



**QUEENSTOWN  
LAKES DISTRICT  
COUNCIL**

**PROPOSED REVOCATION OF QUEENSTOWN  
LAKES DISTRICT WATERWAYS AND RAMP  
FEES BYLAW 2014**

**PROPOSED AMENDMENT TO QUEENSTOWN  
LAKES DISTRICT NAVIGATION SAFETY  
BYLAW 2014**

**STATEMENT OF PROPOSAL**

## INTRODUCTION

- 1 The Otago Regional Council transferred its maritime bylaw making power to the Council pursuant to section 17(1) and 17(4)(a) of the Local Government Act 2002 (**LGA**) and section 650J of the Local Government Act 1974. The transfer has continuing effect under section 87 of the Maritime Transport Amendment Act 2013.
- 2 The Queenstown Lakes District Council (**Council**) has the power to regulate the placing and maintenance of moorings and maritime facilities under section 33M of the Maritime Transport Act 1994 (**MTA**). The Council can also prescribe fees and charges in respect of land and buildings owned and operated by the Council for maritime-related purposes under s33R of the MTA.

## BACKGROUND

- 3 The Council adopted the Waterways and Ramp Fees Bylaw 2014 (**Waterways Bylaw**) in June 2014 to commence on 1 October 2014 (see **Appendix 1**). On 18 December 2014, the Council adopted the Navigation Safety Bylaw 2014 (**Navigation Safety Bylaw**). The Navigation Safety Bylaw commenced on 28 April 2016.
- 4 The Waterways Bylaw established a permitting system for the use of the District's waterways, facilities, and services (**Waterways permitting system**), and is intended to provide clarity regarding the fee structure applicable. An important objective of the permitting system is to enable the Council to recover from users the costs of providing and maintaining the District's waterways, facilities and services.
- 5 In 2015, the Council initiated a review of the Waterways Bylaw to determine how to resolve issues with the implementation of 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. The Council has also identified additional amendments to existing clauses within the Navigation Safety Bylaw, which the Council proposes to seek feedback on as part of this consultation process.
- 6 The Council have completed their review of the Waterways Bylaw, which included: workshops with councillors, and feedback from the Council's contractors regarding the Waterways permitting system.

## PROPOSAL

- 7 Following the review of the Waterways Bylaw (initiated by the Council in 2015), the Council proposes that (collectively referred to as **the Proposal**):
  - a. The Waterways and Ramp Fees Bylaw 2014 (**Appendix 1**) to be revoked in its entirety.
  - b. The Navigation Safety Bylaw 2014 is amended (see **Appendix 2**) to:
    - i. Incorporate parts of the permitting system under the Waterways Bylaw that the Council proposes to retain, with amendments to rationalise the permitting system, including:
      1. Replacing the existing permits under the Waterways Bylaw with the following permits under the Navigation Safety Bylaw:

Waterways permit (under Waterways)	Proposed replacement (under Navigation Safety)
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Bylaw)	Bylaw)
Maritime Structure Permit (Commercial)	Replaced by <u>Council permission</u>
Maritime Structure Permit (Non-commercial)	Replaced by <u>Council permission</u>
Commercial Activity Permit	No replacement, but person in charge of vessel must have a <u>Commercial Vessel Licence</u> under Navigation Safety Bylaw.
Ramp Permit	Retained, but renamed <u>Launch Permit</u>
Mooring Permit	Retained

2. Removing separate fees for application and renewal of permits.
  3. Providing for the payment of annual charges from the date of permit issue rather than charges fixed to the Council's financial year (June – July).
  4. Replacing clauses from the Waterways Bylaw that specify processing considerations and permit conditions with a clause providing for the Council to specify any administrative requirements by Council resolution.
  5. Replacing the bylaw fee schedule with a discretion to prescribe fees in accordance with the Local Government Act 2002.
  6. Inserting relevant definitions from the Waterways Bylaw (with modifications) to give effect to the amendments.
- ii. Make changes to existing provisions in the Navigation Safety Bylaw, including:
1. Consequential amendments, including:
    - a. the revocation of the Waterways Bylaw;
    - b. the incorporation of new clauses within the Navigation Safety Bylaw referred in paragraph 7)b)i) above;
    - c. Consolidating clause 15 (Use of structures) to simplify controls relating to maritime structures into a single clause;

2. Amend the delegation clause to permit delegation of administrative functions to persons other than the Harbourmaster and Council officers (eg. administrative functions).
3. Amend the definition of lifejacket to exclude lifejacket pouches, which are lifejackets that must be physically removed from the pouch to inflate.
4. Require persons in charge of vessels greater than 6 metres in length to ensure that children on board under the age of 10 years old wear a properly secured lifejacket (unless the owner of the vessel is operating under the Maritime Operator Safety System certification under the Maritime Rules).
5. Relocate the Lake Wakatipu high speed access lane 50 metres out from the shore and widen the access lane from 100 metres to 200 metres.
6. Amend the exemption clause to provide that exemptions may be issued by the Council or its delegate instead of the Harbourmaster.
7. Removing the fee schedule, and replacing with a discretion to prescribe fees in accordance with the Local Government Act 2002.

- c. The Maritime Fee Schedule in **Appendix 4** is prescribed in accordance with section 33R of the MTA.

- 8 The Council is using the special consultative procedure to consult the public regarding the proposed revocation of the Waterways Bylaw, amendment to the Navigation Safety Bylaw 2014, and prescribing maritime fees under the MTA. Section 83A of the LGA allows the Council to carry out the consultation regarding these decisions concurrently. This is appropriate given that the amendments proposed to the Navigation Safety Bylaw, and the new maritime fee schedule, are related to the revocation of the Waterways Bylaw.
- 9 The Council is not proposing to consult on the full content of the Navigation Safety Bylaw. It is seeking input from the public in relation to the Proposal only as summarised above, and set out in the amended Navigation Safety Bylaw (Appendix 2), and proposed Maritime Fee Schedule (Appendix 4).
- 10 This Statement of Proposal has been prepared in accordance with the requirements of sections 83 and 86 of the LGA, and includes:
  - a. The reason for the proposal;
  - b. Consideration of whether a bylaw is the most appropriate way to address the perceived problem;
  - c. Consideration of whether the proposed bylaw is the most appropriate form of bylaw;
  - d. Consideration of any implications under the New Zealand Bill of Rights Act 1990;

- e. A statement that the Waterways and Ramp Fees bylaw 2014 is to be revoked;
- f. A draft of the amended Navigation Safety Bylaw 2014; and
- g. A new Maritime Fee Schedule.

## **REASON FOR PROPOSAL**

- 11 A review of the Waterways Bylaw has been completed by Council officers, including workshops with councillors and feedback from Council's contractors regarding the Waterways permitting system. The Council has determined that it is appropriate to make significant changes to the Council's Waterways permitting system. In summary, the Council proposes to make amendments to the Waterways permitting system to: remove unnecessary complexity in permit types and processing requirements, duplication of fees and inflexibility of the charging timeframe.
- 12 The Council considers that it is no longer necessary to maintain separate bylaws to regulate the Waterways permitting system and navigation safety given the reduction in complexity and deletion of much of the clauses in the Waterway Bylaw. The Council proposes to consolidate clauses from the Waterways Bylaw that are to be retained (with modifications) into a single bylaw instrument, the amended Navigation Safety Bylaw (Appendix 2).
- 13 Council officers consider that the amended Navigation Safety Bylaw will appropriately address the purposes of regulating the use of maritime structures, the placing and maintenance of moorings and maritime structures, and the fees and charges for the performance of administrative functions, in addition to the bylaw's existing purposes. The Council also considers that the amendments to the Navigation Safety Bylaw proposed are the most appropriate form of controls in accordance with the purposes of the Navigation Safety Bylaw.

## **MARITIME FEES**

- 14 The Council is proposing to prescribe maritime fees to reflect the changes to the Waterways permitting system set out in the Proposal above (see Appendix 4). Under the Proposal, the fees currently applicable under the Navigation Safety Bylaw 2014 are to be retained. However, the fees will now be prescribed by Council resolution, rather than in a schedule attached to the bylaw. The Council also proposes to prescribe fees for launch permits and mooring permits set out in the table in Appendix 4. The launch permits allow for different fees depending on how long the permit is required.

## **CONSIDERATION BY COUNCIL UNDER SECTION 155 OF THE LGA2002**

### **Problem definition**

- 15 The Council has identified that some members of the community are having difficulty understanding the Waterways permitting system and are failing to meet the Waterways Bylaw requirements as a result. Particular issues that have emerged include that the Waterways permitting system is unnecessarily complex in terms of permit types and processing requirements, it duplicates fees, and it has an inflexible charging timeframe. These challenges are placing pressure on the Council to spend more resources on public education and enforcement of the Waterways Bylaw to meet the objectives of the bylaw in the District.
- 16 The Council has concluded that it is appropriate to substantially rationalise 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 achieve its core objectives, including the recovery of the costs of providing and maintaining the District's waterways, facilities and services from users.

- 17 The amended bylaw also provides for the Council to prescribe administrative requirements such as application considerations, permit terms and conditions, processing requirements, application forms. This amendment is sought so the Council is not required to amend the bylaw whenever administrative requirements need updating. Similarly, fees associated with the bylaw will no longer be set in the bylaw, but will be prescribed following a consultation process in accordance with the Local Government Act 2002.
- 18 The Council has also identified that modifications to lifejacket clauses within the Navigation Safety Bylaw are also needed. The Council proposes to reinstate the requirement under the former Navigation Safety Bylaw 2009 that children under the age of 10 years old are required to wear lifejackets on vessels over 6 metres in length. The Council has received feedback from the community and the Harbourmaster supporting the reinstatement of this obligation, as a precautionary measure to help prevent drownings of children in the District. Commercial operators who are subject to Maritime Operator Safety System (**MOSS**) requirements will be exempt from this requirement.
- 19 The Council has become aware of a lifejacket pouch available on the market which the Council proposes to exclude from the definition of lifejacket. The lifejacket pouch, which is generally worn by paddle boarders is worn around the waist of the wearer. This product requires the wearer to manually remove the lifejacket from the pouch before the wearer can trigger the lifejacket to inflate. Council has concerns regarding the ability of a wearer to quickly inflate the lifejacket in an emergency situation if it is sealed in a pouch. Given these concerns, the Council considers it is appropriate to expressly exclude this lifejacket type from the definition of lifejacket in the Navigation Safety bylaw.
- 20 It is proposed that the Lake Wakatipu high speed access lane is moved 50 metres out from the shore and widened from 100 metres to 200 metres. The Harbourmaster has advised that the current width is no longer sufficient to cope with the amount of traffic at peak times. A 50 metre gap with the shore will provide space on either side for paddle boarders and other non-powered vessels.
- 21 The Council proposes to update the Navigation Safety Bylaw to reflect that the Council has the power to grant exemptions, not solely the Harbourmaster. It is envisaged that the Council will delegate the exemption power to the Harbourmaster once the amendment takes effect.
- 22 The Council also proposes minor editorial changes to the Navigation Safety Bylaw to improve clarity of drafting, including some minor typographical changes. The changes proposed also involve replacing the Upliftings maps (in Schedule 3) for Queenstown Bay, Clutha River Mouth, Clutha River and Frankton Arm & Lower Shotover to increase the contrast between colour-coded areas depicted. The Upliftings map for the Narrows is also proposed for replacement to reflect the amendment proposed to clause 34.1(b) of the Navigation Safety Bylaw

## **IS THE PROPOSED BYLAW THE MOST APPROPRIATE BYLAW?**

- 23 The Council has considered the most appropriate way of addressing the issues described in the problem definition section above, the options available, and

determined that the proposed bylaw is the most appropriate means for addressing the issues.

24 In considering whether a bylaw is the most appropriate, Council has considered the following options:

- a. Option 1 – Do nothing
- b. Option 2 – Amend the Waterways Bylaw and Amend the Navigation Safety Bylaw
- c. Option 3 – Revoke the Waterways Bylaw and Amend the Navigation Safety Bylaw

**Option 1 – Do nothing**

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

26 The disadvantage is that the existing issues identified with the Waterways permitting system, and requirements in the Navigation Safety bylaw are likely to continue. The Council will be responsible for implementing the existing provisions of the Waterways Bylaw as is, despite concerns regarding the workability and fairness of aspects of the Waterways permitting system. The costs of administering and enforcing a number of different permits and fees will continue to fall on the Council.

**Option 2 – Amend the Waterways Bylaw and Amend the Navigation Safety Bylaw**

27 The Council could amend the Waterways Bylaw to address the issues identified with the permitting system. An amendment to the Navigation Safety Bylaw would still be required to update various references in the Navigation Safety Bylaw to controls, permits and definitions that affect the Waterways Bylaw. The changes sought to the lifejacket requirements and Lake Wakatipu high access lane could still be incorporated with these amendments. The advantage of this option is that the primary regulatory objectives could be achieved (ie. simplifying and streamlining the waterways permitting system).

28 The amendments to the Waterways Bylaw will significantly reduce the size of the bylaw. The Council considers it is unnecessary to retain a separate bylaw for the Waterways permitting system, and it would be more efficient to merge the remaining provisions into the Navigation Safety Bylaw. Both bylaws broadly deal with matters relating to regulation of the District's maritime areas, and therefore it is logical that they are regulated under a single bylaw.

**Option 3 – Revoke the Waterways Bylaw / Amend the Navigation Safety Bylaw**

29 The Council considers that the proposed amendments to the Navigation Safety Bylaw will achieve the objective of reducing the complexity of the current Waterways permitting system by removing unnecessary fees, applications, and controls to streamline the system. The Council considers that these changes will promote better understanding of the Waterways permitting system in the community, and will make regulatory compliance easier.

30 The removal of specific clauses setting out the detail of the application process arguably reduces transparency of the process. The Council can address this issue

by issuing clear 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. The removal of administration fees could result in the Council obtaining less revenue. However, administration costs could be incorporated into the permit fees to prevent this cost being passed on to ratepayers.

## **ARE THERE ANY IMPLICATIONS UNDER THE NEW ZEALAND BILL OF RIGHTS ACT 1990?**

- 31 The proposed bylaw is consistent with the New Zealand Bill of Rights Act 1990 (**NZBORA**). The proposed controls are considered reasonable limits as allowed for in section 5 of the NZBORA:

*Subject to section 4, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*

- 32 The proposal will potentially engage the following right under the NZBORA:

a. Right to freedom of movement (section 18).

- 33 The proposal provides for the continuation of a licensing regime in relation to maritime facilities in the District, albeit with a reduced number of permits, fees and processing requirements. The changes proposed to the licensing regime involve the streamlining and simplification of the Waterways permitting system, which is unlikely to pose an impediment to public access to maritime areas. The Council considers that the reduction in complexity could arguably facilitate greater public access to maritime areas due to better public understanding of achieving lawful access.

- 34 Therefore, the Council considers that the restrictions imposed are unlikely to infringe the right to freedom of movement. Alternatively, even if there is an infringement of this right, it is a reasonable limit on an individual's rights and freedoms and which is justifiable in a democratic society. Therefore, the proposed Bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.

## **TIMETABLE FOR CONSULTATION**

- 35 The following dates represent the key times in the consultation programme:

- a. Council resolves to undertake public consultation regarding the Proposal – 30 July 2016
- b. Advertisement in Otago Daily Times, Southland Times, Mirror and Wanaka Sun – between 30 July and 6 August 2016.
- c. Submissions close on 29 August 2016.
- d. Submissions heard by a subcommittee of Councillors (to be confirmed).
- e. Council considers outcome of consultation process and whether to make decisions in the Proposal – 29 September 2016.
- f. Public notice of final decision (if Council resolves to revoke the Waterways Bylaw, amend the Navigation Safety Bylaw, and adopt the Maritime fee schedule) – 1 October 2016.

- 36 The amendments to the Navigation Safety Bylaw comes into effect subject to the above.



## **INSPECTION OF DOCUMENTS AND OBTAINING COPIES**

- 37 Copies of this Statement of Proposal and the proposed Bylaw may be inspected, and a copy obtained, at no cost, from:
- a. either of the Council offices at 10 Gorge Road, Queenstown or the Wanaka Service Centre, 47 Ardmore Street, Wanaka;
  - b. any Council library within the Queenstown Lakes District; or
  - c. the Council website – [www.qldc.govt.nz](http://www.qldc.govt.nz)

## **RIGHT TO MAKE A SUBMISSION AND BE HEARD**

- 38 Any person or organisation has a right to be heard in regard to this Proposal and the Council encourages everyone with an interest to do so. For the avoidance of doubt, the Council is not undertaking a comprehensive review of the Navigation Safety Bylaw 2014. Submissions should be directed toward matters that are within the scope of the Proposal.
- 39 The Council would prefer that all parties intending to make a submission:
- a. go to the Queenstown Lakes District Council Website: [www.qldc.govt.nz](http://www.qldc.govt.nz) or
  - b. post their submission to: Regulatory Department, Queenstown Lakes District Council, Private Bag 50072, Queenstown 9348.
- 40 Submissions must be received by **Monday 29 August 2016**. The Council will then convene a hearing, which it intends to hold between Monday **5<sup>th</sup> September and Friday 9<sup>th</sup> September 2016** at which any party who wishes to do so can present their submission in person. The Council will give equal consideration to written and oral submissions.
- 41 The Council will permit parties to make oral submissions (without prior written material) or to make a late submission, only where it considers that special circumstances apply.
- 42 Every submission made to the Council will be acknowledged in accordance with the LGA 2002, will be copied and made available to the public, and every submission will be heard in a meeting that is open to the public.
- 43 Section 82 of the LGA 2002 sets out the obligations of the Council in regard to consultation and the Council will take all steps necessary to meet the spirit and intent of the law.

## **MAKING AN EFFECTIVE SUBMISSION**

- 44 Written submissions can take any form (e.g. Email, letter). An effective submission references the clause(s) of the draft Bylaw you wish to submit on, states why the clause is supported or not supported and states what change to the clause is sought.
- 45 Submissions on matters outside the scope of the Proposal cannot be considered by the Hearings Panel.

Mike Theelen  
CHIEF EXECUTIVE

**APPENDIX 2** – Proposed Amended Queenstown Lakes District Council Navigation Safety Bylaw 2014

**APPENDIX 3** – Current Queenstown Lakes District Council Navigation Safety Bylaw 2014

**APPENDIX 4** – Maritime Fee Schedule

## APPENDIX 4 – MARITIME FEE SCHEDULE

### 1. Fees (other than launch permits / Council permission to occupy maritime structures)

Description	Proposed fee (including GST)
Annual fee for commercial vessel licence	\$1,000
Annual fee for mooring permit	\$250
Special Event Licence	\$120 per hour plus actual costs
Bylaw Exemption	\$120 per hour plus actual costs
Speed Uplifting	\$120 per hour plus actual costs

### 2. Launch permit (non-commercial)

Duration	Proposed fee (including GST)
Annual	\$50
Six Monthly	\$35
Three monthly	\$25
Daily/Casual	\$5

### 3. Council permission to occupy maritime structure

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