

Statement of Proposal

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The Hawke's Bay Regional Council (the Council) is seeking public comment on a draft proposal to amend the Hawke's Bay Navigation Safety Bylaw 2018. The document Draft Hawke's Bay Navigation Bylaw includes proposed changes to the current bylaw.

The bylaw has been developed to ensure navigation safety for water users in the Hawkes Bay region. The current bylaw came into force on 1 November 2018.

Section 159 of the Local Government Act 2002 (LGA) requires that all Council bylaws be reviewed every ten years, with two years to adopt a reviewed bylaw.

Purpose of the bylaw

The purpose of the Navigation Bylaw is to ensure that different users of coastal and inland waters in the Hawkes Bay region can safely use and share our waters, whether it is for recreational or commercial purposes. The bylaw is in addition to the requirements of the Maritime Transport Act 1994 and the Maritime Rules.

We want to keep people safe on the water around Hawke's Bay. We want to recognise the different values and uses associated with the region's waterways and ensure that people use and share them safely. Changes proposed in the draft bylaw will help us to build on our successes under the current bylaw and are necessary to address new and emerging safety issues.

Review of bylaws under the LGA

The purpose of local government is to:

- enable democratic local decision-making and action by, and on behalf of, communities; and
- to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

To effectively manage navigation safety on water the Council has the optional ability, under the LGA together with the Maritime Transport Act 1994, to develop specific rules to manage navigation safety through a bylaw.

The Council also needs to keep the Navigation Bylaw current and fit for purpose to reflect changing uses and previous experiences gained over the life of the current bylaw. The best way to do this is through a review of the current bylaw, including formal consultation with those affected under a prescribed process outlined in the LGA.

Legislative compliance

Under section 155 of the LGA, in the making of the draft Navigation Bylaw, the Council must consider whether:

- the proposed bylaw is the most appropriate way of addressing a perceived problem;
- the proposed bylaw is the most appropriate form of bylaw, and
- the proposed bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.



Appropriateness of bylaw to address a perceived problem

To that end, the Council has identified in the table overleaf, alternative methods to using bylaw to manage risks to navigation safety in the Hawkes Bay region.

Options considered	Reasons for rejection or acceptance
Revoke bylaw and transfer jurisdiction to Maritime New Zealand	No bylaw means that the Council has no regulatory responsibilities (other than those relating to the Harbour Master granted under the Maritime Transport Act 1994) to enforce appropriate behaviour and ensure navigation safety on Hawke's Bay waters.
X Outcome Rejected	Without the bylaw, monitoring and enforcement responsibilities revert to Maritime New Zealand, which may not have local capacity to adequately manage risks to navigation safety in Hawke's Bay waters.
Revoking bylaw and include rules in the Coastal Environment Plan	The Coastal Environment Plan is an alternative regulatory tool provided through the Resource Management Act 1991 (RMA). The RMA does not include provisions that address maritime safety or navigation as these are more appropriately addressed under the Maritime Transport Act 1994 and other legislation.
X Outcome Rejected	The Coastal Environment Plan does not address most inland waters.
	Regulating maritime issues under the RMA is therefore inappropriate and not considered an appropriate option.
Status quo - the Council maintains a bylaw for navigation safety matters in the Hawke's Bay region in accordance with the LGA.	The Council is aware of and can be directly involved in matters of local significance.
	Is consistent with the Memorandum of Understanding that the Council has with Maritime New Zealand (and other Councils) in which all parties agree to adopt and implement the New Zealand Port & Harbour Marine Safety Code. It is an expectation of the code that councils will use their statutory powers to manage and maintain their harbours and navigable waters so that they are fit for the intended uses. This includes putting in place appropriate bylaws to manage maritime safety risks.
✓ Outcome Accepted	The bylaw serves to assist the Port Company as a risk control for the conduct of their own marine operations in the port and their associated obligations under the Health and Safety Act 1995 and the Port Company Act 1988.

Most appropriate form of bylaw

Under the LGA, the Council must determine whether the Navigation Bylaw is in the most appropriate form (e.g. standalone, amendment to existing document, consolidation with other bylaws).

The Council has determined that a standalone document is appropriate. There are several reasons why the Council believes a standalone document is the most appropriate form of bylaw. A standalone document:

- holds all of the relevant regulations in one place and is easily accessible;
- is targeted and focusses only on navigation safety;
- ensures that the bylaw and the matters being addressed cannot be confused with others;
- is relatively short and concise and can be easily printed or referenced in its entirety; and
- becomes a repository for all the legal matters associated with navigation safety within the Hawkes Bay region.

New Zealand Bill of Rights Act 1990

Under section 155(3) of the LGA the Council must determine that the Navigation Bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990.

The Bill of Rights Act 1990 protects the civil and political rights of all New Zealanders. The Act covers:

- Life and security of the person
- Democratic and civil rights
- Non-discrimination and minority rights
- Search, arrest and detention
- Criminal procedure
- The right to justice.

The Council considers the Navigation Bylaw as proposed here, is not inconsistent with the Bill of Rights Act 1990.

Summary of changes

An internal review of the efficiency and effectiveness of the current Navigation Bylaw has now been completed. In most cases it has been determined that the existing rules are effective for ongoing navigation safety. However, in the five years since the last bylaw was reviewed and updated the Council has noted changes to the use of some area, the emergence of new uses and technologies, as well as opportunities to improve alignment across maritime regulations going forward.

Proposed changes to the current Navigation Bylaw to be 'tested' with the public are summarised below.

Changes to current bylaw	Reason(s) for the change	Draft (2023) bylaw reference
Bylaw section re-ordering, refining, and reducing document size. Material from the Maritime Transport Act and Maritime Rules is now referenced rather than included in the bylaw where possible.	To streamline the bylaw and make more readable and relevant to water users.	Various
New or strengthened provisions regarding: <ul style="list-style-type: none"> - the seaworthiness of ships - speed to reference restrictions in reserved areas and mooring zones. 	To mitigate navigational risk and the potential for harm caused by unseaworthy vessels as well as excessive speed in reserved areas and mooring zones.	Pages 14-15
Removed redundant clauses regarding: <ul style="list-style-type: none"> - licencing of hire vessels - tanker operations. 	Regulations, certifications or safety protocols exist in other forms.	N/A
Refined section on rocket launching.	To help promote public safety and awareness and also include flexibility on public notice provisions.	Page 11
Removed Te Paehahi Beach from schedule.	Schedule (and associated regulations) deemed unnecessary.	N/A
Increased regulation in these spatial areas: <ul style="list-style-type: none"> - Napier Hardinge Road beach - Pourerere beach lagoon - Napier Pandora Pond - Mohaka River 	To mitigate collision risk in mixed use areas.	Schedules 1.3, 1.4, 1.5, 2.2
Decreased regulation in these spatial areas: <ul style="list-style-type: none"> - Whangawehi Beach - Kairakau Beach - Waikokpu Beach. 	Variable seasonal coastal conditions mean attempting to demarcate some areas is impractical. Water users are instead advised to exercise caution. These areas are identified and scheduled as 'cautionary zones' with 'advisory notes' included within the proposed bylaw.	Schedules 1.7, 1.8, 1.9
Include new schedule for Pourerere Beach.	To advise water users to exercise caution.	Schedule 1.10

For a further explanation of key issues being addressed by the Draft bylaw and changes proposed, please refer to the consultation document on the review.



Tukua mai ō whakaaro

Have your say

The easiest way is
online at hbrc.govt.nz
search: **#haveyoursay**



Public consultation and submissions

Copies of the Draft Hawke's Bay Navigation Safety Bylaw and a consultation document summarising the proposal and including a submission form are available:

1. Online at hbrc.govt.nz, search: **#haveyoursay**
2. At the Hawke's Bay Regional Council offices at 159 Dalton Street, Napier
3. On request from the Hawke's Bay Regional Council by:
 - emailing haveyoursay@hbrc.govt.nz, or
 - phoning **06 835 9200**.

The Hawke's Bay Regional Council welcomes your views and feedback.

Any organisation or member of the public may make a submission on the Draft Hawke's Bay Navigation Safety Bylaw. A submission is a statement in support of, or in opposition to, any part of this statement of proposal or the Draft Bylaw. Submissions may focus on:

- the effectiveness of the proposed changes to the bylaw in managing risks to navigation and safety in the Hawkes Bay region;
- identifying any management issues; and
- identifying any gaps or additional changes required to manage risks to navigation and safety in the Hawke's Bay region.

To have your say, you can:

- make an on-line submission to hbrc.govt.nz, search: **#haveyoursay** or scan our QR code;
- email your submission to haveyoursay@hbrc.govt.nz;
- post your submission to Hawke's Bay Regional Council, Private Bag 6006, Napier 4142; or
- hand deliver your submission to 159 Dalton Street, Napier.

**Public submissions close at 8pm,
Sunday 29 October 2023.**

When making a submission:

- clearly state your name, address, email, telephone number and preferences on being heard at a hearing;
- state the most important points you want the Hawke's Bay Regional Council to consider;
- make your comments as specific as possible; and
- include the relevant section to which your comments refer.

Pages 10 and 11 of the consultation document includes a submission form to assist you in providing your feedback on the draft bylaw.

A hearing of submission on the draft bylaw will be scheduled following receipt of submissions.


HAWKES BAY
REGIONAL COUNCIL

TE KAUNIHERA Ā-ROHE O TE MATAU-A-MĀUI