

QLDC Council  
28 July 2016

Report for Agenda Item: 10

Department: Finance & Regulatory

Navigation Safety Bylaw – amendments

Purpose

To consider the amalgamation and simplification of the Navigation Safety Bylaw 2014 and the Waterways and Ramp Fees Bylaw 2014.

Executive Summary

The report recommends to the combination of the current Navigation Safety Bylaw and Waterways and Ramps Fees Bylaw. The combined Bylaw removes the need for a maritime structure permit and simplifies the requirements regarding moorings and waterways activities.

The report also provides the fees for Commercial activities and moorings.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Approve** the proposed amendments of the Navigation Safety Bylaw and Waterways and Ramp Fees Bylaw for public consultation.
3. **Approve** the proposed fee schedule for public consultation.
4. **Direct** that a review of the fees and charges for maritime structures is undertaken, to develop a single consistent process, with fair and reasonable charges reflecting the size and location of the maritime structure, to be reported back to Council by December 2016.
5. **Appoint** three councillors to hear and consider the submissions on the proposed amendments of the Navigation Safety Bylaw and Waterways and Ramp Fees Bylaw, and recommend to Council the form of the amendments to the Bylaws to be adopted.

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18/07/2016

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18/07/2016

## Background

- 1 On 26 June 2014, Council resolved to adopt the Waterways and Ramp Fees Bylaw <http://www.qldc.govt.nz/assets/Uploads/Council-Documents/2014-Full-Council-Agendas/26-June-2014/Item-07/7-Waterways-covering-report.pdf> . This Bylaw set fees and implemented controls regarding moorings, launching vessels, maritime structures and waterways activities. This Bylaw commenced on 1 October 2014.
- 2 Following the implementation of the Waterways and Ramp Fees Bylaw, Council received feedback from customers expressing concern and frustrations regarding the various aspects including the fees structure, launch permit periods and the mooring renewal process.
- 3 Council requested that the Waterways and Ramp Fees Bylaw be reviewed to address these specific concerns identified.
- 4 On 18 December 2014, Council adopted the Navigation Safety Bylaw respectively <http://www.qldc.govt.nz/assets/Uploads/Council-Documents/2014-Full-Council-Agendas/18-December-2014/Item-6/6-Navigation-Safety-Bylaw-covering-report.pdf> which dealt with safety controls within the Queenstown Lakes District navigable waterways.
- 5 The Navigation Safety Bylaw commenced on 28 April 2016, following the notification that the associated regulations to enable the enforcement of this Bylaw had not been progressed by the Ministry. This report was publicly excluded to avoid prejudice to measures protecting the health and safety of members of the public, as this meant we cannot current enforce the Bylaw through infringements, and would have to prosecute for each offence.
- 6 During the time between the adoption of the Navigation Safety Bylaw and its commencement, there have been some additional aspects that have been brought to Council's attention that would improve safety aspects and improve the community's understanding of the Navigation Safety Bylaw requirements. These matters would need to be consulted on following the special consultative procedure.
- 7 This report is reflects the recommended amalgamation of the two Bylaws, to simplify processes and to improve the information for the community to promote self-compliance with the Bylaw requirements e.g. through the provision of an information booklet, improved maps and signage.

## Comment: Waterways and Ramp Fees Bylaw

- 8 Following the implementation of the Waterways and Ramp Fees Bylaw, there were concerns expressed from the community regarding:
  - a) The fees charged for the administration of the application of \$120 per private mooring, in addition to the mooring permit fee (currently \$380.00);
  - b) Mooring fees being charged every two years rather than annually;
  - c) No fee for commercial maritime structures has been set;

- d) Section 10(1)(f) of the bylaw requires the applicant to produce an insurance certificate for craft, the mooring or both the craft and the mooring;
  - e) No fee for commercial activity permits has been set;
  - f) Launch permits were issued for the financial year rather than 12 months i.e. from the date of issue.
- 9 A report to Council on 24 September 2015 outlined these issues, with recommendations to address these. However, during the Council meeting, it was determined that there were other concerns regarding this Bylaw that needed to be considered, which included the simplification of the Bylaw and the fees being charged.
- 10 The development of this Bylaw has caused confusion and frustration to our customers, and it is proposed that this Bylaw is rescinded with the following aspects included into the Navigation Safety Bylaw.

### Mooring Fees

- 11 It is proposed that the mooring fees will be changed from every two years to an annual fee, to ensure a consistency with all other fees charged. This fee will include any administration charges, as well as the charge to offset the costs of managing the waterways, as set in the financial policy.
- 12 The mooring fees are proposed to be the same for commercial operators as they are for private mooring owners, as there are no additional benefits to the business than a private owner.
- 13 There are currently 272 private moorings and 17 commercial moorings.
- 14 The proposed fees are \$250 (including GST) annually for private or commercial moorings, as there is no difference in the work necessary regarding the administration or enforcement. These fees have been simplified in the proposed fee schedule.

### Waterways Information

- 15 The Bylaw also requires mooring owners to meet various standards and specifications, but does not provide any details as to what these are to assist the mooring owner to self-comply.
- 16 It is proposed that a waterways information document would be developed for our customers to provide a better understanding of Council requirements of having a mooring, how to maintaining it, the transfer of ownership, details of who can inspect a mooring (i.e. what a competent person is, and who can inspect a mooring) and a template of the documentation to be completed by a competent person, to confirm a mooring meets the necessary standards.
- 17 This document is currently being developed and will be available for customers when the amended Bylaw is completed for consideration by Council.

### Mooring Insurance

- 18 The Bylaw required the mooring owner to obtain insurance for the craft, mooring or both. The intention was to cover costs to remove a sunken craft attached to the mooring. However, the wording in the Bylaw requires owners who don't have a boat to insure the mooring too.
- 19 This requirement has caused concern, as some customers have not been able to insure their moorings, and have questioned this requirement.
- 20 It is proposed that the requirement for insurance for a mooring or craft is removed, as the risk of an owner not wanting to remove their sunken craft is very small, and is an un-necessary burden on the mooring owner.

### Maritime Structures

- 21 The definition of a maritime structure reflects private, commercial and Council owned or controlled structures, all of which require a permit i.e. a maritime structure permit.
- 22 The Navigation Safety Bylaw uses a slight variation on this term for a commercial permit i.e. Maritime Structure (Commercial) Permit, which causes confusion, and has been deleted to have one consistent term.
- 23 There are currently inconsistencies on how these structures are dealt with across the district, as some have not been charged any fee (as no fee has been set), some have lease agreements (8 of the 31), others have a licence to occupy.
- 24 It is recommend that an initial fee is established, equal to that of the current private fees, to enable a fair and reasonable charge to be applied initially.
- 25 It is further recommended that a review of the fees and charges for maritime structures is undertaken and one system is utilised i.e. a lease agreement, with the cost of the each lease reflecting the size of the structure and the location e.g. the cost of the jetty in Queenstown Bay would be more than a jetty of the same size in Kingston.
- 26 Any permits issued under the current Bylaw to date, are valid until their expiry date, after which these will be dealt with under the regime.

### Commercial Activity Permits/ Commercial Vessel Licence

- 27 The need for a Commercial Activity Permit was established for businesses using a Council controlled/ Council owned maritime structure.
- 28 A Commercial Vessel Licence was established, to address commercial operations that are not covered by another safety system i.e. Maritime New Zealand, to enable an inspection by the Harbourmaster to be undertaken.
- 29 Following the funding review, Council requested an investigation in to a broader based 'waterways fee' to enable the increased recovery of a proportion of the costs of the enforcement of waterways activities by the Harbourmaster, from boat owners using the waterways.

- 30 It is proposed to combine these two systems that have demands on the Harbourmaster service, with one term (Commercial Vessel Licence) and one fee for commercial operators of \$1000 per business, which includes the ability to use a public wharf or jetty to embark and disembark passengers for 10 minutes and the use of any public ramp or launch facility.
- 31 The Bylaw also introduces a consistent system for a business that wishes to occupy a Council controlled or Council owned jetty, wharf or foreshore for more than 10 minutes to be able to do so through the conditions of the agreement and a set fee.
- 32 It is recommended that a separate report is prepared for Council in December from Council's Property Manager, which determines the fee regime for this activity across the district and an implementation plan.

### Launch Permits

- 33 The current Bylaw had introduced a new format for launch permits. These permits were issued for the financial year of 1 July to 30 June. This meant that if a customer purchased a permit after 1 July e.g. in November, this would be valid until 30 June the following year.
- 34 As a result of this format, a number of customers felt that they were not getting the full season i.e. 12 months, which has led to a number of complaints.
- 35 It is recommended that the permit validity times are amended to revert back to 12 months from the date of issue for private users.
- 36 The Bylaw also has different fees for private and commercial use. It is recommended that the commercial fee is combined with the Commercial Vessel Licence, and not a separate fee for the uses of a launch facility/ramp by commercial operators.
- 37 It is also recommended that a variety of permit times are offered for private users to provide options to customers. The permit options and proposed fees are shown in table 2, with all options being from the date of issue.

Table 2 – Proposed Launch Permit Options

<b>Proposed Launch Permit Options</b>	<b>Proposed Launch Permit Fee</b>
Annual	\$50
Six Monthly	\$35
Three monthly	\$25
Daily/Casual	\$5

- 38 The proposed fees incentivise an annual fee, but also provide options for users that may be more suitable e.g. visitors to the district at a higher pro-rata rate, to meet the financial policy following the funding review.

- 39 It is proposed that the permits can be issued at the ramps (by staff during the peak season), purchased from Council or from fuel stations. The permits are placed on the trailers, which can be easily inspected for compliance as they are parked in our car parks.
- 40 Any day permits, are proposed to be issued by a tear off envelope at the launch facilities. Part of the envelope goes into the pay box and half in the car, to enable easy inspection by officers when checking for compliance.

### **Navigation Safety Bylaw Issues/proposals**

#### Life Jackets – 10 Year olds and under

- 41 Currently the Bylaw requires every person on a vessel under six metres to wear a life jacket while underway, and for vessels over six metres to wear a life jacket if instructed to do so by the person in charge of the vessel.
- 42 Following the adoption of the Bylaw, a matter was brought to Council's attention regarding the desire to include a requirement for children aged 10 years and under, to wear a life jacket regardless of the size of the vessel, which had previously been included in information booklets for customers.
- 43 It is proposed include this amendment to the Bylaw for consultation with the community.

#### Access Lanes

- 44 The current Bylaw shows the access lane at The Narrows (the area of Lake Wakatipu between Kelvin Heights Peninsula and Park Street) as 100 metres wide.
- 45 The Harbourmaster has recommended that this be increased in width as a result of the level of activity in the area, to ensure the safety of boaties on the lake.
- 46 To ensure the safety of all users, it is proposed that the access lane is formed across the width of the Narrows, and would start 50 metres from the north and south shores, for a 200m length as depicted in the updated Map 3.

#### Paddle Borders – Life Jackets

- 47 The Navigation Safety Bylaw 2009 included an exemption for paddle boarders from wearing a life jacket. This exemption expired in 2014, which has caused frustration with some paddler boarders, as Council enforce the requirement to wear a life jacket that is easily inflated e.g. one/two actions, rather than the manual waist/ bum bag style, which has three/four actions to inflate that some have been using.
- 48 Paddler boarders have recently provided details of an improved gas assisted waist/bum bag style life jacket, which they are seeking authority from Council to use. This was demonstrated to Council at a recent workshop, where the consensus was that this version was acceptable.
- 49 It is recommended that this version of the life jacket is formally accepted and included in the Bylaw as a minimum requirement for paddle boarders.

## Delegations

- 50 Currently the Bylaw states that the Harbourmaster has the delegation to issue permits, grant exemptions and to enforce the Bylaw. This provides the Harbourmaster with the absolute control to deal with these matters and removes the ability from Council, and does not take into account the ability for other organisations to issue permits e.g. APL.
- 51 It is recommended that the wording be amended to delegate the responsibility to the Queenstown Lakes District Council Chief Executive, who can sub-delegate this role accordingly, to ensure Council retains the control regarding the Bylaw.

## **Additional Information**

- 52 Due to the combining of the two Bylaws, there have been a number of amendments to various clauses, which have been taken from the Waterways and Ramp Fees Bylaw and included in the Navigation Safety Bylaw. There have also been some new clauses to ensure the clauses link to each other in a simplified manner.
- 53 In addition to the amendments to these Bylaws, it is proposed that new signage will be placed at each of Council's launch facilities to ensure consistent messaging of key waterways requirements.
- 54 An information document will be developed to ensure customers understand their responsibilities, the standards to be met to enable self-compliance and the associated fees.
- 55 Boating leaflets for Queenstown and Wanaka will be updated to provide consistent boating information to customers with updated maps.
- 56 Currently, launch fees are collected through Council officers (annual permits) and honesty boxes (day permits). Although these methods will need to continue in this manner currently, officers will explore the options for pay and display machines, apps and mobile technology to facilitate the customer needs for easier payment, which will be reported back to Council as part of the annual plan for 2017-2018.
- 57 At present Council does not have the regulations in place (from Government) to enable the enforcement of the current Bylaw. Following the consultation with the proposed Bylaw, new regulations will need to be developed by Government to enable its enforcement i.e. infringement capability. Officers will liaise with the Ministry for Transport to organise the development of the regulations, to develop regulations by November 2016.

## **Options**

- 58 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.
- 59 Option 1 Status Quo

*Advantages:* No additional work

60 If the Bylaws are not combined, no further work is necessary, until the Bylaws are due for a review in the next three years.

*Disadvantages:* Customer dissatisfaction, confusion, unfair

61 There have been a number of concerns and complaints regarding the identified elements of the Bylaws, which have been confusing for customers on how they can self-comply with the rules. It is also unfair that no fees have been set for commercial operations.

## 62 Option 2 Combine the Bylaws

*Advantages:* Simplification, Customer satisfaction, Fair

63 The proposed amendments and combining of the Bylaws simplify the rules and will provide a fairer regime regarding user pays. The changes may also assist in the customer's satisfaction, as Council will be addressing the complaints raised.

*Disadvantages:* Consultation, additional work

64 In order to combine the two Bylaws, further consultation is required, which takes more officer time.

65 This report recommends **Option 2** for addressing the matter, as the combining of the two Bylaws addresses the issues raised by customers and Council, in addition to providing an opportunity to address some additional issues regarding the Navigation Safety Bylaw e.g. life jackets for paddle boarders, to provide a single Bylaw.

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

66 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because there is community interest regarding our waterways, and the Bylaw impacts on the wider community.

### ***Risk***

67 This matter related 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 our waterways, ramps and jetties.

68 The recommended option considered above mitigates the risk by simplifying the rules regarding the use of our lakes and waterways, by providing simplified rules to enable self-compliance.

### **Financial Implications**

69 The costs associated with the review and combining of the bylaws and associated replacement signage, however these will be met from current budgets.



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

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

- Enforcement and Prosecution Policy
- Navigation Safety Bylaw 2014
- Waterways and Ramp Fees Bylaw 2014
- Finance Policy
- 10 Year Plan

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

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

- Volume 1 – Regulatory Functions and Services

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

73 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 provides simplified requirements, which are applied in a fair manner for users of our waterways;
- 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 ownership or control of a strategic asset to or from the Council.

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

74 The persons who are affected by or interested in this matter are tourists, residents/ratepayers of the Queenstown Lakes district community, iwi, or and any users of our Lakes and navigable waterways.

75 The Council has consulted on the existing Bylaws following the special consultative procedure, in addition to workshops and Council meetings regarding these matters.

76 Following the decision regarding these Bylaws, consultation regarding the proposals (not the whole Bylaw) would need to be undertaken in accordance with the special consultative procedure.

## **Attachments**

- A Navigation Safety Bylaw 2014
- B Waterways and Ramp Fees Bylaw
- C Amended Navigation Safety Bylaw 2014
- D Statement of Proposal
- E Summary of the Statement of Proposal