

Statement of Proposal

PORTS AND WHARVES BYLAW 2018

Introduction

The Whakatāne District Council (the Council) has reviewed Part 14: Ports and Wharves of the Consolidated Bylaw 2008 that is due to expire in 2018. The Whakatane District Council seeks your views on the Draft Ports and Wharves Bylaw 2018.

Proposal

The Council proposes to revoke Part 13: Ports and Wharves of the Consolidated Bylaw and replace it with a stand-alone bylaw.

The Draft Ports and Wharves Bylaw 2018 is being released for consultation using the Special Consultative Procedure as outlined in section 86 of the Local Government Act 2002 (the Act).

In accordance with section 86 (2) of the Act, Council is required to include the following in a Statement of Proposal:

- A draft of the proposed bylaw;
- The reasons for the proposal; and
- A report on any relevant determinations by Council under section 155 of the Act.

The attached copy of the proposed Whakatane District Council Draft Ports and Wharves Bylaw 2018 forms part of this Statement of Proposal.

Reasons for the Proposal

Under sections 158 to 160 of the Act, the Council is required to review all bylaws within five years of their adoption and every ten years thereafter.

Council staff have reviewed Part 14: Ports and Wharves Bylaw 2008 and consider that while much of the current bylaw is working well, changes have been made to improve the safety of all users, provide clarity around the use of berths, protect the infrastructure, and allow Council to charge storage fees for the storage of goods on a wharf.

The key changes are:

- Changing the title 'Harbours Superintendent' to 'Authorised Officer';
- Highlighting that overall, commercial activities take precedence over leisure activities regarding the use of port facilities;
- Prohibiting any vehicle or vessel from blocking or hindering access to fuel pumps and loading bays;
- Providing clarity around the application process for berthages;
- Prohibiting sub-letting of berths without the written consent of the Authorised Officer;
- Allowing individuals or groups/organisations to apply to the Authorised Officer for exclusive use of a port structure for an event'
- Regulating swimming and fishing around port structures and in the navigation channel; and
- Enabling Council to charge fees for the use of boat ramps if a boat ramp fee is approved at a later date.

Specific changes made in the Draft Ports and Wharves Bylaw 2018

The Table below shows the specific changes that have been made in the Draft Ports and Wharves Bylaw 2018.

Section in existing bylaw	Reason for proposed change	Proposed Change	Outcome if change approved	Section in Draft Bylaw
New Sections	Current Bylaw is part of the Consolidated Bylaw and does not contain these sections.	Add new sections: - Short Title and Commencement - Revocation - Purpose - Interpretation	All relevant information is contained in a single document.	S2 Short Title and Commencement S3 Revocation S4 Purpose S5 Interpretation
S14.1 Appointment of Officers	Current bylaw refers to 'Harbours Superintendent' or deputy. This is technically inaccurate as BOPRC is responsible for the harbour and water below mean low tide mark; WDC is responsible for ports and wharves.	Replace 'Harbours Superintendent' with 'Authorised Officer' throughout the Bylaw.	An accurate title, that will not become outdated in the future is used in the Bylaw.	S6 Appointment of Officers
S14.3 Lifesaving Apparatus	Council no longer provides lifesaving equipment on wharves or in the port, but provides safety equipment.	- Change heading to 'Safety Equipment'. - Change text from 'any lifebuoy or lifesaving apparatus' to 'any spill kit or any other safety feature or equipment.'	Aligns Bylaw with current practice.	S8 Safety Equipment
S14.5 Use of Port Structures and Surrounds	Current bylaw does not state that port and wharf facilities are primarily provided for the use of commercial operators.	Add new clause S10(1) stating that commercial activities and vessels have priority. Delete 14.5.1 (a)(i) as this is clarified in new clause s10(1).	Enables the Council to give priority to commercial vessels.	S10 (1) Obstruction of Port Structures
New Section	Council has no authority to deal with hindrances to fuel bays and pumps or loading areas.	Add new clause prohibiting anyone or any vessel from blocking or hindering access to fuel bays and pumps and loading areas.	The Council has greater ability to control the use the wharves and port areas.	S10(3)(b) Obstruction of Port Structures
S14.5.1 (b)(iv)	The Authorised Officer should	Add new sentence to this clause requiring 30 days' notice when	Enables the Council to	S10(3)(e)

	know in advance when organized activities might affect the movement of vessels in the harbor or the use of wharves and port structures.	seeking written consent for such an organized event involving swimming around port structures.	better control the use the wharves and port areas.	Obstruction of Port Structures
S14.5.1 (b)(vi)	Complaints have been received about fishing lines being caught by boats passing through navigation channels.	Add a new sentence stating: '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.'	Boat owners and fisherman in the waterways have clarity around responsibility for fishing lines in navigation channel.	S10(3)(f) Obstruction of Port Structures
S14.5.1 (b)(vii)	Current bylaw only prohibits unattended vessels from obstructing boat ramps, but not wharves, jetties or port structures.	Add extra phrase at the end of this clause: ' wharf, jetty or port structure.'	Ensures unattended vehicles do not obstruct the use of any wharf, jetty or port structure.	S10(3)(h) Obstruction of Port Structures
New Section	Current bylaw does not regulate swimming around port structures and in the navigation channel. This can create safety hazard for boats and swimmers.	Add new section: 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. '	Enables the Council to manage safety issues associated with swimming.	S11 Swimming
New Section	Current bylaw does not prohibit the use of fires on any wharf or port structure.	Add new section - Lighting Fires: 'No person shall light any fires on any part of the wharf structure or on any land associated with the port or wharf.'	Prohibits lighting fires that could create a significant safety hazard.	S12 Lighting Fires
S14.5.2 Dangerous Goods On Wharves or Boat Ramps	Current bylaw doesn't prohibit the landing or handling of chemical hazards on wharves.	Change heading to: Dangerous Goods on Port Structures. Include 'chemical hazards' in all lists of dangerous goods. Add new clause: '(3) All users refueling vessels on or adjacent to port structures	Prohibits the landing or handling or chemical hazards on any wharf or port structure.	S12 Dangerous Goods on Wharves or Boat Ramps

	Current bylaw does not require users refueling vessels to comply with fuel safety requirements.	must adhere to fuel safety requirements.'	Requires users refueling vessels to comply with safety requirements.	
S14.5.4 Vehicles on Wharves	Current bylaw doesn't prohibit overweight vehicles from driving on wharves or structures with weight limits.	Add new clause: '(2) No vehicle exceeding the weight limits where they are posted on a wharf structure shall drive on that wharf or structure.'	Protects wharf infrastructure.	S15 (2) Vehicles on Wharves
S14.5.7 (a) and (b) Berthage Licences	Duplication of requirements in previous section 'Directions as to Berthing'.	Delete clauses S14.5.7 (a) and (b)	Removes duplication in bylaw	
S14.5.7(c) Berthage Licences	Current clause is clunky and refers to clauses (a) and (b) which have been deleted.	Change wording to: 'Any person may apply in writing to the Council for a berthage licence authorizing the berthage of any vessel.'	Easy to read English.	S18 (1) Berthage Licences
New Clause	Applications for berthage licences exceed supply. Clarifies that an application does not guarantee a licence.	Add new clause '(3) The Council cannot guarantee that a berthage licence will be authorized when an application is made, particularly at times when demand exceeds supply.'	Clarifies Council's position.	S18 (3) Berthage Licences
New Clause	Current bylaw does not prohibit the holder of a berthage licence from sub-letting his berthage to another vessel.	Add new clause: 'A person holding a berthage licence cannot sub-let his berthage to another vessel without written consent from an Authorised Officer. If the holder wishes to sub-lease his berthage, this must be according to clause 17(4) and the sub-letter will need approval of the Authorised Officer.'	Ensures the Council always has complete jurisdiction over which vessels are berthed alongside wharf structures. Helps manage the Council's liability.	S18(7) Berthage Licences
New Section	The Council currently has no ability to allow an organization or individual to have exclusive use of a port structure for an event or to manage such an event.	Add new section: 'Exclusive Use of a Port Structure for Private Use.' (1) No person or organization 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	Enables the Council to permit the exclusive use of a port structure for an event and to control the requirements around that	S19 Exclusive Use of a Port Structure for Private Use

		<p>written consent for such an activity.</p> <p>(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:</p> <p>(a) Cause a public nuisance; or</p> <p>(b) Compromise the commercial operation of the port structure; or</p> <p>(c) Create a hazard or endanger public health and safety; or</p> <p>(d) Cause damage to the port structure.</p> <p>(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.</p>	the use of the port structure.	
New Clause	Council currently cannot charge fees for the use of boat ramps.	Add new clause: '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.'	Enables Council to charge fees for the use of boat ramps in the future if a decision to do so is made.	S21 (5) Fees and Charges: Storage Fees
New Section	Current bylaw does not state what the penalties are for breaching the bylaw.	Add section: (1) Pursuant to section 242(4) of the Local Government Act 2002, any person convicted of breaching this Bylaw is liable to a fine not exceeding \$5,000 (2) Any person convicted of an offence against this Bylaw is liable to a fine not exceeding \$20,000.	Ensures all information relevant to the Bylaw is contained within a single stand-alone document.	S22 Penalties for Breach of Bylaw

Other options to the proposed bylaw considered

Council considered two other options:

- Keeping the existing bylaw
- Having no bylaw at all.

Council considers that the proposed bylaw is the most appropriate method to manage public health and safety in the ports and wharves under its jurisdiction.

Without a bylaw, Council would be unable to fulfil its responsibilities under sections 145 and 146 of the Act to protect the public from nuisance, protect, promote, and maintain public health and safety to minimise the potential for offensive behaviour in ports and wharves, and the manage and protect the infrastructure, land and structures under its control.

Council's ability to make a Ports and Wharves Bylaw

The Act sets out the procedure for making a bylaw. The Council is required under section 155 of the Act to determine whether a bylaw is the most appropriate way to address perceived problems. Section 155 (1) of the Act requires the Council to determine whether a bylaw is the most appropriate way to address perceived problems and section 155(2) requires Council to determine whether the proposed bylaw:

- Is the most appropriate form of bylaw; and
- Gives rise to any implications under the New Zealand Bill of Rights Act 1990.

The proposed bylaw is the most appropriate form to control nuisances and manage public health and safety in ports or wharves in the District because it meets the following tests:

- The bylaw is authorised by statutory authority under the Local Government Act 2002;
- The bylaw is not repugnant to the general laws of New Zealand;
- The proposed bylaw is certain and provides clear direction;
- The bylaw is reasonable; and
- The bylaw is not overly restrictive, onerous on any one person, or impractical.

There are no implications under the New Zealand Bill of Rights Act. The draft bylaw does not place any limits on freedom of movement, expression or association, and does not isolate any particular social group in terms of the Act. In addition, any offences under the bylaw will require a judicial process through the Courts.

Section 156 of the Act requires the Council to use the Special Consultative Procedure set out in section 83 of the bylaw and continues to apply.

Consultation and Submissions

Council invites the community to give us feedback on the proposed Bylaw to assist it in the decision-making process.

The formal consultation process will take place between **12 March and 12 April 2018**. Council will hold a hearing in May 2018.

Any person or organisation is welcome to make a submission on the Draft Ports and Wharves Bylaw 2018. The Council take into account all submissions when it decides on the final content of the bylaw.

Copies of the Statement of Proposal are available on Whakatane District Council's website <http://www.whakatane.govt.nz>

Hard copies are available from:

- Whakatane District Council 14 Commerce Street, Whakatane
- Whakatane Library 49 Kahahoroa Drive, Whakatane
- Edgecumbe Library 38 College Road, Edgecumbe
- Ohope Library 4 Harbour Road, Ohope
- Murupara Library / Service Centre Civic Square, 48 Pine Drive, Murupara

Formal submissions may be made:

Online: <http://www.whakatane.govt.nz>

Post to: Ports and Wharves Bylaw, Private Bag 1002,
Whakatane 3158.

Deliver to: Ports and Wharves Bylaw, Whakatane District Council, 14 Commerce Street,
Whakatane.

Email to: submission@whakatane.govt.nz Attention Bylaw Review

Informal submissions can be made by commenting on our Facebook page at:
<http://www.facebook.com/WhakataneDistrictCouncil>

Submissions close at 5pm on Friday 12 April 2018.

Submitters should note that their submission will be copied and made available to the public after the submission period closes.

Your submission should include your name, address, telephone number and email address and should state if you wish to speak to Council in support of your submission. The Council will contact in writing, all submitters who wish to be heard to advise the confirmed time, date and venue of the hearing.

