

Attachment D



QUEENSTOWN
LAKES DISTRICT
COUNCIL

**PROPOSED QUEENSTOWN LAKES DISTRICT
NUISANCE BYLAW 2016**

STATEMENT OF PROPOSAL

INTRODUCTION

- 1 Section 145 and 146 of the Local Government Act 2002 (**LGA**) enables the Queenstown Lakes District Council (**Council**) to make bylaws for the following purposes:
 - a. protecting the public from nuisance;
 - b. minimising the potential for offensive behaviour in public places;
 - c. protecting, promoting and maintaining public health and safety;
 - d. protecting land under Council control from misuse, damage or loss; and
 - e. regulating trading in public places.
- 2 The Council's Control of Activities and Obstructions in Public Places Bylaw 2010 (**the current bylaw**):
 - a. regulates certain activities that occur in public places, including trading, busking, entertaining, and distributing leaflets.
 - b. establishes a permitting system for activities and obstructions that occur in public places, including setting assessment criteria and standard conditions for certain permits.
 - c. prohibits canvassing, enticing or accosting members of the public for commercial purposes in any public place.
- 3 The Council has undertaken a programmed review of the current bylaw as required by the LGA. As part of this review, the Council undertook informal consultation with the public regarding the control of certain activities in public places. The Council received 57 responses from individuals, and three responses from organisations.
- 4 The Council sought feedback on the regulation of a wide range of activities in public places, including: food stalls, markets, pop-up stalls, fundraising, leaflet distribution, sample distribution, busking, smoking, psychoactive substances, glass on beaches / reserves, positioning of litter bins, and the provision of dog waste bins.

PROPOSAL

- 5 The Council has undertaken a statutory review of the current bylaw, which is due to expire on 6 November 2017. The Council has determined that the current bylaw should be revoked, and replaced with the proposed Queenstown Lakes District Council Nuisance Bylaw 2016 (**the proposed bylaw**).
- 6 The proposed bylaw is intended to capture activities that give rise to nuisances and may cause obstructions and damage to public places (including roads) and generally impact on the public's perceptions of safety. The proposed bylaw also establishes a permitting system for the following activities in public places:
 - a. Events (including markets, pop up stalls, parades, protests, weddings, etc);
 - b. Busking (singing, dancing, juggling, etc); and
 - c. Organised licensed premises tours (also known as "pub crawls").

- 7 Events and busking will not require additional permits if the activity is already expressly authorised by a resource consent.
- 8 The proposed bylaw will continue the requirement under the current bylaw that a permit is sought for events in public places and to prohibit canvassing of members of the public for commercial purposes. In addition, controls in the proposed bylaw include:
 - a. Imposing a general prohibition on activities in a public place that:
 - i. cause or permit a nuisance to occur;
 - ii. wilfully obstructs, disturbs or interferes with a persons use or enjoyment of a public place;
 - iii. uses any material or thing recklessly or in a manner which may intimidate, be dangerous, be injurious to, or cause a nuisance to any person; and
 - b. Prohibiting the consumption of mind altering substances (eg. glue sniffing, psychoactive substances) in public places.
 - c. Prohibiting the distribution of leaflets, flyers, promotional material, or samples in connection with a trading activity, except within retail premises that offer related goods or services, provided the owner or occupier consents;
 - d. Requiring event organisers to obtain a permit from the Council prior to the start of an event held in a public place, and also requiring that a person does not undertake a trading activity in connection with such an event unless the event is authorised by a permit;
 - e. Requiring organisers of licensed premises tours (commonly referred to as “pub crawls”) to obtain a permit if the event involves payment of a fee, and is advertised to the public (private pub crawls that either do not involve payment of a fee to the organiser, or are not advertised to the public are not intended to be regulated);
 - f. Allowing buskers to perform without requiring a permit from the Council provided they meet certain basic conditions (distance from other buskers, volume, not obstructing pedestrian flow, etc) set out in the bylaw;
 - g. Requiring buskers who cannot meet the basic conditions within the bylaw to obtain a permit from the Council;
 - h. Setting out specific conditions that the Council may impose when issuing permits for events, organised licensed premises tours, or busking; and
 - i. Giving Council enforcement officers powers to:
 - i. direct event organisers, licensed premises tour organisers, and buskers to comply with the proposed bylaw, or conditions in a permit;
 - ii. revoke permits if the person does not comply with the direction within a reasonable time; and

- iii. if the permit is revoked, the power to direct event organisers, licensed premises tour organisers and buskers to cease or close down the activity, and in the case of buskers to move to a new location.
- 9 This Statement of Proposal has been prepared in accordance with the requirements of sections 83 and 86 of the LGA, and includes:
 - a. The reason for the proposal;
 - b. Consideration of whether a bylaw is the most appropriate way to address the perceived problem;
 - c. Consideration of whether the proposed bylaw is the most appropriate form of bylaw;
 - d. Consideration of any implications under the New Zealand Bill of Rights Act 1990;
 - e. A statement that the current bylaw is to be revoked; and
 - f. A draft of the proposed bylaw.

REASON FOR PROPOSAL

- 10 The current bylaw is due to expire on 6 November 2017. The Council is required under the LGA to conduct a statutory review of the bylaw within five years from the making of the current bylaw.
- 11 Council officers have conducted a review of the current bylaw, including informal consultation with the public regarding various types of activities that can cause nuisances, and internal workshops within the Council. Following this review, Council officers consider that the proposed bylaw is the most appropriate means of protecting the public from nuisances, promoting public safety, controlling inappropriate behaviour, regulating trading in public places, and protecting land under Council control from misuse.

CONSIDERATION BY COUNCIL UNDER SECTION 155 OF THE LGA2002

Problem definition

- 12 The Council considers that there is a broad scope of anti-social or nuisance behaviours and activities in public places that can cause nuisances or other negative effects that impact on the public's perception of safety. A general control regulating uses of a public place that contribute to adverse effects can cover a range of potential behaviours. It would leave it to the discretion of Council officers to determine if an activity is causing a prohibited negative effect.
- 13 The consumption of mind altering substances (eg. glue sniffing, psychoactive substances) in public places can lead to anti-social or nuisance behaviour which impacts on other users of those public places. It can contribute to offensive behaviour in public places and risks to public health and safety. The Council proposes to introduce a prohibition on consumption of mind altering substances in public places as an early intervention tool, that discourages this behaviour before it escalates into more serious disturbances.

- 14 Certain promotional activities in public places associated with trading contribute to obstructions to pedestrian flow, increased litter, offensive behaviour, and nuisances to other users of those spaces. The distribution of promotional leaflets on to vehicles (often without consent) or to members of the public in person, or distribution of promotional samples contributes to these negative effects. Aggressive selling behaviours (sometimes referred to as “touting” or “canvassing”) also subject other users of public places to unwanted and possibly aggressive behaviour.
- 15 The holding of events in public places covers a wide range of activities, including markets, pop up stalls, concerts, sporting events, festivals, parades, protests and weddings. Events of this type have a largely positive influence on the District, and many local businesses, residents and visitors alike enjoy participating in them. However, an event that is not appropriately planned or managed can generate negative effects such as obstructions to pedestrian flow and access, risks to health and safety of the public, adverse effects on traffic safety, and create nuisances to the public.
- 16 A number of buskers regularly perform in public places throughout the District. Busking in public places contributes to the vitality and diversity of the District, and performances conducted within reasonable limits are unlikely to cause negative effects. The Council considers that buskers operating within these limits should not need a permit (unlike under the current bylaw). However, buskers that do not meet reasonable conditions when undertaking a busking performance may cause negative effects on the public (eg. obstructions to pedestrian flow, offensive behaviour, nuisances), and therefore a permit should be required.
- 17 The Council has received complaints regarding organised licensed premises tours (commonly known as “pub crawls”) which occur in the District. The organised licensed premises tours which are causing negative impacts usually involve the payment of a fee to an organiser, and are marketed to the public. Currently there is no regulation of these organised licensed premises tours. Complaints received by the Council have raised concerns that participants congregate in large groups in public places while travelling between licensed premises’, and that some members of these groups have engaged in offensive or intimidating behaviour toward members of the public. There is a concern that organisers of organised licensed premises tours do not take reasonable steps or adequate planning to mitigate negative effects.

IS THE PROPOSED BYLAW THE MOST APPROPRIATE BYLAW?

- 18 The Council has considered the most appropriate way of addressing the issues described in the problem definition section above, the options available, and determined that the proposed bylaw is the most appropriate means for addressing the issues.
- 19 In considering whether a bylaw is the most appropriate, Council has considered the following options:
 - a. Option 1 - Do nothing.
 - b. Option 2 – Rely on Council’s non-regulatory strategies and policies.
 - c. Option 3 – Re-adopt the current bylaw.
 - d. Option 4 – Revoke the current bylaw, and replace with the proposed bylaw.

Option 1 – Do nothing

- 20 If the Council does nothing there will be limited regulation of activities in public places that can cause nuisances, and other negative effects. The current bylaw will expire in 2017 and many of the activities proposed for inclusion in the proposed bylaw are not regulated elsewhere (eg. consumption of mind altering substances).
- 21 The Council may be able to respond to certain nuisances and negative effects in public places using rules in the Council's District Plan and the Resource Management Act 1991 (**RMA**) (eg. noise limits). However, the particular focus of the RMA on environmental effects means that some activities in public places that cause nuisances, obstructions, or risks to health and safety will not necessarily be covered.
- 22 Doing nothing would reduce compliance costs for business and the Council. Some members of the public may approve of less regulation by the Council.

Option 2 – Public education and/or non-regulatory policies

- 23 Public education is often an important and necessary tool for encouraging compliance with Council policies (eg. Waste Minimisation Strategy), and can be effective in combination with regulatory tools (eg. the Litter Act 1979).
- 24 The main advantage of this option is that there is less regulation by the Council. The disadvantage of the option is that education and non-regulatory tools will not deter certain individuals from undertaking nuisance and anti-social behaviours. In relation to events / busking / licensed premises tours / distribution of leaflets there would be no comprehensive regulatory tools available for ensuring a robust system for the management of these activities.

Option 3 – Re-adopt the current bylaw

- 25 The advantage of this option is that it would continue the same system of regulation of activities in public places that are already known to the public. The Council would not have to update any internal systems or officer training to continue implementing the existing bylaw.
- 26 The current bylaw does not expressly capture a number of activities in public places that may cause negative effects, such as anti-social / nuisance behaviours and consumption of mind altering substances. The Council also proposes substantial changes to the types of activities, scope of controls, and permitting system covered under the current bylaw. To achieve these outcomes a significant overhaul of the current bylaw is required, and therefore the Council proposes to adopt a new bylaw.

Option 4 – Adopt proposed bylaw

- 27 The proposed bylaw enables the Council to meet its obligations to protect the public from nuisance, promote public safety, control inappropriate behaviour, and protect land under Council control from misuses. The proposed bylaw also provides for proportionate limits on certain activities in public places that are likely to impact the enjoyment of other users of those public places. The proposed bylaw establishes a permitting system to ensure appropriate management and planning that protects the interests of all users of public places. It is also a useful early intervention tool for a number of activities in public places that can lead to more serious effects.
- 28 A possible disadvantage is concern by some members of the public that there is additional regulation, or duplication of regulation. However, the proposed bylaw does not require additional permits for events or busking if the activity is already expressly authorised by a resource consent, which reduces the scope for duplication. The

additional scope of controls in the proposed bylaw is a proportionate responses to activities in public places that can cause nuisances, and other negative effects.

ARE THERE ANY IMPLICATIONS UNDER THE NEW ZEALAND BILL OF RIGHTS ACT 1990?

29 The proposed bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA). The proposed controls are considered reasonable limits as allowed for in section 5 of the NZBORA:

Subject to section 4, the rights and freedoms contained in this 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.

30 The controls within the proposed bylaw potentially engage the following rights under NZBORA:

- a. Right to freedom of expression (section 14).
- b. Right to freedom of peaceful assembly (section 16).
- c. Right to freedom of movement (section 18).

31 The proposed bylaw regulates busking, which is an activity that may often involve the exercise of freedom of expression. The proposed bylaw allows busking to occur without a permit provided minimum conditions are met to avoid negative effects on other users of public places. The artistic content of a busking performance is not regulated under the bylaw, unless it involves intimidation or other unjustifiable behaviour toward members of the public. The proposed bylaw also establishes a permitting system to manage busking that cannot meet the ordinary conditions to occur, within the scope of a Council issued permit.

32 A number of gatherings in public places (eg. markets) are controlled under the proposed bylaw, which potentially engages the right to freedom of peaceful assembly. The Council proposes a reasonable management of these events through a permitting system to mitigate potential negative effects such as nuisances or obstructions from occurring in public places. The permitting system is not a significant impediment to these activities continuing to occur in public places.

33 Certain controls within the bylaw could potentially touch on an individual's right to freedom of movement (eg. busking in locations that cause obstructions). The proposed bylaw may require that certain activities are not located in a position that will results in effects such as obstructions to pedestrian flow. These are modest limits that a majority of the public would consider reasonable and appropriate.

TIMETABLE FOR CONSULTATION

34 The following dates represent the key times in the consultation programme:

- a. Council resolves to undertake public consultation regarding the proposed bylaw – 28th April 2016
- b. Advertisement in Otago Daily Times, Southland Times, Mirror and Wanaka Sun – between 30th April and 7th May 2016.
- c. Submissions close on 31st May 2016.

- d. Submissions heard by a subcommittee of Councillors (to be confirmed).
- e. Council considers outcome of consultation process. Adoption of Queenstown Lakes District Trading and Events in Public Places Bylaw 2016 – 28th July 2016
- f. Public notice of final decision (if Council resolves to adopt the bylaw) – 30th July 2016

35 The Bylaw comes into effect subject to the above.

INSPECTION OF DOCUMENTS AND OBTAINING COPIES

- 36 Copies of this Statement of Proposal and the proposed Bylaw may be inspected, and a copy obtained, at no cost, from:
- a. either of the Council offices at 10 Gorge Road, Queenstown or the Wanaka Service Centre, 47 Ardmore Street, Wanaka;
 - b. any Council library within the Queenstown Lakes District; or
 - c. the Council website – www.qldc.govt.nz

RIGHT TO MAKE A SUBMISSION AND BE HEARD

- 37 Any person or organisation has a right to be heard in regard to this proposal and the Council encourages everyone with an interest to do so.
- 38 The Council would prefer that all parties intending to make a submission:
- a. go to the Queenstown Lakes District Council Website: www.qldc.govt.nz or
 - b. post their submission to: Regulatory Department, Queenstown Lakes District Council, Private Bag 50072, Queenstown 9348.
- 39 Submissions must be received by **Friday 31st May**. The Council will then convene a hearing, which it intends to hold between **Wednesday 8th June and Friday 10th June 2016** at which any party who wishes to do so can present their submission in person. The Council will give equal consideration to written and oral submissions.
- 40 The Council will permit parties to make oral submissions (without prior written material) or to make a late submission, only where it considers that special circumstances apply.
- 41 Every submission made to the Council will be acknowledged in accordance with the LGA 2002, will be copied and made available to the public, and every submission will be heard in a meeting that is open to the public.
- 42 Section 82 of the LGA 2002 sets out the obligations of the Council in regard to consultation and the Council will take all steps necessary to meet the spirit and intent of the law.

MAKING AN EFFECTIVE SUBMISSION

- 43 Written submissions can take any form (e.g. Email, letter). An effective submission references the clause(s) of the draft Bylaw you wish to submit on, states why the clause is supported or not supported and states what change to the clause is sought.

44 Submissions on matters outside the scope of the Bylaw cannot be considered by the Hearings Panel.

Mike Theelen

CHIEF EXECUTIVE

APPENDIX 1 - Proposed Queenstown Lakes District Council Nuisance Bylaw 2016