

## QLDC Council

10 August 2023

### Report for Agenda Item | Rīpoata moto e Rāraki take [3]

Department: Strategy & Policy

Title | Taitara : Proposed Activities in Public Places Bylaw 2023 for adoption

#### Purpose of the Report | Te Take mō te Pūroko

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The purpose of this report is to provide information and present options to Council, so that it can make decisions on the draft Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui (the draft bylaw, **Attachment A**), and to present the draft bylaw for adoption.

#### Executive Summary | Whakarāpopototaka Matua

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Officers commenced the process to review the bylaw by undertaking preliminary engagement in late 2022. On 23 March 2023, Council adopted and released a statement of proposal (**Attachment B**), which included the draft bylaw for consultation in accordance with the special consultative procedure, with consultation occurring between 3 April and 5 May 2023.

The hearings panel received written and oral submissions at its meeting on 15 June 2023. The hearings panel proposed minor changes to the draft bylaw that went out for public consultation. These changes include:

- adding wording to clarify that anti-competitive behaviour between buskers and street vendors is in contravention of the bylaw;
- requiring that buskers, pop up stall holder and charity street collectors carry proof of registration
- adding wording to the bylaw to clarify that the online registration regime and conditions apply to buskers, as well as pop-up stalls and charity street collectors, as per the current practice.

As an outcome of submissions received, the hearings panel also recommended that Council consider the scope and timing for a smoke free policy for the district.

#### Recommendation | Kā Tūtohuka

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That the Council:

1. **Note** the contents of this report.
2. **Note** that on 23 March 2023, Council determined, pursuant to section 155(1) of the Local Government Act 2002 that a bylaw is the most appropriate way of addressing the

problems related to busking, trading, events, the consumption of mind-altering substances, the distribution of leaflets and licenced premises tours in public places.

3. **Determine** prior to making the bylaw, pursuant to section 155(2)(a) of the Local Government Act 2002 that the draft Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui is the most appropriate form of bylaw.
4. **Determine** prior to making the bylaw, pursuant to section 155(2)(b) of the Local Government Act 2002, that the draft Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
5. **Adopt** the draft Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui, with the following changes from the draft bylaw that went out for consultation (strike out if change not adopted by Council):
  - a. clause 12.1(j) “The busker does not at any time argue, intimidate, insult or abuse the public, **or engage in any anti-competitive behaviour with other buskers or pop up stall holders**” (emphasis added to wording change);
  - b. clause 12.1(a) “The busker has registered his or her details in the Council online busking register, **is carrying proof of registration**, and has agreed to comply with all busking conditions” (emphasis added to wording change).
6. **Resolves** that the draft Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui will come into effect on 1 September 2023 and that the Activities in Public Places Bylaw 2016 is revoked on 1 September 2023.
7. **Recommend** that officers present a report to the 21 September 2023 Community and Services Committee meeting to canvas the current information, options and timing relating to progression of a smoke free policy for the district.
8. **Note** that in accordance with Section 157 of the Local Government Act 2002, public notice be given of the review of the draft Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui, advising:
  - i. that the bylaw will come into force on 1 September 2023;
  - ii. that copies of the bylaw may be inspected, without fee, at all Council offices.

Prepared by:



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Policy Manager

17 July 2023

Reviewed and Authorised by:



Michelle Morss  
General Manager Strategy and Policy

20 July 2023

## Context | Horopaki

- Two bylaws are currently under review and are being progressed and consulted on together for efficiency. This includes:
  - Alcohol Restrictions in Public Places Bylaw 2018 in place since November 2018, last reviewed in 2018 and due for review this year. If the review is completed before October 2023, it is eligible for a ten-year review period.
  - Activities in Public Places Bylaw 2016 in place since November 2016 and due for review and will expire if not reviewed prior to September 2023. Once reviewed, it will next have a five-year review requirement.
- Both bylaws have reached the stage in the process for deliberations and adoption. The current progress of the bylaw is set out in the diagram below.



- The review process and key milestones for this bylaw review are summarised below.

Date	Milestone
November 2022	Preliminary engagement – targeted emails to stakeholders as well as the opportunity for anyone in the community to provide general feedback on the bylaw
21 February 2023	Community and Services Committee recommended that Council endorse the draft bylaw for consultation.
23 March 2023	Council resolved to review the draft Alcohol Restrictions in Public Places Bylaw 2018 in accordance with the Special Consultative Procedure and appointed a hearings panel to receive submissions.
3 April – 5 May 2023	Submission period
15 June 2023	Hearings and consideration of options by hearings panel
10 August 2023	Council deliberates and adopts bylaw

### The current Activities in Public Places Bylaw 2016

- The purpose of the Activities in Public Places Bylaw 2016 includes protecting the public from nuisance, and currently contains specific provisions including:
  - a ban on the consumption of mind-altering substances in public places

- a ban on the distribution of leaflets in connection with a trading activity in a public place
- requiring permission for events in public places
- requiring permission for organised licensed premises tours in public places (commercial pub crawls)
- requiring registration for busking in public places.

## **Analysis and Advice | Tatāritaka me kā Tohutohu**

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### **Summary of submissions received**

5. Council received 15 submissions on the draft bylaw. Support and points raised in the feedback are divided by the topics in the bylaw below, including recommendations made by the hearings panel.
6. Minor changes to the bylaw definitions, and to clarify and to improve readability and align with other legislative changes are tracked in the draft bylaw at **Attachment C**.

### Commercial hire of micromobility devices (e-scooters)

7. A key change recommended in the draft Activities in Public Places Bylaw 2023 is to add the commercial hire of micromobility devices in public places to the definition of 'trading activity' that may be regulated via the bylaw. This includes dockless e-scooters, but in the future could also include the commercial hire of e-bikes and other similar devices.
8. Of the submitters (seven) who answered the survey question asking whether they support the regulation of commercial e-scooters through the draft bylaw, six were supportive and one had no opinion. Two submitters commented that they did not support e-scooters or e-bikes in the district for safety and amenity reasons.
9. Te Whatu Ora, National Public Health Service - Southern (NPHS-S) provided support for the regulation of e-scooters through the draft bylaw and provided information from medical journal publications outlining a growing concern about the usage of e-scooters. The hearings panel also supported the change proposed.

### Ban on the consumption of mind-altering substances in public places

10. This ban was added to the bylaw as an outcome of the 2016 review and was supported by Police and the District Health Board of the time. The problems associated with the consumption of mind-altering substances in public places include the potential for an unsafe public environment and offensive behaviour.
11. Of the submitters (seven) who answered the survey question asking whether they support the continued ban on the consumption of mind-altering substances in public places, six were supportive and one had no opinion. In line with the draft bylaw, the hearings panel did not propose any changes to this provision.

Ban on the distribution of leaflets in connection with a trading activity in a public place

12. The provision in the current bylaw regarding the ban on leaflets is very narrow and only applies to leaflet distribution in connection to a trading activity in a public place. From the 2016 bylaw review it is evident that the problem is connected to leaflets placed on cars or handed out in a public place that relate to any business or event (whether the business trades from a public place or not) and the litter created by this activity. It is therefore recommended to increase the scope of this provision, to address leaflets and material handed out in a public place in relation to any commercial activity or business.
13. Seven submitters answered the survey question asking if they support the proposal to increase the scope of this provision to address leaflets and material handed out in a public place in relation to any commercial activity or business. Four people supported this provision, one did not and two submitters were neutral. Two people commented that this provision helps with overall waste minimisation in the district. There was one comment that leafletting in public places should be allowed without a permit.
14. The hearings panel supported the change proposed, to increase the scope of this provision to include the distribution of leaflets relating to any commercial activity.

Requiring permission for events in public places

15. The potential problems from this type of activity without proper management include overcrowding of public places, leading to nuisance, obstructions and possible health and safety issues. Currently an event organiser is required to obtain permission from Council, and the bylaw enables Council to impose certain conditions on the event permission.
16. Of the submitters (seven) who answered the survey question asking whether they support the continued requirement for permission for events in public places, six were supportive and one had no opinion. One submitter commented that it was unclear to them when an event triggers the requirement for permission, and suggested that there be increased clarity, communication and enforcement regarding this requirement.
17. The hearings panel supported continuing this requirement in the bylaw, and requested that officers ensure that there is clear information available as to when an event requires permission.

Requiring permission for organised licensed premises tours in public places (pub crawls)

18. The potential problems from organised licensed premises tours in public places (pub crawls) include overcrowding of certain places, leading to nuisance and possible health and safety issues or offensive behaviour in public places.
19. It is recommended that the current bylaw requirement that tour organisers need Council permission where a tour occurs in any public places is maintained. The bylaw allows conditions to be imposed on tour operators to manage this activity to avoid these issues, as well as the ability to enforce these conditions. Conditions that may be imposed include designated times of operation, the ratio of staff to patrons and a limit on group size. When the bylaw was last reviewed in 2016, the requirement for permission for organised licensed premises tours received a fair amount of attention.

20. Eight submitters answered the survey question asking whether they support the continued requirement to obtain permission from Council for commercial pub crawls. Seven supported this requirement and one person did not. The person who did not support this requirement viewed that it conflicts with rights of admission to private business. The draft bylaw is clear that the provision relates to commercial tours operating in public places, not individuals.
21. The hearings panel supported the continuation of the requirement for permission for organised licensed premises tours in the bylaw.

Requiring registration for busking, pop-up stalls and charity street collectors in public places

22. Currently prospective buskers (as well as pop-up stalls and charity street collectors) are required to register via an application form on Council's website. If the applicant does not meet the conditions for undertaking their activity in a public place, they are required to apply for a permit. It is not proposed to change this system in principle. This is because a shift to a full permit system would not address the perceived issues with busking, related to crowding and arguably detrimental effects to the visitor experience on the Queenstown lakefront. Whether via registration or permit, the enforcement options under the bylaw are similar.
23. As an outcome of the submissions received by the hearings panel, it became apparent that whilst the online registration system is clear that it applies to buskers, pop-up stall holders and charity street collectors, the wording of the bylaw that the registration requirement applies to all three categories is ambiguous. Accordingly, officers have added wording to the draft bylaw to ensure clarity in this regard. The wording changes are not a departure from the current regime or from the draft bylaw that went out for consultation
24. The hearings panel received mixed feedback in relation to buskers and pop-up stalls. Some people said that buskers and pop-up stalls are integral to a welcoming lakefront atmosphere in Queenstown, and others saying that there are crowding and noise issues, and a failure by some to adhere to the registration conditions.
25. The limitations in property designations in central Queenstown mean that whilst the permissible locations for busking and pop-up stalls could be reduced, there are no additional areas where busking could be expanded under the bylaw. As such, officers do not recommend any changes to the designated places where busking is permitted. It is open to Council to review these locations at any time, a review does not need to occur in align with the review of the bylaw. The hearings panel considered that the submissions did not support any changes to the designated locations where busking is permitted.
26. The hearings panel recommended that wording be added to the draft bylaw to clarify that any anti-competitive behaviour towards or between buskers and pop-up stall holders is in contravention of the registration conditions. The following wording has been added to clause 12.1(j) of the draft bylaw:
- “they do not at any time argue, intimidate, insult or abuse the public, or engage in any anti-competitive behaviour with other buskers, pop-up stall holder or charity street collectors.”



27. To ensure that buskers and pop up stall holders are registering and are aware of the conditions to obtaining a registration, the hearings panel recommended that proof of registration be carried. The following wording has been added to clause 12.1(a) of the draft bylaw (changes in bold):

- “they have registered their details in the Council online register, are carrying proof of registration, and have agreed to comply with all conditions.”

Recommendation from submitter: smoke-free policy

28. In its submission, the Otago and Southland Cancer Society recommended that QLDC adopt a smoke free policy. The Cancer Society views that ensuring public places are smoke free aligns with key features of the draft bylaw, including that public spaces be free from harmful products or products that decrease the wellbeing of people in them, hence its submission to the bylaw review process.

29. Currently all Council playgrounds, swimming pools and sports fields are smoke free. The capacity to implement this beyond Council controlled activities is limited, without large scale intervention and collaboration between business owners, the tourism industry and other stakeholders.

30. The hearings panel recommended that Council consider the scope and resourcing to progress a smoke free policy for the district. As an outcome, it is recommended that officers present a report to the 21 September 2023 Community and Services Committee meeting that will canvas the current information, options and timing around proceeding with a smoke free policy.

**Summary of the recommendations from the hearings panel**

31. The recommendations as an outcome of the hearings panel meeting to the draft bylaw from what went out for consultation include:

- adding wording to clarify that anti-competitive behaviour between buskers and street vendors is in contravention of the bylaw;
- requiring that buskers, pop up stall holder and charity street collectors carry proof of registration
- adding wording to the bylaw to clarify that the registration regime and conditions apply to buskers as well as pop-up stalls and charity street collectors, as per the current practice.

32. As an outcome of submissions received, the hearings panel also recommended that Council consider the scope and timing for a smoke free policy for the district.

**Options and Analysis**

33. This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.

34. **Option 1:** Accept recommendations from the hearings panel and adopt the Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> <li>• Responds to information received in submissions.</li> <li>• Council retains the ability to regulate busking, trading, events, the consumption of mind-altering substances, the distribution of leaflets and licenced premises tours in public places.</li> <li>• Council would have the ability to regulate commercial micromobility rental schemes (e-scooter hire) in public places.</li> <li>• Adopting the draft bylaw facilitates the timely completion of the bylaw review process.</li> </ul>	<ul style="list-style-type: none"> <li>• The draft bylaw may not align with some community views.</li> <li>• There are costs associated with implementation of the bylaw.</li> </ul>

35. **Option 2:** That Council not adopt the Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui, or propose a different way forward.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> <li>• There would be reduced time and cost associated with implementation of the bylaw.</li> </ul>	<ul style="list-style-type: none"> <li>• The bylaw would lapse.</li> <li>• Council would lose the ability to regulate busking, trading in public places, events, the consumption of mind-altering substances in public places, the distribution of leaflets and licenced premises tours.</li> <li>• Council would not have the ability to regulate commercial micromobility rental schemes (e-scooter hire) in public places.</li> <li>• There may be a reduced public perception of public safety.</li> </ul>

36. This report recommends that the Council adopt **Option 1** for addressing the matter because Council should retain a bylaw to protect the public from nuisance, and promotes health and safety of the public, whilst balancing individual rights and freedoms.



37. The hearings panel also recommended that Council consider the scope and resourcing for a smoke free policy. Proceeding with a policy would occur outside of the timing for the review of the bylaw. Accordingly, it is included as a separate recommendation, to present a report to the 21 September 2023 Community and Services Committee meeting for it to canvas the current information, options and timing relating to progression of a smoke free policy for the district.

#### **Next steps**

38. If Council adopts the draft bylaw, it is proposed that it would be implemented on 1 September 2023. There will be public notification of the outcome of the review, and submitters will be notified.

#### **Consultation Process | Hātepe Matapaki**

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#### **Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka**

39. This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because:

- the matters have minimal to moderate impact on the community
- the proposal will not change the level of services provided by Council, or Council's capacity
- there is a low level of financial consequence in adopting the recommended option.

40. The persons who are affected by or interested in this matter are residents/ratepayers and visitors to the Queenstown Lakes District, as well as buskers, pop-up stall holders, charity street collectors and local businesses.

41. Council has consulted on this matter in line with the Special Consultative Procedure.

#### **Māori Consultation | Iwi Rūnaka**

42. Council contacted Te Ao Marama and Aukaha to invite any feedback at the pre-engagement and the formal consultation stages of the review of this bylaw.

#### **Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka**

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43. This matter relates to the Regulatory/Legal/Compliance risk category. It is associated with RISK00018 Damage to the Environment - noise pollution events and facilities and RISK00038 Lack of Alignment - strategies and policies within the QLDC Risk Register. This risk has been assessed as having a low inherent risk rating.

44. The approval of the recommended option will support the Council by allowing it to retain the risk at its current level. This shall be achieved by having a bylaw in place that responds appropriately to the issues in the district regarding activities in public places.

### **Financial Implications | Kā Riteka ā-Pūtea**

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45. Costs associated with this work, such as staff time and advertising, are proposed to be met within current budgets. There are no proposed changes in the draft bylaw to current operational practice.
46. Whether through an MOU or the draft bylaw, the enforcement of micromobility device conditions could require additional resourcing in addition to what is provided for in current Council budgets. The draft bylaw does not propose any other significant changes to Council operations that would require additional funding.

### **Council Effects and Views | Kā Whakaaweawe me kā Tirohaka a te Kaunihera**

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47. The following Council policies, strategies and bylaws were considered:

- the outcomes and principles of the Vision Beyond 2050
- QLDC Annual Plan
- the QLDC Ten Year Plan 2021-31
- QLDC Events Strategy
- Queenstown Town Centre Masterplan: A creative and innovative town centre
- The QLDC Disability Policy: safety of mobility device users
- QLDC Climate and Biodiversity Plan
- QLDC Destination Management Plan.

48. The recommended option is consistent with the principles set out in the named instruments.

49. Provision for bylaw reviews is included in the Ten Year Plan/Annual Plan.

### **Legal Considerations and Statutory Responsibilities | Ka Ture Whaiwhakaaro me kā Takohaka Waeture**

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50. Council is bound by the LGA when making or reviewing bylaws. The base determination, notification and consultation procedures set out under sections 155, 156 and 157 of the LGA, apply. The draft bylaw, statement of proposal and reports to Council have been legally reviewed.

51. Consultation on the draft bylaw followed the requirements of the Special Consultative Procedure outlined in sections 83 and 86 of the LGA.

52. Section 160A of the LGA automatically revokes any bylaw two years after the last date it was eligible for review. For the Activities in Public Places Bylaw 2016, section 158 required review before 29 September 2021. As this was not undertaken, revocation is scheduled to occur on 29 September 2023. Council cannot avoid the revocation of the current bylaw, although it may elect to revoke it early and make another new bylaw, subject to completing a formal public consultation process. This has been completed and it is therefore recommended that Council revoke the Activities in Public Places Bylaw 2016, effective September 1, 2023, when the Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui is proposed to come into effect.

## **Determinations**

53. Before making a bylaw, Council must make the determinations required under section 155 of the Act. Set out below is the assessment by officers for each required determination.

### Most appropriate way of addressing the perceived problem

54. Council determined, when adopting its statement of proposal for consultation on 23 March 2023, that a bylaw is the most appropriate way of addressing the problems related to activities in public places.

55. The issues that the draft bylaw addresses relate to activities occurring in public places, including trading, busking, events, the consumption of mind-altering substances, the distribution of leaflets and licenced premises tours. Officers consider that a bylaw to address these issues is the most appropriate option, given the assessment of the issues and options in the Analysis and Advice section of the report. Alternative measures such as engagement and education may be appropriate in conjunction with the bylaw, that enables Council to take enforcement action if indicated.

### Most appropriate form of bylaw

56. Council is also required to determine whether the proposed bylaw is the most appropriate form of bylaw before it makes its decision. Officers consider that the draft bylaw is the most appropriate form of bylaw.

57. The draft bylaw enables Council to regulate the commercial hire of micromobility devices. Permission conditions may be added through a policy by resolution, when Council has more information as to issues that require regulation.

### New Zealand Bill of Rights Act 1990 [‘NZBORA’]

58. Council is required to determine whether the draft bylaw gives rise to any implications under the NZBORA, which grants certain civil and political rights to people in New Zealand Aotearoa. In accordance with section 5 of the NZBORA, ‘the rights and freedoms contained in the Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society’.

59. The draft bylaw prohibits the use of mind-altering substances in public places. This ban does not unreasonably interfere with any of the rights in the NZBORA, as its purpose is to protect and promote public safety.

60. Officers consider that the proposed increase in the scope of the ban on the distribution of leaflets in the draft bylaw does not unreasonably restrict freedom of expression in the NZBORA. The ban is restricted to leaflets that are in relation to a business or event. In addition, an explanatory clause has been added to the bylaw to clarify that the purpose of the provision relates to littering, not limiting freedom of expression.

61. The other issues covered in the bylaw permit certain activities to occur (events, licensed premises tours, busking, trading), provided that certain conditions are met to ensure that these

activities do not cause a nuisance to other members of the community. Accordingly, officers view that they do not unreasonably interfere with any of the rights in the NZBORA.

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### **Local Government Act 2002 Purpose Provisions | Te Whakatureture 2002 o te Kāwanataka ā-Kiaka**

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62. Section 10 of the Local Government Act 2002 states the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future. The bylaw promotes the four well-beings by protecting the public from nuisance and regulating trading in public places. As such, the recommendations in this report are appropriate and within the ambit of Section 10 of the Act and;

- can be implemented through current funding under the Ten Year Plan and Annual Plan;
- is consistent with the Council's plans and policies; and
- would not significantly alter the intended level of service provision for any significant activity undertaken by or on behalf of the Council or transfer the ownership or control of a strategic asset to or from the Council.

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### **Attachments | Kā Tāpirihaka**

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A	Final version for adoption: Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui
B	Statement of proposal
C	Marked up version showing changes proposed: Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui
D	Activities in Public Places Bylaw 2016