

**Freedom Camping Bylaw 2021 Hearings Panel
27 September 2021**

Report for Agenda Item | Rīpoata moto e Rāraki take : 1

Department: Community Services

Title | Taitara Hearing: Submissions on the Proposed Queenstown Lakes District Council Freedom Camping Bylaw 2021

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

- 1 The purpose of this report is to present the written submissions received by the Queenstown Lakes District Council on the Proposed Queenstown Lakes District Council Freedom Camping Bylaw 2021, to assist the Hearing Panel to hear oral submissions, and to outline options to the Hearing Panel.

EXECUTIVE SUMMARY | WHAKARĀPOPOTOTANGA MATUA

- 2 On 29 July 2021, Council approved the commencement of the special consultative procedure and publically notified a proposed new bylaw to regulate freedom camping in the Queenstown Lakes District.
- 3 The consultation period began on 2 August 2021 and closed on 3 September 2021. During the consultation period 284 submissions were received. Twenty-two submitters have confirmed they wish to speak in support of their submission.
- 4 This report presents the submissions for consideration by the Hearing Panel.

RECOMMENDATION | NGĀ TŪTOHUNGA

That the Freedom Camping Bylaw Hearing Panel:

1. **Note** the contents of this report;
2. **Consider** the submissions to the Proposed Queenstown Lakes District Council Freedom Camping Bylaw 2021 content for recommendation; and
3. **Recommend to Council** a final form of Queenstown Lakes Freedom Camping Bylaw 2021 to be adopted, incorporating any changes following consideration of public feedback from the submissions.

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21/09/2021

Reviewed and Authorised by:



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21/09/2021

CONTEXT | HOROPAKI

5 The Council adopted the Queenstown Lakes District Council Bylaw 2019 (**Current Bylaw**) under s 11 of the Freedom Camping Act 2011 (**FCA**) in December 2019.

6 At the Council meeting on 12 December 2019 the following resolutions were passed:

On the motion of Councillor MacLeod and Councillor Copland it was resolved that the Council:

- 1. Note the contents of this report;*
- 2. Note that all submissions and feedback received through this consultation will be fed into the responsible camping strategy work that is currently underway;*
- 3. Approve the Hearings Panel recommendation to amend the Queenstown Lakes District Council Freedom Camping Control Bylaw 2019;*
- 4. Determine that the Queenstown Lakes District Council Freedom Camping Control Bylaw 2019 is:*
 - a. Necessary to protect the areas for which freedom camping is prohibited or restricted, to protect the health and safety of people who may visit the areas, or to protect access to the areas.*
 - b. The most appropriate and proportionate way of addressing the perceived problem in relation to the areas.*
 - c. Not inconsistent with the New Zealand Bill of Rights Act 1990.*
- 5. Approve the revocation of the Queenstown Lakes District Council Freedom Camping Control Bylaw 2012 effective from 13 December 2019;*
- 6. Adopt the Queenstown Lakes District Council Freedom Camping Control Bylaw 2019 with the Bylaw coming into effect on 13 December 2019; and*
- 7. Agree that a full and comprehensive review of the Freedom Camping Control Bylaw will be undertaken in the next 18-24 months.***

7 In February 2021, Council engaged Xyst Limited to complete an independent comprehensive Site Assessment to identify Council owned or administered land throughout the Queenstown Lakes District which has the potential to be used for freedom camping, and assess where is appropriate to restrict or prohibit freedom camping, as provided for under s11 of the FCA. Xyst assessed 105 sites across the district using methodology that has been agreed by Local Government New Zealand as best practice. This methodology is as follows:

- a. Assess the scope of land to be included and excluded by nature of ownership, administration, legislation or practical limitations of access;

- b. Define what is to be protected under the three purposes of the FCA;
 - c. Develop an assessment/scoring system to assess the degree to which a site requires protection from the effects from freedom camping
 - d. Assess sites using the assessment system; and
 - e. Present the findings of the assessment.
- 8 The Site Assessment found that the current controls under the Existing Bylaw are appropriate with a few minor alterations.
- 9 Since 2018 Council staff, contractors and Responsible Camping Ambassadors have been collecting data and evidence about freedom camping behaviour and taking photos at sites where freedom campers have been observed. This evidence has helped to assess the extent of freedom camping in the District and evaluate its effects, informing the Proposed Queenstown Lakes District Council Freedom Camping Bylaw 2021 (**Proposed Bylaw**).
- 10 In July 2021 Council undertook a pre-consultation survey, seeking public feedback generally on freedom camping in the district and specifically on several potential freedom camping sites (Gibbston Reserve Carpark, Whitechapel Reserve, Morven Ferry Reserve Carpark, Glenorchy Lakefront, Glenorchy Domain Carpark, Camphill Road Carpark). This survey was designed to test the community's attitudes to freedom camping and the areas where it could potentially occur. There were 826 responses to the survey. 30% of respondents were visitors to the district and 70% were residents. Council officers analysing the data found there was a strong correlation in the results, in that visitors – want more freedom camping areas - and residents want fewer.
- 11 At a Council meeting held on 29 July 2021 the Council resolved to approve the commencement of the special consultative procedure in relation to the proposal to make a new bylaw to regulate freedom camping in the Queenstown Lakes District:

Resolution:

Determine under section 155(1) of the LGA that the problem presented by freedom camping in the district is most appropriately and proportionately addressed by way of a bylaw under the Freedom Camping Act 2011;

Approve commencement of public consultation using the special consultative procedure in relation to the proposal to make a new freedom camping bylaw under section 11 of the Freedom Camping Act 2011;

- 12 The Council also resolved to appoint four councillors of which three are required to hear and consider submissions on the proposal, to make recommendations to council on adoption of the Proposed Bylaw.
- 13 The review process and key milestones in the special consultative procedure are summarised below:

DATE	Milestone
12 December 2019	Council resolved for staff to undertake a comprehensive review within the next 12-18 months.
February - May 2021	Comprehensive site by site assessment undertaken.
July 2021	Pre-consultation survey on possible freedom camping sites.
29 July 2021	Council instructed staff to begin a Freedom Camping Bylaw review
29 July 2021	Approval of commencement of special consultative procedure and appointment of councillors to hearing panel
2 August 2021	Submissions open.
3 September 2021	Submissions close.

14 The Statement of Proposal is that Council replace the Current Bylaw with a new Freedom Camping Bylaw.

Proposal

15 Following Council approval, Council staff commenced a special consultative procedure on the Proposed Bylaw. The Proposed Bylaw establishes where freedom camping is permitted, restricted or prohibited within the District.

16 The key changes in the Proposed Bylaw (compared to the Current Bylaw) that were consulted on were:

- a. Additional prohibited areas are proposed to include the following road reserve areas: Coronet Peak Road to Skippers Road, including to Skippers Saddle, the Crown Range Road, Precipice Creek Carpark on Glenorchy Paradise Road and Moke Lake Road, Rafters Road and Motutapu Road Track end.
- b. The general prohibition of freedom camping in residential areas is extended to include new residential areas at Hāwea Flat and at Wicklow Terrace, Albert Town.
- c. Proposed new restricted freedom camping areas (that were previously prohibited) at Gibbston Reserve Carpark and Glenorchy Domain Carpark.
- d. Proposed new provisions in the proposed bylaw which authorise the Council to, by resolution, specify the maximum number of freedom camping vehicles for a certain location. Where that occurs, the Council will put up signage recording this and directing freedom campers to park in marked bays or spots. It is then a breach of the bylaw to freedom camp in that location without being in one of the marked bays or spots if the maximum limit has been reached.

17 The Statement of Proposal and Proposed Bylaw (**Attachments A and B**) were publicly notified by advertisement on the QLDC website and in local newspapers between 2 August and 7 August 2021, including the Otago Daily Times, the Southland Times, the Mountain Scene and the Wānaka Sun.

18 The Proposed Bylaw, the Statement of Proposal and other supporting documents were made available on the Council's website, at the Council offices at 10 Gorge Road, Queenstown and 47 Ardmore Street, Wānaka.

19 Submissions opened on 2 August 2021 and closed on 3 September 2021.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

Submissions received

20 From 2 August to 3 September 2021, 284 submissions were received on the Proposed Bylaw. Copies of the submissions are included as **Attachment C**.

21 Twenty-one submitters supported the Proposed Bylaw in full. Seventeen were neutral or did not indicate whether they were in support.

22 There were 241 submissions in opposition which can be grouped into two subgroups:

- a. 184 people submitted that the Proposed Bylaw did not go far enough to prohibit freedom camping and/or that it should include additional specific sites as prohibited areas, or that it should be prohibited more widely (some say everywhere).
- b. 29 submitted that the Proposed Bylaw was too restrictive and freedom camping should be allowed in more locations.

23 Many submitters did not support freedom camping at a particular location, naming:

- Morven Ferry Reserve
- Gibbston Reserve Carpark
- Glenorchy Domain Carpark and Glenorchy surrounds
- Camphill Road Carpark
- Luggate Red Bridge Reserve

24 The above locations were included as sites in the pre-consultation survey as locations where freedom camping could occur. Typically the submitters opposing freedom camping at these areas were from the general area of the location that they were submitting on.

25 Twenty-two submitters have indicated they wish to be heard in support of their submission.

26 The Hearing Panel are to give full consideration to the submissions received and determine the extent to which the submissions will be accepted or disallowed.

Key themes from submissions

27 Submissions can generally be grouped into the following themes.

Too prohibitive

28 This was approximately 13% of all submissions. Themes were that Council should provide better managed sites that are well policed, with facilities, close to town, and not just in rural areas. Two submissions stated the Proposed Bylaw is not in accordance with the FCA which does not allow complete prohibition. Several submitters wish to see freedom camping everywhere with limited controls or restrictions. 60% of submitters stated that more freedom camping were visitors to area. Several stated that the Queenstown Lakes District was unfriendly, unwelcome and did not appreciate the potential economic benefit freedom campers could bring.

Not prohibitive enough

29 Approximately 50% of submitters stated that the Proposed Bylaw did not go far enough to control freedom camping in the District. These submissions proposed that more areas should be prohibited areas, or that there should be a complete prohibition of freedom camping across the District. Additional prohibited areas include:

- Luggate Red Bridge Reserve
- SH6 from Nevis Bluff to Arrow Junction
- Road reserve beyond Glenorchy Township

30 It is not lawful under the FCA to provide for a blanket prohibition on freedom camping across the District.

Comment on Specific Sites

31 50% of all submitters submitted on one or more specific sites, and considered that these should be prohibited. Some of these submitters supported freedom camping elsewhere in the district but not at reserves they used or were close to where they lived. These are summarised as follows:

Camphill Road Carpark

Forty-five submitters, many from the kayaking community, submitted that Camphill Road Carpark should be prohibited. Eight of these submitters were from outside of the District. Health and safety was a primary concern as the carpark is in close proximity to a river surfing site that can be dangerous for the general public, and the carpark is on a road that does not have good sight lines. It is right next to a one lane bridge that does not have separate pedestrian access. Several submitters (including the adjacent landowner) stated they had seen evidence of litter and toilet waste from campers, people washing themselves and dishes in the river. The majority of submitters stated that the carpark is often full as it is heavily used by kayakers, walkers and cyclists (the carpark provides access to a walking/cycling trail). Other concerns were around litter and pollution from freedom campers, concerns that it will become an overflow camping area for Luggate Red Bridge Reserve, camping at this site could overflow into the adjacent carpark on DOC land that is accessed through private land and the access arrangement may be at risk.

Morven Ferry Reserve

Forty-one people submitted specifically on Morven Ferry Reserve carpark that it should be a prohibited area. Reasons given were that the carpark is small but well used by the community for access to a popular recreation reserve, the Arrow River and the Queenstown Trail. A number of submitters stated amenity and privacy of those living nearby would be affected. Road safety was also a concern - the road is a narrow rural road and is accessed via the State Highway 6 at Arrow Junction.

Gibbston Reserve Carpark

Twenty-eight submissions sought to have the Gibbston Reserve Carpark prohibited. A primary reason in the majority of the submissions is that freedom camping will affect the amenity and privacy on neighbouring residents and businesses (Mount William Winery and several residences are immediately adjacent to the reserve). The size of the carpark and the unmaintained state was also a concern. Several submitters stated that there is no potable water and the toilets are often out of order. The narrow road was raised as a safety issue.

Glenorchy Domain Carpark and the wider Glenorchy Area

Thirty-two submissions sought to have the Glenorchy Domain Carpark included as a prohibited area, while a number also submitted that all freedom camping areas beyond Glenorchy should be prohibited. Many of the submitters stated that the Domain Carpark is heavily used by the Glenorchy community for rugby, tennis, golf and events and that the organisations that use the domain have to coordinate to ensure capacity for events. The Rugby Club, whose lease area includes the carpark (but which is a public carpark) does not support freedom camping. Two submitters, including the Glenorchy Community Association, submitted that the community has previously resolved that freedom camping in the township is not supported while there is a campground available. Several submitters suggested that Bennetts Bluff Carpark (on DOC land) or the lakefront would be more suitable.

Luggate Red Bridge Reserve

While many submitters supported freedom camping at Luggate Red Bridge Reserve, some did not. Others sought a cap on the numbers permitted to camp there. Neighbouring residents submitted that Luggate Red Bridge Reserve should be prohibited as they have experienced campers accessing their property, noise, litter and submit that it impacts their privacy and amenity.

Enforcement

32 Fifty submitters had concerns with the existing and future level of enforcement of freedom camping and that it was not adequately resourced. Several submitters did not support the ratepayer having to cover enforcement costs.

The Freedom Camping Act and New Zealand Standards

33 Seventy-eight submitters stated the New Zealand Standards for Certified Self Contained Camping were an issue, or that only motorhomes that had full toilet facilities should be allowed. Several submitters stated they no longer thought the Freedom Camping Act was fit for purpose, and did not provide for the local community.

New Zealand Motor Caravan Association (NZMCA) Submission

34 The NZMCA submission does not support the Proposed Bylaw. Their submission included a legal opinion from Galloway Cook Allan and can be summarised into the following points:

- a. The 2021 Bylaw is more restrictive than the 2019 Bylaw, resulting in a prohibitive bylaw that is not in accordance with the FCA.
- b. The Proposed Bylaw is premised on irrelevant considerations under the FCA and exposes the Council to judicial review risk for error of law.
- c. The Council's rationale for prohibiting freedom camping in most local authority areas is unlawful as the NZMCA considers that Council cannot consider effects on adjacent land that is private or non-council land (eg private residences).
- d. Undersupply and overcrowding issues are not addressed in a sustainable way, and therefore the bylaw is not consistent with the FCA.
- e. The Xyst Site Assessment relies on criteria that cannot be considered under s11 of the FCA, namely: Residential and commercial amenity values, economic values and crime.
- f. The Site Assessment threshold for a significant site (in the Xyst methodology) should increase from 60% to 80%.
- g. Prohibited areas should be reassessed.
- h. NZMCA was not consulted as a key stakeholder prior to draft being notified.
- i. The NZMCA supports revoking 2019 bylaw and creating a new bylaw.
- j. Freedom camping has many positive effects which the SOP failed to consider.
- k. Council should exercise its delegated authority under the Reserves Act to permit freedom camping on council reserves that are not otherwise prohibited on the maps in Schedule A.
- l. A list non-exhaustive list of 42 sites and reserves has been provided where the NZMCA submits that freedom camping should not have been prohibited.

35 Other common submission topics

- More on-the-ground presence, enforcement and education is required;
- All camping should be user pays;
- The district has a range of paid campgrounds, the DOC campgrounds and Albert Town Campgrounds are affordable;
- All campers should go to the districts campgrounds including the DOC campgrounds;
- The local economy should be supported by campers staying at local campgrounds, many of which are operated by locals and are struggling post Covid;
- Freedom Camping is not consistent with the post Covid sustainable tourism model;
- Any New Zealander should have the right to freedom camp without any regulations;
- Residents believe amenity and privacy is important and should be protected.

36 When reporting back to the Council the Officer Report will need to incorporate a report from the hearing panel. The Officer Report will contain reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002. Reasonably practicable options are sketched out below for the hearing panel's consideration:

37 **Option 1:** The Hearings Panel recommends to Council that the Proposed Freedom Camping Bylaw 2021 be adopted without changes

Advantages:

- 38 The Council will be able to enforce under the FCA in prohibited and restricted areas in the District, and will be able to issue freedom camping infringement notices in prohibited and restricted areas.
- 39 Continued enforcement will reduce the risk of environmental damage, and also protect public recreation accessibility to these areas.
- 40 The proposed bylaw will incorporate the findings of the comprehensive site assessment and additional sites.
- 41 The Council will be acting consistently with feedback received from its internal stakeholders that the bylaw is generally working well.
- 42 The bylaw will enable additional controls on number of vehicles at certain sites and maximum number of stays which will enable better control and enforcement

Disadvantages:

- 43 Submitters may perceive that issues raised through consultation are not addressed, both those in support and those opposed.
- 44 Specific issues raised by submitters, both individuals and organisations will not be addressed, where they fall within the scope of the FCA.

- 45 **Option 2** The Hearings Panel recommends to Council that the Proposed Freedom Camping Bylaw 2021 be adopted with changes following consideration of submissions.

Advantages:

46 Option 2 will have the same advantages as Option 1; and

47 Some submitters will perceive that the issues they have raised through submissions have been addressed by Council.

Disadvantages:

48 The Proposed Bylaw expands areas in which freedom camping is prohibited. This is considered a disadvantage because, while it may be necessary to protect the amenity and health and safety and access to areas, it will have the effect of conversely reducing the area in which freedom camping is allowed in self-contained vehicles.

- 49 **Option 3:** The Hearings Panel recommends to Council that the Proposed Freedom Camping Bylaw 2021 is not adopted.

Advantages:

50 Council can continue to regulate freedom camping through the Current Bylaw which does not need to be reviewed until 2024.

Disadvantages:

51 Submitters may perceive that issues raised through consultation are not addressed, both those in support and those opposed.

52 The findings of the Site Assessment will not be incorporated.

53 Council will not be acting in accordance with the resolution made in 2019 to undertake a comprehensive review of the 2019 Bylaw.

- 54 **Option 4:** The Hearings Panel recommends to Council that the Proposed Freedom Camping Bylaw 2021 is not adopted as significant changes are required, which may require a further consultation period.

Advantages:

55 More community engagement on the issue will occur.

Disadvantages:

56 The bylaw will need to be redrafted and further consultation commenced.

57 The majority of submitters will not perceive that their submissions have been considered.

LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHAKA WAETURE

- 58 Meredith Connell has provided Council with a legal opinion on the matters that are raised in the NZMCA submission.
- 59 While the hearing panel must consider all of the submissions, there are aspects of the submissions that will have to be put to one side. For example, some submitters consider that a blanket prohibition on freedom camping in the District is appropriate. The FCA does not permit a blanket prohibition. Those submissions are relevant to the question of community views about the statutory criteria in s 11(2), but the outcome sought cannot be achieved under the FCA.
- 60 The power to make the Proposed Bylaw is contained in s 11 of the Freedom Camping Act 2011. Section 11(2) of the FCA contains a number of decision-making requirements when making a bylaw. The statutory criteria in s 11(2) that Council must consider while hearing the submissions are:
- a. The bylaw is necessary to protect the areas for which freedom camping is prohibited or restricted, to protect the health and safety of people who may visit the areas, or to protect access to the areas.
 - b. The bylaw is the most appropriate and proportionate way of addressing the perceived problem in relation to the areas.
 - c. The bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.
- 61 Consultation is required under the FCA, which requires the special consultative procedure in sections 83 and 86 of the Local Government Act 2002 to be undertaken.

ATTACHMENTS | NGĀ TĀPIRIHANGA

A	Statement of Proposal
B	Proposed QLDC Freedom Camping Bylaw 2021
C	Full Submissions