

**QLDC Council**  
**3 February 2022****Report for Agenda Item | Rīpoata moto e Rāraki take : 7****Department: Community Services****Title | Taitara – Old Kawarau Falls Bridge Acquisition****PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO**

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- 1 Waka Kotahi has advised the Council that it intends to revoke the State Highway status of the road over the old Kawarau Falls Bridge. On revocation, it will become local road controlled by Council. The bridge structure on which the road sits is owned by the Ministry of Business, Innovation & Employment (MBIE) which no longer wishes to own it once the Council controls to road. MBIE has offered to sell the underlying structure to Council for \$1. Councillors are being asked to decide whether to agree to that acquisition.

**EXECUTIVE SUMMARY | WHAKARĀPOPOTOTANGA MATUA**

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- 2 There are five main issues Council should consider in assessing whether it wishes to acquire the old Kawarau Falls Bridge from MBIE:
  - a. Council's future plans for the road;
  - b. The structural integrity of the old Kawarau Falls Bridge and the maintenance obligations previously owed by Waka Kotahi;
  - c. Risks to Council in terms of health and safety, and liability to users of the old Kawarau Falls Bridge;
  - d. Obligations on local authorities in respect of heritage management and protection; and
  - e. Financial implications of ownership.
- 3 The heritage value of the old Kawarau Falls Bridge, as well as its position as part of the Council's trail network means it is potentially an advantage to Council to own the structure and control the decision-making process for the old Kawarau Falls Bridge in the future.

**RECOMMENDATION | NGĀ TŪTOHUNGA**

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That Council:

- 1 **Note** the contents of this report;
- 2 **Note** that the former SH6 across the old Kawarau Falls Bridge will be revoked by Waka Kotahi and the road will become "local road";
- 3 **Agree** in principle to the acquisition of the old Kawarau Falls Bridge from MBIE for \$1;

- 4 **Agree** to enter into a Deed with MBIE effecting the acquisition; and
- 5 **Delegate** the approval of the final terms and conditions of the Deed with MBIE effecting the acquisition, along with any associated agreements and signing authority to purchase to the Chief Executive of Council.

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21/01/2022

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## CONTEXT | HOROPAKI

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- 1 The old Kawarau Falls Bridge spans the junction between Lake Whakatipu and the Kawarau River. It was constructed between 1922 and 1926 as a stoney roller sluice dam. It has also operated as a bridge following its use as a dam. It is a Category 1 Listed Historic Place and an outstanding natural feature as identified in the district plan. It has been closed to traffic since 2018 and currently operates as a walking and cycling bridge.
- 2 Despite initially being built as a dam, the current structure does not meet the definition of a dam in section 7 of the Building Act 2004. The structure is considered to be a bridge, and referred to as a bridge in this report.
- 3 The old Kawarau Falls Bridge is currently owned by MBIE and, until the construction of the new two-lane Kawarau Falls Bridge project in 2018 carried traffic as part of State Highway 6. Waka Kotahi leased the Kawarau Falls Dam from MBIE and used it as part of its State Highway roading network.
- 4 In 2019, MBIE approached Council to discuss whether Council might purchase the old Kawarau Falls Bridge for a nominal sum. The reason for this approach is with the new Kawarau Falls Bridge being built, Waka Kotahi intended to revoke the state highway status of the part of SH6 that ran across the old Kawarau Falls Bridge. On revocation the road would become “local road” by virtue of s 103(5) of the Land Transport Management Act 2003, and therefore under the control of Council. MBIE’s view is that it would make sense for Council also to own the old Kawarau Falls Bridge in order to have full control over the structure.
- 5 The road will come into Council’s control on declaration from Waka Kotahi. The Council need not do anything in relation to this and in particular this does not require a decision. It will happen by operation of law. However, the issue of whether to acquire the old Kawarau Falls Bridge structure, and enter into a Deed with MBIE effecting this, does require a decision from Council.
- 6 The matters that the Council should consider in making this decision can be gathered under five heads:
  - a. Council’s future plans for the old Kawarau Falls Bridge;
  - b. The structural integrity of the structure and maintenance obligations previously owed by Waka Kotahi;
  - c. Risks to Council from owning such a structure in terms of health and safety, and liability to users of the old Kawarau Falls Bridge;
  - d. Obligations on local authorities in respect of heritage management and protection; and
  - e. Financial implications of owning the old Kawarau Fall Bridge.

- 7 If Council decides to acquire the old Kawarau Falls Bridge there will be a need to regularise the legal description of the bridge by way of survey.

## **ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU**

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### **Future Plans for the old Kawarau Falls Bridge**

- 8 The old Kawarau Falls Bridge is currently used as a cycleway and walkway.
- 9 Use of the structure in this way is appropriate as part of the Whakatipu Active Travel Network, which aims to provide an integrated network of trails for walking and cycling that connects to public transport.
- 10 There are a number of utilities which are attached to the structure such as telecommunications, power, gas, and Council waste and drinking water pipes. The three waters and power utilities have been transferred to sit on the new bridge. However, this leaves other utilities depending on the structure for conveyance.
- 11 There may be an opportunity for the bridge to convey a new privately funded sewerage pipe linking Henley Downs with Project Shotover and transport requirements. The utilities infrastructure contained within the old bridge is sufficient to meet foreseeable demands.

### **Maintenance obligations previously owed by Waka Kotahi – and to Council**

- 12 Waka Kotahi has been working on finalising its maintenance obligations under the lease it had entered into with MBIE. A site inspection occurred in June 2021 between Council and Waka Kotahi to confirm the list of maintenance obligations owed by Waka Kotahi had been fulfilled.
- 13 There are three current maintenance issues:
  - a. The clear screen on the winding mechanism is a heritage item and needed to be discussed with Heritage NZ. Waka Kotahi has addressed this issue with Heritage NZ.
  - b. There is a Memorandum of Understanding in train between Council and Waka Kotahi in relation to maintenance. As yet it has not been concluded but needs to be finally negotiated irrespective of who owns the old Kawarau Falls Bridge.
  - c. The signage around the bridge needs to be updated, and Council will work with the Wakatipu Heritage Trust (WHT) to conclude this. David Mayhew, Chairman of the WHT, confirmed the Trust's interest to partner with Council on the heritage aspect of this project.
- 14 Waka Kotahi's view is that some issues with the road structure – such as the uneven surface – should lie with whoever owns the bridge. There are heritage requirements to consider in identifying what repair methodology would be appropriate for the roading surface. The other ongoing maintenance required by Council will include maintaining a safe surface for pedestrians and cyclists, painting the barriers, repairs as required, and inspections of the structure.

- 15 The costs expected with future maintenance are as follows (costs have been checked with current costs on bridges) :

Item	Cost	Frequency
Bridge inspections	\$5,000	Every two years
Periodic maintenance	\$2,500	Annually
Repairs or replacement	\$50,000	Every five years
Structural maintenance	\$400,000-\$500,000	In the next 15-20 years

- 16 **As a comparison the historical Lower Shotover Bridge** is managed by the Parks Department and is inspected under the roading contract. The last work on that bridge was about six years ago to address a leaking pipe that is suspended underneath. Other than that just minor RFS work has been done i.e. bollards, geogrid.

### **Risks to Council as owner of the old Kawarau Falls Bridge**

- 17 Engineering reports have been sent to Council which identify cracking and spalling of the concrete, corrosion of the piers, decaying timber sections and the fact that the concrete which makes up the bridge structure is not reinforced. There are several reports available to Council on the structural condition of the bridge: from WSP (Waka Kotahi's bridge consultant), from MWH engineers in 2013, and a recent review of those reports has been carried out by Stantec, in 2021. A copy of the Stantec report is Attachment A.
- 18 The Stantec report highlights the potential for substantial damage to be caused in a significant earthquake, but notes that this is not peculiar to this particular structure. There are no practical or economically feasible measures available to bring the structure up to current seismic level and the risk of earthquake damage to the structure is one that is commensurate with risks the Council has in relation to other bridges such as Edith Cavell and Shotover.
- 19 Stantec has advised Council that while the concrete columns are brittle, heavy and poorly socketed, this is a seismic risk they will have for the life of the bridge. The bridge's gravity load capacity remains more than sufficient for light traffic.

### ***Dangerous or earthquake-prone?***

- 20 The old Kawarau Falls Bridge is a "building" or "structure" within the meaning of the Building Act so it is regulated by Council as a territorial authority.
- 21 In this case, s.133AA of the Building Act says that the provisions which relate to earthquake-prone buildings do not apply to a "bridge." This means the situation is dealt with at common law. There is very little legislation which covers the responsibilities of a road owner to the public because for centuries owners of highways have been immune from being sued by road users under what is known as the 'non feasant rule'.
- 22 The non-feasant rule says that a highway authority can be liable for misfeasance (negligent action) but not for non-feasant (inaction or omission). Doing something to a

road which actively creates a danger will incur liability but failing to repair an existing danger will not.

### ***Other sources of liability***

23 Specific advice has been given on what liability the Council would have if it acquired the old Kawarau Fall Bridge and a catastrophic event occurred. Apart from reputational damage (in that a structure known to have risks collapsed), the potential liability would include:

- a. under the Health and Safety at Work Act 2015 to any workers carrying out work on the bridge at the time of an event. The guideline bands for sentencing of offences against the HSWA have recently been reviewed so they are now:

<b>Culpability</b>	<b>Amount</b>
Low culpability	Up to \$250,000
Medium culpability	\$250,000 - \$600,000
High culpability	\$600,000 - \$1,000,000
Very high culpability	\$1,000,000 plus

- b. under the Local Government Act 1974 to any person if there were construction or repairs being carried out. For example, in a previous case, a Council was convicted and made to pay costs for damage to a motor vehicle that slid on loose gravel.
- c. to any person who suffers mental injuries (but no physical injuries – which would be covered by ACC) where the Council’s actions led to those injuries. For example, a person who witnesses the death of a spouse during a bridge collapse but is not physically injured themselves. The measure of damages is compensatory but there is no ‘tariff’ case.

24 Specific legal advice on Council liability has been given and this report is consistent with that advice.

### **Heritage considerations**

25 Council has responsibilities under various legislation for heritage management and protection (e.g. the Resource Management Act 1991, Heritage New Zealand Act 2014, Building Act 2004 and Local Government Act 2002). The Council’s Heritage Inventory Register already lists the Kawarau Falls Dam in its inventory. To that extent it is already part of Council’s heritage considerations. Kawarau Falls Dam appears as a Category 1 heritage structure in the Council’s Historic Heritage chapter and listed in the District Plan (DP), Chapter 26 as a protected feature (ref 40). Take note: The Heritage Inventory Register is a separate document from the District Plan that is intended to provide additional information for plan users on the schedule of protected features that are listed within Chapter 26 (Historic Heritage).

- 26 The old Kawarau Falls Bridge is listed in the Heritage Inventory Register as the Kawarau Fall Dam, rather than bridge. As noted previously, the structure does not meet the definition of a dam in section 7 of the Building Act, and therefore is considered to be a bridge.
- 27 The Wakatipu Heritage Trust has carried out a site assessment of the structure in 2013 and noted it had a high overall heritage value, in particular for its architectural, cultural, historical/social, landscape/townscape, rarity and technological value. In August 2020, the Wakatipu Heritage Trust was in discussions with Council about the heritage matters including management, restoration and signage (confirmed by David Mayhew on 25 January 2022).
- 28 The Council's responsibilities do not extend to restoration in the event of significant damage, or even maintenance to prevent heritage degradation.

### Financial implications

- 29 Acquisition of the old Kawarau Falls Bridge will have financial implications. Anticipated maintenance costs have been set out above, but in the case of an event that caused significant damage to the bridge the Council would have a decision to make about whether to undertake repair and restoration or whether to decommission and potentially to remove the structure.
- 30 For the anticipated maintenance costs there may be a number of external funding streams available to the Council. For example, given the current and intended use of the bridge for some commuter transport it may be that Waka Kotahi would fund 51% of costs. Funding may also be available from MBIE given it is part of the Great Ride (Queenstown Trail). These avenues will require further exploration. For the purpose of the decision whether or not to acquire the Council should assume that the Council will bear all maintenance costs.

### Legal title

- 31 In short, the survey plan that Council has been sent to approve for the new bridge (SO 550505) only defines the relevant parcels of the new bridge. The old Kawarau Falls Bridge is not adequately defined by any survey.
- 32 If Council acquires the old Kawarau Fall Bridge it would be beneficial for Council, Waka Kotahi and the Crown as owner of the riverbed below, to delineate the boundaries of the old Kawarau Fall Bridge (in conjunction with the new bridge) so that the spatial extent of each party's responsibility can be defined.
- 33 This can be undertaken as part of finalising the deed by which the acquisition would occur. A draft deed is Attachment B.

## Options

### Option 1: Decline to acquire the old Kawarau Falls Bridge from MBIE

#### 34 *Advantages:*

- a. Council avoids taking on financial liabilities and health and safety risk from issues arising from the old Kawarau Falls Bridge which will otherwise rest with MBIE as owner of the bridge.

#### 35 *Disadvantages:*

- a. It is anomalous that Council will be able to control the road but not in fact own it. Officers have been told by MBIE that it is also anomalous that MBIE owns the bridge as it does not generally own bridges.
- b. If it remains in MBIE ownership there is a risk that the bridge is not well-maintained to an extent that existing utilities need to be relocated at Council's cost, and to the detriment of Council's cycleway/trail.

### Option 2: Agree to acquire the old Kawarau Falls Bridge from MBIE

#### 36 *Advantages:*

- a. Council will have full control over the old Kawarau Falls Bridge and can work with Wakatipu Heritage Trust to integrate it into its network. It makes the most logical sense for Council to own the structure as well as the road on top of it.
- b. Council will be able to control what utilities are conveyed by the old Kawarau Falls Bridge (power, gas, three waters etc.) which will assist future development either side.
- c. Acquiring the old Kawarau Falls Bridge would meet the Council's community outcome of effective and efficient infrastructure that meet the needs of growth, including as part of the Council's trail network, the Wakatipu Active Transport Network and the Great Ride.

#### 37 *Disadvantages:*

- a. Known structural issues with the old Kawarau Falls Bridge as a result of the age of its construction with unreinforced concrete and possible poor performance in an earthquake may lead to health and safety risks arising from collapse.

38 For completeness, it is noted that while leasing the old Kawarau Falls Bridge is a legal option open to Council, MBIE has categorically declined to consider this as an option.

39 This report recommends **Option 2** for addressing the matter. The Bridge remains a useful services conduit and adds value to the Council's active transport strategy. It is also an important heritage item which the Council has an interest in maintaining. The risks and



liabilities can be managed and Council is best placed to work with heritage and interest groups to manage the old Kawarau Falls Bridge in the future.

## CONSULTATION PROCESS | HĀTEPE MATAPAKI:

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### > SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 40 This matter is of low significance, as determined by reference to the Council’s Significance and Engagement Policy. There is a level of community interest for users of the Queenstown trail network, as well as residents in Frankton, Kelvin Peninsula and the Southern Corridor.
- 41 The persons who are affected by or interested in this matter are the residents and ratepayers of the Queenstown Lakes District community, as well as those visitors and users of the Queenstown trail network.

### > MĀORI CONSULTATION | IWI RŪNANGA

- 42 The Council will consult with iwi if it chooses to acquire the old Kawarau Falls Bridge.

## RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

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- 43 This matter relates to the Community & Wellbeing risk category. It is associated with RISK000009 within the QLDC Risk Register. This risk has been assessed as having a high inherent risk rating.
- 44 The approval of the recommended option will support the Council by allowing us to retain the risk at its current level. This shall be achieved by acquiring the old Kawarau Falls Bridge which will secure Council’s position in respect of access, heritage and roading infrastructure matters.

## FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

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- 45 The acquisition of the old Kawarau Fall Bridge would bring with it ongoing and long term maintenance cost. This matter will be addressed though the development of the next Long-term plan (2024). The expected costs associated with this are provided in paragraph 19 above, however it is expected that these costs should be low considering the investment that Waka Kotahi has undertaken on the structure in the last 18 months. It is expected that there will be minor “request for service “time repairs required on an ad hoc basis. Inspections of structure will be undertaken every 2 years with an in-depth inspection every 6 years as part of the existing QLDC Bridge Inspection programme. From these inspections any urgent or future works are highlighted and usually delivered through the roading maintenance contract, these costs are expected to be covered in the “every 5 years” estimate. Larger works are expected to be undertaken on the longer-term horizon and may include structural member replacements or similar works expected in the 15-year horizon. These costs are based on maintaining the same level of service.
- 46 The costs incurred in maintenance obligations will be able to be met with existing budgets until funding is included in the ten-year plan.

## **COUNCIL EFFECTS AND VIEWS | NGĀ WHAKAAWEWE ME NGĀ TIROHANGA A TE KAUNIHERA**

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47 The following Council policies, strategies and bylaws were considered:

- a. Local Government Act 2002;
- b. QLDC Proposed and Operative District Plan;
- c. QLDC Significance and Engagement Policy.

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

49 This matter is not included in the Ten Year Plan/Annual Plan.

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

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50 Four main legal issues have been considered:

- a. The impending declaration of the former SH6 as “local road” – which is unilateral in that it requires no decision or action from Council;
- b. The need to regularise the legal title of the old Kawarau Falls Bridge by way of survey;
- c. The obligations on Council as owner of a heritage structure; and
- d. The risks to Council under the Health and Safety at Work legislation, and in general liability to the public, as owner of the old Kawarau Falls Bridge.

51 Council has been given legal advice on each of the issues above and the recommended option takes into account and is consistent with that advice.

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

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52 Section 10 of the Local Government Act 2002 states the purpose of local government is (a) to enable democratic local decision-making and action by, and on behalf of, communities; and (b) to promote the social, economic, environmental, and cultural well-being of communities in the present and for the future.

53 Acquiring the old Kawarau Falls Bridge will enable Council to have full control over decision-making in respect of it, and will promote social and cultural wellbeing of the community by enabling the development of trails. As such, the recommendation in this report is appropriate and within the ambit of Section 10 of the Act.

54 The recommended option:

- Can be implemented through current funding under the Ten Year Plan and Annual Plan;
- 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	Stantec Report
B	Draft Deed