# QUEENSTOWN LAKES DISTRICT COUNCIL

# FOR MEETING OF 31 OCTOBER 2008

REPORT FOR AGENDA ITEM: 6

SUBMITTED BY: General Manager Regulatory and Corporate Services -

**Roger Taylor** 

REPORT DATED: 22 October 2008

# STATUTORY REVIEW OF WATERWAYS NAVIGATION AND SAFETY BYLAW 2003 AND SHOTOVER RIVER BYLAW 2003

#### **PURPOSE**

To propose adoption for the purposes of consultation draft Waterways Navigation and Safety and Shotover River Bylaws.

#### **BACKGROUND**

The Local Government Act 2002 (LGA) requires that bylaws are reviewed within 5 years of them being made.

These two waterways based bylaws were both adopted in 2003 and therefore require review this year. The review is required to be undertaken following the special consultative procedure set out in the LGA. That process is the adoption of the draft bylaws (this proposal), public consultation for a minimum of a month, holding a hearing for any member of the public that wishes to be heard in regard to their submission, and final adoption of the bylaw with any amendments made as a result of the consultative process.

# SIGNIFICANCE OF DECISION

Not applicable.

# **CONSULTATION – INTERESTED OR AFFECTED PERSONS**

The adoption of these draft bylaws will trigger the start of the consultation process.

# **RELEVANT COUNCIL POLICIES**

Not applicable.

## **DISCUSSION**

It is proposed that the Shotover River Bylaw remain unchanged from its current form. It currently serves the purpose of creating a restricted zone on the Shotover River to provide for public safety in the river gorges between Tuckers Beach and the Oxenbridge Tunnel. Public access into the restricted area is provided for through the permit process Council adopted earlier in the year.

The Waterways Navigation and Safety Bylaw is also proposed to be consulted on relatively unchanged, but two significant changes are put forward. Firstly, the current bylaw places a speed restriction of five knots within 100 metres of the shore (clause 2.2.1.2) and 100 metres of any craft that is flying Flag A of the International Code of Signals (clause 2.2.1.3). Maritime Rule Part 91.6 requires that the speed restriction in relation to the shore or other craft flying the appropriate flag is within 200 metres, i.e. double what is in the current bylaw. Maritime New Zealand (MNZ) has indicated that they will oppose any proposed bylaw that maintains the current blanket 100m restriction.

Considerable dialogue has been held with MNZ over this issue. The difficulty is that Rule Part 91 was designed predominantly for open seas, not the inland waterways such as this District has. Despite that fundamental difference, MNZ are not willing to compromise that position. What they have suggested is that Council could incorporate a provision to uplift the speed limit for specific areas of waterways so that the effect of the change in the bylaw would be restricted to those populated areas of waterways where the 200 metre limit is reasonably required.

Consequently the second area where the bylaw is proposed to be changed is the provision of specific uplifting powers in the bylaw. This appears to have been an area of omission from the 2003 bylaw in any event.

The less significant area of proposed change is the incorporation of the recommendations from the Jetties and Moorings Policy review group into the proposed bylaw.

#### **Statutory Provisions**

In reviewing a bylaw Section 155 of the LGA requires that Council consider whether:

- a) A bylaw is the most appropriate way of addressing the perceived problem;
- b) The proposed bylaw is the most appropriate form of bylaw; and
- c) The proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (NZBORA).

Both of the bylaws are proposed to deal with the problem of ensuring safety for all users of waterways in the Queenstown Lakes District. The Waterways Navigation and Safety Bylaw is a general bylaw that regulates the speed and operation of vessels in the district generally. The Shotover River Bylaw provides specific restrictions to the area of the Shotover River between Tuckers Beach and the Oxenbridge Tunnel.

Both of the bylaws are proposed to be substantially in the same form as the bylaws they replace. These forms of bylaw have proven to be successful in promoting safety and providing penalties for those who do not obey the bylaw generally and partially restricting access to the Shotover River to those times when it is safe for the public and the commercial operator for private boats to be there.

Section 18 of the NZBORA provides the right to freedom of movement and residence in New Zealand. It might be argued that the Shotover River Bylaw, by restricting access to a part of the Shotover River is in breach of that section of the NZBORA. However, section 5 of the NZBORA provides that the rights and freedoms contained in the Act are subject to such reasonable limits as can be justified in a free and democratic society. The restriction on access is justifiable on the grounds that it is unsafe to have unrestricted access to this waterway and there are reasonable alternative access measures available.

# **OPTIONS**

Not applicable.

# **FINANCIAL IMPACT**

Not applicable.

# **DELEGATIONS REGISTER REFERENCE**

Not applicable.

# RECOMMENDATION

- 1. That the draft Waterways Navigation and Safety Bylaw 2008 and the draft Shotover River Bylaw 2008 are adopted for the purpose of community consultation.
- 2. That if required, a hearings panel consisting of three Councillors will be convened to hear submissions on the draft bylaws and make a recommendation to Council.
- 3. That Councillors [insert three names] are appointed to hear submissions (if any) on the Waterways Navigation and Safety Bylaw 2008 and the Shotover River Bylaw 2008.

#### QUEENSTOWN-LAKES DISTRICT COUNCIL

#### **SHOTOVER RIVER BYLAW 2008**

THE **QUEENSTOWN-LAKES DISTRICT COUNCIL** hereby makes the following bylaw pursuant to section 684B(d) of the Local Government Act 1974 by virtue of a transfer of that bylaw making power by the Otago Regional Council pursuant to section 17(1) and 17(4)(a) of the Local Government Act 2002 and section 650J of the Local Government Act 1974.

#### 1. Title

This Bylaw is the "Shotover River Bylaw 2008".

#### 2. Commencement

This Bylaw comes into force on the day of 2008.

#### 3. Interpretation

In this Bylaw, unless the context otherwise requires:

"Council" means the Queenstown-Lakes District Council, a territorial authority named in Part 2 of the Local Government Act 2002.

"Restricted Zone" means the part of the Shotover River between Tuckers Beach and the waters of the Shotover River at the east end of the Oxenbridge Tunnel.

"Vessel" means a ship as defined in the Maritime Transport Act 1994.

# 4. Reservation of Restricted Zone in the interests of navigation safety

The Restricted Zone is reserved for use only by persons and vessels permitted to operate or be operated in the Restricted Zone by a licence granted by the Council, and only in accordance with the terms and conditions of such a licence.

### 5. Other users prohibited

No person may use any vessel in the Restricted Zone unless the person is licensed by the Council to operate that vessel in the Restricted Zone.

# 6. Offences

Any person who:

- (a) operates a vehicle in the Restricted Zone contrary to the terms of a licence granted to that person by the Council; or
- (b) operates any vessel in the Restricted Zone when not licensed by the Council to do so commits an offence and is liable on summary conviction to a fine not exceeding \$20,000.00.

# The COMMON SEAL OF THE QUEENSTOWN LAKES DISTRICT COUNCIL WAS HEREUNTO AFFIXED IN THE PRESENCE OF

Mayor

**Authorised Officer**