

QLDC Council
16 December 2021

Report for Agenda Item | Rīpoata moto e Rāraki take : 1

Department: Community Services

Title | Taitara Adoption of QLDC Freedom Camping Bylaw 2021

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

- 1 The purpose of this report is to present the Queenstown Lakes District Council Freedom Camping Bylaw 2021 for adoption.

EXECUTIVE SUMMARY | WHAKARĀPOPOTOTANGA MATUA

- 2 The Queenstown Lakes District Council Freedom Camping Bylaw 2019 (**Current Bylaw**) has been reviewed following a Council resolution in 2019 to undertake a comprehensive review. A comprehensive site assessment of 105 Council administered sites has been completed. A pre-consultation survey was undertaken on freedom camping in general and specifically several potential freedom camping sites. There were 826 responses to the survey.
- 3 There is an identified need for Council to continue to regulate freedom camping in the District. Following Council approval, Council staff commenced a special consultative procedure on the Proposed Bylaw. The Proposed Bylaw establishes where freedom camping is permitted, restricted or prohibited within the District. The Proposed Bylaw expands the areas in which freedom camping is currently prohibited.
- 4 A total of 285 submissions were received during the consultation period. 21 supported the bylaw, 241 submissions were in opposition. Of those in opposition, 184 people submitted that the Proposed Bylaw did not go far enough to prohibit freedom camping and/or that it should include additional specific sites as prohibited areas, or that it should be prohibited more widely (some say everywhere). 29 submissions sought that restrictions on freedom camping be lessened.

RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report;
2. **Note** the Hearing Panel recommendation to amend the Queenstown Lakes District Council Freedom Camping Bylaw 2021 as recorded in the deliberations reports in Attachment "F" of this report.
3. **Determine** that the Queenstown Lakes District Council Freedom Camping Control 2021 is:

- a. Necessary to protect the areas for which freedom camping is prohibited or restricted, to protect the health and safety of people who may visit the areas, or to protect access to the areas.
 - b. The most appropriate and proportionate way of addressing the perceived problem in relation to the areas.
 - c. Not inconsistent with the New Zealand Bill of Rights Act 1990.
4. **Approve** the revocation of the Queenstown Lakes District Council Freedom Camping Bylaw 2019 effective from 16 December 2021.
 5. **Adopt** the Queenstown Lakes District Council Freedom Camping Bylaw 2021 in Attachment “D” of this report with the Bylaw coming into effect on 16 December 2021.
 6. **Agree** that if there are changes to the New Zealand Self-Containment Standards or relevant freedom camping legislation a review of these changes will be undertaken to determine if amendments to the Queenstown Lakes Freedom Camping Bylaw 2021 are required.
 7. **Note** that all submissions and feedback received through consultation will be incorporated into the review of the Responsible Camping Strategy that is underway.
 8. **Amend** the minutes from the 29 July 2021 Full Council Meeting for Agenda Item 7 Draft QLDC Freedom Camping Bylaw 2021 which omitted reference to a verbal correction made during the meeting to the resolution to ‘Determine under section ~~155(1) of the LGA-11~~ of the Freedom Camping Act 2011 that the problem presented by freedom camping in the district is most appropriately and proportionately addressed by way of a bylaw under the Freedom Camping Act 2011;

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30/11/2021

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2/12/2021

CONTEXT | HOROPAKI

- 5 The Freedom Camping Act 2011 (**FCA**) allows freedom camping anywhere in a local authority area that a local authority has control over, except at those sites where it is specifically prohibited or restricted by that local authority. 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.
- 6 The Queenstown Lakes District is a significant tourist destination home to approximately 40,000 residents. There has been significant growth in our community and in the number of visitors to the District over the last decade, which includes an increase in the number of freedom campers. Numbers have reduced since the borders have been closed due to COVID-19, but it is expected they will increase again when the borders open. The community is highly engaged on freedom camping matters, as is evidenced by the high numbers of responses to the pre-consultation feedback and the Proposed Bylaw. In general the community sentiment towards freedom camping or the perceived issues it poses is negative.
- 7 The Council adopted the Current Bylaw under s 11 of the FCA in December 2019. A copy of the Current Bylaw is included as **Attachment A** with this report. The Current Bylaw defines the areas where freedom camping is restricted or prohibited within the District, and any relevant restrictions within the restricted areas. Restrictions under the Current Bylaw include that vehicles must be certified self-contained and that campers may not stay at one site or in the same area for more than two consecutive nights. Freedom camping without restrictions is not permitted on any council land in the District. Under the FCA, a bylaw can only apply to council controlled land. There are other areas in the District where freedom camping can occur that are controlled by other agencies. The current and proposed bylaw have no control over these areas.
- 8 At the Council meeting on 12 December 2019 the following resolution was passed:

On the motion of Councillor MacLeod and Councillor Copland it was resolved that the Council:

7. Agree that a full and comprehensive review of the Freedom Camping Control Bylaw will be undertaken in the next 18-24 months.
- 9 Council staff have now undertaken a full review of the 2019 bylaw as requested by Councillors in December 2019, including completing a comprehensive site assessment of 105 council administered sites where freedom camping can potentially occur.
- 10 As part of this review, the Council's options are to revoke the existing bylaw, make no changes to the existing bylaw, amend the existing bylaw, or pass a new bylaw. In conducting the review the Council is required to make the determinations required by s 11(2) of the FCA.
- 11 Section 11(2) of the FCA provides that the Council may only make a bylaw under the FCA if it is satisfied that:

- a. the bylaw is necessary for one or more of the following purposes:
 - i. to protect the relevant areas:
 - ii. to protect the health and safety of people who may visit the relevant areas:
 - iii. to protect access to the relevant areas; and
 - b. the bylaw is the most appropriate and proportionate way of addressing the perceived problem in relation to the relevant area; and
 - c. the bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA).
- 12 At the 29 July 2021 meeting the Council resolved to approve the commencement of the special consultative procedure in relation to the proposal to make a new bylaw to regulate freedom camping in the Queenstown Lakes District:

Resolution:

Determine under section 11 of the Freedom Camping Act 2011 that the problem presented by freedom camping in the district is most appropriately and proportionately addressed by way of a bylaw under the Freedom Camping Act 2011;

Approve commencement of public consultation using the special consultative procedure in relation to the proposal to make a new freedom camping bylaw under section 11 of the Freedom Camping Act 2011;

- 13 The Proposed Bylaw including the maps is attached as **Attachment B**.
- 14 The key changes in the Proposed Queenstown Lakes District Council Freedom Camping Bylaw 2021 (**Proposed Bylaw**) (compared to the Current Bylaw) that were consulted on were:
- a. Prohibited areas to include the following road reserve areas; Coronet Peak Road to Skippers Road (including to Skippers Saddle), the Crown Range Road, Precipice Creek Carpark on Glenorchy Paradise Road, Moke Lake Road, Rafters Road and Motutapu Road Track end.
 - b. Prohibit freedom camping at Whitechapel Reserve.
 - c. The general prohibition of freedom camping in residential areas extended to include new residential areas at Hāwea Flat and at Wicklow Terrace, Albert town.
 - d. New restricted freedom camping areas (that were previously prohibited) at Gibbston Reserve Carpark and Glenorchy Domain Carpark.
 - e. Proposed new provisions which authorise the Council to, by resolution, specify the maximum number of freedom camping vehicles for a certain location.

- 15 Several specific sites were also consulted on that would continue to allow freedom camping:
- Camphill Hill Road Carpark
 - Morven Ferry Road Reserve
 - Luggate Red Bridge Reserve
- 16 The Statement of Proposal (**SOP**) (**Attachment C**) and Proposed Bylaw were publicly notified by advertisement on the QLDC website and in local newspapers between 02 August and 07 August 2021, including the Otago Daily Times, the Southland Times, the Mountain Scene and the Wānaka Sun.
- 17 Submissions opened on 02 August 2021 and closed on 03 September 2021.
- 18 A total of 285 public submissions were received within the advertised submission period.
- 19 21 submitters supported the Proposed Bylaw in full. 17 were neutral or did not indicate whether they were in support.
- 20 241 submissions were in opposition, these can be grouped into two subgroups:
- a. 184 people submitted that the Proposed Bylaw did not go far enough to prohibit freedom camping and/or that it should include additional specific sites as prohibited areas, or that it should be prohibited more widely (some say everywhere).
 - b. 29 submitted that the Proposed Bylaw was too restrictive and freedom camping should be allowed in more locations.
- 21 Many submitters did not support freedom camping at the following particular locations:
- Morven Ferry Reserve
 - Gibbston Reserve Carpark
 - Glenorchy Domain Carpark and Glenorchy surrounds
 - Camphill Road Carpark
 - Luggate Red Bridge Reserve
- 22 The above locations were included as sites in the pre-consultation survey as locations where freedom camping could occur. Typically the submitters opposing freedom camping at these areas were from the general area of the location that they were submitting on.
- 23 A hearing in Queenstown was held on 27 September 2021 and in Wānaka on 29 September 2021. A total of 22 submitters were heard in support of their submissions.
- 24 The Hearing Panel (the Panel) comprising Councillors Calum MacLeod, Niki Gladding and Craig Ferguson gave full consideration to the submissions received and determined the extent to which the submissions will be accepted or disallowed. Of the submitters who were heard three submitters wanted freedom camping increased in the District (New Zealand Motor Caravan Association (**NZMCA**), Rik Deaton from Landescape Wānaka and

Robert Kyles of Wānaka). The remaining submitters that were heard did not support freedom camping across the district or at a specific site.

- 25 The Panel recommend the adoption by Council of the Proposed Bylaw with amendments following the submissions and hearings process. The final version of the Proposed Bylaw 2021 is attached as **Attachment D**.

Legal Considerations

- 26 The power to make the Proposed Bylaw is contained in s11 of the FCA. Section 11(2) of the FCA contains a number of decision-making requirements when making a bylaw. The statutory criteria in s 11(2) that Council must consider while hearing the submissions are whether:
- a. The bylaw is necessary to protect the areas for which freedom camping is prohibited or restricted, to protect the health and safety of people who may visit the areas, or to protect access to the areas.
 - b. The bylaw is the most appropriate and proportionate way of addressing the perceived problem in relation to the areas.
 - c. The bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.
- 27 While the Panel must consider all of the submissions, there are aspects of some submissions that will have to be put to one side. For example, some submitters consider that a blanket prohibition on freedom camping in the District is appropriate. The FCA does not permit a blanket prohibition. Those submissions are relevant to the extent that the Council may consider community views about the statutory criteria in s 11(2), but the outcome sought cannot be achieved under the FCA.
- 28 One submitter, the NZMCA, considers that the Xyst Site Assessment Report takes into account certain matters that are not permissible considerations under s 11(2); for example, the effect of allowing freedom camping at a local authority area on the property value of adjacent properties. Its submission attaches a legal opinion about the interpretation of s 11(2). The Council has received legal advice, which has informed the Hearing Panel's recommendations and the recommended option is consistent with that advice.
- 29 Because the Proposed Bylaw expands the areas in which freedom camping is prohibited or restricted, the Council will have to be satisfied that the additional limits on freedom of movement are proportionate and justified having regard to the purpose of the FCA, namely to regulate freedom camping on local authority areas so as to control and manage the adverse effects of freedom camping.

Hearings Panel:

- 30 Overall, the Panel consider that the prohibitions and restrictions in the Proposed Bylaw are consistent with s 11 of the FCA and are based on evidence.

31 This bylaw process is under the FCA not the Reserves Act 1977. All reserves, including those with the prohibition under the Reserves Act, were assessed under the site assessment, and were assessed as having concerns significant enough to justify prohibition under s 11 of the FCA.

Submissions and Hearing Panel Deliberations

32 All submissions can generally be placed in two main groups:

Too prohibitive

33 This was approximately 13% of all submissions. Points raised within submissions included that:

- a. Council should provide better managed sites that are well policed, with facilities, close to town, and not just in rural areas;
- b. the Proposed Bylaw is not in accordance with the FCA which does not allow complete prohibition;
- c. freedom camping should be allowed everywhere with limited controls or restrictions;
- d. the Queenstown Lakes District is unfriendly, unwelcome and does not appreciate the potential economic benefit freedom campers could bring.

34 60% of these submitters that wanted more freedom camping were visitors to the district.

Not prohibitive enough

35 Approximately 65% of submitters stated that the proposed restrictions were not prohibitive enough. These submissions proposed that more areas should be prohibited areas, or that there should be a complete prohibition of freedom camping across the District. The FCA and the NZ Self-Containment Standards were identified by some as a key issue, suggesting they are not fit for purpose. Approximately 50% of submitters stated that the proposed bylaw did not go far enough to control freedom camping in the District. The majority of these submitters are residents or ratepayers.

36 The Hearing Panel deliberations were extensive and comprehensive. During the deliberations, council officers were requested to explore ideas and flesh out issues, and to report back to the Panel. A number of reports and advice back to the Panel were used during deliberations. Minutes were taken and a Hearing Panel Deliberations Report was prepared that records the discussion on key issues in detail. This package of information is included as **Attachment E** and is listed below:

- a. Hearing Panel Deliberations Report
- b. QLDC Freedom Camping Bylaw 2021 Council Officer Summary of Submissions Table

- c. QLDC Freedom Camping Bylaw Enforcement Memo
- d. QLDC Freedom Camping Bylaw 2021 Discretionary Exemption Permit Assessment Memo
- e. Hearing Panel Questions and Answers Document

37 Following deliberations the Council Officers Summary of Submissions Table was updated to note the changes the Panel wished to recommend.

Main Issues and Subsequent Changes

38 The main issues and recommended changes to the Proposed Bylaw and the reasons for those changes are as follows:

More freedom camping

- More freedom camping, fewer restrictions
- More freedom camping close to town centres
- Prohibition will move the problem

39 Submitters seek that freedom camping should be allowed in urban areas or close to amenities so campers can visit retail areas, attractions, restaurants, use public transport etc. Some submitted that not allowing freedom camping is bad for the District's economy. Sites in town have infrastructure and therefore should be more accessible for enforcement purposes. Prohibition in the town centres moves the problem out to the rural areas.

Hearing Panel:

40 The Panel questioned whether the Discretionary Exemption Permit that council can issue under Part 3 of the existing and Proposed Bylaw could be used as a blanket permit for a company or organisation (for example NZMCA, or Maui). Part 3 doesn't specifically state the permit is for a community organisation for a one off event (although this is what it is always used for). It states '*A person may apply...*'. This could be applied for by an organisation, allowing their members to camp in a restricted number of carpark sites in town centres.

41 Council officers prepared the Discretionary Exemption Permit Memorandum that provides an analysis of how this permit system could work.

42 Discretionary permits have been used for one off events for community groups. If it was used as a basis for NZMCA to seek as an exemption for its members, QLDC would have to apply the permit to other organisations (e.g. Jucy, Maui) who applied. This approach hasn't been tested and the community may not support it.

43 The Panel concluded that using the discretionary permit process in this way posed too many difficulties and complexities and it should instead continue to be used for one off events for community groups.

- 44 Detailed discussion is recorded in Section 3 of the Hearing Panel Deliberations Report.
- 45 The Panel directed staff to tidy up the wording in Part 3 of the Proposed Bylaw to make it clear that use of the exemption process is for one-off or community events.
- Recommended Change:
- 46 See proposed amendments to clause 8.1 of the final form of the Proposed Bylaw in Attachment D.
- 47 The Panel also discussed at length if carparks in town centres should be made available for restricted freedom camping. They are sealed, could have CCTV installed if not already present, and less travel time would be required for enforcement officers and contractors.
- 48 The Panel discussed the QLDC Enforcement Memorandum that sets out how QLDC undertakes freedom camping enforcement.
- 49 The history of freedom camping in the district has resulted in central hotspots being prohibited as problems arose with freedom campers disregarding the rules or overcrowding, and restricted areas being pushed further out into remote rural areas.
- 50 A reasonable extrapolation of experience and evidence from what happened in the past (and what continues to happen at restricted sites) suggests the same problems (overcrowding, litter and human waste pollution) would recur if these sites were opened up again. It can be reasonably assumed from general experience of human pollution at a number of sites without toilets that all sites without toilets where freedom camping occurs will have human pollution. These areas require protection from these issues.
- 51 Putting restrictions on the numbers of vehicles at each site was discussed, noting the challenges in enforcing these restrictions and the camper behaviour this encourages (eg driving across the district to look for a free site).

Further prohibitions and/or Blanket Ban

- 52 Many submitters sought that there should be more prohibited areas, all campers should stay in a paid campground and there should be a complete prohibition of freedom camping across the district.

Hearing Panel:

- 53 It is clear that a large portion of submitters were not aware that under the FCA the Council:
- a. Is unable to prohibit freedom camping across its district; and
 - b. Can only control freedom camping on council owned/controlled land.
- 54 The FCA provides that people may freedom camp in local authority areas except where it is prohibited or restricted through a bylaw. It is not possible under the FCA to absolutely prohibit freedom camping in the District. Therefore, there will be opportunities for freedom camping in the District.

Council's Site by Site Assessment (prepared by Xyst)

55 A numbers of submitters disagreed with the Site by Site Assessment, prepared by Xyst Limited, or questioned how it was prepared and/or the consistency between site assessments. The NZMCA submitted that the Xyst Site Assessment relied on matters that were not s11 criteria.

56 In addition to the sites that Xyst recommended for restricted freedom camping, Council officer's explored if any other sites could be provided for freedom camping if the sites were managed with appropriate controls. The criteria was that the site must have only one '5' significance score, a formed carpark, and a public toilet nearby (as the evidence suggests that if there is no toilet then health and safety and environmental issues arise). This provided a further five sites to be considered, four of which were notified in the SOP as restricted local authority areas.

Hearing Panel:

57 The Xyst report expressly states that the approach taken is based on how "Xyst has interpreted" the statutory criteria. The site assessment has been prepared generally in accordance with LGNZ best practice.

58 The Xyst Site Assessment report is a tool to assist the Council as decision-maker to apply the statutory criteria to the relevant local authority areas. Councillors are able to arrive at a different conclusion about a site after considering the statutory criteria, informed by the submissions and the Statement of Proposal. Officers recommended that some sites be restricted where the Xyst conclusion suggested prohibition, after considering that additional controls such as site restrictions and a public toilet were possible that could mitigate the effects of freedom camping. The sites that were proposed to allow restricted camping also received over 800 comments in the pre-consultation feedback. Council previously completed a site assessment in 2011. This is all part of the information Councillors may use to inform the decision. There are many inputs and the Hearing Panel have also applied their own knowledge of the district to the assessment.

59 The Panel agreed with the NZMCA submission that the economic assessment criteria that was included in the Xyst Site Assessment should not apply, and therefore they did not consider this for the relevant site assessments where these criteria had been applied by Xyst. However, this did not affect the final outcome as the Panel agreed considered that the s 11(2) criteria were still met for each of those sites.

60 The Panel disagrees with the Xyst Site Assessment report to allow restricted freedom camping at the following sites:

- Camphill Carpark
- Rees Valley Road
- Kinloch Road

The reasons for these disagreeing with the assessment of areas are discussed in paragraphs 69 – 72 and 86 - 95 of this report.

Areas where freedom camping should be allowed

61 A numbers of submitters sought that freedom camping should be allowed at specific sites. All sites are addressed in the Council Officer Summary of Submissions Table. Sites that the Panel considered in detail were:

- Former Glenorchy Tennis Courts
- Glenorchy Former Landfill
- LandEscape Land at Hāwea
- Council administered golf courses

62 The Hearing Panel Questions and Answers Document provides a further assessment for these sites

Hearing Panel:

63 None of the sites are appropriate for freedom camping. The former tennis courts and the former landfill do not have vehicle access, the LandEscape site is on private land and would require payment by way of a service and the council administered golf courses would charge a fee so does not come within the scope of the FCA.

Areas where freedom camping should be prohibited

Camphill Road Carpark

64 45 submitters, many from the kayaking community, submitted that Camphill Road Carpark should be prohibited. Health and safety was a primary concern as the carpark is in close proximity to a river surfing site that can be dangerous for the general public, and the carpark is on a road adjacent to a one lane bridge that does not have good sight lines. Several submitters (including the adjacent landowner) stated they had seen evidence of litter and toilet waste from freedom campers, people washing themselves and dishes in the river. The majority of submitters stated that the carpark is often full as it is heavily used by kayakers, walkers and cyclists (the carpark provides access to a walking/cycling trail). Submitters also had concerns that the site would become an overflow camping area for Luggate Red Bridge Reserve, and that camping at this site could overflow into the adjacent carpark on DOC land that is accessed through private land putting the access arrangement at risk.

Hearing Panel:

65 The Panel consider there is sufficient evidence to support prohibition at this location for the following reasons:

- a. Camphill Carpark is a unique site – the Wave is a National/International recreation asset. This is the only area in the district where this recreation activity occurs.

Recreation demand is always high yet particularly busy times are unpredictable as the wave conditions depend upon release of water by the energy company. All of the s 11(2) FCA criteria apply.

- b. Freedom camping at Camphill had been an issue before freedom camping was made available at the Luggate Red Bridge site. These issues will likely arise again.
- c. Limits on the numbers of campervans allowed in the carpark (eg two or three carpark sites) would not be easy to enforce as Camphill is remote and has a gravel carpark.
- d. There is fire risk with the adjacent forest.
- e. The carpark has specific health and safety risks that have been raised by submitters – people carrying kayaks and/or needing to cross the adjacent one way bridge.
- f. The carpark is frequently full, in particular when there are regional and national events on. The carpark and adjacent reserve functions for a specific purpose and freedom camping will impede that purpose

66 The Panel consider it is necessary to amend the Proposed Bylaw to prohibit freedom camping at Camphill Road Carpark to protect access to the area (s11(2)(a)(iii)) and to protect the health and safety of the people who visit the area (s11(2)(a)(ii)).

Recommend Change:

67 Amend the Proposed Bylaw maps to include Camphill Road Carpark as a prohibited area.

Morven Ferry Reserve

68 41 people submitted specifically that Morven Ferry Reserve carpark should be a prohibited area. Reasons given were that the carpark is small but well used by the community for access to a popular recreation reserve, the Arrow River and the Queenstown Trail. The reserve is very busy with horse riders, trail users and it provides access to a popular swimming hole. The carpark is often at capacity with cars spilling onto the road. A number of submitters stated amenity and privacy of those living nearby would be affected. Road safety was also a concern - the road is a narrow rural road, and is accessed via the State Highway 6 at Arrow Junction. Several submitters requested a specific traffic and/or landscape assessment for freedom camping to be undertaken due to safety and visual amenity concerns.

Hearing Panel:

69 Agree a specific traffic assessment for freedom camping is not required as road safety applies to all users. A freedom camping site does not need resource consent, therefore it does not need a traffic or landscape assessment like a consented activity would. The roads are public roads that should conform to other QLDC/NZTA roading standards for all users.

70 Adding only one or two freedom camping parks in such a small carpark has a disproportionately high impact on reserve users and the adjacent community.

71 Further discussion is detailed in the Hearing Panel Questions and Answer Document and section 9 of the Hearing Panel Deliberations Report.

72 The need to protect access to the busy popular reserve that has a small carpark outweighs the reasons in the staff response and justifies prohibiting at this site. The Panel agrees with the conclusion of the Xyst Site Assessment Report to prohibit freedom camping at Morven Ferry Reserve to protect access to the area (s11(2)(a)(iii)).

Recommended Change:

73 Amend the Proposed Bylaw maps to include Morven Ferry Reserve Carpark as a prohibited area.

Gibbston Reserve Carpark

74 28 submissions were received that seek to have the Gibbston Reserve Carpark prohibited. Most submitted that the carpark was inadequately formed, very small and there is no potable water. The narrow road was raised as a safety issue. Many submitters were concerned freedom camping will affect the amenity and privacy on neighbouring residents and businesses.

Hearing Panel:

75 Allowing freedom camping at Gibbston Reserve Carpark is not consistent with prohibition at other site assessments – eg the Boundary Street council carpark or the Queenstown Event Centre.

76 The carpark is very small and the submissions provide evidence that the carpark area would need work and recreation access needs to be protected. The Gibbston Reserve is the only recreation reserve in the Gibbston area.

77 Limiting the numbers of campervans that can camp there could be a way to manage the FCA s11 criteria effects on site but this would be very difficult to enforce.

78 The Hearing Panel agree with the Xyst Site Assessment report conclusion to prohibit freedom camping at Gibbston Reserve Carpark as it is necessary to protect access to the area (s11(2)(a)(iii)) and disagree with staff recommendations to allow restricted freedom camping.

Recommended Change:

79 Amend the Proposed Bylaw maps to include Gibbston Reserve Carpark as a prohibited area.

Glenorchy Domain Carpark and the wider Glenorchy Area

80 32 submissions seek to have the Glenorchy Domain Carpark included as a prohibited area, while a number also submitted that all freedom camping areas beyond Glenorchy should be prohibited. Many of the submitters stated that the Glenorchy Domain and the carpark

are heavily used by the Glenorchy community for rugby, tennis, golf and events and that the organisations that use the domain have to coordinate to ensure capacity for events.

81 Several submissions sought to have freedom camping prohibited along all roads north of Glenorchy. The Rees Valley Road received submissions that freedom camping impacts on farming operations and that large campervans pose a safety risk to other road users on narrow winding roads, including farmers in large farm vehicles. Submitters also seek that Kinloch Road is a prohibited area as this site is subject to regular flooding.

Hearing Panel:

82 The carpark and domain is well used by many different community groups and organisations as the Glenorchy Domain is the primary recreational reserve for the wider Glenorchy area and is the sporting and community hub.

83 The proposed freedom camping site is directly in front of the rugby club, which is used for a variety of community activities including events.

84 The Panel agree with submitters that there is no publicly accessible toilet – the toilet is maintained by the rugby club and may be locked from time to time.

85 The Panel consider freedom camping would prevent regular recreation activities at the site, as the carpark is small and it is already a well-used recreation area.

86 The Panel agree with the Xyst site assessment and disagree with staff recommendations to allow restricted freedom camping at Glenorchy Domain. It is necessary to prohibit freedom camping to protect the area (s11(2)(a)(i)) and to protect access to the area (s11(2)(a)(iii)).

87 The Panel's view of the Rees Valley Road is that this road is narrow, and winding in places, and having campervans parked on the side of the road is an access issue to farmers and farm vehicles (e.g. campervans parked in front of farm gates). Campervans parked on the side of the road when large farm vehicles need to pass on narrow roads can be a safety issue. The formed road and the legal road boundaries are significantly out of alignment along its length (i.e. the actual road is over on private land for much of the road, so freedom camping at this location is occurring on private land).

88 The hearing Panel consider that there is sufficient evidence that Kinloch Road should be prohibited by reference to s11(2)(a)(ii) protect health and safety of users of the area, as the road is subject to regular flooding.

89 The Panel disagrees with the Xyst Site Assessment to allow restricted freedom camping along Rees Valley Road and Kinloch Road and considers that it is necessary to prohibit freedom camping at these two sites to protect access to the area (s 11(2)(iii)) and to protect the health and safety of users of the area. Panel

Recommended changes:

- 90 Amend the Proposed Bylaw maps to include Glenorchy Domain Carpark, Rees Valley Road and Kinloch Road.

Luggate Red Bridge Reserve

- 91 While many submitters supported freedom camping at Luggate Red Bridge Reserve, some did not. Others want to see a cap of the numbers that can camp there. Neighbouring residents submitted that Luggate Red Bridge Reserve should be prohibited as they have experienced campers accessing their property, noise, litter and submit that it impacts their privacy and amenity.

- 92 Refer discussion on Luggate Red Bridge in the Hearing Panel Questions and Answers Document.

Hearing Panel:

- 93 Consider it is appropriate to continue to provide for restricted freedom camping at Luggate Red Bridge Reserve.

Community Consultation and Sentiment

- 94 Many submitters stated that freedom camping contributes little to the economy, all campers should stay in paid campgrounds and support local operators, and the freedom camping at local reserves displace users and can create hostile encounters. There is a community sentiment that freedom camping adversely affects community wellbeing and that freedom camping doesn't align with the principles of regenerative tourism.

Hearings Panel:

- 95 The Panel acknowledges the community generally wants council to prohibit freedom camping across the district and that this is a very strong community view. The Panel has considered that community sentiment to the extent that it can under the FCA s11 criteria. In other words, the public strongly wants to maintain access to local authority areas, is concerned about health and safety issues associated with freedom camping, and wants to protect their local areas. The submissions give evidence of freedom campers' behaviour such that certain local authority areas require protection. It is also relevant to the Council's assessment of whether it is an appropriate and proportionate response to the problem.

Enforcement and Education

- 96 50 submitters had concerns with the existing and future level of enforcement of freedom camping particularly in remote rural areas, and that it was not adequately resourced. Several submitters did not support the ratepayer having to cover enforcement costs.

Hearing Panel:

- 97 The Panel agreed rural areas are generally harder to monitor and enforce given the distance from where enforcement contractors are based (often an hour's drive away).
- 98 QLDC's bylaws over the years have pushed freedom camping out of towns and to more remote areas where there is less monitoring and enforcement, and potentially a greater environmental impact, for example fire, litter, less accessible dump stations, degradation of waterways.
- 99 Restrictions can work in theory – difficult in practice to enforce particularly in remote rural areas. However, this does not mean Council shouldn't use them.
- 100 The Tourism Infrastructure Fund that has been successfully used for education and monitoring over the past few years is not available for the 2021/2022 season. This funding has been used since 2018 to resource freedom camping enforcement. Ease of enforcement is therefore a more important consideration than it might have been.

The Freedom Camping Act and New Zealand Standards

- 101 78 submitters stated the New Zealand Self-Containment Standards were an issue, or that only motorhomes that had full toilet facilities should be allowed. Several submitters stated they no longer thought the FCA was fit for purpose, and did not provide for the local community.

Hearing Panel:

- 102 The Panel questioned if prohibition in town centres is the most proportionate response, or if effects could be mitigated through a higher standard and site restrictions to a sufficient extent that it could be allowed in town centres, or at least certain carparks.
- 103 Carparks in town centres could be made available to large motorhomes with a plumbed in toilet if the QLDC bylaw could require a higher standard than the current NZ self-containment standards. This would enable sites that scored highly under s11 (2)(a)(i) (protect the area) of the Xyst Site Assessment report to be restricted sites only, as campers will be less likely to defecate outside campervans if they have plumbed-in toilets on board. Council should keep using the current standard until Central Government has made changes to the NZ Self-Containment Standards and/or relevant freedom camping legislation, as has been recently signalled. If this policy work gets to a point that mean changes to the bylaw are required this will be done by way of an amendment to the bylaw. Otherwise QLDC would be requiring a higher standard in advance of the national direction on this matter.
- 104 The current standards that allow vehicles with portable toilets are a key part of the problem, although photos and evidence from submitters show there are effects on the environment from all users, even if there is a plumbed in toilet on board.
- 105 Councillors MacLeod and Ferguson agreed that there should be no further investigation of a higher QLDC standard. Councillor Gladding questioned whether prohibition in town centres is this the most proportionate response, if effects could be mitigated through imposing a higher standard and site restrictions. Councillor Gladding's

view is it depends on how the standards are described noting there are complexities that may be insurmountable and/or unaffordable.

- 106 The Hearing Panel agreed 2:1 to keep current standards but change the wording in the bylaw to reference the specific standard 'or any other replacement standard' or words to this effect to ensure the bylaw applies any updated standard.

Recommended Change:

- 107 See proposed amendments to clause 4.1 in the final form of the Proposed Bylaw in Attachment D.

Bylaw text and site restrictions

- 108 Several submitters sought clarification on the specific site restrictions in clauses 6.4 and 6.5 of the Proposed Bylaw, and that these be included in the bylaw text, and that the wording of the bylaw must be clear about intentions, definitions and restrictions. Others submitted that site restrictions will not work as they are ignored by freedom campers and are difficult to enforce.

- 109 Hearing Panel:

- 110 The Panel discussed whether site restrictions (restricting the numbers of vehicles at each site and restricting the numbers of nights) could be a way to manage freedom camping at each site. Restrictions would involve new infrastructure – new signage, marking out of bays, wheel stops that would require additional budget in annual plans

- 111 Many of the sites where freedom camping can occur under the Proposed Bylaw are in remote rural areas so do not have regular enforcement.

- 112 The sites will fill up quickly, if campers arrive and the sites are full they will either overflow, or campers will have to drive around the district looking for other sites. This will increase their carbon emissions.

- 113 Council has evidence that once a site reaches the threshold, campers ignore signage and overflow.

- 114 The Tourism Infrastructure Fund that has been successfully used for education and monitoring over the past few years is not available for 2021/2022. This funding has been used since 2018 to resource freedom camping enforcement.

- 115 The restrictions, enforcement and community angst at each site does not warrant only providing a small number of freedom camping sites that will quickly fill up and will result in campers not complying with the bylaw, or driving searching for freedom camping sites.

Recommended change:

- 116 Amend the final form of the Proposed Bylaw (Attachment D) to delete clauses 6.4 and 6.5:

~~6.4 The Council may, by resolution, limit the number of vehicles in which freedom camping may occur in an identified restricted local authority area, and in that event—~~

~~a. only the number of vehicles specified in the resolution may have persons freedom camping in that local authority area at any one time; and~~

~~b. no person may freedom camp in that local authority area unless that person's vehicle is parked in a bay, space, or location delineated by the Council for freedom camping.~~

~~6.5 Where the Council has, by resolution, limited the number of vehicles that may freedom camp in an identified restricted local authority area, the Council shall:~~

~~a) display signage at the identified local authority area:~~

~~(i) explaining the limitation; and~~

~~(ii) stating the number of vehicles that may freedom camp in that area; and~~

~~(iii) requiring any vehicle freedom camping in that area to park in bays, spaces or locations delineated as being for freedom camping; and~~

~~b) delineate bays, spaces, or locations for vehicles to freedom camp by way of markings, bollards, wheel stops or other signage.~~

Maps

123 Several submitters sought changes to the bylaw maps to correct road or area names (Gibbston Valley to Gibbston and Coal Pit Road to Gibbston Back Road).

Hearing Panel:

124 The Panel consider a change should be made to the Proposed Bylaw maps.

Recommended Change

125 Amend the maps in the final form of the Proposed Bylaw in Attachment D to read Gibbston and Gibbston Back Road.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

126 Option 1 Adopt the Proposed Bylaw without changes

Advantages:

127 The Council will be able to continue to enforce under the FCA in prohibited and restricted areas in the District, and will be able to issue freedom camping infringement notices in prohibited and restricted areas.

128 Continued enforcement will reduce the risk of environmental damage, and also to protect public recreation access to these areas.

129 Council will be acting consistently with its own Responsible Camping Strategy.

130 The Proposed Bylaw will incorporate the findings of the comprehensive site assessment and additional sites.

131 The Council will be acting consistently with feedback received from its internal stakeholders that the bylaw is generally working well.

Disadvantages:

132 Submitters may perceive that issues raised through consultation are not addressed, both those in support and those opposed.

133 Specific issues raised by submitters will not be addressed, where they fall within the scope of the FCA.

134 Submitters and further internal consultation has highlighted that enforcement of site restrictions is difficult and enforcement in rural areas is difficult and less effective, this will not be addressed.

135 The recommendations of the Hearing Panel will not be incorporated.

136 Option 2 Adopt the Proposed Freedom Camping Bylaw 2021 with changes.

Advantages:

137 Option 2 will have the same advantages as Option 1, as well as the following

138 Some submitters will perceive that the issues they have raised through their submissions have been addressed by Council.

139 The bylaw will be more straightforward as the clauses relating to site restrictions will be removed.

Disadvantages:

140 The Proposed Bylaw expands areas in which freedom camping is prohibited. This is considered a disadvantage because, while it is based on a necessity to protect areas, health and safety, and access to areas, and is therefore consistent with the FCA, it will have the effect of reducing the area in which freedom camping is allowed in self-contained vehicles.

141 Option 3 Do not adopt the Proposed Freedom Camping Bylaw 2021.

Advantages:

142 Council can continue to regulate freedom camping through the Current Bylaw which does not need to be reviewed until 2024.

Disadvantages:

- 143 Submitters may perceived that issues raised through consultation are not addressed, both those in support and those opposed. There was an approximate 70% increase in submissions since the 2019 bylaw, so there is strong community sentiment about this matter.
- 144 The findings of the comprehensive site by site assessment will not be incorporated.
- 145 Council will not be acting in accordance with the resolution made in 2019 to undertake a comprehensive review of the 2019 Bylaw.
- 146 Option 4 Do not adopt the Proposed Freedom Camping Bylaw 2021 as significant changes are required, requiring a further consultation period.

Advantages:

- 147 More community engagement on the issue will occur.
- 148 More freedom camping sites may be made available – e.g. town centre carparking.

Disadvantages:

- 149 The bylaw will need to be redrafted and further consultation commenced.
- 150 The majority of the submitters will not perceive that their submissions have been considered.
- 151 This report recommends **Option 2** for addressing the matter because Council will have an improved bylaw that is consistent with the FCA, incorporates the findings of the Site Assessment and the feedback from submissions. Council will be able to continue to enforce under the FCA to reduce the risk of environmental damage, protect health and safety of users of the areas and protect recreation access to these areas. Council will be acting consistently with its own Responsible Camping Strategy and 2019 council resolution to undertake a comprehensive review. There will be a consistent regime in place to control and enforce freedom camping in the District in areas where issues have been identified.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 152 This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy because the issue of freedom camping is a matter of high importance to the district, with freedom camping being an ongoing issue and likely to increase again when tourist numbers increase once the international borders open, and it is of high community interest for residents and locals who are affected by freedom camping.

153 Reviewing a freedom camping bylaw requires use of the special consultative procedure under s83 of the LGA.

154 The persons who are affected by or interested in this matter are:

- a. QLDC residents/ratepayers
- b. Freedom campers
- c. Local campground or holiday park owners
- d. Department of Conservation; and
- e. Land Information New Zealand
- f. The New Zealand Motor Caravan Association;

155 The Council has undertaken consultation under the special consultative procedure under s83 of the LGA.

> MĀORI CONSULTATION | IWI RŪNANGA

156 The Council has engaged with Kāi Tahu through the Responsible Camping Strategy. Regular communications are had through Aukaha, and the Project Control Group minutes and agenda are circulated. The Current Bylaw provides that nothing in the Current Bylaw limits or affects the rights in relation to nohoanga entitlements under the Ngāi Tahu Claims Settlement Act 1998. This clause has been carried over to the Proposed Bylaw. However it is important that the Council also takes active steps to gather and consider the views of Kāi Tahu, because the Proposed Bylaw concerns matters of the District's natural resources and resource management, which is of interest to iwi as kaitiaki of the land.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

157 This matter relates to the following risk categories and risks:

- a. Environmental risk category. It is associated with:
 - a. RISK00017 relating to damage to the environment – discharge of contaminants within the QLDC Risk Register. This risk has been assessed as having a moderate inherent risk rating.
- b. Community & Wellbeing risk category. It is associated with :
 - a. RISK00006 relating to ineffective management of social nuisance issues within the QLDC Risk Register. This risk has been assessed as having a low inherent risk rating.
 - b. RISK0056 relating to the ineffective provision for the future planning and development needs of the district within the QLDC Risk Register. This risk has been assessed as having a low inherent risk rating.

158 The approval of the recommended option will support the Council by allowing us to retain the risk at its current level. This shall be achieved by the continuation of a Council bylaw to regulate, monitor and enforce restrictions and prohibitions against freedom camping in the District, for example against people who are creating damage to the environment or a social nuisance by freedom camping in restricted or prohibited areas. The recommended option will also allow Council to effectively provide for the future planning and development needs of the district, for example by anticipating increased tourist and freedom camping numbers once the international borders open.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

159 There are no operational and capital expenditure requirements additional to existing approved budgets or Annual/Ten Year Plans associated with the adoption of the recommended option. Basic enforcement of any freedom camping bylaw has already been anticipated in Council's annual expenditure. Enforcement of the Proposed Bylaw is expected to be cost neutral. These costs will be met through current operational and CAPEX budgets.

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

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

- Reference alignment with and consideration of the principles of the Vision Beyond 2050: <https://www.qldc.govt.nz/vision-beyond-2050/>
- Responsible Camping Strategy: <https://www.qldc.govt.nz/events-and-recreation/responsible-camping/responsible-camping-strategy/>
- The QLDC Disability Policy: <https://www.qldc.govt.nz/assets/Uploads/FINAL-Disability-Policy-May-2018.pdf>

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

162 This matter is included in the Ten Year Plan/Annual Plan. The Ten Year Plan provides for year-on-year operational expenditure relating to enforcement of a freedom camping bylaw.

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

163 The Council has received legal advice and the proposed bylaw, and the recommended option, are consistent with that legal advice

164 While the Panel must consider all of the submissions, there are aspects of the submissions that will have to be put to one side. For example, some submitters consider that a blanket prohibition on freedom camping in the District is appropriate. The FCA does not permit a blanket prohibition. Those submissions are relevant to the question of community views about the statutory criteria in s 11(2), but the outcome sought cannot be achieved under the FCA.

165 The power to make the Proposed Bylaw is contained in s 11 of the Freedom Camping Act 2011. Section 11(2) of the FCA contains a number of decision-making requirements when making a bylaw. The statutory criteria in s 11(2) that Council must consider while hearing the submissions are:

- a. The bylaw is necessary to protect the areas for which freedom camping is prohibited or restricted, to protect the health and safety of people who may visit the areas, or to protect access to the areas.
- b. The bylaw is the most appropriate and proportionate way of addressing the perceived problem in relation to the areas.
- c. The bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.

166 Because it is proposed to expand the areas in which freedom camping is prohibited, the Council will have to be satisfied that the additional limits on freedom of movement are proportionate and appropriate having regard to the purpose of the FCA, namely to regulate freedom camping on local authority areas so as to control and manage the adverse effects of freedom camping.

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

167 The recommended option:

- 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. 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 controlling an activity that, if uncontrolled, will have adverse effects, by protecting specific areas which are prone to freedom camping, then health and safety of people who visit these areas, and protecting access to these areas;
- Can be implemented through current funding under the Ten 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.

ATTACHMENTS | NGĀ TĀPIRIHANGA

| | |
|---|--------------------------------------|
| A | Current Bylaw 2019 |
| B | Proposed Bylaw 2021 |
| C | Statement of Proposal |
| D | Final version of Proposed Bylaw 2021 |
| E | Deliberations Documents |