

Community & Services Committee
20 May 2021

Report for Agenda Item | Rīpoata moto e Rāraki take 1

Department: Community Services

Title | Taitara Request from Hydro Attack Limited to review the Queenstown Bay Foreshore Reserve Management Plan 2016

PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO

- 1 The purpose of this report is to consider the request from Hydro Attack Limited to review the Queenstown Bay Foreshore Reserve Management Plan 2016, to establish a private commercial jetty and wharf across St Omer Park.

RECOMMENDATION | NGĀ TŪTOHUNGA

- 2 That the Community & Services Committee:
 1. **Note** the contents of this report; and
 2. **Agree** that there will be no changes made to the Queenstown Bay Foreshore Reserve Management Plan 2016.

Prepared by:



Jeannie Galavazi
Senior Parks Planner
Community Services

10/05/2021

Reviewed and Authorised by:



Thunes Cloete
General Manager
Community Services

11/05/2021

CONTEXT | HOROPAKI

- 3 Hydro Attack Limited (HAL) is a private commercial operator proposing to establish and use a commercial jetty and wharf within Queenstown Bay immediately west of St Omer Wharf adjoining Lake Esplanade. HAL currently operate Hydro Attack Vessels and Queenstown Jet Ski Tours from the Lapsley-Butson Wharf in Queenstown Bay.
- 4 The HAL proposed design is shown in Figure 1 below. The full plans are available at this link:

https://edocs.qldc.govt.nz/Documents/e755d64qE_sdXgQZ2RtxbUFIHrwTmyuYQXGje2wP8SZYPljySK1aXbUwQen2evXG1cpgSkViEcy9VQns_dTtUkY8THhAo8hGrevuKsKTWM/C%20-%20Plans%20updated%206%203%202020.

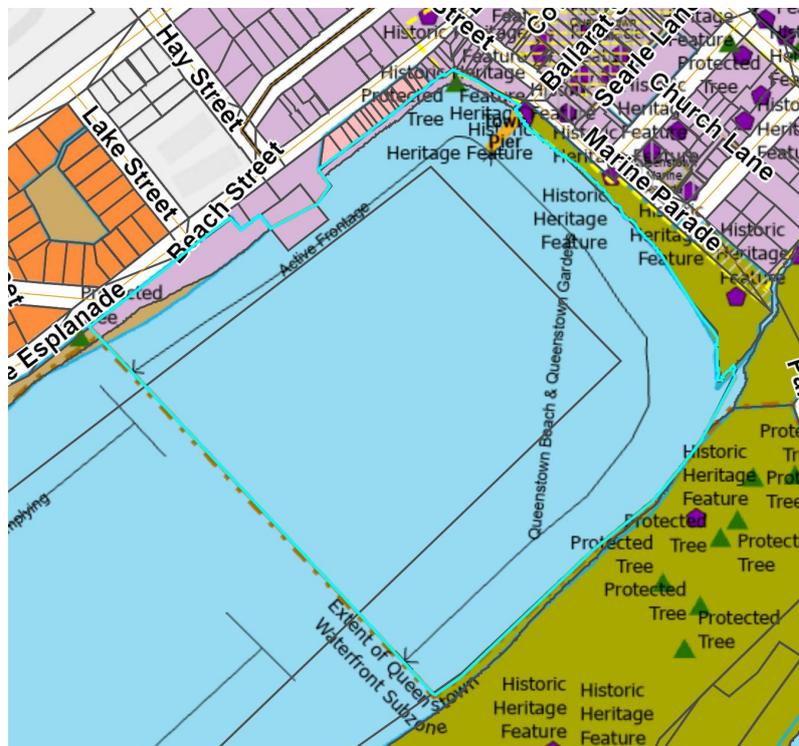
Figure 1: Proposed HAL Jetty and Wharf with Kiosk on St Omer Park



- 5 A kiosk for commercial sales is also proposed with three alternative locations – one within St Omer Park and two on the proposed wharf. Figure 1 above shows the kiosk located on St Omer Park and plans are included at Attachment 1 which show the alternative locations on the proposed wharf.
- 6 HAL has made an application for resource consent (RM200053) to the Queenstown Lakes District Council (QLDC) to erect and use a proposed jetty and wharf. The application was publicly notified and has received submissions. The application is currently on hold. The location of the jetty and wharf sits across the Proposed District Plan Town Centre Zone, the Queenstown Bay Waterfront Subzone, Open Space and Recreation Zone (Informal Recreation) and the Rural Zone – refer Figure 2. The majority of the wharf structure is within the Rural Zone and is also within the Outstanding Natural Landscape area. As such

it is either a discretionary or a non-complying activity under the Proposed District Plan (it is unclear from the consent application exactly what rules are triggered).

Figure 2: Proposed District Plan Decisions Version (blue line is extent of Queenstown Waterfront Subzone)



- 7 HAL would also require land owner approval from the Parks Department as the administrator of the recreation reserve, for the part of the structure located within St Omer Park. A lease under the Reserves Act 1977 (Reserves Act) would be required and approval under s176 of the Resource Management Act (RMA) is also required as the reserve land is subject to a designation under the Queenstown Lakes Operative and Proposed District Plans (#217). It is important to note that the boundary of Designation #217 and the RMP does not extend into the lake, and therefore a licence from LINZ is also required for the jetties and wharf structures.
- 8 In order for HAL to give effect to its proposal, both the resource consent and lease must be approved by the Council and a lease obtained from LINZ.

Queenstown Bay Foreshore Reserve Management Plan 2016

- 9 Section 41 of the Reserves Act requires the Council to prepare a management plan for any recreation reserve under its control, management or administration.
- 10 The use of the Queenstown Bay Foreshore Reserves is governed by the Queenstown Bay Foreshore Reserve Management Plan 2016 (RMP).
- 11 The proposed HAL wharf is located in Zone 1 of the Queenstown Bay Foreshore Reserve Management Plan (RMP).

12 Figure 3 below is the RMP Map.

Figure 3: Queenstown Bay Foreshore RMP 2016 Map



13 Within Zone 1, in addition to the general objectives and policies, the following specific objectives and policies apply:

Objectives

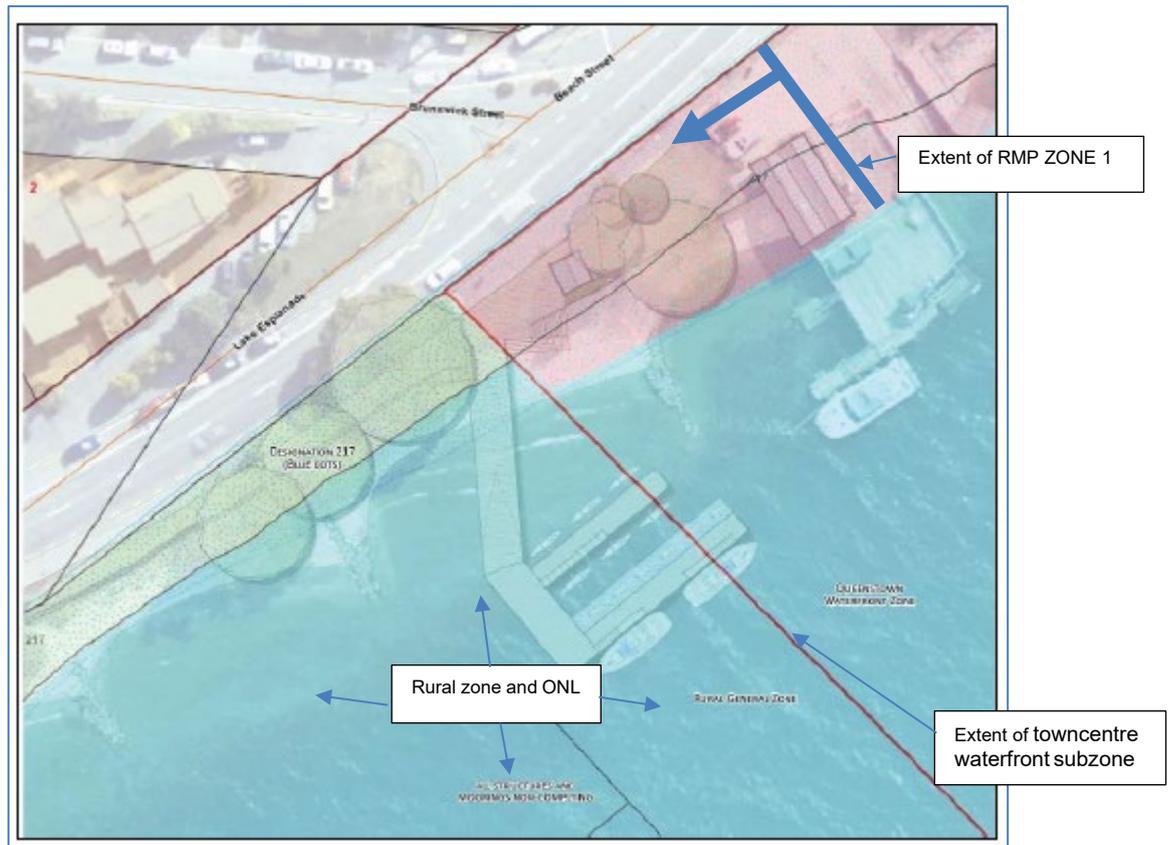
14 *To promote an appropriate planned mix of non-commercial passive recreation and commercial activities within a defined area.*

Policies

- *Manage the reserves to promote passive recreation activities and enjoyment of the lakes edge in St Omer Park.*
- *Allow for consideration of commercial activities only in a defined reserve area 200m in length from One Mile towards the town centre (see Appendix 1).*
- *Do not permit commercial activities in the defined area that require exclusive use of public reserve land or the adjoining lake where that use could impact on public use of reserve or lake areas.*
- *One Mile Point to be managed for scenic and activity viewing.*

15 The RMP identifies St Omer’s Park as Zone 1. The policies of the RMP seek to limit commercial activities to 200 metres of One Mile towards the town centre. Therefore, the RMP seeks to preclude commercial activities from the location of the proposed jetty. Figure 4 below shows the proposed wharf in relation to the RMP Zone 1 boundary, the extent of the QLDC Towncentre Waterfront Subzone and the Rural Zone/ONL.

Figure 4: HAL Wharf proposal context map



ANALYSIS AND ADVICE | TATĀRITANGA ME NGĀ TOHUTOHU

- 16 Council updated the RMP relatively recently (2016) and the general intent of the RMP is to limit commercial development to certain areas within the reserves.
- 17 This RMP was prepared as the first variation to the Sunshine Bay to Kelvin Heights Reserve Management Plan 1991 to address the increasing requests for commercial activity on public land. QLDC prioritised the section of Queenstown Bay from the head of the gardens to the One Mile roundabout because this is where there was the most pressure to increase commercial activity on public recreation land.
- 18 The review was intended to address increasing pressures from commercial activity and to enable the community and the council to determine what is an appropriate balance of commercial and non-commercial use of the reserves.
- 19 Under the Reserves Act reserve management plans should be reviewed every 10 years but can be reviewed sooner to ensure they remain relevant.
- 20 At the beginning of the HLA resource consent process, HAL were advised by the Parks Department that landowner approval cannot be given for the proposal as the RMP does not support commercial activity in the proposed location. A review of the RMP, that would agree to amend provide for extended commercial activity (or to expressly provide for HLA proposal), is required before landowner approval could be given and a lease under the Reserves Act is processed. As the outcome of the resource consent is not yet known,

the Parks Department's preference has been not to embark on a review of the RMP until resource consent approval was confirmed. HAL have requested that the RMP is reviewed prior to the resource consent being granted.

21 Under the QLDC delegations, the delegation for deciding to review a reserve management plan sits with Full Council.

22 There are two main options available to Council:

- a. Comprehensive Review - requires Council to follow the public process outlined in sections 41(5) and (6) of the Reserves Act as if the review were a new Reserve Management Plan. This is typically a 2 month notification period of the draft, with hearing of submissions.
- b. Change that is not a comprehensive review - Council may, if it thinks fit, follow the process outlined in sections 41(5) and (6) of the Reserves Act but it is not mandatory to do so. In this case, the Council must still consider whether some form of consultation is required to make the change. The special consultative procedure under the LGA allows for a one month consultation period, with hearing of submissions.

23 There are three main ways to change the RMP to enable the Hydro Attack wharf (if that is what Council chooses to do):

- a. Amend Zone 1 provisions and policy to include a new permitted commercial activity area (similar to that at One Mile) - minor changes to policy framework and RMP map required:
 - i. *Allow for consideration of commercial activities only in a defined reserve area 200m in length from One Mile towards the town centre and in the defined area immediately to the west of the boat ramp adjacent to St Omer Park (see Appendix 1)*;
 - ii. Amend the map in Appendix One of the management plan to show this area in Zone 1.
- b. Extend Zone 2 of the RMP map to cover the proposed wharf and change the policy framework to specifically allow for the proposed commercial activity. This requires changes to zone boundaries and to the policy framework which may constitute a comprehensive review.

(Zone 2 Objectives: To promote use of this area for passive recreation and events of benefit to the community and District. To allow consideration of temporary commercial and community activities compatible with the passive recreation use of the reserves.)

- c. Conduct a more comprehensive review to consider the entire RMP and whether provisions relating to commercial activities are appropriate or should be amended.

- 24 Given the process that Council went through (relatively recently) to implement this RMP and that the general intent of the RMP is to limit commercial development to certain areas within the reserves, it is recommended that any amendment to the RMP should be publicly notified and a hearing held to hear public submissions.
- 25 The policies of the RMP are a relevant matter for the processing of a consent and would generally be given material weight.
- 26 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002:
- 27 **Option 1** Agree to a comprehensive review the RMP, which would consider whether the RMP provisions relating to commercial activities are appropriate or should be amended.

Advantages:

- 28 The whole RMP is reviewed with full public consultation.
- 29 This ensures the RMP is relevant.
- 30 The public has the opportunity to submit and be heard.

Disadvantages:

- 31 Comprehensive review of the RMP may take up to 12 months to complete.
- 32 If Council does decide to review the RMP in response to the request from HAL for the private commercial wharf, this does create a precedence that other commercial operators can seek changes to RMP's in response to commercial drivers.
- 33 Council went through the process to update the RMP recently (5 years) and the general intent of the RMP was to limit commercial development to certain areas within the reserves.
- 34 This RMP review will be prioritised over other reserve management plan's and parks planning projects, while private commercial interests are progressed.
- 35 There will be budgetary implications for Council if a RMP review is required.
- 36 The outcome of the Resource Consent process is uncertain, a review may not be required.
- 37 **Option 2** Agree to partially review the RMP and amend RMP Zone 1 policies and map to include a new permitted commercial activity area. The amended RMP will be prepared and publicly notified under s 41 (4) and (5) with a submissions period of 2 months minimum and a hearing if submissions are received.

Advantages:

- 38 As above, and;

39 Less time and cost.

Disadvantages:

40 As above.

- 41 **Option 3** As above but choose to do the review using the special consultative procedure under the LGA 2002 with a one month notification period minimum and a hearing if submissions are received.

Advantages:

42 As above, and;

43 Less time and cost.

Disadvantages:

44 As above.

- 45 **Option 4** Agree to a minor review of the RMP and do not undertake full public consultation.

Advantages:

46 Less time and cost.

47 Less risk to HAL.

Disadvantages:

48 As above, and:

49 Public do not get to participate. There are submissions in opposition to the resource consent application that reference the RMP policies that do not provide for commercial activity in the proposed area.

- 50 **Option 5** Council to notify an intention to grant lease pursuant to s 54(2) of the Act;

Advantages:

51 Less time and cost for HAL

52 A lease would be publicly notified

Disadvantages:

53 There are precedent risks associated with providing landowner approval for an activity that is fundamentally inconsistent with an RMP unless if there is a unique situation to distinguish the requests from other similar request that might be made. In this case the RMP is very clear that it does not allow commercial activities in this

particular area. The Council went through the process to update the RMP recently (five years) and the general intent that of the RMP was to limit commercial development to certain areas within the reserves.

- 54 There are a number of operators who would likely wish to establish jetties in the town centre. If we recommend a lease is approved that is not in accordance with the RMP this would set an undesirable precedent.
- 55 The outcome for HAL is still uncertain as the notified lease process may not result in the outcome they are seeking.
- 56 The lease, if approved, may differ from the resource consent decision.
- 57 **Option 6** Do nothing, no change to the RMP (i.e. no review); let the consent run its course.

Advantages:

- 58 Efficient use of Council staff time.
- 59 No undesirable precedent set.
- 60 Public expectations of RMP intent is upheld
- 61 No cost to QLDC
- 62 No further time delays on the HLA resource consent.

Disadvantages:

- 63 If the HLA resource consent is approved there will be a time delay while the RMP is reviewed (if that is what Council chooses to do).
- 64 This report recommends **Option 6** for addressing the matter because this does not set an undesirable precedent, it upholds the integrity of the Reserve Management Plan, which was publicly consulted on, and is efficient use of staff time and ratepayer funding.
- 65 If Option 6 is not agreed, **Option 3** is recommended as this ensures a robust public process is undertaken, integrity of the RMP is maintained and the public have an opportunity to submit.

CONSULTATION PROCESS | HĀTEPE MATAPAKI:

> SIGNIFICANCE AND ENGAGEMENT | TE WHAKAMAHI I KĀ WHAKAARO HIRAKA

- 66 This matter is of medium significance, as determined by reference to the Council's [Significance and Engagement Policy](#) because it involves a potentially high level of Community interest for the public and users of the St Omer and Queenstown Bay reserves and the commercial operators in Queenstown Bay.

67 The persons who are affected by or interested in this matter are the residents/ratepayers of the Queenstown Lakes District and visitors to, and users of, the St Omer and Queenstown Bay Reserves.

68 The Council has not consulted on this matter.

RISK AND MITIGATIONS | NGĀ RARU TŪPONO ME NGĀ WHAKAMAURUTANGA

69 This matter relates to the Community & Wellbeing risk category. It is associated with RISK000009 Ineffective management of community assets within the [QLDC Risk Register](#). This risk has been assessed as having a high inherent risk rating.

70 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 continuing to administer the reserve under the current RMP policies.

FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

71 The cost to carry out a partial notified review of the RMP will be approximately \$20,000 to Council.

72 There is no budget in the Ten Year Plan to review this RMP. It's estimated a partial review would cost approximately \$25, 000. The Community Services work programme would need to be reviewed and work on other reserve management plans deprioritised. HLA could be required to meet these costs as the review is for private gain. The risk of HLA paying for the review is that this could predetermine the granting of a lease to HLA and the use of the reserve land.

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

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

- Queenstown Bay Foreshore Reserve Management Plan 2016
- The Reserves Act 1977.
- Local Government Act 2002.
- Parks & Open Spaces Strategy 2017 and Draft Parks and Open Spaces Strategy 2021.
- Proposed and Operative District Plan.

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

75 This matter is not included in the Ten Year Plan.

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

76 Queenstown Bay Foreshore Reserve Management Plan 2016 was prepared in accordance with the Reserves Act 1977. RMP states it does not allow commercial activities in this

particular area. Legal advice was taken when assessing the options, and the recommended option is consistent with that advice.

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

77 The recommended option:

- 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

A	HAL proposed kiosk alternative locations on wharf
B	Queenstown Bay Foreshores Reserve Management Plan.