

QLDC Council  
10 December 2020

Report for Agenda Item | Rīpoata moto e Rāraki take : 10

Department: Property & Infrastructure

Title | Taitara QLDC Integrated Three Waters Bylaw and Administration Manual 2020

**PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO**

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The purpose of this report is to consider the Queenstown Lakes District Council Integrated Three Waters Bylaw and Administration Manual 2020 (**Proposed Bylaw**) for adoption.

**EXECUTIVE SUMMARY | WHAKARĀPOPOTOTANGA MATUA**

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- 1 The Queenstown Lakes District Council Trade Waste Bylaw 2014 and Water Supply Bylaw 2015 (**Current Bylaws**) are both due for review. Queenstown Lakes District Council currently does not have any Bylaws to manage stormwater or wastewater services. The Proposed Bylaw will replace the Current Bylaws and incorporates new provisions relating to the management of stormwater and wastewater. The key changes in the Proposed Bylaw and associated Administration Manual that relate to the Current Bylaws have been modernised but no significant changes have been made. These key changes include:
  - a. An Administration Manual that allows administrative matters to be undertaken through Order of Council or Council's Chief Executive or Officer's delegated authority rather than through a full Local Government Act consultative procedure;
  - b. Amendment to the categories of the bylaw to capture all premises (as defined in the bylaw) to ensure a fair and comprehensive management approach;
  - c. Amendment to the current trade waste, Council's wastewater infrastructure discharge parameters to ensure they align with current resource consents and promote cleaner production;
  - d. Requiring businesses that store hazardous substances on site to comply with all Codes of Practice developed by the New Zealand Government's Environmental Protection Agency;
  - e. Introducing a schedule of fees and charges (for trade waste discharges) to be implemented from July 2021; and
  - f. Incorporating new provisions relating to the management of wastewater and stormwater, together with the water supply and trade waste bylaws (given that trade waste is discharged into the wastewater system), into one comprehensive document.
- 2 Under sections 158 and 160 of the Local Government Act 2002 (**LGA**), the Council had five years to review the Current Bylaws by making a determination under section 155. A further two year period is provided under sections 160A and 160B and the Council's

review falls within this two year period (a review by Council staff of the Current Bylaws took place on 30 January 2020 which recommended minor changes and on 23 July 2020, the Council resolved to undertake the special consultative procedure). If approved, the Proposed Bylaw will need to be reviewed within five years under section 158, and then at ten yearly intervals following the first review under Section 159.

## RECOMMENDATION | NGĀ TŪTOHUNGA

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That Council:

1. **Note** the contents of this report.
2. **Approve** the Hearing Panel recommendation to adopt the Queenstown Lakes District Council Integrated Three Waters Bylaw and Administration Manual 2020, incorporating minor changes to the previous edition considered by Council at their Ordinary Meeting on 23 July 2020 and following consideration of public feedback from the submissions.
3. **Determine** that the Queenstown Lakes District Council Integrated Three Waters Bylaw is:
  - a. Necessary to provide a regulatory framework to effectively manage water supply, wastewater (including trade waste) and stormwater.
  - b. The most appropriate and proportionate way of addressing the perceived problem.
  - c. Not inconsistent with the New Zealand Bill of Rights Act 1990.
4. **Approve** the revocation of the Queenstown Lakes District Council Trade Waste Bylaw 2014 and Water Supply Bylaw 2015.
5. **Adopt** the Queenstown Lakes District Council Integrated Three Waters Bylaw and Administration Manual 2020 [Attachment A and B of this report] with the Proposed Bylaw coming into effect on 1 July 2021.

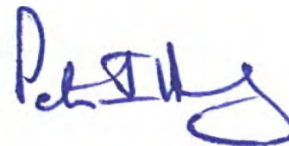
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26/11/2020

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27/11/2020

## CONTEXT | HOROPAKI

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- 1 Queenstown Lakes District Council is able to make bylaws for the purposes of managing and protecting the three waters networks and the natural environment from which water is abstracted and into which wastewater and stormwater are discharged under the LGA.
- 2 The LGA provides that councils shall review any bylaws no later than five years after the date on which the bylaw was made and then further review every 10 years (sections 158 and 159). A bylaw which is not reviewed within the specified timeframe is revoked two years after the review should have been completed (sections 160A and 160B). Essentially, there is an additional two year period in which to complete a review that is not completed within the initial five year period. The current Trade Waste Bylaw 2014 was adopted on 24 November 2015 and the current Water Supply Bylaw 2015 was adopted on 1 December 2015. In accordance with the LGA the Trade Waste Bylaw 2014 and Water Supply Bylaw 2015 are now due for review.
- 3 Incorporating the water supply and trade waste bylaws (given that trade waste is discharged into the wastewater system) with stormwater and wastewater bylaws into one comprehensive document allows Council to take an integrated and consistent approach to the management of its three waters services and the associated networks. The networks include water abstraction and treatment, wastewater treatment and discharge and stormwater discharges as well as the water supply, distribution systems, and wastewater and stormwater collection and conveyance systems.
- 4 The establishment of an Administration Manual to accompany the Proposed Bylaw allows Council to consolidate and make consistent those aspects of managing each of the three waters which are more administrative in nature and which may need regular review and updating. This simplifies the administration of the Proposed Bylaw, allowing for administrative and technical processes to be kept up to date, and assisting the interpretation of the Proposed Bylaw. Amendments to the Administration Manual will be authorised either by an Order of Council or the Council's Chief Executive or Officers delegated authority.
- 5 The Administration Manual will be managed under the delegated authority of the Proposed Bylaw, and will govern the implementation and operation of the Proposed Bylaw.
- 6 Reports detailing the findings of a Council review of the Current Bylaws were prepared during 2019 and made available for Council consideration for the 23 July 2020 Ordinary Council Meeting
- 7 Additionally, two determinations reports investigating the appropriateness of a stormwater bylaw and wastewater bylaw (respectively) were also made available for council consideration at the 23 July 2020 Ordinary Council Meeting, along with a covering report to inform Council's decision-making processes.
- 8 All of the findings and determinations reports included analysis of the option to develop an Integrated Three Waters Bylaw and associated Administration Manual, and weighed the benefits and disadvantages of this approach.

- 9 Early consultation was undertaken by Council to introduce the concept of the Proposed Bylaw and associated Administration Manual to the community in 2019. This included publication of an article in the community newsletter (Issue 133 of Scuttlebutt).
- 10 On the basis of the information available, Council resolved to approve the commencement of the necessary public consultation in relation to the Proposed Bylaw and Administration Manual 2020 at the Ordinary Council Meeting on 23 July 2020.
- 11 Following Council approval, Council staff commenced a special consultative procedure on the Proposed Bylaw and Administration Manual. The Proposed Bylaw and Administration Manual, and Statement of Proposal were publicly notified by advertisement on the Council website and in local newspapers from 30 July 2020. These newspapers included the Wānaka Sun, Mountain Scene, the Otago Daily Times, and the Southland Times.
- 12 The Proposed Bylaw, Administration Manual and the Statement of Proposal and other supporting documents were made available on the Council's website, and at the Council offices at 10 Gorge Road, Queenstown and 47 Ardmore Street, Wānaka.
- 13 Submissions opened on 30 July 2020 and closed on 27 September 2020. During this period, 11 formal submissions were received and a further two submissions from Council's three waters contractor (Veolia Australia and New Zealand), making 13 submissions in total.
- 14 Four of the formal submissions supported the Proposed Bylaw and Administration Manual in full. Three submissions were neutral, and four submissions opposed the Proposed Bylaw and Administration Manual on one or more matters.
- 15 Two submitters indicated they wished to be heard in support of their submission. After contacting each submitter prior to the hearing, both confirmed they still wished to speak.
- 16 The LGA requires that comment is sought from the Minister of Health in terms of any proposed trade waste bylaw (in this case, the trade waste components of the Proposed Bylaw). This comment was sought by Council, and a response was received from Hon Julia-Ann Genter, Associate Minister of Health (**attached**). Overall, the Associate Minister's letter was positive and confirming, noting the importance of improving outcomes for the management of stormwater and wastewater particularly given the increase in the population of the Queenstown Lakes District. Ministry of Health officials had advised the Associate Minister that "the Council's proposed new Bylaw and associated Administration Manual is comprehensive and largely follows the requirements set by the New Zealand Standard (NZS) Model Bylaw for Trade Waste."
- 17 The Associate Minister did not require consultation with any specific representatives of the owners or occupiers of trade waste premises under section 148(4) of the LGA 2002. There was one request; that the title 'National Radiation Laboratory' be updated to the 'Office of Radiation Safety', and that the text and schedules of the Proposed Bylaw and Administrative Manual refer to the Office of Radiation Safety Code of Practice CSP1 for the use of Unsealed Radioactive Material. This change has been made in Clause A3 of the Administration Manual.

- 18 A Council hearing was convened on 21 October 2020 in Queenstown. The Hearing Panel was comprised of Councillors Lewers (Chair), MacLeod, and Gladding.
- 19 The report to the Hearings Panel dated 21 October 2020 summarises the key themes of the submissions, undertakes an analysis of each key theme and gives the Council's officers and advisors recommendations on how to address the key themes.
- 20 One of the two submitters who attended the hearing took a neutral to supportive position regarding the Proposed Bylaw and Administration Manual, with a key focus on environmental protection, consideration of the Lake Wanaka Preservation Act 1973, and recognising the need for evidence-based management of water bodies (such as baseline monitoring).
- 21 The second submitter appeared in opposition, with key concerns including an objection to the focus on reticulated sewerage systems (by the Council), and questioning whether the Bylaw satisfied the intent of the Resource Management Act 1991. This submitter also promoted innovative solutions including property owners and occupiers' own solutions.
- 22 The Hearings Panel gave full consideration to the submissions received and determined the extent to which the submissions should be accepted or disallowed.
- 23 Following deliberations of the Hearing Panel (which were not public), the following minor changes were made to the Proposed Bylaw and Administration Manual to address concerns raised by submitters and the panel (see attached Deliberations Report):
  - a. Adopt the recommendations set out in the Hearing Report (21 October 2020; attached);
  - b. Include innovation in the definition for cleaner production;
  - c. Add reference to the Queenstown Lakes District Plan into the Administration Manual (Clause A3);
  - d. Amend Clause E10 of the Administration Manual to specify that food premises trade waste dischargers that are not commercial operations (such as marae, churches, community halls etc.) must apply for a trade waste consent, but Council may only require grease traps to be fitted where this is warranted based on a risk based assessment; and
  - e. Amended the definition of 'Occupier' to exclude residential tenancies.
  - f. It was noted that the Hearing Panel did not support the staged introduction of costs (e.g. reflected in Schedule D of the Administration Manual).
- 24 The Hearing Panel moved that the final form of the Queenstown Lakes District Council Integrated Three Waters Bylaw and Administration Manual 2020 be recommended to Council, incorporating minor changes (outlined in the Deliberations Report, Attachment E) following consideration of public feedback from the submissions.

The Hearing Panel also recommended that the Council develop a policy relating to monitoring of the receiving environment to ensure that the Proposed Bylaw is being complied with and the Council is meeting its obligations under the Resource Management Act. This policy should be developed at the same time as the LTP to ensure it is adequately resourced.

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

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25 These options were presented to the Hearing Panel on 21 October 2020 and also included in the Cover Report as Appendix 3 presented in Council's Ordinary Meeting on 23 July 2020:

26 **Option 1** The Proposed Bylaw and Administration Manual 2020 are considered without changes.

### *Advantages:*

27 The Proposed Bylaw and Administration Manual combines and updates two current (but due to expire) Bylaws, along with additional provisions for stormwater and wastewater. It manages all three waters services in an integrated manner.

### *Disadvantages:*

28 Some submitters may perceive that matters raised through consultation and at the Hearing are not addressed, both those in support and those opposed. Some of the matters arising from the submissions are appropriate to include in the Proposed Bylaw and Administration Manual; these would not be implemented.

29 **Option 2** The Proposed Bylaw and Administration Manual 2020 are adopted with changes following consideration of submissions and the deliberations of the Hearing Panel.

### *Advantages:*

30 Option 2 will have the same advantages as Option 1, as well as:

31 Some submitters will perceive that the issues they have raised through submissions have been addressed by Council.

### *Disadvantages:*

32 There is a chance that some submitters (particularly those opposed or neutral, focused on wider environmental management and stewardship matters which may not necessarily be able to be addressed through a Bylaw mechanism) may perceive that matters raised through consultation are not addressed.

33 **Option 3** The Proposed Bylaw and Administration Manual 2020 is not adopted, or the status quo.

### *Advantages:*



- 34 If the Proposed Bylaw and Administration Manual are not adopted, and the Current Bylaws are renewed without any changes, enforcement (including current challenges) will continue as it currently does. There will be no further financial or resource costs to enforcing a new Bylaw.

*Disadvantages:*

- 35 The costs incurred to date in an extensive review process and in developing the Proposed Bylaw and Administrative Manual (including technical and legal advice, communications, and in-house time) will, in part, be lost.
- 36 Council will not be meeting its statutory obligation to review and revise the Current Bylaws, nor will there be a bylaw for wastewater and stormwater.
- 37 Objectives set for each of the three waters services (including trade waste) will not be met – in fact, a good number will not be met at there is currently no Council Wastewater or Stormwater Bylaw in place.
- 38 The Trade Waste Bylaw 2014 will be revoked if not reviewed by November 2021 (as per the Trade Waste Bylaw Findings Report 2019).
- 39 Council will lose the opportunity to take an integrated approach to three waters management, and address a wide range of legislative and Council policy and procedure requirements which have been (and continue to be) developed since 2014; e.g. National Policy Statement for Freshwater Management 2020.
- 40 This report recommends **Option 2** for addressing the relevant matters because the Council will have a bylaw which provides a proactive and responsive regulatory framework to manage the risks associated with the operation of the three waters network, including the quality of discharges to the environment. The integration of the three waters bylaws ensures a consistent and holistic approach to the promotion of sustainable behaviours and activities in the district, including water management, waste minimisation, on-site pre-treatment of trade waste, control of backflow contamination risks to our water supply, and expand the toolkit available for Council to protect the natural environment, as well as numerous other benefits.

## CONSULTATION PROCESS | HĀTEPE MATAPAKI:

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

- 41 This matter is of high significance, as determined by reference to the Council's Significance and Engagement Policy because it impacts on public health and the receiving environment.
- 42 The persons who Council staff have identified as affected or interested in this matter are:
- a. the wider community;
  - b. all trading premises;

- c. consultants;
- d. contractors;
- e. environmental groups; and
- f. the Minister of Health.

43 The Council has informally and formally engaged with the community via the special consultation procedure under Section 83(1) of the LGA.

44 The consultation process undertaken by Council has been comprehensive as evidenced by the range and extent of activities encompassed in the Council's Communication Plan for the Proposed Bylaw and Administration Manual. The Methods and Channels section of the Communication Plan highlights the wide range of consultation activities undertaken which included local radio station messages; direct emails to over 1,000 Three Waters stakeholders; "Let's Talk" and "Brace Yourself" articles; articles in Scuttlebutt; emails to iwi representatives; media releases; poster services and/or summaries in libraries, council offices and recreation centres; two documents on "How does the Bylaw Affect Me" (one for Trade Premises, one for Residents); Stakeholder meetings; newspaper articles and statutory notification in the Otago Daily Times, Southland Times, Wanaka Sun and Mountain Scene.

#### > MĀORI CONSULTATION | IWI RŪNANGA

45 It was recognised early in the process of developing a proposed bylaw that water management is critical to Maori as kaitiaki who are responsible for the wellbeing of tangata whenua and protecting, enhancing and restoring the mauri of freshwater bodies. The Council recognises these kaitiaki responsibilities and wants to ensure an outcome where kaitiaki concerns are appropriately addressed where possible in the management of public systems and in relation to council policy and monitoring the performance of private systems.

46 In addition to these responsibilities of Council, the purpose of the Proposed Bylaw includes to recognise Te Mana o Te Wai (a fundamental concept under the *National Policy Statement for Freshwater Management 2020*) in freshwater management.

47 Consultation with Maori included email correspondence between Council officers and iwi representatives at Te Ao Mārama and Aukaha, and contact with iwi through Council's partnership with Ngāi Tahu in terms of providing guidance on water stewardship through Te Mana o Te Wai.

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

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48 This matter relates to the following risk categories within the QLDC Risk Register:

- a. **Environmental risk category.** RISK00017 Damage to the Environment – Discharge of contaminants



- b. Regulatory/Legal/Compliance risk category.** RISK00031 Ineffective management and governance over legislative compliance, RISK00029 Contaminated Water Supply – Death of person(s)
- c. Community & Wellbeing risk category.** RISK00009 Ineffective management of community assets, RISK00015 Temporary Core Infrastructure Outage – maintenance issues, RISK00016 Temporary Core Infrastructure Outage caused by 3<sup>rd</sup> Party Supplier, RISK00027 Contaminated Water Supply – Person(s) become ill or unwell, RISK00028 Discharge of contaminants from council assets or infrastructure, RISK00010 Operational Asset failure results in damage to private property and/or loss of community services
- 49 The above risks except for Risk 00029 Contaminated Water Supply have been assessed in accordance with Council’s Risk Register as having a moderate inherent risk rating. RISK00029 has been ranked as high inherent risk rating, but after taking residual input and residual likelihood into account and the risk rating is reduced to moderate.
- 50 It is also noted that the Cover Report reviewed during the Ordinary Council meeting on 23 July 2020 identified legal challenges, cultural issues, and community resistance to increased levels of regulatory management as potential risks associated with adopting the Proposed Bylaw and Administration Manual. However, these risks did not feature in further public consultations or the Hearing Panel discussions to any significant degree.
- 51 The approval of the recommended option will support the Council to implement additional controls for these risks. This can be achieved by establishing an integrated Three Waters Bylaw and Administration Manual that better suits the needs of the community, promotes proactive and consistent management of all three waters services and supports efficient enforcement against activities that may cause harm to infrastructure, the environment or present a risk to human health and safety of Council personal and the general public.

## FINANCIAL IMPLICATIONS | NGĀ RITENGA Ā-PŪTEA

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- 52 Current budgets will supply expenditure associated with educational materials produced to support the implementation of the Proposed Bylaw following its adoption.
- 53 Costs associated with trade waste discharge management, such as the costs of administration (which costs are intended to be covered by the fees and unit charges listed in Schedule D of the Administration Manual). These costs will be reviewed prior to the operative date of 1 July 2021.
- 54 Commercial/industrial users of the three waters services can expect to face additional costs. These costs would relate to both compliance monitoring charges levied by the Council, as well as potential capital investments in order to comply with the requirements of the new bylaw.
- 55 With the implementation of the Proposed Bylaw and Administration Manual it is envisaged that there will be a reduction in costs relating to maintenance of the network infrastructure and regulatory compliance as better environmental practises are adopted

throughout the District. These benefits would only be expected in the medium to long term.

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

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56 The following Council policies and strategies were considered:

- Vision Beyond 2050: <https://www.qldc.govt.nz/vision-beyond-2050/>
- Significance and Engagement Policy <https://www.qldc.govt.nz/media/5dkns4jx/qldc-significance-and-engagement-policy-aug18.pdf>
- QLDC Enforcement Strategy and Prosecution Policy <https://www.qldc.govt.nz/media/vxrm3wws/qldc-enforcement-strategy-and-prosecution-policy.pdf>
- Infrastructure Strategy – 2015-2045
- Infrastructure Asset Management Strategy

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

58 This matter is included in the Ten Year Plan/Annual Plan

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

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59 The Proposed Bylaw and Administration Manual must comply with the following legislation:

- Resource Management Act 1991
- Health Act 1956
- (LGA)
- New Zealand Bill of Rights Act (NZBOR)

60 The process followed by Council, including the background to the review of existing Bylaws, and development of the current proposal, is set out in the following documents (considered by Council at its meeting on 23 July 2020):

- Proposed Integrated Three Waters Bylaw – Cover Report
- Draft Integrated Three Waters Bylaw 2020
- Draft Integrated Three Waters Bylaw – Administration Manual 2020
- Trade Waste Bylaw 2014 – 2020 Review Findings Report
- Water Supply Bylaw 2015 – 2020 Review Findings Report
- Stormwater Bylaw – New Bylaw Determination Report
- Wastewater Bylaw – New Bylaw Determination Report

- 61 The recommended option does not raise any NZBORA issues because it only seeks to impose justifiable and reasonable limitations on persons in the interests of environmental quality and public health and safety. Council officers consider the Proposed Bylaw does not unreasonably limit any rights or freedoms under the Act. The regulatory controls provided under the Proposed Bylaw are designed to minimise danger, distress and nuisance to the community and their property, and to maintain public health and safety.
- 62 Legal advice has been sought in relation to the relevant Acts and the recommended option for adoption of the Proposed Bylaw and Administration Manual is consistent with that advice.

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

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63 The recommended option:

- Will help protect the water quality and ecology of lakes and rivers, protect the safety and health of Council personnel and the general public, and meet the current and future needs of communities for good-quality local infrastructure;
- Provide for a robust monitoring and enforcement regime for managing the district's Three Waters Services
- 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 of Council's three water services, or transfer the ownership or control of a strategic asset to or from the Council.

### **ATTACHMENTS | NGĀ TĀPIRIHANGA**

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A	Proposed Integrated Three Waters Bylaw 2020
B	Proposed Integrated Three Waters Bylaw – Administration Manual 2020
C	Report to Hearing Panel (21 October 2020)
D	Hearing Panel Deliberations Report

**Note that the attachments are circulated as a separate document.**