

Bay of Plenty Regional Navigation Safety Bylaws Review Committee

Ngā Meneti Open Minutes

Commencing: Thursday 25 August 2022, 9:30 am

Venue: Via Zoom

Heamana

Chairperson: Cr Andrew von Dadelszen - Bay of Plenty Regional Council
Toi Moana (BOPRC)

Ngā Kopounga

Members:

Cr Jane Nees - BOPRC
Cr Kevin Winters - BOPRC
Raewyn Bennett - Tangata Whenua Representative
Micah Tawhara - Tangata Whenua Representative
Patrick Young - Tangata Whenua Representative

In Attendance:

Reuben Fraser - General Manager Regulatory Services, Toni Briggs - Senior Project Manager, Monique Brooks - Legal Counsel, Rachel Boyte - Legal Counsel, Georgia Thomson - Community Engagement Advisor, Claudia Cameron - Committee Advisor.

Ngā Hōnea

Apologies:

Cr Toi Kai Rākau Iti for absence;
Cr Kevin Winters for early departure.

Introduction:

An introduction to staff in attendance was provided by Toni Briggs - Senior Project Manager.

1. Karakia Whakatuwhera Opening Karakia

A karakia was provided by Patrick Young.

2. Ngā Hōnea Apologies

Resolved

That the Bay of Plenty Regional Navigation Safety Bylaws Review Committee:

- 1 **Accepts the apologies from Cr Toi Kai Rākau Iti for absence and Cr Kevin Winters for early departure tendered at the meeting.**

**Nees/Bennett
CARRIED**

3. Whakapuakanga o Ngā Take Whai Taha-Rua Declaration of Conflicts of Interest

Raewyn Bennett - Chair of Te Arawa ki Tai Charitable Trust and a Marine and Coastal Area (Takutai Moana) Act 2011 (MACA) claimant on behalf of Ngāti Pikiao.
Patrick Young - MACA Act claimant.

4. Minutes

Minutes to be Confirmed

4.1 Bay of Plenty Regional Navigation Safety Bylaws Review Committee Minutes - 26 July 2022

Resolved

That the Bay of Plenty Regional Navigation Safety Bylaws Review Committee:

- 1 **Confirms the Bay of Plenty Regional Navigation Safety Bylaws Review Committee Minutes - 26 July 2022 as a true and correct record.**

Matters Arising

- The operational aspects of bylaws implementation was to be addressed at the meeting on 20 September
- All other items identified for follow up were planned for discussion at this meeting
- Noted that Micah Tawhara's name was spelled incorrectly in the Terms of Reference in the Agenda, and that this would be corrected.

**Winters/Nees
CARRIED**

5. Verbal Updates

The order of the Verbal Updates was amended from the Agenda contents to provide clarity around the legal concepts subsequently being discussed.

5.1 Takutai Moana Act Interface and Current Cases Affecting the New Navigation Safety Bylaws

Tabled Document 1 - Relationship between the Maritime and Coastal Area Act and the Navigation Safety Bylaws: Objective ID A4189893

Presented by: Rachel Boyte - Legal Counsel. Supported by: Toni Briggs - Senior Project Manager

Key Points:

- Provided an overview of areas of potential cross-over between the Navigation Safety Bylaws review process and the MACA Act
- Customary Marine Title (CMT) and Protected Customary Rights (PCR) were identified as being of note, although they did not directly affect the bylaws or the bylaws review process
- A CMT planning document could impact the bylaws process; Council had an obligation to take it into account when decisions were made under the Local Government Act 2002 (LGA)
- There were no current CMT Planning Documents lodged with BOPRC
- PCRs had been granted within the Bay of Plenty region, but Navigation Safety Bylaws still applied to claimant areas, and must be adhered to, as they regulated maritime safety
- CMT orders could contain waahi tapu conditions, but these did not need to be reflected within the bylaws
- Waahi tapu restrictions may impact access to a location to enforce a bylaw, but this was seen as low risk
- Being a claimant for recognition orders under the MACA Act was not considered a conflict of interest to this bylaw review process.

In Response to Questions:

- A CMT planning document could only be lodged once the CMT decision was sealed by the court
- Although the Navigation Safety Bylaws had powers delegated from the Maritime Transport Act 1994, obligations under the LGA still applied, particularly around consultation with communities.

Key Points - Members:

- Requested that the legal team provided a one page summary of the key legal matters addressed.

5.2 Clarification of Legal Concepts

*Presentation: Navigation Safety Bylaws Review Committee Meeting Two
Presentation: Objective ID A4195373 [⇨](#)*

Presented by: Monique Brooks - Legal Counsel and Toni Briggs - Senior Project Manager

Key Points:

- Provided an introduction to the identification and management of perceived and actual conflicts of interest
- Conflicts of interest were explained as a spectrum; which ranged from direct financial benefit to an interest shared with members of a community. Having an interest in a topic, and having a conflict of interest, were two separate concepts
- The extent of perceived or actual benefit impacted the level of management required
- It was always preferable to declare an interest, as this showed an awareness of the potential perception of bias; bylaws could be challenged based on a perception of bias
- A Te Ao Māori perspective did not alone constitute a conflict of interest
- Continued awareness of any potential conflicts of interest was an ongoing obligation for members as the bylaws review progressed
- Members were required to demonstrate open-mindedness during the review process. This included preparation for, and participation in, the meetings, an openness to new ideas and transparent decision making
- It was expected that members would have differing perspectives, but conduct authentic discussions as a collective.

In Response to Questions:

- Members' participation in previous bylaws review processes was not seen as a conflict of interest, as long as open-mindedness was demonstrated
- The wide range of perspectives within the committee was intentional as it represented the varying views of the community
- A Te Ao Māori lens was important as issues covered by the bylaws would directly affect tangata whenua.

Key Points - Members:

- Welcomed and appreciated the encouragement of thorough debate and the informative material around legal concepts
- It was identified that there was an inconsistency in the way Māori viewed a conflict of interest and its effect on decision making, to the Western legal perspective. This made the application of Tikanga Māori, while operating within the framework of conflicts of interest, a challenge. In particular, the concept of whānau was much wider from a Te Ao Māori perspective
- As some members of the public may view committee members as having a pre-conceived view on some matters; staff would assist in the management of public perceptions.

6. Reports

Information Only

6.1 Updated Timeline for Review of the Regional Navigation Safety Bylaws

Tabled Document 2 - Heather Hamerton - Maketū Social and Recreational Impacts Assessment Report 2014: Objective ID A4198213 [⇒](#)

Tabled Document 3 - Heather Hamerton - Recreation Patterns Around Maketū Estuary and Kaituna River Following Rediversion of the Kaituna River 2022: Objective ID A4195844 ⇨

Presented by: Toni Briggs – Senior Project Manager

Key Points:

- The updated Bylaws Review Project timeline was introduced, and although there were changes, the projected completion date remained the same
- An overview of the engagement plan would be provided to members at the 20 September meeting, with a more detailed plan provided at the 30 November meeting
- It was anticipated that committee members would be involved in the engagement programme
- Introduction into the bylaws document, key concepts and terminology would be provided at the next meeting
- Staff would make technical changes to the document and await the result of committee discussions before the key legacy issues were amended
- It was proposed the drafting of the new document would commence in February 2023
- A campaign would take place over the summer boating season to gain feedback around key legacy issues and potential areas for change.

In Response to Questions:

- Engagement would be sought from relevant BOPRC co-governance forums and Bay of Plenty entities which had an interest covered by the scope of the bylaws
- If the bylaws required community specific provisions, active engagement would take place with that community, and sufficient opportunity for direct input would be given
- Any additional changes to the timeline would be communicated to members.

Key Points - Members:

- Noted the importance of engaging with beach-goers as well as boat users
- Requested that two reports by Heather Hamerton – “Maketū Social and Recreational Impacts Assessment Report 2014” and “Recreation Patterns Around Maketū Estuary and Kaituna River Following Rediversion of the Kaituna River 2022”, assessing the use of the Kaituna River, be circulated to members.

Resolved

That the Bay of Plenty Regional Navigation Safety Bylaws Review Committee:

- 1 Receives the report, Updated Timeline for Review of the Regional Navigation Safety Bylaws.**

**von Dadelszen/Bennett
CARRIED**

10.26 am - Cr Kevin Winters **withdrew** from the meeting.

10.26 am - The meeting **adjourned**.

10.40 am – The meeting **reconvened**.

6.2 An Introduction to Bylaws

Presented by: Toni Briggs – Senior Project Manager. Supported by: Monique Brooks
– Legal Counsel

Key Points:

- Provided an introduction to the Bay of Plenty Regional Navigation Safety Bylaws (the bylaws):
 - The powers of authority and parameters were delegated from The Maritime Transport Act 1994, then adapted to meet the needs of the Bay of Plenty region
 - The purpose was maritime safety, which must be at the forefront of all discussions and decisions
 - The bylaws applied to all ships entering the Port of Tauranga, as well as recreational vessel use
- Other legislation, regulations and rules had to be taken into consideration, including:
 - The Maritime and Marine Protection Rules published by Maritime NZ
 - The MACA Act, which continued to be monitored by the BOPRC legal team, with any relevant court decisions or changes reported back to the committee
 - The BOPRC Coastal Environment Plan
 - All appropriate Iwi and Hapū Management Plans
 - The Regional Policy Statement, which ensured consistency with the Resource Management Act 1991 (RMA)
 - The Bylaws Act 1910
 - Local Government Act 2002, specifically in relation to the consultation process
- The overarching goal was to create a succinct, easily accessible document, which took into account all influencing legislation and plans, while being balanced and fair, and responsible for maritime safety.
- A clear definition of the word ‘nuisance’ in relation to ensuring maritime safety had been investigated, but no clear definition in case law or direct interpretation in statute was found
- The definition of ‘public nuisance’, as applied by Territorial Authorities in bylaws for the purpose of preventing nuisance, could provide guidance, however was found to be too broad for the purpose of maintaining maritime safety
- To ensure the appropriate due diligence was conducted, and the bylaws developed were fair to the community, further investigation was needed
- The following next steps were proposed:
 - A definition be requested from Maritime NZ
 - A Council position statement on the definition of nuisance in terms of maritime safety be developed by the committee.

In Response to Questions:

- A definition of nuisance was required from Maritime NZ before public consultation on the bylaws occurred
- As the bylaws review process was being conducted under the LGA, there would be an extensive consultation period, hearings, deliberations and a final adoption of the bylaws

- A High Court Judicial Review was the only means to challenge bylaws; this was possible, although required a fairly high criteria to be met
- The main risks for Judicial Review were from a perception of bias, a conflict of interest, or the bylaws going beyond the delegated scope of legal authority (ultra vires), for example a purpose other than maritime safety
- Any further information required would be distributed to all members for consistency of information.

Resolved

That the Bay of Plenty Regional Navigation Safety Bylaws Review Committee:

- 1 Receives the report, An Introduction to Bylaws.**

**von Dadelszen/Nees
CARRIED**

7. Karakia Kati Closing Karakia

A karakia was provided by Patrick Young.

11:10 am - the meeting closed.

CONFIRMED 20 SEPTEMBER 2022

Cr Andrew von Dadelszen
Chairperson, Bay of Plenty Regional Navigation
Safety Bylaws Review Committee