

QUEENSTOWN LAKES DISTRICT COUNCIL

FOR MEETING OF 31 OCTOBER 2008

REPORT FOR AGENDA ITEM: 7

SUBMITTED BY: Senior Governance Officer – Jane Robertson (on behalf of Brothel Control Bylaw Hearings Panel)

REPORT DATED: 24 September 2008

BROTHEL CONTROL BYLAW 2008

PURPOSE

To approve the adoption of the Queenstown Lakes District Council Brothel Control Bylaw 2008 following a review undertaken pursuant to section 158 of the Local Government Act 2002.

BACKGROUND

On 25 July 2008 Council resolved that the draft Brothel Control Bylaw 2008 should proceed through the special consultative process. The resolution made was as follows:

On the motion of Perkins and Overton it was resolved that the Council:

- a. Commences by way of special consultative procedure the introduction of the draft Queenstown Lakes District Brothel Control Bylaw 2008 in the form submitted as part of this report;**
- b. Approves the attached draft bylaw and Statement of Proposal as satisfying the requirements of the Local Government Act 2002; and**
- c. Appoints a hearings panel consisting of Councillors Lyal Cocks, Gillian Macleod and Lex Perkins to hear public submissions, if required.**

The submission period was from 30 July to 1 September 2008 and was publicly notified in the 'Mirror', 'Wanaka Sun' and the 'Otago Daily Times' as well as the information being available on the Council's website and at all Council libraries.

One submission was received which was supportive of the proposed Bylaw but suggested a change to take account of New Zealand human rights legislation. The submitter indicated that she did not wish to be heard and accordingly, no hearing was convened.

Council's lawyers have reviewed the draft Bylaw and the final form of the Bylaw is attached.

ATTACHMENTS

- Copy of submission received.
- Marked up final form of Queenstown Lakes District Council Brothel Control Bylaw 2008 showing where changes have been made.

DISCUSSION

Review of Bylaw

The Brothel Control Bylaw 2003 was originally adopted in response to the enactment of the Prostitution Reform Act in 2003. This Act decriminalised prostitution and brothel keeping and the Council at the time determined that the provision of a Bylaw was the most appropriate way of controlling the effects of commercial sex services throughout the district. An amendment to the original Bylaw was adopted in 2004, adding provisions related to soliciting.

A review of the Bylaw found that only minor amendments were needed as the effects of commercial sexual services were considered to be well controlled by the current provisions and there was not a noticeable escalation in the scale of commercial sexual services in either Wanaka or Queenstown meriting major change. Accordingly, the redrafted Bylaw contains only some minor changes with the essence of the original Bylaw remaining unchanged.

Submissions

In contrast to 2003 when consultation on the draft Brothels Bylaw attracted 20 separate submissions as well as a petition-like submission seeking the prohibition of brothels throughout the whole district and containing 30 signatures, the public consultative phase of this process attracted one submission which was generally in favour of the Bylaw but sought a change to the wording to reflect New Zealand human rights legislation.

The submission received on the draft Bylaw asked that the following sentence in the preamble to the bylaw not be included in the text in recognition of NZ human rights legislation.

It also prohibits soliciting for commercial sexual services within the district and prohibits the distribution in any public place of material advertising brothels or any form of commercial sexual services.

The submitter pointed out that prostitution is legal in New Zealand and people have the right to practise this activity in a dignified manner and without undue or arbitrary restriction. Accordingly she sought the deletion of this sentence as it did not “materially add anything to the extensive protections that are already included”.

The submitter did not wish to be heard and no hearing was therefore convened.

Legal guidance was sought on this request as whilst the point was accepted as having some validity, it was felt equally that removal of this reference completely would render the preamble incomplete. Accordingly, the following compromise was suggested:

It also places controls on areas where soliciting for commercial sexual services may take place and the distribution of material advertising commercial sexual services.

The legal advice received stated that the sentence did not breach New Zealand human rights legislation as section 132 of the Prostitution Reform Act 2003 makes it clear that a bylaw made either under Section 12 of that Act or under Section 145 of the Local Government Act 2002 will not be invalid because of inconsistency with the New Zealand Bill of Rights Act. The relevant section is as follows:

Section 13 Procedure for making bylaws

- (1) A bylaw made under section 12 must be made in the same manner in all respects as if it were a bylaw made under the Local Government Act 2002.
- (2) Despite subsection (1), a bylaw may be made under section 12 even if, contrary to section 155(3) of the Local Government Act 2002, it is inconsistent with the New Zealand Bill of Rights Act 1990.

Accordingly, the legal advice concluded that the Council was able to choose either the original sentence or the proposed amendment. It is recommended that the amendment be adopted as it more accurately describes the intent of the Bylaw which is to place controls on commercial sexual activities rather than a blanket prohibition.

Following confirmation of the Bylaw, a letter will be sent to the submitter advising of the final outcome of this special consultative procedure and acknowledging her participation in this statutory process.

Further amendment

The legal advice highlighted an unintended limitation in regard to clause 2.2 in which brothels may not be established or operate within specified distances from such facilities as schools, churches and residential areas:

‘The problem is that the operation of a brothel after 2003 may become illegal if, for example, a child care facility is subsequently established within the 100 metre radius. The brothel will not be ‘grandfathered’ by clause 5. If this is not the Council’s intention then we suggest that clause 2.2 be amended along the following lines:

“No person may establish or operate a brothel within the Queenstown Town Centre Zone (including the Queenstown Town Centre Transitional Subzone) or the Wanaka Town Centre Zone if, at the time it is proposed to establish the brothel, it is to be located...[as per existing text]”

The legal advice points out that ‘retrospective illegality’ would be regarded as unreasonable by the Court with the result that this part of the Bylaw at least could be declared invalid.

Conclusion

With the exception of these two points, the legal advice was that the Bylaw was in order in all other respects. The amendments noted above have been incorporated into the redrafted version, which is presented in the attached alongside the changes suggested as part of the original review. It is recommended that they be adopted and form the final text of the new Bylaw.

SIGNIFICANCE OF DECISION

Not significant in accordance with Council policy.

CONSULTATION – INTERESTED OR AFFECTED PERSONS.

In accordance with the provisions of the Local Government Act 2002 the Special Consultative Process has been followed in the review of this Bylaw. One submission was received.

RELEVANT COUNCIL POLICY

The following documents have been considered in the preparation of this report:

- Queenstown Lakes District Council District Plan.
- Significance Policy

OPTIONS

- Adopt the bylaw as presented
- Reject the bylaw as presented

FINANCIAL IMPACT

There is no financial impact.

DELEGATION REFERENCE

Council must approve all Bylaws subject to the Special Consultative Process.

RECOMMENDATION

That the Council resolves:

- 1. That the Queenstown Lakes District Council Brothel Control Bylaw 2008 be adopted and enacted in the form submitted as part of this report.*
- 2. That the Bylaw be publicly notified in accordance with section 157 of the Local Government Act 2002.*
- 3. That the Bylaw come into effect on 9 November 2008, at which point the Brothel Control Bylaw 2003 and Brothel Control Bylaw Amendment No 1 2004 shall be revoked.*

Attachment 1

Bonnie Miller Perry, Ph.D., M.Arch.

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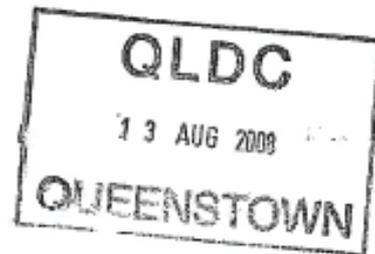
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12 August 2008

The Chief Executive,
Queenstown Lakes District Council,
Private Bag 50072,
Queenstown



Dear Sir/Madam,

Brothel Control Bylaw 2008

I am writing to **SUPPORT** the new bylaw in general, but with one proposed amendment.

I believe that specific recognition should be made in the preamble "Background" of the necessity to adhere in all respects to New Zealand's Human Rights legislation.

In this context, the following new clause unreasonably restricts, in my opinion, the rights of people to practice this activity in a dignified and law-abiding manner:

It also prohibits soliciting for commercial sexual services within the district and prohibits the distribution in any public place of material advertising brothels or any form of commercial sexual services.

This new clause should not be included in the bylaw amendment as it unnecessarily restricts the human rights of patrons and operators, and does not materially add anything to the extensive protections that are already included in the legislation.

In view of the fact that equal weight will be given to oral and written submissions, I do not propose to be present at the hearing.

Yours sincerely,

Attachment 2

QUEENSTOWN LAKES DISTRICT COUNCIL BROTHEL CONTROL BYLAW 2008

The Queenstown Lakes District Council makes this Bylaw pursuant to the powers contained in the Local Government Act 2002 and the Prostitution Reform Act 2003.

This Bylaw has the purpose of introducing control measures that are designed to manage the potential impacts of brothels and commercial sex premises on sensitive activities. This Bylaw restricts the establishment of brothels to specific areas of the Queenstown Lakes District and regulates the signage that advertises brothels which have been legally established. ~~It also prohibits within the district places controls on areas where soliciting for commercial sexual services may take place and the distribution in any public place of material advertising brothels or any form of commercial sexual services.~~

1. Short Title and Commencement

- 1.1 ~~This Bylaw may be cited as “the Queenstown Lakes District Brothel Control Bylaw 2008”.~~
- 1.2 This Bylaw comes into force on ~~the day following the giving of the public notice of the making of this Bylaw as is required by Section 157 of the Local Government Act 2002. 9 November 2008.~~

Interpretation

In this Bylaw, unless the context otherwise requires:

“Brothel” means any premises kept or habitually used for the purposes of prostitution but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere.

“Business of Prostitution” means a business of providing or arranging the provision of “Commercial Sexual Services”.

“Client” means a person who receives or seeks to receive commercial sexual services.

“Commercial Sexual Services” means sexual services that –

- (a) involve physical participation by a person in sexual acts with, and for the gratification of another person; and
- (b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person).

“Council” and “the Council” means the Queenstown Lakes District Council.

“District Plan”, ~~“Partially Operative District Plan”~~ and “Proposed Plan” have the same meaning as in Section 2, Resource Management Act 1991.

“Premises” means any form of building or structure of any kind or nature (whether permanent or not) and includes any aircraft, hovercraft, ship, ferry or other vessel, caravan, campervan, vehicle, train or any other form of motorised or non-motorised moveable contrivance.

“Operator” has the same meaning as in Section 5(1) of the Prostitution Reform Act 2003.

“Prostitution” means the provision of commercial sexual services.

“Public Place” has the same meaning as in Section 4(1) Prostitution Reform Act 2003.

“To solicit” means the act by a sex worker or a client of requesting the provision of commercial sexual services and/or prostitution and/or the business of prostitution; and the words “solicit” or “soliciting” shall have similar meanings.

2. Prohibition

- 2.1 No person shall locate a brothel in any area or part of the district administered by the Council other than an area or part which is zoned in the Partially Operative District Plan ~~or the proposed Plan~~ as administered for the time being by the Council as “Queenstown Town Centre Zone” (including the Queenstown Town Centre Transitional Subzone) or “Wanaka Town Centre Zone”.
- 2.2 No person may establish or operate a brothel within the Queenstown Town Centre Zone (including the Queenstown Town Centre Transitional Subzone) or the Wanaka Town Centre Zone if at the time it is proposed to establish the brothel, it ~~where that brothel~~ is to be located is:
- (i) Within 100 metres of any site zoned residential; or
 - (ii) Within 100 metres of any pre-school educational or care centre, primary school, intermediate school or secondary school; or
 - (iii) Within 100 metres of any place of worship; or
 - (iv) Within 100 metres of any community facilities or reserves; or
 - (v) Within 75 metres of any existing brothel (measured vertically or horizontally).
 - (vi) In or on any vessel, boat, craft, raft, motor vehicle of any description, jetty or wharf.
 - (vii) At ground level or beneath ground level on any site.
- 2.3 No person shall solicit (as defined in the terms of this Bylaw) within the Queenstown Lakes District on or in any street, road, footpath, road reserve or public place or area.
- 2.4 No person shall solicit (as defined in the terms of this Bylaw) within the Queenstown Lakes District where that person is, or may be visible from any public place, reserve or area.

3. Regulation of Signage Advertising Commercial Sexual Services

- 3.1 No operator or other person shall erect any signage that advertises commercial sexual services that is either in, or is visible from, any public place, educational or care centre, school, places of worship, community facilities or reserve areas.
- 3.2 No person shall place on or in any premise, or allow to remain in place a sign that advertises a brothel and which:
- (i) displays any information other than the name of the person who conducts the brothel business, or the registered name of the business; or

- (ii) displays words or images or models (human or mannequin) which, in the opinion of the Council, are sexually explicit or lewd or otherwise offensive; or
- (iii) exceeds 1 metre by 0.3 metres in size (or other dimensions, but of equivalent surface area); or
- (iv) is illuminated by flashing lights or contains neon lighting; or
- (v) is visible from a residential zone.

3.3 No person may place or allow to remain in place, in any public area or in view of any public place or area, a sandwich board advertisement for the purpose of advertising a brothel.

3.4 No person may in any public place situated within the area of the Council distribute, place, hand out, or give over any form of promotional or advertising material in respect of any brothel or any form of commercial sexual service.

4. **Removal of Works in Breach of Bylaw**

The Council may:

- (a) Remove or alter any work or thing that is, or has been, constructed in breach of this Bylaw.
- (b) Recover the costs of any such removal or alteration from the person who committed the breach.

TRANSITIONAL REQUIREMENTS

5. **Brothels**

5.1 Any brothel that was operating on the day ~~this Bylaw~~ the Queenstown Lakes District Council Brothel Control Bylaw 2003 came into force and which:

- (i) is located within the Town Centre Zones of Queenstown or Wanaka; and
- (ii) holds any Resource Consent that may be required for the site on which that brothel is located ~~under an operative or proposed District Plan~~, or a certificate of compliance or has existing use rights under the Resource Management Act 1991; and
- (ii) holds a current certificate issued under Section 35 of the Prostitution Reform Act 2003,

Is exempt from compliance with the location controls in *Clause 2* of this Bylaw.

5.2 For the avoidance of doubt, the controls in *Clause 3* (signs), applied to all brothels from the date on which ~~this Bylaw~~ the Queenstown Lakes District Council Brothel Control Bylaw 2003 came into force.

6. **Offences**

6.1 Every person who breaches this Bylaw commits an offence.

6.2 Every person who commits an offence against this Bylaw is liable to a fine not exceeding \$20,000.