

Navigational and Safety Bylaw Review

1. History of the Bylaws

In December 2000 the Council made Navigation and Safety Bylaws (the Bylaws) under the Local Government Act 1974 for the first time. The previous Bylaws had been made by the Harbour Board under the Harbours Act 1950. In February 2003, the Minister of Transport approved Part 91 of the Maritime Rules – Navigation Safety Rules, the Council's Bylaws could not be inconsistent with those Rules. In accordance with the process set out in the Local Government Act 2002 (the Act), the Bylaws were reviewed and amended in December 2003. Due to public concerns regarding safety, the Reserved Area for Personal Water Craft in Lyall Bay was removed from the Bylaws in November 2006. A complete review was not undertaken at this time. The Act requires that a review of new Bylaws be undertaken no later than 5 years after the Bylaws were made, as a result we are reviewing the Bylaws this year.

2. How the bylaws are reviewed

The Act specifies the process for reviewing bylaws.

The Council must first determine whether a bylaw is the most appropriate way of addressing the perceived problem (section 155(1)). If so, the Council must then determine whether the proposed bylaw is the most appropriate form of bylaw (section 155(2)(a)). Finally the Council must determine whether the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (section 155(2)(b)).

If the tests above are satisfied, the special consultative procedure, outlined in the Act, must be followed to amend, revoke or revoke and replace the bylaws. In dealing with an amendment to the Bylaws or a revocation of any part of the Bylaws, the Council needs to consider not only whether the Bylaws as a whole are the most appropriate way of addressing the problem but whether the bylaw to be amended or revoked is necessary or the most appropriate form of bylaws.

3. What is the special consultative procedure?

This is outlined in the Act (s.83) and essentially is a community consultation process. The proposed timetable for the special consultative procedure is as follows:

Regional Council approval	29 September 2008
1 st Public Notice	1 October 2008
2 nd Public Notice	15 October 2008
Close of Submissions	5 November 2008
Hearing of Submissions	November 2008
Regional Council report back and approval	December 2008/February 2009
Bylaws come into effect	Mid 2009

4. Why the delay in implementation?

Along with the Bylaws goes enforcement, and the simplest form of penalty is the infringement fee, or instant fine. Infringement offences and fees need to be included in regulations made by an Order in Council by the Governor-General. The Department of Internal Affairs arranges this process for us. This process can only begin once the Bylaws have been approved by Council. The process for regulations to be made currently takes approximately six months to complete. If we were to introduce our Bylaws before summer we would not have any infringement notices to aid in enforcement of the Bylaws. By setting the date the Bylaws come into effect next year we can have the updated infringement offences and fees coming into effect at the same time as the Bylaws.

5. What are the major changes?

Maritime NZ is planning some changes to Rule 91 (Recreational Boating rule) that we intend to anticipate to remain not inconsistent with the Rule. These are a change of wording in relation to use of lifejackets in vessels under 6 metres in length. The change is from “must be worn when dangerous conditions exist” to “must be worn unless the skipper says its safe not to”. Also a requirement for a suitable means of communication to aid in Rescue, should the need arise.

The Port and Harbour Marine Safety Code Navigational Risk Assessment identified several area where improvement to the Safety of Navigation could be made for the harbour. The Beacon Hill upgrade is the most significant single part of these, however there is also additional information and clarification of requirements that can be placed in the Bylaws as well.

The most noticeable of these will be publishing the recommended tracks for shipping in the Harbour, with specific requirements for small vessels to keep clear of the shipping. This is in part covered by the “500 ton rule” which says that vessels under 500 Gross Tonnage (measure of volume, not weight) keep clear of vessels over 500 Gross Tonnage. There has been some confusion over this and where the ships normally travel through the Harbour.

The aim is to clarify that and give the recreational boaties a better of idea of where the shipping is likely to be and also formally impose some restrictions on how the ships travel through the harbour as well.

There will also be several smaller changes, including some of the reserved areas that will be detailed in the Summary of Information that will accompany the proposed Bylaws.

6. What is the role of the Regulatory Committee?

Council is required to formally start the review process and to approve the final version of the Bylaws; however the intention is for Council to delegate the hearing and considerations of submissions to the Regulatory Committee.

Six principles of consultation are set out in the Act. One of these principles is that views presented to a local authority should be accepted with an open mind, and should be given due consideration by the local authority, in making a decision.

It is consistent with best practice that members hearing submissions must be present for the duration of the hearing of the oral submissions.