

QLDC Council
28 September 2017

Report for Agenda Item: 7

Department: Finance & Regulatory

Navigation Safety Bylaw review

Purpose

To consider the proposal to commence a special consultative procedure in relation to the proposed Navigation Safety Bylaw 2017 (**proposed bylaw**) and revocation of Waterways and Ramp Fees Bylaw 2014 (**Waterways bylaw**) and Navigation Safety Bylaw 2014 (**current bylaw**).

Executive Summary

- 1 Council staff have completed an internal review of the Waterways Bylaw and the current Navigation Safety bylaw. The objective of the review is to update existing navigation safety controls to ensure greater consistency with the requirements of the Maritime Transport Act 1994 (**MTA**) and maritime rules, reduce duplication, remove controls that are no longer required, and to simplify regulation where appropriate.
- 2 This report recommends that the Council commence a special consultative procedure in relation to the proposal to adopt the proposed Navigation Safety bylaw and revoke both the current Navigation Safety bylaw and Waterways bylaw. The proposed bylaw removes duplication and redundant provisions within the current bylaw, improves consistency with the MTA, and rationalises the waterways permitting system to make it easier for the Council to implement and the public to understand. It is proposed that some of the provisions from the Waterways bylaw are to have continuing effect (eg. mooring permits) by incorporation within the proposed bylaw, and others are to be revoked. It is also recommended that the Council commence consultation regarding the proposed maritime fees and charges, which is intended to replace the fees applicable under the current bylaws.

Recommendation

That Council:

1. **Note** the contents of this report;
2. **Approve** the commencement of the special consultative procedure in relation to the proposal to:
 - a. adopt the proposed Navigation Safety Bylaw 2017 ;
 - b. revoke the Waterways and Ramp Fees Bylaw 2014;
 - c. revoke the Navigation Safety Bylaw 2014; and

- d. adopt the proposed maritime fees and charges.
3. **Appoint** three Councillors [to be named] to hear and consider the submissions on the proposal to:
- a. adopt the proposed Navigation Safety Bylaw 2017 :
 - b. revoke the Waterways and Ramp Fees Bylaw 2014;
 - c. revoke the Navigation Safety Bylaw 2014; and
 - d. adopt the proposed maritime fees and charges.

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13/09/2017

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Background

- 1 In 2015, the Council initiated a review of the Waterways Bylaw to determine how to resolve issues with the implementation of the waterways permitting system in the District. The issues identified included: unnecessary complexity in permit types and processing requirements, duplication of fees and the inflexibility of the charging timeframe.
- 2 During 2016 the Council carried out a special consultative procedure regarding a proposal to substantially simplify the waterways permitting system by incorporating the Waterways Bylaw within the current bylaw. In the course of the special consultative process the Council identified that a more comprehensive review of the current bylaw was warranted.
- 3 On 6 October 2016, the previous Council resolved to recommend to the incoming Council (after the election) to carry out a full review of the current Navigation Safety bylaw and the Waterways Bylaw. The objective of the review is to update existing navigation safety controls to ensure greater consistency with the requirements of the MTA and maritime rules, reduce duplication, remove controls that are no longer required, and to simplify the bylaw where appropriate.
- 4 Council staff have completed an internal review of the current Navigation Safety Bylaw and the Waterways Bylaw, in consultation with the Harbourmaster and Deputy Harbourmasters. Internal meetings have occurred with staff and contractors responsible for overseeing the waterways permitting system under the Waterways Bylaw. A copy of the proposed Navigation Safety Bylaw has also

been provided to Maritime New Zealand for comment, although no feedback has been provided at this stage.

Comment

- 5 Navigation safety is regulated through the adoption of navigation safety bylaws under the MTA. These bylaws make provision both for nationwide rules relating to navigation safety¹, and for rules to address specific local navigation safety issues, within the legislative framework of the MTA. The last comprehensive review of the Council's Navigation Safety Bylaw occurred in 2014.
- 6 Following an internal review of the Waterways Bylaw in 2016, the Council consulted with the public regarding a proposal to overhaul and consolidate the Waterways permitting system and incorporate it within the current bylaw (Navigation Safety Bylaw 2014). The Council also consulted with the public regarding targeted amendments to navigation safety rules within the current bylaw (eg. excluding certain life pouches from the lifejacket definition, altering the location of the Lake Wakatipu access lane, and requiring children under the age of 10 to wear lifejackets on large vessels).
- 7 In the course of the consultation process, Council staff identified that a comprehensive review of the bylaw was necessary to improve consistency between the current bylaw and maritime rules, and to remove rules that were either redundant or duplicated elsewhere.

Navigation Safety Bylaw 2014

- 8 The Harbourmaster and Council staff consider that most of the existing rules under the current bylaw are appropriate and effective in addressing navigation safety issues within the District. However, a number of changes to the current bylaw are proposed to improve consistency with the provisions in the MTA and Maritime Rule 91. The proposed bylaw does not include an amendment to the lifejacket definition to exclude certain life pouches, which was considered during the last review process. A definition of lifejacket consistent with the definition used in the Maritime Rules is preferred, which will leave decisions regarding compliance of new products with applicable standards to Maritime New Zealand. Council staff have also identified some rules within the current bylaw that are redundant, or contain requirements relating to specific activities that are already effectively regulated elsewhere.
- 9 A table providing a comparison between the current Navigation Safety Bylaw 2014 and the proposed Navigation Safety Bylaw 2017 is set out in **Appendix 5** to the statement of proposal. The table is not exhaustive, but provides an overview of the key changes identified by Council staff and the Harbourmaster.
- 10 The proposed bylaw aims to scale back or revoke parts of the current bylaw which are more appropriately covered under the MTA. It is also proposed to develop a Navigation Safety information document which will incorporate technical and administrative requirements, such as application considerations, permit terms and conditions, processing requirements and application forms.

¹ Maritime Rules 91 – Navigation Safety Rules.

This document will remove the need for much of this detailed content contained in the current bylaw. Similarly, fees associated with the bylaw will no longer be set out in the bylaw, but will be prescribed following a consultation process in accordance with the Local Government Act 2002 (see maritime fees section below).

- 11 The current bylaw imposes rules affecting the operation of commercial vessels that are already subject to specific maritime rules (eg parasailing, white water boarding). Council staff propose to replace existing detailed requirements on commercial operators with a general obligation to carry out specific water based activities (eg whitewater boarding) in compliance with the applicable maritime rule for that activity (eg. Maritime Rule 81 – Commercial Whitewater Rafting). For consistency, the proposed bylaw will also require that jet boat operators meet the applicable maritime rules. Commercial operators will continue to be subject to specific local rules that apply to all vessels (for example, speed limits).
- 12 The Harbourmaster has recommended minor modifications to existing access lanes, reserved areas, and rules affecting river users, to address the changing navigation risk profile in these locations.

Waterways and Ramp Fees Bylaw 2014

- 13 Council staff propose to incorporate most of the amendments developed during the last review of the Waterways Bylaw. Those amendments are intended to facilitate a simpler waterways permitting system by rationalising existing permit types, fee structures, and processing requirements in a manner that will simplify the Waterways permitting system. The changes will still allow the Council to recover the costs of providing and maintaining the district's waterways, facilities and services from users. A summary of the key changes are set out below.

Waterways permit (under Waterways Bylaw)	Proposed replacement (under Navigation Safety Bylaw)
Maritime Structure Permit (Commercial)	Revoked, and replaced by existing processes requiring Council permission through leases.
Maritime Structure Permit (Non-commercial)	Revoked, and replaced by existing processes requiring Council permission through leases.
Commercial Activity Permit	Revoked.
Ramp Permit	Revoked and replaced through fees and charges set in accordance with the MTA and LGA.
Mooring Permit	Retained under the proposed Navigation safety Bylaw 2017.

- 14 The current system of ramp / launch permits is not the most efficient means of ensuring users contribute to the maintenance and upkeep of Council ramps and launch facilities, as it is difficult to administer consistently across the district. Staff propose to revoke the existing ramp / launch permit, and replace it with paid parking areas around all Council ramps / launch facilities in the district. A separate work stream is being developed to investigate the implementation of the paid parking areas, which will ultimately require allocation of funds and amendments to the Council's Traffic and Parking Bylaw 2012. In the meantime, charges will be set for the use of Council ramps and launch facilities in accordance with the Local Government Act 2002 (see maritime fees section below).
- 15 Mooring permits will be retained, but will be incorporated within the proposed bylaw, rather than a separate Waterways Bylaw. The proposed bylaw reduces the number of prescribed requirements regarding matters such as the content of applications for moorings, terms and conditions, and processing requirements. Instead the Council proposes to prescribe administrative requirements in a Navigation Safety information document that can be adopted or amended by resolution of Council.
- 16 It is appropriate to require that members of the public seek Council approval to occupy and/or use the Council's maritime structures. The proposed clause gives the Council greater flexibility as to the form its approval to occupy or use Council maritime structures will take.

Maritime Fees

- 17 If the special consultative procedure for the proposal is commenced, Council staff consider that it would be logical to also seek public feedback regarding the proposed maritime fees and charges for the use and occupation of Council maritime assets and administrative fees associated with the proposed bylaw. Staff consider that maritime fees should be set by Council resolution following consultation with the public under the Local Government Act 2002, rather than within the proposed bylaw. The reason for this is that the proposed maritime fees and charges (below) may need to be revisited after current permits expire on 30 June 2018. Specifying fees by Council resolution will enable the Council to update the fees without amending the proposed bylaw.
- 18 Staff recommend seeking public feedback regarding the proposal to adopt the following maritime fees and charges by Council resolution:

1. Fee for use of launch facilities / ramps

Duration	Proposed fee (including GST)
Annual	\$50 (Recreational vessels) \$70 (Commercial vessels)
Daily/Casual	\$5 (any vessel)

2. Council permission to occupy maritime structure

Size of structure	Proposed fee (including GST)
Up to 15m ²	\$115
15m ² to 28m ²	\$230
28m ² up to 56m ²	\$460
56m ² up to 84m ²	\$750
84m ² and over	\$920

3. Mooring permits

Duration	Proposed fee (including GST)
Annual fee	\$250
Application / renewal fee	\$200

4. Other fees

Description	Proposed fee (including GST)
Annual fee for commercial vessel licence	\$1,000
Application for special event exemption	\$120 per hour, plus actual costs
Application for bylaw exemption	\$120 per hour, plus actual costs
Application for speed uplifting	\$120 per hour, plus actual costs

Options

19 Option 1 Do nothing

Advantages:

20 If the Council does nothing, the current bylaw and Waterways Bylaw will continue to have effect at least until the next statutory review of the Waterways Bylaw in 2019. The advantage of this option is it does not require the Council to undertake a special consultative procedure this year, or to incur costs updating its internal

systems. The Council will continue to receive fees in relation to the various permits under the waterways permitting system.

Disadvantages:

- 21 The disadvantage is that the Council will be responsible for implementing the existing provisions of the current bylaw despite the inconsistency of parts of the current bylaw with maritime rules. The consistency issues may delay the development and passage of updated infringement regulations to facilitate effective enforcement of local navigation safety rules.
- 22 If the Council does nothing, the existing waterways permitting system will continue despite concerns regarding the workability and fairness of some aspects of the system. The Council will need to improve public awareness of the Waterways Bylaw. The costs of administering and enforcing a number of different permits and fees will continue to fall on the Council. These matters will remain unresolved, and will still need to be addressed in the next review in 2019.
- 23 **Option 2 Commence special consultative procedure in relation to:**
 - a. **proposed Navigation Safety Bylaw 2017**
 - b. **revocation of Navigation Safety Bylaw 2014 and Waterways and Ramp Fees Bylaw 2014**
 - c. **proposed maritime fees and charges**

Advantages:

- 24 The proposed bylaw will effectively achieve greater consistency with the MTA and applicable maritime rules, particularly Maritime Rule 91 (Navigation Safety). Further, the proposed bylaw substantially reduces duplication, and removes redundant clauses that deal with matters more effectively regulated elsewhere. The modifications proposed by the Harbourmaster to specific rules in the current bylaw are intended to meet changes to the existing maritime risk profile applicable to specific waterways, or water based activities.
- 25 The revocation of the Waterways Bylaw and incorporation of mooring permit regime within the proposed bylaw will achieve the objective of reducing the complexity of the current waterways permitting system. The Council considers that these changes will promote better public understanding of the process and costs associated with using Council infrastructure, and will make compliance easier. Council staff consider that it is more efficient to consult on maritime fees at the same time as the proposed bylaw, rather than conducting a separate consultation later.

Disadvantages:

- 26 Some members of the public may be unhappy about changes to existing requirements within the current bylaw and Waterways Bylaw. Council staff anticipate that any particular concerns with the changes can be addressed in the course of the special consultative procedure. An effective system for recovering user fees in relation to launch facilities and ramps must be implemented promptly

after the revocation of the Waterways Bylaw in accordance with the Local Government Act 2002.

- 27 The removal of specific clauses with the current bylaws that set out technical and administrative detail of application processes arguably reduces the transparency of the process. The Council can rectify this by issuing clear policy guidance to the public as to how the application process functions, what information is required, what fees apply, and what conditions are to be imposed.
- 28 This report recommends **Option 2** because the proposed bylaw will remove duplication and redundant provisions within the current bylaw, improves consistency with the MTA, and rationalise the Waterways permitting system to make it easier for the Council to implement and the public to understand.

Significance and Engagement

- 29 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because there is community interest regarding the safe use of the District's waterways, and the regulation of infrastructure under the waterways permitting system.

Risk

- 30 This matter relates 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 the Council's waterways, ramps and jetties.
- 31 The recommended option considered above mitigates the risk by rationalising the rules regarding the use of waterways in the district, by providing simplified rules to facilitate self-compliance.

Financial Implications

- 32 It is anticipated that the costs associated with the review and combining of the bylaws and associated replacement signage can be met from current budgets and the current fees and charges remain in place.

Council Policies, Strategies and Bylaws

- 33 The following Council policies, strategies and bylaws were considered:

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

- 34 If following consultation, the proposed bylaw is adopted, the current bylaw and Waterways Bylaw will be revoked. It is envisaged under the proposed bylaw that a policy can be adopted by Council to address certain technical and administrative requirements set out in the proposed bylaw. The new policy is

likely to update and supersede the content of the current Jetties and Moorings Policy.

35 This matter is included in the Annual Plan under Section 3 – Regulatory Functions and Services.

Local Government Act 2002 Purpose Provisions

36 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 consolidates and simplifies navigation and waterways regulation;
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies apart from the Jetties and Moorings Policy, which will require updating if the proposed bylaw is adopted; 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

37 The persons who are affected by or interested in this matter are residents and ratepayers of the Queenstown District, iwi, tourists, and any other users of the District's lakes and waterways.

38 To date, Council staff have consulted with the Harbourmaster and Deputy Harbourmaster to identify matters within the current bylaw that require updating, and to address specific concerns they have with the current bylaw. A copy of the proposed bylaw has also been provided to Maritime New Zealand, although they are yet to provide any feedback. Internal meetings have also been carried out between Council staff and contractors responsible for overseeing the waterways permitting system under the Waterways Bylaw.

39 Council staff recommend that the Council commences the special consultative procedure regarding the proposed bylaw, which will ensure that members of the community are appropriately consulted, and have an opportunity to provide feedback regarding the proposal. Council staff also intend to notify submitters who participated in the most recent bylaw review processes in 2014 and 2016, to advise that a special consultative procedure is underway.

Legal Considerations and Statutory Responsibilities

40 The power to make the proposed bylaw is set out in section 33M of the Maritime Transport Act 1994. The Council is required to carry out a special consultative procedure in accordance with the requirements set out in the Local Government Act 2002.

- 41 The power to set maritime fees and charges is set out in section 33R of the Maritime Transport Act 1994. The Council is required to comply with its obligations for setting fees in accordance with s150(3) – (6) of the LGA, which includes giving effect to the principles of consultation. Compliance with these principles is achieved by consulting on the maritime fees during a special consultative procedure.

Attachments [Presented separately]

- A Statement of Proposal for proposed Navigation Safety Bylaw 2017 and revocation of Navigation Safety Bylaw 2014 and Waterways and Ramp Fees Bylaw 2014 (including):

APPENDIX 1 – Proposed Navigation Safety Bylaw 2017

APPENDIX 2 – Current Navigation Safety Bylaw 2014

APPENDIX 3 – Current Waterways and Ramp Fees Bylaw 2014

APPENDIX 4 – Summary of the Statement of Proposal

APPENDIX 5 – Table comparing proposed Navigation Safety Bylaw 2017 and current Navigation Safety Bylaw 2014

APPENDIX 6 – Proposed Maritime Fees and Charges