



STATEMENT OF PROPOSAL

PROPOSED FREEDOM CAMPING BYLAW 2019

INTRODUCTION

- 1 The Queenstown Lakes District Council is seeking public feedback on its proposal to make a new bylaw to regulate freedom camping in the Queenstown Lakes District. The proposed bylaw will replace the QLDC Freedom Camping Control Bylaw 2012 (**current bylaw**). The current bylaw sets out the rules regarding where freedom camping is permitted, restricted or prohibited within the District. However, the current bylaw will be revoked by operation of law in December 2019.
- 2 There is an identified need for Council to continue to regulate freedom camping in the District. The Council therefore proposes to adopt a new Freedom Camping Bylaw 2019 (**proposed bylaw**) to replace the current bylaw. The proposed bylaw will adopt the same approach as the current bylaw, but be drafted in a more simplified way.
- 3 Council officers have consulted with stakeholders to identify matters within the current bylaw that require updating, and to address specific concerns they have with the current bylaw. Council officers have also sought legal advice about the drafting improvements that could be made to the current bylaw.

LEGISLATIVE FRAMEWORK

- 4 The Freedom Camping Act 2011 (**FCA**) allows freedom camping anywhere in a local authority area, except at those sites where the local authority makes a bylaw defining local authority areas in which freedom camping is specifically prohibited or restricted. Local authority areas are, in general terms, accessible public places controlled or managed by the Council, such as reserves, roads, and laybys, other than camping grounds.
- 5 The current bylaw is due to expire in December 2019, and the Council must consider whether to make a new bylaw, and if so, in what form, or whether to no longer regulate freedom camping in this way.

PROPOSAL

- 6 The Council proposes that:
 - a. a new bylaw should be made;
 - b. the proposed bylaw should be made easier to understand than the current bylaw; and
 - c. the areas in which freedom camping is prohibited should be expanded.
- 7 The proposal to make a new bylaw to control freedom camping must follow the special consultative procedure in the LGA.
- 8 This Statement of Proposal has been prepared in accordance with the requirements of sections 83 and 86 of the LGA, and includes:
 - a. Consideration of whether the bylaw is necessary to protect the areas in which it is proposed to prohibit or restrict freedom camping, the health and safety of people who may visit those areas, or access to those areas;
 - b. Consideration of whether a bylaw is the most appropriate and proportionate way of addressing the perceived problem in relation to the areas in which it is proposed to prohibit or restrict freedom camping;

- c. consideration of the bylaw's consistency with the New Zealand Bill of Rights Act 1990;
- d. a draft of the proposed Freedom Camping Bylaw 2019.

CONSIDERATION UNDER SECTION 11 OF THE FREEDOM CAMPING ACT 2011

- 9 The District is home to approximately 37,000 residents and is a significant tourist destination. As the long-term plan records, on its busiest days there are more than 100,000 people in the District. A significant number of people, tourists and residents alike, freedom camp as a means of accommodation.
- 10 Prior to 2012 when the current bylaw was made, it was recognised that controlling freedom camping was necessary to protect the District's environment, including visual amenity and landscapes, and waterways.
- 11 During the life of the current bylaw, Council officers have continued to observe poor behaviour from campers leaving an environmental impact. The high number of freedom campers poses health and safety risks from human waste and reduces the accessibility of waterways and reserves.
- 12 Council staff have received anecdotal evidence of freedom campers defecating on the land (ie rather than using toilets). Public concerns around freedom camper behaviour also remain, such as washing in lakes and rivers, causing damage to the environment and overcrowding. The Council receives daily complaints from the public about freedom campers.
- 13 Since the current bylaw was made, the Council has, in 2018 adopted its Responsible Camping Strategy. That Strategy identifies the following problems:
 - Poor behaviour from some campers is leaving an environmental impact.
 - In some cases people are avoiding recreation areas because of human waste and poor camping behaviour.
 - Free camping areas have become quickly overwhelmed and have resulted in unacceptable on-site and off-site effects.
 - Camping (both self-contained and non-self-contained) can limit locals' access to recreational facilities and sites and detract from their local experience.
 - Frequent and persistent camping (both self-contained and non-self-contained) can impact on residents' privacy and quiet enjoyment of their property.
- 14 However, it is important not to overstate the problem. Frequently complaints from the public are about freedom camping generally, rather than about any illegal or unlawful activity from campers, and sometimes do not relate to land controlled or managed by the Council. And Council officers and contractors enforcing the bylaw have reported that there are only a small number of infringement notices issued compared to the large number of lawful campers in the region.
- 15 The Council's Responsible Camping Strategy identifies a number of non-regulatory actions that it is seeking to reduce the problem. Implementation of these commenced in the 2018/2019 peak season and have reduced the numbers of complaints and infringements. These include:
 - Providing additional dump stations (long term);
 - Utilising the Tourism Infrastructure Funding to provide temporary hubs for limited overnight camping, washing and waste disposal;
 - Employing Responsible Camping Ambassadors to educate campers
 - Increasing the numbers of public toilets.

- 16 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.
- 17 Despite these steps, it is necessary at this stage to continue to control freedom camping in order to protect residential and built-up areas where it is proposed to prohibit freedom camping, the health and safety of people who may visit those areas, or access to those areas, and to restrict freedom camping elsewhere throughout the district. Limiting freedom camping to self-contained vehicles will largely reduce the overall level of demand for freedom camping to those with access to self-contained vehicles.
- 18 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. While this mechanism could be used to part-regulate freedom camping, it would not remove the need for a bylaw altogether because it would not address roadside camping or land managed by the Council under another enactment.
- 19 A bylaw is the most effective mechanism to provide for prohibited local authority areas and restricted local authority areas.
- 20 While stakeholders were unified in identifying a continuing need for a bylaw, views were mixed as to the efficacy of the current bylaw. Stakeholders reported that members of the public find the current restricted or prohibited areas in the bylaw difficult to understand. Legal advice also suggests that the drafting of the bylaw provisions themselves are convoluted and could be simplified, and that a number of definitions and provisions are potentially confusing as they unnecessarily repeat parts of the FCA.

IS THE PROPOSED BYLAW THE MOST APPROPRIATE AND PROPORTIONATE WAY OF ADDRESSING THE PROBLEM?

Proposed new prohibited areas

- 21 Under the current bylaw, freedom camping is prohibited in:
- Lake Hawea
 - Wānaka
 - Arrowtown
 - Lake Hayes Estate
 - Quail Rise
 - Arthurs Point
 - Queenstown
 - Jacks Point/Wye Creek
 - Kingston
 - Kinloch
 - Glenorchy
 - Makarora

- 22 Since 2012, residential areas have expanded in Lake Hawea, Wānaka , Alberttown, Luggate, Cardrona, Arthurs Point, Jacks Point, Lake Hayes Estate, Kingston and Gibbston Valley. These are a combination of low-high residential areas and rural lifestyle areas/townships.
- 23 New residential subdivisions are also under construction in Hanley's Farm, Bridesdale Farm, Shotover Country, Coneburn, Hawea, Frankton Flats.
- 24 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.
- 25 Two sections of road that have become 'hotspots' for freedom campers have also been added to the maps.
- 26 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.
- 27 The second section of road is Mt Aspiring Road from Wānaka township to Glendhu Bay. This road is also narrow and winding, and the lakeside road reserves were experiencing high numbers of freedom campers that adversely impacted public recreation access to Roys Peak and, given the rubbish and toileting issues caused, were having a health and safety effect. There is also anecdotal evidence that freedom campers were camping on the road reserve outside the two campgrounds located along this road.
- 28 The Council has considered the most appropriate way of addressing the issues described in the problem definition section above, the options available, and determined that the proposed bylaw is the most appropriate means for addressing the issues.
- 29 In considering whether a bylaw is the most appropriate and proportionate way of addressing the problem, the Council has considered the following options:
- a. Option 1 – Do nothing.
 - b. Option 2 – Make a bylaw identical to the Freedom Camping Control Bylaw 2012.
 - c. Option 3 – Adopt the proposed Freedom Camping Bylaw 2019, is drafted more simply, and which increases the areas in which freedom camping is prohibited.
- 30 Option 3 is the proposed option.

Option 1 – Do nothing

- 31 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 local authority areas of the District. Freedom camping using tents and non-self-contained vehicles is likely to increase.

- 32 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).
- 33 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 mechanism could be used to part-regulate freedom camping, it would not remove the need for a bylaw altogether because it would not address roadside camping or land managed by the Council under another enactment.
- 34 Finally, the Council would be acting inconsistently with its own Responsible Camping Strategy, which is based on promoting self-contained vehicle usage.
- 35 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 – Adopt a bylaw identical to the Freedom Camping Control Bylaw 2012

- 36 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.
- 37 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 and Hawea would 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 would not be addressed.

Option 3 – Adopt the proposed Freedom Camping Control Bylaw 2019, and revoke the Freedom Camping Control Bylaw 2012.

- 38 The Council considers that 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 with the Act. The Council will therefore be acting consistently with feedback received from stakeholders to simplify the bylaw and make it easier for users to understand.
- 39 Disadvantages include that the proposed bylaw expands areas in which freedom camping is prohibited. This is considered necessary to protect the amenity and health and safety of residents of newly expanded or developed residential areas. It does have the effect of conversely reducing the area in which freedom camping is allowed in self-contained vehicles.

ARE THERE ANY IMPLICATIONS UNDER THE NEW ZEALAND BILL OF RIGHTS ACT 1990?

- 40 The proposed bylaw will potentially engage the right to freedom of movement in section 18 of the New Zealand Bill of Rights Act 1990 (NZBORA). However, the proposed controls are considered reasonable limits on that right as allowed for in section 5 of the NZBORA:

Subject to section 4, the rights and freedoms contained in this 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.

- 41 If engaged, the right to freedom of movement does not obviously encompass a right to remain in a certain place for the purpose of camping overnight. But if engaged, the inconsistency is a minor one and is based on a rational link between the bylaw provisions and the objective of controlling the adverse effects of freedom camping. The expansion of proposed areas for prohibition remains a proportionate control.

TIMETABLE FOR CONSULTATION

- 42 The following dates represent the key times in the consultation programme:
- a. Council resolves to undertake public consultation regarding the Proposal at its meeting of 10 October 2019.
 - b. Submissions open on 11 October 2019.
 - c. Advertisement in Otago Daily Times, Southland Times, Mirror and Wānaka Sun – between 11 October 2019 and 18 October 2019.
 - d. Submissions close on 11 November 2019.
 - e. Submissions heard by a subcommittee of Councillors in Queenstown on mid November 2019 and in Wānaka in mid November 2019.
 - f. Council considers outcome of consultation process and whether to make decisions on the Proposal – December 2019 (meeting date to be confirmed).

INSPECTION OF DOCUMENTS AND OBTAINING COPIES

- 43 Copies of this Statement of Proposal and the proposed bylaw may be inspected, and a copy obtained, at no cost, from:
- a. either of the Council offices at 10 Gorge Road, Queenstown or the Wānaka Service Centre, 47 Ardmore Street, Wānaka ;
 - b. any Council library within the Queenstown Lakes District; or
 - c. the Council website – www.qldc.govt.nz.

RIGHT TO MAKE A SUBMISSION AND BE HEARD

- 44 Any person or organisation has a right to be heard in regard to this Proposal and the Council encourages everyone with an interest to do so. Submissions should be directed toward matters that are within the scope of the Proposal.
- 45 The Council would prefer that all parties intending to make a submission:

- a. go to the Queenstown Lakes District Council Website: www.qldc.govt.nz or
 - b. post their submission to: Regulatory Department, Queenstown Lakes District Council, Private Bag 50072, Queenstown 9348.
- 46 Submissions must be received by **Monday 11 November 2019**. The Council will then convene two hearings, which it intends to hold in Queenstown and Wānaka in mid-November at which any party who wishes to do so can present their submission in person. The Council will give equal consideration to written and oral submissions.
- 47 The Council will permit parties to make oral submissions (without prior written material) or to make a late submission, only where it considers that special circumstances apply.
- 48 Every submission made to the Council will be acknowledged in accordance with the LGA, will be copied and made available to the public, and every submission will be heard in a meeting that is open to the public.
- 49 Section 82 of the LGA sets out the obligations of the Council in regard to consultation and the Council will take all steps necessary to meet the spirit and intent of the law.

MAKING AN EFFECTIVE SUBMISSION

- 50 Written submissions can take any form (eg email or letter). An effective submission references the clause(s) of the proposed bylaw you wish to submit on, states why the clause is supported or not supported, and states what change to the clause is sought.
- 51 Submissions on matters outside the scope of the Proposal cannot be considered by the Hearings Panel.

Mike Theelen
CHIEF EXECUTIVE

APPENDIX 1 – Proposed Queenstown Lakes District Council Freedom Control Bylaw 2019.

APPENDIX 2 – Current Queenstown Lakes District Council Freedom Camping Control Bylaw 2012.