

Decision Report

To: The Mayor and Councillors

From: Policy Analyst, Strategic Policy Planner

Date: Tuesday, 5 March 2019

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Appendix A: Statement of Proposal Draft Wharves and Boat Ramps Bylaw 2019 – includes draft bylaw (2547281)

Portfolio holder: Councillor Milner and Councillor Leonard

Meeting date: Wednesday, 27 March 2019

Subject: **Adoption of Draft Wharves and Boat Ramps Bylaw 2019**

Recommendation:

THAT the report be received, and

THAT in accordance with section 155(1) of the Local Government Act 2002 the draft Wharves and Boat Ramps Bylaw 2019 is the most appropriate way of addressing the perceived problems, and

THAT in accordance with section 155(2) of the Local Government Act 2002 the draft Wharves and Boat Ramps Bylaw 2019 is the most appropriate form of bylaw and does not have any implications under the New Zealand Bill of Rights Act 1990, and

THAT in accordance with section 145 and section 159 of the Local Government Act 2002 the Council approves the draft Wharves and Boat Ramps Bylaw 2019 (as contained in the Statement of Proposal attached) for public consultation, and

THAT the special consultative procedure is used for community engagement on the draft Wharves and Boat Ramps Bylaw 2019 and the related timeframes and approach are approved, and

THAT in accordance with sections 156(1)(a) and 86 of the Local Government Act 2002 the Council adopt the attached Statement of Proposal for the Draft Wharves and Boat Ramps Bylaw 2019.

1 Purpose

This report seeks the Council's approval of the draft Wharves and Boat Ramps Bylaw 2019 and adoption of the Statement of Proposal prior to public consultation.

The matter or suggested decision does not involve a new activity, service, programme, project, expenditure or other deliverable.

2 Background

At the Council meeting on 29 August 2018 Mayor Tregidga, Deputy Mayor Adams and Councillors Milner, Leonard, Spicer and Harris were appointed to a councillor working party to work with staff on the review of various bylaws. The majority of the Council's bylaws are due for a legally required 10-year review.¹

The Council also resolved that the various Parts of the Hauraki District Council Consolidated Bylaw 2007 be separated into individual bylaws. Subsequently Part 9 (Wharves) of the Hauraki District Council Consolidated Bylaw has been renamed the Hauraki District Council Wharves and Boat Ramps Bylaw 2019.

The Council operates the following wharves and maritime facilities:

- jetty and boat ramp at Turua,
- jetty and boat ramp at Puke Bridge,
- boat ramp at Pipiroa,
- the Wharf Street Jetty, Paeroa, once completed.

The boat ramp at Kaiaua is owned by the boat club and the adjacent land is under a co-governance agreement, which means the adjacent land would be covered by the bylaw but the boat ramp is not.

2.1 The Bylaw

The purpose of the Wharves and Boat Ramps Bylaw is to provide for the control and management of the wharf facilities that are provided by, owned or controlled by the Council. The 2007 Wharves Bylaw covers matters such as;

- access to wharves and wharf facilities,
- requiring the Council's permission to berth at wharves (tie up to a wharf),
- weight limitations for tying to wharves,
- the removal of litter, loitering and obstruction, and
- the ability to set specific mooring fees.

To view the full 2007 version of the Wharves Bylaw, go to <http://www.hauraki-dc.govt.nz/our-council/bylaws/>. There is no Franklin District Council Bylaw in place regarding wharves.

2.2 Issues analysis and community opinion

To determine if the 2007 bylaw is the most appropriate form of bylaw, staff and the councillor working party considered issues received through the service request system, bylaw enforcement action taken over the past ten years, Long Term Plan submissions and past submissions to the 2007 bylaw review process. This analysis revealed there has been only a few incidents where staff have requested people move their vessel on, due to it being moored at a wharf for an extended period of time without the Council's permission. No convictions under the bylaw have been sought.

A community survey was undertaken in December 2018 to help inform the review process. The key policy question posed was whether or not people agreed with the current policy, that people must get the permission of the Council to tie/secure a vessel (like a boat or barge) to any jetty, even for a short period for loading and unloading cargo and people. The survey also asked people how often they use these facilities and what for, and if they ever have issues

¹ Sections 158, 159, 160A Local Government Act 2002.

with car parking at our jetties or boat ramps. 37 people completed the survey and the results are summarised below:

- Eight respondents thought people should have to seek the permission of the Council to tie to a jetty, while 29 people thought people should not have to seek the permission of the Council. The times they thought people should be permitted to leave a vessel unattended varied (without seeking the permission of the Council).
- The most common use of the jetties/boat ramps and surrounding reserve is for sightseeing/picnics, closely followed by launching recreational fishing boats. A smaller number of people use them for recreational fishing off a jetty and sports e.g. waka ama.
- No survey respondents use the boat ramps to launch commercial fishing boats.
- Three respondents use the facilities more than once a month.
- Two respondents noted they have had issues where they could not access our jetties because a vessel was tied to it, blocking their use. One person noted the issue was at Puke Bridge.
- Two respondents noted they have experienced issues with limited car parking, one comment was specific to Puke Bridge.

The survey link was placed on Facebook, on the Council’s Hauraki Herald page and sent to key stakeholders. Staff also spoke with representatives from the Paeroa Maritime Park.

2.3 What are the proposed changes to the 2007 Bylaw and why?

The councillor working party requested a ‘plain English’ rewrite of all the bylaws during the review process and are also recommending various policy changes to the Wharves and Boat Ramps Bylaw. For this reason, there were many wording ‘tweaks’ made to the bylaw as well as entire clauses re-written. The more substantial changes are outlined in the table below.

Changes in Draft Wharves and Boat Ramps Bylaw 2019	Rationale
Definition of a boat ramp changed from <i>‘includes any designated launching and retrieval points approved by the Council in clause 2.6.1 of Part 3 (Public Safety) of this Bylaw’</i> to <i>‘a sloping entrance to a body of water, designed for launching and retrieving a vessel’</i> .	There are no approved designated launching and retrieval points in Part 3: Public Safety.
Delete the definitions for Litter, Service vehicle, Waterway and Wharf facility.	The terms are no longer required in the bylaw due to recommended policy changes.
Amend clause about no vehicles permitted on any <i>wharf facilities</i> , without the permission of the Council to no vehicles permitted on any <i>wharf</i> without the permission of the Council.	A wharf facility was defined as <i>‘any buildings, enclosures, fences, shed, wharf, boat ramps, conveniences, storage parks, associated facilities and any other work used or associated with marine and river waterway activities that is provided, owned or controlled by the Council within the District’</i> . It was not the Council’s intention to require a vehicle to seek its permission to drive on boat ramps and other listed facilities above, only wharves.
Amend clauses that require the prior permission of the Council, to tie or secure any vessel to any wharf, or in the proximity of any such wharf. Amend to <i>‘A person can berth a vessel at any wharf for the purpose of loading and</i>	The working party does not believe it is necessary for every person to seek the permission of the Council to use its wharves to load/unload people or cargo. We do not have a lot of issues in the district with too many users at the wharves at one time and it seems like unnecessary administration. However, vessels cannot be left unattended without the permission of the Council.

Changes in Draft Wharves and Boat Ramps Bylaw 2019	Rationale
<i>unloading people or cargo, subject to the provisions in this bylaw’.</i>	
Remove reference to the Council’s ‘Rules of Use’ for wharves as the Council did not develop any.	In accordance with section 12 of the Local Government Act 2002 the Council can establish rules of use for its wharves. If it chooses to, it is seen as a more practical option to trespass people from these facilities instead of prosecuting people under the bylaw.
Delete clause requiring removal of offenders from a wharf facility.	The Council believes disorderly behaviour and offensive behaviour is better addressed by Police Officers in accordance with the Summary Offences Act 1981 as they are trained and better equipped for these situations than Council officers.
Delete clauses requiring no littering and requiring people to take their litter with them.	The Litter Act 1974 addresses littering in public places, and a wharf is a public place. The Council can fine people up to \$400 for littering in a public place. This is more effective than prosecution under a bylaw.
Delete Schedule 1 – Wharf and Pile Mooring Fees and include a reference in the bylaw that any fees for the commercial use of its wharves will be included in the Council’s Schedule of Fees and Charges.	Presently there is no fee set for wharf and pile mooring so it is thought unnecessary to have such prescriptive wording in the bylaw. Legally the Council will still be able to set fees for the commercial use of wharves, through the Council’s Schedule of Fees and Charges process.

2.4 What has stayed the same?

The following matters have been reworded for ‘plain English’ purposes, however the policy intent remains the same.

- Every wharf and boat ramp shall be open to the public unless the Council closes it for health and safety or maintenance.
- Vessels in excess of 40 tonnes (DWT) are prohibited from berthing at any wharf without the prior permission of the Council. This rule was established to protect wharf structures in accordance with engineering reports for the wharves.
- No vessel shall be left unattended at any wharf, except with the prior permission of the Council obtained 24 hours before leaving the vessel unattended.
- The Council retains the ability to ask people to move their vessel on.
- The Council retains its ability to remove offending vessels and vehicles (is left unattended and/or is obstructing the facilities).

3 Issues and options

The Council is required by law to consider the following questions before adopting a bylaw.

3.1 Is a bylaw the most appropriate way of addressing the problem?

Prior to 2005 there was no wharves bylaw in place. The Council could revoke the current bylaw in its entirety and establish ‘rules of use’ for its wharves and boat ramps. However, the enforcement options would be limited to verbal warnings and in certain circumstances the Council may be able to trespass people.

While there are not a lot of issues with vessels or vehicles being left unattended at Council wharves and boat ramps, staff have relied on the bylaw to ask people to move their vessels when they have been left unattended. Having a bylaw means if people do not comply with oral

or written requests, the Council can escalate the enforcement and tow/impound a vessel/vehicle, or in extreme circumstances prosecute through the District Court.

Community Services staff and the Councillor working party recommend retaining a wharves and boat ramps bylaw as it enables more enforcement options.

3.2 Is the proposed bylaw the most appropriate form of bylaw?

The draft Wharves and Boat Ramps Bylaw 2019 is considered to be appropriate because it is proportionate to the issues the Council faces with wharves and boat ramps. The bylaw recognises the benefit in controlling certain activities at wharves (e.g. not leaving vessels unattended) so all recreational and private operators can have fair access and use of wharves and the surrounding facilities. It is believed the positive effects for users of the wharves outweigh any inconveniences associated with seeking the Council's permission for certain things.

3.3 Are there any implications under the New Zealand Bill of Rights?

A bylaw that unreasonably interferes with the rights and freedoms in the NZ Bill of Rights Act 1990 will be held to be unreasonable and invalid. Rights likely affected include freedom of expression, freedom of peaceful assembly, freedom of association and freedom of movement and freedom from discrimination. The draft Wharves and Boat Ramps Bylaw 2019 does not have any implications on the rights and freedoms contained in the Bill of Rights Act 1990.

3.4 Approval of Draft Wharves and Boat Ramps Bylaw 2019

There are various policy options that must be explored during all bylaw reviews (or potential bylaw development) including:

- Revoke the existing bylaw without a replacement as it is no longer needed or is not effective.
- Status Quo – keep the existing bylaw in its current form.
- Amend aspects of an existing bylaw.
- Develop a new bylaw to address an identified issue or need.

The Councillor working party recommends amending the 2007 Bylaw to better meet the current environment and level of issues experienced over the past ten years. The rationale for the amendments are outlined in section 2.3 above.

3.5 Adoption of Statement of Proposal - Draft Wharves and Boat Ramps Bylaw 2019

The Council must also adopt the statement of proposal for public consultation, attached as Appendix A. Staff do not consider that it is necessary to develop a summary of the information contained in the statement of proposal to enable public understanding as the statement of proposal is already concise.

3.6 Approval of the consultation approach

The recommended approach to community engagement is outlined in the Significance and Engagement Assessment section below. This approach needs to be approved by the Council.

4 Significance and Engagement Assessment

A bylaw made, reviewed or revoked under the Local Government Act 2002 must be publicly consulted on before the decision is made. If it is deemed significant or the local authority

considers that there is a significant impact on the public due to changes or proposals, then the more prescriptive 'special consultative procedure' must be followed (section 83) in addition to the general consultation approach (section 82).

The special consultative procedure requires that a statement of proposal is adopted by the Council and people must be given a period of at least one month to provide their views to the Council. This can be done by written or verbal feedback. Any person who wishes to present their views must be given a reasonable opportunity to do so.

The alternative engagement approach (if these significance 'triggers' do not apply) is to solely use section 82 'principles of consultation' in the Local Government Act 2002 which still requires that anyone who is affected or has an interest in a matter should be provided with clear information and encouraged to provide feedback to the Council, however the required one month feedback period is not mandatory. In reality, these two approaches are quite similar when put into practice.

4.1 Recommended Engagement Approach

It is proposed the Council consult on the Draft Cemeteries Bylaw, the Draft Public Places and Nuisance Bylaw and the revocation of various Franklin Bylaws at the same time as the consultation for the draft Wharves and Boat Ramps Bylaw. While the review of the Wharves Bylaw may in itself not be of significant interest or have significant impact on the general public, staff recommend that the special consultative procedure is used for the engagement approach as certain bylaw matters in the other bylaws could have high public interest. The use of one process for all bylaw engagement will be less confusing for the public, potentially reach a wider audience (as we will notify key stakeholders for each bylaw about the other reviews), and provide cost benefits.

It is proposed that a one month written feedback period run from Friday 29 March – Monday 29 April 2019. The working party supports the forms of written feedback outlined in the Statement of Proposal as per Appendix A. If people wish to provide spoken feedback to the Council, the working party recommend this is done by way of drop in sessions in Whiritoa, Waihi, Paeroa and Ngatea, and a formal hearing of feedback on Wednesday, 22 May 2019. Following the hearing, it is proposed that deliberations and decisions are made regarding the bylaw. As decisions are expected to be made on the same day, a resolution to hold an extraordinary meeting of the Council is contained in the Group Manager Planning & Environmental Services' monthly report.

5 Budget Implications

Consultation undertaken as part of the special consultative procedure will involve planned expenditure in the strategic planning budget. This is not considered to be additional expenditure as it can be met through existing budget provision.

6 Recommendation

It is recommended the Council pass the relevant resolutions for making a bylaw under the Local Government Act 2002 and adopt the Statement of Proposal for the Draft Wharves and Boat Ramps Bylaw 2019 for the special consultative procedure. The working party recommends the council approve the draft Wharves and Boat Ramps Bylaw 2019 in its current form.

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