

Full Council

1 August 2024

Report for Agenda Item | Rīpoata moto e Rāraki take [2]

Department: Strategy & Policy

Title | Taitara: Adoption of draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau

Purpose of the Report | Te Take mō te Pūroko

The purpose of this report is to provide information and present options to Council, so that it can make decisions on the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau (the draft bylaw, **Attachment A**), and to present the draft bylaw for adoption.

Executive Summary | Whakarāpopototaka Matua

Officers commenced the process to review the bylaw by undertaking preliminary engagement in August 2023. On 2 May 2024, Council endorsed a statement of proposal (**Attachment B**), which included the draft bylaw for public consultation, in accordance with the special consultative procedure, with consultation occurring between 3 May 2024 and 5 June 2024.

The hearings panel received written and oral submissions at its meeting on 25 June 2024. The hearings panel recommended minor changes to the draft bylaw that went out for public consultation. These changes include:

- amending the purpose provision of the draft bylaw to remove reference to meeting community demand for services
- amending the location requirements of brothels to remove the restriction on brothels being beneath ground level of any building, but retaining the restriction on brothels being at ground level.

Council is being asked to deliberate on the proposed bylaw and make the determinations required prior to adopting the draft bylaw.

Recommendation | Kā Tūtohuka

That the Council:

1. **Note** the contents of this report;
2. **Note** that on 2 May 2024, Council determined, pursuant to section 155(1) of the Local Government Act 2002, that a bylaw is the most appropriate way of addressing the issues related to brothels in the district;

3. **Determine** prior to making the bylaw, pursuant to section 155(2)(a) of the Local Government Act 2002, that the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau is the most appropriate form of bylaw;
4. **Determine** pursuant to section 155(2)(b) of the Local Government Act 2002, that the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau does not give rise to any implications under the New Zealand Bill of Rights Act 1990;
5. **Adopt** the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau, with the following changes recommended by the hearing panel from the draft bylaw that went out for consultation:
 - a. Clause 2(1)(b): "The purpose of this bylaw is to ... enable commercial sexual service providers to operate within the district in a manner that addresses community concerns and sensitivities."
 - b. Clause 4.1: "No persons may establish, operate, or permit the operation of a brothel unless the brothel satisfies all of the following requirements: ...(c) the brothel is not located at ground level."
6. **Resolve** that the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau will come into effect on 1 September 2024 and that the Brothel Control Bylaw 2017 is revoked on 1 September 2024.
7. **Note** that in accordance with section 157 of the Local Government Act 2002, public notice be given of the review of the draft Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau, advising:
 - a. that the bylaw will come into force on 1 September 2024;
 - b. that copies of the bylaw may be inspected, without fee, at all Council offices.

Prepared by:



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10 July 2024

Reviewed and Authorised by:



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Title: GM Strategy and Policy
10 July 2024

Context | Horopaki

1. The current progress of the review of the Brothel Control Bylaw 2017 is set out in the diagram below.



2. The review process and key milestones for this bylaw review are summarised in the following table.

Date	Milestone
August 2023	Preliminary engagement – targeted emails to stakeholder groups, inviting them to provide feedback via Let’s Talk; also open to anyone in the community wishing to provide feedback.
2 May 2024	Council resolved to review the bylaw in accordance with the special consultative procedure and appointed a hearing panel to receive submissions.
3 May - 5 June 2024	Formal consultation period.
25 June 2024	Hearing of submissions and consideration of options by the hearing panel.
1 August 2024	Council to deliberate and adopt the bylaw.

Local Government Act 2002

3. Section 145 of the Local Government Act 2002 (LGA) sets out the general bylaw-making power for territorial authorities. It permits councils to make bylaws for one of more of following purposes:
 - protecting the public from nuisance;
 - protecting, promoting, and maintaining public health and safety; and/or
 - minimising the potential for offensive behaviour in public places.

The Prostitution Reform Act 2003

4. The purpose of the Prostitution Reform Act 2003 (PRA) is to decriminalise prostitution, while not endorsing or morally sanctioning prostitution or its use, and to create a framework that:

- safeguards the human rights of sex workers and protects them from exploitation
- promotes the welfare and occupational health and safety of sex workers
- creates an environment that is conducive to public health
- protects children from exploitation in relation to prostitution.

5. There are provisions under the PRA so that councils may:

- adopt a bylaw to manage brothel signs (section 12 of the PRA) and/or manage the location of brothels (section 14 of the PRA), or
- manage brothel activity through a council's District Plan provisions (section 15 of the PRA).

The current Brothel Control Bylaw 2017

6. The current Brothel Control Bylaw 2017 (**Attachment E**) provides that:

- brothels are not to be within 100m of each other
- brothels may not be located at or below ground level
- signs may only display the registered name of the brothel or the person who operates the brothel, it must not exceed 0.3 square metres in size, and must comply with all applicable requirements in the District Plan
- brothel activity may occur within the permitted activity areas in Queenstown and Wānaka (shown in the maps below).

Figure 1: Queenstown and Wānaka permitted activity areas in the 2017 bylaw.



Operation of the current bylaw

7. The definition of a brothel in the current bylaw includes small owner-operated brothels (SOOBs), therefore it prohibits SOOBs from operating outside of the permitted activity areas outlined in the bylaw.
8. Brothel operators, apart from small owner-operated brothels (SOOBs), are required under the PRA to hold a valid brothel operator certificate issued via the Ministry of Justice, and brothels may be inspected by the Police to ensure compliance with the PRA’s welfare requirements. Certificates must be renewed every year. There have been no registered brothels in the Queenstown Lakes District since 2013.
9. Queenstown Lakes District Council (QLDC) has made no prosecutions under the current bylaw. Council has received eight complaints of alleged operation of brothels outside of the permitted activity areas in the bylaw in the five years since 2018, of which six related to valid breaches of the bylaw. Two complaints related to commercial accommodation, which is lawful under the bylaw, so these are outside of what a bylaw may regulate. It is permissible for sex workers to provide “out services” in places outside the permitted activity areas. Out services are when a sex worker is engaged to visit a client at a specified address, and the transaction is initiated elsewhere. Out service locations are not the sex workers’ premises, which would likely be considered a SOOB under the bylaw as a being “habitually used for the purposes of prostitution”.

10. The complaints have been investigated by Council and there has been no enforcement action taken aside from Council officers explaining the restrictions under the bylaw to the residents, who were provided a copy of the bylaw to educate, in accordance with Council's Enforcement Strategy and Prosecution Policy. No further action was required.
11. Matters of harassment, assault and exploitation sit within Police jurisdiction, not council bylaw powers. However, a sex worker who reports such incidents could be incriminating themselves, as the complaint might bring to light a breach of the bylaw. Anecdotally, this could have the effect of deterring the reporting of incidents. The purpose of the bylaw should not be inconsistent with the purpose of the PRA, which is to protect workers, not criminalise them.

Analysis and Advice | Tatāritaka me kā Tohutohu

Summary of submissions received

12. Council received 20 submissions on the draft bylaw. Of the 20 submissions, 3 submissions were made from people in Queenstown, 4 from Wānaka, and 13 from outside of the district.
13. The changes proposed in the draft bylaw that was endorsed for consultation include:
 - increasing the size of the permitted activity areas slightly
 - a new provision that states the purpose of the bylaw
 - removal of the restriction that brothels may not be located at or below ground level, within the permitted activity areas
 - adding 'District Plan' to the definitions section and an explanatory note that the requirements in the bylaw are in addition to a brothel needing to meet requirements specified in the District Plan.
14. Feedback was also sought on the provisions of the bylaw around signage and the requirement of 100m distance between brothels, where no changes are proposed.
15. The submissions are summarised below by topic in the bylaw, including recommendations made by the hearing panel. More detailed analysis of the submissions can be found in the report to the hearings panel here: [Hearings | Queenstown Lakes District Council \(qldc.govt.nz\)](https://www.qldc.govt.nz/hearings). All amendments proposed in the draft bylaw are identified at **Attachment D** by way of tracked changed text.

Increasing the size of the permitted activity areas

16. Council elected to consult on a draft bylaw that expanded the permitted activity areas to include the current areas (shown in red) as well as the areas shaded in blue (Option 1). The proposed areas represent an intermediate option. They are bigger than the current bylaw (Option 3), but smaller than aligning the permitted activity area with the Proposed District Plan Town Centre Zones (Option 2). Option 4 in the survey was to regulate brothels through the district plan, and not have a bylaw.

Figure 2: Options for permitted activity areas consulted on for Queenstown:

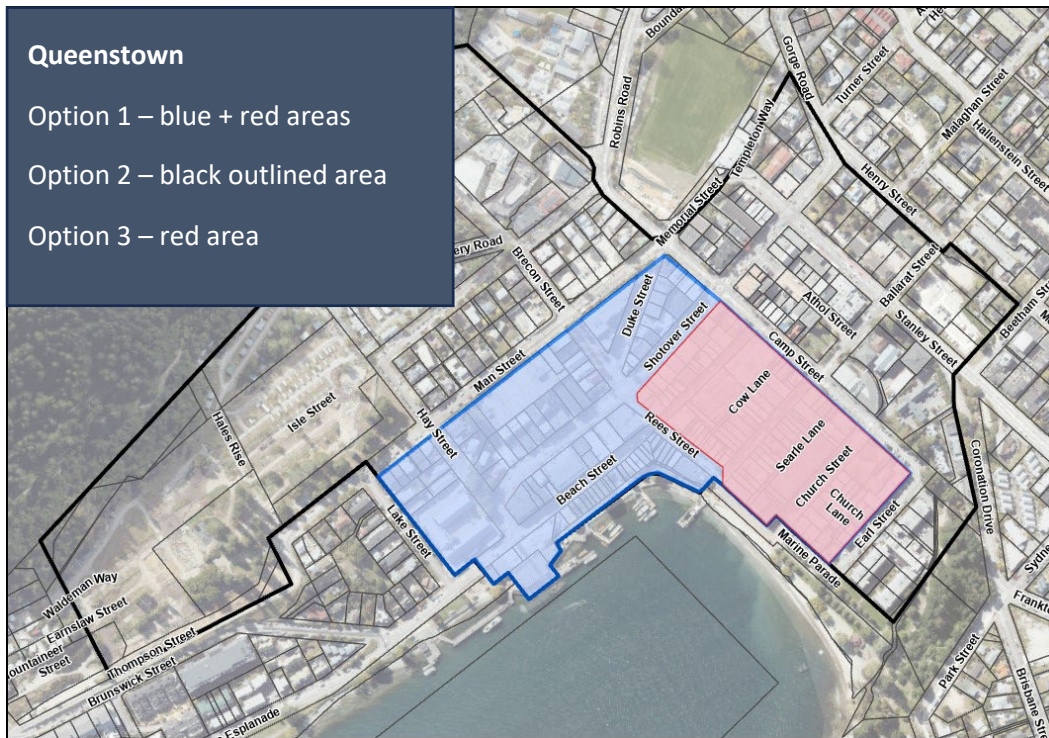
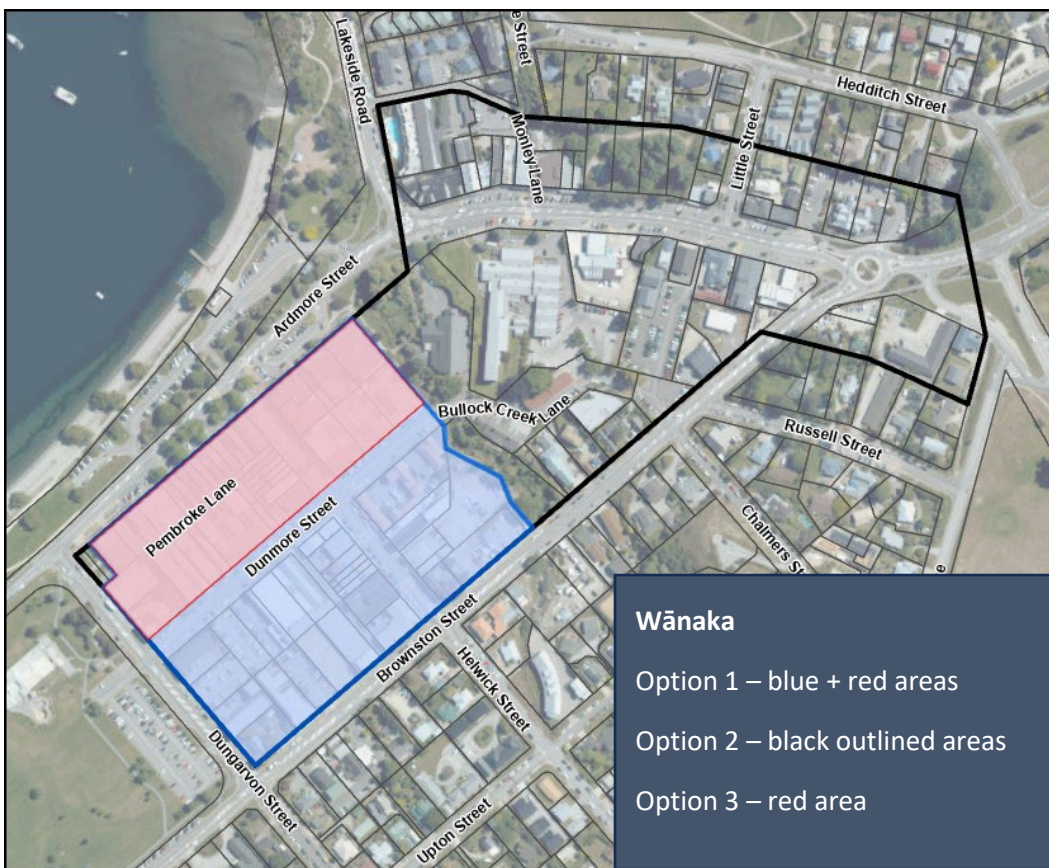


Figure 3: Options for permitted activity areas consulted on for Wānaka:



17. The majority of submitters favoured maintaining the permitted activity areas as per the current bylaw, with a minority preferring that brothel activity is regulated through the district plan. Backing for a middle ground of expanding the current permitted activity areas was not supported in the responses. These opposing views are also reflected in the response to the question 'what is your position on the draft bylaw', with the majority (18 respondents, 95%) opposing the draft bylaw, and one respondent (5%) neutral.
18. The draft bylaw that was consulted on proposed to increase the permitted activity areas to allow more opportunities for brothel activity, in order to address concerns that the bylaw is overly restrictive. The challenge is to balance community sensitivity to sex work, with Council's legal obligations to be consistent with the PRA that decriminalises prostitution and provide a framework for sex workers to work safely within. Regardless of an increase in size, it may still be perceived that a bylaw that restricts the locations where brothels operate is inconsistent with the PRA. Any bylaw that restricts the location of brothels has a risk of being challenged as not providing sufficient opportunities for brothel activity.
19. *Recommendation:* The hearing panel recommendation is that Council adopts the permitted activity areas that were endorsed for consultation with the community. It viewed that the intermediate option provided sufficient opportunity for brothel activity, and that aligning the permitted activity areas with the Town Centre Zones (option 2) did not reflect the majority of submitters, who expressed concern around increasing the size of the permitted activity areas. Whilst the panel recognised that the recommended option was not supported in the submissions, it viewed that in making this recommendation that it had given consideration to the feedback reflected in the submissions, in line with s.78 of the LGA.

Purpose provision

20. The draft bylaw proposes new provision that states that the purpose of the bylaw is to:
- support the purpose and intent of the PRA
 - enable commercial sexual service providers to operate within the district in a manner that both meets community demand for services and addresses community concerns and sensitivities
 - allow the establishment of brothels in areas where the effects associated with the operation can be readily controlled
 - control the establishment of signage associated with brothels to minimise community harm or offence.
21. Submitters were asked whether they support the draft purpose statement. 17 of 20 submitters responded to this question. The majority were opposed to the purpose statement, with one submitter in support and three neutral.
22. *Recommendation:* In the absence of a purpose provision in the current bylaw, the draft bylaw proposes wording in order to better give effect to the intent of the bylaw. The hearing panel recommended a minor change so that 2.1(b) reads "enable commercial sexual service providers to operate within the district in a manner that addresses community concerns and sensitivities."

It viewed that the first part of this provision that enables the operation of brothels was sufficient, and that the wording “meeting community demand for services” was not necessary in order to give effect to the purpose of the bylaw. Officers consider that this proposed change is within the scope of the statement of proposal, as it does not materially impact the operation of the bylaw. This recommended change has been tracked in the draft bylaw at **Attachment D** and highlighted in yellow for reference.

Location restrictions of brothels being at or below ground level

23. The draft bylaw proposed to remove the requirement that brothels may not be located at or below ground level, within the permitted activity areas. The majority of respondents who answered this question (15) were opposed to removing this requirement, 3 were neutral and 1 were in support.
24. The rationale behind the proposed change was to address the feedback that the bylaw is overly restrictive, and remove any restrictions to brothel locations within the permitted area that were considered unnecessary, in line with the purpose of the PRA.
25. *Recommendation:* The hearing panel recommended a change to the draft bylaw. It supported removing the restriction that brothels may not operate below ground level, but recommended that this restriction for ground level be maintained, in order to respond to the feedback received. Officers consider that this change is within the scope of the statement of proposal, as the recommended change represents a middle ground between the current bylaw and the draft bylaw that was consulted on and therefore is reasonably contemplated as an option. This recommended change has been tracked in the draft bylaw at **Attachment D** and highlighted in yellow for reference.

Signage and distance provisions

26. No changes were proposed in the draft bylaw to the requirement that brothels are not to be within 100 metres of each other or to the signage provisions. The signage provisions require that signs may only display the registered name of the brothel or the person who operates the brothel, it must not exceed 0.3 square metres in size, and must comply with all applicable requirements in the District Plan.
27. Submitters were evenly divided on these aspects of the bylaw, with relatively consistent numbers of submitters opposing, supporting and neutral on these requirements.
28. *Recommendation:* The panel agreed that there is no evidence, or that the submissions support any changes to the bylaw requirements around distance and signage.

Summary

29. The hearing panel recommended that Council adopts the draft bylaw that went out for consultation with the following changes:

- Changing clause 2(1)(b) to read: “The purpose of this bylaw is to ... enable commercial sexual service providers to operate within the district in a manner that addresses community concerns and sensitivities.”
- Removing the restriction on brothels not being able to operate below ground level in clause 4.1: “No persons may establish, operate, or permit the operation of a brothel unless the brothel satisfies all of the following requirements: ...(c) the brothel is not located at ground level.”

30. Council can make changes to the draft bylaw as an outcome of formal consultation, in response to feedback received, as long these changes are within the scope of the statement of proposal. Material changes to the draft bylaw proposed after consultation that come about through the submissions process but are not contemplated in the statement of proposal may require Council to consult again.

Options and analysis

31. 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.

32. **Option 1:** Accept the recommendations from the hearings panel and adopt the Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau.

Advantages	Disadvantages
<ul style="list-style-type: none"> • Council would retain the ability to regulate the locations in which brothels may operate and the signage that may be used to advertise brothel location and services through a bylaw. • Increasing the permitted activity area slightly mitigates the risk of perception of the bylaw not satisfying s.155 of the LGA as the most appropriate way to address the perceived problem, or as not supporting the purpose of the PRA, or being inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA). 	<ul style="list-style-type: none"> • The draft bylaw may not align with some community views contained in the submissions. • Some people in the community do not support an increase in the size of the permitted activity areas. • It may still be perceived that the draft bylaw: <ul style="list-style-type: none"> ○ does not satisfy s.155 of the LGA as the most appropriate way to address the perceived problem ○ does not support the purpose of the PRA ○ is inconsistent with the NZBORA.

33. **Option 2:** Do not adopt the Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare Kairau, or propose a different way forward.

Advantages	Disadvantages
<ul style="list-style-type: none"> • If Council elects not to adopt a bylaw, there is no risk the bylaw would be perceived as: <ul style="list-style-type: none"> ○ not satisfying s.155 of the LGA as the most appropriate way to address the perceived problem ○ not supporting the purpose of the PRA ○ being inconsistent with the NZBORA. • This option would respond to the minority feedback received to regulate brothel activity through the District Plan. • There would be reduced time and cost associated with implementation of the bylaw. 	<ul style="list-style-type: none"> • The majority of submitters did not support this approach. • Council would lose the ability to specifically manage and regulate where brothels are located through a bylaw if the bylaw lapsed. • Council would not retain the ability to regulate the signage used to display the location and services of a brothel through a bylaw if the bylaw were revoked or lapsed.

34. This report recommends that Council proceed with **Option 1** for addressing the matter, that it accept recommendations from the hearings panel and adopt and endorse the draft bylaw.

Option 1 enables Council to:

- continue to regulate the locations in which brothels may operate and the associated signage restrictions through a bylaw mechanism;
- mitigate the risk of challenge to the bylaw as being perceived to be inconsistent with LGA, PRA and NZBORA requirements, is consistent with the Proposed District Plan, whilst still maintaining a bylaw mechanism for Council to regulate brothel activity.

Next steps

35. If Council adopts the draft bylaw, it is proposed that it would be implemented on 1 September 2024. There will be public notification of the outcome of the review, and submitters will be notified.

Consultation Process | Hātepe Matapaki

Significance and Engagement | Te Whakamahi I kā Whakaaro Hiraka

36. This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy 2021 because:

- based on evidence of recent years, the matters occur at a low level and 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.

37. The persons who are affected by or interested in this matter are residents, ratepayers and visitors to the district, and industry stakeholders, as well as special interest groups.

38. Formal consultation via the special consultative procedure has enabled feedback from the community and industry stakeholders. The statement of proposal and draft bylaw were publicly notified by advertisement on QLDC's website and in local newspapers, including the Otago Daily Times, Mountain Scene, and Wānaka Sun, as well as on Council's Facebook page. The number of submissions received is relatively low, which could indicate that the current bylaw is working effectively, and that the community is amenable to the current bylaw as well as the proposed changes in the draft bylaw.

39. The draft bylaw, the statement of proposal and other supporting documents were made available on Council's website, at the Council offices at 10 Gorge Road, Queenstown, and 47 Ardmore Street, Wānaka.

Māori Consultation | Iwi Rūnaka

40. Through regularly hui with Council's Strategic Advisor Māori, Te Ao Marama and Aukaha were invited to provide feedback on the review of this bylaw. Te Ao Marama and Aukaha determined that it did not wish to provide a formal submission on this issue.

Risk and Mitigations | Kā Raru Tūpono me kā Whakamaurutaka

41. This matter relates to the Regulatory/Legal/Compliance risk category. It is associated with RISK10026 Ineffective enforcement within the QLDC Risk Register. This risk has been assessed as having a low residual risk rating.

42. The approval of the recommended option will allow Council to retain the risk at its current level. This will be achieved by review of this bylaw to ensure that it responds appropriately to the issues regarding brothel activity in the district.

Financial Implications | Kā Riteka ā-Pūtea

43. Costs associated with this work, such as staff time and advertising, will be met within current budgets. There are no proposed changes in the draft bylaw to current operational practice that would require additional funding.

Council Effects and Views | Kā Whakaaweawe me kā Tirohaka a te Kaunihera

44. The following Council policies, strategies and bylaws were considered:
- the outcomes and principles of the Vision Beyond 2050: Our Vision and Mission - QLDC
 - the QLDC Annual Plan
 - the QLDC Long Term Plan 2021-31.

45. The recommended option is consistent with the principles set out in the named instruments.

46. Provision for review of bylaws is included in the Long-Term Plan/Annual Plan.

Legal Considerations and Statutory Responsibilities | Ka Ture Whaiwhakaaro me kā Takohaka Waeture

47. 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. The draft bylaw and statement of proposal has been legally reviewed.

48. Consultation on the draft bylaw has followed the requirements of the special consultative procedure outlined in sections 83 and 86 of the LGA.

Determinations

49. Before making or reviewing a bylaw, Council must make the determinations required under section 155 of the LGA. Section 155(1) requires a council to determine whether a bylaw is the most appropriate way of addressing a perceived problem.

50. There are two further parts to section 155 (determining that a bylaw is in the most appropriate form and assessing whether it gives rise to any implications under the New Zealand Bill of Rights Act 1990).

Most appropriate way of addressing the perceived problem

51. Council must determine whether a bylaw is the most appropriate way of addressing the perceived problem or issue.

52. The perceived problem that the draft bylaw addresses is to enable commercial sexual service providers to operate within the district in a manner that enables brothel activity in line with the PRA, but that also addresses community concerns and sensitivities through allowing the establishment of brothels in areas where the effects associated with the operation can be readily controlled, but not in areas where they cannot. The draft bylaw also seeks to control the establishment of signage associated with brothels to minimise community harm or offence.
53. Council may rely solely on the District Plan to address any perceived issues that the bylaw seeks to address. Alternatively, if it considers that the District Plan does not address the specific issues, namely location, enforcement, and signage, it may endorse a draft bylaw for consultation as the most appropriate option to address the issues.
54. A bylaw may help to strengthen the measures to address these issues and may be the most appropriate option, if there is a need for enforcement measures. This needs to be balanced with the merits of regulating these issues through District Plan mechanisms.
55. The hearing panel recommended that Council proceed with a bylaw because it found that a bylaw is necessary to regulate brothel activity. The panel's views were that there are distinctions in how brothels operate that differentiate it from other businesses, while acknowledging the fact that prostitution was decriminalised by the PRA, therefore a lawful activity, and also acknowledging that the submissions highlighted the importance of health and safety considerations related to sex work, and that this bylaw was a means of ensuring appropriate control, without compromising the purpose and requirements of the PRA, and the NZBORA.

Most appropriate form of bylaw

56. Council is also required to determine whether the proposed bylaw is the most appropriate form of bylaw before it makes its decision. The draft bylaw clarifies the purpose of the bylaw and updates the maps to improve readability.

New Zealand Bill of Rights Act 1990

57. Council is required to determine whether the draft bylaw gives rise to any implications under the 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".
58. The location restrictions of the current and draft bylaw could be perceived as being inconsistent with NZBORA because it may impinge on these rights and freedoms and is not within the "reasonable limits prescribed by law as can be justified in a free and democratic society." These restrictions prohibit a brothel from operating except for within the areas of permitted activity in Queenstown and Wānaka, and may be seen as a restriction on trade. This risk is mitigated, but not removed, by increasing the size of the permitted activity areas, to allow for more

opportunities for brothels to operate, without reducing the level of control over the location of brothels in the district. The PRA gives councils the ability to regulate brothel signage and locations via a bylaw or its district plan provisions.

59. The draft bylaw regulates locations in which brothels may operate and the signage associated with brothels within the district to enable the provision of commercial sexual services to meet demand but also aims to address community concerns and sensitivities. Section 13(2) of the PRA allows Council to make provision in a bylaw relating to signage for brothels even if, contrary to s.155(3) of the LGA, it is inconsistent with the NZBORA.
60. The purpose of the PRA is to decriminalise prostitution and provide a framework for sex workers to work safely within, so it may be perceived that a bylaw that restricts the locations where brothels operate is inconsistent with the PRA. Any bylaw that restricts the location of brothels has a risk of being challenged. Examples include challenges against Hamilton, Christchurch and Auckland bylaws. Hamilton’s bylaw was upheld by the Court, whilst the Christchurch and Auckland bylaws were not.

Local Government Act 2002 Purpose Provisions | Te Whakatureture 2002 o te Kāwanataka ā-Kiaka

61. 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 recommendation in this report is appropriate and within the ambit of Section 10 of the Act.
62. The recommended option:
- Can be implemented through current funding under the Long Term Plan and Annual Plan;
 - Is consistent with the Council's plans and policies; and
 - Would not significantly alter 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 | Kā Tāpirihaka

A	Final clean version for adoption: Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare
B	Statement of Proposal
C	Minutes of hearing of submissions held on 25 June 2024
D	Marked up version showing all changes proposed: Brothel Control Bylaw 2024 / Kā Ture Whakahaere Whare
E	Brothel Control Bylaw 2017