Bay of Plenty Regional Navigation Safety Bylaws Review Committee Rārangi Take (Agenda)

NOTICE IS GIVEN that the next meeting of Bay of Plenty Regional Navigation Safety Bylaws Review Committee will be held in Council Chambers, Regional House, 1 Elizabeth Street, Tauranga on:

WEDNESDAY 15 FEBRUARY 2023 COMMENCING AT 9.30AM

Fiona McTavish
Chief Executive, Bay of Plenty Regional Council Toi Moana
7 February 2023

Bay of Plenty Regional Navigation Safety Bylaws Review Committee

Membership

Chairperson	Cr Andrew von Dadelszen
Members	**Bay of Plenty Regional Council:** Cr Toi Kai Rākau Iti (Deputy Chair) Cr Jane Nees Cr Kevin Winters **Tangata Whenua Representatives:** Raewyn Bennett Micah Tawhara Patrick Young
Ex Officio	Chairman Doug Leeder
Quorum	Four members, consisting of a minimum of two tangata whenua members and two councillors
Meeting frequency	As required in agreed work programme

The Council Chairman has delegated authority to appoint replacement members to the Hearings Committee if necessary.

Purpose

The Bay of Plenty Regional Navigation Safety Bylaws Review Committee was established by the Regional Council, 23 June 2022; for the purpose of undertaking engagement, options analysis, submissions, hearings, and deliberations of the review process; and making a final recommendation to Council on a revised Bay of Plenty Regional Navigation Safety Bylaws 2023.

Role

The role of the Committee is to:

- Provide a wide range of perspectives on any changes, issues, options, and solutions when reviewing the Navigation Safety Bylaws 2017, especially a Te Ao Māori lens to those changes, issues, and options that directly affect some tangata whenua
- Prepare and recommend a Bay of Plenty Regional Navigation Safety Bylaws 2023 for adoption by Council after undertaking engagement and consultation processes under the Local Government Act 2002, by:
    - Developing solutions to issues and options presented to the Committee for inclusion in a draft Bylaws document

- Undertaking engagement with key stakeholders on specific matters which remain challenging
- Developing a Statement of Proposal and a *draft* Navigation Safety Bylaws 2023 for consultation
- Undertaking a formal consultation process including formal Hearings, under ss 83 and 86 of the Local Government Act 2002
- Undertaking final deliberations to consider all community submissions on a draft Bylaws document
- Recommending to Council a final *draft* Bay of Plenty Regional Navigation Safety Bylaws 2023 for adoption.

Power to Recommend

The Bay of Plenty Regional Navigation Safety Bylaws Review Committee will recommend to Regional Council:

- Solutions to issues and options addressed through the review of the Bay of Plenty Regional Navigation Safety Bylaws 2017 through:
  - A Statement of Proposal and a *draft* Bay of Plenty Regional Navigation Safety Bylaws 2023 for consultation under ss 83 and 86 of the Local Government Act 2002
  - A final Bay of Plenty Regional Navigation Safety Bylaws 2023 for adoption under schedule 7 s 32(b) of the Local Government Act 2002.

The Bay of Plenty Regional Navigation Safety Bylaws Review Committee reports directly to the Regional Council.

Decision Making

The Committee must seek to achieve consensus.

If the Chair considers that the meeting is unlikely to achieve consensus on a matter, the decision on the matter may be made only by a 75% majority of those present. The Chair may vote but does not have a casting vote.

Term of the Committee

For the duration of the Bay of Plenty Regional Navigation Safety Bylaws project unless discharged earlier by Regional Council.

Bay of Plenty Regional Council - Toi Moana

Governance Commitment

mō te taiao, mō ngā tāngata - our environment and our people go hand-in-hand.

We provide excellent governance when, individually and collectively, we:

- Trust and respect each other
- Stay strategic and focused
- Are courageous and challenge the status quo in all we do
- Listen to our stakeholders and value their input
- Listen to each other to understand various perspectives
- Act as a team who can challenge, change and add value
- Continually evaluate what we do

TREAD LIGHTLY, THINK DEEPLY,
ACT WISELY, SPEAK KINDLY, JOURNEY TOGETHER.

Recommendations in reports are not to be construed as Council policy until adopted by Council.

Rārangi Take
Agenda

1. Karakia Whakatuwhera
Opening Prayer

2. Ngā Hōnea
Apologies

3. Wāhanga Tūmatanui
Public Forum

4. Ngā Take Tōmuri
Items not on the Agenda

5. Raupapa o Ngā Take
Order of Business

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

7. Presentations

7.1 Maritime Operational Perspective

Presented by: Jon Jon Peters - Bay of Plenty Harbourmaster
Dan Rapson - Bay of Plenty Deputy Harbourmaster
Scott Robinson - Maritime Operations Team Leader

8. Verbal Updates

8.1 Field Trip Planning - From late Summer 2023

Presented by: Toni Briggs – Seniro Project Manager

8.2 Engagement Update

Presented by: Toni Briggs - Senior Project Manager and Georgia Thomson - Community Engagement Advisor

8.3 Feedback on Actions from the Previous Meeting

Presented by: Toni Briggs – Senior Project Manager

9. Reports

Information Only

9.1 Feedback from previous meeting actions – Including the inclusion of tangata whenua in the Bay of Plenty Region Navigation Safety Bylaws Review Committee 7

9.2 Challenge Areas in the Regional Navigation Safety Bylaws Review 16

Attachment 1 - Bylaw review spreadsheet 2022 24

10. Ngā Take Tōmuri Hei Whakaaroaro
Consideration of Items not on the Agenda

11. Karakia Kati
Closing Prayer

BAY OF PLENTY REGIONAL COUNCIL TOI MOANA

Pūrongo Ki: **Report To:**	Bay of Plenty Regional Navigation Safety Bylaws Review Committee
Rā Hui: **Meeting Date:**	15 February 2023
Kaituhi Pūrongo: **Report Writer:**	Toni Briggs, Senior Project Manager
Kaiwhakamana Pūrongo: **Report Authoriser:**	Reuben Fraser, General Manager, Regulatory Services
Kaupapa: **Purpose:**	To record the process undertaken to recruit tangata whenua community members to the Navigation Safety Bylaws Committee.

Feedback from previous meeting actions – Including the inclusion of tangata whenua in the Bay of Plenty Region Navigation Safety Bylaws Review Committee

Whakarāpopototanga
Executive Summary

This paper outlines, and confirms, the process and thinking behind the specific addition of tangata whenua members to the Navigation Safety Bylaws Review Committee.

Ngā tūtohutanga
Recommendations

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

1 **Receives the report, Feedback from previous meeting actions – Including the inclusion of tangata whenua in the Bay of Plenty Region Navigation Safety Bylaws Review Committee.**

1. Kupu Whakataki
Introduction

Regional Council has a statutory role in maritime safety through the Bay of Plenty Regional Navigation Safety Bylaws under section 33M of the Maritime Transport Act 1994.

These regulations help the Council and the Harbourmaster ensure water safety in the region.

The review of the regions Bylaws is done every five years. This ensures the Bylaws reflect the most up to date legislation; latest best practice; up to date maritime regulations and rules; and current regional risks and issues.

Regional Navigation Safety Bylaws have been in effect since 2002. Since their inception the Bylaws have provided ongoing challenges in some areas. This has been evident in the submissions received during each review and ongoing issues with the management of some areas.

Various reviews have had Hearings Panels made up of elected members or independent commissioners. Previous reviews and consultation processes showed that there were issues that were common with each process. Public opinion was always polarised around jetskis, ski lanes, speed upliftings, and peoples' behaviour on the water; without fully supported resolutions being achieved.

Staff determined that this was likely to be the case with the current review. What was also noted was that each of these 'legacy' issues affected tangata whenua in particular, with at least two iwi making over five submissions in eight years on the same issues.

With competing uses, waters sports and activities becoming increasing popular over time, it is also apparent that activities in and on the water are increasingly conflicting.

With this in mind, staff suggested that specific tangata whenua representation on an on-going review committee would be a good way to provide an increasingly important Te Ao Māori perspective.

1.1 Pou Tarāwaho ā-Ture
Legislative Framework

1.1.1 The Maritime Transport Act 1994

Under Part 3A of the *Maritime Transport Act 1994*, Regional Council is mandated to ensure maritime safety in its region by appointing Harbourmasters, making Bylaws, and carrying out enforcement on offences.

Maritime Rules

While the Maritime Transport Act stipulates broad principles of maritime law, the rules contain detailed technical standards and procedures. Compliance with the rules is mandatory because they form part of New Zealand maritime law. Failure to comply with the rules may be an offence under the Maritime Transport Act.

The maritime rules are statutory instruments (or secondary legislation) made by the Minister of Transport under the Maritime Transport Act 1994.

Maritime rules relate to the safety of ships and people. The rules prescribe requirements for ship design, construction, equipment, crewing, operation, tonnage measurement, and for the carriage of passengers and cargoes. Many of the standards are based on international ship safety conventions.

Of particular importance to Regional Councils are:

- ***Maritime Rules – Part 90 – Pilotage***

Maritime Rules Part 90 specifies compulsory pilotage areas and thresholds for pilotage. It also covers qualifications and training for pilots and pilotage exempt masters, and the issue of pilot licences and masters' pilotage exemption certificates (PECs) by the Director of Maritime New Zealand. This is of particular importance for the Port of Tauranga.

- ***Maritime Rules – Part 91 – Navigational Safety***

Part 91 outlines navigation safety rules, specifically for personal floatation devices, anchoring and mooring, give way rules, wakes and proximity to oil tankers and ships carrying dangerous goods.

- ***Maritime Rules – Part 22: Collision Prevention***

Part 22 outlines the navigation safety rules (and gives effect to the Convention on International Regulations for Preventing Collisions at Sea). These rules outline the standardised (international) system for prevention of collisions and apply to all watercraft, including ships, pleasure craft, and seaplanes. The rules outline international conventions around steering and sailing, and the use of lights and sound for collision avoidance.

1.1.2 The Local Government Act 2002:

Regional Councils make Bylaws under the LGA 2002 under the general *procedure for making bylaws* (sections 155-161) and consult on bylaws using the special consultative procedure (section 86). Adopting a bylaw cannot be delegated by Council to a Committee, so the Committee 'recommends' a course of action to Council for adoption.

1.1.3 Marine Transport (Infringement Fees for Offences – Bay of Plenty Regional Navigation Safety Bylaws 2017) Regulations 2017:

Under section 33O of the *Maritime Transport Act*, Regional Council can set infringement fees by Order in Council[1]. At present we have 2017 regulations, which outlines offences under the Bay of Plenty Region Navigation Safety Bylaws 2017 and the fees applicable for those offences. These will need to be updated.

1.1.4 Other Legislation:

Staff will also ensure that any other legislation that may affect the legitimacy of the new Bylaws is considered. For example, one key influence will be from the *Marine and Coastal Area (Takutai Moana) Act 2011* and the recognition of customary marine titles and protected customary rights.

[1] An Order in Council means this regulation must go through Parliament to provide the legal force (see MTA 1994 s33O).

The Bylaws also cannot be inconsistent with the *Resource Management Act*.

1.2 Te Hāngai ki te Pou Tarāwaho Rautaki
Alignment with Strategic Framework

During the development of the Long Term Plan 2021-2031, Council identified three Impact Areas that would drive the focus of all Council work over the next ten years. It also set the scene for what Council's strategic priorities are and where Council is looking to make the most impact with communities.

One of the three Impact Areas is *Partnerships with Māori*. Te Tiriti (Treaty of Waitangi) principles and the partnership upon which it is founded are an established part of our local government framework. As Treaty partners, Māori hold a unique role in shaping and contributing to regional leadership and direction.

Collectively, Māori contribute significantly to the region through ownership of notable assets: economic investment initiatives, participation in co-governance arrangements with councils, and a growing influence in natural resource management.

Council is focused on continuing to work collaboratively with Māori, as key contributors to strategic direction and leadership in the region.

This commitment supported, among other things, the decision to ensure a wide range of perspectives in tangata whenua input into the Navigation Safety Bylaws review decision-making process. Also, some of the legacy issues directly affect tangata whenua, so including a specific Te Ao Māori perspective will be important.

Safe and Resilient Communities	We support community safety through flood protection and navigation safety.

The Maritime Operations Activity provides a 24/7 navigation safety and maritime oil spill response across the region, as required by regulations and Regional Council requirements. This involves operating an around-the-clock call centre and duty roster, administering moorings and commercial/event licences, and maintaining navigational aids, lights, and beacons around the region.

The Activity promotes navigational safety through a combination of regulation enforcement and education, with an aim to ensure people are kept safe on the water and our maritime environments are protected from spills. The Navigation Safety Bylaws is a key component of this work.

1.2.1 Community Well-beings Assessment

Dominant Well-Beings Affected			
☑ Environmental	☑ Cultural	☑ Social	☑ Economic
Low - Positive	Medium - Positive	Low - Positive	Low - Positive

The review of the Navigation Safety Bylaws 2017 will affect all of the well-beings directly.

2. Feedback from questions at previous Committee meeting – 20 September 2022

- **Increased Moorings**

At present mooring areas in the Bay of Plenty are at full capacity. A review of the Regional Coastal Environment Plan would need to be undertaken in order to look at options for increased mooring areas. This has been highlighted with staff. And further discussion will take place in the future.

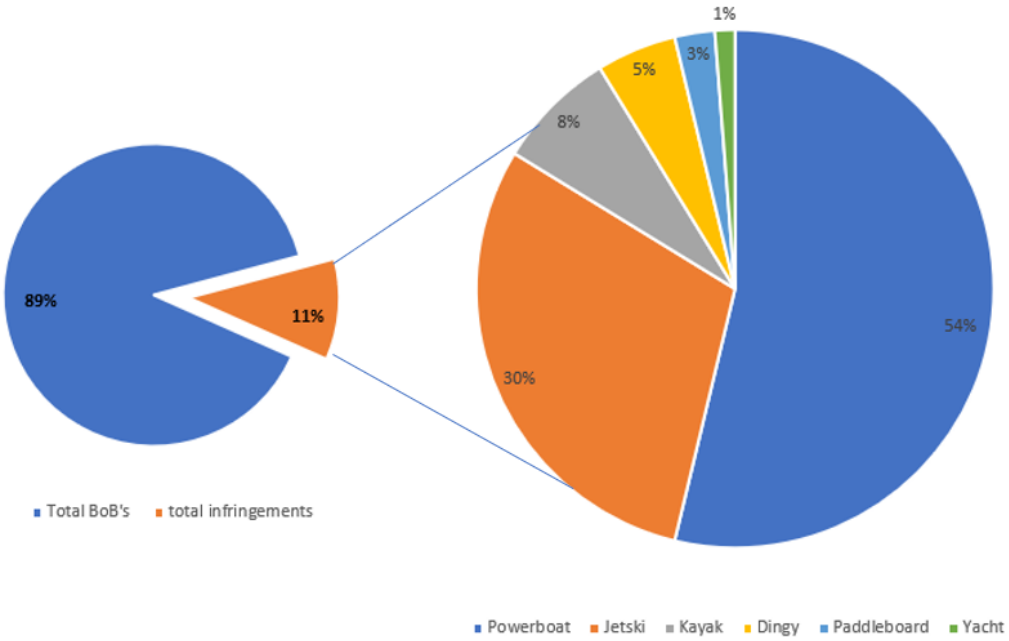
- **Information on Breach of Bylaw Infringements and Prosecutions**

A committee member asked for some data on breach of byla fees and infringements in the Bay of Plenty region:

<u>The type and location of infringements (Oct 21 - Oct 22)</u>

Rotorua	20
Tauranga	60
Whakatāne	0
infringements withdrawn	-15
Ministry of Justice (Courts)	8

Total BoB's	659	
total infringements	80	12%
Powerboat	54%	43
Jetski	30%	24
Kayak	8%	6
Dingy	5%	4
Paddleboard	3%	2
Yacht	1%	1



Note: The infringement process is a robust two-step process that starts with the issues of a Breach of Bylaw (BoB). All patrol personnel wear body camera, with each BoB video independently reviewed. A decision is made whether to send an official infringement notice to the person breaching the Bylaws, usually with a fine.

Infringement fees that remain unpaid or have an application for a payment plan are referred to the Ministry of Justice (there were eight last year).

When compared to other regional councils' infringement fees, Bay of Plenty Regional Council is consistent with the fee amounts set in other regions. As outlined in a previous paper (*Challenge Areas in the Regional Navigation Safety Bylaws Review*. 15 February 2023), staff are recommending a full review of the infringement fee penalties as part of the wider review.

Further analysis of this summer's data will be provided to the committee at the 15 February 2023 meeting.

- **Boundaries of Scope**

Committee members indicated that clear boundaries on the scope of the Bylaws was understood to ensure no areas were missed.

Staff are careful to adhere strictly to the prescribed content of the Maritime Transport Act 1994, especially section 33M. Also of particular importance are the Maritime Rules that prescribe best practice in terms of navigation safety.

Operational staff are working closely with policy staff to ensure all operational aspects are included in the development of new bylaws.

- **Consultation and pre-determination**

Members requested support from staff in preparation for public consultation to ensure no unintentional impressions of predetermination.

As part of the preparation for the formal consultation, standard council practice is to undertaken specific stakeholder engagement meetings with groups, iwi, industry and other affected parties in order to have focused conversations on the review.

Committee members are encouraged to attend any and all meetings. To ensure no unintentional impressions of predetermination committee members are asked not to share personal viewpoints on issues. The role of a committee member in this type of forum is to listen to community viewpoints, issues and concerns and note the feedback and viewpoints.

- **Akwé: Kon**

A committee member asked for this document to be considered in this process.

The full document is available on request (as suggested by Committee Member Raewyn Bennett).

This document outlines international guidelines from the Secretariat of the Convention on Biological Diversity and can be accessed following this link: https://www.cbd.int/traditional/guidelines.shtml

The Guidelines suggest a ten-step process for impact assessment of proposed developments involving indigenous communities, including public consultation; identification of indigenous and local communities as key stakeholders; establishing mechanisms to support indigenous community participation; agreeing mechanism for recording views and concerns; analysing options for cultural, financial, technical and social impacts; establishment of a review and appeals process.

Much of the suggested steps in the guidelines are built into New Zealand's primary Acts and best practice for local government in New Zealand.

3. Development of a Bylaws review decision-making body

During the initial internal review into the continuing effectiveness of the current Bylaws staff considered a range of factors including continuing support of national direction and legislation; latest best practice; up to date maritime regulations and rules; and current regional risks and issues.

During this internal review is became apparent that there are four main issues that continue to be divisive within the community and which still challenge council in developing a well-supported approach.

Along with a number of technical changes needed, it was noted that the four main issues were:

- Ongoing concerns by Matakana Island and Rangiwāea Island residents over ski lane areas in Tauranga Harbour, particularly Hunters Creek Ski Lane.
- Speed uplifting rules and the impact jet boats have on areas on the Kaituna River.
- Speed uplifting rules and the impact jet boats have on areas on the Tarawera River, through Kawerau.
- Prohibition of Personal Watercraft (PWC), especially jetskis, from most of Ōhiwa Harbour.

A Bylaws review hearings panel is usually be made up of elected councillors, independent commissioners, or a mix of both.

Given the complexity and community sentiment of the legacy issues staff recommended to Council that a Committee be established for the duration of the project to ensure the Committee understood the issues and options personally; could be part of the engagement and consultation process; and had the time and opportunity to build comprehensive recommendations to council.

Staff also recommended that tangata whenua were represented as part of that committee to ensure that a Te Ao Māori perspective was an integral part of the decision-making process.

As some of the legacy issues are of particular importance to tangata whenua it is important to include them in the design, consultation, and decision-making process.

This also led to a view that the committee should be recommendatory (part of the decision-making process) rather than just advisory (point of view). Council is the final decision-making authority.

3.1 Expressions of Interest

Council undertook a planned procurement procedure for tangata whenua representation through a formal Expressions of Interest process.

Applications were received and shortlisted with the Māori constituency Councillors and the Tumu Herenga Tangata - Director Strategic Engagement making up a panel to finalise the members using criteria including experience, demographics (including gender and age) and regional location.

3.2 Agreement by Council

Full Council agreed that the Committee would be run under standard governance processes as a formal Committee of Council and be remunerated under the BOPRC Elected and Appointed Members Remuneration and Expenses Policy.

At the Council meeting, 23 June 2022 Council agreed:

- The need for the Committee to meet on the issues to develop **a relatively deep understanding, balanced with efficient decision-making**. This development of a relatively deep understanding will inevitably take time, with the eventual Committee meeting multiple times.

- As some of the legacy issues directly affect mana whenua, the need for tangata whenua to input into the decision-making process and to provide a unique Te Ao Māori perspective to the problem analysis and solutions.

- That as a consequence of the complexity of the legacy issues, the Committee should be closer to "decision-making" than "advisory".

If the legacy issues did not exist a simple Hearings Panel would have sufficed. However, due to the complex history of the legacy issues, a more comprehensive focus is needed.

4. Ngā Whakaarohanga
Considerations

4.1 Ngā Mōrea me Ngā Whakangāwaritanga
Risks and Mitigations

Given the legacy issues connected to this project, it is considered to be high risk. Detailed risk analysis and management has been built into the project management of the review and any new issues and risks that affect the decision-making of the Committee will be presented to the Committee at the earliest opportunity.

4.2 Huringa Āhuarangi
Climate Change

Though climate change has an impact on all Council does and must be considered in all that we do, and effects considered across the length of the project the matters addressed in this report are of a procedural nature and there is no need to consider climate change impacts.

4.3 Ngā Pānga ki te Māori
Implications for Māori

Given the legacy issues connected to this project, the project is considered to be high risk. Detailed risk analysis and management has been built into the project management of the review and any new issues and risks that affect the decision-making of the Committee will be presented to the Committee at the earliest opportunity.

4.4 Whakawhitiwhiti ā-Hapori
Community Engagement

	INVOLVE **Whakaura**	To work directly with affected communities throughout the process to ensure that their issues and concerns are consistently understood and fully considered in Council's decision making.

A detailed *Communications and Engagement Plan* has been developed for the Navigation Safety Bylaws Review project.

Due to the complex nature of the legacy issues in particular we will need to work directly with some affected stakeholders. Communication and engagement will need to use a range of consultation, engagement and involvement techniques that can be tailored for specific groups and issues.

4.5 Ngā Pānga ā-Pūtea
Financial Implications

There are no material unbudgeted financial implications and this fits within the allocated budget.

5. Ngā Mahi Whai Ake
Next Steps

The next Committee Meeting will be held in March 2023. This will begin our more focused phase of the Bylaws review as we start to delve into the detail of the potential changes to the Bylaws document and begin to focus on direct engagement with our affected communities.

Pūrongo Ki: **Report To:**	Bay of Plenty Regional Navigation Safety Bylaws Review Committee
Rā Hui: **Meeting Date:**	15 February 2023
Kaituhi Pūrongo: **Report Writer:**	Toni Briggs, Senior Project Manager
Kaiwhakamana Pūrongo: **Report Authoriser:**	Reuben Fraser, General Manager, Regulatory Services
Kaupapa: **Purpose:**	To provide an overview of potential areas of change in the Bylaws document.

Challenge Areas in the Regional Navigation Safety Bylaws Review

Whakarāpopototanga
Executive Summary

This paper outlines the main anticipated topics to be covered by the Committee in its options analysis and decision-making in 2023.

Staff have undertaken an internal review of the existing bylaw document to ensure its on-going effectiveness and legal validity. Out of this internal review, a number of areas have been noted for further analysis and review, including:

- The reasonable certainty that some previous legacy issues will continue to be controversial with this review and consultation.
- Ongoing alignment with relevant legislation, regulation, and industry standards. The legal team will support the redrafting of the document for consultation to this end.
- A number of minor technical changes.

Ngā tūtohutanga
Recommendations

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

1 Receives the report, Challenge Areas in the Regional Navigation Safety Bylaws Review.

1. Kupu Whakataki
Introduction

Early in 2022 staff undertook an internal review of the Bay of Plenty Regional Navigation Safety Bylaws 2017. The Bylaws are reviewed every five years to ensure on-going effectiveness, and to confirm the Bylaws reflect the most up to date legislation, maritime regulations and rules, and current regional risks and issues.

Overall, staff consider that the 2017 Bylaw rules are effective for the protection of maritime safety in the Bay of Plenty. There are a number of minor technical amendments that staff consider should be made as soon as practicable to improve implementation of the Bylaws, and further, there are four legacy issues that have been identified by staff as being of continuing concern to members of the community that will need to be addressed:

- Ongoing concerns by Matakana Island, Rangiwāea Island, and Motuhoa Island residents over ski lane areas in Tauranga Harbour, particularly Hunters Creek Ski Lane.
- Speed uplifting rules and the impact jet boats have on areas on the Kaituna River.
- Speed uplifting rules and the impact jet boats have on areas on the Tarawera River, through Kawerau.
- Prohibition of Personal Watercraft (PWC), especially jetskis, from most of Ōhiwa Harbour.

Throughout the first half of 2023 the committee will begin to examine these issue areas in more detail. This paper summarises the background information that will support those discussions.

The minor technical amendments will be provided to the Committee as part of the draft consultation documents with a summary rationale for each change, but these changes are not required to be discussed in detail by the Committee as part of its decision-making.

1.1 Pou Tarāwaho ā-Ture
Legislative Framework

1.1.1 The Maritime Transport Act 1994

Under Part 3A of the *Maritime Transport Act 1994*, Regional Council is mandated to ensure maritime safety in its region by appointing Harbourmasters, making Bylaws, and carrying out enforcement on offences.

Maritime Rules

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is required because they form part of New Zealand maritime law. Failure to comply with the rules may be an offence under the Act.

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Of particular importance to Regional Councils are:

- ***Maritime Rules – Part 90 – Pilotage***

Maritime Rules Part 90 specifies compulsory pilotage areas and thresholds for pilotage. It also covers qualifications and training for pilots and pilotage exempt masters, and the issue of pilot licences and masters' pilotage exemption certificates (PECs) by the Director of Maritime New Zealand. This is of particular importance for the Port of Tauranga.

- ***Maritime Rules – Part 91 – Navigational Safety***

Part 91 outlines navigation safety rules, specifically for personal floatation devices, anchoring and mooring, give way rules, wakes and proximity to oil tankers and ships carrying dangerous goods.

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1.1.3 Marine Transport (Infringement Fees for Offences – Bay of Plenty Regional Navigation Safety Bylaws 2017) Regulations 2017:

Under section 33O of the *Maritime Transport Act*, Regional Council can set infringement fees by Order in Council[2]. At present we have 2017 regulations, which outlines offences under the Bay of Plenty Region Navigation Safety Bylaws 2017 and the fees applicable for those offences. These will need to be updated.

[2] An Order in Council means this regulation must go through Parliament to provide the legal force (see MTA 1994 s33O).

1.1.4 Other Legislation:

Staff will also ensure that any other legislation that may affect the legitimacy of the new Bylaws is considered. For example, one key influence will be from the *Marine and Coastal Area (Takutai Moana) Act 2011* and the recognition of customary marine titles and protected customary rights.

1.2 Te Hāngai ki te Pou Tarāwaho Rautaki
Alignment with Strategic Framework

Safe and Resilient Communities	We support community safety through flood protection and navigation safety.

The Maritime Operations Activity provides a 24/7 navigation safety and maritime oil spill response across the region, as required by regulations and Regional Council requirements. This involves operating an around-the-clock call centre and duty roster, administering moorings and commercial/event licences, and maintaining navigational aids, lights, and beacons around the region.

The Activity promotes navigational safety through a combination of regulation enforcement and education with an aim to ensure people are kept safe on the water and our maritime environments are protected from spills. The Navigation Safety Bylaws is a key component of this work.

1.2.1 Community Well-beings Assessment

Dominant Well-Beings Affected			
☑ Environmental	☑ Cultural	☑ Social	☑ Economic
Low - Positive	Medium - Positive	Low - Positive	Low - Positive

The review of the Navigation Safety Bylaws 2017 will affect all of the well-beings directly.

2. Internal Document Review

2.1 Review of the Bay of Plenty Regional Navigation Safety Bylaws 2017

The internal review highlighted a range of improvements needed to the current document. These have been ranked using the simple criteria: impact area, amount of risk; potential impact on communities. (**Attachment 1**: Bylaws Review table).

Note: this table also contains feedback from community members who have provided email commentary to the Harbourmaster email address. This list is not exhaustive and may be subject to addition as we continue to develop a draft 2023 document.

As well as developing the criteria above, changes can be further grouped into key themes. The following tables outline each of the topics that will discussed in detail over the course of 2023 and will be the subject of engagement and consultation with the community.

Staff will provide a verbal overview on each of the topics below at this committee meeting and provide detailed history, detailed options analysis and discussion material at subsequent meetings in the new year.

2.1.1 Legislative direction and mandate

The most important consideration when developing new Bylaws documents is that the legislative mandate and support remains current. Further discussion on each topic will be provided at the committee meeting.

Topic	Overview
Changes to LGA and MTA in 2013 – wording changes and implications	Verbal update at the Committee briefing following the 15 February Committee meeting.
Lake Ōkataina and other *Lakes A* area lakes	Transfer of Powers Agreement with Rotorua Lakes Council (Completed). District Plan Rule 12 to be included in the Bylaws Documents.
Environmental protection areas	At present there is an environmental protection area in Lake Rotoiti prohibiting all motorised vessels.
Submarine cables	Addressed under the Submarine Cables and Pipelines Act 1996. To be included in the Bylaws documents.
Hot works	Due to changes in the Health and Safety at Work Act these clauses will need to be reviewed around responsibility and role of PCBU[3]'s and the definition of workplace.

2.1.2 Ongoing challenges

Each of the ongoing challenges have long been controversial subjects of submissions, and staff expect that they will continue to be significant issues for this review.

Note: Background reading has been provided in Committee Members' Resource Folder at the start of the process.

[3] A PCBU means a Person Conducting a Business or Undertaking and is a board concept used through Health and Safety at Work Act to describe all types of modern working arrangements which we commonly refer to as businesses.

Topic	Overview
Hunters Creek	Ski Area in Tauranga Harbour between Matakana Island and Rangiwāea Island.
Kaituna and Tarawera Speed upliftings	Speed uplifting up both the Kaituna and Tarawera Rivers
Ōhiwa Harbour jetski prohibition	Personal Watercraft (PWC's or jetskis) at present are prohibited in most of the Ōhiwa Harbour.

2.1.3 Other challenges to be investigated

Topic	Overview
Moorings at capacity and ability to future-proof	Mooring space in the region is at a premium, with very little spare space. We will look for ways to futureproof this and note the interaction with the Bay of Plenty Regional Coastal Environment Plan (Coastal Plan).
Abandoned vessels and 'wreck insurance'	Consider the potential to include wreck insurance and seaworthiness requirements on mooring licences.
Long Term boat anchorages	People living on boats has increased with the shortage of housing. This has consequences for vessel congestion but also vessels illegally on moorings (and the by-product of water quality issues which are addressed in the Coastal Plan).

2.1.4 Infringement Fees

Setting infringement fees for the majority of the Bylaw rules is done under a separate process to the drafting of the document and is signed off by Order in Council (NZ Parliament). The Harbourmaster is recommending a full review of the infringement fee penalties as part of the Bylaws review. Recommendations on the fees will be brought to the Committee for endorsement as part of the draft consultation document. Final decision-making on the fees will be done by the Minister of Transport.

2.1.5 Technical Changes

The technical changes – as outlined in Attachment 1, have come from a range of sources. The majority have come from operational staff experience, with some coming from members of the community.

The technical amendments will be provided to the Committee as part of the draft consultation documents with a summary rationale for each change, but these changes are not required to be discussed in detail by the Committee as part of its decision-making.

3. Ngā Whakaarohanga
Considerations

3.1 Ngā Mōrea me Ngā Whakangāwaritanga
Risks and Mitigations

Given the legacy issues connected to this project, the project is considered to be high risk. Detailed risk analysis and management has been built into the project management of the review and any new issues and risks that affect the decision-making of the Committee will be presented to the Committee at the earliest opportunity.

3.2 Huringa Āhuarangi
Climate Change

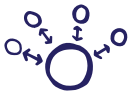
Climate change has an impact on all Council does and is considered in all that we do, and the effects are considered across the length of the project.

3.3 Ngā Pānga ki te Māori
Implications for Māori

The Treaty principles and the partnerships upon which they are founded are an established part of our local government framework. As Treaty partners, Māori hold a unique role in shaping and contributing to regional leadership and direction.

As some of the legacy issues are of particular importance to tangata whenua it is important to include them in the design, consultation, and decision-making process.

3.4 Whakawhitiwhiti ā-Hapori
Community Engagement

	**INVOLVE** **Whakaura**	To work directly with affected communities throughout the process to ensure that their issues and concerns are consistently understood and fully considered in Council's decision making.

A detailed *Communications and Engagement Plan* has been developed for the Navigation Safety Bylaws Review project and has been outlined to the Committee. This plan specifically outlines the pre-engagement and consultation aspects of the project.

Due to the complex nature of the legacy issues in particular we will need to work directly with some affected stakeholders. Communication and engagement will

need to use a range of consultation, engagement and involvement techniques that can be tailored for specific groups and issues.

3.5 Ngā Pānga ā-Pūtea
Financial Implications

There are no material unbudgeted financial implications and this fits within the allocated budget.

4. Ngā Mahi Whai Ake
Next Steps

The next Committee Meeting will be held 15 March 2023. This will begin our more focused phase of the Bylaws review as we start to delve into the detail of the potential changes to the Bylaws document and begin to focus on direct engagement with our affected communities.

Attachments

Attachment 1 - Bylaw review spreadsheet 2022 ⇩

Putative Review Matters for Bay of Plenty Navigational Safety Bylaws

Technical = little community impact; technical change to document; light communication to affected communities
Policy = changes made to align with latest legislation, regulation/ similar impact to technical changes
Tier 1 = High community impact, regional wide change, wider consultation needed, potential to be controversial/many submissions
Tier 2 = medium community impact, targeted group engagement, small amount of submissions/feedback

	Clause No	Section/Title	Location	Submission Suggestion	Community Impact	Harbourmaster Comments	Policy Comments	Legislative Mandate	Further Explanation Needed	Name	Contact	Submission Date:
1	3.2.1	Kaituna uplifting	Kaituna River	Speed uplifting/speeding vessels after Mangorewa Confluence	Tier 1		**legacy issue**: Propose removing speed uplifting from entrance to Mangorewa Confluence. This through impact e.g. whitebaiting area (Aug - Nov) dealth with through operational approach (e.g. signage durign whitebaiting season).			Kelvin O'Hara		
2	3.12 and 2.4 ?	Moorings	Region wide	Include "WRECK INSURANCE" /Vessel remaining seaworthy as a condition of owning a mooring	Tier 1		investigate whether we can impose this as a rule - does it align with 'maritime safety'?		Targeted to mooring owners but potential to be controversial. Also links to national direction as no other council has done this	Jon Jon Peters		
3	Page 40	Map amendment	Hunters Creek	Amend to match changes made 2019			**Legacy issue:** review whether Hunters creek remains as a designated ski area		What changes were made in 2019?	Peter Buell (notes)		
4	Page 52	Amendment	Ōhiwa Harbour map	Personal watercraft exclusion area - remove? Make open waters with normal speed rules to apply. Update with additional buoyage.	Tier 1		**legacy issue:** options include: 5 knot rule applied to same zone as opposed to prohibition (no madate); a new jet ski area on main beach nad move the curretn beach side one adjacent to Maraetotora park			Peter Buell (notes)		
5	3.12 and 2.4 ?		Region wide	Include "WRECK INSURANCE" as a condition of owning a mooring	Tier 1				see above 3.12	Jon Jon Peters		
6	3.10.8	added 29/3	Ōhiwa	Removal of Bylaw 3.10.8 - we had no legal reason to stop jet skiers user the same water that other power driven vessels can use.	Tier 1	Isaac Tait	Legacy issue: agree		see Ōhiwa Exclusiuon zone above			
7	3.10.8	added 29/3	Ōhiwa	Relocation of the personal water craft priority area from mid Ōhope(beach) to west of the Ōhiwa river entrance.	Tier 1	Isaac Tait						
8	Schedule 2	added 29/7	Kaituna	Speed upliftings on Kaituna 2 to be removed	Tier 1	Vance Skudder	Legacy Issue: As part of Kaituna Speed uplifting review			Vance Skudder Tia Marae,0220882669		
9	schedule 3 Tarawera	added 29/3	Tarawera	No Power boats up stream of the Tamarangi Drive Bridge SH34 or between Nov and April	Tier 1	Kawerau locals	Issue: propose Speed uplifting areas removed above SH34 bridge					
10		Kaituna	Kaituna River / Region wide	Bay of Plenty's lakes, rivers, streams & alike free of all jet-boating & jet skiing activities. Kaituna in particular following witnessing near misses with children swimming.	Tier 1		legislation does not support blanket prohibition. Focus on specific speed uplifted area on Kaituna		Not feasible - however has potential for safety clause around swimming areas or patrols and compliance	Jason Marra	jmarrabuilders@yahoo.co.nz	12/02/2019
11	3.10.	18/11/2022	Region wide	Special Designated Areas - simplify the categories and provide better links between clauses and schedule 4	Policy			33M(1)(e)		Toni		
12			Rotorua Lakes	Wildlife Protection Area - identified on Schedule 4 map only ohau wall	Policy		not linked to Maritime Safety					
13		18/11/2022	Rotorua Lakes	Lake Ōkataina Passive Lake	Policy		Needs RLC transfer of powers - being adressed now					
14		Reserve area	Hannahs Bay, Lake Rotorua	Hannah's Bay ski lane, change to a PWC area due to the depth of water and potential reserve and ramp upgrade.	Tier 2		if we change from ski to jetski area - what is the impact?			Scott Robinson		8/03/2021
15	2.6.5	Anchorages	Rotorua Lakes	Temporary boat anchorages max 14 day rule similar to Tga. Sewage discharge from boat toilets to be prohibited.. Boat size increasing with macerating toilets.	Tier 2		How do we approach this? As not technically a maritime safety issue. Check district plan rules for lakes. Water Quality? Health concerns?		Would this be applied to Rotorua lakes only or region wide? Macerating toilets new?	Scott Robinson		8/03/2021
16	3.12	Moorings	Region wide	3rd Party insurance required.	Tier 2		this will need clear investigation on legal support but mandate under 33M(b) and is there a section in MTA on cost recovery?			Peter Buell (notes)		
17	1.3	5 Knot/Hydrofoils	Region wide	Powered hydro foils to be excluded from board sports (definition)	Technical		Which MTA definition does this type of vessel fit into as this will affect the regulation applied.		Context? Is this a speed issue? Considered power driven vehicle?	Scott Robinson		8/03/2021
18	**?**	Commercial port	Tauranga Harbour Entrance	PWC users in Harbour Entrance - PWCs vs Commercial vessels	Technical		PWC probibited area through 33M(1)(h) or similar.		Is this about jetskis etc at Harbour entrance?	Lars Sorensen (Duty Pilot)		29/11/2018
19	4.4 ?	Oil transfers	Region wide	Oil Transfer Sites - emergency procedures for natural disasters. Example wording: "Oil Transfer Site Marine Oil Spill Contingency Plans are to include measures to suspend transfers following a significant natural disaster and not resume transfers until an assessment is made that oil can be safely and securely transferred.	Technical					Adrian Heays		8/03/2021
20	2.7	Prohibited anchorages	Tauranga Harbour Entrance	Prohibited anchorage to No2 Reach/no anchoring in entrance	Technical	Peter Buell: prohibited on #2 reach is the future	add to maps		Reaches shown on nautical maps but not Bylaws maps - need to be on Byalws maps	Phil Julian	PhillipJ@port-tauranga.co.nz	25/02/2019
21	2.1.5(c)	PFD's	Region wide	Clarify scuba in order to exclude surfer or water sport wetsuits	Technical		delineate between different types of wetsuits and pfd's - best practice on Maritime NZ			Peter Buell (notes)		
22	2.3.1	Powerloading	Region wide	prohibit powerloading	Technical		add to clause		Strengthen rule. Implications for monitoring and enforcement.			
23	2.4.2	Unseaworthy vessels	Region wide	No facility can launch an unseaworthy vessel	Technical		What is definition of 'facility"?			Peter Buell (notes)		

24	2.4.2(b)	Unseaworthy vessels	Region wide	Add ability to destroy vessel	Technical		also see MTA 33J, K, L		Need legal opinion on the legislative basis for councils ability to destroy others personal property. Also need to check legality of clause (c)	Peter Buell (notes)		
25	2.6.2	Anchoring	Region wide	(1) Add tampering to moored/anchored vessel offence (2) 2.6.2(b) - the fastening or securing of any vessel lying in, at or alongside near any wharf, dock or landing place.	Technical	Leave it as it is			two separate changes	Peter Buell (notes)		
26	2.6.4	Anchoring	Region wide	Add comment/requirement for high winds over 20 knot winds for example Anchor watch to be maintained	Technical		Is this a 'comment' which is a simple addition; or a 'requirement' which is an enforceable rule (implication is that all boat owners will need to be onboard to keep watch in 20 knot winds which may be a safety issue)			Peter Buell (notes)		
27	2.6.5	Anchoring	Tauranga Harbour	Proximate Location' - detail '14 consecutive days' - Leave out consecutive	technical		This s becoming a bigger issue due to a lot fo new "live-aboards" but is not necessarily a maritime safety issue. See 2.6.5 above)			Peter Buell (notes)		
28	2.7	Prohibited anchorages	Region wide	Except in an emergency no person may anchor or moor any vessel' - split anchor and moor	technical				not sure of the meaning of this change.	Peter Buell (notes)		
29	3.10.05	Special Designated areas	Whakatāne	Discuss changes to the Whakatāne swim area location with WDC			reserved area - swimming only area adjacent to the wharf and boat ramp.					
30	3.12.4	Moorings	Region wide	(a) once positioned by the harbourmaster be solely responsible for the position....'	technical		add only			Peter Buell (notes)		
31	3.12.6	Moorings	Region wide	The harbourmaster has the right to inspect any mooring and can direct the mooring owner to upgrade, repair or service the mooring as considered appropriate'.	technical		add only		do you mean 'maintain' rather than service?	Peter Buell (notes)		
32	3.12	Moorings	Region wide	Any breach of mooring licence is an offence	Technical		But may have a flow on effect with offences and penalties which are set through central govt regulation.			Peter Buell (notes)		
33	3.12.14	Moorings	Region wide	Add reference to 'your boat'.	?	Leave as it is	as this is about vacant or unattended moorings where is the boat being referenced?		not sure where "your boat" would be added in this clause	Peter Buell (notes)		
34	3.12	Moorings	Whakatāne	Consider clarifying owners responsibilities in relation to and during floods?			add					
35	4.4	Oil Tankers	Tauranga Harbour	Add notes/offences re: Transferring without plan and transferring without complying with checklists	Technical					Peter Buell (notes)		
36	4.5	Hot Work operations	Region wide	Note in Peter's master bylaw 'validity period'	Technical		This needs reviewing as the HSaW Act has significantly changed who is responsible for crew/ port workers safety during hot works		Is this about a process for notifying harbourmaster (including date and time of hot work)?	Peter Buell (notes)		
37	5.3.1	Navigation Safety Licences	Region wide	Delete clause. Note: Conflict in definition.Delete commercial (legal advice to clarify)	Technical		Definition needs updating also. And avoids duplication with the Health and Safety at Work (Adventure Activities) Regulations 2016 (Note 2 below)		Definition needs updating also. And avoids duplication with the Health and Safety at Work (Adventure Activities) Regulations 2016 (Note 2 below)	Peter Buell (notes)		
38	5.3.3	Navigation Safety Licences	Region wide	Move this clause to replace 5.3.1.(legal advice to clarify)			clarify		leave clause 1 and 2 in place with updated working	Peter Buell (notes)		
39	Schedule 1	Tauranga Port 1	Tauranga	Prohibited - No 1 Reach No 2 Reach - prohibited?	Technical				Reaches are not mapped in Bylaws - should be	Peter Buell (notes)		
40	Schedule 4	Special Designated areas	Region wide	Remove jetski buoy, PWC area - should be reserved area.(Minor TYPO)	Technical					Peter Buell (notes)		
41	page 50	Map amendment	Whakatāne	Add engine warm up area			look at impact on other areas e.g. swimming areas					
42	Schedule 9	title		Change title to Breach of Bylaws and Infringement Fees	Technical		Offences and penalties have different legal and legislative meanings.					
43	Schedule 9	3.12.10		Mooring a vessel other than the vessel named in the license- To be an offence	Technical		infringement			Peter Buell (notes)		
44	Schedule 9	3.12.20		Add to list of offences		Already done	infringement			Peter Buell (notes)		
45	Schedule 9	3.13.20		Add to list of offences	Technical		infringement			Peter Buell (notes)		
46	Schedule 9	5.2.2		Offence not in.	Technical		does not need an additional infringement fee			Peter Buell (notes)		
47				The speed limit for all powered craft including jet skis be reduced to 5 knots for the entire estuary upstream of the green buoy near the entrance	Technical				which harbour??	Les Scott	021 427 362	
48	Schedule 3	added 29/3		All navigable waters of the Rangitaiki river upstream of the State highway bridge, this should now read up stream of the Thornton road bridge as three years ago NZTA re-routed state highway 2	Technical	Isaac Tait	update only					
49	2.8/2.9	added 27/09/2021		area from the Pilot Boarding Station/No. 1 Reach up to (and including) Stella			when, where, why would 2.9 happen?					
50				passage a prohibited anchorage area - POT	tier 2		clarify with HM			Jon Jon Peters		
51	4.5	added 29/09/2022	Whakatāne	Review Hot Works in Whakatāne, consider directing to WDC?			see 4.5 above					
52	7.1.2	added 04/10/2021		bar signal - "unworkable"to be replaced by "closed"	Technical		update only		on legal advice wording amended.	Jon Jon Peters		
53				mooring and nav safety license fee should not have early payment discount	technical		clarify					
54		added 07/10/2021		amend event policy wording	Technical	Dan rapson	Event Guidelines being worked on as of 16 Nov 22 - see Monique to JonJon email					
55		added 11/01/2021		Express right to remove objects (other than vessels) that are a hazard to navigation. This is provided for in s33F(1)(f) of the MTA but it would be good to have it reflected in the Bylaw.	Technical	Benjamin Easte (BOPRC legal)	is this 2.15 extension? Or something different? Clarify					
56				Set out a process allowing BOPRC to sell / scrap Vessels or Obstructions that we have removed from the water and use those funds to re-coop removal expenses	Technical		Not Bylaws but is linked to 2.4.2(b) above					

57		added 11/04/21		Uplifting of the 5 knot rules to be removed in the Tarawera river	Technical		see Schedule 3 Tarawera above		see email -FWMR22-0366	Veronica Ward /Rolinson 02041007304		
58		added 21/01/2021		Notification to HM regd aircraft taking off or landing waters vessel or quay (Akl 29 (1)(2) esp. helicopters)	Technical	Refer to Auckland bylaws for details	clarify legally		have this ocurring on the lakes/ helicopters on private vessels.	Jon Jon Peters		
59	5.4.1	added 25/01/2022		5.4.1 to read "Unique Identification" instead of the word Number /to be free of charge.	technical	other regions allow	clarify with contributor		personalised number plates	Julia Taylor(HM team)		
60	3.10.5	added 02/03/2022		Offence to have "okawa bay " removed as the actual bylaw applies to the whole region	Technical		clarify with contributor			HM		
61	2.6.5	added 02/03/2022		To apply the anchoring 14 day restriction to the entire region andnot just Tauranga harbour	Technical	this will prevent live on boards in other regions which lead to more complications	See also 2.6.5 above. This needs investigation in to the linkage to a maritime safety issue.			HM		
62	7.1.2	added 19/04/2022		Bar signal - to be amended	Technical	Forecasting method to replace bart calling/	Is this Whakatāne - added above		Peter Head working on this.	HM		
63	7.1.2	added 29/09/22	Whakatāne	Bar Signal - Consider removing as this is an advisory and not an offene under the bylaw?	Technical		Is this Whakatāne - added above					
64		added 19/04/2022		remove requirement to state name of enforcement officer on infringement notices	Technical	Danger to persons issuing.	Not Bylaws - BoB form? Clarify		Amend order of council			
65		29/04/2022		we designate the area from the Pilot Boarding Station/No. 1 Reach up to (and including)	Technical	increased risk of collision	clarify		Currently rec boat allowed as omg as ready to move when necessary.This resulted in too many close calls			
66		27/07/2022		Stella passage as a prohibited Anchorage area	Technical		clarify			Nicole Brown		
67		27/07/2022		Any new Ōpōtiki Harbour clauses?	Technical		Clarify					
68				Any new Whakatāne Marina clauses?	Technical	new harbour development	clarify			Cllr Winters		
69	3.6.1	9/11/2022	See email Monique Brooks 9/11/22 Obj. ref A4246583	Council can designate an area as an access or reserved lane. Clarify that the Harbourmaster can designate such an area on a temporary basis but any permanent change requires Council resolution.	Technical		clarify		from review of delegations manual	Legal	Monique	
70	3.6.2	9/11/2022	See email Monique Brooks 9/11/22 Obj. ref A4246583	Council may designate an area to be subject to speed uplifting. Clarify that the Harbourmaster can designate such an area on a temporary basis but any permanent change requires Council resolution.	Technical		clarify		from review of delegations manual	Legal	Monique	
71	5.1	9/11/2022	See email Monique Brooks 9/11/22 Obj. ref A4246583	Council may suspend any provision or exempt any activity of the Bylaw. To require a Council resolution.	Technical		No need to change the Bylaws clause - update the Delegations maual.		from review of delegations manual	Legal	Monique	
72	3.12	21/09/2022	Whakatāne	consider clarifying owners responsibility prior to, during and after floods in WHK.	Technical		also above		through email to Toni Briggs 21/09/22	Peter Head		
73	3.10.15	21/09/2022	Whakatāne	discuss changes to the WHK swim area with WDC as they are looking to move/ change it.	Technical		also above					
74	7.1.2	21/09/2022	Whakatāne	consider removing reference to the bar signal light as it's an advisory and is not a bylaw offence? This will also help lead in to future changes.	Technical		also above			Peter		
75	4.5	21/09/2022	Whakatāne	Check and discuss hot work permits with WDC as I believe this now sits with them?	Technical		also above		if WDC own the wharf where hot works undertaken then they are PCBU under HSE so therefore yes	Peter		
76	3.9.3	16/11/2022	See email Monique Brooks 16/11/22 Obj. ref A4251484	Lakes Closure Guidelines as referenced in the Bylaws document	Technical		Review Special Events section of Bylaws document					
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Notes

1 The wearing of personal flotation devices at all times on small vessels - is this covered?

2 Clause not required for licensing of commercial vessels for hire and reward because since 2017 this matter has been addressed by relying on other existing regulations, including the Health and Safety at Work (Adventure Activities) Regulations 2016.