

Auckland Regional Council Navigation Safety Bylaw 2008 Review Statement of Proposal

1. INTRODUCTION

The Auckland region's coastal marine area extends from the shore out to the 12 nautical mile limit throughout the region. Within the 12 nautical mile area the Auckland Regional Council is responsible for safe navigation. A harbourmaster has been appointed by the Council to conduct the Council's navigation safety functions.

The Auckland Regional Council Navigation Safety Bylaw 2008, which was made under section 684B of the Local Government Act 1974, is one of the tools used by the Council to regulate maritime operations and mitigate risks with regards to navigation safety.

The Local Government Act 2002 requires Auckland Regional Council to follow the special consultative procedure when reviewing a bylaw. This Statement of Proposal has been prepared in accordance with the requirements set out in section 86 of the Local Government Act 2002 for the use of the special consultative procedure.

2. BACKGROUND

The Auckland Regional Council Navigation Safety Bylaw is required by the Local Government Act 2002 to be reviewed every five years. Accordingly, a review was carried out over 2007 and 2008 and involved considerable public and stakeholder consultation. A total of 75 submissions were received and the Council established a bylaw working party to hear and make recommendations to the proposed bylaw. The Auckland Regional Council Navigation Safety Bylaw became operative on 1 July 2008.

3. REASONS FOR PROPOSAL

Since the Bylaw became operative and has been put into practice, two issues have arisen. The two issues relate to the workability of certain clauses:

- **Clause 2.17 Visibility of kayaks and paddle craft**
- **Clause 7.1.5 Whangateau Harbour reserved area**

4. ANALYSIS

Clause 2.17 Visibility of kayaks and paddle craft

Since the bylaw came into force there has been considerable feedback from kayaking groups regarding the requirements to increase their visibility on the water. The theme of opposition is that the bylaw provisions are unworkable from a practical point of view, and unacceptable with regard to cost impositions.

In developing the bylaw, considerable testing work on visibility issues was carried out by the Harbourmaster's Office in conjunction with the Auckland Canoe Club, Maritime New Zealand and members of the public. The final bylaw was developed as a result of initial consultation with kayaking groups, outcomes from the test results, and

submissions received from groups and operators of motor boats. Three submissions were received to this issue.

The bylaw that came into force in July 2008 states as follows:

“Every kayak and paddle craft that is navigating in waters beyond 200 metres from shore shall ensure they are highly visible to other vessels. This shall include:

- (a) wearing a high visibility vest or high visibility PFD; and
- (b) use of reflecting tape on oars or paddles and also on clothing; and
- (c) at night showing a continuous white light visible in all directions from a distance two nautical miles.”

Consideration has been given to the existing bylaw and how this may be modified to meet the wishes of kayak groups while still providing for a mandatory rule that ensures that kayakers are kept safe from the possibility of a collision with another vessel, either during the day, or at night. It should be noted that parties, other than kayak groups submitted in general support of the bylaw clauses.

Recent consultation with various groups has identified that the opposition to the bylaw relates to the “high visibility” description which has a legal description internationally relating to a standard, and also may not be the appropriate colour to be displaying in certain weather conditions. For example, it may be that a darker colour would be more appropriate in bright sunlight.

The second point of opposition relates to the all round white light with a visibility of two miles. This, evidently, will be difficult and costly to install on a kayak given the power requirements to achieve two nautical miles visibility. It will also be detrimental to night vision both for the kayaker and any other kayakers close by.

Accordingly, it is proposed that the bylaw be amended to read as follows:

“Every kayak and paddle craft that is navigating in waters beyond 200 metres from shore shall ensure they are highly visible to other vessels. This shall include:

By Day

Wearing highly visible clothing or a highly visible PFD suitable for contrasting with the visibility conditions at the time;

At Night

- (a) use of reflective tape on clothing; and
- (b) showing a continuous white light visible in all directions and of suitable intensity to avoid collision; and
- (c) having ready an electric torch showing a white light which must be exhibited in sufficient time to prevent collision.”

Clause 7.1.5 Whangateau Harbour reserved area

At the request of Rodney District Council (RDC) a reserved area in the Whangateau Harbour was inserted into the bylaw. The intention of the request was to restrict the area in which motorised watercraft could operate. Unfortunately this intent is not

reflected in the amendment requested and the reserved area is for the use of vessels towing water-skiers, or other motorised water sports only.

Since coming into effect the bylaw has created significant opposition by the residents of Whangateau Harbour, who see the reserved area being used by motor vessels to the detriment of other non motorised activities such as swimming and kayaking and will result in an unacceptable noise factor.

It is proposed that this reserved area be withdrawn from the bylaw. Sometime in the future RDC may request to introduce an access lane from the shore out to the 200 metre mark for motorised vessels. However RDC is not in a position to identify this at present and wish to undertake consultation with the local community before making any request.

5. SECTION 155 ANALYSIS

Section 155 of the Local Government Act

Section 155 requires local authorities, before commencing the process for making a bylaw, to determine whether a bylaw is the most appropriate way of addressing the perceived problem.

Visibility of kayaks and paddle craft - As this is a minor amendment to the existing Auckland Regional Council navigation Safety Bylaw 2008, it is considered that the bylaw is the most appropriate way of addressing the perceived problem in relation to the visibility of kayaks and paddle craft. It is important that the visibility of kayaks and paddle craft are regulated through a bylaw because alternatives such as a voluntary code would not ensure sufficient safety for kayakers, paddle craft users and other harbour users. The issue of small craft visibility is also identified in the Port and Harbour Safety Code risk assessment for the Auckland region.

Whangateau harbour – It is considered that a bylaw is an effective mechanism to address issues created by competing uses of Whangateau harbour. However as the current clause has been found unworkable, and RDC is currently not in a position to introduce a new access lane, it is likely that this issue will be addressed in the future by RDC.

6. New Zealand Bill of Rights Act 1990

The proposed bylaw review is not considered to give rise to any implication under the New Zealand Bill of Rights Act 1990.