

**QLDC Council**  
**3 June 2021****Report for Agenda Item | Rīpoata moto e Rāraki take : 3****Department: Finance, Legal & Regulatory****Title | Taitara Queenstown Lakes District Council Shotover River Bylaw 2021****PURPOSE OF THE REPORT | TE TAKE MŌ TE PŪRONGO**

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- 1 The purpose of this report is to present the Queenstown Lakes District Council Shotover River Bylaw 2021 for adoption following completion of the Special Consultative Procedure.

**EXECUTIVE SUMMARY | WHAKARĀPOPOTOTANGA MATUA**

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- 2 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.<sup>1</sup> A bylaw which is not reviewed within the specified timeframe is revoked two years after the review should have been completed.<sup>2</sup> The Shotover River Bylaw 2015 (**2015 Bylaw**) was adopted on 17 December 2015, and in accordance with the LGA is now due for review.
- 3 Following a period of receiving submissions, a hearing and deliberations, further work has been undertaken to establish how the submissions received by the community could be better accommodated by the bylaw, whilst maintaining public and navigation safety. It was not considered appropriate or necessary to alter the bylaw itself in response to these submissions, rather modernise the permitting system to provide a more transparent and user friendly system, which provides ease of access and understanding of available permit times and dates.

**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 Shotover River Bylaw 2021 following consideration of public feedback from submissions;
3. **Determine** that the Shotover River Bylaw 2021 is:
  - a. Necessary to provide a regulatory framework to manage the Concession Area for the purposes of maritime safety;

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<sup>1</sup> Sections 158 and 159.

<sup>2</sup> Sections 160A and 160B.

- b. The most appropriate and proportionate way of addressing the perceived problem; and
  - c. Not inconsistent with the New Zealand Bill of Rights Act 1990.
4. **Adopt** the Queenstown Lakes District Council Shotover River Bylaw 2021 with the proposed bylaw coming into effect on 3 June 2021.

Prepared by:



Thomas Grandiek  
Monitoring, Enforcement  
& Environmental Team  
Leader  
30/04/2021

Reviewed and  
Authorised by:



Anthony Hall  
Regulatory Manager  
20/05/2021

Reviewed and  
Authorised by:



Stewart Burns  
GM, Finance, Legal and  
Regulatory  
20/05/2021

## CONTEXT | HOROPAKI

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- 4 The Local Government Act 2002 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.
- 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° 59'24.58 S 168° 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 a significant safety risk for inexperienced users, if not appropriately managed.
- 6 The proposed Shotover River Bylaw 2021 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 and navigation safety. It also provides the permitting system to enable booking of the concession area. The Concession Area of the Shotover River has existed since 1985 via the Shotover River Empowering Act 1985. Later, the Concession Area has been regulated via the Maritime Transport Act 1994, Local Government Act 2002 and the associated Shotover River Bylaws. The first Shotover River Bylaw was established in 2000.
- 7 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. A bylaw which is not reviewed within the specified timeframe is revoked two years after the review should have been completed. The Shotover River Bylaw 2015 (2015 Bylaw) was adopted on 17 December 2015, and in accordance with the LGA is now due for review.
- 8 In 2020, Council invited key stakeholders, such as the Arthurs Point Community Association, Shotover Jet (Ngai Tahu), Harbour Masters, Jet Boating New Zealand, Otago Regional Council, Central Otago White Water, Maritime New Zealand and Council Compliance Officers to provide feedback on the existing Shotover River Bylaw 2015. 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 Shotover River Bylaw 2021.
- 9 At the 10 December 2020 Council meeting the Council resolved to approve the commencement of public consultation of the proposed Shotover River Bylaw 2021, and determined that a bylaw was the most appropriate way of restricting public access to the Concession area for the purposes of maritime safety in accordance with section 155(1) of the LGA.
- 10 Councillors Lewers, Clark and Smith were appointed to form a hearings panel to consider submissions received during public consultation.

- 11 Following Council approval, Council staff commenced a special consultative procedure on the proposed Shotover River Bylaw 2021. The proposed bylaw and the Statement of Proposal were publicly notified by advertisement on the Council website on 13 December 2020, and in local newspapers from 16 December 2020. These newspapers included the Otago Daily Times, Southland Times, Mountain Scene and the Wānaka Sun.
- 12 The proposed Shotover River Bylaw and supporting documents were made available on Council's website, and the Council offices at 10 Gorge Road and 47 Ardmore Street, Wānaka.
- 13 Submissions opened on 11 December 2020 and closed on 25 January 2021. During this period 38 submissions were received on the proposed bylaw. Eight submissions supported the proposed bylaw. One submitter was neutral. Twenty-nine submissions opposed the proposed bylaw.
- 14 Section 33M of the Maritime Transport Act 1994 requires that Council consult with the Director of Maritime New Zealand when making bylaws for ensuring maritime safety. Maritime New Zealand responded and did not provide any comments and determined the proposed bylaw was appropriate.
- 15 A hearing of submissions was held on 26 February 2021 and submissions from the Arthurs Point Community Association and Central Otago White Water were heard. Specific detail of the submissions presented can be viewed in Attachment B.
- 16 The panel recognised that the main message from the hearing was the public wish for the Concession Area to be opened up regularly for passive recreation; nevertheless, the purpose of the proposed bylaw is to maintain navigation safety. (Attachment B).
- 17 The Hearings Panel gave full consideration to the submissions received and determined the extent to which the submissions should be accepted or disallowed.
- 18 The panel directed Council Officer Mr Grandiek to investigate whether a system that enabled a blanket permit for passive users of the Shotover River was possible. It was made clear from the panel that this would only be available for non-powered craft and swimmers travelling in a down-stream direction and outside of Shotover Jet's operating times.

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

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- 19 Following the hearing, further work was undertaken to establish how the submissions received could be better accommodated by the bylaw. While greater access for the community for recreational use was desirable, it was equally vital for the bylaw to continue to maintain public safety and navigation safety.
- 20 It was not considered appropriate or necessary to alter the bylaw itself in response to these submissions, rather to modernise the permitting system to provide a more transparent and user friendly system, with the aim of providing ease of access and greater understanding of available permit times and dates.

- 21 This has resulted in the creation of a web page on the QLDC website providing greater information on the bylaw itself, what it sets out to achieve, as well as providing a clear and concise permit application system. A booking calendar is provided which QLDC and its delegate, Shotover Jet, regularly update. The provision of this calendar is to enable permit applicants to make more informed applications for access to the concession area at appropriate times.
- 22 A 'blanket permit option' has been provided within the application form so that passive, non-powered river users can recreate within the concession area simultaneously, within allocated permit times. During submissions and deliberations, it was acknowledged that multiple recreational users in the form of rafters and kayakers and similar non-powered vessels, pose little risk when operating together within the Concession Area and powered vessels are not present. Essentially the revised permit system now allows for a group such as the Otago White Water or Arthurs Point Community Association, to apply for a blanket permit for any number of recreational users within the allocated permit time.
- 23 Private motorised vessels in the form of jet boats were raised through submissions, and were considered by the Hearings Panel. Feedback from Jet Boat New Zealand ('JBNZ') was complimentary of the existing and proposed bylaws. JBNZ commented that the Bylaw has worked well to manage watercraft and the process to obtain a permit is acceptable. The pre-requisite safety briefing is appropriate, and the subsequent communication with Shotover Jet prior to accessing the river is important and necessary. It is believed that the modernisation of the permit application system will also benefit private motorised vessels accessing the concession area.
- 24 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. The infringement fees are considered appropriate, and officers consider the fees should remain the same.
- 25 The proposed bylaw will replace the existing bylaw and will continue to 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 bylaw, with some minor changes, is considered to be the most appropriate way to manage use of the Concession Area for users, both recreational and commercial, and to ensure public safety.
- 26 The proposed Shotover River Bylaw 2021 maintains navigation safety and public safety as the principle of the bylaw. Only minor changes have been made to the bylaw. This includes minor grammatical changes, inclusion of a clear definition of a vessel and an updated permit application form. Outside the bylaw a lot of work has been undertaken to provide a modernised electronic booking system that allows for blanket permits to be applied for, as well as clear and concise information for the community to refer to. The changes made are as follows:
  - a. The definition of vessel has been expanded to align with the Navigation Safety Bylaw 2018 for greater consistency and clarity for river users.
  - b. The word "craft" has been replaced with the word "vessel" for consistency with the Navigation Safety Bylaw 2018.

- c. The addition of the word “only” in the purpose to ensure clarity that the bylaw is only in respect of the Concession Area;
- d. 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
- e. Correcting minor errors.

27 The Hearings and Deliberations Panel resolved that the final form of the Queenstown Lakes District Council Shotover River 2021 Bylaw be recommended to Council, incorporating minor changes (outlined in Attachment B), following consideration of public feedback from the submissions.

28 Option 1 Adopt the proposed Shotover River Bylaw 2021

*Advantages:*

- 29 Continuity, effective management and control of potential safety risks to members of the public using the concession area recreationally. Adoption of the proposed changes to the Bylaw enables the continuity of a successful process that has been in place for a number of years to effectively manage access to the Concession Area.
- 30 The changes to the permitting system will provide a more efficient, transparent and modernised system for members of the public to access information on the bylaw and to apply and obtain permits more successfully.
- 31 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:*

- 32 Wider river users may view the proposed changes as restricting their right to access the Shotover River.

33 Option 2 Do nothing, allow the existing bylaw to expire.

*Advantages:*

- 34 Wider river users may view the proposed changes as restricting their right to access the Shotover River.
- 35 No resources would need to be spent on enforcement of the bylaw.

*Disadvantages:*

- 36 The Council runs the risk of not taking all practical steps to protect, promote and maintain public health and safety and the natural environment.



- 37 Without a bylaw, high risk activities within the Concession Area cannot be monitored and investigated to provide control.
- 38 There is a large risk that there could be a serious incident in the Concession Area with unregulated interaction of commercial and recreational users.
- 39 This report recommends **Option 1** for addressing the matter because the proposed Shotover River Bylaw 2021 manages and controls public access to the Concession Area, in order to promote navigation safety of all users of the river. The retention of the current process, 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. Option 1 also addresses best the general submission concerns received by the respective stakeholders.

## CONSULTATION PROCESS | HĀTEPE MATAPAKI:

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

- 40 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.
- 41 The persons who are affected by or interested in this matter are:
- Residents/Ratepayers
  - Visitors to the district
  - Recreational river users
  - Commercial river users
- 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. 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 considered that given the public safety components of this bylaw that undertaking the special consultative procedure was the most appropriate form of consultation.
- 43 The Council has undertaken informal consultation and publicly notified public consultation as detailed within the context/background section of this report. Additionally, consultation with Maritime New Zealand's Director has been undertaken as required by section 33M(1) of the Maritime Transport Act.

### > MĀORI CONSULTATION | IWI RŪNANGA

44 It is important that the Council also 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 has allowed for additional opportunities for Māori consultation.

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

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46 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 moderate inherent risk rating.

47 The approval of the recommended option will support the Council by retaining 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

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48 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

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49 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>

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

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

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

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- 52 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.
- 53 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.<sup>3</sup> The Council must then be satisfied that:<sup>4</sup>
- 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).
- 54 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.
- 55 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.
- 56 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.
- 57 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.

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<sup>3</sup> s155(1).

<sup>4</sup> s155(2).

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

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58 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.

**ATTACHMENTS | NGĀ TĀPIRIHANGA**

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A	Shotover River Bylaw 2021
B	Hearing and Deliberations Meeting Minutes
C	Amended permit form