

QLDC Council
14 December 2017

Report for Agenda Item: 11

Department: Finance & Regulatory

Brothel Control Bylaw 2011 Review

Purpose

The purpose of this report is to present the Queenstown Lakes District Council Brothel Control Bylaw 2017 for adoption.

Recommendation

That Council:

1. **Note** the contents of this report.
2. **Adopt** the Queenstown Lakes District Council Brothel Control Bylaw 2017.

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30/11/2017

Reviewed and Authorized by:



Stewart Burns
General Manager
Finance and Regulatory

30/11/2017

Background

- 1 On 6th April 2017 the Community and Services Committee considered the proposed continuation of the Brothel Control Bylaw 2011 (**current bylaw**), <http://www.qldc.govt.nz/assets/Uploads/Council-Documents/Committees/Community-and-Services-Committee/6-April-2017/Item-8.-Brothel-Control-Bylaw-2011-Review/8.-Brothel-Control-Bylaw-2011-Review.pdf>. The Community and Services Committee resolved to recommend that the Council reviews the current bylaw and undertake public consultation.

- 2 Following the Community and Services Committee meeting on 6 April 2017, the Committee queried whether the permitted activity area for brothels may need to be extended to reflect the proposed Plan Change 50. This plan change amended the operative Queenstown Lakes District Plan, by establishing a larger town centre zone to recognise the growth experienced across Queenstown and Wanaka.
- 3 The Brothel Control Bylaw 2017 proposes to retain the existing rules in the current bylaw. This includes the permitted area of activity remaining the same for both Queenstown and Wanaka. Council considers that the current bylaw is working appropriately, and provides for reasonable regulation of the location of brothels and associated signage. The current permitted areas of activity are best suited to a brothel operation as there is CCTV in operation, the areas are in close proximity to a Police Station, and there is frequent pedestrian traffic.
- 4 On 18 July 2017 a report was presented to Council including the proposed Brothel Control Bylaw 2017, statement of proposal, and the summary of the statement of proposal documents for public consultation using the special consultative procedure. <http://www.qldc.govt.nz/assets/Uploads/Council-Documents/Full-Council-Agendas/2017/17-August-2017/8.-Brothel-Control-Bylaw-Review-covering-report/8.-Brothel-Control-Bylaw-Review-covering-report.pdf>
- 5 Public consultation took place between 19 August and 18 September 2017. Only one submission was received, which was in support of the proposed Brothel Control Bylaw 2017 and to maintain current permitted areas of operation. The submitter did not wish to be heard.
- 6 Due to only one submission being received in support of the Bylaw, the hearings panel being Councillors MacLeod, Clark and Stevens were contacted and accepted that it was not necessary for the scheduled hearing to take place and recommended instead that the proposed Brothel Control Bylaw 2017 be adopted at the Council meeting on 14 December.
- 7 The current bylaw was adopted under the Prostitution Reform Act 2003 (**the Act**) and the Local Government Act 2002 ("**LGA**"). A brothel includes a premises kept or habitually used for the purposes of prostitution, but does not include accommodation that is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere. The Act does not envisage the blanket prohibition of brothels across the district, but does allow the Council to restrict the location of brothels to certain areas in order to reduce or prevent harmful effects, such as nuisances.
- 8 Council staff have completed a review of the current bylaw, and recommend that the Council adopt the Brothel Control Bylaw 2017 (**proposed bylaw**). A copy of the proposed bylaw is contained in **Attachment A**.

Comment

- 9 Council staff proposes to substantially continue the current approach to the regulation of brothels, which includes specifying suitable areas within the district

for the establishment and safe operation of brothels, and requiring publicly visible brothel signage to meet minimum standards.

- 10 This approach is consistent with the Act, and an appropriate fit for the district and the community. Some amendments have been included within the proposed bylaw to update and clarify the scope of the controls (eg. improving consistency with legislation, clarifying rules and using improved maps, and removing redundant content).
- 11 As part of the special consultative procedure, Council staff invited feedback from the public regarding the possible extension of the permitted activity area for the establishment of brothels in the district. Submitters also had the ability to comment on the continuation of the current bylaw without change, instead of the adoption of the proposed bylaw, which includes some amendments.
- 12 Only one submission was received with the submitter supporting the proposed Brothel Control Bylaw 2017 and that the present permitted zones remain the same. The submitter did not wish to be heard in a hearing. The submitter stated “Although I am strongly opposed to the concept of Brothels and would prefer that they did not exist, I accept that the Council has a duty to regulate the activity. I support the objectives of the proposed amendment and in particular I strongly agree that the present permitted zones (which do not appear to have caused any issues) should not be expanded in either Wanaka or Queenstown”.
- 13 The proposed bylaw includes the existing restrictions to brothel locations. To date no complaints have been received regarding the permitted activity area, although no known brothels have been established. The rationale of the current permitted activity areas is to facilitate CCTV monitoring, close proximity to a Police station, and regular pedestrian traffic.

Local Government Act 2002 (LGA)

- 14 The LGA 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.
- 15 The process for adopting a new bylaw is set out in the LGA. The LGA requires that the current bylaw must be reviewed within five years after the date on which it was made. If a bylaw is not reviewed within five years it will be revoked two years after the date it was required to be reviewed. The current bylaw was adopted on April 27, 2011 and is due to expire on 27 April, 2018, unless a new bylaw is adopted.
- 16 If the current bylaw was to lapse, the Council would have not be able to effectively regulate and control the advertising and the location of brothels within the District. Brothel advertising would still be subject to rules affecting other commercial signage under the Queenstown Lakes District Plan, but without a bylaw the Council would be unable to impose specific regulations on the size, display and content of brothel advertising.

Proposed Bylaw

- 17 The current bylaw provides the ability to have a brothel within a specified area of the Queenstown Town Centre and the Wanaka Town Centre only. The rationale for this is to ensure that any brothels are in locations where there is CCTV in operation, within close proximity of a Police Station and where there is regular pedestrian foot traffic. Council staff propose to reduce the risk of potential negative issues that may eventuate if a brothel was situated in more remote locations in the District. The permitted areas were also identified to prevent the potential nuisance of brothels in residential neighbourhoods.
- 18 There are no known brothels currently located within the permitted areas as specified in the current bylaw.
- 19 It is proposed that the controls under the current bylaw are substantially continued in the proposed bylaw, which meets legislative requirements, and is an appropriate tool for reducing the risk of nuisances in our communities.

Options

20 Option 1- Adopt the proposed Brothel Control Bylaw 2017.

Advantages:

- 21 Continuity, effective management and control of potential impacts of brothels on the public, and the prevention of brothels in residential areas. The permitted zones specified in the Queenstown Town Centre and the Wanaka Town Centre are best suited to a brothel operation as there is CCTV in operation, the areas are in close proximity to a Police Station, and there is frequent pedestrian traffic. Amendments in the proposed bylaw are required to update and clarify the scope of the controls, although this will not substantially alter existing brothel regulation.

Disadvantages:

- 22 No disadvantages have been identified.

23 Option 2 – Do not adopt the Brothel Control Bylaw 2017.

Advantages:

- 24 Council will be perceived as being less bureaucratic. Some members of the community may prefer less regulation on the location and signage of brothels.

Disadvantages:

- 25 The existing Brothel Control Bylaw 2011 will expire on 27 April 2018. If the Bylaw expires the Queenstown Lakes' District Council will not have the ability to exercise controls on the establishment of Brothels in the Queenstown Lakes District.

- 26 After the current bylaw lapses, there will be no restrictions on the location of brothels and display of brothel signage in the District. If in future a person decides to establish a brothel, they could do so in any area, including in a residential neighbourhood. The Council considers that this may lead to harmful effects in those areas, such as nuisances.
- 27 Publicly visible brothel advertising will still be subject to the Queenstown Lakes District Council District Plan, which prohibits sexually explicit, lewd or offensive content. However, brothel advertising may still contain sexual innuendo or other content that falls short of being offensive, which would be technically permissible without a bylaw in effect.
- 28 This report recommends **Option 1** for addressing the matter, as this directly addresses the issue or perceived issues of brothels and where they are permitted to operate.

Significance and Engagement

- 29 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy; the Bylaw affects few people and substantially continues controls set out in the Brothel Control Bylaw 2011.

Risk

- 30 This matter relates to the strategic risk SR3 Management Practise - Working within Legislation, as documented in the Council's risk register. The risk is classed as moderate. This matter relates to this strategic risk due to the associated legislation and controls surrounding the activity.
- 31 The recommended option considered above mitigates the risk by 'Treating the risk' – putting measures in place which directly impact the risk by regulating and controlling, in accordance with the LGA.

Financial Implications

- 32 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

- 33 The following Council policies, strategies and bylaws were considered:

- Brothel Control Bylaw 2011
- Enforcement Strategy and Prosecution Policy 2014
- New Zealand Bill of Rights Act 1990 ("**BORA**")
- Activities in Public Places Bylaw 2016
- Prostitution Reform Act 2003
- Queenstown Lakes Council District Plan

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

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

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

Local Government Act 2002 Purpose Provisions

35 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; governing the effective management and control of potential impacts of brothels on the public and protect the interests of the district.
- 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

36 The persons who are affected by or interested in this matter are the residents/ratepayers of the Queenstown Lakes' District community, local Iwi and brothel operators.

37 Public consultation was undertaken on the proposed bylaw. Consultation was undertaken in accordance with the special consultative procedure pursuant to section 156 of the Local Government Act 2002. One submission was received which is in support of the proposed Brothel Control Bylaw 2017.

Attachments

- A Queenstown Lakes District Council Brothel Control Bylaw 2017
- B Submission received

Attachment A



Brothel Control Bylaw 2017

Queenstown Lakes District Council

Date of making:
Commencement: [Insert]

This Bylaw is adopted pursuant to the provisions of the Local Government Act 2002 and the Prostitution Reform Act 2003 by resolution of the Queenstown Lakes District Council at a meeting of the Council on [].

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Part 1 - Preliminary

1 Short title and commencement

- 1.1 This bylaw may be cited as “the Queenstown Lakes District Council Brothel Control Bylaw 2017”.
- 1.2 This bylaw comes into force on a date specified by Council resolution.
- 1.3 The Queenstown Lakes District Brothel Control Bylaw 2011 is revoked on the date this bylaw comes into force.

2 Interpretation

- 2.1 In this bylaw, unless the context otherwise requires–

Brothel means any premises kept or habitually used for the purposes of prostitution but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere.

Commercial Sexual Services means sexual services that:

- (a) involve physical participation by a person in sexual acts with, and for the gratification of another person; and
- (b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person).

Council means the Queenstown Lakes District Council.

District means the Queenstown Lakes District.

Premises includes a part of premises.

Prostitution means the provision of commercial sexual services.

Public place –

- (a) means any place that is open to, or being used by the public, whether admission is free or on payment of a charge and whether any owner or occupier of the place is lawfully entitled to exclude or eject a person from that place; and
- (b) includes any aircraft, hovercraft, ship, ferry, or other vessel, train, or vehicle carrying or available to carry passengers for reward.

Part 2 – Brothel control

3 Locations of brothels

3.1 No person may establish, operate, or permit the operation of a brothel unless the brothel satisfies all of the following requirements:

- (a) the brothel is located in either:
 - (i) the area of permitted activity within the Queenstown Town Centre Zone identified on the map contained in Schedule 1; or
 - (ii) the area of permitted activity within the Wanaka Town Centre Zone identified on the map contained in Schedule 2;
- (b) the brothel is located in a building lawfully established under a building consent issued pursuant to the Building Act 2004 (or its predecessor);
- (c) the brothel is not located at ground level or beneath ground level of any building; and
- (d) the brothel is not located within 100 metres of any existing brothel.

4 Regulation of brothel advertising

4.1 No person may erect or display any sign that advertises the business of a brothel and is visible from a public place, unless it satisfies all of the following requirements:

- (a) the only information displayed on the sign is the registered name of the brothel or the name of the person who operates the brothel;
- (b) the sign does not exceed 0.3 square metres in size; and
- (c) must comply with all applicable requirements in the Queenstown Lakes District Council District Plan (or its successor), or be authorised by a resource consent.

4.2 No person may permit the erection or display of any sign that advertises the business of a brothel and is visible from a public place, unless it satisfies all of the requirements in clause 4.1 above.

Part 3 – Enforcement

5 Powers to enforce bylaw

5.1 The Council may use its powers under the Local Government Act 2002 to enforce this bylaw.

6 Offences

- 6.1 Every person who breaches this Bylaw commits an offence.
- 6.2 Every person who commits an offence against this Bylaw is liable on conviction to the penalty set out in Section 242(4) of the Local Government Act 2002.

The common seal of the Queenstown Lakes District Council is attached in the presence of:

Mayor:

Chief Executive:

Schedule 1 – Map of permitted areas within Queenstown Town Centre Zone



Schedule 2 – Map of permitted areas within Wanaka Town Centre Zone



#3

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Friday, August 18, 2017 8:47:34 PM
Last Modified: Friday, August 18, 2017 8:51:50 PM
Time Spent: 00:04:16
IP Address: 122.57.189.51

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Q1 I am giving feedback as:	An individual
Q2 Please select the statement that applies to you:	I DO NOT wish to be heard in support of my feedback at a public hearing

Page 2

Q3 Name of organisation	Respondent skipped this question
Q4 Email address	Respondent skipped this question
Q5 Contact numberPlease enter a contact phone number. (This will not be made public.)	Respondent skipped this question
Q6 Would you like to include your name as part of this feedback?	Respondent skipped this question

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Q7 Full name	
Peter Bernard Degerholm	
Q8 Contact numberPlease enter a contact phone number. (This will not be made public.)	Respondent skipped this question
Q9 Email address	

Q10 Postal address

[REDACTED]

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Q11 Do you approve of the proposed Brothel Control Bylaw 2017. **Yes**

Q12 Please explain your decision

Although I am strongly opposed to the concept of brothels, and would prefer that they did not exist, I accept that the Council has a duty to regulate their activity.

I support the objectives of the proposed amendment, and in particular I strongly agree that the present permitted zones (which do not appear to have caused any issues) should NOT be expanded in either Wanaka or Queenstown.

Q13 I understand that all submissions will be treated as public information. Your name and comments will be publicly available, however we will not disclose your contact details. **I understand**
