

Statement of Proposal

Proposed Navigation bylaws for Port Taranaki and its approaches

Statement of Proposal

The Taranaki Regional Council (the Council) is seeking public comment on a proposal to amend the *Navigation Safety Bylaws for Port Taranaki and its Approaches 2009*. The document *Proposed Navigation Safety Bylaws for Port Taranaki and its Approaches* includes proposed changes to the current bylaws.

The Bylaws have been developed to ensure navigation safety for users of Port Taranaki and its approaches. The current Bylaws were adopted in October 2009.

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.



Image: Port Taranaki and Ngāmotu beach.

Purpose of the Bylaws

The purpose of the Navigation Safety Bylaws is to ensure that different users of the Port Taranaki area and its approaches can safely use and share the area where the bylaws apply, whether it is for recreational or commercial purposes. The Bylaws are in addition to the requirements of the *Maritime Transport Act 1994* and the *Maritime Rules* and only apply to Port Taranaki and its approaches (2.5 nautical miles around the Port).

Port Taranaki and its approaches have the highest risk to navigation safety in the region due to the high volume of users and the wide variety of activities that occur within that confined space. Outside this area, Maritime New Zealand retains responsibility for navigation safety.

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.

In order 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 bylaws.

The Council also needs to keep the Navigation Safety Bylaws current and fit for purpose to reflect changing uses and previous experiences gained over the life of the current Bylaws.

The best way to do this is through a review of the current Bylaws, 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 Navigation Safety Bylaws the Council has to consider whether:

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

Appropriateness of Bylaws to address a perceived problem

To that end, the Council has identified in the table below alternative methods to using Bylaws to manage risks to navigation safety in Port Taranaki and its approaches.

Options considered	Reasons for rejection or acceptance
Revoke bylaws and transfer jurisdiction to Maritime New Zealand	<ul style="list-style-type: none"> • No bylaws means that the Council has no regulatory responsibilities (other than those relating to the Harbour Master granted under the <i>Maritime Transport Act 1994</i>) to enforce appropriate behaviour and ensure navigation safety within the Port Taranaki and its approaches. • Without bylaws, monitoring and enforcement responsibilities reverts back to Maritime New Zealand, which may not have local capacity to adequately manage risks to navigation safety within the Port Taranaki and its approaches. <p style="text-align: right;">Outcome - Rejected</p>
Revoking bylaws and include rules in the Coastal Plan for Taranaki	<ul style="list-style-type: none"> • The <i>Coastal Plan for Taranaki</i> is an alternative regulatory tool provided through the <i>Resource Management Act 1991 (RMA)</i>. The RMA does not include provisions that address maritime safety or navigation as these are more appropriately addressed under the <i>Maritime Transport Act 1994</i> and other legislation. • Regulating maritime issues under the RMA is therefore inappropriate and not considered an appropriate option. <p style="text-align: right;">Outcome - Rejected</p>
Status quo – the Council maintains bylaws for navigation safety matters in the port and its approaches in accordance with the LGA.	<ul style="list-style-type: none"> • 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 <i>New Zealand Port & Harbour Marine Safety Code</i>. 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. • Bylaws serve 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. <p style="text-align: right;">Outcome - Accepted</p>

In addition to the assessment above, the Council also considered whether the spatial extent of bylaw jurisdiction was still appropriate¹. Three broad options were considered:

- **Status quo:** Spatial extent and geographical coverage of the bylaws to be confined to Port Taranaki and its approaches.
- **Coastal waters:** Spatial extent and geographical coverage of the bylaws is extended to include all Taranaki coastal waters out to 12 nautical miles.
- **All Taranaki coastal and fresh waters:** Spatial extent and geographical coverage of the bylaws is extended to include all Taranaki coastal waters out to 12 nautical miles plus all inland waters.

The assessment determined that the *status quo* option was appropriate given the level of pressure and risk that exists specific to the Port and its approaches in comparison with other areas around Taranaki. This approach involves applying resources where the risks are greatest with Maritime New Zealand retaining responsibility for the other areas.

¹ The options were considered and decided by the Council at the Policy and Planning Committee Meeting of February 4th 2020.

Most appropriate form of Bylaw

Under the LGA, the Council must determine whether the Navigation Safety Bylaws are 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 a number of reasons why the Council believes a standalone document is the most appropriate form of Bylaw.

A standalone document:

1. Holds all of the relevant regulations in one place and is easily accessible
2. Is targeted and focusses only on navigation safety
3. Ensures that the Bylaws and the matters being addressed cannot be confused with others
4. Is relatively short and concise and can be easily printed or referenced in its entirety
5. Becomes a repository for all the legal matters associated with maritime navigation safety within the Port and its approaches.

New Zealand Bill of Rights Act 1990

Under section 155(3) of the LGA the Council must determine that the Navigation Safety Bylaws are 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 Bylaws as proposed here, are not inconsistent with the *Bill of Rights Act 1990*.



Image: Port Taranaki from the chimney.

Summary of changes

An internal review of the efficiency and effectiveness of the existing Navigation Safety Bylaws has now been completed. In most cases it has been decided that the existing rules are effective for ongoing navigation safety within the areas that the bylaws cover. However, in the ten years since the last bylaws were reviewed and updated the Council has noted changes to the use of the area as well as legislative changes that need to be reflected in the bylaws going forward.

Changes are summarised in the Table below.

Description of change or addition	Reason for change
Changing the water ski access lane to the boat access lane	<ul style="list-style-type: none"> • Water skiing is no longer a common recreational use of the harbour. Jet skis and towed 'biscuit boards' are more common. • The water ski lane does not have egress and ingress lanes within it. There is insufficient room in the lane for this and therefore it is potentially dangerous for towing vessels coming and going from the beach. Re-designating the access lane for 'boat access' will address this issue. • Ngāmotu Beach is increasingly popular for swimmers. Extending the five knot rule to the entire beach waterfront will make the beach a safer place. • Section 2.7 [Water-ski access lane] in current Bylaws is amended by section 10 [Boat access lane] in Proposed Bylaws and references in the associated maps updated to refer to the boat access lane.
Vessels must be seaworthy	<ul style="list-style-type: none"> • Experience over the last ten years that the Bylaws have been operative is that vessels which are not seaworthy increase risk of damage to other users, property and the environment and may become a risk to navigation safety. • Currently there is no provision for the harbourmaster to be informed of vessels that are not seaworthy. In addition, the harbourmaster requires a regulatory mechanism to ensure that vessels that are not seaworthy are managed and located such that they do not produce risks to other users, property or the environment. • New section 13 [Vessels to be seaworthy] included in Proposed Bylaws.
Increasing regulations in main navigation channel and Port area	<ul style="list-style-type: none"> • The risk of collision and/or accident is highest within the Port and within the main navigation channel due to the high volume of traffic, confined space and variety of vessel types. There is a need to ensure that the high traffic areas are managed so as to reduce risks and ensure personnel safety. • Large vessels cannot manoeuvre easily or change course without increased risk, the most appropriate way to reduce risk is to ensure that large vessels have right of way within these areas. This is achieved through sections 11 [Anchorage of vessels in the main navigation channel] and 14 [Moving prohibited zone] (section 2.11 [Moving safety zones] in current Bylaws).
Increased requirements for temporary events that involve uplifting of bylaws or restricting access to general public	<ul style="list-style-type: none"> • Organised events are becoming more common and more definitive management is required. If an activity will require the uplifting of bylaw provisions or the temporary restrictions to public access over the duration an updated process needs to be in place to ensure that the harbourmaster is provided with the necessary information and can ensure that health and safety matters are fully considered. • Amendments include more specific directions to event applicants to provide the harbourmaster with appropriate information. • The general public also need to be kept informed by event holders if an event will impact or restrict access to the Port/harbour area. Increased requirements for public notices is recommended and additional consultation with other parties encouraged through the online form. • New sections 12 [Areas set aside for temporary events] and 16 [Authorisation for temporary events] are proposed to replace section 2.9 [Temporary events] in current Bylaws.
Incident reporting	<ul style="list-style-type: none"> • Current bylaws do not have any reporting requirements for collisions or accidents. • The harbourmaster is generally kept informed, however, a consistent method of reporting incidents is necessary to ensure that any issues are captured and can form part of any future assessment of navigation safety within the Port and its approaches. • New section 15 [Collisions and accidents] as well as associated online reporting form is recommended.
Removal of redundant bylaw provisions	<ul style="list-style-type: none"> • A number of bylaw provisions in the current bylaws are recommended to be revoked: <ul style="list-style-type: none"> ○ Small vessels to stop on demand – Under section 33F (1) (g) of the <i>Maritime Transport Act 1994</i> harbourmasters can require any person in charge of a ship or seaplane to stop and give his or her name and address and is not limited to small vessels only. This makes section 2.8 [Small vessels to stop on demand] of the current bylaws redundant. ○ Collision Prevention – redundant as Maritime Rule Part 22 applies to all vessels regardless of whether required by bylaws or not. This makes section 2.12 [Collision Prevention] of the current bylaws redundant.

Public consultation and submissions

Copies of the Proposed *Navigation Safety Bylaws for Port Taranaki and its Approaches* are available:

- Online at www.trc.govt.nz/river-control-bylaws/
- At the Taranaki Regional Council offices at 47 Cloten Road, Stratford, 4352
- On request from the Taranaki Regional Council by:
 - emailing bylaws@trc.govt.nz
 - or phoning 0800 736 222.

The Taranaki Regional Council welcomes your views and feedback.

Any organisation or member of the public may make a submission on the Proposed *Navigation Safety Bylaws for Port Taranaki and its Approaches*.

A submission is a statement in support of, or in opposition to, any part of this statement of proposal or the Proposed *Navigation Safety Bylaws for Port Taranaki and its Approaches*.

Submissions may focus on:

- The effectiveness of the proposed bylaws in managing risks to navigation and safety in Port Taranaki and its approaches;
- Identifying any cross boundary or management issues; and
- Identifying any gaps or additional activities required to manage risks to navigation and safety in Port Taranaki and its approaches.

To have your say, you can:

- Make an on-line submission at www.trc.govt.nz/river-control-bylaws/
- Emailing your submission to bylaws@trc.govt.nz and including 'Submission on the Proposed Navigation Safety Bylaws for Port Taranaki and its Approaches' as the subject heading; or
- by posting your submission to Taranaki Regional Council, Private Bag 713, Stratford 4352 and including as the subject 'Submission on the Proposed Navigation Safety Bylaws for Port Taranaki and its Approaches'.

Public submissions start at 8am on Monday 27 July 2020 and close at 5pm on Friday 21st August 2020.

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 Taranaki Regional Council to consider;
- Make your comments as specific as possible; and
- Include the relevant section to which your comments refer.

Hearings relating to the Proposed Bylaws will be scheduled following receipt of submissions.