

QLDC Council

23 March 2023

Report for Agenda Item | Rīpoata moto e Rāraki take [12]

Department: Strategy & Policy

Title | Taitara : Consultation - Draft Activities in Public Places Bylaw 2023

Purpose of the Report | Te Take mō te Pūroko

The purpose of this report is to present Council with the draft Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui and seek that that Council endorse the draft bylaw for formal consultation, via the special consultative procedure.

Executive Summary | Whakarāpopototaka Matua

The Activities in Public Places Bylaw 2016 is due for review and will automatically expire if not reviewed prior to September 2023. For the bylaw to continue past this date, Council will need to adopt a new bylaw.

If Council endorses the draft bylaw and adopts the statement of proposal for consultation, staff will undertake a consultation process in accordance with the Special Consultative Procedure from 8.00am 3 April 2023 to 5.00pm 5 May 2023.

Recommendation | Kā Tūtohuka

That the Council:

1. **Note** the contents of this report;
2. **Note** that the Community and Services Committee recommended that Council endorse the draft Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui for consultation;
3. **Determine** 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;
4. **Determine** pursuant to section 155(2)(a) of the Local Government Act 2002 that the draft Activities in Public Places Bylaw 2023 is the most appropriate form of bylaw;
5. **Determine** pursuant to section 155(2)(b) of the Local Government Act 2002, that the draft Activities in Public Places Bylaw 2023 does not give rise to any implications under the New Zealand Bill of Rights Act 1990;
6. **Endorse** the draft Activities in Public Places Bylaw 2023 / Ngā ture mahi ki ngā wāhi tūmatanui (Attachment A);
7. **Adopt** the statement of proposal outlined in Attachment C for consultation in accordance with the Special Consultative Procedure outlined in sections 83 and 86 of the Local Government Act 2002, from 8.00am Monday 3 April 2023 to 5.00pm Friday May 5 2023.

8. **Appoint** four councillors (to be named) of which three are required to form a hearings panel to hear and consider the submissions on the proposal and make recommendations to the Council on adoption of the draft bylaw.

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23 February 2023

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23 February 2023

Context | Horopaki

The bylaw review process

1. The Local Government Act 2002 (LGA) requires councils to review their bylaws every five years, and in some cases, every ten years. When a bylaw is first made, if it is reviewed by Council within five years, the subsequent review period is ten years. If a bylaw is not reviewed within five years of being made, there is a two year grace period within which the bylaw is still valid, after which it automatically expires. A review done in the two year grace period invokes a subsequent five year review requirement.
2. Two bylaws are currently under review and are being progressed and consulted on together for efficiency. This includes:
 - 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.
 - 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.
3. The Alcohol Restrictions in Public Places Bylaw 2018 is addressed in a separate report.
4. Before commencing the process for making or reviewing a bylaw (including consultation), Council is required to make the determinations in section 155 of the LGA. This is to determine whether a bylaw is the most appropriate way of addressing the perceived problem, whether the proposed bylaw is in the most appropriate form, and if it gives rise to any implications under the New Zealand Bill of Rights Act 1990. These requirements are canvassed in this report.
5. The bylaw has now reached the stage in the process for public consultation. The current progress of the bylaw is set out in the diagram below.



6. Preliminary engagement was undertaken on both bylaws during November 2022 to gather information as to what stakeholders view as the main issues with these bylaws. Targeted emails were sent to stakeholder groups, inviting them to provide feedback on Council's Let's Talk platform. Anyone in the community could also respond to the online survey.
7. Generally, the feedback received about the bylaw were positive, and that the current system is working well. Comments about trading and busking were mixed, with concerns raised that the noise caused by buskers (both with and without speakers) can dominate the lakefront environment in Queenstown.
8. The draft bylaw was presented to the Community and Services Committee (the committee) at its 21 February 2023 meeting. The committee recommended that Council endorse the draft bylaw for consultation.

The Activities in Public Places Bylaw 2016

9. 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

Proposed changes to the Activities in Public Places Bylaw 2016

10. The main features of the bylaw and proposed changes are discussed below. All proposed changes are annotated in the draft Activities in Public Places Bylaw 2023 at Attachment A. The Analysis and Advice section of this report also provides analysis for the purpose of meeting Council's obligations under section 155 of the LGA.

Commercial hire of micromobility devices (e-scooters)

11. The 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.
12. In December 2022, Council endorsed entering a memorandum of understanding (MOU) with micromobility device operator Beam for the operation of an e-scooter trial in Queenstown, Frankton and Wānaka ([Full Council \(qldc.govt.nz\)](https://www.qldc.govt.nz)). The draft MOU provides that Beam will ensure that e-scooters cannot be parked, or rides terminated, in the areas outside the deployment locations, which are on private land.
13. It is not recommended that Council regulate the commercial hire of micromobility devices occurring on private land through this bylaw, because the LGA bylaw-making provisions relate primarily to public places.
14. However, it is recommended that the bylaw be drafted to enable Council to regulate the hire and parking of micromobility devices on public land, by requiring permission of Council for this activity. Conditions and restrictions may be provided for in the bylaw or in a separate policy.
15. Potential problems resulting from this type of trading occurring in a public place is overcrowding of that place, leading to nuisance, obstructions and possible safety issues. Competing activities and general use by the public will need to be managed properly.
16. An alternative option is for Council to determine that a voluntary MOU is sufficient to regulate this activity to address any perceived problems. However, there is no guarantee that all micromobility providers would be amenable to entering into and complying with a MOU. Additionally, providers are indicating that their preference would be to utilise public land for parking and hire of micromobility devices. A bylaw

provides Council with the ability to make requirements similar to those outlined in the MOU, and to take enforcement action if necessary.

17. Council needs to be aware that enforcement of the bylaw may not be straightforward. There is no infringement regime that will allow fines to be issued, therefore Council is largely confined to bringing a prosecution when a breach of the bylaw occurs.

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

18. 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.
19. Police have advised that the ban is a useful tool with respect to butane/ solvent abuse in public places, primarily by itinerant individuals, as these are volatile substances for which there is no other directly applicable legislation to prevent their use in public. The ban protects the public and maintains public health and safety, as well as minimising the potential for offensive behaviour in public places. Police use the ban to ensure that solvent abuse is not occurring in public places in the district. An alternative would be to rely on Police powers to react to offensive behaviour as an outcome of this activity. However, the ban allows Police to ensure that solvent abuse may be stopped when detected, rather than waiting for detrimental effects. It is proposed to maintain the current provisions in the bylaw.

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

20. The provision in the current bylaw 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. The distribution of leaflets is used to promote local businesses due to the high number of visitors to the district. 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.
21. Officers consider that the alternative of relying on the Litter Act 1979 alone is insufficient to address this problem. This is because although fines may be issued under the Litter Act 1979, the bylaw allows Council to take enforcement steps when someone is in the process of handing out leaflets, before any actual littering occurs.
22. If the ban were to extend beyond commercial activities and businesses, it would likely be inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA). Under the NZBORA, a bylaw may only be valid where it can be found to be a reasonable limit that “can be demonstrably justified in a free and democratic society” (section 5). The application of this principle means that there is a distinction between leaflets advertising goods or services, as compared to those expressing religious, political or other views. To further guard against a challenge under the NZBORA, a purpose for this clause to clarify that it is aligned with the prevention of litter has been added to the draft bylaw.

Requiring permission for events in public places

23. 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.

24. Alternatives to a bylaw such as a policy, procedure or guidelines would not give Council the same enforcement mechanisms as a bylaw, therefore a bylaw is considered the most appropriate option. It is proposed to maintain the provisions in the bylaw for events in public places. There is a programme of work scheduled to review and improve the internal system for processing event and film applications.

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

25. 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.
26. 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.
27. Largely due to COVID-19, there has been minimal activity in this space in recent years. However, with visitor numbers quickly rebounding in Queenstown, it is anticipated that this will again become a popular activity.

Requiring registration for busking in public places

28. 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.
29. To address the concerns raised in the preliminary feedback regarding the Queenstown lakefront, it is proposed to review the permitted sites for busking that the bylaw applies to, with a view to ensuring that they are located a reasonable distance from areas particularly sensitive to disruption or noise from busking activity. The bylaw does not apply to reserves land, which is governed by the Reserves Act 1977.

Options analysis

30. Council has the ability to make changes to the draft bylaw as an outcome of formal consultation in response to feedback received, as long as the changes are within the scope of the statement of proposal. Material changes to the draft bylaw proposed after consultation that are not contemplated in the statement of proposal may require Council to consult again.
31. 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.

32. **Option 1:** that Council endorses the draft Activities in Public Places Bylaw 2023 for consultation following the Special Consultative Procedure. Note that it is open to the Council to recommend changes to the draft bylaw as part of this option.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> Continues a compliant bylaw review process in a timely fashion. 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. Council would have the ability to regulate commercial micromobility rental schemes (e-scooter hire) in public places. 	<ul style="list-style-type: none"> There are time and costs associated with consultation and implementation.

33. **Option 2:** that Council does not endorse the draft Activities in Public Places Bylaw 2023 for consultation following the Special Consultative Procedure.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> There would be reduced time and costs associated with consultation and implementation of the bylaw. 	<ul style="list-style-type: none"> The bylaw review process would not be continued and the bylaw would lapse. 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. Council would not have the ability to regulate commercial micromobility rental schemes (e-scooter hire) in public places.

34. This report recommends **Option 1** for addressing the matter, as this option regulates activities in public places in the district, whilst balancing individual rights and freedoms.

Next steps

35. If endorsed by Council at its 23 March 2023 meeting, the draft bylaw and statement of proposal will go out for public consultation from 8.00am 3 April 2023 to 5.00pm 5 May 2023.

36. It is intended that the written submissions received will be presented and a hearing on this matter for those that would like to present their submission orally will take place in June 2023.

37. Staff would then present the draft bylaw to Council for deliberation and adoption at its 18 August 2023 meeting, to come into effect from September 2023.

Consultation Process | Hātepe Matapaki

Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

38. 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 as a result of adopting the recommended option.
39. During the later stages of reviewing this bylaw, such as when the decision is made to adopt the final bylaw, the degree of importance of this matter may reach the threshold of being a significant decision.
40. The persons who are affected by or interested in this matter are residents/ratepayers of the Queenstown Lakes District community, businesses that may wish to or currently do operate in or close to public places (ie. event organisers, licenced premises tour operators, licenced premises along Queenstown lakefront), and visitors to the district.
41. Officers have sought early feedback from stakeholders and the community on this bylaw. If Council endorses the draft bylaw and adopts the statement of proposal for public consultation, the public will be formally consulted using the Special Consultative Procedure. This will enable Council to better understand community views.

Māori Consultation | Iwi Rūnaka

42. Input will be sought on the draft bylaw from Te Ao Marama and Aukaha through the formal consultation process. In order to continue to educate and socialise the use of te reo Māori the community, the title of the bylaw has been translated.

Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka

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 review of this bylaw to ensure that they respond appropriately to the issues in the district regarding activities in public places.

Financial Implications | Kā Riteka ā-Pūtea

45. The costs associated with reviewing the bylaw including staff time and advertising will be met within current Council budgets. Costs include staff time and advertising.
46. Whether through an MOU or the draft Activities in Public Places Bylaw 2023, 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

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

- the outcomes and principles of Vision Beyond 2050
- the 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 review is included in the Ten Year Plan/Annual Plan.

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

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. Legal advice has been received in relation to the draft bylaw and statement of proposal.

Special Consultative Procedure

51. It is proposed to consult on the draft bylaw using the Special Consultative Procedure outlined in sections 83 and 86 of the LGA. The Special Consultative Procedure requires that Council adopts a formal statement of proposal, has a consultation period of not less than one month, and allows people to present their views to Council in a manner that enables spoken interaction, such as by having a hearing.

52. It is proposed that Council will make the statement of proposal as widely available as is reasonably practicable (in accordance with section 83 of the LGA), and encourage people to give feedback, by:

- placing advertisements in local newspapers
- promoting the consultation on Council's social media pages
- having the statement of proposal accessible on Council's Let's Talk website.

Revocation of the Activities in Public Places Bylaw 2016

53. 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 formal public consultation process.

Determinations

54. Before making or reviewing a bylaw, Council must make the determinations required under section 155 of the LGA. Set out below is the assessment for each required determination.

Most appropriate way of addressing the perceived problem

55. Council must, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem or issue.
56. 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

57. 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.
58. The draft Activities in Public Places Bylaw 2023 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

59. 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'.
60. The draft Activities in Public Places Bylaw 2023 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.
61. Officers consider that the proposed increase in the scope of the ban on the distribution of leaflets in the draft Activities in Public Places Bylaw 2023 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.
62. 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.

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

63. 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.

Attachments | Kā Tāpirihaka

A	Draft Activities in Public Places Bylaw 2023
B	Current Activities in Public Places Bylaw 2016
C	Statement of proposal

Document revision: 2023-1