

**QLDC Council
26 July 2018****Report for Agenda Item: 1****Department: Finance, Legal & Regulatory****Navigation Safety Bylaw 2018 – Clutha River****Purpose**

To report on the outcome of informal public consultation during April – May 2018 and recommend that the Council commence a special consultative procedure to amend the Navigation Safety Bylaw 2018 (**the Bylaw**) regarding the Clutha River.

Executive Summary

- 1 During April – May 2018, Council staff carried out informal consultation with the public to assist the Council to understand the wider community's views on four topics:
 - a. Options for regulating powered vessels / vessel speeds on the Clutha River (clause 37, Schedule 2 (Table 1) – Clutha River, Maps 8-9);
 - b. A new rule requiring river boarding (river boards, river bugs, body boards, and river sledges/hydro speeds) operators to comply with applicable health and safety regulations (Health and Safety in Employment (Adventure Activities) Regulations 2011) (clause 27);
 - c. A new rule requiring stand up paddle boarders, wind surfers, sail boarders and users of similar vessels to wear a leg leash (clause 25); and
 - d. Amending the definition of “vessel” to include surfboards (clause 6).
- 2 Public feedback given during the informal consultation suggested fairly divergent views were held by the public in relation to the Clutha River. The river is used by a wide range of users, many of whom are concerned about safety and the risk of collision between powered vessels and other users, while others are concerned to protect their rights of access and movement. A clear majority of submitters opposed any amendments to river boarding requirements, paddle boarding leg leashes, and changes to the definition of “vessel”.
- 3 This report recommends that the Council commence a special consultative procedure on a proposal to amend the clauses within the Navigation Safety Bylaw 2018 that regulate vessels using the Clutha River. The proposed amendment makes permanent a current timed speed uplifting for powered vessels between Albert Town Bridge and the Red Bridge (**Lower Clutha**). It proposes to prohibit powered vessels (subject to exceptions) between Lake Wanaka outlet and the Albert Town Bridge (**Upper Clutha**) over the Summer months when passive recreational use is high (1 December to 30 March), and to implement a timed speed uplifting for those vessels over the rest of the year. The

proposed amendment to the Bylaw recognises the different navigation safety risk profile in different parts of the Clutha River, and at different times of the year.

Recommendation

That **Council**:

1. **Note** the contents of this report.
2. **Note** that on 23 March 2018 the Council adopted the Navigation Safety Bylaw 2018 and directed staff to develop a new proposal for public consultation on possible amendments to the Navigation Safety Bylaw 2018 on four topics.
3. **Note** that the Council carried out informal consultation and received submissions from the public on four consultation topics concerning possible amendments to the Navigation Safety Bylaw 2018.
4. **Note** that the Council has considered the results of the informal consultation in April 2018, and has developed a proposed amendment to the Navigation Safety Bylaw 2018 in relation to regulation of vessels on the Clutha River, and agrees not to amend the bylaw regarding river boarding requirements, paddle boarding leg leashes, and changes to the definition of "vessel".
5. **Approve** the commencement of the special consultative procedure in relation to the proposed amendment to the clauses within the Navigation Safety Bylaw 2018 that regulate vessels using the Clutha River.
6. **Appoint** three councillors (to be named) to hear and consider the submissions on the proposal to amend the Navigation Safety Bylaw 2018 and make a recommendation to Council.

Prepared by:



Lee Webster
Manager, Regulatory

17/07/2018

Reviewed and Authorised by:



Stewart Burns
General Manager: Finance
and Regulatory

17/07/2018

Background

- 4 On 23 March 2018, the Council resolved to adopt the Bylaw, which took effect from 6 April 2018. At the same meeting the Council directed staff to develop a new proposal for public consultation on possible amendments to the Bylaw covering four topics. This informal consultation was intended to assist the Council to understand the wider community's views on the matters and to help the Council develop a preferred option on each topic.
- 5 The adoption of the Bylaw followed a special consultative procedure undertaken by the Council in late 2017. During that process a large majority of submitters (285/314 submissions) addressed their submissions to proposed changes to the Clutha River uplifting. The proposed changes involved extending the timed uplifting on the Upper Clutha to the Lake Wanaka outlet, and adopting a permanent uplifting on the Lower Clutha. Approximately 96% of submitters were identified as being opposed to the changes. The focal point of submissions was the proposed uplifting for the Upper Clutha, due to the community's concerns that a speed uplifting would increase collision risks to the growing number of passive recreational users of this section of the river.

Topics addressed in the informal consultation process

- 6 During April 2018, Council Officers notified parties who had participated in the 2017 public consultation process prior to the adoption of the Bylaw that it was seeking community feedback on four topics of potential amendments to the Bylaw:
 - a. Options for regulating powered vessels / vessel speeds on the Clutha River (clause 37, Schedule 2 (Table 1) – Clutha River, Maps 8-9);
 - b. A new rule requiring river boarding (river boards, river bugs, body boards, and river sledges/hydro speeds) operators to comply with applicable health and safety regulations (Health and Safety in Employment (Adventure Activities) Regulations 2011) (clause 27);
 - c. A new rule requiring stand up paddle boarders, wind surfers, sail boarders and users of similar vessels to wear a leg leash (clause 25); and
 - d. Amending the definition of "vessel" to include surfboards (clause 6).
- 7 The informal consultation closed on 11 May 2018. There was significant public participation in the consultation, particularly in relation to the topic concerning regulation of vessels on the Clutha River.

Overview of submissions on the informal consultation

Powered vessels / vessel speeds on the Clutha River:

- 8 Four options were proposed:
 - a. Retain status quo: a timed speed uplifting for vessels travelling between the Red Bridge and a 5 knot buoy located approximately 3km upstream from the

Albert Town Bridge (approximately 15 km stretch of river). The uplifting is all year between 10am and 4pm (winter) and 10am and 6pm (summer), and 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);

- b. A prohibition of powered vessels entering the whole Clutha River (excluding resource consent holders);
 - c. A prohibition of powered vessels entering the Upper Clutha (excluding resource consent holders) and a permanent speed uplifting on the Lower Clutha;
 - d. A timed uplifting on the Upper Clutha and a permanent speed uplifting on the Lower Clutha (this was the proposal during the last consultation process).
- 9 In total, 663 submissions were received in relation to powered vessels and vessel speeds on the Clutha River. Of the four options, the most popular was a timed speed uplifting on the Upper Clutha and a permanent speed uplifting on the Lower Clutha (277 submitters or 41.78%). Submitters in favour of this option supported having the freedom to enjoy the river in the way they wished and noted there had been no recorded accidents between a vessel and recreational user. They said noise would be reduced if boats could hydroplane at faster speeds. While this option was the most popular during the April 2018 informal consultation, there was significant public opposition to the same proposal during the special consultative procedure in 2017 (over 90% of submitters were opposed).
- 10 The status quo had the support of 199 submitters (30.02%), who said no change was warranted because the status quo was working well and appropriately balanced different uses of the river. Some submitters noted that the Lower Clutha, on which there is a timed uplifting, has better visibility, is wide and easily navigated by jet boaters. Other submitters considered there was too little awareness of the existing rules and a lack of enforcement.
- 11 A prohibition of recreational vessels in some form on the Clutha River was supported by 28.2% of submitters. A total of 98 submitters (14.78%) supported a prohibition on the entire Clutha River. A total of 89 submitters (13.42%) sought a prohibition on the Upper Clutha, with a permanent uplift on the Lower Clutha. Most submitters who supported a prohibition considered this was necessary for safety, particularly on the Upper Clutha. They referred to the high number of passive users in summer (including swimmers, kayakers and anglers), increasing population, and near misses between boats and other river users. Some submitters argued that any liberalisation of speeds was inconsistent with the District Plan. Other submitters considered boats were noisy and disturbed the tranquillity of the natural environment.
- 12 A number of submitters were also concerned by the lack of speed controls in any of the proposals on resource consent holders and considered speed restrictions should apply to commercial jet boat operators on the Clutha River.

Safety obligations on white water boards

- 13 Most submitters opposed requiring river boarders to comply with health and safety regulations (271 were opposed and 135 in support). Those opposed considered the amendment was unnecessary and duplicative of health and safety regulations, that the activity was low risk and that a change could be hard to enforce. Those in favour said the amendment would increase safety and consistency by requiring all watercraft users to follow the same rules.

Leg leashes on paddle boards and similar vessels

- 14 Most submitters opposed requiring stand up paddle boarders, wind surfers and sail boarders to wear a leg leash. The 305 submitters in opposition referred primarily to the safety risk of wearing a leg leash, particularly in flowing water. Some submitters referred to a recent near drowning on the river. Other submitters said wearing a leash was a personal choice and a blanket rule would be hard to enforce. The 105 submitters in favour of the proposal supported it primarily to improve safety.

Amending the definition of “vessel” to include surfboards

- 15 Most submitters supported maintaining the status quo to exclude surf boards from the definition of vessel. These 234 submitters considered there was no need for change and that a life jacket could not sensibly be worn while surfing. Submitters who supported the amendment said it would enhance safety and ensure surfboards were not treated differently. Many submitters noted they had no opinion.

Recommended amendment to Bylaw

- 16 Council staff have carefully considered the feedback from the informal consultation process, and developed a proposal for regulating powered vessels on the Clutha River, which is a modification of the proposal to prohibit powered vessels in the Upper Clutha.
- 17 Council staff recommend amending the Bylaw (**the Proposed Amendment**) as follows:
- a. On the Upper Clutha (between the Lake Wanaka Outlet and Albert Town Bridge):
 - 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 (between Albert Town Bridge and the Red Bridge).
- 18 Council staff consider that the Proposed Amendment will provide greater protection for the high and growing volume of passive users of the Upper Clutha during the summer months from the risks of collision with a powered vessel. During the rest of the year, the passive use of the Upper Clutha is significantly less, and therefore a timed uplifting is considered appropriate. The navigation safety risk of collision in the Lower Clutha is reduced due to the width of the river on this section, and therefore a permanent uplifting is proposed in this area.
- 19 Council staff recognise that this proposal may impact on operators of powered vessels and has engaged with Jet Boating New Zealand regarding the proposed amendment. Staff have also engaged with two active commercial operators who hold resource consents to operate powered vessels in the area, which includes a condition that each consent holder comply with the applicable navigation safety bylaw. To address the community's concerns regarding collision risks, consent holders were willing to reduce their usage during a 2 week period in the summer (15 January – 1 February). As a result of those discussions, Council staff recommend that over this period consent holders only operate twice daily between 10am – 12pm. The consent holders would not be able to operate after 12pm on those dates.
- 20 Council staff do not recommend amendments to the Bylaw in relation to the other 3 topics for which it carried out informal consultation in April 2018. Members of the community are concerned that if the Council required paddleboarders to wear a leg leash in flowing water, it may in fact increase safety risks to paddleboarders. Submitters referred to a recent near drowning of a paddleboarder due to their leg leash becoming entangled on a buoy. Council staff consider given these concerns and the significant community opposition to the proposed rule no amendment is recommended at this time. In relation to the incorporation of health and safety regulations for whitewater boards into the Bylaw and amending the definition of "vessel", Council staff also note public feedback that the current rules are working as they should, and consider a further amendment is not necessary at this time.

Comment

- 21 The Council has the power to amend a bylaw under s 156 of the Local Government Act 2002. Under s33M of the Maritime Transport Act 1994 (**Act**), the Council can make a bylaw for the purposes of maritime safety. 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.

- 22 Council Officers proposed to initially conduct informal public consultation and then prepare a further report to Council on a preferred option. There was substantial engagement with the informal consultation, particularly in relation to regulating powered vessels on the Clutha River. This feedback demonstrated that the proposals is of substantial interest to the public, and the public holds fairly divergent views.
- 23 In relation to the Clutha River, there was not a groundswell of opinion in favour of any one particular option on which consultation was conducted. While the most popular position was a permanent uplifting on the Lower Clutha / timed uplifting on the Upper Clutha, a significant portion supported the status quo and nearly a third of submitters supported a partial or total prohibition of powered vessels on the Clutha. These results stand in contrast to the feedback during the 2017 special consultative procedure, in which there was strong opposition to establishing a timed uplifting on the Upper Clutha (285 of 314 submissions opposed the then proposed speed uplifting). This demonstrates that public opinion is somewhat polarised.
- 24 In relation to the other three topics on which informal consultation was conducted, Council Officers consider the status quo to be appropriate. The majority of submitters in each case preferred the status quo. To the extent that additional amendments to the Bylaw may be desirable in future, these can be addressed at the next statutory review of the Bylaw.

Options

Option 1 Retain the status quo and not propose amendments to the Navigation Safety Bylaw 2018

Advantages:

- 25 This option does not require the Council to conduct a further special consultative procedure, which saves the Council the time and resources associated with this process.
- 26 There are specific advantages in relation to the four specific proposals on which consultation was conducted:

a. Powered vessels / vessel speeds on the Clutha River:

Public opinion is reasonably split; some members of the public favour more restrictions including prohibition of powered vessels, whereas other members of the public favour fewer restrictions and an uplifted speed limit. The status quo was the second most popular option during informal consultation. It attempts to strike a balance by retaining the 5 knot speed limit on the Upper Clutha, which recognises the higher risk profile on the Upper Clutha due to the number of passive users. The status quo also reflects the fact that the Lower Clutha 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.

b. Safety obligations on white water boards

White water boarding is already covered by Health and Safety regulations (Health and Safety in Employment (Adventure Activities) Regulations 2011), so some members of the public consider it does not need to be covered in the Bylaw.

c. Leg leashes on paddle boards and similar vessels

Many members of the public submitted that the status quo is arguably safer than requiring use of a leg leash, because it is not clear that requiring a leg leash would improve safety due to the risk of entangling, which is a particular risk in flowing river water.

d. Amending the definition of “vessel” to include surfboards

Most submitters noted that there was no need to include surfboards under the Bylaw, but some recognised that it would be beneficial to have consistency with the definition of “vessel” under the Act.

Disadvantages:

- 27 The disadvantage is that some members of the public are likely to be unhappy by retention of the status quo (a clear majority favoured one of the other options). In particular, some submitters may be unhappy that the Council has not made changes in relation to the Clutha River, to either prohibit powered vessels or to permit additional speed uplifts on parts of the Clutha River. The current rule does not go as far as many members of the public seek by prohibiting vessels to protect passive users from the risk of collision. This is a topic on which many members of the public appear to have strong views and have made submissions.

Option 2 Commence a special consultative procedure on the Proposed Amendment to the Bylaw in relation to vessel use and speeds on the Clutha River

Advantages:

- 28 The Proposed Amendment reflects the concern held by many members of the community about safety and the risk of collision in the Upper Clutha between powered vessels and passive users. The greatest concentration of passive recreational users on the Clutha (including swimmers, kayakers and anglers) is during the summer months and primarily in the Upper Clutha. Council staff consider that a prohibition on powered vessels in the summer would offer a much greater degree of protection than the status quo.
- 29 While some powered vessel operators may be unhappy about not being able to use powered vessels on the Upper Clutha during summer, this is balanced with fewer speed restrictions on powered vessels operating in the Upper Clutha

during the rest of the year, and a permanent uplifting year round in the Lower Clutha. Powered vessels operating under a resource consent will still be permitted to operate in the area, subject to a two week period in which they will be required to reduce their daily trips to 2, and operate between 10am – 12pm. Powered vessels carrying out a permitted activity under the District Plan, and the Harbourmaster properly exercising his functions, will continue to be able to operate in the area.

Disadvantages:

- 30 Council staff recognise that not all submitters will be happy with the proposed amendment. However, it does provide greater protection for passive users when the risk of collision is highest, and greater access to powered vessels at times/areas when the risk of collision is reduced. The Council will need to ensure that if the amendment is adopted there is appropriate signage and public education regarding the new rules.

Recommendation

- 31 This report recommends **Option 2** – that a special consultative procedure be conducted on the Proposed Amendment to the Bylaw. This approach reflects legitimate public concerns regarding collision risks, and recognises the different navigation safety risk profile in relation to parts of the Clutha River, and 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 community interest regarding the safe use of the District's waterways.

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 Council's waterways.
- 34 The recommended option considered above mitigates the risk by attempting to provide greater protection to passive users of the Upper Clutha during summer months, when passive use is high.

Financial Implications

- 35 There are likely to be additional costs educating the public about the amendment to the rules and on enforcement, which will be met through existing budgets.

Council Policies, Strategies and Bylaws

- 36 The following Council policies, strategies and bylaws were considered:
- a. Navigation Safety Bylaw 2018

- b. Finance Policy
- c. 10 Year Plan
- d. Council's Operative District Plan and Proposed District 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 maintain the current Bylaw;
- Is likely to require additional funding to conduct the Special Consultative Procedure, and 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 Consultation: Community Views and Preferences

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 District's lakes and waterways.

40 The adoption of the Bylaw followed a special consultative procedure undertaken by the Council in late 2017. During that process a large majority of submitters (285/314 submissions) addressed their submissions to proposed changes to the Clutha River uplifting. The proposed changes involved extending the timed uplifting on the Upper Clutha to the Lake Wanaka outlet, and adopting a permanent uplifting on the Lower Clutha. Approximately 96% of submitters were identified as being opposed to the changes. The focal point of submissions was the proposed uplifting for the Upper Clutha, due to the community's concerns that a speed uplifting would increase collision risks to the growing number of passive recreational users of this section of the river.

41 After the adoption of the Bylaw, the Council sought public feedback on 4 topics of potential amendments to the Bylaw and received 663 submissions as part of the informal consultation. This consultation was valuable in assisting the Council to understand the wider community's thoughts on the matters and to help the Council to develop a preferred option.

42 The Council has also engaged with Jet Boating New Zealand, and the two commercial operators who hold resource consents and are active on the Clutha River.

Legal Considerations and Statutory Responsibilities

- 43 The power to make a navigation safety bylaw is set out in section 33M of the Maritime Transport Act 1994, which provides that the Council (in consultation with Maritime New Zealand) may make a bylaw for the purposes of ensuring maritime safety to:
- (a) regulate and control the use or management of ships:
 - (b) regulate the placing and maintenance of moorings and maritime facilities:
 - (c) prevent nuisances arising from the use of ships and seaplanes:
 - (d) prevent nuisances arising from the actions of persons and things on or in the water:
 - (e) reserve the use of any waters for specified persons, ships, or seaplanes:
 - (f) in relation to boat races, swimming races, or similar events,—
 - (i) prohibit or regulate the use of ships:
 - (ii) regulate, or authorise the organisers of an event to regulate, the admission of persons to specified areas:
 - (g) regulate and control the use of anchorages:
 - (h) prescribe ship traffic separation and management schemes:
 - (i) specify requirements for the carriage and use of personal flotation devices and buoyancy aids on pleasure craft:
 - (j) require the marking and identification of personal water craft
- 44 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.
- 45 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.

Attachments

- A Amended Navigation Safety Bylaw 2018
- B Statement of proposal to amend Navigation Safety Bylaw 2018
- C Summary of statement of proposal to amend Navigation Safety Bylaw 2018