

**QLDC Council
26 June 2014**

Report for Agenda Item 8

Department:

Legal and Regulatory

8. Navigation Safety Bylaw 2014 – Proposed Bylaw Review

Purpose

- 1 To approve the proposed Navigation Safety Bylaw 2014 to enable the special consultative procedure to commence.

Executive Summary

- 2 A review of the Navigation Safety Bylaw has been undertaken to ensure the bylaw meets the needs of our community.
- 3 There have been some minor changes to definitions and duties, however the significant proposals are to require the wearing of a life jacket on all vessels, under 6 metres including paddle boarders and for the delegation of an exemption to the bylaw to be provided to the Harbourmaster.
- 4 The remaining proposed amendments modernise the language used and follow targeted consultation with stakeholders to assist in protecting the safety of users.

Recommendation

- 5 *That Council:*
 - a. **Approve** the proposed Queenstown Lakes District Council Navigation Safety Bylaw 2014 for public consultation;
 - b. **Appoint** an officer to liaise with Central Government to update the offences for the proposed Queenstown Lakes District Council Navigation Safety Bylaw 2014 and the Queenstown Lakes District Council Fees Bylaw 2014 ;
 - c. **Approve** the proposal that life jackets must be worn at all times on vessels under 6 metres;
 - d. **Approve** the delegation to the Harbourmaster to authorise exemption applications of the bylaw;
 - e. **Agree** to appoint three councillors to hear and consider the submissions on the proposed Queenstown Lakes District Council Navigation Safety

Bylaw 2014, and recommend to Council the form of the Bylaw to be adopted.

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12/06/2014

Reviewed and Authorised by:



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12/06/2014

Background

- 6 The Chief Executive's work plan requires a review of Council's bylaws. In undertaking this review it was determined that on 5 May 2009 Council adopted the Queenstown Lakes District Council Navigation Safety Bylaw 2009, which was made under section 68B of the Local Government Act 1974.
- 7 The responsibility of waterways safety was delegated to Queenstown Lakes District Council (QLDC) from the Regional Council by virtue of section 17(1) and 17(4) of the Local Government Act 2002 (LGA).
- 8 In October 2013 the Maritime Transport Act 1994 (MTA) was amended, which resulted in the transfer of the empowering provisions of local authorities regarding navigation safety from the LGA to the MTA. However, there are some enforcement provisions that follow both the LGA and the MTA.
- 9 The Maritime Transport Act 1994 provides the ability to develop a bylaw for specific purposes relating to navigation safety.
- 10 Council is also able to make a bylaw under section 145 of the LGA2002 to protect the area; protect the health and safety of people who may visit the area and protect access to an area.
- 11 The enforcement of the Queenstown Lakes District Council Navigation Safety Bylaw is undertaken through the Local Government (Infringement Fees for Offences – Queenstown Lakes District Navigation Safety Bylaw 2009) Regulations 2009.
- 12 If Council resolves to adopt the proposed Navigation Safety Bylaw 2014 (and the Waterways and Fees Bylaw), this will require consultation with central government to ensure the infringement offences are updated in the Local Government (Infringement Fees for Offences – Queenstown Lakes District Navigation Safety Bylaw 2009) Regulations 2009.

- 13 Section 155(1) of the LGA2002 requires that, before commencing the process for making a bylaw, we need to determine if a bylaw is the most appropriate way of addressing a perceived problem.
- 14 Section 155(2) of the LGA2002 states that, if a bylaw is the most appropriate way of addressing the perceived problem, we need to determine if the proposed bylaw is the most appropriate form of bylaw.
- 15 Finally, Section 155(3) of the LGA2002 requires that no bylaw may be made which is inconsistent with the New Zealand Bill of Rights Act 1990.

Comment

Issues

- 16 Following discussions with the Harbourmaster and targeted consultation from stakeholders, the following issues were identified as issues, which have been considered in the proposed bylaw:
 - Life jackets to be worn on all vessels less than 6 metres
 - Definition details e.g. method for measuring length overall of a vessel
 - Self-compliance in relation to the bylaw e.g. regarding use of access lanes
- 17 Additional issues that were raised during consultation, that are addressed by other methods:
 - Enforcement: An increase in the frequency of on-water enforcement activity to encourage compliance with Maritime Safety Rules and the Bylaw is an operational matter and will be addressed through a new enforcement strategy and a targeted enforcement programme during peak use periods.
 - Information and maintenance: The improvement of lighting, signage and other navigation assets in the region is an asset management function and also forms part of the Council's enforcement strategy to ensure people understand the rules.
 - Education: Requiring the compulsory education, training and licensing for persons in charge of vessels is not required by the Maritime Transport Act 1994, therefore a bylaw to this effect would be unlawful as it would impose duties on persons in charge of a vessel that go beyond the scope of the empowering legislation.
 - Fees: The Administration of a more equitable fees and charging system for commercial operators is a matter that will be considered under a separate bylaw (Queenstown Lakes District Waterways and Fees Bylaw 2014) to ensure a fair user payers regime.

Outcomes Sought

18 The purpose of the bylaw is not to replace the obligations of our community under national legislation, but to address the local issues on our waterways and to contribute to achieving the following regulatory functions and services to achieve our desired community outcomes:

- Encouraging self-compliance;
- Protecting the interests of the district; and
- Cost effective enforcement of regulatory objectives

Options

19 In considering if a bylaw is the most appropriate way of addressing the issues, we have considered other methods of addressing these concerns, as an alternative to a bylaw:

- No enforcement
- Education
- Maritime Safety enforcement
- Status quo
- Amended Bylaw

No enforcement

20 As a number of the issues raised are not addressed through the MTA and there are serious navigation safety matters, this is not considered a viable option.

Education

21 Public education is useful and necessary tool, which is used in various enforcement situations. However, this method has been found to be a less effective method of addressing the issues when used as a stand-alone tool, but is a positive additional tool when utilised with regulatory and enforcement provisions.

Maritime Safety Enforcement

22 The MTA deals with general navigation safety matters. This does not however cover all aspects of issues identified in our community and is therefore not a viable option. The MTA also provides for the ability to develop a Navigation Safety Bylaw to address local issues.

Status quo

23 Following targeted consultation, it is apparent that there are amendments necessary to the existing Navigation Safety Bylaw to ensure the issues in our community are addressed. Consequently, this is not a viable option.

Amended Bylaw (This is the recommended option)

24 As there were amendments identified through targeted stakeholder consultation, the most appropriate manner of addressing the issues of

Navigation Safety is believed to be an amended bylaw through the MTA and the LGA.

Proposed Bylaw Provision Amendments

Part 1 - Administration

- 25 There are a number of amendments to the proposed bylaw to provide clarity of the rules to enable greater self-compliance, in addition to modernising the language used to reflect that of the relevant legislation and to meet standards set by the Office of Parliamentary Counsel.

Clause 6 - Interpretation

- 26 An amendment to the definition regarding the length of a vessel has been included, along with a diagram to facilitate compliance with the lifejacket requirements of the bylaw i.e. the wearing of a life jacket on a vessel under 6 metres.
- 27 The inclusion of a new definition regarding drugs has been made to assist with the issue of people in charge of a vessel under the influence of a mind altering substance causing a risk to themselves and others on our waterways.
- 28 A definition regarding alcohol and intoxication has been included to reflect the purpose of the Sale and Supply of Alcohol Act 2012.
- 29 The definition of the person in charge of a vessel has been included to clarify that responsible boating and that compliance with the bylaw is required of every person in every case.

Part 2 – Navigation and Water activities

Clause 7 - Duties under bylaw

- 30 This is a new clause to clarify who the bylaw relates to and in what capacity, and that every person on board a vessel has a degree of personal responsibility.

Clause 9 – Vessels 6 metres or less in length

- 31 The prevention of people drowning in the cold waters of our lakes and rivers, from not wearing a life jacket is a serious issue. Whilst the number of drowning's is low, this is aided by the current requirement to wear a lifejacket on a vessel of less than 6 metres, and to carry them for all passengers on vessels over 6 metres.
- 32 The proposed bylaw extends the need to wear a lifejacket on vessels such as paddleboards, kayaks and white water boards under 6 metres in length. Whilst there is an argument that the wearing of a life jacket impedes the movement of the individual, there is an equal argument that those who may

fall in to the cold waters of the lakes and fast flowing rivers in our district would have a greater chance of survival wearing a life jacket.

33 The options available regarding this matter are:

- a) To maintain the existing provisions which exempt paddle boarders from wearing a life jacket if within 200 metres of the shoreline, but require the wearing of an ankle tether. This exemption for paddle boarders expires on 1 October 2014 if not previously amended. The exemption from wearing a lifejacket also extends to sailboarders, windsurfers and kite surfers if full body dive suits are worn at all times.
- b) Require that life jackets must be worn at all times on **all** vessels under 6 metres (**This is the recommend option**); or
- c) Specify exemptions that the requirement to wear a life jacket does not apply to certain vessels.

Clause 19 – Near Miss Incident Reporting

34 A new clause requiring a near miss to be reported to the Harbourmaster has been included to provide an opportunity to educate waterways users to comply with the rules following the enforcement strategy.

Part 3 – Access Lanes and Reserved Areas

Clause 30 – Conduct in Access Lanes

35 As a result of a previous unintended omission, a new clause regarding crossing and turning in an access lane has been included to provide clarity to users of these facilities of the rules that apply in access lanes. This clause has also been updated to include impeding other users in access lanes.

Part 4 – Commercial Activities

36 The licensing criteria has been updated to include suitability, experience and reputation of the applicant to assist the Harbourmaster in the enforcement of his duties regarding licences issued to commercial operators. This clause now requires non-powered crafts to obtain a licence.

37 A further clause to reflect the ability for the Harbourmaster to cancel a licence.

Part 5 – Administrative Provisions

38 A new clause to permit the Harbourmaster to provide an exemption to a clause of the bylaw upon receiving a written application has been included, to assist in the operational application of the bylaw. This is currently dealt with by delegation to the Chief Executive, however there are two options:

- a. To retain the Chief Executive's delegation; or

- b. To provide delegation to the Harbourmaster **(This is the recommended option)**

39 In reviewing other similar bylaws, this role has been undertaken by the Harbourmaster as they are the most appropriate person to do so. The bylaw is also implicit that such exemptions cannot be granted if it would be contrary to another enactment. **It is recommended that this function is delegated to the Harbourmaster.**

40 The ability to cancel an exemption has also been included, where the Harbourmaster has reason to believe there is a risk to public health and safety.

Part 6 - Enforcement

41 Infringement offences for breaching the bylaw, and associated penalties must be imposed by regulation¹ (by way of an order in council). The review of this bylaw will require the existing order in council to be updated. The maximum penalty for an infringement offence is \$1,000, and infringement penalties are paid to the Council². As the Ministry of Transport will undertake the work to prepare the order in council, the Council is not required to perform any public consultation on the scope of infringement offences and the penalties to be imposed. The Ministry has been advised of this bylaw review.

Schedule 2 – White Water Boarding

42 This is a new clause, which governs the standard of life jackets to be worn by participants for this activity. This follows the tragic death of Emily Jordan and the Maritime New Zealand (MNZ) investigation, which resulted in MNZ issuing a set of guidelines to operators for life jacket standards.

43 The proposed bylaw establishes the criteria for all operators (new and existing), rather than guidelines to minimise the risks to participants.

Schedule 3 - Upliftings

44 There has been a proposed amendment to clause 10(b) regarding a section of the Clutha river, which has a restriction of the speed until 6pm to be increased to 10pm to reflect daylight savings.

Schedule 4 - Fees and Charges

Fees can be prescribed in a bylaw or as part of a special consultative procedure in respect of a licence. Whilst the licence provision has been in place in the current bylaw, no fee was prescribed or charged.

¹ Section 33O of the Maritime Transport Act 1994

² Section 33Q of the Maritime Transport Act 1994

- 45 The proposed annual fee takes into consideration the time taken for the Harbourmaster to undertake an assessment of the activity to determine safe operation on our waterways.

Schedule 5 – Length Overall of a Vessel

- 46 A new schedule to clearly demonstrate how a vessel is measured has been included to ensure the rules are clear for all users.
- 47 This is an important aspect as this defines when a life jacket must be worn or carried on a vessel.

Navigation Safety Review

- 48 Following concerns regarding the use of the lower Shotover River and the mouth of the Kawarau River, a review of these areas was requested from an independent external waterways consultant to determine if there are any navigation safety matters that need to be addressed.
- 49 The draft report identifies that the safe operation of commercial jet boats must adhere to the Maritime Safety Rule 82, and therefore it is not necessary to include details in the proposed bylaw, and the issues should be addressed in the commercial jet boat operators Safety Operational Plans.

Financial Implications

- 50 The application of a licence fee will assist in meeting the Queenstown Lakes District Council's 10-Year Plan 2012/2022. However, It is not anticipated that this will make a significant change, as this is likely to affect a minor number of operators.

Local Government Act 2002 Purpose Provisions

- 51 Section 10 of the LGA2002 identifies a key purpose of local government is to undertake good-quality regulatory functions in the most cost-effective way.
- 52 Having a Navigation Safety Bylaw regarding the specific issues identified in our community that are not addressed by any other means enables Council to perform its duties in accordance with s.11 of the LGA2002.

Council Policies

- 53 The following Council Policies were considered:
- Policy on Significance: the matters being reported on are not significant as they do not meet the thresholds specified within the policy.
 - Annual Plan/ 10-Year Plan: the proposed bylaw meets the financial criteria to be met.

Consultation

- 54 Commercial operators were contacted earlier in the year to determine what safety navigational issues existed that needed to be addresses, what aspects of the current bylaw were missing or needed to be amended and whether a bylaw was needed or not.

55 The overwhelming response was that a bylaw was needed, with some amendments as discussed in this report.

Attachments

- A Queenstown Lakes District Council Navigation Safety Bylaw 2014
- B Statement of Proposal
- C Summary of the Statement of Proposal