

Minutes of a Hearing of Submissions on the Amended Queenstown Lakes District Navigation Safety Bylaw 2016 held in the Council Chambers, 10 Gorge Road, Queenstown on Friday 16 September 2016 commencing at 1.00pm

Present

Mayor Vanessa van Uden (Chairperson), Councillor Calum Macleod, Councillor Simon Stammers-Smith

In attendance

Mr Lee Webster (Manager, Regulatory), Mr Marty Black (Harbourmaster) and Ms Jane Robertson (Senior Governance Advisor)

Appointment of Chair

The Governance Advisor called the meeting to order and asked the panel to determine who would chair the meeting.

On the motion of Councillors MacLeod and Stammers-Smith it was resolved that Mayor Vanessa van Uden chair the meeting.

Apologies

An apology was received from Councillor Lawton.

It was noted that the resolution appointing the panel only required three of the four members to be present to hear submissions and make a recommendation.

On the motion of Councillors MacLeod and Stammers-Smith it was resolved that the apology be accepted.

Conflicts of Interest

No conflicts of interest were declared.

1. Hearing of Submissions on the proposed Amendments to the Queenstown Lakes District Navigation Safety Bylaw 2014

Submission of Kawarau Jet Services Holdings Ltd

Kawarau Jet Services Holdings Ltd was represented by Mr James Gardner-Hopkins (Solicitor). Mr Shaun Kelly of Kawarau Jet Ltd also attended.

Mr Gardner-Hopkins detailed the history of actions between the Council and KJet in relation to use of the Kawarau River. He noted that KJet had lodged a resource consent under the previous version of the Bylaw to operate on the Kawarau River and had been engaging with Council on this and working through the process when happening upon the proposal to amend the 2014

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version of the bylaw. He therefore had concerns about the process adopted to amend the bylaw.

Mr Gardner-Hopkins noted that under the previous Bylaw exemptions could be sought on an indefinite basis. Under the new Bylaw, KJet was concerned that any exemption could not be granted for a period exceeding 14 days which effectively prohibited commercial jet boat use beyond the Arrow Confluence.

Mr Gardner-Hopkins commented further on the scope of the review. He noted that the Council was amending who could grant the exemption which he contended opened the door to reconsider the extent of any exemption. He considered that to ensure fairness of process, the fact that there was no robust safety evidence supporting a 14 day exemption, as well as economic considerations meant that there were good reasons to revisit the exemption.

Mr Gardner-Hopkins contended that the provisions of a 'Safety' bylaw needed to be centred on maritime safety and not on other issues. He stated that the restriction limiting an exemption to 14 days was not grounded on safety as there was no objective evidence that it was not safe to permit jet boats beyond the Arrow confluence. He understood that there had been an accident on that stretch of the Kawarau River in the mid-1960s which had motivated the then council to introduce a bylaw which limited access by powered vessels below the Arrow confluence. He stated that the situation had changed significantly in the intervening years and by contrast to the very small boat involved in that accident, the KJet boats were large, twin-engined vessels. Further, the section of rapids was now only a third of what it used to be and the fact that exemptions were sought and granted for that stretch of river to be used for film shoots indicated that it was now deemed safe.

Mr Gardner-Hopkins observed that the provisions could not be inconsistent with the RMA and that by effectively prohibiting the activity it was inconsistent with the District Plan and therefore also the RMA.

Mr Gardner-Hopkins stated that the relief sought by KJet was the ability to obtain an exemption to use the Kawarau River below the Arrow confluence for an indefinite period. Alternatively, he asked the Council to consult and specifically consider the need to prohibit access for safety reasons for all powered vessels. He suggested that an independent study may be needed to demonstrate this.

In reply to a question Mr Webster stated that the decision sought by KJet for an amendment to clause 55 to allow for an exemption to be granted for an indefinite period was outside the scope of the current hearing as the only amendments proposed in the Statement of Proposal were in relation to the proposed amalgamation of the bylaw with the Ramp Fees Bylaw.

Submission of Paul van der Kaag

Mr van der Kaag stated that the type of life jacket allowed under the bylaw should be limited to those on the Maritime NZ and NZSUP list only. He noted that there were four bum bag type lifejackets approved by Maritime NZ and

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NZSUP which all self-inflated from the pouch so there was no reason why the Council should not accept them.

He added that it was also a recommendation from Maritime NZ and NZSUP that Paddle Boarders should be required to wear a leash that attached them to their board and this should be included in the bylaw.

Mr Webster noted that personal flotation devices were excluded if they had to be manually removed from a pouch to inflate, but he would support inclusion of these alternatives if it was determined that they did not have to be removed.

The meeting adjourned at 1.43 pm and reconvened at 1.49pm

Deliberations

There was discussion about whether inclusion of a leash for paddle boarders was within scope and able to be considered. Mr Webster agreed that it concerned the safety of individuals using a stand-up paddle board and whilst it was not within the scope of the consultation, he believed that the risk of including provisions was low, particularly as it was a sensible suggestion and closely linked to user safety.

The panel considered that it was also sensible to uphold the submissions which suggested that the bylaw adopt the lifejackets approved by MNZ and NZSUP.

There was further discussion about the approved lifejackets listed in the bylaw. Mr Webster agreed that it would simplify matters if the bylaw could simply refer to the standards and the Maritime NZ list, provided that the flotation device was able to be inflated without having to be taken out of a bag. Mr Black advised that the cold water in this region necessitated automatically inflating flotation devices. Mr Webster believed however that what was sought in submissions regarding life jackets was already covered by the current text in the bylaw and again he considered that such a change was out of scope of the current consultative process.

In reply to a question, it was confirmed that 'vessel' did not include a surf board which was exempt because users generally wore a wetsuit which provided buoyancy. The thickness of wetsuit was not specified but this rule corroborated maritime rules which also had this exemption.

It was agreed that that the word 'harbourmaster' should be reinstated wherever it had been removed from the bylaw. It was noted that the matter of who issued exemptions was in scope and was as a result of combining the bylaws.

Consideration was given to the KJet request to amend clause 55 to provide an exemption to use the Kawarau River for an indefinite period. The Mayor considered that this request was out of scope, adding that KJet's resource consent application and the desire to amend the bylaw were two separate processes. The panel also noted that the decision not to permit indefinite use

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of the Kowarau River below the Arrow Confluence by powered vessels was due to safety concerns.

Consideration of other issues

Mr Webster advised that legal advice had been sought on the proposal to combine the bylaws and the advice had highlighted a drafting error in 36(1) which stated that the clauses applied to 'any vessel not subject to the Maritime Rules...' This was anomalous as all vessels operated under Maritime Rule. He stated that there were implications of the error on the licensing requirements for commercial activities. Further, correcting this mistake now would be ultra vires as it was beyond the ability provided by the Local Government Act 2002 to correct a minor error.

Conclusion

The Mayor stated that based upon the hearing and deliberations the panel could either recommend the adoption of the amended bylaw as it stood or recommend that it not be adopted and that the Council seek an immediate full review of the bylaw.

Mr Webster detailed the proposed timeframe if the panel was of a mind to direct a full review. He stated that a draft bylaw could be presented to the November Council meeting, with consultation taking place through December and January, a hearing in February with final approval of the bylaw in March 2017. In the meantime, the two existing bylaws would remain in place. If the panel chose to take this way forward, all submitters would be written to advising of this course of action and the planned approach. Councillor MacLeod suggested that this communication also include anyone who had previously submitted on the bylaw.

In the meantime it was agreed that contact needed to be maintained with the Ministry of Transport stressing the importance of approving the regulations without delay.

On the motion of Councillors MacLeod and Stammers-Smith it was resolved that the hearings panel recommend to Council:

- 1. That the Amended QLDC Navigation Safety Bylaw 2014 not be adopted; and**
- 2. That the Council recommend to the incoming Council that a full review of the Navigation Safety Bylaw and Ramp Fees Bylaw be undertaken as soon as practicable.**

The meeting concluded at 3.07pm.