

3. Consultation – Draft Activities in Public Places Bylaw 2023

PURPOSE OF THE REPORT | TE TAKE MO TE PURONGO

1. The purpose of this report is to present the Community & Services Committee (the committee) with proposed changes to the Activities in Public Places Bylaw 2016 and seek that the committee recommend that Council endorse the proposed changes in the draft Activities in Public Places Bylaw 2023 (the draft bylaw) for formal consultation, via the special consultative procedure.



EXECUTIVE SUMMARY | WHAKARAPOPOTANGA MATUA

The Activities in Public Places Bylaw 2016 is due for review and will expire if not reviewed prior to September 2023. The purpose of the bylaw is to protect the public from nuisance, and currently contains provisions including a ban on the consumption of mind-altering substances in public places, a ban on the distribution of leaflets in connection with a trading activity in a public place, requiring permission for events in public places, requiring permission for organised licensed premises tours in public places (commercial pub crawls) and requiring registration for busking in public places. The main change recommended is to add the commercial hire of micromobility devices (e-scooters) in public places to the definition of ‘trading activity’ that may be regulated via the bylaw. This report seeks the committee’s recommendation that Council endorse the proposed changes in the draft bylaw for formal consultation, via the special consultative procedure.

RECOMMENDATION | NGA TUTOHUNGA

That the Community & Services Committee:

1. **Note** the contents of this report;
2. **Recommend to Council** that it endorse the draft Activities in Public Places Bylaw 2023 (Attachment 1), to be presented to Council for formal consultation via the Special Consultative Procedure;
3. **Note** that the draft Activities in Public Places Bylaw 2023 and associated statement of proposal will be presented to the 23 March 2023 Council meeting.

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Signature		
Date	3 February 2023	3 February 2023

REPORT CONTENT & ATTACHMENTS | NGA TAPIRIHANGA

Number	Title of Attachment
1.	Consultation - Activities in Public Places bylaw 21 Feb 2023 C&S Committee
2.	Draft Activities in Public Places Bylaw 2023
3.	Current Activities in Public Places Bylaw 2016

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 by Council 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 Two bylaws are currently under review and are being progressed and consulted on together for efficiency. This includes:
 - Activities in Public Places Bylaw 2016 - in place since November 2016 and due for review and will expire if not reviewed prior to September 2023. Once reviewed, it will next have a five year review requirement.
 - Alcohol in Public Places Bylaw 2018 - in place since November 2018, last reviewed in 2018 and due for review this year. If the review is completed before October 2023, it is eligible for a ten year review period.
- 3 The Alcohol in Public Places Bylaw 2018 is addressed in a separate report.
- 4 Preliminary engagement was undertaken on both bylaws during November 2022 to gather information as to what stakeholders view as the main issues with these bylaws. Targeted emails were sent to stakeholder groups, inviting them to provide feedback on Council's Let's Talk platform. Anyone in the community could also respond to the online survey. People were asked what they thought was working well with the bylaw, what was not working well, and whether they had any recommendations for changes.
- 5 Before commencing the process for making or reviewing a bylaw (including consultation), Council is required to make the determinations in section 155 of the LGA. This is to determine whether a bylaw is the most appropriate way of addressing the perceived problem, whether the proposed bylaw is in 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 and will be outlined as recommendations in the report to Council.
- 6 Independent legal advice has been obtained on key issues and has been incorporated into the Analysis and Advice section of this report.

The Activities in Public Places Bylaw 2016

- 7 The purpose of the Activities in Public Places Bylaw 2016 includes protecting the public from nuisance, and currently contains specific provisions including:
 - a ban on the consumption of mind-altering substances in public places

- a ban on the distribution of leaflets in connection with a trading activity in a public place
 - requiring permission for events in public places
 - requiring permission for organised licensed premises tours in public places (commercial pub crawls)
 - requiring registration for busking in public places.
- 8 Generally, the feedback received about the bylaw were positive, and that the current system is working well. Comments about trading and busking were mixed, with concerns raised that the noise caused by buskers (both with and without speakers) can dominate the lakefront environment in Queenstown.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

Proposed changes to the Activities in Public Places Bylaw 2016

- 9 The main features of the bylaw and proposed changes are discussed below. All proposed changes are marked up in the draft Activities in Public Places Bylaw 2023 at Attachment A.

Commercial hire of micromobility devices (e-scooters)

- 10 The key change recommended in the draft Activities in Public Places Bylaw 2023 is to add the commercial hire of micromobility devices in public places to the definition of 'trading activity' that may be regulated via the bylaw. This includes dockless e-scooters, but in the future could also include e-bikes and other similar devices.
- 11 In December 2022, Council endorsed entering a memorandum of understanding (MOU) with micromobility device operator Beam for the operation of an e-scooter trial in Queenstown, Frankton and Wānaka ([Full Council \(qldc.govt.nz\)](https://www.qldc.govt.nz)). The draft MOU provides that Beam will ensure that e-scooters cannot be parked, or rides terminated, in the areas outside the deployment locations, which are on private land.
- 12 Legal advice has been obtained in relation to the options available to Council to regulate this activity through a bylaw. It is not recommended that Council regulate the commercial hire of micromobility devices occurring on private land through this bylaw, because the LGA bylaw making provisions relate primarily to public places.
- 13 However, it is recommended that the bylaw be drafted to enable Council to regulate the hire and parking of micromobility devices on public land, by requiring permission of Council for this activity. Conditions and restrictions may be provided for in the bylaw or in a separate policy.
- 14 An alternative option is for Council to determine that a voluntary MOU is sufficient to regulate this activity to address any perceived problems. However, there is no guarantee that all micromobility providers would be amenable to entering into and

complying with a MOU. Additionally, providers are indicating that their preference would be to utilise public land for parking and hire of micromobility devices. A bylaw provides Council with 'more teeth' to make requirements similar to what is in the MOU, and take enforcement action if necessary.

- 15 Council needs to bear in mind that enforcement of the bylaw is not straightforward. There is no infringement regime that will allow fines to be issued, therefore Council is largely confined to bringing a prosecution when a breach of the bylaw occurs.

Ban on the consumption of mind-altering substances in public places

- 16 This ban was added to the bylaw as an outcome of the 2016 review and was supported by Police and district health board. Police have advised that the ban is a useful tool with respect to butane/ solvent abuse in public places, primarily by itinerant individuals, as these are mind-altering substances for which there is no directly applicable legislation. It is proposed to maintain the current provisions in the bylaw.

Ban on the distribution of leaflets in connection with a trading activity in a public place

- 17 The provision in the current bylaw is very narrow and only applies to leafletting in connection to a trading activity in a public place. It appears from the 2016 review that the issue is in relation to leaflets placed on cars or handed out in a public place that relate to any business or event, whether the business trades from a public place or not. It is therefore recommended to increase the scope of this provision, to address leaflets and material handed out in a public place in relation to any commercial activity or business.
- 18 If the ban were to extend beyond commercial activities and businesses, it would likely be inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA). Under the NZBORA, a bylaw may only be valid where it can be found to be a reasonable limit that "can be demonstrably justified in a free and democratic society" (section 5). The application of this principle means that there is a distinction between leaflets advertising goods or services, as compared to those expressing religious, political or other views. To further guard against a challenge under the NZBORA, a purpose for this clause to clarify that it is aligned with the prevention of litter has been added to the draft bylaw.

Requiring permission for events in public places

- 19 It is proposed to maintain the provisions in the bylaw for events in public places. Currently an event organiser is required to obtain permission from Council, and the bylaw enables Council to impose certain conditions on the event permission. There is a programme of work scheduled to review and improve the internal system for processing event and film applications.

Requiring permission for organised licensed premises tours in public places (pub crawls)

- 20 It is recommended that the current aspects of the bylaw in relation to organised licensed premises tours are maintained. When the bylaw was last reviewed in 2016, the requirement for permission for organised licensed premises tours received a fair amount

of attention. The bylaw requires that tour organisers need Council permission where a tour occurs in any public places. Conditions may be imposed, such as designated times of operation, the ratio of staff to patrons and a limit on group size.

- 21 Largely due to COVID-19, there has been minimal activity in this space in recent years. However, with visitor numbers quickly rebounding in Queenstown, it is anticipated that this will again become a popular activity.

Requiring registration for busking in public places

- 22 Currently prospective buskers are required to register via an application form on Council’s website. If the applicant does not meet the conditions for undertaking an activity in a public place, they are required to apply for a permit. It is not proposed to change this system in principle. This is because a shift to a full permit system would not address the perceived issues with busking, related to crowding and arguably detrimental effects to the visitor experience on the Queenstown lakefront. Whether via registration or permit, the enforcement options under the bylaw are similar.
- 23 To address the concerns raised in the preliminary feedback regarding the Queenstown lakefront, it is proposed to review the permitted sites for busking, with a view to ensuring that they are located a reasonable distance from areas particularly sensitive to disruption or noise from busking activity.

Options analysis

- 24 Council has the ability to make changes to the draft bylaw as an outcome of formal consultation in response to feedback received, as long as the changes are within the scope of the statement of proposal. Material changes to the draft bylaw proposed after consultation that are not contemplated in the statement of proposal may require Council to consult again.
- 25 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.
- 26 **Option 1:** that the Community and Services Committee recommends that Council endorses the draft Activities in Public Places Bylaw 2023 for consultation following the Special Consultative Procedure. Note that it open to the committee to recommend changes to the draft bylaw as part of this option.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • Initiates a compliant bylaw review process in a timely fashion. • Council retains the ability to regulate busking, trading in public places, events, the consumption of psychoactive substances in public 	<ul style="list-style-type: none"> • There is time and costs associated with consultation and implementation.

<p>places, the distribution of leaflets and licenced premises tours.</p> <ul style="list-style-type: none"> • Council would have the ability to regulate commercial micromobility rental schemes (e-scooter hire) in public places. 	
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27 **Option 2:** that the Community and Services Committee does not recommend that Council endorse the draft Activities in Public Places Bylaw 2023 for consultation following the Special Consultative Procedure.

<i>Advantages</i>	<i>Disadvantages</i>
<ul style="list-style-type: none"> • There would be reduced time and cost associated with consultation and implementation of the bylaw. 	<ul style="list-style-type: none"> • The bylaw review process would not be initiated and the bylaw would lapse. • Council would lose the ability to regulate busking, trading in public places, events, the consumption of psychoactive substances in public places, the distribution of leaflets and licenced premises tours. • Council would not have the ability to regulate commercial micromobility rental schemes (e-scooter hire) in public places.

28 This report recommends **Option 1** for addressing the matter, because this initiates a compliant bylaw review process in a timely fashion, Council retains the ability to regulate busking, trading in public places, events, the consumption of psychoactive substances in public places, the distribution of leaflets and licenced premises tours, and Council would have the ability to regulate commercial micromobility rental schemes (e-scooter hire) in public places.

Next steps

29 If endorsed by Council at its 23 March 2023 meeting, the draft bylaw and statement of proposal will go out for public consultation in late March.

30 It is intended that the written submissions received will be presented and a hearing on this matter for those that would like to present their submission orally will take place in May 2023.

31 Staff would then present the draft bylaw for deliberation and adoption July 2023, to come into effect from August 2023.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

32 It has been identified that the decisions made in this report are of low to moderate significance in relation to the LGA and Council's Significance and Engagement Policy because:

- the matters have minimal to moderate impact on the community
- 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

33 During the later stages of reviewing this bylaw, such as when the decision is made to adopt the final bylaw, the degree of importance of this matter may reach the threshold of being a significant decision.

34 Officers have sought early feedback from Police, stakeholders and the community on this bylaw. 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.

> MĀORI CONSULTATION | IWI RŪNANGA

35 Input will be sought on the draft bylaws from Te Ao Marama and Aukaha through the formal consultation process. In order to continue to educate and socialise the use of te reo Māori the community, the title of the bylaw has been translated.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

36 This matter relates to the Regulatory/Legal/Compliance risk category. It is associated with RISK00018 Damage to the Environment - noise pollution events and facilities and RISK00038 Lack of Alignment - strategies and policies within the [QLDC Risk Register](#). These risks have been assessed as having a low inherent risk rating.

37 The approval of the recommended option will support the Council by allowing it to retain the risk at its current level. This shall be achieved by review of this bylaw to ensure that they respond appropriately to the issues in the district regarding alcohol control and activities in public places.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

38 The costs associated with reviewing the bylaws including staff time and advertising will be met within current Council budgets. Costs will include staff time and advertising.

39 Whether through an MOU or the draft Activities in Public Places Bylaw 2023, the enforcement of micromobility device conditions could require additional resourcing in

addition to what is provided for in current Council budgets. The draft bylaw does not propose any other significant changes to Council operations that would require additional funding.

COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA

40 The following Council policies, strategies and bylaws were considered:

- Way to Go partnership (QLDC, ORC and Waka Kotahi)
- the outcomes and principles of Vision Beyond 2050
- the QLDC Annual Plan
- the QLDC Ten Year Plan 2021-31.

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

LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHAKA WAETURE

42 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. Legal advice has been received in relation to the main issues for the bylaw. The draft bylaw and statement of proposal will be legally reviewed prior to being presented to Council.

Special Consultative Procedure

43 It is proposed to consult on the draft bylaw using 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.

44 It is proposed that Council will make the statement of proposal as widely available as is reasonably practicable (in accordance with section 83 of the LGA), and 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

Revocation of the Activities in Public Places Bylaw 2016

45 Section 160A of the LGA automatically revokes any bylaw two years after the last date it was eligible for review. For the Activities in Public Places Bylaw 2016, section 158 required review before 29 September 2021. As this was not undertaken, revocation is scheduled to occur on 29 September 2023. Council cannot avoid the revocation of the

current bylaw, although it may elect to revoke it early and make another new bylaw, subject to completing formal public consultation process.

Determinations

46 Before making or reviewing a bylaw, Council must make the determinations required under section 155 of the LGA. Set out below is the assessment for each required determination.

Most appropriate way of addressing the perceived problem

47 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.

48 The issues that the draft bylaw addresses relate to activities occurring in public places, including trading, events, the consumption of psychoactive substances, the distribution of leaflets and licenced premises tours. Officers consider that a bylaw to address these issues is appropriate, given the assessment of the issues and options in the Analysis and Advice section of the report. Alternative measures such as engagement and education may be appropriate in conjunction with the bylaw mechanism, that enables Council to take enforcement action if indicated.

Most appropriate form of bylaw

49 Council is also required to determine whether the proposed bylaw is the most appropriate form of bylaw before it makes its decision. Officers consider that the draft bylaws are the most appropriate form of bylaw.

50 The draft Activities in Public Places Bylaw 2023 enables Council to regulate the commercial hire of micromobility devices. Permission conditions may be added through a policy by resolution, when Council has more information as to any issues that require regulation.

New Zealand Bill of Rights Act 1990

51 Council is required to determine whether the draft bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (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'.

52 The draft Activities in Public Places Bylaw 2023 prohibits the use of psychoactive substances in public places. This ban does not unreasonably interfere with any of the rights in the NZBORA, as its purpose is to protect and promote public safety.

53 Officers consider that the proposed increase in the scope of the ban on the distribution of leaflets in the draft Activities in Public Places Bylaw 2023 does not unreasonably restrict freedom of expression in the NZBORA. The ban is restricted to leaflets that are

in relation to a business or event. In addition, an explanatory clause has been added to the bylaw to clarify that the purpose of the provision relates to the littering, not limiting freedom of expression.

- 54 The other issues covered in the bylaw permit certain activities to occur (events, licensed premises tours, busking, trading), provided that certain conditions are met to ensure that these activities do not cause a nuisance to other members of the community. Accordingly, officers view that they do not unreasonably interfere with any of the rights in the NZBORA.

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA

- 55 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

- 56 The recommended option:

- can be implemented through current funding under the Ten Year Plan and Annual Plan
- is consistent with the Council's plans and policies
- 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

- 57 As such, the recommendation in this report are appropriate and within the ambit of Section 10 of the Act.