

QLDC Council
10 October 2019

Report for Agenda Item | Rīpoata moto e Rāraki take 5

Department: Community Services

Title | Taitara: QLDC Freedom Camping Bylaw

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

- 1 The purpose of this report is to recommend that the Council agree to undertake public consultation using the special consultative procedure on the issue of making a new bylaw to regulate freedom camping in the Queenstown Lakes District, which will replace the QLDC Freedom Camping Control Bylaw 2012.

EXECUTIVE SUMMARY | WHAKARĀPOPOTOTANGA MATUA

- 2 The current bylaw will be revoked by operation of law in December 2019. There is an identified need for Council to continue to regulate freedom camping in the District. This report therefore recommends that Council make a new bylaw to replace the current bylaw when it expires. It also recommends that the new bylaw adopt the same approach as the current bylaw, but be drafted in a more simplified way. It is proposed that the areas in which freedom camping is prohibited are expanded.

RECOMMENDATION | NGĀ TŪTOHUNGA

- 3 That Council:
 1. **Note** the contents of this report;
 2. **Approve** commencement of public consultation using the special consultative procedure in relation to the proposal to make a new freedom camping bylaw under s 11 of the Freedom Camping Act 2011;
 3. **Appoint** three councillors to hear and consider the submissions on the proposal and make recommendations to the Council on adoption of the proposed bylaw and delegate to the Mayor the authority to make those appointments once the 2019 local authority election has occurred.

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26/09/2019

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27/09/2019

CONTEXT | HOROPAKI

- 4 The Freedom Camping Act 2011 (**FCA**) allows freedom camping anywhere in a local authority area that a local authority has control over, except at those sites where it is specifically prohibited or restricted by that local authority.
- 5 The District is a significant tourist destination and home to approximately 37,000 residents. There has been significant growth in our community and in the number of visitors to the District over the last decade, which includes an increase in the number of freedom campers.
- 6 The Council made the current bylaw under s 11 of the FCA in December 2012. A copy of the current bylaw is included as **Attachment A** with this report. The current bylaw defines the areas where freedom camping is permitted, restricted or prohibited within the District, and any relevant restrictions within the restricted areas.
- 7 The FCA provides that councils must review any bylaws made under the FCA no later than five years after the date on which the bylaw was made.¹ If not reviewed within this time period, the bylaw is automatically revoked two years after it should have been reviewed.²
- 8 The Council did not undertake a full review of the current bylaw by December 2017. A minor amendment of the 2012 bylaw was undertaken in 2018 to address two problematic camping areas in the Wakatipu, using the special consultative procedure. A full review was not carried out as the Responsible Camping Strategy was in preparation and a full review would pre-empt the Strategy's recommendations. A work programme has been adopted which indicates a comprehensive review of the areas freedom camping zones and how the bylaw works, should be undertaken in approximately 2022 once other actions are implemented.
- 9 Therefore, the current bylaw will be automatically revoked in December 2019. If the Council wishes to continue to control freedom camping through a bylaw, it will need to make a new bylaw, rather than continuing the current bylaw in force.
- 10 The purpose of this report is therefore to consider whether the Council should make a new bylaw to regulate freedom camping in the District, which will replace the current bylaw once it expires in December 2019.
- 11 Section 11(2) of the FCA provides that the Council must only make a bylaw under the FCA if it is satisfied that:
 - a. the bylaw is necessary for 1 or more of the following purposes:
 - i. to protect the relevant areas:
 - ii. to protect the health and safety of people who may visit the relevant areas:

¹ FCA, s 13(1).

² FCA, s 13(6).

- iii. to protect access to the relevant areas; and
 - b. the bylaw is the most appropriate and proportionate way of addressing the perceived problem in relation to the relevant area; and
 - c. the bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990 (**NZBORA**).
- 12 Section 11(5) of the FCA provides that if the Council does decide to make a new bylaw, it must conduct a special consultative procedure under s 83 of the Local Government Act (**LGA**).

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

- 13 The Council manages freedom camping currently using regulatory (bylaw) and non-regulatory means. The non-regulatory means include measures adopted under the Council's Responsible Camping Strategy (**Attachment B**), including provision of infrastructure to support freedom campers, such as rubbish receptacles and porta-loos at various camp sites; government-funded "summer camping hubs"; and education and guidance for freedom campers and locals. The Council adopted the Strategy in 2018 in partnership with the Department of Conservation (**DOC**), New Zealand Transport Agency (**NZTA**), Land Information New Zealand (**LINZ**), Ministry of Business Innovation and Employment (**MBIE**) and neighbouring councils. Two limbs of the strategy include to control freedom camping, and to maintain responsible camping. The Council has provided information on its website for locals and campers, including an interactive map showing prohibited areas and suggestions for DOC or commercial campgrounds.
- 14 Council staff have gathered the following statistics about freedom camping in the District in recent years:
- a. In the period November 2018-April 2019 period, 15,000 freedom campers that visited the temporary service hubs used self-contained vehicles, and 300 used non-self-contained vehicles.
 - b. One campground, Red Bridge (near Luggate) recorded 99 self-contained campers at its peak in one night during the 2018-2019 summer period.
 - c. The Council receives daily complaints from the public about freedom campers, although often the complaints are not about any illegal or unlawful activity from the campers.
 - d. The Council issues, on average, 3,200 infringement notices for freedom camping annually (averaging nearly 9 per day).³

³ For completeness, we note that there is no way of knowing how many freedom campers who infringed the FCA or current bylaw were not caught; or how many people would have infringed but for the Council's guidance and enforcement practices.

- e. The recovery rate of those infringement notices between 1 January 2017 and 1 January 2019 was 62.6%. (At 3,200 notices issued annually, this equates to approximately \$400,640 received in fines per year.)
- 15 The Responsible Camping Strategy also contains forecasted visitor numbers and growth for the next five years, which predicts an increase from 1.28 million visitors in 2018, to approximately 1.7 million visitors in 2024.
 - 16 While a “review” of the current bylaw is unnecessary as it will be revoked automatically, an understanding of how the current bylaw is working will assist the Council to decide whether to make a new bylaw.
 - 17 Council officers and contractors enforcing the bylaw have reported the bylaw is generally working well, and that there are only a small number of infringement notices issued compared to the large number of lawful campers in the region. While one stakeholder reported that anywhere there is freedom camping there are impacts on the environment, he noted that littering is actually rare. We have been provided with anecdotal evidence, however, that freedom campers dropping human waste in or on the land (ie rather than using toilets) remains an issue that is important to address, however infrequent.
 - 18 The Responsible Camping Strategy identifies the following problems:
 - a. Poor behaviour from some campers is leaving an environmental impact.
 - b. In some cases, people are avoiding recreation areas because of human waste and poor camping behaviour.
 - c. Traditional free camping areas have become overwhelmed and have resulted in unacceptable on-site and off-site effects.
 - d. Camping (both self-contained and non-self-contained) can limit locals’ access to recreational facilities and sites and detract from their recreation experience.
 - e. Frequent and persistent camping (both self-contained and non-self-contained) can impact on residents’ privacy and quiet enjoyment of their property.
 - 19 Other feedback from internal and external stakeholders included that:
 - a. The bylaw is unclear about where campers can actually stay, and that it would be better if it specified where campers can stay rather than where they cannot.
 - b. The areas are out of date as residential areas have grown and expanded. Some new and existing residential areas are not prohibited areas under the current bylaw, such as Hanley’s Farm, Shotover Country, Cardrona and Hawea surrounds. This is inconsistent with the approach to prohibiting freedom camping in all urban and residential areas in the District.
 - c. There is a perception that there are many places to camp in self-contained vehicles, but once you remove the built-up areas where it is prohibited, it really

only amounts to some reserves (eg, Whitechapel Reserve and Red Bridge Reserve), and QLDC land on the edge of roads.

- d. Anecdotally, the number of freedom campers is growing.
- e. Camping ground owners or operators wanted to prohibit freedom camping in a radius around camping grounds of varying sizes in reflection of the positive effect that the camping grounds have on the economy of the District. In their feedback they specifically mentioned Glenorchy Road and Glendhu Bay to Wanaka as problematic hotspot areas.

20 It may be perceived from the updated bylaw maps that the areas where freedom camping is prohibited has substantially increased, however this is simply reflecting the strong residential growth of the District.

Two sections of road that have become 'hotspots' for freedom campers have also been added to the maps.

One is between Queenstown and Glenorchy. The road is very narrow and winding and not safe for vehicles to pull over. The Department of Conservation (DOC) has also recently gazetted all conservation land along this road in order to prohibit freedom camping on the lakeside reserves through the Reserves Act. Including the road reduces the safety risks and aligns QLDC's and DOC's freedom camping restrictions.

21 The second section of road is Mt Aspiring Road from Wanaka township to Glendhu Bay. This road is also narrow and winding, and the lakeside road reserves were experiencing high numbers of freedom campers that generated many complaints from the public. There is also anecdotal evidence that freedom campers were camping on the road reserve outside the two campgrounds located along this road.

22 Council could also use the Reserves Act 1977 (Reserves Act) to regulate (prohibit or restrict) freedom camping rather than a bylaw or the FCA. Section 44(1) of the Reserves Act provides that no person can use a reserve, or any vehicle, caravan, tent, or other structure situated on the reserve, for the purposes of permanent or temporary accommodation. Therefore, freedom camping on reserves is prohibited unless provided for in a Reserve Management Plan or Council exercises its delegated ministerial consent to allow it. While this mechanism could be used to part-regulate freedom camping, it would not remove the need for a bylaw because it would not address roadside camping or land managed by the Council under another enactment.

23 A bylaw is the most effective mechanism to provide for prohibited local authority areas and restricted local authority areas.

24 Meredith Connell has also reviewed the current bylaw and identified a number of drafting difficulties with the current bylaw. It has drafted the proposed bylaw so as to adopt the same approach as the current bylaw, but with drafting improvements. A memorandum containing explanations of the changes in drafting proposed is attached as **Attachment C**.

Options

25 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:

Option 1: Status quo (do nothing, and allow the current bylaw to expire)

26 If the Council does nothing, the current bylaw will be automatically revoked in December 2019 and there will be no bylaw in place defining any prohibited or restricted areas in the District. Freedom camping of all kinds (not just in self-contained vehicles) will become lawful in all areas of the District. Freedom camping using tents and non-self-contained vehicles is highly likely to increase.

Advantages:

27 One advantage of this option is it does not require the Council to undertake a special consultative procedure this year, nor will there be any financial or resource costs incurred in enforcing any new bylaw. But enforcement officers will still be required to enforce the infringement offences of the FCA that do not relate to camping in prohibited or restricted areas (eg damage to flora and fauna, or dumping of waste).

Disadvantages:

28 The Council can also continue to use non-regulatory approaches to manage freedom camping. It is hoped that these measures will reduce the problem, but that may be more difficult if the number of non self-contained freedom campers has increased. Public expectation is that Council will regulate and enforce freedom camping. As freedom camping is prohibited under the Reserves Act, Council could enforce through the Reserves Act, but while this would not remove the need for a bylaw because it would not address roadside camping or land managed by the Council under another enactment.

Finally, the Council would be acting inconsistently with its own Responsible Camping Strategy, which is based on promoting self-contained vehicle usage.

29 While the Council may decide to adopt a new bylaw at a later time after the current bylaw is revoked, this option means that there will be no bylaw in force for the 2019-2020 peak freedom camping season, which is generally between November and March.

Option 2: Make a bylaw identical to the current bylaw***Advantages:***

30 If the Council adopts a bylaw identical to the current bylaw, its enforcement of the restricted and prohibited areas in the District will continue much as it currently does. Advantages include that Council can continue to issue freedom camping infringement notices in prohibited and restricted areas in the District. Continued enforcement will reduce the risk of environmental damage, and also provide for greater accessibility to these areas for all. Council will be acting consistently with its own Responsible Camping Strategy.

Disadvantages:

- 31 Disadvantages include that stakeholder feedback has identified that the current bylaw is difficult to understand and, as identified by legal advice, contains significant drafting anomalies. New and expanded residential areas such as Hanleys Farm, Shotover Country, Hawea and Wanaka surrounds will be excluded from the restricted and prohibited areas as they did not exist when the 2012 bylaw was adopted and problem areas such as the Glenorchy Road will not be addressed.

Option 3: Make a new, simplified bylaw***Advantages:***

- 32 The proposed bylaw will have all the advantages of the current bylaw, but also be more user-friendly and consistent with the FCA. The proposed bylaw substantially reduces duplication, and removes redundant clauses that deal with matters more effectively regulated elsewhere. The Council will therefore be acting consistently with feedback received from its internal stakeholders to simplify the bylaw and make it easier for users to understand.

Disadvantages:

- 33 Disadvantages include that 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 of residents of newly expanded or developed residential areas, it will have the effect of conversely reducing the area in which freedom camping is allowed in self-contained vehicles.
- 34 The Council's financial and resource costs associated with enforcing any freedom camping bylaw will continue to increase with the forecasted tourist numbers in the District.

Recommendation

- 35 This report recommends **Option 3** for addressing the matter. The evidence and information-gathering exercises undertaken Council staff suggest that the current bylaw is working well and reinforces that there is a continuing need for a bylaw to regulate freedom camping in the District. However, the drafting of that bylaw should be simplified from the convoluted wording of current bylaw, and not include unnecessary repetition of the FCA.
- 36 Consistent with s 11(2) of the FCA, making a bylaw in this situation is necessary to protect the relevant areas, the health and safety of people who may visit the relevant areas, and access to the relevant areas. Furthermore, making a bylaw is the most appropriate and proportionate way of addressing the perceived problem in relation to the relevant area.
- 37 If Council agrees to adopt Option 3, it will need to commence a special consultative procedure. Copies of the draft Statement of Proposal for the special consultative procedure, and the draft proposed bylaw, are included as **Attachments D and E**.
- 38 The timetable for consultation is included in the draft Statement of Proposal. The timeline is tight given a special consultative procedure occurs over a period of about two months,

and there is a need for Council to make the new bylaw at its Council meeting in December 2019. Such a timeline will ensure that there is no period in which there is no bylaw in force, given the current bylaw expires in December 2019, and freedom camping peak season is yearly from November-March.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 39 This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy because the issue of freedom camping is a matter of:
- a. high importance to the District, with freedom camping being an ongoing issue and likely to increase with the District's forecast of tourist numbers;
 - b. of high community interest for residents and locals who are affected by freedom camping.
- 40 The persons who Council staff have identified as being particularly affected by or interested in this matter are:
- a. the New Zealand Motor Caravan Association Inc;
 - b. Department of Conservation;
 - c. local campground or holiday park owners;
 - d. Council's 14 "Campground Ambassadors" (who regulate and monitor Council campgrounds in the peak season);
 - e. Council's facilities management contractor, Summit Events; and
 - f. Council Parks and Regulatory staff and enforcement officers.
- 41 Freedom campers and residents/ratepayers of the District community generally are also affected by or interested in this matter.
- 42 As mentioned above, Council staff have undertaken a pre-consultation feedback exercise, which included a number of the identified stakeholders above. Stakeholders' initial feedback has informed the recommendations in this report and the drafting of the proposed bylaw.
- 43 The level of significance determines the level of compliance necessary with the decision-making requirements in sections 76-78 of the Local Government Act 2002. A higher level of compliance must be achieved for a significant decision. However, not only is this matter one of high significance which may ordinarily trigger a special consultative procedure under s 83 of the LGA, but s 11(5)(a) of the FCA also requires that the Council undertake a special consultative procedure for any bylaw made under the FCA.

> MĀORI CONSULTATION | IWI RŪNANGA

44 Council officers will specifically consult Ngāi Tahu in addition to using the special consultative procedure. The current bylaw provides that nothing in that current bylaw limited or affected the rights in relation to nohoanga entitlements under the Ngāi Tahu Claims Settlement Act 1998.⁴ This clause will be carried over to any new bylaw. However, it is important that the Council also takes active steps to gather and consider the views of Ngāi Tahu, as the proposed bylaw concerns matters of the District's natural resources and resource management, which is of interest to iwi as kaitiaki of the land.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

45 This matter relates to the following risk categories and risks:

- a. Environmental risk category. It is associated with:
 - i. RISK00017 relating to damage to the environment – discharge of contaminants within the [QLDC Risk Register](#). This risk has been assessed as having a moderate inherent risk rating.
- b. Community & Wellbeing risk category. It is associated with:
 - i. RISK00006 relating to ineffective management of social nuisance issues within the [QLDC Risk Register](#). This risk has been assessed as having a low inherent risk rating.
 - ii. RISK00056 relating to ineffective provision for the future planning and development needs of the district within the [QLDC Risk Register](#). This risk has been assessed as having a low inherent risk rating.

46 The approval of the recommended option will support the Council by allowing us to retain the risk at its current level. This shall be achieved by the continuation of a Council bylaw to regulate, monitor and enforce restrictions and prohibitions against freedom camping in the District, for example against people who are creating damage to the environment or a social nuisance by freedom camping in restricted or prohibited areas. The recommended option will also allow Council to effectively provide for the future planning and development needs of the district, for example by anticipating increased tourist and freedom camping numbers, and providing for the increase of residential development areas in the District for which freedom camping should be prohibited.

47 The cost of not adopting the recommended option, ie to maintain the status quo and allow the current bylaw to expire in December 2019, is for these risks to increase.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

48 There are no operational and capital expenditure requirements additional to existing approved budgets or Annual/Ten Year Plans, associated with the adoption of the

⁴ Bylaw, cl 11. For more information, see: https://ngaitahu.iwi.nz/our_stories/staying-at-nohoanga/.

recommended option. Enforcement of any freedom camping bylaw has already been anticipated in Council's annual expenditure. Enforcement of the proposed bylaw is anticipated to be cost neutral. These costs will be met through current operational and Capex budgets.

COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA

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

- Vision Beyond 2050: <https://www.qldc.govt.nz/vision-beyond-2050/>
- Responsible Camping Strategy: <https://www.qldc.govt.nz/events-and-recreation/responsible-camping/responsible-camping-strategy/>

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

51 This matter is not required to be included in the Ten Year Plan/Annual Plan. The Ten Year Plan provides for year-on-year operational expenditure relating to enforcement of a freedom camping bylaw.

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

52 As mentioned above, section 11(2) of the FCA contains a number of decision-making requirements when making a bylaw. The Council must be satisfied that:

- 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.

53 If, following the special consultative procedure, the Council decides to make the bylaw, the Council will be asked to make resolutions confirming its satisfaction with these legal requirements.

54 Council staff have asked Meredith Connell to consider the proposed bylaw against the NZBORA. Meredith Connell advises that the proposed bylaw will potentially engage the right to freedom of movement under s 18 of the NZBORA. Because it is proposed to expand the areas in which freedom camping is prohibited, the Council will have to be satisfied that the additional limits on freedom of movement are proportionate and justified having regard to the purpose of the bylaw, namely to control and manage the adverse effects of freedom camping. The High Court has found in a previous case (*New Zealand Motor Caravan Inc v Thames-Coromandel District Council* [2014] NZHC 2016) that a bylaw that restricted freedom camping through a list of urban areas where it

was prohibited, and by requiring use of self-contained vehicles in restricted areas, was not inconsistent with NZBORA.

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA

55 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 continuing regulation and enforcement of freedom camping in the District;
- 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 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.

ATTACHMENTS | NGĀ TĀPIRIHANGA

A	Freedom Camping Control Bylaw 2012
B	Responsible Camping Strategy 2018
C	Legal advice from Meredith Connell on drafting improvements
D	Proposed bylaw
E	Statement of Proposal