

QLDC Council
17 August 2017

Report for Agenda Item: 8

Department: Finance & Regulatory

Brothel Control Bylaw 2011 Review

Purpose

To consider the proposed Queenstown Lakes District Council Brothel Control Bylaw 2017 for public consultation.

Recommendation

That Council:

1. **Note** the contents of this report and the recommendation from the Community and Services Committee to approve the continuation of the current Queenstown Lakes District Council Brothel Control Bylaw 2011 for public consultation;
2. **Approve** the proposed Brothel Control Bylaw 2017, Statement of Proposal, and Summary of Statement of Proposal documents for public consultation using the special consultative procedure; and
3. **Appoint** three Councillors from the Community and Services Committee to participate in a hearing panel to consider and hear submissions on the proposed Brothel Control Bylaw 2017 and make a recommendation to Council.

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18/07/2017

Reviewed and Authorised by:



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1/07/2017

Background

- 1 On 6 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 review 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 proposed 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 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.
- 5 Council staff have completed a review of the current bylaw, and recommend that the Council approve for consultation the proposed Brothel Control Bylaw 2017 (**proposed bylaw**). A copy of the proposed bylaw is contained in **Attachment B**.

Comment

- 6 Council staff propose 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. 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, using improved maps and removing redundant content).

- 7 As part of the special consultative procedure, Council staff propose to seek feedback from the public regarding the possible extension of the permitted activity area for the establishment of brothels in the district. Submitters can also comment on the continuation of the current bylaw without change, instead of the adoption of the proposed bylaw, which includes some amendments.
- 8 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

- 9 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.
- 10 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 27 April 2011 and is due to expire on 27 April 2018, unless a new bylaw is adopted.
- 11 If the current bylaw were to lapse, the Council would not be able to regulate and control the advertising and the location of brothels effectively 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

- 12 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, they are in close proximity to a Police Station and 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.
- 13 There are no known brothels currently located within the permitted areas as specified in the current bylaw.
- 14 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

15 Option 1- Approve the proposed Brothel Control Bylaw 2017 for consultation using the special consultative procedure

Advantages:

16 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:

17 No disadvantages have been identified.

18 Option 2 – Approve the current bylaw without amendment for consultation using the special consultative procedure

Advantages

19 If the Council re-adopts the current bylaw without any amendment, brothel location and signage will continue to be regulated in the same way going forward.

Disadvantages

20 If a brothel is established, there could be some uncertainty as to the scope and enforceability of parts of the current bylaw. For example:

- a. there are inconsistencies in definitions in the current bylaw compared to the same definitions in the Prostitution Reform Act 2003.
- b. the current bylaw may be difficult to apply to “brothels”, which do not have legal personality.
- c. the requirement to comply with the Signage Bylaw 2006 is redundant.
- d. the maps which specify the permitted areas for brothels are faded, and the streets within the permitted areas are not labelled.

21 Option 3- Allow the current bylaw to lapse

Advantages:

22 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:

- 23 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.
- 24 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.
- 25 This report recommends **Option 1** for addressing the matter, as this directly addresses the issue or perceived issue of brothels and where they are permitted.

Significance and Engagement

- 26 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

- 27 This matter relates to the strategic risk SR3 Management Practice - 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.
- 28 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

- 29 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

- 30 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

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

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

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

Local Government Act 2002 Purpose Provisions

34 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

35 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.

36 There has been no public consultation undertaken on the proposed bylaw to date. Consultation will be commenced in accordance with the special consultative procedure pursuant to section 156 of the Local Government Act 2002.

Attachments

Attachment A – Proposed Queenstown Lakes District Council Brothel Control Bylaw 2017

Attachment B – Queenstown Lakes District Council Brothel Control Bylaw 2011

Attachment C – Statement of Proposal

Attachment D – Map showing the permitted area under the current bylaw and the expanded town centre zone implemented after Plan Change 50 became operative