforce alcohol-free zones. The Commissioner may delegate his or her authority to Police Local Area Commanders. Where councils identify benefits to their communities for their officers to enforce alcohol free zones, the general manager will need to liaise with the Local Area Commander to ensure that council officers are suitable for this enforcement role.

Only authorised employees of a council and not contractors, who may be otherwise engaged by a council to provide regulatory services, may be authorised for this purpose.

Councils are responsible for ensuring that their authorised enforcement officers have appropriate identification to support this enforcement role.

Ministerial Guidelines on Alcohol-Free Zones

Councils with authorised council enforcement officers need to establish a system to record the number of occasions that these officers enforce the Alcohol-Free Zone legislation in their area. This should include monitoring the number of authorised council enforcement officers and how often alcohol is tipped out or otherwise disposed of. Councils may from time to time be required to report this data to the Department of Local Government to inform the evaluation of the usage of the Alcohol-Free Zone powers by councils.

It is important that the Police Local Area Commander and the officer-in-charge of the local police station (if different) are involved in the establishment procedure so that the zone operates and is enforced most effectively.

ALCOHOL-FREE ZONES AND COMMUNITY EDUCATION

As well as the requirement to publish information in the local media about the establishment of an alcohol-free zone, the community will be better educated about the intent of the alcohol-free zone if a community education campaign is run in line with the establishment of the zone.

Councils may wish to engage their local Community Drug Action Team or Drug and Alcohol Service within their Area Health Service so that responsible drinking messages can be promoted within the community to coincide with the establishment of the alcohol-free zone.

Posters and other information about the consequences of irresponsible street drinking may be displayed in local licensed premises and bottle shops. Collaboration between council, the police and stakeholders including liquor licensees may be assisted through a local Liquor Accord. Further information on Liquor Accords is available on the Office of Liquor, Gaming and Racing website at www.olgr.nsw.gov.au.

CONTACTS

Department of Local Government

Level 1, 5 O'Keefe Avenue
(Locked Bag 3015)
Nowra, 2541

Telephone: (02) 4428 4100

Website: www.dlg.nsw.gov.au

Anti-Discrimination Board

Level 4, 175 Castlereagh Street,
Sydney
(PO Box A2122, Sydney South, 1235)

Telephone:

General Enquiry Service & Employers Advisory Service (02) 9268 5544
For rural and regional New South Wales only 1800 670 812

Website: www.lawlink.nsw.gov.au/adb

NSW Police Service

1 Charles Street
(Locked Bag 5102)
Parramatta, 2150

Telephone: 1800 622 571

Website: www.police.nsw.gov.au

Appendix 1

APPLICATION FOR ALCOHOL-FREE ZONE

(Local Government Act 1993, section 644)

To(Name of Council)

I
(Full Name)

of
(Address) (Telephone No.)

3 **Being** (tick appropriate box):

(a) a representative of
(Name of Community Group in area)

(b) a police officer stationed at

(c) a person living in the area

(d) a person working in the area at
.....
(work address)

apply to the Council to establish an alcohol-free zone.

4 **Roads or parts of roads ('roads' includes 'footpaths') and/ or public car parks to be included in the alcohol-free zone:**

.....
.....
.....
.....

(Specify exactly by referring to street numbers or other landmarks)

5 **Reasons for requesting the alcohol-free zone:**

.....
.....
.....
.....

(Give details of obstruction, littering, personal injury, property damage, police intervention, etc. that have occurred on those roads or in those car parks)

Signed.....

Date.....

Documents supporting the information on this form may be attached.

Appendix 2

COUNCILS WHICH MUST CONSULT WITH THE ANTI-DISCRIMINATION BOARD

Sixteen councils are required to consult with the NSW Anti-Discrimination Board in their establishment of an alcohol-free zone to provide a measure of protection against the possibility of a discriminatory impact upon certain groups in the community. These councils are:

Blacktown
Bourke
Campbelltown
Dubbo
Kempsey
Lake Macquarie
Liverpool
Moree Plains
Newcastle
Penrith
Randwick
Shoalhaven
South Sydney
Tamworth
Walgett
Wollongong