



Report 08.684
Date 12 September 2008
File J/01/02/01

Committee Council
Author Margaret Meek, Policy Analyst, Grant Nalder,
Harbour Ranger, Mike Pryce, Regional
Harbourmaster.

Review of the Wellington Regional Navigation and Safety Bylaws 2003

1. Purpose

The purpose of this report is for Council to consider the review of the Wellington Regional Navigation and Safety Bylaws 2003.

2. Significance of the decision

Before making any decision on the Wellington Regional Navigation and Safety Bylaws 2003 the Council will be following the special consultative procedure as set out in the Local Government Act 2002 (the LGA 2002).

3. Background

In December 2000 the Council adopted the Navigation and Safety Bylaws 2000 under the Local Government Act 1974 (the LGA 1974).

In December 2003 the Council replaced those bylaws to be consistent with changes to the Maritime Rules. The adopted bylaws were named the Wellington Regional Navigation and Safety Bylaws 2003 (the Bylaws). In November 2006 the Council amended the Bylaws by removing the provision for personal water craft to operate in the reserved area at Lyall Bay. However, a complete review of the Bylaws was not done at this time.

The LGA 2002 requires councils to review new bylaws within five years of their adoption. As a result of this, we are undertaking a review to be consistent with the LGA 2002.

4. Making bylaws

4.1 Procedure to review bylaws

The LGA 2002 specifies the process for reviewing bylaws. The Council must first determine whether a bylaw is the most appropriate way of addressing the perceived problem. If the Council determines that a bylaw is the most appropriate way, it must determine whether the proposed bylaw is the most appropriate form of bylaw

(s. 155(2)(a)). The Council must also determine whether the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (s. 155(2)(b)). Each of these tests is examined further below:

4.1.1 Is a bylaw the most appropriate way?

Navigation and safety bylaws have been in place for many years, and there is public expectation that they will continue. In addition, the LGA 1974 empowers the Council specifically to make navigation and safety bylaws. This in itself signals that bylaws are the appropriate way of addressing navigation and safety on the region's waters. Alternative means, e.g. public education, still require a regulatory framework. Consequently, we are satisfied that navigation and safety bylaws are appropriate in the circumstances.

4.1.2 Are the proposed bylaws the most appropriate form of bylaws?

The Bylaws' amendments closely follow the wording in the Maritime Rules, and also the national model navigation and safety bylaws. We are satisfied, therefore, that the form of the proposed changes is appropriate in the circumstances.

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

In addition to the considerations undertaken above, the proposed bylaws must meet the legal standards of reasonableness, and cannot be inconsistent with the freedoms protected and affirmed in the New Zealand Bill of Rights Act 1990. Officers do not believe that there are any implications under the New Zealand Bill of Rights Act 1990.

4.2 **Should the Bylaws be retained in their current form, amended, revoked or revoked and replaced?**

If, after reviewing the issues above, the Council considers that the Bylaws should be retained in their current form, amended, revoked or revoked and replaced, it must initiate the special consultative procedure.

Officers recommend that the Bylaws should be amended. The Amendments are proposed for a number of reasons:

- to ensure that the Bylaws are not inconsistent with the Maritime Rules;
- to ensure that the Bylaws are consistent with the national model navigation and safety bylaws;
- to incorporate minor editorial changes to clarify the existing Bylaws,
- to incorporate recommendations resulting from the recently conducted Port and Harbour Risk Assessment; and
- to ensure that the Bylaws reflect standard practice.

5. **Proposed Amendments**

A copy of the Bylaws, showing the proposed amendments and the reasons for each 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. The special consultative procedure

The special consultative procedure is outlined in the LGA 2002 (s.83). It is essentially 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	11 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

6.1 Principles of consultation

Six principles of consultation are set out in the LGA 2002. 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.

7. Communications

The proposed amendments to the Bylaws will be circulated to territorial authorities and stakeholders in the Wellington region. There will be public notices advising of the proposed amendments and inviting submissions.

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

8. Recommendations

That the Council:

1. *Receives the report*
2. *Notes the contents*
3. *Agrees that the proposed amendments to the Wellington Regional Navigational and Safety Bylaws 2003:*
 - (i) *are the most appropriate way for the Council to regulate and control navigation and safety in relation to waters within its region*
 - (ii) *are the most appropriate form of bylaws*
 - (iii) *do not contravene the New Zealand Bill of Rights Act 1990.*


4. *Agrees to the Statement of Proposal to amend Wellington Regional Navigational and Safety Bylaws 2003 and the Summary of Information, included as attachments 1 and 2 respectively to this report;*
5. *Agrees to initiate the special consultative procedure outlined in section 83 of the Local Government Act 2002;*
6. *Notes the timetable outlined in this report; and*
7. *Delegates to the Regulatory Committee the authority to consider any submissions made to the Council as a consequence of the consultative procedure and to report and make recommendations to the Council for the Council's further consideration and action.*

Report prepared by:




Margaret Meek
Policy Analyst, Secretariat

Report prepared by:



Grant Nalder
Harbour Ranger

Report prepared by:



Mike Pryce
Regional Harbourmaster

Report approved by:



Nigel Corry
Divisional Manager,
Environment Management
Division

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