



## **STATEMENT OF PROPOSAL**

**PROPOSED AMENDMENT TO QUEENSTOWN LAKES DISTRICT  
COUNCIL NAVIGATION SAFETY BYLAW 2018**

## INTRODUCTION

- 1 The Queenstown Lakes District Council (**Council**) propose to amend the clauses within the Navigation Safety Bylaw 2018 (**Bylaw**), which regulate vessels using the Clutha River (clause 37, Scheduled 2 (Table 1) – Clutha River, Maps 8-9). The proposed amendment affects the Clutha River, which is referred to as follows:
  - a. **Upper Clutha** = area of Clutha River between Lake Wanaka outlet and the Albert Town Bridge.
  - b. **Lower Clutha** = area of Clutha River between the Albert Town Bridge and the Red Bridge.
- 2 The proposed amendment (refer **Appendix**), if adopted, will result in a summer prohibition of powered vessels on the Upper Clutha (subject to exceptions), and a timed uplifting on the Upper Clutha during the rest of the year. A permanent uplifting is proposed on the Lower Clutha year round.

## BACKGROUND

- 3 On 23 March 2018, the Council adopted the Bylaw, which came into effect on 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.
- 4 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.
- 5 During April 2018 Council staff carried out informal consultation with the public to understand the wider community's views on possible amendments being considered for the Bylaw. On the topic of regulating powered vessels on the Clutha River, four options were proposed:
  - a. Retain status quo: a timed speed uplifting (10am and 4pm (winter) and 10am and 6pm (summer)) 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). Between the 5 knot buoy and the Lake Wanaka outlet a 5 knot speed limit to apply all year round;
  - 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 (also proposed in the notified version of the Bylaw).

- 6 The results of the informal consultation indicated that there is significant public interest in the regulation of powered vessels on the Clutha River. However, the feedback from this consultation process also demonstrated that there is significant divergence of opinion as to whether the status quo should remain (30.02%), some form of prohibition on powered vessels should be imposed (28.2%), or a timed uplifting on the Upper Clutha and a permanent uplifting on the Lower Clutha (41.78%). While the last option was the most popular during the April 2018 informal consultation, there was significant public opposition to this option when it was proposed during the 2017 special consultative procedure, prior to adoption of the Bylaw (over 90% of submitters were opposed).
- 7 A clear majority of the public opposed the other amendments proposed for consideration, including amendments to rules affecting river boarding, paddle boarders, and the definition of “vessel”. Many submitters argued that these other changes were not necessary.

## PROPOSAL

- 8 Council staff 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.
- 9 The Council proposes to carry out a special consultative procedure regarding an amendment to the Bylaw (clause 37, Schedule 2 and Maps 8-9), 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).
- 10 The Appendix contains the Proposed Amendment as a change tracked into the text of the Bylaw.

11 This Statement of Proposal has been prepared in accordance with the requirements of sections 83 and 86 of the LGA, and includes:

- a. The reason for the proposal;
- b. Consideration of whether a bylaw is the most appropriate way to address the perceived problem;
- c. Consideration of whether the proposed bylaw is the most appropriate form of bylaw;
- d. Consideration of any implications under the New Zealand Bill of Rights Act 1990;
- e. A draft of the proposed amendment to the Navigation Safety Bylaw 2018.

## **REASON FOR PROPOSAL**

12 The 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).

13 During the special consultative procedure carried out prior to adoption of the Bylaw (late 2017), the Council proposed an easing of speed restrictions on both the Upper and Lower sections of Clutha River. Over 90% of submitters opposed the notified speed uplifting on the Upper Clutha due to perceived navigation safety risks to passive recreational users of the area. There was more limited opposition to a permanent uplifting on the Lower Clutha, although some submitters noted that this stretch of water was more appropriate for fast boat traffic because it was wider and used less frequently by passive recreational users. Submitters also put forward various alternatives that were not part of the Council's original proposal (including prohibition of powered vessels).

14 Following the special consultative procedure, the Council decided to retain the status quo in the Bylaw, until further consultation could occur regarding a possible amendment to the Bylaw. The Council also directed that staff develop a new proposal for amending the Bylaw, which included changes to the regulation of powered vessels using the Clutha River.

## **CONSIDERATION BY COUNCIL UNDER SECTION 155 OF THE LGA2002**

15 Public feedback obtained during consultation in 2017-2018 shows that the Clutha River is used by a wide cross section of the community. It is popular with passive users (including swimmers, those floating on the river, kayakers and anglers), particularly in the Upper Clutha. Increased population and residential density has increased the number of passive users in the Upper Clutha, especially during the summer months.

16 Many members of the public are concerned about the navigation safety risks posed by powered vessels in the Upper Clutha, particularly the risk of collision between powered vessels and passive users. However, the status quo offers limited protection in the Upper Clutha as powered vessels are not restricted beyond a 5 knot limit which

commences approximately 3km above the Albert Town Bridge. The Council proposes to change this by prohibiting powered vessels entering the Upper Clutha during summer months when passive use is high.

- 17 The Council has issued a small number of resource consents to allow powered vessels to conduct commercial operations on the Clutha River, which includes a condition that each consent holder comply with the applicable navigation safety bylaw. The Council has approached the consent holders and advised them of its concerns regarding the risk of collision between powered vessels and passive users during summer. Consent holders have been willing to reduce their usage during a 2 week period in the summer to address community concerns regarding collision risks (15 January – 1 February). As a result of those discussions, the Council proposes 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.
- 18 The Council recognises that the Clutha River is also popular with users of powered vessels. The Lower Clutha in particular is seen as attractive for boating because it is wide, has better visibility than the Upper Clutha and is easily navigable. Users of powered vessels are concerned to protect their rights of access and movement in this area.
- 19 The Council considers that a bylaw is the most appropriate way of addressing the problem described above. 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. The perceived problem is fundamentally a navigation safety issue: collision risks between passive users and powered vessels using a river. The risk affects both recreational and commercial users of the Clutha River.
- 20 Council staff consider that an amendment to the Bylaw is the appropriate regulatory tool for addressing the problem. A prohibition on recreational vessels in summer on the Upper Clutha would significantly reduce the risk of collision highlighted by many members of the public, and it would be targeted to apply during the months when passive use is high. During the rest of the year, the proposed amendment would involve a timed uplifting on the Upper Clutha, at a time when there are fewer passive users and therefore a lower risk of collision. The Lower Clutha would be subject to a permanent uplifting which recognises the lower navigation safety risk profile of this area.

#### **IS THE PROPOSED BYLAW THE MOST APPROPRIATE BYLAW?**

- 21 The Council has considered the most appropriate way of addressing the issues described in the problem definition section above, the options available, and determined that the proposed bylaw is the most appropriate means for addressing the issues.
- 22 In considering whether a bylaw is the most appropriate, Council has considered the following options:
  - a. Option 1 – Retain the status quo.
  - b. Option 2 – Adopt the Proposed Amendment to the Navigation Safety Bylaw 2018.

#### **Option 1 – Retain the status quo**

- 23 The advantage of this option is it does not require the Council to conduct a further special consultative procedure, which saves the Council the time and resources associated with this process. 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.
- 24 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.
- 25 The disadvantage is that some members of the public are likely to be unhappy by retention of the status quo. 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 – Adopt the Proposed Amendment to the Navigation Safety Bylaw 2018**

- 26 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 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.
- 27 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 for 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.
- 28 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.

#### **ARE THERE ANY IMPLICATIONS UNDER THE NEW ZEALAND BILL OF RIGHTS ACT 1990?**

- 29 The proposed bylaw is consistent with the New Zealand Bill of Rights Act 1990 (**NZBORA**). The proposed controls are considered reasonable limits as allowed for in section 5 of the NZBORA:

*Subject to section 4, the rights and freedoms contained in this 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.*

- 30 The proposal will potentially engage the following right under the NZBORA:

- a. Right to freedom of movement (section 18).

- 31 The proposal potentially engages freedom of movement in that it limits the ability of powered vessel operators to enter the Clutha River. The proposed amendment does not restrict persons such as swimmers or operators of unpowered vessels from entering the Clutha River. Limited exceptions are also in place for other vessels authorised to access the area under the Resource Management Act 1991. The Council is satisfied that the proposed amendment is a reasonable limit on an individual's rights and freedoms, and which is justifiable in a democratic society. Therefore, the proposed Bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.

## **TIMETABLE FOR CONSULTATION**

- 32 The following dates represent the key times in the consultation programme:

- a. Council resolves to undertake public consultation regarding the Proposal between 28 July 2018 and 31 August 2018.
- b. Advertisement in Otago Daily Times, and Wanaka Sun – between 28 July 2018 and 4 August 2018.
- c. Submissions close on 31 August 2018.
- d. Submissions heard by a subcommittee of Councillors during the week of 10 – 14 September 2018 (to be confirmed).
- e. Council considers outcome of consultation process and whether to make decisions in the Proposal – 25 October 2018.
- f. Public notice of final decision – 27 October 2018.

## **INSPECTION OF DOCUMENTS AND OBTAINING COPIES**

- 33 Copies of this Statement of Proposal and the proposed Bylaw may be inspected, and a copy obtained, at no cost, from:

- a. either of the Council offices at 10 Gorge Road, Queenstown or the Wanaka Service Centre, 47 Ardmore Street, Wanaka;
- b. any Council library within the Queenstown Lakes District; or
- c. the Council website – [www.qldc.govt.nz](http://www.qldc.govt.nz)

## **RIGHT TO MAKE A SUBMISSION AND BE HEARD**

- 34 Any person or organisation has a right to be heard in regard to this Proposal and the Council encourages everyone with an interest to do so. Submissions should be directed toward matters that are within the scope of the Proposal.
- 35 The Council would prefer that all parties intending to make a submission:
  - a. go to the Queenstown Lakes District Council Website: [www.qldc.govt.nz](http://www.qldc.govt.nz) or
  - b. post their submission to: Regulatory Department, Queenstown Lakes District Council, Private Bag 50072, Queenstown 9348.
- 36 Submissions must be received by **Friday 31 August 2018**. The Council will then convene a hearing, which it intends to hold between **Monday 10 September and Friday 14 September 2018** at which any party who wishes to do so can present their submission in person. The Council will give equal consideration to written and oral submissions.
- 37 The Council will permit parties to make oral submissions (without prior written material) or to make a late submission, only where it considers that special circumstances apply.
- 38 Every submission made to the Council will be acknowledged in accordance with the LGA 2002, will be copied and made available to the public, and every submission will be heard in a meeting that is open to the public.
- 39 Section 82 of the LGA 2002 sets out the obligations of the Council in regard to consultation and the Council will take all steps necessary to meet the spirit and intent of the law.

#### **MAKING AN EFFECTIVE SUBMISSION**

- 40 Written submissions can take any form (e.g. Email, letter). An effective submission references the clause(s) of the proposed bylaw you wish to submit on, states why the clause is supported or not supported and states what change to the clause is sought.
- 41 Submissions on matters outside the scope of the proposed amendment cannot be considered by the Hearings Panel.

Mike Theelen  
CHIEF EXECUTIVE

#### **APPENDIX– Amended Queenstown Lakes District Council Navigation Safety Bylaw 2018\***

\*The above documents are appended elsewhere as part of this agenda item and are not repeated here.