

# Statement of Proposal

Draft Brothel Control Bylaw 2024 |  
Kā Ture Whakahaere Whare Kairau

## 1 INTRODUCTION

### Background

The Brothel Control Bylaw 2017 (the 'current bylaw') has been in place since December 2017 and is due for review.

Since 2003, sex work has been a legal occupation in New Zealand under the Prostitution Reform Act 2003 (PRA), subject to the same laws that regulate other businesses and workers, but with some additional requirements aimed at protecting sex workers and their clients (see sections 7 to 23 of the PRA).

There are provisions under the PRA so that councils may either manage a brothel using the District Plan (section 15 of the PRA) or adopt a bylaw to manage a brothel's signs (section 12 of the PRA) and/or manage the location of brothels (section 14 of the PRA).

### Council's proposal

In August 2023 officers undertook early engagement as part of the current bylaw review.

At a Council meeting on 2 May 2024, Council considered two options in its review of the current Brothel Control Bylaw 2017:

1. Review the current bylaw and propose changes.
2. Look to managing brothels in the Queenstown Lakes District through Council's existing District Plan provisions.

Council agreed, that for the purpose of this consultation, it would continue to regulate brothel activity through a bylaw mechanism and consult with the community on a draft Brothel Control Bylaw 2024/ Kā Ture Whakahaere Whare Kairau (Draft Bylaw).

This statement of proposal is prepared under sections 83 and 86 of the Local Government Act 2002 (LGA) and contains:

- a copy of the draft bylaw showing the proposed amendments to be made to the current bylaw
- information about the proposed amendments, including Council's determinations under section 155 of the LGA
- the reasons for the proposed amendments
- how you can have your say
- timetable for consultation.

## 2 THE REASON FOR THE PROPOSAL

The key reasons for this proposal are to:

- address the allowable locations of brothels and the restrictions on brothel signage
- seek community views on the review of a brothel control bylaw
- seek community views on the draft bylaw
- to encourage people to give feedback on the draft bylaw

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- to let people know how they can give feedback.

The 2 May 2024 Council report contains more detailed information on these points:

<https://www.qldc.govt.nz/your-council/council-documents/agendas-minutes/full-council>

## 3 HOW YOU CAN HAVE YOUR SAY

Anyone can make a submission online at <https://letstalk.qldc.govt.nz>. Submissions will be accepted from 8am on 3 May 2024 and must be received by 5pm on 5 June 2024.

All submissions should state:

- the submitter's name<sup>1</sup>
- the submitter's contact details
- whether or not the submitter would like to speak to Council about this matter.

Copies of this statement of proposal and draft bylaw may be obtained at no cost from either of the Council offices at 10 Gorge Road, Queenstown, 47 Ardmore Street, Wānaka, any Council library within the Queenstown Lakes District or the Council website at <https://letstalk.qldc.govt.nz>. If you need help submitting, please contact Council at 03 441 0499, or call in to one of Council's offices. All written submissions made to Council will be acknowledged and made available to the public.

Council intends to hold a hearing 25 June 2024. This is when anyone who has made a written submission and who has said they would like to speak to Council, can do so. This meeting will be open to the public. If you indicate you would like to be heard, Council staff will get in touch with you to arrange a time for you to speak at the hearing either in person or via audio-visual link. If at the hearing you have any requirements, please let us know.

## 4 TIMETABLE FOR CONSULTATION

The dates below outline the timetable for the consultation process. Any changes to these dates will be publicly advised on Council's Facebook page and website.

Date	Activity
2 May 2024	Council adopted the proposal for consultation

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<sup>1</sup> Note: if you do not feel comfortable providing your name or contact details in a submission, please contact Council, who can facilitate an anonymous submission.

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3 May 2024	Consultation period begins (8am)
5 June 2024	Consultation period ends (5pm)
25 June 2024	Oral submissions heard by Council hearing panel
1 August 2024	Deliberations and adoption by Council

## 5 INFORMATION ABOUT THE PROPOSAL

### Why do we have a brothel bylaw?

Under the LGA, Council can address certain issues for our district using a bylaw, where this is found to be necessary. The issues include protecting, promoting and maintaining public health and safety, protecting the public from nuisance, and minimising the potential for offensive behaviour in public places.

In 2003 the Prostitution Reform Act 2003 (PRA) decriminalised sex work in New Zealand. Also, in 2003 Council adopted the Brothel Control Bylaw 2003 to address concerns that some members of the community had at the time regarding permitted locations and signage associated with brothels.

### What is the current bylaw?

A full copy of the current bylaw can be found on our website, but a summary of its main requirements are as follows:

- brothels may only be in the areas of permitted activity within Queenstown and Wānaka as shown in the maps below:

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- brothels are not to be within 100m of each other
- brothels may not be located at or below ground level
- Signs may only display the registered name of the brothel or the person who operate the brothel, it must not exceed 0.3 square metres in size, and must comply with all applicable requirements in the District Plan.

## The Prostitution Reform Act 2003

The purpose of the PRA is to decriminalise prostitution, while not endorsing or morally sanctioning prostitution or its use, and to create a framework that:

- safeguards the human rights of sex workers and protects them from exploitation
- promotes the welfare and occupational health and safety of sex workers
- creates an environment that is conducive to public health
- protects children from exploitation in relation to prostitution.

There are provisions under the PRA so that Councils may:

- adopt a bylaw to manage a brothel's signs (section 12 of the PRA) and/or manage the location of brothels (section 14 of the PRA), or

- manage brothel activity through a council's District Plan provisions (section 15 of the PRA).

## What are the effects and implications of the current bylaw?

The bylaw addresses issues relating to enabling commercial sexual service providers to operate within the district in a manner that meets both the market demand for these services, but that also addresses community concerns and sensitivities through allowing the establishment of brothels in areas where the effects associated with the operation can be readily controlled, but not in areas where they cannot. The bylaw also seeks to control the establishment of signage associated with brothels to minimise community harm or offence through its enforcement provisions.

QLDC has made no prosecutions under the current bylaw. Council has received eight complaints of alleged operation of brothels outside of the permitted activity areas in the bylaw in the five years since 2018, of which six related to valid breaches of the bylaw. These complaints have generally come from neighbouring properties. The complaints have been investigated by Council and there has been no enforcement action taken aside from Council officers explaining the restrictions under the bylaw to the residents, who were provided a copy of the bylaw to educate, in accordance with Council's Enforcement Policy. No further action was required.

The definition of a brothel in the current bylaw effectively includes small owner-operated brothels<sup>2</sup> (SOOBs), therefore it prohibits SOOBs from operating outside of the permitted activity areas outlined in the bylaw.

Matters of harassment, assault, exploitation sit within Police powers, not a council's bylaw powers. However, a sex worker who reports such incidents could be incriminating themselves, as the complaint might bring to light a breach of the bylaw. Anecdotally, this could have the effect of deterring the reporting of incidents. The purpose of the bylaw should not be inconsistent with the purpose of the PRA, which is to protect workers, not criminalise them.

## How does our bylaw compare with other councils?

There are currently seven councils that regulate the location of brothels through a bylaw mechanism. Of these, QLDC and Hamilton City Council have bylaws that restrict the location of SOOBs. Four of the remaining five councils with bylaws exempt the bylaw from applying to SOOBs, while South Waikato District Council permits SOOBs as a Home Occupation under its district plan. Unless expressly prohibited or otherwise controlled under a district plan, the activity would need to comply with the relevant standards of the district plan that applies to each territorial authority area.

## 6 PROPOSED CHANGES

Council is proposing the following amendments in the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau (the draft bylaw):

- increasing the size of the permitted activity areas to align with the Proposed District Plan Town

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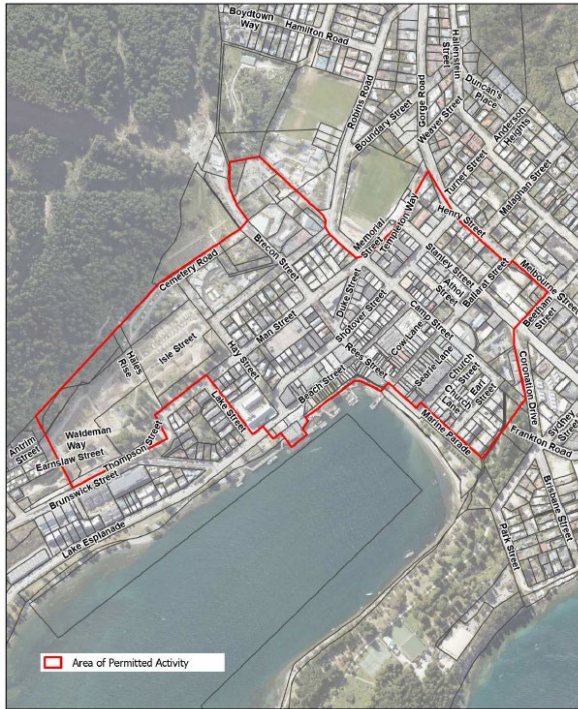
<sup>2</sup> A small owner-operated brothel (SOOB) is defined in the PRA as a brothel at which not more than 4 sex workers work and where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel (PRA s.4).

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Centre Zones, so the areas are based on existing zoned areas for commercial activity in Queenstown and Wānaka and provides consistency with the Proposed District Plan for education and enforcement purposes. This would provide a larger area within which brothel activity is permitted and is show in the maps below:

Schedule 1 - Area of permitted activity - Queenstown



Scale: 1:6,000  
Map Date: 19/03/2024  
The information provided on this map is intended to be general information only. While considerable effort has been made to ensure that the information provided on this map is accurate, current and otherwise adequate in all respects, Queenstown Lakes District Council does not accept any responsibility for content and shall not be responsible for, and excludes all liability, with relation to any claims whatsoever arising from the use of this map and data held within.

Schedule 2 - Area of permitted activity - Wānaka



Scale: 1:4,000  
Map Date: 19/03/2024  
The information provided on this map is intended to be general information only. While considerable effort has been made to ensure that the information provided on this map is accurate, current and otherwise adequate in all respects, Queenstown Lakes District Council does not accept any responsibility for content and shall not be responsible for, and excludes all liability, with relation to any claims whatsoever arising from the use of this map and data held within.

- a new purpose provision. It is important that Council updates the bylaw to include a purpose. This ties the bylaw into the PRA, making its purpose consistent with the purpose of the PRA. The purpose of the draft bylaw is to:
  - support the purpose and objectives of the PRA
  - enable commercial sexual service providers to operate within the district in a manner that both meets market demand for services and addresses community concerns and sensitivities
  - allow the establishment of brothels in areas where the effects associated with the operation can be readily controlled. This may include changes to the permitted area so that these areas are not inconsistent with the PRA, and do not curb the activity and remove the rights and freedoms of sex workers to engage in a legal activity except where justified, in accordance with the principles of NZBORA.
  - control the establishment of signage associated with brothels to minimise community harm or offence
- removal of the restriction that brothels may not be located at or below ground level, within the permitted activity area. This removes unnecessary restrictions to locations within the permitted area in line with the purpose of the PRA.

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- adding 'District Plan' to the definitions section and an explanatory note that the requirements in the bylaw are in addition to a brothel needing to meet requirements specified in the District Plan.

All proposed amendments are identified in the draft bylaw by way of tracked changed text (strike-through and underline).

As with the formal review, or making, of any bylaw, it is open to Council to consider other amendments that could be included in the bylaw.

During the consultation process, Council may consider community views that seek to:

- make changes to the issues that are regulated in the draft bylaw
- add additional issues that are regulated by the draft bylaw
- make additional changes to the draft bylaw
- not adopt a bylaw.

Before adopting the final bylaw, with any additional amendments, Council will consider whether there has been adequate consultation and, under section 155 of the LGA, must determine that a bylaw is the most appropriate way of addressing the perceived problems, that the proposed bylaw is in the most appropriate form, and that it does not give rise to any implications under the New Zealand Bill of Rights Act 1990.

Council has made these determinations in relation to the draft bylaw, discussed below. Any further changes after the consultation period concludes could be subject to further consultation, if the changes are material and go beyond the scope of the draft bylaw and this statement of proposal.

## 7 DETERMINATIONS UNDER SECTION 155 OF THE LGA

Council is empowered to make the bylaw in accordance with the Local Government Act 2002, which also requires Council to make the following determinations.

**The draft bylaw is the most appropriate way of addressing the perceived problem** – The draft bylaw is to ensure that commercial sexual service providers operate within the district in a manner that meets both the market demand for services, but that also addresses community concerns and sensitivities through allowing the establishment of brothels in areas where the effects associated with the operation can be readily controlled but not in areas where they cannot.

The draft bylaw also seeks to control the establishment of signage associated with brothels to minimise community harm or offence. Council has resolved that a bylaw is the most appropriate way to address the problems associated with brothels in the district, because it addresses specific issues around location, enforcement and signage related to brothels.

**The draft bylaw is the most appropriate form of bylaw** – The draft bylaw clarifies the purpose of the bylaw in order that it is consistent with the PRA. Council resolved that the draft bylaw is the most appropriate form of bylaw

**The draft bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990** – The draft bylaw is designed to regulate the locations in which brothels may operate, and the signage

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associated with brothels within the district to enable the provision of commercial sexual services to meet demand but to also addresses community concerns and sensitivities.

Section 13(2) of the PRA allows Council to make provision in a bylaw relating to signage for brothels even if, contrary to s.155(3) of the LGA, that it is inconsistent with the NZBORA. The draft bylaw allows brothels to operate within areas of permitted activity within Queenstown and Wānaka town centre.

Any restrictions contained in a bylaw need to be considered in light of the NZBORA because restrictions may impinge on the rights and freedoms of sex workers to engage in a legal activity. Any restrictions under a bylaw must be within the “reasonable limits prescribed by law as can be justified in a free and democratic society.”

Current restrictions under the bylaw prohibit a brothel from operating except within the areas of permitted activity in Queenstown and Wānaka. It could be argued that this is an unreasonable restraint on trade given that the PRA is intended to subject sex work to the same laws that regulate other businesses and workers. A bylaw must be consistent with this purpose.

Council has resolved that the draft bylaw does not give rise to implications under the NZBORA.

## 8 WHAT HAPPENS NEXT?

After it has received written and oral submissions, Council will make decisions on the draft bylaw in August 2024. Council may make other changes to the draft bylaw in response to feedback, but anything that is a significant departure from the options set out in this proposal may require further consultation.

Council will consider the following options about how to proceed:

- **Option 1** – adopt the draft bylaw
- **Option 2** – adopt an amended bylaw
- **Option 3** – do not adopt the draft bylaw.