



Ports and Wharves Bylaw 2018

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Commencement: 01 July 2018

whakatane.govt.nz



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Part 1: Introduction

The Whakatāne District Council makes this bylaw pursuant to Sections 145 and 146 of the Local Government Act 2002.

1 Short title and commencement

This bylaw is the Whakatāne District Council Ports and Wharves Bylaw 2018.

This bylaw comes into force on 1 July 2018.

2 Revocation

Part 14 of the Whakatāne District Council Consolidated Bylaw 2008 is revoked at the time this bylaw comes into force.

3 Purpose

1. The purpose of this bylaw is to regulate and control the use of all port structures owned by the Council, generally within the Whakatāne Port Zone, Rangitāiki River mouth, and the Ōhiwa Harbour. This bylaw applies to every Council owned asset contained within the Bay of Plenty Regional Council: Harbour Development Zone.
2. To avoid doubt, compliance with this bylaw does not remove the need to comply with all other applicable Acts, regulations, bylaws, and rules of law.
3. Unless the context requires another meaning, a term or expression that is defined in the Maritime Act 1994 or maritime rule and used in this Bylaw, but not defined, has the meaning given by the Maritime Act or maritime rule.
4. Any explanatory notes and maps are for information purposes, do not form part of this bylaw, and may be made, amended and revoked without formality.
5. The Interpretation Act 1999 applies to this bylaw.

4 Interpretation

In this bylaw, unless the context otherwise requires:

ACT means the Local Government Act 2002.

AGENT means a person or business authorised to act on another's behalf.

APPROVAL or APPROVED means approved in writing by the Council, either by resolution of the Council or by an Authorised Officer of the Council.

AUTHORISED OFFICER means any person delegated, appointed, or authorised in writing by the Chief Executive or by the Council to act on its behalf and with its authority, and includes a member of the New Zealand Police.

The following note is explanatory and is not part of the Bylaw:

The Council contracts the activity of Authorised Officer to the Bay of Plenty Regional Council. The position that manages that role is the Senior Maritime Officer.

BERTHAGE means any site designated by the Authorised Officer for use by a berthage licence holder.

BOAT MASTER means the captain or chief commanding officer of a vessel or the person in control of the vessel.

CONSIGNOR means the person or firm (usually the seller) who delivers a consignment to a carrier for transporting it to a consignee (usually the buyer) named in the transportation documents. Ownership (title) of the goods remains with the consignor until the consignee pays for them in full.

COUNCIL means the Whakatāne District Council and/or any person delegated or authorised to act on its behalf.

DANGEROUS OR HAZARDOUS GOODS mean any solids, liquids or gases that can harm people, other living organisms, property of the environment.

MOORING means any weight or article placed in or on the foreshore, seabed or the bed of a waterway for the purpose of securing a vessel and includes any chain, wire, rope, buoy or other device attached or connected to the weight, but excludes an anchor that is removed with the vessel when it leaves the site or anchorage.

MOORING SITE means the area designated by the Authorised Officer within a mooring zone for use by a mooring licence holder and includes the swing area around the mooring.

NAVIGATION AID includes:

- (a) Any lightship and any floating or other light exhibited for the guidance of vessels;
- (b) All marks and signs in aid of marine navigation;
- (c) Any electronic, radio or other aid of marine navigation not carried on board any vessels.

NAVIGATION CHANNEL is the area of the harbour that the Regional Council has approved resource consent to the Council to maintain a channel for the passage of vessels.

PORT STRUCTURE means all port and wharf facilities provided for the use of, or commonly used by commercial vessels or recreational vessels and includes any wharf, jetty, landing place, boat ramp, groyne or training wall.

PORT ZONES mean the areas as defined in the maps attached as Schedule 1.

SPILL KIT includes the necessary items to counteract and stop the spilled oil from creating a larger undesirable effect on land or structures or in the case of waters, spreading to a wider range.

SWIMMING includes movement in or on the water, jumping or diving in or out of the water, surfing, bathing and paddling.

SWIMMING DESIGNATED AREA includes the tidal pool and the swimming lane as defined by buoys, which are downstream of the boat ramp at the Whakatāne Heads.

VEHICLE means any form of transport which is equipped with wheels or revolving runners or tracks regardless of its means of motive power, and is not limited to cars, trucks, motorbikes, bicycles, segways and skateboards. Vehicle does not include prams or wheelchairs (or other mobility scooters used by persons with a physical or neurological condition).

VESSEL means any ship or boat and includes any motorised vessel, yacht, inflatable rubber boat, kayak, jet ski, seaplane and any fishing boats designed to be used in the sea or river, but does not include wakeboards, kitsurfing boards, surfboards or stand up paddle boards.

WHARF / PORT includes all wharves, quays, jetties, piers, boat ramps, land and premises owned by or under the control of the Council in, on, or from which passengers or goods may be taken on board or, loaded from vessels. For clarity, these are generally located within the Whakatāne Port Zone, Rangitāiki River mouth, and the Ōhiwa Harbour.

Part 2: Use of Port Structures And Surrounds

5 Appointment of officers

The Council may appoint any person(s) to enforce the provisions of the Ports and Wharves Bylaw 2018.

6 Residing on a vessel

- (1) No person shall dwell, inhabit or reside on any vessel berthed within the Whakatane Port Zone under the control of the Council for any period longer than seven (7) consecutive days or for more than fourteen (14) days within any three (3) month period without the prior written consent of the Council.
- (2) The Council's consent to reside will be withheld if any vessel does not have adequate effluent and black water containment facilities.

7 Safety equipment

No person shall interfere with, remove, destroy or damage any spill kit or any other safety feature or equipment erected, maintained, or otherwise authorised by the Council on any port structure or riverbank to which this Bylaw applies.

8 Navigation aids and equipment

No person shall damage, remove, deface or otherwise interfere with navigation mark, light or beacon, buoy, fences, wharf or other device or structure erected by the Council as a navigation aid or warning.

9 Obstruction of Port Structures

- (1) All port structures are provided primarily for the use of commercial vessels and to enable commercial operations. This means that in the normal course of operations, commercial vehicles have priority for berthage, although there may be times when recreational vessels will be permitted to berth, provided they have a licence to do so.
- (2) No person without a licence or written consent provided by the Council, shall:
 - (a) allow any vessel to obstruct the approach of other vessels; or
 - (b) allow any vessel to lie alongside any port structure required for landing or embarking passengers.
- (3) No person shall:
 - (a) Obstruct any port structure while passengers are embarking or landing, or while any vessel for hire is approaching or departing from the port structure.
 - (b) Block or hinder access to fuel bays and pumps, or loading areas.

- (c) Commit a nuisance, on, under or about any port structure.
 - (d) In any way obstruct or impede traffic on any port structure.
 - (e) Arrange or hold any organised activity such as swimming or surfing in or within ten metres of any navigation channel without the prior written consent of the Authorised Officer. At least 30 days' notice is required when seeking written consent for such an activity.
 - (f) Fish with any means from any wharf, landing place, groyne, training wall, jetty or port structure under the control of the Council, within 50 metres of any vessel approaching, departing or passing. When a vessel in the navigation channel approaches the place where fishing is taking place, all fishing lines must be pulled in so as not to obstruct the vessel within the navigation channel.
 - (g) Leave any vessel, trailer or motor vehicle unattended on or near any boat ramp, wharf or jetty in a way that obstructs the reasonable use of these facilities.
 - (h) Leave any vehicle/trailer combination unattended or parked anywhere except in an area designated by Council for the parking of vehicle/trailer combinations.
 - (i) Leave any vehicle without a trailer unattended or parked in an area designated for vehicle/trailer combinations.
 - (j) Leave any vehicle, trailer or boat parked on a continual basis in any area designated by the Council for the parking of vehicles, trailers or boats.
- (4) Any vehicle obstructing a boat ramp, wharf jetty or port structure may be towed away. The decision to remove the obstructing vehicle shall be made by the Authorised Officer. All reasonable costs associated with recovery shall be met by the owner and/or operator of the obstructing vehicle and/or trailer.

10 Swimming

No person shall swim or engage in any underwater activity from any wharf, jetty, boat ramp or other port structure under the control of the Council, within 50 metres of any vessel approaching, departing or passing, except in the Port Zone of Thornton or in the swimming designated area.

11 Lighting fires

No person shall light any fires on any part of the port structure or on any land associated with the port or wharf.

12 Dangerous Goods On Port Structures

- (1) Any person landing any chemical hazards, explosives, kerosene, motor spirits, fuel oil, or goods of a dangerous or flammable character from any vessel onto any port structure shall remove these goods immediately on being landed.
- (2) No person shall load any chemical hazards, explosives, kerosene, motor spirits, fuel oil, or goods of a dangerous or flammable character on to any vessel from any port structure other than in sealed containers.

- (3) All users refuelling vessels on or adjacent to port structures must adhere to safety requirements.

13 Goods landed on wharves

- (1) All goods landed at any wharf are landed at the boatmaster's own risk. The Council has no responsibility to deliver any goods landed on any wharf to the consignee.
- (2) Any goods placed on any wharf for shipment are placed there at the consignor's own risk. The consignor is solely responsible for the safety of the goods until they are accepted by the master, owner, or agent of the vessel by which they are to be shipped.

14 Vehicles on wharves

- (1) No person shall drive or cause to be driven, any vehicle on any wharf at a speed exceeding 5 km per hour.
- (2) No vessel exceeding the weight limits where they are posted on a port structure shall drive on that structure.

15 Vessels coming alongside wharves and in boat trailer parks

- (1) The master of any vessel coming alongside any wharf is responsible for the proper and safe berthing of his or her vessel and is responsible for any damage done to any port structure in connection with that vessel.
- (2) The Council may repair any damage done by a vessel and charge the cost of doing so against the master or owner of the vessel doing the damage. The cost of the repairs may be recovered by the Council from the master or owner by action in any Court of competent jurisdiction.

16 Directions as to berthing

- (1) No vessel shall be berthed at any wharf unless the written consent of the Authorised Officer has first been obtained.
- (2) When two vessels are expecting to berth at any wharf at the same time, the Authorised Officer can direct the master of each vessel regarding where his or her vessel is to be berthed.
- (3) The Authorised Officer may order any vessel to be removed from any berth alongside any wharf or to be relocated in another berth either permanently or temporarily, whenever he considers that this removal or relocation is needed for the general accommodation of vessels.

17 Berthage licences

- (1) Any person may apply in writing to the Council for a berthage licence authorising the berthage of any vessel.

- (2) Every application for a berthage licence shall be accompanied by payment of an application fee as fixed by the Council or as fixed through the Annual Plan process.
- (3) The Council cannot guarantee that a berthage licence will be authorised when an application is made, particularly at times when demand exceeds supply.
- (4) Every berthage licence issued by the Council shall be:
 - (a) in a form and on the terms prescribed by Council;
 - (b) subject to clause 18 (2); and
 - (c) for a term not exceeding 24 months from the date of the licence.
- (5) The Council may revoke any berthage licence without liability for compensation by giving seven (7) days notice in writing of the revocation and the reasons for it.
- (6) Without prejudice to the power conferred by clause 18 (5), the Council may immediately revoke any berthage licence if:
 - (a) the licensee commits or suffers a breach of any provision contained in the licence; or
 - (b) the licensee ceases to occupy his or her berth for a period of 30 consecutive days without the consent of the Authorised Officer first having been obtained in writing; or
 - (c) the licensee defaults for a period of 30 days after the due date as invoiced; or
 - (d) the licensee or one of the licensees (if more than one person holds the licence), becomes bankrupt or makes a compromise with his creditors or is in any manner brought under the operation of any Act for the time being in force relating to bankruptcy; or
 - (e) the licensee or any one of the licensees (if more than one person holds the licence), being a corporate body, is the subject of an effective winding up resolution or order for liquidation or is in any manner wound up or dissolved;

then in such case it shall be lawful for the Council, without the necessity of any previous notice to the licensee, to revoke the licence and the powers, rights and privileges thereby conferred shall cease.

- (7) A person holding a berthage licence cannot sublet his berthage to another vessel without written consent from the Authorised Officer. In the event that he wishes to sublease, this can be according to clause 18(4) and the subletter will first need the written approval of the Authorised Officer.

18 Exclusive use of a port structure for private use

- (1) No person or organisation can use a port structure or any part of a port structure for private use except with the prior written permission of an Authorised Officer. At least 30 days' notice is required when seeking written consent for such an activity.
- (2) If written permission is withheld, the Council will give reasons. Permission may be refused in the case of a civil emergency or hazardous situation or when the Council reasonably believes that the activity will or is likely to:
 - (a) Cause a public nuisance; or
 - (b) Compromise the commercial operation of the port structure; or
 - (c) Create a hazard or endanger public health and safety; or
 - (d) Cause damage to the port structure.
- (3) In the case where permission for exclusive use of a port structure is granted, reasonable public use of that structure shall still be allowed.

Part 3: Claims, Offences and Fees

19 Claims against the Council

- (1) No person is entitled to claim against the Council for the loss of any goods landed or placed on any port structure.
- (2) Nothing in this clause shall be deemed to relieve the Council from liability for negligence on the part of an Authorised Officer acting within the scope and in the course of his or her employment.

20 Offences

Every person commits an offence against this Bylaw who:

- (a) refuses to carry out the lawful instructions of the Authorised Officer; or
- (b) permits the remains of fish offal or other offensive matter to be placed in or about any of the port structures; or
- (c) uses any port structure or associated land for any purpose other than embarking or disembarking passengers or loading or unloading goods without the prior written consent of the Authorised Officer; or
- (d) in any way contravenes or fails to comply with this Bylaw.

21 Fees and charges

- (1) The Council may from time to time set fees through the Annual Plan process. These fees shall form part of the Whakatane District Council Schedule of Fees and Charges which are publicly notified. These fees include but are not limited to:

Berthage Fees

- (2) The master, owner or their agent of every vessel berthing at any port structure shall pay to the Council berthage fees as may be set by the Council as part of the Annual Plan process. Berthage licence holders shall pay berthage fees during the currency of the licence irrespective of whether or not the berth is occupied. If a berthage fee is not paid within 30 days, the Council reserves the right to move the vessel to a mooring.

Wharfage/Freight Fees

- (3) Every person who uses any port structure for landing or shipping any goods shall pay to the Council wharfage/freight fees as may be set by the Council on an individual basis, or through the Annual Plan process.

Boat Ramp Fees

- (4) If annual fees and charges are approved, including Boat Ramp Fees, these must be paid to the Council. Failure to do so will result in a fine of \$200.

Storage Fees

- (5) Every person who uses any port structure for storing any goods shall pay to the Council storage fees as outlined in a written approval to store goods from the Authorised Officer.

Removal of Goods

- (6) Where any cargo remains on any port structure for a longer period than 48 hours, or where any such cargo hinders the loading or unloading of any vessel, or is an impediment to the approaches, the Council, through the Authorised Officer, may have the cargo removed at the expense of the owner. The cost of such a removal shall be payable by the owner to the Council before taking receipt of the goods.
- (7) If the fees are not paid to Council within 30 days, the Council reserves the right to move the cargo as necessary.

23 Penalties for breach of bylaw

Pursuant to section 242(4) of the Act, any person convicted of breaching this Bylaw is liable to a fine not exceeding \$20,000.

Schedule 1: Map Showing Locations of Port and Wharf Facilities