

Submission

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Do you wish your comments to be disclosed publicly?	OK to disclose

1. Overview

Greater Wellington considers that the current system of port and harbour safety management is working satisfactorily now and that there is no need for substantial changes. Much of the work to comply with the Port and Harbour Safety Code is already in hand and significant changes would be unwise now, especially if that ran the risk of encouraging some Councils of deferring doing anything in the hope that it might not be their responsibility in the near future. The system of “Regional Harbourmasters” is in place and there is a close integration of them into port and harbour safety, wider navigation safety in other areas, marine oil spill response and Resource Management Act responsibilities. Centralisation and removal of some of the Regional Council marine responsibilities would not help with this integration and could prevent the efficient and effective local management of maritime matters.

2. Background

Greater Wellington Regional Council has always willingly accepted its role under the Local Government Act 1974 to be the statutory harbour authority in the Wellington Region, including the harbours of Wellington and Porirua.

Greater Wellington provides appropriate navigation aids, navigation and regulatory buoys and signage for the area under its jurisdiction, including the main Wellington Harbour navigation aids, and has navigation safety bylaws that apply to all Regional waters out to three nautical miles from the coast.

The New Zealand Port and Harbour Marine Safety Code (the Code) has responsibilities for regional and territorial authorities, port companies, Maritime New Zealand and the Ministry of Transport. The Code applies to all “harbours” which are defined by the Code to include pilotage areas and other coastal or inland waters subject to a determination by the regional council that the code should apply to those waters.

The focus to date has been on the Wellington Harbour pilotage area, as per guidelines from the National Advisory Committee.

Key Issues for Port and Harbour Safety Management

Do you agree with the analysis of key issues?

Not entirely.

The casualties to the Jody F. Millenium, Tai Ping etc., that are stated to be the reason for changes being needed, were themselves partially caused by some deficient legislation introduced in the late 1990's, during the consultation process, the drafting authorities were warned that the legislation would lead to such casualties if it was not corrected. It is important that such legislative errors are not replicated.

Are there other important issues that have not been identified?

The Code is still in the process of being implemented, so I consider that it is far too early to start worrying and raising concerns about whether the process will be effective. The majority of harbour authorities are fully committed to the introduction and implementation of the Code.

Do you consider that these issues warrant action?

They can be considered in the discussion context below.

Possible Responses to Key Issues

Can a Code without any formal statutory support be relied on for the effective long term management of port and harbour marine safety?

It is far too early to answer this question. Greater Wellington considers that few significant changes should be considered until the Code has become fully established and been audited by Maritime New Zealand as presently proposed (by about 2012). The implementation of the Code could be assisted in some areas by (further) amending the LGA so that Councils **must** take on the role of the Statutory Harbour Authority and **must** appoint an appropriately-qualified Harbourmaster. These two changes alone would solve many existing problems in some areas.

If the measures in the Code remain entirely voluntary, what actions would participants take to mitigate the risk of failing to meet their responsibilities under the Code?

There is sufficient "liability pressure" already existing to ensure that participants meet their responsibilities under the Code. The Code only states what any competent harbour authority operating to "best practice" should be doing anyway, although requiring much more documentation of this.

Would an approved code of practice be more likely than the existing Code to secure the effective long term management of port and harbour marine safety?

We do not believe so.

If legislation were to provide for an approved code, what should be the basis for developing and establishing such a code?

The National Advisory Committee has already been established to include all stakeholders in a transparent process for developing a pragmatic risk-assessment based Port & Harbour Safety Code. If any further legislation was considered to be vital at this stage, then I consider that it should be limited to having a simple Maritime Rule requiring that the Port & Harbour Safety Code needed to be implemented, and nothing more. Any suggestions of actually putting the Code into a Maritime Rule at this stage would be highly counter-productive, discourage stakeholders, and effectively “lock-in” requirements that may need to be modified through the National Advisory Committee. Such changes would be far more difficult to achieve if the Code was actually made a Maritime Rule.

Should local harbour safety control become a prescribed function of regional councils?

Yes, it should become a statutorily-prescribed function in order to remove uncertainty about responsibly and to avoid any evasion of clarity. At present Greater Wellington Navigational & Safety bylaws apply in the waters of the region out to three nautical miles. This was done deliberately to in order to avoid conflict with Marlborough District Council’s area on the other side of Cook Strait. Whether the distance is three miles or twelve miles seems irrelevant, as the majority of recreational boating issues seem to take place closer to shore or in the main port and harbour areas. Monitoring of navigation safety responsibility implies a physical presence in an area on an ongoing basis.

What, if any, supporting duties should accompany any such function?

Supporting duties (of a Regional Council) should be the statutory appointment of a Harbourmaster, and statutory adoption of Navigation Safety Bylaws.

Would there be advantages to including any such function and duties in the Maritime Transport Act rather than in local government legislation?

There would appear to be little practical difference, especially if any approval role of Navigation & Safety bylaws was given to the Director of MNZ in order to ensure consistency of bylaw content. Regional councils are accustomed to working under the Local Government Acts, and there could be some reluctance to change this.

Does the legal authority of harbourmasters need clarification?

Expansion and clarification of the Harbourmaster’s statutory authorities would be appropriate, as presently it is not clearly obvious in legislation.

Would providing for maritime rules to prescribe regional council obligations in respect of port and harbour safety management be preferable to the stipulation of specific statutory duties?

We do not believe so. Adoption of the Code should be sufficient. Prescribing things in Maritime Rules is not infallible, drafting/approval errors have occurred in the past, but mainly it makes changes lengthy and difficult to make.

Should port facility operators and other marine service providers be subject to a general duty to act safely in providing marine services under their control?

We believe so, and this already seems to be required by other legislation.

Should port facility operators have a duty to have place effective measures to identify, assess and manage risks involved in port marine operations under their control?

Most already have such provisions under other legislative requirements.

Should legislation provide expressly for audits and inspections of port marine operations?

Not necessarily, see above.

Would the ability to impose conditions on port marine operations under Section 55 be a suitable, proportionate mechanism for responding to safety problems identified by an audit?

Section 55 has only been used in the past because of a lack of statutory guidelines to do it any other way due to current maritime legislation wording. The Code (and its audit requirements) should provide this ability.

Could problems identified by an audit be addressed initially by publication of audit findings and recommendations, with the imposition of conditions reserved as an option if recommendations are disregarded without good cause?

This could to be a sensible approach, but compliance with the Code should alleviate the need for this.

Would there be any value in legislation providing for maritime rules to be made in respect of port marine operations?

Pilotage is already covered by Maritime Rules. Pilot vessels and tugs are already covered by Safe Ship Management rules. What other forms of port marine operations were being considered?

Health & Safety legislation applies to most other activities.

Do you agree that port marine service providers should not be required to hold a maritime document?

It is not entirely clear what is meant by “port marine service providers”.

Do you consider that a mandatory Code is a practical option for the future management of port and harbour marine safety?

Greater Wellington does not consider that a mandatory Code is practical or necessary for the future management of port and harbour safety. The other alternatives appear to be adequate for now.

Funding of Regional Council Harbour Safety Management Costs

Is the present bylaw mechanism for imposing navigation safety related charges a barrier to cost recovery?

The resolution of funding issues is vital for the ongoing successful implementation of the Code. There is little point in producing a list of assessed risks if there is no adequate method of certainty of funding to achieve them. Flexibility should be allowed to enable Councils and Ports to “mix and match” funding to suit their situations, but some “bottom-line” certainty should be in place to ensure that adequate funding is available to achieve the implementation of the Code. This could be difficult with the present requirement to consult with all stakeholders, who then not unexpectedly usually wish to oppose all increases in costs.

Would regulations be a more effective cost recovery mechanism?

This is regarded as unlikely.

Would it be a problem if harbour-control cost recovery practice varied between regions?

It is not considered to be problematic if the recovery practice varied between regions. “One size will not necessarily fit all”. The only stakeholders that might consider this a problem would be the same ones trying to use the argument to delay increased charges being imposed.

Is there a cost recovery option that has not been considered in this discussion?

The amendments proposed in the Land Transport Act reallocating the element of tax paid on fuel used by recreational boaties could be a useful new source of revenue for funding some recreational boating activities, but would be unlikely to satisfactorily fund “big ship” activities.

Could centralised harbour control improve harbour Safety outcomes than regional control?

What are the factors that most affect local authorities' harbour management capability?

It is contended it is the competence, experience and commercial independence of the Regional Harbourmaster that mostly impacts local authorities' harbour safety management capability. Regional Harbourmasters are usually (or soon become so) very experienced in Harbour Management activities, which is a different discipline than ship operations, ship safety auditing, and other similar disciplines.

How could constraints on local authorities' capability best be overcome?

Sufficient revenue from the sources identified above.

Could better harbour safety outcomes be achieved under a different organisational model?

Greater Wellington did not believe so. Centralisation is strongly opposed. It would produce too much separation of "on the water" activities. The oft-quoted examples of aviation and airports overlook the fact that such have much more standardisation of processes and procedures.

It is considered pragmatically unworkable to separate port and ship safety regulation from regulating recreational craft, as such activities occur in the same waters, and would result in costly duplication.

Would harbour safety outcomes be improved if harbour safety management were no longer a local authority function? If so, how?

Greater Wellington believe that harbour safety outcomes would not be improved by "centralisation". Local involvement is usually necessary for local problems and a central government agency would not be appropriate as the manager of this process. Local government is best placed to deal with local concerns and issues and is easily accessed by members of the public on a day to day basis.

Maritime New Zealand has difficulty now in dealing with navigation safety responsibilities not picked up by regional councils, with staff resources very thin on the ground.

What are the implications of a centralised system for the performance of tier 2 marine oil spill response and other marine functions that remain a regional council responsibility?

Most harbourmasters also carry out the role of regional on-scene commander, under the Maritime Transport Act, and under the New Zealand Oil Spill Response Strategy, so "relocating" them under Maritime New Zealand's "control" would be practically pointless, as they are already part of the tiered marine oil spill response system.

Separating this function from a Regional Council would reduce integration of functions and reduce the regional effectiveness of marine oil spill responses. Some Regional Councils could decide to "disengage" completely from this activity, effectively making any response a Tier 3, which would be costly, undesirable, wasteful and ineffective, with the additional disadvantage that Tier 3 relies on

local knowledge to guide them. Regional Council's usually make available non-marine staff to be usefully trained for marine oil spill response, and their willingness to do this could diminish under this scheme.

Regional Harbourmasters can also act both as a Regional Oil Spill Commander and a regulatory authority.

What are the advantages and disadvantages of the three centralised harbour safety delivery models outlined above?

Their problems are all identified above. Centralising only the big ship component of safety would fragment the current system, and could create difficulties in problems of interaction between "big ships" and recreational craft.

If a central agency were responsible nationally for harbour safety management, would delegable functions, duties and powers adequately provide for local authorities willing and able to continue in a harbour safety management role?

There seems to be little validity or accountability in reassigning responsibilities, then delegating them back.

General navigation safety

Issues for navigation safety

Possible approach for improving the coherence of Navigation safety control

Is there support for statutory confirmation of regional council responsibility for navigation safety?

Yes.

Would confining such responsibility to enclosed and inland waters be realistic?

In 1999, Maritime Safety Authority encouraged Regional Councils to extend their areas of Navigation & Safety bylaws beyond just their harbour areas to also include regional waters, perhaps up to 12-miles off their coastline. This was because Maritime Safety Authority at that time had insufficient staff capability to manage those areas, apart from their Launch Warden's, whose effectiveness and motivation varied. The change enabled Regional Councils to manage areas of coastline holistically with consistent policies, instead of with "ad hoc" policies from different authorities. In the case of Greater Wellington Regional Council, except for Lake Wairarapa, most areas of inland waterways were excluded from the Navigation and Bylaw areas due to insufficient resources to effectively manage them – the identical situation that Maritime New Zealand finds itself in now. It is a resourcing issue to fund additional staff to be able to monitor activities in these inland waters – whoever does it. Presently, all Regional staff capacity is limited, as is funding for additional ones.

Should maritime rules, enforceable by regional councils, regulate navigation in areas beyond a council's area of direct responsibility?

It could be useful, but any benefit would need to be assessed against outcome and cost.

Would the ability to issue infringement notices in respect of breaches of maritime rules be a reasonable and useful extension of local enforcement powers?

Yes.

Should the Director of Maritime New Zealand approve the content of a navigation safety bylaw to ensure consistency with relevant maritime rules?

This would be useful. Additions and amendments to bylaws can potentially be drawn out and litigious processes. Increasing divergence from standard "model" bylaws will only result in recreational boaties claiming, when issued an infringement notice for transgressing some bylaw, that they could not be expected to know the bylaws everywhere due to required differences.

Could questions of certainty, clarity and consistency be resolved through measures other than those discussed?

The consultation and submission process works well now.

Funding Arrangements for Recreational Boating Controls

Would the establishment of a statutory navigation safety function expose regional councils to costs that they do not face at present?

Only to those Councils who have so-far evaded taking on a statutory navigation safety function, which was already there before the LGA 2002 amendment removed the statutory requirement.

Are the practical difficulties of cost recovery from recreational boat users a constraint on the ability of councils to exercise local navigation safety control?

The amendments proposed in the Land Transport Act reallocating the element of tax paid on fuel used by recreational boaties could be a useful new source of revenue for funding some recreational boating activities.

Is there scope for a mechanism other than licensing or registration to assist cost recovery from recreational boat users?

Regional councils that undertake navigation safety functions should be allocated a portion of the roading petrol tax, representing fuel used off road in boats.

How likely would councils be to use a more accessible funding mechanism?

All would certainly consider the effectiveness of any other funding mechanisms.

Is rating a fair and reasonable alternative to user charging to cover recreational navigation safety costs?

It is the only system that Regional Councils currently pragmatically have, as any user charges by boaties are usually paid to facility owners, such as marinas or boat ramps, usually owned by someone other than a Regional Council. Collection costs could easily exceed revenue from this source.

Should all Navigation Safety Controls be consolidated in One Statute?

Is the idea of consolidating navigation safety controls in one statute feasible in practice and supportable in principle?

It is contended this would make no practical difference.

Would the benefits of consolidation outweigh the potential disadvantages of introducing into the Maritime Transport Act provisions that relate to functions, duties and powers belonging to organisations and officials other than Maritime New Zealand and the Director of Maritime New Zealand?

It is not considered that doing this would be advantageous, and there could be strong opposition from moving it from the LGA.

Would consolidation of navigation safety controls be assisted by simplifying existing measures to their essential elements and reducing the level of prescription?

We do not believe so. Some level of prescription is usually required (e.g. 5 knots within 200 metres of the shore”) in order to make safety controls both simple and enforceable. Changes away from prescriptive details would be unhelpful and make enforcement more difficult and legally more contestable.

Would it be preferable to retain separate legislation subject to modifications to improve the coordination and clarity of the legislation?

Better legislation is always desirable, but must be weighed against the necessity and cost of change.