

Revocation - Objectionable Signs Bylaw

1. Summary of Information

The Local Government Act 2002 (LGA 2002) requires a local authority to review its existing bylaws five years after the day they were first made and then every ten years after that. In keeping with this directive, Taupō District Council is reviewing its Objectionable Signs Bylaw.

The bylaw manages the contents of signs so as to protect the public from nuisance and minimize the potential for offensive behaviour. Council considers that there is sufficient national legislation to manage the content of signs and the bylaw should be revoked.

2. Introduction

The Objectionable Signs Bylaw was adopted and came into force on 1 June 2016. The existing bylaw has controls on the content of signs and requires that signs are not objectionable within the meaning of the Films, Video and Publications Classification Act 1993, or discriminatory under the Human Rights Act 1993. The bylaw was crafted to manage only the content of signs as the District Plan already controls the size and location of signs across the district. This division of responsibility for the management of signs between the existing Objectionable Signs Bylaw and the District Plan creates uncertainties for the general public and enforcement officers responsible for implementing signage rules.

As part of the bylaw review process, officers have also undertaken a review of the effectiveness of the existing rules and the following options for changes to the Objectionable Signs Bylaw are considered below.

Option 1 – Council directly controls the content of signage through a bylaw (status quo)

By choosing this option Council will continue to exert direct control over the content of signs with a view to ensuring that the material is not objectionable or discriminatory; does not cause offense, and is not considered to be threatening, defamatory, insulting or inciting someone to commit an offence. In practice, Council compliance officers continue to seek guidance from and / or refer complainants to various external bodies including the Human Rights Commission, Office of Film and Literature Classification or Advertising Standards Authority when addressing a complaint.

Advantages

- Council is able to undertake immediate remedial action to rectify an issue relating to objectionable content and discrimination.

Disadvantages

- Council officers have less expertise in dealing with the considerations relating to objectionable content and discrimination than the relevant national bodies.
- There is the potential for legal risk if Council errs in the determination of what is offensive or objectionable.

- National laws and regulations would be more effective at managing objectionable content for signs.

Option 2 – Utilise existing national legislation to manage the content of signs

Under this option Council would solely rely on national legislation to manage the content of signs that are not related to traffic safety. Guidance on the location and size of signs will continue to be determined by the District Plan.

Advantages

- Objectionable or discriminatory content is determined by national bodies with relevant expertise.
- Clarity around signage provision and who bears responsibility for fulfilling different aspects of signage regulation.
- Council retains the ability to review and decline consents for signs that are inconsistent with its District Plan.

Disadvantages

- Potential risk of Council being perceived to be abdicating its responsibility to protect the public from nuisance and offence.
- Likelihood of a delayed response time in addressing complaints as they will first have to be determined by national bodies external to the district before any follow up action can be taken.

3. Preferred Option

Of the options above, Option 2 is the preferred option. It provides clarity on the delineation of responsibilities around the management of signs. It also allows subject matter experts at the Human Rights Commission, Office of Film and Literature Classification, Department of Internal Affairs or Advertising Standards Authority to exercise best judgment in the resolution of complaints; rather than requiring Council officers to make judgment calls on matters they may be ill-equipped to address.

4. Powers of other agencies to deal with Objectionable Content

New Zealand's censorship regime is governed by the ***Films, Videos, and Publications Classification Act 1993***. The Censorship Compliance Unit at the Department of Internal Affairs (DIA) is the main censorship enforcement agency, with the ability to submit items to the Classification Office for classification. DIA defines ***Objectionable Material*** in a similar manner as the Objectionable Signs Bylaw 2016 – a definition based solely on the ***Films, Videos and Publications Classification Act 1993***.

The Act defines a publication (including signage) as objectionable (banned) if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

When determining whether a publication should be categorised as objectionable consideration is given to the extent to which the material:

- a) Describes, depicts, or deals with:
 - I. acts of torture, extreme violence or cruelty
 - II. sexual violence or sexual coercion
 - III. dehumanising sexual or physical conduct
 - IV. sexual exploitation of minors
- b) Exploits the nudity of minors;
- c) Degrades any person;
- d) Promotes criminal acts or acts of terrorism; or
- e) Represents any particular class of the public as inherently inferior as a result of a characteristic of members of that class being a characteristic that is a prohibited ground of discrimination specified in the Human Rights Act 1993.

In fulfilling its censorship enforcement role, the DIA Censorship Team:

1. **helps to ensure that publications considered to be objectionable are not made available to members of the public;**
2. helps to ensure that the decisions of the Office of Film and Literature Classification are adhered to by the film and video industry, magazine distributors, and shops; and
3. **investigates complaints.**

DIA also has the ability to prosecute offenders and exact severe penalties in a way the bylaw is unable to.

- **Anybody found “knowingly” in possession of objectionable material can receive a maximum of 10 years imprisonment.**
- Anybody who knowingly makes or knowingly trades, distributes, or displays an objectionable publication via the Internet can receive a maximum of 14 years imprisonment. A body corporate can be fined up to \$200,000.

5. Determination of Appropriateness

Under Section s155 of the LGA, Council is required to consider whether or not a bylaw is the most appropriate way of addressing the identified issues. In accordance with this statute, Council has reviewed the issues addressed by the existing bylaw and determined that there are simpler and more efficient ways of addressing the problems being dealt with by the bylaw.

We are therefore of the opinion that a bylaw is not the most appropriate way of addressing the identified problems.

6. Consultation and Submission

In making, amending, or revoking a bylaw, Council must use the special consultative procedure set out in section 83 of the LGA. Public consultation on the proposed revocation will be undertaken along with

the other bylaws being reviewed by the Council. Any member of the public will be able to make a submission on the proposal.

A copy of the Statement of Proposal, including the proposed policy and amended bylaw and information about making a submission can be obtained from the Council website: www.taupodc.govt.nz