

QLDC Council
28 April 2016

Report for Agenda Item: 6

Department: Legal and Regulatory

Nuisance Bylaw 2016

Purpose

- 1 To consider the proposed Queenstown Lakes District Nuisance Bylaw, to enable the special consultative procedure to commence.

Executive Summary

- 2 This report covers a review of the Activities and Obstructions in Public Places Bylaw as identified in the 2015/2016 work programme.
- 3 The review covers the wide ranging and varied issues caused from activities in public places across the district and the reasoning to include or exclude these in the proposed Bylaw.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Approve** the proposed Queenstown Lakes District Nuisance Bylaw 2016 for public consultation using the special consultative procedure.
3. **Appoint** three Councillors [to be named] to participate in a hearing panel to consider and hear submissions on the proposed Queenstown Lakes District Nuisance Bylaw 2016.

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13/04/2016

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13/04/2016

Background

- 4 Council identified the review of the Control of Activities and Obstructions in Public Places Bylaw 2010 as a key area of work to be undertaken in the 2015/2016 work programme.
- 5 One of the main aspects to be considered during the review was the potential of banning the consumption of Psychoactive Substances in public places, following the development of a Local Approved Products Policy ("LAPP"). A LAPP controls the location for the retail sale of approved products (i.e. psychoactive products approved by the Psychoactive Substances Regulatory Authority) within the Queenstown Lakes District. Council approved and adopted the LAPP on 30 June 2015:

<http://www.qldc.govt.nz/assets/Uploads/Council-Documents/2015-Full-Council-Agendas/30-June-2015/Item-10/10-Local-Alcohol-policy-report.pdf>

- 6 Informal public consultation was carried out through December 2015 and January 2016, along with internal consultation. During the informal consultation, several questions were asked regarding issues that had been raised with Council since the introduction of the current Bylaw. A total of 60 responses were provided with an additional 426 general comments.
- 7 Informal feedback was provided from three departments within Council, namely, Regulatory, Parks and Reserves and Corporate Services.
- 8 Council was presented with a summary of the pre-consultation in a workshop on 8 March 2016.

Comment

- 9 The Local Government Act 2002 ("LGA 2002"), enables Council to make a Bylaw to address local issues and provides the ability to operate proactively to:
 - a) Protect the public from nuisance;
 - b) Protect, promote, and maintain public health and safety; and
 - c) Minimise the potential for nuisance behaviour in public places.
- 10 The informal consultation covered the following general areas: market locations, pop-up stalls, fundraising, canvassing, busking, smoking, psychoactive substances, drones, glass on reserves/beaches, litterbins on footpaths and dog waste bins.
- 11 Several additional topics were also brought to Council's attention during the informal consultation regarding fireworks, bar crawls, slack lining and motorbikes on reserves, which have also been considered in the Bylaw review.

Markets/Food stalls/Pop up stalls

- 12 The current Bylaw permits these activities, provided that a resource consent or permit is obtained from Council. The informal consultation received was supportive of the continuation of these activities (80%), however it was suggested that markets should be restricted to specific days and times. Comments were also received that the pedestrianisation of Beach Street could also provide a future site for markets to be held.
- 13 The pedestrianisation of Beach Street has not been considered as an option currently as this is only a trial and therefore should not be considered at this stage.
- 14 There are a number of current locations for markets e.g. Remarkables Market, Earnslaw Park Market and Wanaka Market. Each of these has obtained a resource consent and provide little or no nuisance/issues to the wider community as well as a level of control; they also contribute to vibrancy in the community
- 15 Foodstall permits were previously required (regardless of any resource consents), to undertake food safety assessments. However, these are no longer required following the implementation of the Food Act 2014 on 1 March 2016. The Food Act 2014 provides the food safety controls although it does not control the nuisance aspect such stalls might cause in a public places.
- 16 It is recommended that the current provisions to obtain authority from Council for these activities is retained and that pop-up stalls be considered an 'event' and as such, require authority from Council .

Busking

- 17 The current Bylaw provides the ability for busking throughout the district if a permit is obtained from Council with associated conditions.
- 18 54% of feedback received proposed that busking should be permitted, but should be restricted to specific areas. Furthermore it was suggested that permission should be sought from premises/residential property owners to allow for busking within a certain distance of a premise/residential property and that the use of amplifiers should be banned.
- 19 On average, 75 busking permits are issued annually. It is recommended that the current conditions are retained, however that the ability to busk is more permissive i.e. busking is a permitted activity providing the customer meets the conditions set in the proposed Bylaw, therefore no permit is required. However, if the customer cannot meet the conditions a permit will be required as this will require additional consideration. E.g. no amplifiers are permitted, so if a busker wishes to use an amplifier, this would be considered before a permit is issued.
- 20 It is recommended that the ability to busk is retained in a more permissive self-complying manner, and an application is only necessary where the conditions cannot be met.

Leaflets/Sampling/Canvassing

- 21 The current Bylaw prohibits canvassing, the distribution of leaflets of sampling to obtain any commercial gain.
- 22 Informal consultation (58%) indicated that leaflet distribution should be restricted to specific locations and that sampling should be close to the licenced food premises.
- 23 It is recommended that the prohibition for canvassing, sampling and the distribution of leaflets is retained to reduce the likely impact on the community from the potential inundation of these activities as each business touts for business.

Licenced Premises Tours

- 24 This activity is not controlled thought the current Bylaw. Informal consultation has raised concern about a lack of control with commercial organised groups in regards to alcohol consumption, public intimidation and general public safety.
- 25 It is recommended that organised licenced premises tours, which require a fee to participate, are considered as an event and therefore would need a permit for the activity to be conducted. The permit would impose relevant conditions on permit holders, including limits on the size of the licenced premises tour groups, the supervision and responsibility of hosts and the hours and days of operation.

Psychoactive Substances

- 26 This activity is not addressed in the current Bylaw. 68% of the feedback stated that the consumption of psychoactive substances should be banned in our district. 25% believed they should be permitted in specific locations and 7% believed that should be permitted anywhere.
- 27 The issue of psychoactive substances has been discussed in detail over recent times, culminating in the development of an LAPP. It is recommended that the consumption of psychoactive substances in public places is prohibited in the proposed Bylaw. This would include all mind-altering substances, whether synthetic or naturally occurring, which may alter consciousness, mood or emotions, or which might intoxicate or induce pleasurable sensations.
- 28 This would exclude all medically prescribed substances, substances purchased from a pharmacy without a medical prescription, nicotine, caffeine and alcohol as defined in the 'Sale and Supply of Alcohol Act 2012', which is addressed in the Alcohol Ban Bylaw.

Glass on beaches and reserves

- 29 The prohibition of glass on beaches and reserves provided mixed and inconclusive feedback

- 30 It is recommended that the prohibition of glass on beaches and reserves is not included in the proposed Bylaw, as littering can be addressed through the Litter Act 1979. This provides the ability for infringements to be issued (up to \$400).

Litter bins / Dog waste bins

- 31 Feedback received raised concerns and frustrations regarding the lack of litter bins throughout the district, domestic and commercial rubbish being disposed of in public bins, household bins being left on the pavement for long periods of time and the overflowing of rubbish in public areas.
- 32 The provision of litter facilities is not as simple as providing more facilities e.g. dog waste bins, as there are direct cost implications for the provision of these facilities and the on-going servicing.
- 33 The issue of waste from commercial and residential premises being placed in public bins, leading to them being filled faster is difficult, and leads to increased costs to service these facilities as the depositing of any rubbish into the bin complies with the Litter Act 1979.
- 34 It is recommended that these matters are considered as part of a waste minimisation strategy and solid waste strategy. In addition to further consideration to address these matters through the annual plan process as resolved by Council in November 2015.

<http://www.qldc.govt.nz/assets/Uploads/Council-Documents/2015-Full-Council-Agendas/26-November-2015/Item-13/13-Queenstown-CBD-Litter-collection-report.pdf>

Slack lining

- 35 This activity is not included in the current Bylaw. The issue raised relates to the damage caused by the use of slack lines on our trees.
- 36 It is recommended that this activity not be included within this Bylaw as it has the ability to be managed through the Reserves Act 1977.

Fireworks

- 37 This activity is not addressed the current Bylaw. Informal consultation has raised comments around enforcing restrictions around when fireworks can be used due to safety, noise and general nuisance.
- 38 Government has enforced restrictions around the sale of fireworks, however, there are no restrictions in place regarding their use i.e. when they can be used or not.
- 39 It is recommended that due to the difficulty in enforcing the use of fireworks that this activity is not included in the proposed Bylaw.

40 Fundraising

- 41 This activity is not included in the current Bylaw. Informal consultation indicated that more control was needed over fundraising in respect to the number of collectors allowed and the locations they are permitted.
- 42 As this is an activity that provides benefits to our community and others, it is recommended that we do not require a permit for this activity or implement any restrictions, but instead that this is a permitted activity, but is treated under the 'general nuisance' capabilities in the Bylaw, where an Enforcement Officer may ask the collector to move on.

Drones

- 43 Informal consultation has raised comments regarding the concern of privacy, drones being used in populated areas and the use of drones in general.
- 44 It is recommended that this topic is not included in the proposed Bylaw as all areas of concern are governed by Civil Aviation Rules made under the Civil Aviation Act 1990 and civil remedies through a private commissioner for the breach of privacy. This could also be addressed in reserve management plans or a QLDC policy regarding this matter.

Smoking

- 45 The informal consultation requested smoking restrictions around shops, business entrances, alfresco dining areas, beaches, sports areas and children's play areas.
- 46 A blanket ban for smoking may be challenged as being unreasonable given that tobacco is a legal product and there would be considerable difficulties enforcing a ban on smoking in public places in a meaningful way.
- 47 Is it unlikely to be appropriate to prosecute a person in breach of the Bylaw, and no infringements are available under existing legislation. It is recommended that Council does not include this in the proposed Bylaw, but instead works towards adopting a smoke-free policy, similar to Auckland City Council, with the aim of creating a Bylaw in 2019. This target date would allow for a 3 year roll out of a programme for banning smoking across the district.

Options

- 48 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.

49 Option 1 Status Quo

50 Advantages: *Minimal additional work*

- 51 If the Bylaw is retained in its current format, there will be minimal work necessary to roll this over for a further 10 years.

52 Disadvantages: *Does not meet community needs*

53 Since the implementation of the current Bylaw, other matters have been identified to be considered in the proposed Bylaw e.g. the consumption of psychoactive substances.

54 Option 2 No Bylaw

55 Advantages: *Council will be perceived as being less bureaucratic*

56 As there are no rules in place, some of the community may see this as a positive.

57 Disadvantages: *No ability to control any activities considered a nuisance*

58 With no Bylaw we have no ability to enforce certain nuisances within our community on topics that affect the community on a daily basis.

59 Option 3 Proposed Bylaw

60 Advantages: *A more structured Bylaw covering current topics for our community allowing relevant enforcement.*

61 Since the implementation of the current Bylaw, other matters have been identified to be considered in the proposed Bylaw to address the changing nature of certain activities e.g. the use of amplifiers whilst busking.

62 Disadvantages: *More resources maybe needed to enforce the Bylaw*

63 With the inclusion of more activities more enforcement will be required from different teams within Council which will increase workloads e.g. town custodians will need to be warranted to issue infringements which will need processing by the Regulatory support team or enforcement officer.

64 This report recommends **Option 3** for addressing the matter.

Significance and Engagement

65 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because of the community interest of the topics and the impacts on our community.

Risk

66 This matter does not have significant risk. This matter does not have significant risk as documented in the Council's risk register. The recommended option considered above mitigates the risk by 'Treating the risk – putting measures in place which directly impact the risk'.

Financial Implications

67 There are operational cost implications resulting from the decision regarding the review of this Bylaw. These costs will be met through current budgets.

Council Policies, Strategies and Bylaws

68 The following Council policies, strategies and bylaws were considered:

- The Control of Activities and Obstructions in Public Places Bylaw 2010
- Local Approved Products Policy 2015
- Auckland Council Smoke-Free Policy 2013
- Enforcement Strategy and Prosecution Policy
- Waste Management Strategy
- New Zealand Bill of Rights Act 1990 (“BORA”)

69 The recommended option is consistent with the principles set out in the named policy/policies.

70 This matter is included in the 10-Year Plan/Annual Plan

71 Volume 1 – Our Long Term Council Outcomes to encourage compliance and to protect the interests of the district.

Local Government Act 2002 Purpose Provisions

72 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by providing the framework to enable the vibrancy of activities in public places, with controls in place where appropriate;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly 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.

Consultation: Community Views and Preferences

73 The persons who are affected by or interested in this matter are the residents/ratepayers of the Queenstown Lakes district community as a whole. Initial pre-consultation was conducted between December 2015 and January 2016. It is suggested that Council approve formal consultation commencing on Saturday 30th April 2016 and ending on Monday 30th May 2016.

74 It is suggested that a hearing for submissions be heard on either 9th or 10th June with a final report and bylaw being presented to Council at the Council meeting on 30 June 2016 for a 1 July 2016 implementation of the Nuisance Bylaw 2016.

75 The Council has already conducted informal consultation within our organisation and with the wider community. During the pre-consultation 17 questions were asked of the wider community. A total of 949 responses were given over the 17 questions and 426 comments were provided. Four organisations provided

feedback on the pre-consultation and four departments from within Council's organisation.

Attachments

- A Informal feedback summary
- B Control of Activities and Obstructions in Public Places Bylaw 2010
- C Proposed Queenstown Lakes District Nuisance Bylaw 2016
- D Statement of Proposal
- E Summary of the Statement of Proposal