

**QLDC Council  
20 November 2018**

**Report for Agenda Item: 1**

**Department: Finance & Regulatory**

**Proposed amendment to the Queenstown Lakes District Council Navigation Safety Bylaw 2018 – Clutha River**

**Purpose**

- 1 To consider the adoption of the proposed amendment to clauses within the Navigation Safety Bylaw 2018 (**Bylaw**) that regulate vessels using the Clutha River.

**Executive Summary**

- 2 The Council has conducted a special consultative procedure regarding a proposed amendment to the clauses within the Bylaw that regulates vessels using the Clutha River. The Navigation Safety Hearings Panel (**Hearings Panel**) received 651 submissions regarding the proposal, which indicated a wide divergence of views, roughly evenly split in favour / against the proposed amendment. On 3 October 2018 the Hearings Panel was convened at the Lake Wanaka Centre and heard from 20 oral submitters in relation to the proposed amendment.
- 3 Following deliberations on the submissions and evidence received, the Hearings Panel recommended the adoption of the proposed amendment to the Bylaw subject to some modifications, as follows:
  - a. Extending the proposed prohibition on recreational powered vessels operating in the Upper Clutha by 1 month to cover the period 1 December - 30 April inclusive (clause 35.1(a));
  - b. Removing the proposed restrictions on powered vessels (commercial) operating in the Upper Clutha under a resource consent between 15 January and 1 February (clause 35.1(a)(i)); and
  - c. Inserting a list of expressly permitted activities on the Clutha River under clause 21.5.44 of the Queenstown Lakes Proposed District Plan subject to a requirement to seek permission from the Harbourmaster (clause 35.1(a)(ii)).
- 4 Council staff note that the Hearings Panel recommended that greater resources be invested into monitoring, enforcement, and data gathering in relation to the usage of the Clutha River, safety issues, and nuisances arising from that usage. If the amendment is adopted, the Council will require development of educational materials for Clutha Rivers users, including improved signage.

**Recommendation**

That **Council**:

1. **Note** the contents of this report.
2. **Adopt** the recommendation of the Navigation Safety Bylaw Hearings Panel to amend the Navigation Safety Bylaw 2018 (**Attachment B**) pursuant to section 156 of the Local Government Act 2002 to take effect on 1 December 2018.
3. **Direct** Council staff to:
  - a. replace existing signage on the Clutha River with new signage to reflect the Bylaw (as amended) in Attachment B.
  - b. produce materials to educate users of the Clutha River and the wider community regarding the amendment to the Bylaw.

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12/11/2018

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12/11/2018

## Background

- 5 The Navigation Safety Bylaw 2018 (**Bylaw**) currently provides for a timed speed uplifting for vessels travelling between the Red Bridge and a 5 knot buoy located approximately 3 km upstream from the Albert Town Bridge (an approximately 15 km stretch of river). The uplifting is all year between 10 am and 4 pm (during winter) and 10 am and 6 pm (during summer). Outside of those hours a 5 knot speed limit applies. Between the 5 knot buoy and the Lake Wanaka outlet, there is also a 5 knot speed limit that applies (with no uplifting).
- 6 The Council's proposal to amend the Bylaw relates to the following parts of the Clutha River:
  - a. **Upper Clutha River** = area of Clutha River between Lake Wanaka outlet and the Albert Town Bridge.
  - b. **Lower Clutha River** = area of Clutha River between the Albert Town Bridge and the Red Bridge.
- 7 On 26 July 2018, Council approved the commencement of the special consultative procedure in relation to a proposal to amend the Bylaw (clause 35, Schedule 2 and Maps 8-9) as follows:
  - a. On the Upper Clutha River:

- i. Between 1 December and 31 March: no powered vessels may operate in this area, unless the powered vessel satisfies one of the following exceptions:
    1. it is expressly authorised to operate in this area by a resource consent issued by the Council, provided that between 15 January and 1 February the powered vessel shall:
      - a. only operate between 10am and 12pm; and
      - b. not exceed more than two daily trips.
    2. it is carrying out a permitted activity under the Queenstown Lakes District Plan.
    3. it is being operated by the Harbourmaster or Deputy Harbourmaster for the purposes of exercising his or her functions under the Act or ensuring compliance with this bylaw.
  - ii. Between 1 April and 30 November any powered vessel operating in this area is subject to a 5 knot speed limit (outside of the timed uplifting: 10am – 6pm).
  - b. A permanent speed uplifting to be implemented on the Lower Clutha River (between Albert Town Bridge and the Red Bridge).
- 8 The proposed amendment was publicly notified by advertisement in local newspapers between 28 July 2018 and 4 August 2018, including the Otago Daily Times and Wanaka Sun. The text of the proposed amendment, statement of proposal, summary of proposal, and other supporting documents were made available on the Council's website, at the Council offices at 10 Gorge Rd, Queenstown and 47 Ardmore Street, Wanaka upon request from the public and at any Council library within the Queenstown Lakes District.

### Submissions received

- 9 Submissions closed on 31 August 2018. In total, the Council received 651 submissions regarding the proposed amendment, including one late submission received in September 2018. The submissions received by the Council are attached as **Attachment C**. A brief overview of the submissions is attached as **Attachment D** (this is not intended to be an exhaustive representation of every matter raised in submissions).
- 10 Of the written submissions received:
- a. 342 submissions (approximately 52.5%) including nine from organisations, were identified by Council officers as being in favour of the proposed amendment.
  - b. 309 submissions (approximately 47.5 %) including five from organisations were identified by Council officers as being opposed to the proposed amendment.

- 11 The number of submitters identified as “in support” or “opposed” (and other groupings identified below) should be viewed with care given that a large number of submitters on both sides supported parts of the proposal but opposed other aspects. For instance, submitters in support and opposed to the proposed amendment sought to have the duration or geographical location of restrictions on powered vessels modified. Other submitters opposed the seasonal restrictions on powered vessels navigating the Upper Clutha River but supported a removal of the 5 knot speed limit on the Lower Clutha River.
- 12 Of the submissions identified as in support of the proposed amendment, 61 supported the Council imposing even greater restrictions on powered vessels in the Clutha River. Of the submissions identified as opposed to the proposed amendment, 133 supported retaining the status quo. A further 19 submitters opposed the proposed amendment because they argue it does not go far enough to mitigate risks posed by powered vessels on the Clutha River.
- 13 On 3 October 2018, the Hearings Panel heard oral submissions from 20 submitters on the proposed amendment.

## **Deliberations**

- 14 The Hearings Panel noted that several submitters considered that the proposal was a reasonable compromise to address legitimate navigation safety concerns. However, there was a wide cross section of views offered by the community, including many who either opposed part or all of the proposed amendment, and those who wanted to change parts of the proposal. The Hearings Panel acknowledged that the Council has the option to initiate a review of the Bylaw earlier than the conventional statutory review period of 5 years to determine whether the rules are operating as intended.
- 15 In relation to the Upper Clutha, a number of submitters supported the extension of the timeframe for the prohibition to cover the period from 1 November to 30 April. Submitters highlighted that there was a significant number of passive recreational users of the Upper Clutha during April (particularly when Easter weekend falls in April). The Hearings Panel supports this proposed amendment in part, by extending the seasonal restrictions to include the month of April (the seasonal restriction would still commence on 1 December).
- 16 The Hearings Panel noted concerns raised regarding the permanent uplifting on the Lower Clutha, particularly in relation to the area between the Albert Town Bridge and the Hawea River confluence. Some submitters highlighted potential noise nuisances for residents from increased usage of the boat ramp situated nearby, and concerns regarding swimmers jumping off the Albert Town Bridge into the path of powered vessels. It was accepted that members of the community concerned about excessive noise (if it was to occur) can raise a request for service with Council to investigate and if appropriate exercise its powers under the Resource Management Act 1991.
- 17 To address the concerns regarding the area just below the Albert Town Bridge, the Hearings Panel proposed that the Council invest greater resources in improving its monitoring and enforcement presence to deter any risky behaviours (from swimmers as well as powered boat users). This will include educating all users to

raise awareness of: the rules under the Bylaw, potential risks, nuisances, and to be respectful of local residents. As part of increased monitoring the Council is to improve data gathering through CCTV, increased patrols, and other methods to feed into future reviews of the Bylaw, and policy development.

- 18 Some submitters argued that the two week restriction on resource consent holders would unfairly impact on existing businesses during a busy time of the year. The Hearings Panel considered that the restriction added an unnecessary layer of complexity and would not substantially reduce navigation safety risks. The Hearings Panel supported the removal of this proposed restriction.
- 19 The Council's District Plan identifies specific activities that are expressly permitted on the Clutha River, and are exempt from the restrictions on powered vessels (eg. resource management monitoring). For clarity, the Hearings Panel recommend that those activities are to be specifically listed in the Bylaw. The Hearings Panel considered that the Harbourmaster should have some oversight of powered boats purporting to operate in the area under a listed permitted activity.

### **Summary of recommendations**

- 20 The Hearings Panel recommended that the proposed amendment to the Bylaw be adopted subject to the following changes:
- a. Extending the proposed prohibition on powered vessels operating in the Upper Clutha by 1 month to cover the period 1 December - 30 April (clause 35.1(a));
  - b. Removing the proposed restrictions on powered vessels operating in the Upper Clutha under a resource consent between 15 January and 1 February (clause 35.1(a)(i)); and
  - c. Inserting a list of expressly permitted activities on the Clutha River under clause 21.5.44 of the Queenstown Lakes Proposed District Plan subject to a requirement to seek permission from the Harbourmaster (clause 35.1(a)(ii)).
- 21 In addition, the Hearings Panel recommended that the Council invest greater resources into monitoring, enforcement, and data gathering in relation to the usage of the Clutha River, safety issues, and nuisances arising from that usage. The Council will require development of educational materials for Clutha River users, including improved signage if the amendments are adopted.

### **Options**

- 22 **Option 1 Amend the Navigation Safety Bylaw 2018 in accordance with the proposed amendment (Attachment B).**

#### ***Advantages:***

- 23 This is a topic on which many members of the public have strong and divergent opinions, which is demonstrated by the large number of submissions. Although it appears there is no single proposal that will be acceptable to everyone, a large number of submitters appear to recognise that the proposed amendment

balances appropriately the need to mitigate navigation safety risks without unduly restricting access of powered vessel users to the Clutha River.

- 24 The proposed amendment to the Bylaw will provide greater protection from the risks of collision between powered vessel users and the growing volume of passive users of the Upper Clutha River during the summer months. During the winter months passive use of the Upper Clutha River is significantly less, and the proposal reflects that by implementing a timed uplifting for powered vessels during that period. Council staff consider the proposed amendment is an appropriate and proportionate response to the community's concerns about the navigation safety risks in the Upper Clutha River. Some members of the community also support fewer restrictions on powered vessels at times of the year when passive use is low.

***Disadvantages:***

- 25 A significant minority of submitters oppose the amendment and are likely to be dissatisfied if the proposed changes are implemented. To most submitters in this group, the proposed amendment unnecessarily restricts powered vessels, who they consider do not pose any risk to other users. Other submitters argue the amendment does not go far enough and there ought to be greater restriction on powered vessels (for instance by extending the time period or geographical coverage of the restrictions).
- 26 The proposed amendment will result in different navigation safety rules for the Upper Clutha River and the Lower Clutha River. Some members of the community are concerned regarding the potential impact of increased traffic, including potential noise nuisances, and risks to swimmers who jump off the Albert Town Bridge. These can be mitigated through improved signage and guidance for users of the area. Noise complaints can be made to the Council to investigate on case by case basis.
- 27 The adoption of a restriction on powered vessels in summer will require Council staff to update the signage throughout the area, and invest resources in public education, and key stakeholder engagement regarding the amendment. The Council may need to consider greater investment in operational staff and enforcement measures once the amendment goes into effect.

**28 Option 2 Reject the proposed amendment and revert to the status quo.**

***Advantages:***

- 29 If the status quo is retained the Council will not have to update signage or invest resources in education of the public regarding the changes. The status quo will not restrict the access of powered vessel users to the Upper Clutha River, however they will continue to be subject to the current 5 knot restriction above the 5 knot buoy. Some members of the community consider the status quo strikes a more appropriate balance by imposing a 5 knot speed limit on part of the Upper Clutha River, which they say will protect passive recreational users. The status quo also recognises that the Lower Clutha River is less heavily used by passive users, so a timed uplifting allows for powered vessels to operate without a speed limit on that part of the river.

### ***Disadvantages:***

- 30 The status quo will not provide as much protection to passive recreational users of the Upper Clutha River during the summer months when the risk of collision is highest. Many members of the public who supported the amendment will be dissatisfied. In particular, Council will not have responded to the large body of submitters who have raised safety concerns about the risk of collision between passive users and boats on the Upper Clutha River. The current rule is seen by many as not providing adequate protection to passive recreational users from collision risks on the Upper Clutha River. In addition, those who support a timed speed uplifting on the Upper Clutha River outside of summer, and a permanent uplifting on the Lower Clutha River will have to abide by the existing rules.

### **Recommendation**

- 31 This report recommends **Option 1**, which would amend the Navigation Safety Bylaw 2018. The proposed amendment reflects public concerns regarding collision risks in the Upper Clutha River, and recognises the different navigation safety risk profile in relation to the upper and lower parts of the Clutha River at different times of the year.

### ***Significance and Engagement***

- 32 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because there is significant community interest regarding the safe use of the Clutha River.

### ***Risk***

- 33 This matter relates to the operational risk OR005 – Death of a member of the community, as documented in the Council's risk register. The risk is classed as moderate. This matter relates to this risk because it directly affects the use of the Clutha River.
- 34 The recommended option considered above mitigates the risk by restricting access of powered vessels to the Upper Clutha River during summer, when passive recreational use is high. The speed uplifting on the Lower Clutha River would be made permanent given the lower navigation safety risk profile of this area.

### **Financial Implications**

- 35 It is anticipated that the costs associated with the review and adoption of the amendment to the Bylaw and associated replacement signage will be met from current and future budgets.

### **Council Policies, Strategies and Bylaws**

- 36 The following Council policies, strategies and bylaws were considered:
- a. Navigation Safety Bylaw 2018
  - b. Queenstown Lakes District Plan

- c. Enforcement and Prosecution Policy
- d. Finance Policy
- e. 10 Year Plan

37 This matter is included in the Annual Plan under Section 3 – Regulatory Functions and Services.

### **Local Government Act 2002 Purpose Provisions**

38 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 providing a single bylaw that consolidates and simplifies navigation and waterways regulation;
- Can be implemented through current funding under the 10-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 responsibility/

### **Consultation: Community Views and Preferences**

39 The persons who are affected by or interested in this matter are residents and ratepayers of the Queenstown District, iwi, tourists, and any other users of the Clutha River.

40 The proposed amendment was publicly notified by advertisement in local newspapers between 28 July 2018 and 4 August 2018, including the Otago Daily Times and Wanaka Sun. The text of the proposed amendment, statement of proposal, summary of proposal were made available on the Council's website, at the Council offices at 10 Gorge Rd, Queenstown and 47 Ardmore Street, Wanaka upon request from the public and at any Council library within the Queenstown Lakes District.

41 After the submission period closed, Council staff identified that approximately 80 submissions had not been received by Council as the submitters had saved their submission, instead of finishing the submission process. The Council postponed the Hearings Panel meeting to 3 October 2018 to ensure these members of the community could also have their say. A further submission received after the submission period had closed was accepted by the Hearings Panel as a late submission.

### **Legal Considerations and Statutory Responsibilities**

42 The power to make a bylaw is set out in section 33M of the Maritime Transport Act 1994 (**MTA**). Section 33M(1)(a) and (c) of the Act provides that the Council may make a bylaw to regulate and control the use or management of vessels, and to prevent nuisances from the actions of persons and things on the water.



- 43 The Council is required to carry out a special consultative procedure in accordance with the requirements set out in the Local Government Act 2002.
- 44 The matters outlined in s 33M of the MTA are set out in the purpose clause of the Bylaw. A navigation safety bylaw is subject to certain constraints in s 33M(2) of the MTA, which include that the bylaw cannot be inconsistent with regulations or rules made under the MTA (including Maritime Rules), and it cannot be inconsistent with the Resource Management Act 1991.
- 45 The Council has the power to amend a bylaw under s 156 of the Local Government Act 2002. The special consultative procedure should be used as staff consider the proposed amendments are more than minor changes.

### **Attachments**

- A Map of Clutha River
- B Amended Queenstown Lakes District Council Navigation Safety Bylaw 2018
- C Submissions received
- D Overview of submissions

## Attachment A – Map of Clutha River



Access lane, reserved area, speed limit, prohibition or other navigation safety rule	Refer to clause / schedule
Prohibition of powered vessels (subject to specified exceptions) from the Lake Wanaka Outlet to Albert Town Bridge between 1 December and 30 April.	Clause 35.1(a)
5 knot speed limit applies from the Lake Wanaka Outlet to Albert Town Bridge between 1 May and 30 November, except when there is a speed uplifting between 10am – 6pm.	Clause 35.1(b) Schedule 2, Table 1
Permanent speed uplifting all year: between Albert Town Bridge and Red Bridge.	Schedule 2, Table 1