



Navigation Safety Bylaws: Review Report

Date: July 2022

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Introduction

Northland Regional Council's Navigation Safety Bylaws set the rules for keeping people and property safe on the water.

Council has the statutory function to promote social, economic, environmental and cultural well-being in our region, which includes navigation safety. We do this through bylaws such as the Navigation Safety Bylaws, and through the appointment of Harbourmasters and Honorary Enforcement Officers.

Northland Regional Council (NRC) has two Navigation Safety Bylaws:

- NRC Navigation Safety Bylaw 2017
- Kai Iwi Lakes Navigation Safety Bylaw 2017

The NRC Navigation Safety Bylaw 2017 applies to coastal waters and waters in estuaries, inlets, harbours and along the Northland coast. The bylaw sets out safe practices and rules for activities such as recreational and commercial boating, swimming and water-skiing, for moorings management, and for activities related to commercial shipping including potentially hazardous activities.

The Kai Iwi Lakes Navigation Safety Bylaw 2017 applies to the lakes in the Taharoa Domain in the Kaipara district of Northland; comprising Lake Waikare, Lake Taharoa and Lake Kai Iwi. The bylaw sets out safe practices for recreational boating, swimming, water-skiing and other activities on the lakes.

Purpose

This report presents the findings from the review of NRC's Navigation Safety Bylaw 2017 and the Kai Iwi Lakes Navigation Safety Bylaw 2017. This review has been undertaken to satisfy the requirements of the Maritime Transport Act 1994 and the Local Government Act 2002 (LGA), including sections 155 and 158 of the LGA.

Bylaw status

Section 33M in the Maritime Transport Act 1994 gives regional councils the power to make navigation safety bylaws for the purpose of "ensuring maritime safety" in their region.

The current iterations of NRC's Navigation Safety Bylaw 2017 and the Kai Iwi Lakes Bylaw 2017 came into force in August 2017 and July 2018, respectively. The LGA requires that all new bylaws must be reviewed within five years after the date on which the bylaw was made. Therefore, the Navigation Safety Bylaw 2017 must be reviewed before 1 August 2022.

The review required before 1 August involves the Council making determinations as to whether a bylaw is the most appropriate way of addressing the perceived problem, the appropriateness of the Bylaw and any implications under the New Zealand Bill of Rights Act 1990. These requirements are addressed in subsequent sections of this report.

If a bylaw is not reviewed as required under section 158 or 159 of the Local Government Act it will automatically be revoked 2 years after the review was due.

Is a bylaw appropriate?

This section of the report addresses the legislative requirements of Section 155 of the Local Government Act 2002. Section 155 of the Act requires local authorities to determine whether a bylaw:

1. is the most appropriate way of addressing the perceived problem.
2. is the most appropriate form of bylaw; and
3. gives rise to any implications under the New Zealand Bill of Rights Act 1990.

The perceived problem

Safety – Ensuring the safety and enjoyment of all waterway users in the Northland region is vital. National and regional education initiatives are in place to address key risk factors contributing to injury or drowning, for example encouraging people to wear personal flotation devices. However, education alone is not seen as a comprehensive way of addressing the issue.

Conflict of users – If we relied solely on the national rules, we would have no locally specific rules. We would also have no regional standards for moorings or navigation within the port areas.

Community input – Through previous consultation processes it is evident that the community values the ability to influence how maritime safety on our waterways is managed. The bylaw process provides the community with an opportunity to do so.

Consistency – In Northland, navigation safety bylaws have worked well and have been a reasonable method of providing for local conditions. This is an approach mirrored throughout New Zealand with other regional bylaws. This leads to a public expectation that there will be a bylaw and that this will provide for safe places to swim or use non-powered craft, and a way to modify unsafe behavior.

Determination of whether a bylaw is appropriate

A bylaw is considered by staff to still be the most appropriate way of ensuring maritime safety in the region for the following reasons:

1. Northland has one of the most popular boating areas in New Zealand. NRC has previously considered the restrictions of the national maritime rules on our waterways and the potential conflict between different water-based activities. The 2017 bylaw provides regional versions or geographically specific rules for the purpose of maritime safety. These supplement the national rules, providing for the desires and requirements of local users.
2. The continuation of the 2017 bylaws balances the finite resources of NRC with the need and public desire to have a clear, practical and efficient approach to maritime safety enforcement. The use of a bylaw is consistent with the approach taken by other regional councils throughout New Zealand, thus providing nationwide consistency.
3. The 2017 bylaw is only one aspect of achieving maritime safety in the region. Public education initiatives are in place and look to address some of the key risk factors which compromise maritime safety. However, education alone is not considered sufficient as a method to ensure safety on our waterways; legislative requirements are considered a much more robust method to control unsafe behaviour.
4. It is considered the community involvement, practicality and proven performance of previous bylaws to manage issues means a bylaw remains the most effective and reasonable method to manage current water safety matters.

Form of the Bylaw

It is considered that the overall form of the bylaw is generally appropriate for the reasons listed below:

1. The 2017 bylaw has been current for almost five years. During this time, the bylaw has been well received and has proven to be a simple method for achieving its objectives.
2. The 2017 bylaw is of similar format and content to bylaws used by other regional councils to ensure maritime safety (e.g. Otago Regional Council, Auckland Council and Bay of Plenty Regional Council).

However, a review of the bylaws has made it clear that some amendments to the Navigation Safety Bylaw 2017 are required. No amendments are required to the Kai Iwi Lakes Navigation Safety Bylaw 2017.

Given that improvements can be made to the bylaw, NRC should determine that the 2017 bylaw is not the most appropriate form of bylaw and that it need to be updated.

New Zealand Bill of Rights Act 1990

The New Zealand Bill of Rights Act 1990 establishes certain fundamental human rights as well as rights in relation to offences and other matters.

Legal advice has been obtained from Wynn Williams confirming that the 2017 bylaw is not inconsistent with that Act and does not give rise to any implications under this Act. The 2017 bylaw contributes to the safety of navigation and does not place any limitations on the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.

Review findings

Kai Iwi Lakes Navigation Safety Bylaw 2017

The Kai Iwi Lakes Bylaw was made operative in August 2017, under Section 33M of the Maritime Transport Act 1994, and is now due for statutory review.

The Regional Harbourmaster, in conjunction with NRC's Maritime team, has reviewed the Kai Iwi Lakes Bylaw and recommends that content of the 2017 Kai Iwi Lakes Bylaw be carried over into the new bylaw, without amendments.

While no changes are recommended, there is benefit in seeking public feedback on this bylaw so that the public can provide their comment, in the event NRC may have overlooked a potential issue.



Northland Regional Council Navigation Safety Bylaw

NRC staff have reviewed the Navigation Safety Bylaw 2017 and recommend the following amendments, as well as minor amendments for consistency and ease of use:

Prohibit anchoring in Kioreroa Reach

The Hātea River and upper harbour hosts a number of marinas, haul out and vessel repair facilities catering for vessels ranging from small recreational boats right through to commercial vessels in excess of 500 GT. The channel to access facilities in the upper reaches is narrow with limited water available outside of the buoyed channel.

This shallow upper harbour area has seen navigational issues caused by vessels anchoring and leaving vessels unattended. Vessels have frequently dragged anchor or have been observed to swing into and obstruct the channel or access to the various facilities.

Vessels have also, on occasion, anchored in or near the Portland channel obstructing large commercial vessels who are only able to navigate strictly within the marked channel. This both endangers those on small vessels and creates the risk of grounding of a large vessel. The Portland channel can be used commercially 24 hours a day, at any time of the year.

A review of the NRC Navigation Safety Bylaw 2017 found that the navigation safety issues posed by vessels anchoring in the area are significant and that the bylaw should be amended. Amendments should include:

- a) All anchoring in the main shipping and fairway channels from the fairway buoy inbound is prohibited anywhere within Whangārei Harbour.
- b) All anchoring in the Portland channel, and the approach to the Portland cement facility is prohibited.
- c) Anchoring within the Hātea River and Kioreroa Reach upstream from Kaiwaka Point is restricted as follows:
 - i. Vessels must not anchor during hours of darkness, except in the designated anchor area east of the marked channel in the designated anchorage area before Kissing Point.
 - ii. Anchoring in the above designated areas for longer than 24 hrs is only permitted if the vessel is booked into a repair facility for haul out. These are temporary anchoring areas only (as shown in Appendix A).

Board sports

The 2017 Navigation Safety Bylaw included provisions controlling the use of wind-powered board sports. The provisions primarily addressed ecological issues. The review recommends removal of the clause relating to areas where wind-powered board sports are prohibited, as this is not a navigation safety issue.

Adopt existing Harbourmaster's Directions

In 2018 the Northland Regional Harbourmaster issued a Harbourmasters Direction (#1 -2018/HOU) to address safety issues in Motutatangi Stream, Hohoura Harbour. The Navigation Safety Bylaw 2017 review identified that there are benefits in rolling this Harbourmaster's Direction into the bylaws for administrative ease.

The Harbourmaster's Direction prohibits the use of power-driven vessels in Motutatangi Stream, Hohoura Harbour. This Direction applies to all power-driven vessels of any length or purpose, including personal watercraft (jet-skis), but does not apply to hand-powered vessels being rowed or paddled, such as kayaks and paddleboards.

The reason for these restrictions is that use of power-driven vessels within this small estuary pose significant risk to passive water users.

Given its sheltered nature and proximity to the holiday park, Motutangi Stream is a popular recreational area, particularly for families and children. It is already a requirement of the local Navigation Safety Bylaw that any vessel must not proceed at more than 5 knots within 200m of shore, a dive flag or within 50m of other vessels or people in the water. However, due to the high risk of injury if powered craft operate whilst persons are paddling or swimming, the Harbourmaster has deemed it necessary to ban all powered craft from this small area (See Appendix B).

Updating of Personal Flotation Device (PFD) rule

Amendments to the provisions controlling the use of personal flotation devices requires updating. Provisions in a Navigation Safety Bylaw must be consistent with national maritime rules. The proposed amendments will bring the bylaw provisions into line with Part 91 Maritime Rules which are currently being reviewed.

Moorings

Various amendments are required to moorings provisions of the bylaw to improve safety including:

- a) prohibiting tandem mooring (no more than one vessel per mooring);
- b) requiring moored vessels to be moored in accordance with the moorings design specifications; and
- c) clearly stating that any amendments to mooring design specifications must be approved by the Regional Harbourmaster.

Mangawhai speed uplifting area

Members of the Mangawhai community approached NRC to request an extension to the existing speed uplift area in Mangawhai Harbour. The review does not recommend extending the speed uplift area at this time, mainly due to potential conflicts with other water users, the high demand for recreational space in Mangawhai Harbour and potential ecological effects.

Next steps

This review recommends amendments are made to the Navigation Safety Bylaw 2017 and that no changes are made to the Kai Iwi Navigation Safety Bylaw 2017. NRC is required to consult on the proposed amendments to the Navigation Safety Bylaw 2017¹. This must be done in line with the Local Government Acts special consultative procedure².

While no changes are proposed to the Kai Iwi Lakes Navigation Safety Bylaw, it should also be made available for public feedback to provide an opportunity for the public to raise any issues that NRC may not be aware of.

Following the review of NRC's bylaws, Maritime New Zealand notified staff that they will be reviewing Maritime Rule Part 91. This is a national rule for navigation safety which seeks to manage similar issues to regional council bylaws. Regional Council Navigation Safety Bylaws cannot be inconsistent with a national Maritime Rule.

For reasons of efficiency, consultation on amendments to the bylaw delayed until the overarching Maritime Rule Part 91 review is completed by Maritime New Zealand. Depending on the outcome of the review, the findings of this report may also need to be updated.

¹ S156 Local Government Act 2002

² S86 Local Government Act 2002

Appendix A



