

**QLDC Council
26 July 2018**

Report for Agenda Item: 2

Department: Finance, Legal and Regulatory

Review of Alcohol Ban Bylaw 2014

Purpose

To consider the proposal to commence a special consultative procedure in relation to the proposed Alcohol Ban Bylaw 2018 (**proposed bylaw**) and revocation of the Alcohol Ban Bylaw 2014 (**Alcohol Bylaw**).

Executive Summary

- 1 The Council has an Alcohol Bylaw, which controls and restrictions the possession, consumption and carrying of alcohol, in some public places within the District. The Council is required to review its Alcohol Bylaw under section 158 of the Local Government Act 2002 (**LGA02**).
- 2 The Council currently has the following alcohol ban periods:
 - a. From 10.00pm on any day to 8.00am the following day;
 - b. 6.00am on 27 December of any given year to 6.00am on 6 January the following day;
 - c. 6.00am on the opening day of the Queenstown Winter Festival to 6.00am the day after the closing of the Queenstown Winter Festival; and
 - d. An additional period that may be defined by the Council by resolution from time to time in accordance with clause 5 of the Alcohol Bylaw.
- 3 The Council proposes to include the following bans:
 - a. the current specified period for an alcohol ban of 10.00 pm on any day to 8.00 am the following day be increased to 8.00 pm on any day to 8.00 am the following day for the public places specified in Schedule A of the Alcohol Bylaw; and
 - b. an additional alcohol ban be included for National Crate Day specified as Schedule 2 of the proposed law.
- 4 The reason for the proposed changes is to limit alcohol related harm and minimise the potential for offensive behaviour in public places.

Recommendation

That Council:

1. **Notes** the contents of this report;
2. **Adopt** the recommendation for an alcohol ban for National Crate Day (or any other similar event or promotion) within the highlighted area in Attachment D;
3. **Adopt** the recommendation to increase the hours for current specified period for an alcohol ban to 8.00pm on any day to 8.00am the following day for the public places specified in Schedule A of the proposed Alcohol Ban Bylaw 2018.
4. **Agrees** that pursuant to sections 155(2)(b) and 155(3) of the Local Government Act 2002, the proposed alcohol control bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990 (**NZBORA**).
5. **Authorise** Council Officers to consult with the public on the proposed Alcohol Ban Bylaw 2018 using the Special Consultative Procedure.
6. **Appoint** a hearings panel of three councillors (to be named) to hear submissions, deliberate and make recommendations to the Council on the proposed Alcohol Ban Bylaw 2018.

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12/07/2018

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Background

- 5 The control of possessing, carrying (of open vessels) and consuming alcohol in public places is the responsibility of the Council and is important for the wellbeing of the District. The LGA02 enables Council to make specific bylaws to regulate the possession, carrying and consumption of alcohol in public places.
- 6 The Council currently has the Alcohol Bylaw. Within an alcohol ban area the possession, carrying (of open vessels) and consumption of alcohol is prohibited during the time the ban is operational. The Alcohol Bylaw also applied to the consumption and possession of alcohol in vehicles. Enforcement of the bylaw is the responsibility of the New Zealand Police.
- 7 The Council is required to review its Alcohol Bylaw under the LGA02. This review forms part of the Council's programme of bylaw reviews.

- 8 In 2017, the Police approached Council and requested that a temporary 48 hour alcohol ban be imposed in the Queenstown CBD for the weekend of 2-3 December 2017. This temporary alcohol ban was proposed to prevent the consumption of alcohol in public places during the upcoming 'National Crate Day' event, an unofficial event where participants consume a crate of beer during the first weekend of summer.
- 9 The 'National Crate Day' event has been going for a number of years, but since 2015 the Police have noticed a significant uplift in the numbers of people congregating in public places in the district to consume large amounts of alcohol. This has caused significant issues of disorder and placed a strain on police resources.
- 10 During the 2016 National Crate Day, a group began drinking alcohol in the Queenstown Village Green from mid-morning. By early afternoon the entire reserve was occupied with a large crowd drinking large quantities of alcohol, with crates of beer kept chilled in Horne Creek. Police described the crowd as initially good natured, but during the afternoon police became concerned with escalating disorder in the area, including participants engaging in foul language and deteriorating behaviour to the point where police had serious concerns that violence would occur.
- 11 Police responded to a number of disorderly incidents in the CBD with interventions such as issuing warnings and using de-escalation techniques. The Police stated that they exercised restraint on this occasion and decided not to make arrests because of concerns that a strict application of the law to disorderly incidents might inflame the intoxicated crowd and lead to a wider disturbance. Several members of the public approached the police during the day and expressed concerns that they felt unsafe due to the behaviour and language of the Crate Day participants.
- 12 The morning after the 2016 National Crate Day event, Council Officers observed a significant amount of alcohol related litter (crates, bottles, etc) left in the Village Green area. Photographs of the litter are contained in Attachment C.
- 13 Police considered that there was a significant risk of a repeat or escalation of the disorder observed during the 2016 National Crate Day for the 2017 National Crate Day.
- 14 Following discussions with the Police, the Council introduced a temporary alcohol ban for National Crate Day 2017. The ban applied for 48 hours between 12am Saturday 2 December 2017 until 12am Monday 4 December 2017. The geographical coverage of the ban extended the specified public areas in Queenstown in Schedule A of the Alcohol Bylaw to include the Queenstown Recreation Ground and associated Boundary Street carpark.
- 15 Both the Police and the Council considered that the temporary alcohol ban for the 2017 National Crate Day was successful with a reduction in alcohol related harm and litter.
- 16 The current alcohol ban begins at 10pm. This was put in place to ensure that consumption of alcohol in public places does not take place after that time with members of the public going to licensed premises or private premises. A review

of this start time for the alcohol ban is required to ensure that alcohol related harm is minimised.

- 17 Alcohol related harm is now a primary consideration under the Sale and Supply of Alcohol Act 2012 where section 4 aims to minimise harm caused by the excessive or inappropriate consumption of alcohol. Harm includes, but is not limited to the following, any crime, damage, disorderly behaviour, injury and harm to the community.
- 18 An earlier alcohol ban will create a buffer in time which may deter members of the public consuming alcohol in public places and then leaving that public place to immediately resume consumption on licensed premises where greater controls are in place.

Comment

Issues

- 19 The district is facing issues relating to the consumption of alcohol in public places. In particular, there have been issues during the National Crate Day event. Police have noticed an uplift in the numbers of people congregating in public places in the district to consume large amounts of alcohol. This has caused issues of disorder.
- 20 Council Officers have observed a significant amount of alcohol related litter left in public areas following the National Crate Day.
- 21 In 2017 the Council used its powers under clause 6 of the Alcohol Bylaw to impose a temporary alcohol ban for a period of 48 hours for National Crate Day. This temporary ban, coupled with additional Police presence, resulted in a reduction in alcohol related incidents and litter in the area subject to the alcohol ban.
- 22 Council Officers consider that alcohol related harm and the potential for offensive behaviour will be minimised if the current alcohol ban which begins at 10.00pm was changed to 8.00pm. The reason for this is that the earlier ban will create a buffer in time which may deter members of the public consuming alcohol in public places and then leaving that public place to immediately resume consumption on licensed premises. The change from 10.00pm to 8.00pm is a compromise between agency requests and the community. To have a 24 hour a day, seven days a week ban would be preferred by the agencies however vibrancy of the community and community requests also should be considered.

Current ban

- 23 Currently there is no permanent alcohol ban for National Crate Day.
- 24 The relevant part of the Alcohol Bylaw prohibits the consumption and possession of alcohol in the following specified public places between 10.00pm and 8.00am every day:
 - a. the whole foreshore of Lake Wakatipu from One Mile Roundabout to Park Street including the Queenstown Gardens; and

- b. the area from the foreshore to an outer boundary formed by and including Lake Esplanade, Lake Street, Man Street, Memorial Street, Stanley Street, Coronation Drive, Park Street to the Lake Wakatipu foreshore area directly adjacent to Queenstown Gardens.

Scope of proposed additional bans

25 It is proposed that the current bans are expanded to include the following:

- a. between 12am on National Crate Day until 12am the following day for the specified public areas in Queenstown in Schedule A of the Alcohol Bylaw including the Queenstown Recreation Ground and Boundary Street carpark; and
- b. increase the specified period from 8.00pm on any day to 8.00am the following day.

Grounds for proposed additional bans

26 Under section 145 of the LGA02, the Council may make bylaws to:

- a. Protect the public from nuisance;
- b. Protect, promote and maintain public health and safety; and
- c. Minimise the potential for offensive behaviour in public places.

27 In order to justify a bylaw for alcohol related purposes, the Council must be satisfied that the following criteria in section 147B of the LGA02, are met:

- a. there is evidence that the area to which the bylaw is proposed to apply has experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area;
- b. the imposition of the bylaw is appropriate and proportionate in the light of the evidence; and
- c. the bylaw can be justified as a reasonable limitation on people's rights and freedoms.

28 The area covered by the proposed ban for the National Crate Day involves all of the specified areas in Queenstown in addition to an extended area surrounding the Queenstown Recreation Ground. The reason for including this extended area is that there is a risk of participants relocating using social media to areas just outside of the ban zone.

29 Council Officers agree that the concerns raised by Police and Council Officers (including photographs in Attachment C) demonstrate that the 2016 Crate Day resulted in a high level of disorder shown to be made worse by alcohol consumption. The extension of the ban to apply over a 24 hour period, is an appropriate and proportionate regulatory response to the level of disorder described in this report. The proposed ban will not prevent members of the public consuming alcohol on licensed premises or at private premises.

- 30 The proposed ban will also not prevent members of the public gathering outside of the proposed alcohol ban area. However, the Council does not have the evidence required to have a ban throughout the district.
- 31 While an alcohol ban might inconvenience some people for the National Crate Day, it is a targeted ban that will only last for 24 hours. Council Officers consider it is not an unreasonable limitation on individual rights and freedoms having regard to the risk of disorder, resulting from the Council taking no action.
- 32 The additional time period of two hours a day for the areas identified in Schedule A of the Alcohol Bylaw, is not an unreasonable limitation on individual rights and freedoms having regard to the risk of disorder, resulting from the Council taking no action.
- 33 The extension of the ban to apply for an additional two hour period per day is an appropriate and proportionate regulatory response to ensure that alcohol related harm is minimised. It will minimise the potential for offensive behaviour in public places by creating a buffer in time which may deter members of the public consuming alcohol in public places and then leaving that public place and immediately going to licensed premises.

Options

- 34 The Council has three reasonable options available:
- a. maintain the status quo;
 - b. adopt a total ban across the district; or
 - c. adopt an alcohol ban that applies to the Queenstown CBD from 12am on Crate Day until 12am the following day and increase the specified period for alcohol bans for the public places specified in Schedule A of the Alcohol Bylaw from 8pm on any day to 8am the following day.

Option 1 Do nothing

Advantages:

- 35 Members of the public who wish to consume moderate amounts of alcohol between 8pm and 10pm in public places can continue to do so. Some members of the community may think that it is only a small minority of participants in the National Crate Day event that cause disorder, and that the majority of persons who drink in public are responsible.

Disadvantages:

- 36 The Police will be powerless to prevent day-time alcohol consumption in public on the weekend of National Crate Day and between 8pm and 10pm on all other days. The Police will only be able to intervene where disorderly or criminal conduct is observed, and may have difficulty controlling a large crowd of intoxicated persons. There is likely to be an increase in public disorder, including littering, and may also cause some members of the public to feel unsafe.

Option 2 Adopt a total ban across the district

Advantages:

- 37 The Police will have powers to prevent day-time alcohol consumption in public places. They will be entitled to seize and remove alcohol in breach of the ban, issue infringement notices, arrest any person refusing to surrender alcohol or refusing to leave a place subject to the ban, and search persons or vehicles within the area to ascertain whether alcohol is present.
- 38 A total alcohol ban across the district will ensure that members of the public do not congregate outside of the proposed alcohol ban area.

Disadvantages:

- 39 Members of the public who wish to consume moderate amounts of alcohol in public places will not be able continue to do so. Some members of the community may think that it is only a small minority of participants in the National Crate Day event that cause disorder, and that the majority of persons who drink in public are responsible. Some parts of the community may consider a public alcohol ban to be an overreaction to the bad behaviour of a minority group.
- 40 There is insufficient evidence of high levels of crime or disorder that have been caused or made worse by alcohol consumption in the general district outside of the National Crate Day or between 8.00pm and 10.00pm.

Option 3 Adopt an alcohol ban that applies to:

- (a) the Queenstown area from 12am on National Crate Day until 12am the following day; and
- (b) increase the specified period for alcohol bans for the public places the Alcohol Bylaw from 8.00pm on any day to 8.00am the following day.

Advantages:

- 41 The proposed ban will give the Police preventative enforcement tools to respond immediately to the public consumption of alcohol in breach of the ban. These tools include seizing and removing alcohol in breach of the ban, issuing infringement notices, arresting any person refusing to surrender alcohol or refusing to leave a place subject to the ban, and searching persons or vehicles within the area to ascertain whether alcohol is present.

- 42 Additional alcohol ban parameters are likely to reduce the risk of disorder and crime posed by the heavy consumption of alcohol during 'National Crate Day' and between 8.00pm and 10.00pm on other days. Members of the public and visitors may feel safer if there is no public consumption of alcohol in the city centre on National Crate Day and in the areas specified in Schedule A of the Alcohol Bylaw between 8pm and 10pm.

Disadvantages:

- 43 Additional alcohol bans may interfere with plans by members of the public to consume alcohol in public on that date, for example, at a wedding or picnic event. Some parts of the community may consider a public alcohol ban to be an overreaction to the bad behaviour of a minority group.

Conclusion

- 44 This report recommends **Option 3** for addressing the matter because the Council Officers agree with the Police that the consumption of alcohol in Queenstown during the 2016 National Crate Day resulted in comparatively high levels of disorder and littering when compared with a typical weekend. The Police reported that large groups of intoxicated people engaged in foul language, littering and causing members of the public to feel intimidated.
- 45 Council Officers consider that:
- a. The proposed permanent ban for National Crate Day is a proportionate response to the high level of disorder observed during the 2016 Crate Day, and is not an unreasonable limitation on individual rights and freedoms;
 - b. The proposed ban from 8.00pm on any day to 8.00am the following day is required to minimise alcohol related harm by creating a buffer in time which may deter members of the public consuming in public places and then either immediately entering licensed premises or a private premises and is not an unreasonable limitation on individual rights and freedoms.
- 46 Option 3 can be supported by sufficient evidence of high levels of crime or disorder that can be shown to have caused or made worse by alcohol consumption in the areas of concern. Option 3 is appropriate and proportionate in light of the evidence and the Council's ability to reduced alcohol related harm, and can be justified as a reasonable limitation on people's rights and freedoms.

Significance and Engagement

- 47 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy. It is considered only temporal in nature and primarily impacts persons who intend to drink in a public place on National Crate Day and between 8.00pm and 10.00pm in the areas specified in Schedule A of the Alcohol Bylaw.
- 48 Some members of the public may also be concerned about the scope of any proposed ban if they are worried about a repeat of issues experienced during the 2016 National Crate Day.

Risk

- 49 This matter relates to the operational risk OROO4 – Serious injury to member of community, as documented in the Council’s risk register. The risk is classed as moderate. This matter relates to this risk because it involves a ban to prevent the day-time and evening consumption or possession of alcohol in public places.
- 50 Increasing alcohol bans within Queenstown will reduce the risk to the public by equipping Police with an early intervention tool to prevent public consumption of alcohol.

Financial Implications

- 51 A special consultative procedure is required for any bylaw review whether or not the Council looks to make changes to the bylaw. The consultation process must follow the special consultative procedure set out in the LGA02. The costs of this consultation will be met through the current budgets.

Council Policies, Strategies and Bylaws

- 52 The following Council policies, strategies and bylaws were considered:
- Alcohol Ban Bylaw 2014
 - Enforcement Strategy and Prosecution Policy
 - Significance and Engagement Policy
- 53 The recommended option is consistent with the principles set out in these policies.
- 54 This matter is included in the 10-Year Plan. The Council’s 10 Year Plan refers to minimising alcohol related harm as a consequence of excessive or inappropriate consumption of alcohol by avoiding and reducing the risk of alcohol related harm to our community, and protecting the image of the district.

Local Government Act 2002 Purpose Provisions

- 55 The recommended option:
- a. 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 reducing risks resulting from the public consumption of alcohol;
 - b. Can be implemented through current funding under the 10-Year Plan and Annual Plan;
 - c. Is consistent with the Council's plans and policies; and
 - d. 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

56 The persons who are affected by or interested in this matter are the Police, residents and Council ratepayers, tourists, local businesses, and persons intending to participate in the 'National Crate Day'.

Legal Considerations and Statutory Responsibilities

57 Section 155 of the LGA02 sets out requirements for the making and reviewing of bylaws. In addition to the general provisions about decision making, the Council, when considering a bylaw, must:

- a. Determine whether a bylaw is the most appropriate way of dealing with the perceived problem or issue;
- b. Determine whether the bylaw is in the most appropriate form; and
- c. Determine whether it gives rise to any implications under the NZBORA. If there are implications under that Act, the bylaw must be amended to remove any inconsistencies.

58 The requirements of Section 155 have been considered. The proposed form of the Bylaw is considered the most appropriate form of the bylaw. Council Officers' assessment is that the content does not pose unjustified restrictions on people so is neither inconsistent with nor raises any implications with NZBORA.

59 The LGA02 requires that the Council must be satisfied that the statutory criteria in section 147B are met before imposing an alcohol ban:

- a. there is evidence that the area to which the proposed ban to apply has experienced a high level of crime or disorder that can be shown to have been caused or made worse by alcohol consumption in the area;
- b. the imposition of the ban is appropriate and proportionate in the light of the evidence; and
- c. the ban can be justified as a reasonable limitation on people's rights and freedoms.

ATTACHMENTS

- A Proposed Alcohol Ban Bylaw 2018
- B Alcohol Ban Bylaw 2014
- C Photographs
- D Statement of Proposal
- E Summary Statement of Proposal