

Full Council

2 May 2024

Report for Agenda Item | Rīpoata moto e Rāraki take [7]

Department: Strategy & Policy

Title | Taitara: Review – Brothel Control Bylaw 2017

Purpose of the Report | Te Take mō te Pūroko

The purpose of this report is to provide information and options to Council to decide what action to take in relation to the review of the Brothel Control Bylaw 2017.

Executive Summary | Whakarāpopototaka Matua

The Brothel Control Bylaw 2017 is due for review. Officers undertook preliminary engagement with stakeholders and the community in August 2023 and received feedback challenging the current bylaw as being too restrictive.

The Prostitution Reform Act 2003 (PRA) enables councils to manage brothels via a bylaw, or through District Plan provisions, or a combination of both. If Council endorses a draft bylaw and adopts the statement of proposal for consultation, staff will undertake formal consultation in accordance with the special consultative procedure from 8.00am 3 May 2024 to 5.00pm 5 June 2023.

Recommendation | Kā Tūtohuka

That the Council:

1. **Note** the contents of this report;
2. **Determine** pursuant to section 155(1) of the Local Government Act 2002 that a bylaw is the most appropriate way of addressing the issues related to brothels in the district;
3. **Determine** pursuant to section 155(2)(a) of the Local Government Act 2002 that the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau is the most appropriate form of bylaw;
4. **Determine** pursuant to section 155(2)(b) of the Local Government Act 2002, that the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau does not give rise to any implications under the New Zealand Bill of Rights Act 1990;
5. **Endorse** the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau (**Attachment A**);

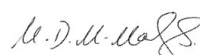
6. **Adopt** the statement of proposal (**Attachment B**) for consultation in accordance with the special consultative procedure outlined in sections 83 and 86 of the Local Government Act 2002, from 8.00am 3 May 2024 to 5.00pm 5 June 2024; and
7. **Appoint** four councillors (to be named) of which three are required to form a hearings panel to hear and consider the submissions on the proposal and make recommendations to Council on adoption of the draft bylaw.

Prepared by:



Name: Carrie Williams
Title: Policy Manager
8 April 2024

Reviewed and Authorised by:



Name: Michelle Morss
Title: General Manager Strategy and Policy
8 April 2024

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 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. Before commencing the process for making or reviewing a bylaw (including consultation), Queenstown Lakes District Council (QLDC) is required to make the determinations in section 155 of the LGA. This includes whether a bylaw is the most appropriate way of addressing the perceived problem, whether the proposed bylaw is 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.
3. 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.



Early engagement

4. Preliminary engagement was undertaken in August 2023 to gather information as to what stakeholders view as the main issues with the current bylaw. Targeted emails were sent to stakeholders, including Police, NZPC: Aotearoa New Zealand Sex Workers' Collective, Te Whatu Ora, Queenstown Chamber of Commerce and Wānaka Business Chamber, inviting them to provide feedback via the QLDC Let's Talk platform. Social media posts invited the general community to provide feedback as well.
5. Two responses were received to preliminary engagement, one from Te Whatu Ora, and one from NZPC: Aotearoa New Zealand Sex Workers' Collective. Both groups oppose the current bylaw as not supporting the intent of the Prostitution Reform Act 2003 (PRA) by being too restrictive, due to the small areas where brothel activity is permitted within the Queenstown and Wānaka town centres. They view that Council's current bylaw has the potential to detrimentally affect sex workers in the district, specifically small owner-operated brothels (SOOBs¹) that typically operate out of residential dwellings. They expressed concern that sex workers may be reluctant to report a problem or seek support if they are working outside the permitted activity areas, in breach of the bylaw. The NZPC would like QLDC to revoke the bylaw and regulate brothels as a commercial

¹ A brothel at which not more than four 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).

activity under the District Plan, with brothels allowed in commercial areas in line with other commercial activities and SOOBs regulated as a Home Occupation activity. The full text of the feedback received is at **Attachment C** to this report.

Prostitution Reform Act 2003 (PRA)

6. Since 2003, sex work has been a legal occupation in New Zealand under the 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.
7. The purpose of the PRA (s.2(1)) 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.
8. The PRA enables councils to manage brothels in two ways:
 - adopt a bylaw to manage a brothel's signs and/or manage the location of brothels (ss. 12 and 14 PRA), and/or
 - manage brothels using District Plan provisions (s. 15 PRA).
9. 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.
10. Brothel operators, apart from small owner-operated brothels (SOOBs), are required under the PRA to hold a valid brothel operator certificate issued via the Ministry of Justice, and brothels may be inspected by the NZ Police to ensure compliance with the PRA's welfare requirements. Certificates must be renewed every year. There have been no registered brothels in the Queenstown Lakes District since 2013.

Bylaws under the Local Government Act 2002

11. The PRA does not limit Council's general or specific bylaw making powers under ss. 145 and 146 of the LGA. Section 145 of the LGA states that councils may make bylaws for one or more of the following purposes:
 - protecting the public from nuisance

- protecting, promoting, and maintaining public health and safety
- minimising the potential for offensive behaviour in public places.

12. Any bylaw made in respect of the location and signage for brothels must be for one (or more) of the purposes set out in the paragraph above. Evidence is required to support the purpose for the bylaw. The LGA s.155 requirements are that:

- a bylaw is the most appropriate way of addressing the perceived problem; and
- the proposed bylaw is the most appropriate form of bylaw; and
- the proposed bylaw does not give rise to any implications under New Zealand Bill of Rights Act 1990 (NZBORA).

The Brothel Control Bylaw 2017

13. The current Brothel Control Bylaw 2017 (**Attachment D**) provides that:

- 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 operates the brothel, it must not exceed 0.3 square metres in size, and must comply with all applicable requirements in the District Plan
- the boundaries for the areas of permitted activity in Queenstown and Wānaka are shown in the maps below:

Figure 1: Queenstown and Wānaka permitted activity areas in the current bylaw.



Monitoring and enforcement of the current bylaw

14. Council has made no prosecutions under the current bylaw. It has received eight complaints in the past five years, of which six related to valid breaches of the bylaw. The themes identified from the complaints are:

- they relate to Whakatipu addresses, none in the Upper Clutha.
- two complaints related to commercial accommodation, which is lawful under the bylaw, so these are outside of what a bylaw may regulate. It is permissible for sex workers to provide “out services” in places outside the permitted activity areas. Out services are when a sex worker is engaged to visit a client at a specified address, and the transaction is initiated elsewhere. Out service locations are not the sex workers’ premises, which would likely be considered a SOOB under the bylaw as a being “habitually used for the purposes of prostitution”.
- concerns that the property identified is operating as a brothel outside of the permitted activity areas in the bylaw.
- people arriving and leaving the property at various hours.
- adjacent property door being knocked on by accident.

15. Council's monitoring and enforcement officers attended the reported addresses, explained the restrictions under the bylaw, and provided a copy of the bylaw to the occupants.

Approach by other councils

16. 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.

Analysis and Advice | Tatāritaka me kā Tohutohu

17. Council could proceed in one of two ways:
- First, it could endorse a draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare (Draft Bylaw) for consultation with the community (proposed changes to the current bylaw are outlined below), or
 - Secondly, it could manage brothels solely through Council's District Plan provisions and revoke the current bylaw or let the current bylaw lapse.

These options are canvassed below.

Consult with the community on a draft bylaw

18. If Council elects to proceed with a brothel bylaw for the district as its preferred option, the changes proposed in the draft bylaw from the current bylaw include:
- a new provision that states that the purpose of the bylaw is to:
 - support the purpose and intent 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
 - 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 areas
 - 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

- refreshed activity area maps, to make them easier to read.

19. All amendments are identified in the draft bylaw at **Attachment A** by way of tracked changed text.

Proposed changes to extend the permitted activity areas

20. In addition to the changes proposed in paragraph 18 above, it is open to Council to propose changes to the boundaries of the permitted activity areas in the draft bylaw for consultation. The maps in figures 2 and 3 below show three options.

21. The recommended option is to expand the permitted activity areas, to align with the Proposed District Plan Town Centre Zones (Q.1 and W.1 in Figures 2 and 3 below), so that 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.

22. This recommended option would provide a larger area within which brothel activity is permitted and therefore responds to feedback that the current bylaw permitted activity areas are overly restrictive. This option therefore mitigates the risk of challenge that the bylaw does not satisfy the requirements under s.155 of the LGA as the most appropriate way to address the perceived problem, that it does not support the purpose of the PRA, or that it is inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA). These issues are canvassed in more detail in the Legal Considerations section of this report starting at paragraph 53.

23. It is also an option to expand the permitted activity areas to include the current areas (shown in red below) as well as the areas shaded in blue (Q.2 and W.2 in Figures 2 and 3). A somewhat expanded area provides an intermediate option as between the current bylaw and the recommended option, as it responds moderately to feedback that the current bylaw is overly restrictive, as well as to LGA, NZBORA and PRA concerns.

24. A third option in relation to the permitted activity areas is to retain the current permitted activity areas (Q.3 and W.3 in Figures 2 and 3). This option does not respond to feedback that the bylaw is overly restrictive, so leaves open the risk of challenge to the bylaw as being inconsistent with the NZBORA, the PRA and not meeting LGA requirements for a bylaw.

Figure 2: Options for Queenstown permitted activity areas.

Q.1 - Recommended option outlined in black

Q.2 - Moderately expanded area shown in blue

Q.3 - Current permitted area in red

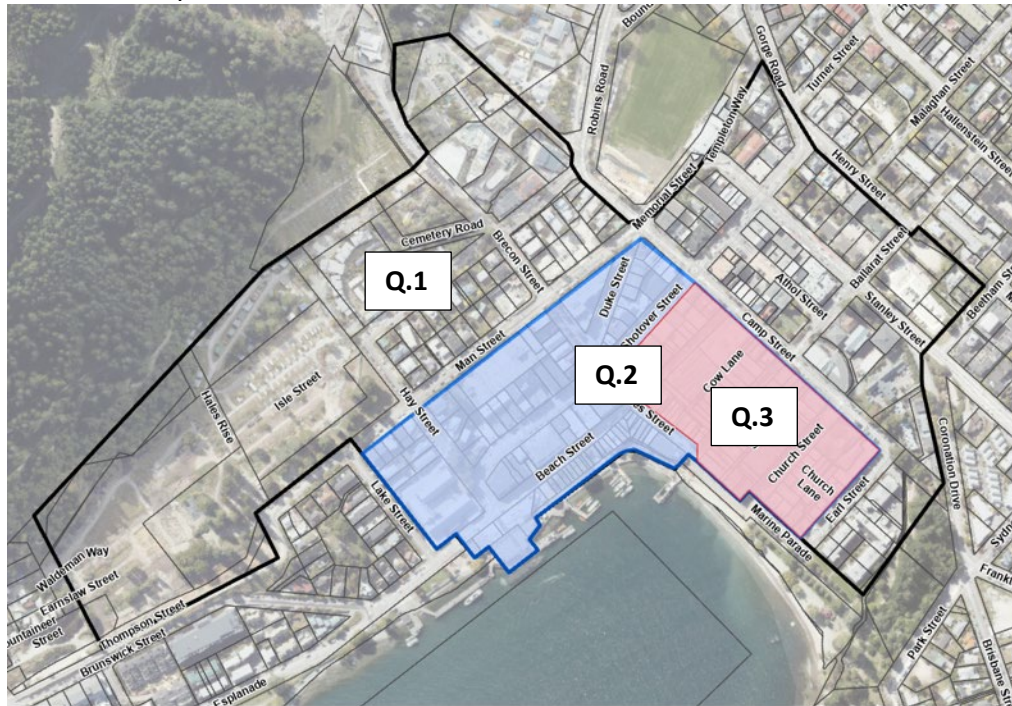
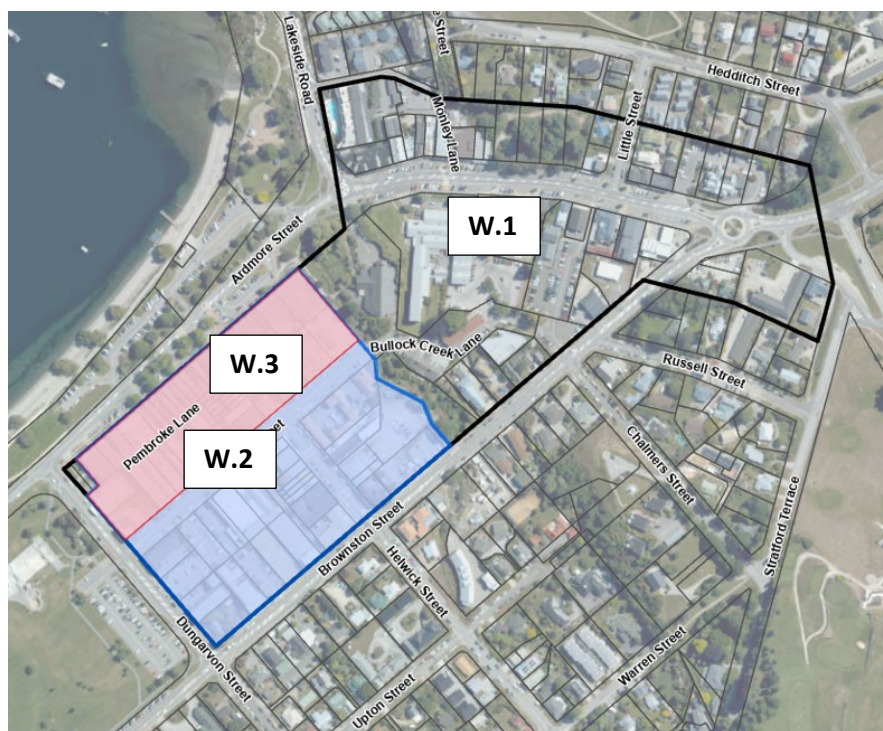


Figure 3: Options for Wānaka permitted activity areas.

W.1 - Recommended option outlined in black

W.2 - Moderately expanded area shown in blue

W.3 - Current permitted area in red



25. Council can make changes to the draft bylaw as an outcome of formal consultation, in response to feedback received, as long these changes are within the scope of the Statement of Proposal. Material changes to the draft bylaw proposed after consultation that come about through the submissions process but are not contemplated in the Statement of Proposal *may* require Council to consult again.

Let the bylaw lapse

26. If the current bylaw lapses, brothel activity would be regulated by the Proposed District Plan (PDP). Under the PDP, a brothel is a Commercial Activity². Commercial Activities require a resource consent to establish and operate in any district plan zone where they are not identified as a Permitted Activity.

27. In most locations, the Queenstown Town Centre and Wānaka Town Centre Zones provide for Commercial activities as permitted activity, provided they comply with the relevant standards.

² Means the use of land and buildings for the display, offering, provision, sale or hire of goods, equipment or services, and includes shops, postal services, markets, showrooms, restaurants, takeaway food bars, professional, commercial and administrative offices, service stations, motor vehicle sales, the sale of liquor and associated parking areas. Excludes recreational, community and service activities, home occupations, visitor accommodation, residential visitor accommodation and homestays.

As a specific type of brothel, SOOBs which operate in other zones (i.e. the district's residential zones) as a Home Occupation would likely be a permitted activity, subject to meeting the criteria under the relevant zone rules.

28. Any brothel that does not comply with the relevant district plan zone rules for residential zones would not be a permitted Home Occupation, and, like other activities in this zone, would require a resource consent.
29. Specific rules for Home Occupations apply in every residential zone. The Home Occupation activity status allows individuals and small businesses, such as accountants, architects, hairdressers to work at residential premises. The Home Occupation rules generally require the landowner to comply in the following manner:
 - no more than one full-time equivalent person from outside of the household shall be employed in the Home Occupation;
 - maximum vehicle trips (10 ordinary vehicles per day);
 - maximum net floor area of 60m²; and
 - the activity and storage of any materials associated with the activity must be indoors.
30. Any signs associated with the operation or siting of the business must also comply with the requirements under the District Plan. Requirements or criteria would include size, position, fixings, and any signs need to maintain the character and visual amenity of the surrounding environment.
31. The District Plan also limits signs which are not situated on the site to which they relate. The District Plan prohibits any moving, digital or illuminated signage, to protect residential amenity, and to ensure that the safety of road users is not compromised. Additionally, any signs located in road corridors may need approval from the Road Controlling Authority.
32. Revoking the bylaw and using the District Plan as a means of compliance would align Council with the approach taken by most councils. If Council allowed the bylaw to lapse, bringing about an automatic revocation of the bylaw on 24 May 2024, the District Plan would exclusively control brothel related activity.

Options Analysis

33. 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.
34. **Option 1:** that Council endorses the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau with permitted activity areas that align with Queenstown and Wānaka Town Centre Zones in the PDP (areas Q.1 and W.1 in figures 2 and 3) for consultation in accordance with the special consultative procedure.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • Council would retain the ability to regulate the locations in which brothels may operate and the signage that may be used to advertise brothel location and services through a bylaw. • Increasing the permitted activity area mitigates the risk of perception of the bylaw not satisfying s.155 of the LGA as the most appropriate way to address the perceived problem, or as not supporting the purpose of the PRA or being inconsistent with the NZBORA. • Aligning permitted activity areas with the Town Centre Zones provides consistency for education and enforcement with the Proposed District Plan. 	<ul style="list-style-type: none"> • Some people in the community may not support an increase in the size of the permitted activity areas. • It may still be perceived that the draft bylaw does not satisfy the requirements under s.155 of the LGA as the most appropriate way to address the perceived problem, that it does not support the purpose of the PRA, or that it is inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA).

35. **Option 2:** that Council endorses the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau with permitted activity areas that are moderately larger than the Brothel Control Bylaw 2017 (areas Q.2 and W.2 in figures 2 and 3) for consultation in accordance with the special consultative procedure.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • Council would retain the ability to regulate the locations in which brothels may operate and the signage that may be used to advertise brothel location and services through a bylaw. • Increasing the permitted activity area, this option moderately mitigates the risk of perception of the bylaw not satisfying s.155 of the LGA as the most appropriate way to address the perceived problem, or as not supporting the purpose of the PRA or being inconsistent with the NZBORA. 	<ul style="list-style-type: none"> • Some people in the community may not support an increase in the size of the permitted activity areas. • It may still be perceived that the draft bylaw does not satisfy the requirements under s.155 of the LGA as the most appropriate way to address the perceived problem, that it does not support the purpose of the PRA, or that it is inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA).

36. **Option 3:** that Council endorses the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau with the same permitted activity areas as the Brothel Control Bylaw 2017 (areas Q.3 and W.3 in figures 2 and 3) for consultation in accordance with the special consultative procedure.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • Council would retain the ability to regulate the locations in which brothels may operate and the signage that may be used to advertise brothel location and services through a bylaw. • There have been a low number of complaints under the current bylaw. 	<ul style="list-style-type: none"> • It may be perceived that the draft bylaw does not satisfy the requirements under s.155 of the LGA as the most appropriate way to address the perceived problem, that it does not support the purpose of the PRA, or that it is inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA).

37. **Option 4:** That Council does not endorse the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau for consultation and regulates brothel activity through the District Plan.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • There is no risk of perception to the bylaw as not satisfying s.155 of the LGA as the most appropriate way to address the perceived problem, or as not supporting the purpose of the PRA or being inconsistent with the NZBORA. • This option would respond to the feedback received from stakeholder groups during pre-engagement. 	<ul style="list-style-type: none"> • Some people in the community may not support this approach. • Council would lose the ability to specifically manage and regulate where Brothels are located through a bylaw if the bylaw were revoked or lapsed. • Council would not retain the ability to regulate the signage used to display the location and services of a brothel through a bylaw if the bylaw were revoked or lapsed.

38. This report recommends **Option 1** for resolving the matter. Options 1, 2 and 3 will enable Council to continue to regulate the locations in which brothels may operate and the associated signage restrictions through a bylaw mechanism. Option 1 is recommended as it best mitigates the risk of challenge to the bylaw as being perceived to be inconsistent with LGA, PRA and NZBORA requirements, is consistent with the Proposed District Plan, whilst still maintaining a bylaw mechanism for Council to regulate brothel activity.

39. Option 4 will allow Council to control brothel activities through the District Plan, but it will no longer be able to specifically manage brothels through a bylaw mechanism. This option removes entirely the risk of challenges to a bylaw pursuant to the LGA, PRA and NZBORA.

Next steps

40. If Council endorses option 1, 2 or 3, the draft bylaw and statement of proposal will go out for public consultation from 8am on 3 May 2024 to 5pm on 5 June 2024. The community will be asked for feedback on all four options for the bylaw through the consultation survey questions.
41. It is intended that the written submissions received will be presented and a hearing on this matter for those members of the public who would like to present their submissions orally in early on 25 June 2024.
42. Officers will then present the draft bylaw to Council for deliberation and adoption on 1 August 2024 at its Council meeting, and if adopted, the bylaw will come into effect following that.

Consultation Process | Hātepe Matapaki

Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

43. This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy 2021 because
 - the matters have minimal to moderate impact on the community, although parts of the community will have interest in this issue
 - 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.
44. The persons who are affected by or interested in this matter are residents, ratepayers and visitors to the Queenstown Lakes District and industry stakeholders.
45. Officers have sought early feedback from stakeholders and the community. 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 on the draft bylaw.

Māori Consultation | Iwi Rūnaka

46. Council will seek input on the draft bylaw from Te Ao Marama and Aukaha through the formal consultation process.

Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka

47. This matter relates to the Regulatory/Legal/Compliance risk category. It is associated with RISK10026 Ineffective enforcement within the QLDC Risk Register. This risk has been assessed as having a low residual risk rating.
48. Approval of Option 1 mitigates the risk of legal challenge to the bylaw, whilst retaining a bylaw. Option 2 moderately reduces this risk. Option 3 will retain the risk at its current level while

enabling Council to continue to regulate brothel activity through a bylaw mechanism and the District Plan. Option 4 removes the risk of a legal challenge and but only enables Council to regulate brothel activity solely through District Plan provisions.

Financial Implications | Kā Riteka ā-Pūtea

49. The costs associated with reviewing or revoking the bylaw including staff time and advertising will be met within current Council budgets. Neither the draft bylaw nor regulating brothel activity solely through the District Plan proposes changes to Council operations that would require additional funding.

Council Effects and Views | Kā Whakaaweawe me kā Tirohaka a te Kaunihera

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

- the outcomes and principles of Vision Beyond 2050: [Our Vision and Mission - QLDC](#)
- the QLDC Annual Plan
- the QLDC Ten Year Plan 2021-31.

51. The recommended option is consistent with the principles set out in the named instruments.

52. Provision for review of bylaws is included in the Long-Term Plan/Annual Plan.

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

53. 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.

Special Consultative Procedure

54. It is proposed that consultation on a draft bylaw would be done via 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. In accordance with s.83 of the LGA, it is proposed that Council will 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.

Determinations

55. Before making or reviewing a bylaw, Council must make the determinations required under section 155 of the LGA. Section 155(1) requires a council to determine whether a bylaw is the most appropriate way of addressing a perceived problem. This report provides the analysis of whether a bylaw is the most appropriate tool to address those problems.
56. There are two further parts to section 155 (determining that a bylaw is in the most appropriate form and assessing whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990).

Most appropriate way of addressing the perceived problem

57. 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.
58. The perceived problem that the draft bylaw addresses relates to enabling commercial sexual service providers to 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.
59. Council may rely solely on the District Plan to address any perceived issues that the bylaw seeks to address. Alternatively, if it considers that the District Plan does not address the specific issues, namely location, enforcement, and signage, it may endorse a draft bylaw for consultation as the most appropriate option to address the issues.
60. A bylaw may help to strengthen the measures to address these issues and may be the most appropriate option, if there is a need for enforcement measures. This needs to be balanced with the merits of regulating these issues through District Plan mechanisms.

Most appropriate form of bylaw

61. Council is also required to determine whether the proposed bylaw is the most appropriate form of bylaw before it makes its decision. The draft bylaw clarifies the purpose of the bylaw.

New Zealand Bill of Rights Act 1990

62. 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”.
63. The location restrictions of the current bylaw could be perceived as being inconsistent with NZBORA because it may impinge on these rights and freedoms, and is not within the “reasonable limits prescribed by law as can be justified in a free and democratic society.” These restrictions

prohibit a brothel from operating except for within the areas of permitted activity in Queenstown and Wānaka, and may be seen as a restriction on trade. As discussed above, this risk could be mitigated by increasing the size of the permitted activity areas, to allow for more opportunities for brothels to operate, without reducing the level of control over the location of brothels in the District.

64. The draft bylaw regulates locations in which brothels may operate and the signage associated with brothels within the district in order to enable the provision of commercial sexual services to meet demand but also aims to address 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, it is inconsistent with the NZBORA.
65. The purpose of the PRA is to decriminalise prostitution and provide a framework for sex workers to work safely within, so it may be perceived that a bylaw that restricts the locations where brothels operate is inconsistent with the PRA. Any bylaw that restricts the location of brothels has a risk of being challenged.

Revocation of the Brothel Control Bylaw 2017

66. A bylaw is automatically revoked under Section 160A of the LGA two years after the last date it was eligible for review. Section 158 of the LGA requires the bylaw to be reviewed before 25 May 2024 (seven years after the date of making). For the purposes of the LGA, meeting the review requirements means that Council must make the determinations in section 155 of that Act prior to 25 May 2024. If Council makes the section 155 determinations prior to 25 May 2024, the current bylaw will continue to be in force until a new bylaw is adopted, at which point the current bylaw will be revoked and replaced by a new bylaw.

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

67. 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 recommendation in this report is appropriate and within the ambit of Section 10 of the Act.
68. The recommended option:
- Can be implemented through current funding under the Long Term 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 Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau
B	Statement of Proposal
C	Pre-engagement feedback
D	Brothel Control Bylaw 2017