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**Committee**      **Policy, Finance and Strategy Committee**  
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## **Proposed amendment to the Wellington Regional Navigation and Safety Bylaws 2003**

### **1. Purpose**

The purpose of this report is for the Council to consider the amendment of schedule 3 the Wellington Regional Navigation and Safety Bylaws 2003 (the Bylaws) relating to the Lyall Bay reserved area and, if necessary, commence the special consultative procedure.

### **2. Significance of the decision**

Before making any decision on the Bylaws the Council will be following the special consultative procedure as set out in the Local Government Act 2002.

### **3. Background**

The Council first adopted the Wellington Regional Navigational and Safety Bylaws in 2000. Under these bylaws a reserved area which allowed for a jet ski lane at Lyall Bay was formally put in place (a trial jet ski lane at Lyall Bay had been in place since 1991). This followed guidance from the 1999 Pleasure Boat Safety Advisory Group report and extensive consultation with the public.

In 2003 the Bylaws were reviewed, this included consultation on the status of the reserved areas outlined in the Bylaws. Included in the Bylaws was provision for the reserved area at Lyall Bay to shift along the beach in the event of an artificial reef being constructed. The 2003 Bylaws were adopted and the reserved areas remained in place.

On 27 April 2006 a petition was presented to the Policy, Finance and Strategy Committee seeking the abolition of the Lyall Bay reserved area. This petition was signed by 919 people.

On 1 June 2006 the Council resolved to initiate a review of the Bylaws in order to consider the relocation or removal of the Lyall Bay reserved area.

## **4. Making Bylaws**

### **4.1 Procedure**

The Local Government Act 2002 (the Act) specifies the process for making bylaws. Section 86 of the Act extends the process to any amendment or revocation of a bylaw.

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 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 bylaw.

### **4.2 Is a bylaw the most appropriate way?**

The navigation and safety bylaws have been in place for many years, there is public expectation that they will continue. In addition the Local Government Act 1974, empowers the Council specifically to make navigation and safety bylaws. This in itself signals that bylaws may be the most appropriate way of addressing the issue of navigational safety. The last review of the Bylaws took place in 2003 the review was conducted in accordance with the Act.

Although the Bylaws continue to be the most appropriate way of addressing the issue of navigational safety, safety issues within Lyall Bay may no longer be best dealt with by maintaining the Lyall Bay reserved area as provided for in Schedule 3 of the Bylaws.

#### **4.2.1 The problem**

The Lyall Bay reserved area is potentially unsafe due to reports of jet skiers using their jet skis outside of the reserved area and surfers and other beach users encroaching on the reserved area. There is concern that if nothing is done to resolve this problem then serious injury could result.

#### **4.2.2 Potential strategies to address the problem**

As part of its decision making process the Council is required to identify and assess all reasonably practicable strategies that could provide the desired solution. The following potential strategies could address the problem:

- Maintain the status quo (i.e. undertake no further work on amending the bylaws); or

- Move the reserved area in Lyall Bay; or
- Public education

(a) Maintaining the status quo

One strategy the Council could employ is maintaining the status quo and not making any amendment to the Bylaws.

Increased signage

At present the reserved area is marked by black and white horizontally striped poles. These poles are situated on the beach. On occasion users have commented that there can be difficulty in determining the location of the reserved area while in the surf. In order to ensure that the reserved area is visible to all users in the area it would be necessary for Greater Wellington to delineate the area with a series of buoys. The delineation would be hard to maintain in the weather conditions this bay is subject to. Maintenance would be costly and labour intensive.

Increased enforcement

Greater Wellington's officers have the power to issue infringement notices when a reserved area is used for a purpose other than the reserved purpose. Enforcement is difficult due to the location of any breaches. Enforcement officers have advised that the most practical way to give infringement notices in this situation would be to patrol the water on a jet ski. They have advised that there would be difficulties communicating with water users breaching the Bylaws. There would also be the practical problem of physically giving out the infringement notice, it is unlikely that these water users would be able to keep the infringement notice on their person. The cost of increased enforcement of the reserved area in staff time would be not insignificant.

(b) Moving the Lyall Bay reserved area

Presently the Lyall Bay reserved area includes:

*"All that area of water on the Eastern side of Lyall Bay (extending westward from Tirangi Road)..., bounded on the sides by parallel lines approximately 200 metres apart, and extending in a southerly direction 200 metres from the edge of the water."*

One option available is to move the location of the reserved area in Lyall Bay. A major aim of the reserved area at Lyall Bay is to provide surf conditions for jet skiers. Moving the reserved area to another location on the beach with surf conditions would necessarily encroach

on existing users such as swimmers and surfers. This would cause significant disruption to these beach users.

(c) **Public education**

The users of the Lyall Bay beach are made aware of the reserved area through signage and the black and white horizontally striped poles mentioned above. It is normal practice throughout the country to make people aware of a reserved area in this way, moreover Greater Wellington successfully uses this method to advise water users of a reserved area in other parts of the region.

Greater Wellington has provided approximately 5,000 copies of the Bylaws to members of the public since formalising the Lyall Bay reserved area in 2000. Officers have also spoken to surfers, jet skiers and other beach users about the Lyall Bay reserved area. Practically there will always be difficulty reaching all beach users and notifying them of the Bylaws through an educational programme.

Officers believe that not much more could be done in the area of public education.

Maintaining the status quo is not a satisfactory option, increasing signage and enforcement are costly and not guaranteed to remove the safety concerns that have developed. There is nowhere to move the reserved area to at Lyall Bay which would not encroach on existing users. Public education is limited by the nature of the users. It is also worth noting that the proposed amendment will not prevent jet skis, or any other powered craft, from being used at Lyall Bay, they will however be restricted to 5 knots within 200 metres of the shore.

**4.3 Are the proposed bylaws the most appropriate form of bylaws?**

In deciding whether the Bylaws should be amended by deleting the Lyall Bay reserved area from Schedule 3, the Council must determine whether that proposed amendment is in the most appropriate form. The proposed amendment addresses the problem by removing the potentially unsafe reserved area.

**4.4 Are there any implications under the New Zealand Bill of Rights Act 1990?**

We do not believe that there are any implications under the New Zealand Bill of Rights Act 1990.

**4.5 What is the special consultative procedure?**

This is outlined in section 83 of the Act, essentially it is a community consultation process.

The proposed timetable for the special consultative procedure is as follows:

Regional Council approval	20 July 2006
1 <sup>st</sup> Public Notice	22 July 2006
2 <sup>nd</sup> Public Notice	5 August 2006
Close of Submissions	25 August 2006
Hearing of Submissions	September 2006
Regional Council report back and approval	September/October 2006
Bylaws come into effect	October 2006

## 5. Proposed Amendment

It is proposed that the Bylaws be amended by deleting the Lyall Bay reserved areas from Part B of Schedule 3 of the Bylaws.

A copy of the proposed bylaws showing the proposed amendment is included as **Attachment 1** to this report (Statement of Proposal).

The special consultative procedure requires the Council to prepare a summary of the proposed changes (Summary of Information). This is included as **Attachment 2**.

## 6. Communication

The Council will circulate the proposed amendment to the Wellington Regional Navigation and Safety Bylaws 2003 to territorial authorities and stakeholders and invite comment. There will be public notices inviting submissions.

We will also prepare a media statement and utilise the Council's internet site.

## 7. Recommendations

*That the Committee:*

1. **Receives** the report, **note** its contents; and
2. **Recommend** that the Council:
  - (a) **Agree** that the proposed amendments to the Regional Navigational and Safety Bylaws 2003 are:
    - (i) the most appropriate way for the Council to address safety concerns at the Lyall Bay reserved area; and
    - (ii) the most appropriate form of bylaws; and
    - (iii) do not contravene the New Zealand Bill of Rights Act 1990;

- (b) **Agree** to the Statement of Proposal to amend navigation and safety bylaws and the Summary of information, included as attachments 1 and 2 respectively to this report;
- (c) **Agree** to initiate the special consultative procedure outlined in section 83 of the Local Government Act 2002;
- (d) **Note** the timetable outlined in this report; and
- (e) **Delegate** to the Environment Committee the authority to consider any submissions made to the Council as a consequence of the consultative procedure and to report and make recommendation to the Council for the Council's further consideration and action.

Report prepared by:

Report approved by:



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**Attachment 1:** Statement of Proposal  
**Attachment 2:** Summary of Information