

**QLDC Council
17 December 2015**

Report for Agenda Item: 8

Department: Finance & Regulatory

Shotover River Bylaw Review

Purpose

To adopt the Queenstown Lakes District Council (Shotover River) Bylaw 2015.

Recommendation

That Council:

- 1 **Note** the contents of this report;
- 2 **Agree** that a bylaw is still the most appropriate way of restricting public access to the Shotover River Concession Area for the purposes of maritime safety for river users.
- 3 **Agree** that the proposed Shotover River Bylaw:
 - (a) Does not concern any matter of significant interest to the public as identified in the Council's significance and engagement policy; and
 - (b) Is not likely to have a significant impact on the public; and
 - (c) That no further consultation with the public is necessary.
- 4 **Adopt** the proposed Shotover River Bylaw 2015 for immediate implementation and public notification.

Prepared by:



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Enforcement Officer

2/12/2015

Reviewed and Authorised by:



Lee Webster
Manager: Regulatory

2/12/2015

Background

- 1 The Local Government Act 2002 (“LGA2002”) requires that a Bylaw made under the Local Government Act 1974 must be reviewed within five years after the date on which the bylaw was made.
- 2 Any Bylaw not reviewed within five years ceases to have effect two years after this date.
- 3 The Queenstown Lakes District Council (Shotover River) Bylaw 2009 (“Shotover River Bylaw 2009”) will expire on 28 April 2016.
- 4 The Shotover River Bylaw 2009 has been reviewed by Council officers, and it has been concluded that a Bylaw is still required to effectively manage and control public access to the Shotover River Concession Area in order to promote maritime safety for the users of the river.
- 5 It is therefore proposed to adopt a new Bylaw that retains the same restrictions on public access to the Shotover River Concession Area as in the Shotover River Bylaw 2009, with some minor changes:
 - The term “navigation safety” will be replaced with “maritime safety” to reflect the terminology in the MTA.
 - The term “restricted zone” will be replaced with “Shotover River Concession Area” to improve consistency of terminology within the bylaw.
 - The word “vessel” has been replaced with “craft” for consistency with terminology used in the recently adopted Waterways and Ramp Fees Bylaw 2014. The definition is effectively unchanged, as it still cross references to “ship” in the Maritime Transport Act 1994.
 - A map has been added in Schedule 1 to clearly depict the Shotover River Concession Area to improve public awareness of the area affected.
 - The sample permit in Schedule 2 will now state that Shotover Jet Limited is the delegated representative nominated by Council to issue permits for the Shotover River Concession Area, for greater clarity.
- 6 The current Bylaw will be revoked by Council resolution before 28 April 2016. This is intended to allow time for new infringement regulations to be prepared following engagement with Central Government.
- 7 These infringement regulations will replace the Local Government (Infringement Fees for Offences – Queenstown Lakes District Council (Shotover River) Bylaw 2009) Regulations 2009. In the meantime, the Shotover River Bylaw 2009 will remain in effect, and Council will retain the power to issue infringement notices for breaches of that Bylaw.
- 8 It is proposed that any permits issued under the current bylaw shall continue in force until the expiry stated on the permit, or up to 12 months from commencement of the new Bylaw.

Comment

- 9 The Council has the power to make Bylaws for the purposes of maritime safety under the Maritime Transport Act 1994 (MTA), including to reserve the use of any waters for specified persons, ships, or seaplanes (s33M(1)(e), MTA).
- 10 The Otago Regional Council transferred its maritime Bylaw making powers in the Queenstown Lakes District to the Council under section 17(1) and 17(4)(a) of the LGA2002, and the former section 650J of the Local Government Act 1974. The transfer has continuing effect under section 87 of the Maritime Transport Amendment Act 2013.
- 11 The LGA 2002, also enables Council to make a Bylaw to address local issues and provides the ability to operate proactively to:
 - a) Protect the public from nuisance;
 - b) Protect, promote, and maintain public health and safety; and
 - c) Minimise the potential for nuisance behaviour in public places.
- 12 The Shotover River Bylaw is the most appropriate way to manage the use of the Shotover River from a variety of users e.g. recreational or commercial, which has resulted in the increased safety for all users of the river.
- 13 The proposed Bylaw is a continuation of the current Bylaw, and following legal advice, it is considered that there is no requirement to follow the special consultative procedure, as the significance of the amendments are low in accordance with Council's Significance and Engagement Policy and the LGA2002. There is also unlikely to be any material impact on the public because the proposed Bylaw will continue the same restrictions as provided for in the Shotover River Bylaw 2009 without substantive amendment.
- 14 The LGA 2002 requires that the Council will need to consult in a manner that gives effect to the requirements of section 82 of the LGA2002.
- 15 Consultation has been undertaken with Ngāi Tahu and the Harbourmaster, who are satisfied with the scope of the Shotover River Bylaw 2009 and have indicated there is no need for any substantial changes.

New Zealand Bill of Rights Act 1990

- 16 Section 18 of the New Zealand Bill of Rights Act 1990 (NZBORA) provides a right to freedom of movement and residence in New Zealand.
- 17 While it might be argued that the Shotover River Bylaw limits the right to freedom of movement by restricting access to a part of the Shotover River, section 5 of the NZBORA provides that rights may be 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 is a reasonable system for public access, which is managed by way of the issuing of permits.

Options

18 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002:

19 **Option 1 Take no action**

20 Advantages: After the expiry of the Shotover River Bylaw 2009 there would be wider access to the Shotover River Concession Area, which may be favoured by some users.

21 No resources would need to be spent on enforcement of the bylaw.

22 Disadvantages: After the expiry of the Shotover River Bylaw 2009 there will be significant risks to the safety of river users caused by uncontrolled access to the Shotover River Concession Area, and unregulated interaction of commercial and recreational users.

23 **Option 2 Adopt the proposed Shotover River Bylaw**

24 Advantages: continuity, public safety for river users

25 The adoption of the proposed Shotover River Bylaw enables a continuity of a successful process that has been in place for a number of years to control public access to the Shotover River Concession Area. This has provided a positive system to ensure the safety of all river users.

26 Disadvantages: wider river users may view the Bylaw as restricting their right to access the river.

27 This report recommends **Option 2** for addressing the matter.

Significance and Engagement

28 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because the Bylaw affects few people and simply continues the existing regulation of the Concession Area.

Risk

29 This matter related to the operational risk OR004, Serious Injury to Member of Community as documented in the Council's risk register. The risk is classed as moderate.

30 The recommended option mitigates the risk by restricting access to the Shotover River Concession Area, where commercial jet boat operations take place. By restricting access to this area there is less exposure to potential harm.

Financial Implications

31 There are no operational or capital expenditure requirements or other budget or cost implications resulting from the decision.

Council Policies, Strategies and Bylaws

32 The following Council policies, strategies and bylaws were considered:

- Navigation Safety Bylaw 2014
- Waterways and Ramp Fees Bylaw 2014
- Enforcement Strategy and Prosecution Policy

33 The recommended option is consistent with the principles set out in the named policy/policies.

34 This matter is included in the 10-Year Plan/Annual Plan.

- Volume 1 – Regulatory Functions and Services.

Local Government Act 2002 Purpose Provisions

35 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 promoting maritime safety for river users by restricting access and gathering of concession money for the use of the Shotover River.
- 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 ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

36 The persons who are affected by this matter are residents/ratepayers of the Queenstown Lakes District community, iwi and river users.

37 As part of this Bylaw review, consultation with the Director of Maritime New Zealand is required under section 33M of the Maritime Transport Act 1994.

38 Ngāi Tahu and the Harbourmaster have been consulted and are supportive of the continuation of the existing regime, by the adoption of the proposed Shotover River bylaw

39 The Council will need to consider whether this level of consultation meets the requirements of section 82 of the Local Government Act 2002. Given that the decision continues the existing regulation of a small part of the river network and the current views and preferences of those who have a direct interest in the

decision are known, the Council may consider that no substantial consultation is required.

Attachments

A Proposed Queenstown Lakes District Council Shotover River Bylaw 2015

Attachment A**Proposed Queenstown Lakes District Council Shotover River Bylaw 2015****Shotover River Bylaw 2015**

Queenstown Lakes District Council

Date of making: [Insert]

Commencement: On a date resolved by the Queenstown Lakes District Council

The bylaw is adopted pursuant to section 33M(1)(e) of the Maritime Transport Act 1994 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 which has continuing effect under section 87 of the Maritime Transport Amendment Act 2013.

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1 Title

- 1.1 This Bylaw is the Queenstown Lakes District Council Shotover River Bylaw 2015.

2 Purpose

- 2.1 The purpose of this Bylaw is to provide for maritime safety by restricting public access to the Shotover River Concession Area.

3 Commencement

- 3.1 This Bylaw comes into force on a date to be resolved by Council.

4 Interpretation

- 4.1 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.

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

Shotover River Concession Area means the part of the Shotover River between Tuckers Beach (GPS reference 22 Deg 59.236 and 168 Deb 43.294) and the east end of the Oxenbridge Tunnel, as depicted in the map in Schedule 1.

5 Reservation of Shotover River Concession Area in the interests of maritime safety

- 5.1 The Shotover River Concession Area is reserved for use only by persons and Craft permitted to be present in or to operate or be operated in the Shotover River Concession Area by permit granted by Council, or its delegated representative.

- 5.2 The permit shall be in a form and style approved by Council, an example of which is set out in Schedule 2.

6 Prohibitions

- 6.1 No person may operate or cause to be operated any Craft in the Shotover River Concession Area unless permitted by Council or its delegated representative to do so.

- 6.2 No person shall operate or cause any operation within the Shotover River Concession Area contrary to a permit issued under this Bylaw.

7 Revocation

- 7.1 The Queenstown Lakes District Council (Shotover River) Bylaw 2009 is revoked from the date this bylaw comes into force.

- 7.2 Any permit issued prior to the commencement of this bylaw under the Queenstown Lakes District Council (Shotover River) Bylaw 2009 shall continue in force until the expiry stated on the permit, or if no expiry is stated, by no later than 12 months from the date this bylaw comes into force.

Explanatory Notes:

The Queenstown Lakes District Council Shotover River Bylaw 2015

This bylaw was adopted pursuant to a resolution passed by the Queenstown Lakes District Council on [Date] [Month] 2015 and in accordance with section 33M(1)(e) of the Maritime Transport Act 1994 and section 145 of the Local Government Act 2002.

Mayor

Chief Executive Officer

Schedule 1 – Map of Shotover River Concession Area



Schedule 2 - Shotover River Restricted Zone Permit

Permit No: _____

Permit to Access Concession Area

1 Permit issued by Shotover Jet Limited as the delegated representative of the Queenstown Lakes District Council:

_____ of _____

_____ (name & address) ("the Permit Holder").

Emergency Contact name & telephone no: _____

2 For access to Shotover River between Tuckers Beach and Oxenbridge Tunnel solely for the purpose of recreational activities.

3 Access date: _____ 20__

4 Access entry time: _____ am/pm

5 Access exit time: _____ am/pm

6 Details of craft to be used in access: _____

7 Number of passengers: _____

Conditions

8 The Permit Holder will make good at their own expense any damage caused by them to any property of Shotover Jet Limited in the course of this access.

9 The Permit Holder indemnifies Shotover Jet Limited from all loss harm or damage however sustained which arises from their access and against any action, claim, injury, damage or loss whatsoever arising in the course of access pursuant to this permit provided that the permit holder shall not indemnify Shotover Jet Limited in respect of any loss harm or damage sustained as a result of any negligence on the part of Shotover Jet Limited.

10 The access shall be at the Permit Holder's risk.

11 The Permit Holder completed the pre-requisite safety briefing on the ___ day of _.

12 The Permit Holder shall comply with the safety briefing procedures and any instruction given to them by any agent of Shotover Jet Limited.

13 A breach of these conditions or any applicable rule or law may result in this permit being revoked and the Permit Holder prosecuted.

14 Shotover Jet Limited will not interfere with or prevent the full use or enjoyment of the access granted by this permit.

Signed: _____ Signed: _____

for Shotover Jet Limited

Permit Holder

Date: _____ Date: _____

Personal Identification Number: _____