

QLDC Council
10 December 2020

Report for Agenda Item | Rīpoata moto e Rāraki take : 2

Department: Finance, Legal & Regulatory

Title | Taitara Shotover River Bylaw 2021

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

- 1 The purpose of this report is to recommend that the Council agree to undertake public consultation using the special consultative procedure on proposed changes to the Shotover River Bylaw 2015 and outline the proposed changes.

EXECUTIVE SUMMARY | WHAKARĀPOPOTOTANGA MATUA

- 2 The Shotover River Bylaw 2015 replaced the Shotover River Bylaw 2009. The 2015 Bylaw was introduced following a number of near accidents in the canyons of the concession area, between recreational and commercial vessels and swimmers.
- 3 The 2015 Bylaw provides that only persons and vessels are permitted to be present in, or to operate, or be operated in the Shotover River Concession Area, by permit granted by Council or its delegated representative. This report recommends that Council adopt minor changes to the 2015 Bylaw to continue to provide for navigation safety, by restricting public access to the Shotover River Concession Area. This is a dynamic section of the river which both commercial and recreational watercraft use and due to the dynamic and unforgiving nature, it can pose as a significant safety risk for inexperienced users if not appropriately managed.

RECOMMENDATION | NGĀ TŪTOHUNGA

That Council:

1. **Note** the contents of this report;
2. **Agree** that a bylaw is the most appropriate way of restricting public access to the Shotover River Concession Area for the purposes of maritime safety in accordance with section 155(1) of the Local Government Act 2002; and
3. **Adopt** the Statement of Proposal and draft Shotover River Bylaw 2021 for the purpose of public consultation; and
4. **Approve** the commencement of the special consultative procedure in accordance with section 83(1) of the Local Government Act 2002 in relation to the proposal to review the Shotover River Bylaw 2015 under section 160 of the Local Government Act 2002; and

5. **Appoint** three councillors [to be named] to hear and consider the submissions on the proposal and make recommendations to the Council on adoption of the reviewed Shotover River Bylaw.

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25/11/2020

Reviewed and Authorised by:



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26/11/2020

CONTEXT | HOROPAKI

- 4 The Queenstown Lakes District is home to some of New Zealand's' most unique and challenging waterbodies. There are a high number of private recreational users and commercial operators that use these unique waterbodies.
- 5 The area of the Shotover River that this bylaw relates to is a unique section of the river, home to narrow canyons and gorges, between Tuckers Beach (GPS reference 44 deg 59'24.58 S 168 deg 43'58.89 E) and the eastern end of the Oxenbridge Tunnel. This part of the Shotover River, as depicted in the map in Schedule 1 of the Proposed Bylaw 2021 is the **Concession Area**. This is a dynamic section of the river which both commercial and recreational water vessels use. Due to the dynamic and unforgiving nature of this section of river, it can pose as a significant safety risk for inexperienced users, if not appropriately managed.
- 6 The Shotover River Bylaw 2015 (**Current Bylaw**) reserves the Concession Area for use by persons and craft that have a permit granted by Council or its delegate for the purposes of maritime safety. It also provides the permitting system. A copy of the Current Bylaw is included as **Attachment A**. There are associated infringement regulations that provide offences and fees for breaches of the Current Bylaw.¹
- 7 The Maritime Transport Act 1994 (**MTA**) provides for Regional Councils to create bylaws for ensuring maritime safety in its region.² The Otago Regional Council (**ORC**) transferred its maritime bylaw making powers in the Queenstown Lakes District to the Queenstown Lakes District Council (**Council**) under sections 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 Act Amendment Act 2013.
- 8 The Local Government Act 2002 (**LGA**) provides that councils shall review any bylaws made under the LGA no later than five years after the date on which the bylaw was made and then any further review every 10 years.³ A bylaw which is not reviewed within the specified timeframe is revoked two years after the review should have been completed.⁴ The Shotover River Bylaw 2015 (**2015 Bylaw**) was adopted on 17 December 2015, and in accordance with the LGA is now due for review.
- 9 The purpose of this report is to consider the review of the 2015 Bylaw, whether a Bylaw is still the most appropriate way to address the safety issues on the Shotover River and whether the proposed changes recommended by Council officers shall be the subject of further consultation with the community.
- 10 Council invited key stakeholders, such as Arthurs Point Community Association, Shotover Jet (Ngai Tahu), Harbour Masters, Jet Boating New Zealand, Otago Regional Council, Arthurs Point Community Association and Council Compliance Officers to provide

¹ Maritime Transport (Infringement Fees for Offences: Queenstown Lakes District Council (Shotover River) Bylaw 2016.

² Section 33M.

³ Sections 158 and 159.

⁴ Sections 160A and 160B.

feedback on how the 2015 Bylaw was working. This informal consultation was undertaken between 27 July 2020 and 14 August 2020. There were six responses received, which provided guidance on the review of the 2015 Bylaw and to assist in the development of the proposed amendments to 2015 Bylaw. This informal consultation is included as Attachment D of this report.

- 11 Clear themes were identified from the feedback and these have shaped the proposed amendments to the 2015 Bylaw. These topics included
 - a. The 2015 Bylaw is effective in providing for the safe navigation of the Concession Area and ensuring public safety for users of the Shotover River.
 - b. Could the public have more access to the river outside of Shotover Jet operating hours?
 - c. Is it possible to have a more modernised permitting system?
 - d. The infringement Regulations under the 2015 Bylaw have proved to be an effective deterrence towards non-compliance.
- 12 Council officers have reviewed the 2015 Bylaw and consider that a bylaw remains the most appropriate way to effectively manage and control public access to the Concession Area in order to promote maritime safety of all users of the river. The retention of the current regime, with some minor changes, is considered to be the most appropriate way to manage the use of the Concession Area for users, both recreational and commercial, and to ensure their safety.

ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

- 13 The Council has the powers, under a transfer of powers from ORC, to make bylaws for the purposes of maritime safety under the MTA, including to reserve the use of any waters for specified persons, ships, or seaplanes pursuant to section 33M(1)(e).
- 14 The LGA also enables Council to make a Bylaw to address local issues and provides the ability to operate proactively to:
 - a. Protect the public from nuisance;
 - b. Protect, promote, and maintain public health and safety; and
 - c. Minimise the potential for nuisance behaviour in public places.
- 15 Council staff have gathered the following statistics in relation to the current 2015 Bylaw:
 - Since 1 January 2015 there have been a total of 708 permits issued to recreational users within the Concession Area.
 - On average 130 permits per year are issued to recreational users.
 - Since 2015, there has been a total of five infringements issued for private vessels entering the concession area without obtaining a permit. Four of the five infringements have been issued in the past eight months.

- Private vessels, specifically jet boats have become more common in the past couple of years, as they become more affordable and available to members of the public for recreational use. Harbour Masters have advised that there are far more private vessels on our waterways, specifically the Shotover River. There are no statistics available for the Shotover River users outside of the Concession Area, however there are statistics in respect of the Dart River. The following statistics in respect of the Dart River are intended to show that the number of privately owned craft has increased each year since 2014:

- Year 2014/2015 – 188 checked in craft
- Year 2015/2016 – 286 checked in craft
- Year 2016/2017 – 370 checked in craft
- Year 2017/2018 – 353 checked in craft
- Year 2018/2019 - 488 checked in craft

Note that it is encouraged to check in on the Dart River but it is not a requirement.

- 16 Council officers consider that the 2015 Bylaw is effective in managing the Concession Area of the Shotover River via the permit system, and officers have received very few complaints in respect of the 2015 Bylaw. Officers consider that the infringement fees under the associated Regulations to the 2015 Bylaw have provided a suitable deterrent for restricting people from the Concession Area outside of their permit.
- 17 Since September 2020, four separate infringements have been issued to private jet boat operators who have operated within the Concession Area without a permit. This has highlighted the importance of the 2015 Bylaw, alongside the increase in private vessels being owned by members of the public. The increase in ownership of private vessels provide a greater need to have the bylaw maintained to effectively manage all users safety on the river, via the permitting system. The risk of a serious incident would be extremely high without appropriate restrictions and provisions in place.
- 18 Near accidents within the Concession Area have been a result of non-permitted recreational users who have not first notified the Council or its nominated delegate of a presence within the Concession Area. Part of the permitting process is for the Shotover Jet Ngai Tahu to complete an induction with the applicant and to advise on river conditions and hazards. Once private users obtain a permit and are inducted, the level of risk is significantly reduced. Without a permitting system in place, the likelihood of a severe or fatal accident taking place increases considerably.
- 19 It is worth noting that in order to purchase and operate a jet boat, a member of the public does not require a licence or any practical or theoretical testing. No prior experience is required in relation to navigating rivers and reading conditions in relation to flow, channels and or general river rules. Combined with technically challenging sections of a dynamic river with multiple users at any one time, the risk of serious accidents will continue to increase.

- 20 From the feedback received, the 2015 Bylaw has worked effectively in relation to achieving its purpose to manage the use of the Shotover River from a variety of users, both recreational and commercial, which has resulted in increased safety for all users of the river. There has been a clear reduction in near misses and no accidents in the past five years.
- 21 Informal consultation feedback from two groups asked Council to consider providing the general public more access to the Concession Area of the Shotover River during operational hours. There are a number of factors that make this currently untenable. The current permitting system is considered inclusive and protects and maintains public health and safety. Currently the delegate has and does issue permits when operations allow in a very effective and accommodating manner. The Shotover River Jet holds a resource consent, separate from the bylaw, that allows it to operate up to four jet boats at any one time within the Shotover River Concession Area for the purposes of commercial jet boating, between the hours of 7.30am-9.00pm seven days a week. The increased risk to members of the public safety outweighs the potential to provide additional access.
- 22 Consideration has been given to the possibility of the permitting system being modernised. This is being reviewed further in-house to ascertain the possibility of having a more automated online application system. This does not need to form part of the bylaw, as the bylaw only specifies that a permit is required and the form of that permit. It does not specify how the permit application is to be made.
- 23 Council officers have reviewed the 2015 Bylaw and have concluded that a bylaw is still required to effectively manage and control public access to the Concession Area in order to ensure maritime safety for all users of the river, and that overall the 2015 Bylaw is working well.
- 24 It is therefore proposed to amend the 2015 Bylaw so that it retains the same restrictions on public access to the Shotover River Concession Area as in the Shotover River Bylaw 2015, with the following minor amendments to the 2015 Bylaw:
- a. The word “craft” has been replaced with the word “vessel” for consistency with the Navigation Safety Bylaw 2018
 - b. The addition of the word “only” in the purpose to ensure clarity that the bylaw is only in respect of the Concession Area;
 - c. In the Permit to access the Concession Area the addition of “Any future permits applied for by parties or individuals with a history of non-compliance with the Bylaw may be rejected;” and
 - d. Correcting minor errors.
- 25 A copy of the proposed changes shown as the Shotover River Bylaw 2021 is included as **Attachment B** to this report. The Council is willing to explore changes as indicated by the community through the special consultative procedure under the LGA. The Statement of Proposal for the special consultative procedure is attached as **Attachment C**.

26 Option 1 Adopt the proposed Shotover River Bylaw 2021 for public consultation

Advantages:

- 27 Continuity, effective management and control of potential safety risks to members of the public utilising the concession area recreationally. Adoption of the proposed changes to the 2015 Bylaw enables a continuity of a successful process that has been in place for a number of years to control public access to the Concession Area. This has provided a positive system to ensure the safety of all river users.
- 28 The Council will be seen as actively engaging in protecting the district's community and river users through a safe and effective permitting system.

Disadvantages:

- 29 Wider river users may view the proposed changes as restricting their right to access the Shotover River.
- 30 Community resistance to regulatory management.

31 Option 2 Do nothing, allow existing bylaw to expire

Advantages:

- 32 After the expiry of the 2015 Bylaw there would be wider access to the Shotover River Concession Area, which may be favoured by some users.
- 33 No resources would need to be spent on enforcement of the bylaw.

Disadvantages:

- 34 The Council runs the risk of not taking all practical steps to protect, promote and maintain public health and safety and the natural environment.
 - 35 Without a bylaw, high risk activities within the Concession area cannot be monitored and investigated to provide control.
 - 36 There is a large risk that there could be a serious incident in the Concession Area with unregulated interaction of commercial and recreational users.
- 37 This report recommends **Option one** for addressing the matter. Council considers the proposed changes to the 2015 Bylaw is the most appropriate way of addressing the problems identified in respect of navigation safety within the Concession Area based on the options available. Council officers consider that the continuation of Shotover River Bylaw is the most appropriate way to manage the use of the Shotover River for all users of the Concession Area.
- 38 The proposed changes to the 2015 Bylaw is a continuation of the current Bylaw. There is also unlikely to be any material impact on the public because the proposed Bylaw will

continue the same restrictions as provided for in the Shotover River Bylaw 2015 without substantive amendment.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

39 This matter is of medium significance, as determined by reference to the Council's Significance and Engagement Policy because there is a reasonable extent of interest from individuals, organisations, groups and sectors in the community that are affected by Councils decision.

40 The persons who are affected by or interested in this matter are:

- a. Residents/Ratepayers
- b. Local Iwi
- c. Visitors to the district
- d. Recreational river users
- e. Commercial river users

41 The Council has undertaken informal consultation with key stakeholders and has briefed the Council about the intention to review the 2015 Bylaw. Stakeholders consulted have been in support of undertaking a review of the Bylaw and are supportive of continuation of the existing regime.

42 The LGA provides that when making or amending a bylaw, the Council must use the special consultative procedure if the bylaw concerns a matter that is identified as significant through the Council's significance and engagement policy, or if there is likely to be a significant impact on the public due to the bylaw, or proposed changes.⁵ In other cases, the Council must consult in a manner that gives effect to the requirements of section 82 LGA. Although the matter has been identified as having medium significance in accordance with the Council's policy, officers consider that given the public safety components of this bylaw that undertaking the special consultative procedure is the most appropriate form of consultation.

43 Section 33M(1) of the MTA requires that in making maritime safety bylaws the Council consults with the Director of Maritime New Zealand. This will occur alongside the special consultative procedure under the LGA, should it be approved.

> MĀORI CONSULTATION | IWI RŪNANGA

44 It is important for the Council also to take active steps to gather and consider the views of local iwi as the proposed bylaw concerns matters of the District's natural resources and resource management, which is of interest to iwi as kaitiaki of the land. Public formal consultation will allow for additional opportunities for Māori consultation.

⁵ s156(1).

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

- 45 This matter relates to the Community & Wellbeing risk category. It is associated with RISK00006 Ineffective management of social nuisance issues within the QLDC Risk Register. This risk has been assessed as having a moderate inherent risk rating.
- 46 The approval of the recommended option will support the Council by keeping the risk at its current level. This shall be achieved by maintaining an effective bylaw to provide for navigation safety in the Shotover River Concession Area, by restricting public access to the area during high risk periods and therefore reducing the potential risk of harm to members of the community in this section of the waterway.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

- 47 Current budgets will supply expenditure associated with educational materials produced to support the implementation of the Proposed Bylaw following its adoption.

COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEAWE ME NGĀ TIROHANGA A TE KAUNIHERA

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

- Reference alignment with and consideration of the principles of the Vision Beyond 2050: <https://www.qldc.govt.nz/vision-beyond-2050/>
- QLDC Enforcement Strategy and Prosecution Policy <https://www.qldc.govt.nz/media/vxrm3wws/qldc-enforcement-strategy-and-prosecution-policy.pdf>
- Significance and Engagement Policy <https://www.qldc.govt.nz/media/5dkns4jx/qldc-significance-and-engagement-policy-aug18.pdf>
- The Shotover River Bylaw 2015 <https://www.qldc.govt.nz/media/hjtntdwb/shotover-river-bylaw-2015.pdf>
- Lakes District Waterways Authority (Shotover River) Empowering Act 1985 <http://legislation.govt.nz/act/local/1985/0002/7.0/DLM76700.html>

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

- 50 This matter is included in the Ten Year Plan/Annual Plan

- Volume 1 – Regulatory Functions and Services

LEGAL CONSIDERATIONS AND STATUTORY RESPONSIBILITIES | KA TURE WHAIWHAKAARO, ME KĀ TAKOHAKA WAETURE

- 51 The MTA provides Regional Councils with the powers to make bylaws for the purpose of maritime safety, including to reserve the use of any waters for specified persons, ships, or seaplanes pursuant to section 33M(1)(e). The ORC has transferred these powers to the QLDC for the Queenstown Lakes District.

- 52 The LGA provides for the review of bylaws. Section 155 of the LGA contains a number of decision-making requirements when reviewing a bylaw. Firstly, the Council must be satisfied that the bylaw is the most appropriate way of addressing the perceived problem.⁶ The Council must then be satisfied that:⁷
- a. The bylaw is the most appropriate form of bylaw; and
 - b. The bylaw is not inconsistent with the New Zealand Bill of Rights 1990 (NZBORA).
- 53 Under section 160 of the LGA, if, after the review, the local authority considers that the bylaw should be amended, revoked, or should continue without amendment, it must:
- a. Use the special consultative procedure if the bylaw concerns a matter identified in the council’s policy as being of significant interest to the public; or
 - b. Consult under section 82 of the LGA if the bylaw does not concern a matter of significant interest to the public.
- 54 If, following the special consultative procedure, the Council decides to make the bylaw, the Council will be asked to make resolutions confirming its satisfaction with these legal requirements.
- 55 Section 18 of the New Zealand Bill of Rights Act 1990 (NZBORA) provides a right to freedom of movement and residence in New Zealand. The Proposed Bylaw will potentially engage the right to freedom of movement under section 18 of NZBORA by restricting access to a part of the Shotover River.
- 56 Section 5 of the NZBORA provides that rights may be subject to such reasonable limits as can be justified in a free and democratic society. The proposed restriction on access to the Shotover River is justifiable on the grounds that it is unsafe to have unrestricted access to this waterway and there is a reasonable system for public access. The Council will have to be satisfied that the limits on access to the Shotover River are proportionate and justified having regard to the purpose of the bylaw, namely to provide for navigation safety.

LOCAL GOVERNMENT ACT 2002 PURPOSE PROVISIONS | TE WHAKATURETURE 2002 O TE KĀWANATAKA Ā-KĀIKA

57 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 continued regulatory functions of the Shotover River concession area, which will allow for the safe use of the river by all users through an effective permitting system.
- Can be implemented through current funding under the Ten Year Plan and Annual Plan;

⁶ s155(1).

⁷ s155(2).

- 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.

ATTACHMENTS | NGĀ TĀPIRIHANGA

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| A | Shotover River Bylaw 2015 |
| B | Proposed Shotover River Bylaw 2021 |
| C | Statement of Proposal |
| D | Informal consultation feedback |