

QLDC Council
26 June 2014
Report for Agenda Item 7

Department:

Legal and Regulatory

7. Adoption of Queenstown Lakes District Waterways and Ramp Fees Bylaw 2014

Purpose

- 1 To receive and consider the advice of the Hearings Panel on the Queenstown Lakes District Waterways and Ramp Fees Bylaw 2014.

Recommendation

2 That Council:

- a. **Adopts** the conclusions and recommendations of the Hearings Panel on the proposed Queenstown Lakes District Waterways and Ramp Fees Bylaw 2014;
- b. **Revokes** Part 4 of the Queenstown Lakes District Navigation Safety Bylaw 2009;
- c. **Makes** the Queenstown Lakes District Waterways and Ramp Fees Bylaw 2014 pursuant to powers under sections 33R of the Maritime Transport Act 1994 and sections 150 and 151 of the Local Government Act 2002;
- d. **Authorises** by delegating to the General Manager Legal and Regulatory the power to make any minor edits, corrections of typographical errors or other amendments for the purpose giving effect to subsequent resolutions of Council pursuant to powers in section 156(2) of the Local Government Act 2002;
- e. **Appoints and authorises** the Senior Solicitor to liaise with Central Government on the form of the Order in Council required to give effect to the schedule of infringement offences pursuant to the Queenstown Lakes District Waterways and Ramp Fees Bylaw 2014.

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19/06/2014

Reviewed and Authorised by:



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19/06/2014

Background

- 3 There are costs of Council's administration and regulatory activities associated with the district's waterways, as well as costs associated with the maintenance of waterways facilities. An example is the cost of providing Harbourmaster services.
- 4 Waterways facilities are identified in the Queenstown Lakes District Council 10-Year Plan 2012/2022¹ (the "10 Year Plan") as a mixed private and public benefit. Council has set fees and charges to recover the "private benefit" costs of a particular activity from public users and non-commercial users if it is economically viable to do so. Under the 10 Year Plan, the proportion of costs to be met by commercial and non-commercial users is 35% of costs for regulatory activities, and 40% of costs for facilities maintenance. This amounts to \$222,750 of funding. The balance of expenditure is to be met by concession revenue.
- 5 The Queenstown Lakes District Navigation Safety Bylaw 2009 is one method for collecting this contribution by requiring licenses to be obtained under that bylaw. The other method used is requesting ramp users to pay a charge for the use of ramps.
- 6 The Local Government Act 2002 provides that a bylaw must be reviewed no later than 5 years after the date on which the bylaw is made.² If a bylaw is not reviewed and reconfirmed, it lapses and is of no effect.
- 7 The existing Navigation and Safety Bylaw 2009 is scheduled for review as it was made in June 2009.
- 8 An outcome of the review was a revised bylaw which was confined to the licensing of waterways facilities. The proposed bylaw was aimed at better meeting the funding targets set in the 10 Year Plan and included requirements for:
 - user fees to be paid at Council owned boat ramps, and in specified areas of the foreshore;
 - fees for erecting structures on the foreshore and for a fee increase on what was charged previously;
 - fees for using Council owned structures for commercial activities;
 - enforcement provisions for the purpose of collecting any unpaid fees.
- 9 On 27 March 2014, the Council resolved to commence the special consultative procedure on the proposed bylaw. A Hearings Panel was appointed to consider submissions and recommend to Council the final form of the bylaw. Submissions opened on 14 April 2014 and closed on 12 May 2014. A total of eight submissions were received. Hearing of submissions occurred on 3 June 2014 (Wanaka) and 4 June 2014 (Queenstown). The Hearings Panel convened for deliberations and has reported its recommendations on the final form of the proposed bylaw. This report is attached as **Annexure A**.

¹ At page 55, Volume 3, Queenstown Lakes District Council 10-Year Plan – 2012/2022

² Section 158(1) Local Government Act 2002

10 To assist Council in its assessment of the proposed bylaw, this report evaluates the changes to the proposed bylaw as recommended by the Hearings Panel, with reference the statutory criteria specified in section 155 of the Local Government Act 2002. The substantive matters within the proposed bylaw have previously been the subject of an officer report to Council on 27 March 2014.

Comment

11 The Hearings Panel recommends changes to the fees bylaw following the consideration of submissions. The amendments to the bylaw proposed are listed below:

- a. An increase in fees for ramp users graduated over a 2 year period.
- b. Removal of any requirement for the Council to undertake inspections of moorings. Instead, the mooring owner will be required to produce a certificate from a suitably qualified person confirming that the mooring is in a satisfactory condition for the duration of the permit period. The duration of the permit period has been extended to two years, with a commensurate change to the schedule of fees.
- c. Recognition that structure owners wish to choose the category of use of their structure, and a re-configuration of the proposed foreshore structure permit into a maritime structure permit (commercial) and maritime structure permit (non-commercial) together with new clauses to give effect to that change.
- d. Renaming of the public structure permit to a commercial activity permit to align the licence title to its function and to differentiate the title from the maritime structure permits.
- e. Removal of the requirement to maintain a valid building consent and resource consent but instead to make this a pre-condition of obtaining a licence where such approvals are required.

12 Detailed discussion on the above points can be found in the report of the Hearings Panel attached as **Annexure A**. The proposed bylaw incorporating amendments recommended by the Hearings Panel can be found annexed to the Report of the Hearings panel as **Attachment B**.

13 The changes proposed by the hearings panel:

- do not affect the rights, interests, titles, immunities, or duties of any person to whom the publically notified bylaw applied;
- do not affect the status or capacity of any person to whom the publically notified bylaw applied;
- could reasonably have been contemplated by a person intending to make a submission;

Therefore the changes are considered to be within the scope of the bylaw that was issued for public consultation.

Financial Implications

- 14 The provision and maintenance of maritime facilities and the Harbourmaster service is a fully user pays system, with no funding provided by rates. The 10 Year Plan provides for the public and commercial users to pay \$222,750 towards the costs of facilities and services. There is a current estimated shortfall of \$146,837. The bylaw will:
- a. prescribe which user groups will contribute to meeting those costs; and
 - b. improve the recovery of costs from public and commercial users; and
 - c. assist in meeting the funding target set in the 10 year plan.
- 15 The fees proposed in the bylaw will better achieve the funding targets in the 10 Year Plan, and after costs of enforcement are met, an improvement in meeting that funding target is expected. This will be a positive impact on Council revenue.

Local Government Act 2002 Purpose Provisions

- 16 A bylaw is the most appropriate method to resolve the issue of funding the costs of waterways facilities and services because no other method of fee setting provides an enforcement regime for the non-payment of fees. The Maritime Transport Act 1994 expressly provides the power for Councils to make a bylaw for the purpose of funding maritime facilities and expenses.
- 17 Before making a bylaw, Council is required to consider whether this is the most appropriate form of bylaw and whether the bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990.³
- 18 On the advice of the Hearings Panel, the Council can be satisfied the form of bylaw is the most appropriate because it has addressed the concerns of submitters where those concerns are not inconsistent with Council's funding policies.
- 19 There are no implications under the New Zealand Bill of Rights Act 1990, because the bylaw is focused on the use of waterways facilities and funding contributions from users. The bylaw does not seeking to restrict the civil or political rights of citizens which are specified in the New Zealand Bill of Rights Act 1990.
- 20 The making of the proposed bylaw meets the purpose of local government as it provides for the costs of the Council's navigation safety activities and facilities to be met by users. The proposed bylaw also provides a framework for enforcing the non-payment of fees imposed. Therefore the bylaw provides for achieving community expectations for the funding of waterways facilities and services, and meets the purpose of the Local Government Act 2002⁴ to provide for the present and future needs of the community.

Council Policies

- 21 The following Council Policies were considered:

³ Section 155(2), Local Government Act 2002.

⁴ See section 10, Local Government Act 2002

- **10 Year Plan** – funding policies set out what amount should be collected from public and commercial users;
- **Policy on significance** – this is not a significant decision as the significance thresholds are not exceeded and the proposal is consistent with the funding expectations set in the Annual Plan;
- **Jetties and moorings policy** – this policy applies to the placement of jetties and moorings in the Frankton Arm of Lake Wakatipu. This policy is not directly related to the issue of funding of Council waterways facilities and services.

Consultation

22 The proposed bylaw was the subject of a pre-consultation discussion with stakeholders. The special consultative procedure was adopted for the purpose of evaluating the bylaw. The changes proposed to the bylaw issued for public consultation are not significant. The most obvious change is a reconfiguration of the licencing for structures on the foreshore and lakebed. These changes have been made to address concerns about the certainty of how fees will be applied to structures on the foreshore which are used for commercial or non-commercial purposes.

23 No further consultation is required. There are no implications for consultation on the proposed Navigation Safety Bylaw 2014.

Publicity

24 Public notice of the commencement of the bylaw is required⁵. The bylaw will commence on 1 October 2014, and developing a brief communications plan will assist to promote the uptake of the annual ramp fee pass, raise awareness of the adjusted fees and the requirement to obtain permits for some activities.

25 Evaluation of whether signage at Council facilities must be changed is also required.

Attachments

A Report of Hearings Panel, together with the Proposed Waterways and Ramp Fees Bylaw 2014 (incorporating amendments on the Panel's recommendations) annexed.

⁵ Section 157(1) Local Government Act 2002