

8. HEARING PANEL REPORT ON THE PROPOSED MARINE AND RIVER FACILITIES BYLAW

Author:	Marine and River Facilities Hearing Panel
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PURPOSE OF REPORT

1. This is a report of the Hearing Panel on its consideration of the proposed Christchurch City Council Marine and River Facilities Bylaw 2008. It summarises the submissions received through the Special Consultative Procedure on the proposed bylaw and contains recommendations from the Panel altering the proposed Bylaw in certain respects. The proposed bylaw (with the recommended changes highlighted) is **attached** to this report.
2. The report recommends the adoption of the Christchurch City Council Marine and River Facilities Bylaw 2008, as **attached**.

EXECUTIVE SUMMARY

3. On 27 March, the Council adopted the proposed Marine and River Facilities Bylaw for consultation. Submissions were received between 12 April to 14 May 2008. Six submissions were received⁵⁸ with four requesting to be heard by the Hearing Panel. The hearings and consideration of all submissions were undertaken on 4 June and 9 June 2008. The Panel was chaired by Councillor Sue Wells, and the Panel members were Councillors Sally Buck, Barry Corbett and Chrissie Williams.

SUMMARY OF THE PROPOSED BYLAW

4. The purpose of the proposed Bylaw is to provide for the orderly management and control of marine and river facilities that are owned or under the control of the Council for the benefit and enjoyment of all users of those facilities. The proposed Marine and River Facilities Bylaw covers:
 - the use of marine and river facilities by commercial and charter operators
 - the use of wharves:
 - the obstruction of marine and river facilities
 - the provision for **fees and charges** relating to the proposed new bylaw
 - the provision for **offences and penalties** relating to the proposed new bylaw
5. All clauses in the proposed Bylaw have come from the Banks Peninsula District Marine Facilities Control Bylaw 2002. The proposed new Bylaw will revoke and replace the Banks Peninsula Bylaw. The proposed Bylaw will cover marine facilities, and extend to river and estuary facilities, in the Christchurch City area which are open to or used by the public, but are managed or owned by the Council. It will not cover privately owned wharves, jetties, or other related facilities. Some examples of Council-owned marine and river facilities include wharves and jetties, slipways, launching ramps, boat and punt landings.

SUMMARY OF SUBMISSIONS

6. The Council received six submissions on the proposed Marine and River Facilities Bylaw. These consisted of submissions from two individuals, three organisations and one Community Board. The submissions were focussed on:
 - Interpretation (2)
 - Use of marine and river facilities by commercial and charter operators (2)
 - Maximum gross laden weight of service vehicles (2)
 - Prohibition of vessels over a certain length from berthing on wharves and exemptions (3)
 - Obstruction of Marine and River Facilities (1)
 - Role of an "Officer" to carry out or exercise duties under this Bylaw (2)
 - Role of other agencies (1)
 - Safety of Wharves (1)
 - Use of the Akaroa Main Wharf by non-commercial persons (1)
 - Previous clauses in Christchurch City Council Bylaw 120 (1982) (1)

⁵⁸ Akaroa Cruising Club Inc; Avon Heathcote Estuary Ihutai Trust; Barry Dacombe; Lyttelton/Mt Herbert Community Board; Sea-Right Investments Ltd; and Ray Shoebridge
Council Agenda 19 June 2008

INTERPRETATION AND PROHIBITION OF VESSELS

7. One submission referred to the issue that the proposed Bylaw uses three expressions –“lie alongside” clause 5(4), “berthing” clause 5(5) and “tying up ... to” clause 5(6). The Akaroa Cruising Club considered it was unclear whether they create one, two or three categories or whether there was some sort of overlap. The Club requests that these definitions were clarified – otherwise, the Club submitted, clauses 5(4) and 5(5) may be in conflict. The Club considered that it was conceivable that clause 5(4) was intended as a special provision for the Akaroa Wharf, operating to the exclusion of clause 5(5). If so, the Club requested that clause 5(5) be amended so that it applies to all wharves *except* the Akaroa Wharf. The Club suggested that such a provision would be more consistent with present uses of the Akaroa Wharf, which is commonly used by both recreational and commercial vessels for the loading and unloading of material and for the embarkation and disembarkation of people. Another submitter was concerned that clause 5(4) (which seeks to limit the time allowed for a vessel to lie alongside Akaroa Wharf, unless undertaking maintenance, or with Officer approval) conflicts with clause 5(5) (which seeks to limit vessels in excess of 10 metres in length from berthing at **any** wharf). The submitter argues that this leaves the interpretation of the Bylaw open to conflicting views and uncertainty. The submitter requested that clause 5(4) and 5(5) be rewritten to establish certainty.

Hearing Panel Decision

8. The Hearing Panel considered further information on the possible lengths of vessels that could be berthed at wharfs or jetties, without specific approval, to provide for protection of the wharf or jetty structure. In coming to the decision, the Panel took into account the views of both a consulting marine engineer and staff at the Akaroa Service Centre that there was a need to restrict vessels to avoid structural damage to wharfs and jetties. The submitters argued that if “berthing” means something like ‘tie alongside for an extended period’ then it would probably be better to express the limitation in terms of tonnes displacement. However, it was determined that in order to make provision for lighter boats such as yachts, the Bylaw could make provision to permit, as of right, yachts up to 15 metres. All other vessels, except where specific approvals had been granted, should not exceed 10 metres. Commercial vessels operating from the wharfs or jetties in excess of the 10 metre limit currently have permission for berthing at the Akaroa or Wainui Wharfs. It was argued that a 10m length limitation would exclude many recreational vessels of a kind that would more likely receive rather than inflict damage – that is, vessels of a relatively light displacement and construction. The Panel recommends the following wording be included in clause 5 to bring the above into effect. The **attached** Bylaw contains these changes for consideration.

“With respect to Akaroa Wharf, in order to facilitate fair access to that Wharf, a vessel is only permitted to be tied up or lie alongside the Akaroa Wharf for a maximum period of one hour, unless the permission of an Authorised Officer has been obtained.

In order to protect any wharf or jetty (including Akaroa Wharf) from any undue strain or damage, the following vessels are prohibited from being tied up to or lying alongside any wharf or jetty:

- (a) any yacht which is in excess of 15 metres in length; or**
- (b) any other vessel which is in excess of 10 metres in length;**

unless prior written permission has been given by an Authorised Officer and the owner or operator of the vessel abides by all conditions contained in that permission.”

USE OF MARINE AND RIVER FACILITIES BY COMMERCIAL AND CHARTER OPERATORS

9. Sea-Right Investments Ltd argued that there have been no problems between commercial and recreational users at Akaroa and Wainui wharves. The company argues that the Council's interest with chartered or commercial operations has more to do with the potential for revenue generation, than with safety or other issues.

Hearing Panel Decision

10. The Panel considered that the ability to control the use of any marine or river facility is appropriate in the circumstances of publicly owned facilities. Likewise the ability to charge fees for the use of such facilities for the purposes of providing facility maintenance, potential wharf replacement and depreciation. Fees are not only applied to commercial and charter operators. Legal advice was given, however, that in the interests of clarity, clause 7(1) relating to fees and charges, should be amended by removing the words "and in accordance with section 150 of the Local Government Act 2002". The Council will still be required to prescribe fees in accordance with section 150 of the Local Government Act if the fee relates to a "certificate, authority, approval, permit, or consent from, or inspection by" the Council in respect of a matter provided for in this bylaw. Section 150 applies whether or not the Council refers to that section in the bylaw or not. However, the Council may also rely on its power to prescribe fees exercising its power of general competence under section 12 of the Local Government Act 2002. In this respect, for those other fees and charges, it is not required to comply with section 150. The current wording of the clauses indicates the Council could be required to comply with section 150 in every case and this was not the intention of the bylaw. **The Panel has recommended such a deletion, which is included in the attached bylaw.**
11. Mr Shoebridge was concerned that the Council does not provide sufficient facilities for use by commercial operators, like the Black Cat Group ferries, the vessel Fox 2, (which operates from Daly's wharf), and the Akaroa Dolphin. The submitter alleges that these vessels currently discharge raw, untreated human sewage directly into the harbour. The submitter requested that as part of the Bylaw, the Council prohibit the discharge of untreated human waste into the harbour and construct a sanitary human waste pump-out facility in the vicinity of the fuel point on Akaroa Wharf. The submitter also requests that signage be erected warning harbour users to use the pump out facilities or to face prosecution under the Bylaw.

Hearing Panel Decision

12. The matter of discharges into harbours is covered by legislation under the Resource Management Act 1991 and the administration is undertaken by Environment Canterbury. The matter of this Council constructing a human waste pump-out facility is an operational issue and was not consulted on in this Bylaw review process. The allegations regarding discharges from vessels will be referred to Environment Canterbury for its examination. This is not a matter that should be included in the Bylaw.

MAXIMUM GROSS LADEN WEIGHT OF SERVICE VEHICLES

13. Lyttelton-Mt Herbert Community Board requested that a maximum gross laden weight of service vehicles also be included in the bylaw for the Diamond Harbour and Port Levy wharves. The Board argued that both the Diamond Harbour and Port Levy wharves have vehicle access and should be afforded the same protection from heavy vehicles as Akaroa and Wainui wharves. Sea-Right Investments requested approval for using both the Akaroa and Wainui wharves.

Hearing Panel Decision

14. Under clause 5(1) of the proposed Bylaw motor vehicles, other than service vehicles or emergency vehicles, unless permitted in writing by an Officer, may not be driven or parked on any wharf or jetty. The Diamond Harbour and Port Levy wharves and the issue of service vehicles were **not** covered in a similar clause in the existing Banks Peninsula Bylaw. Clauses 5(2) and 5(3), including the references with Akaroa and Wainui wharves, exist in the current Banks Peninsula District Marine Facilities Control Bylaw 2002. The Community Board's submission has drawn the Panel's attention to the necessity to protect other wharves from damage caused by heavy service vehicles or heavy vessels lying on Council-owned or controlled wharves. The Council has in its possession a number of important wharves from a safety issue point of view. These are Akaroa, Wainui, Little Akaroa, Pigeon Bay, Port Levy, Diamond Harbour, Rapaki, Church Bay, and Governors Bay wharves. The issue of heavy service vehicles and vessels on Council-owned or controlled wharves can be more appropriately addressed under the Trespass Act and suitably-placed signage. As the owners of the wharves, Council can set the conditions of use which Council can enforce through the Trespass Act. The Council has a mechanism under section 175 of the Local Government Act 2002 to recover money for damage caused to Council's wharves.
15. The Panel considered clause 5 should be amended to cover all wharves and jetties in regard to service vehicle access and to provide for the ability to specify by resolution the maximum gross laden weight of service vehicles permitted on any wharf or jetty. This will enable the appropriate provision to be made in regard to individual facilities depending on their load bearing capability. The issue raised by Sea-Right Investments Ltd regarding continued use of the Akaroa and Wainui wharves will be covered by a savings provision to be added to clause 10 of the Bylaw which will apply to existing permissions already granted under the previous bylaw. The proposed Bylaw will be amended as follows.
 - “(2) The Council may by resolution specify the maximum gross laden weight of service vehicles permitted on any wharf or jetty.**
 - (3) The Council may by resolution subsequently amend or revoke any resolution made under subclause (2).**
 - (4) No person may drive or leave a motor vehicle on a wharf or jetty in contravention of a resolution made under subclause (2).”**

OVER A CERTAIN LENGTH FROM BERTHING ON WHARVES AND EXEMPTIONS

16. Mr Shoebridge requested an explanation of “safety reasons” in regard to clause 5(5) and other submissions from the Akaroa Cruising Club and Mr Dacombe raised matters in regard to lengths of vessels permitted without specific approval. Sea-Right Investments Ltd argued that should the proposed Marine and River Facilities Bylaw be adopted by the Council – written permission should be given to Sea-Right Investments Ltd for the company's 12 metre marine farming vessel “Bruno” and the company's 16.5 metre vessel “Untouchable” to berth at the Wainui Wharf for loading or unloading and for berthing at the Akaroa Wharf for servicing or taking on fuel. The officers advised that there were a number of wharves in the Banks Peninsula Ward which need upgrading and are prone to structural damage because of their current state of disrepair. There is the possibility that wharves will not sustain the strain from vessels of a certain length and/or heavy loads. It is expensive to maintain/repair/replace Council-owned or managed wharves, a program of wharf repair and replacement is currently underway. Environment Canterbury Harbour Master's advice is that the proposed clause is appropriate for the safety of the wharves and enforcement.

Hearing Panel Decision

17. The length issues are largely addressed in paragraph 8 above relating to changes to clause 5 of the bylaw. By amending clause 10 of the Bylaw to include a savings provision, the Council can continue as a matter of course any permissions already granted to Sea-Right Investments to use the marine facilities. However, with respect of any new vessels or service vehicles of a length or weight in excess of that allowed, Sea-Right Investments will need to apply for additional permissions under the Bylaw just like any other commercial operator.

OBSTRUCTION OF MARINE AND RIVER FACILITIES

18. Mr Shoebridge requested that clause 6, the obstruction of marine and river facilities, be extended to prohibit the depositing of rubbish, trade waste, fishing waste, and engineering equipment on the Akaroa Wharf. The submitter argued that these items cause a tripping hazard to pedestrian Wharf users. The submitter requested that there be suitable rubbish facilities or a 'green wheelie bin' installed and maintained on the Wharf or in the main street of Akaroa, which is visible to Wharf users. The submitter also requested that there should also be signage instructing the public to not deposit incidental litter into these bins.

Hearing Panel Decision

19. Leaving engineering equipment on a wharf is already prohibited under clause 6 of the proposed bylaw: "No person may leave on or near any marine or river facility any vessel, trailer, motor vehicle **or any other thing** so as to obstruct the reasonable use of the facility". The other items of rubbish referred to by the submitter are covered by other legislation, including the Litter Act 1979. The request for suitable rubbish facilities and signage are operational matters and do not need to be referenced in the Bylaw.

ROLE OF AN 'OFFICER' TO CARRY OUT OR EXERCISE DUTIES UNDER THIS BYLAW

20. Mr Dacombe was concerned that the introduction of the role of an "Officer" (means an Officer appointed by the Council to carry out or exercise duties under this Bylaw) will have unnecessarily complex and expensive administrative processes associated with the role. Mr Shoebridge requested that a permanent "Wharf Officer" be appointed to administer and control the Bylaw.

Hearing Panel Decision

21. When the Council makes a bylaw there will always be enforcement and administration issues. The Bylaw provides that certain decisions will be made by an Officer. However, this role is largely no different than the current role of Council staff in administering and enforcing the current Banks Peninsula Marine Facilities Control Bylaw 2002. How it should be administered and enforced, and resourcing of such, is a management issue. No change to the Bylaw is required in this regard.

ROLE OF OTHER AGENCIES

22. Mr Dacombe was concerned that there could be potential for conflict with other authorities who have jurisdiction in harbour areas including the Regional Harbour Master and Maritime Safety officers. The submitter requested that the Regional Harbour Master (Environment Canterbury) and Maritime Safety officers (Maritime New Zealand) be directly consulted on this bylaw.

Hearing Panel Decision

23. The Panel were advised that Environment Canterbury were sent a special consultative procedure pack, however, ECan did not make a formal or informal submission. However, officers have had verbal discussions with a Regional Harbour Master over aspects of the proposed bylaw. [see paragraph 16 above]
24. The City Council can make bylaws over land within its district boundaries, which, in the Banks Peninsula area, cross harbour mouths, so include waters within Akaroa and Lyttelton Harbours. The coverage of the proposed bylaw does not extend to activities on the water, other than in relation to the mooring of boats at Council-owned or controlled wharves, jetties, etc. Environment Canterbury has responsibility under the Resource Management Act 1991 and the Local Government Act 1974 for managing activities that occur on the water, specifically those in the navigable inland waters and coastal marine area. Environment Canterbury has its Coastal Management Plan and Navigation Safety Bylaws 2005. Additionally, Maritime New Zealand's regulations cover boat safety etc. The coverage of the proposed Bylaw does not extend to activities on the water, other than mooring boats at Council-owned or controlled facilities. It was not considered there would be any conflicts apparent and no amendments to the proposed Bylaw were necessary.

NEW CLAUSE PROPOSALS - SAFETY OF WHARVES AND USE OF AKAROA WHARF

25. Ray Shoebridge requested that tripping hazards on wharves be secured and other safety measures be introduced to restrict access to the wharf by non-commercial persons. The submitter alleges that often members of the public act irresponsibly on the wharf, littering, driving dangerously, riding mopeds and motorcycles at speed, or simply 'horsing about' where no safety rails or life saving flotation devices are available. The submitter alleged that this behaviour, including the careless use of large fishing rods and knives is in evidence commonly. The submitter requested that these users should also be regulated in the Bylaw.

Hearing Panel Decision

26. The Panel determined that the request for tripping hazards on wharves to be secured and for certain structures to be provided to ensure safe public access were **operational matters** and do not have anything to do with the bylaw. The behavioural issues that were mentioned are adequately covered by legislation such as the Summary Offences Act 1981 (for example, the offences of offensive behaviour or language, disorderly behaviour, things endangering safety), the Land Transport Act 1998 (for example, the offences of reckless or dangerous driving or careless or inconsiderate driving), the Litter Act 1979 and the Trespass Act 1980. These were considered in the section 155 assessment of the existing bylaw as required by the Local Government Act 2002, it being noted that these issues are already legislated against by other bylaws and laws of Parliament and therefore were not included in this proposed Bylaw. No change in the Bylaw is needed.

PREVIOUS CLAUSES IN BYLAW 120

27. The Avon-Heathcote Estuary Ihutai Trust wished to be assured that certain issues which were previously covered by the Christchurch City Bylaw No 120 (1982), "relating to control of parts of the Avon and Heathcote Rivers, the Estuary thereof, and certain Foreshore and adjacent areas and waters" largely in relation to clause 25 "Offences on Beach Foreshore or Places Open to Public View" have been covered by other existing legislation or proposed new bylaws. The Trust also submitted similarly on the review of the Parks and Reserves Bylaw.

Hearing Panel Decision

28. The Panel considered that as Bylaw 120 was currently being reviewed with the proposed Parks and Reserves Bylaw, the matters raised in the submission should be considered in that process. It was noted that changes in legislation have removed some provisions of Bylaw 120 in any case, and it did not cover matters now being considered under the Marine Facilities Bylaw. The matters raised will be considered with the review of the Parks and Reserves Bylaw.

LEGAL CONSIDERATIONS

29. The Special Consultative Procedure took place from 12 April to 14 May 2008. The consultation documents were sent directly to a range of groups, organisations and individuals, as well as public notices appearing in relevant newspapers, and the consultation documents being made available at service centres, Council libraries and on the internet. Additionally, information sessions were held around the district for interested people to drop-in and talk to staff. The submissions were considered on the 4 June 2008.
30. A bylaw hearing panel has no decision-making powers, but can make recommendations to the Council, in accordance with its delegation for that purpose, after considering written and oral submissions. The Council can then accept or reject those recommendations, as it sees fit, bearing in mind that the Local Government Act requires views presented during consultation to be given "due consideration in decision-making".⁵⁹ The Council, as final decision-maker, must be in as good a position as the hearing panel in terms of being fully aware of the content of the written submissions, and from the report on the oral submissions. As the Special Consultative Procedure was used for this consultation, the Council cannot introduce anything new into the bylaw that has not arisen out of a submission made during consultation.

⁵⁹ Section 82(1)(e). This is also supported by the Council's Consultation Policy, which states: "we will receive presented views with an open mind and will give those views due consideration when making a decision".

31. Section 157 of the Local Government Act 2002 requires that the Council give public notice of the making of a bylaw as soon as practicable after the bylaw is made. A recommendations has been made to this effect. It is appropriate to resolve that the Bylaw will come into effect on 1 July 2008, which is the date by which two of the bylaws being revoked by the new Bylaw would automatically expire.
32. The Legal Services Unit considers that the form of the Bylaw, as proposed, is the most appropriate form, and that the Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990 (in accordance with section 155 of the Local Government 2002).

HEARING PANEL RECOMMENDATIONS

The Hearing Panel recommends that the Council:

- (a) Adopt the Christchurch City Council Marine and River Facilities Bylaw 2008, as amended (attached).
- (b) Give public notice as soon as practicable, that the Christchurch City Council Marine and River Facilities Bylaw 2008 has been adopted by Council, that it comes into effect on 1 July 2008, and that copies of the bylaw will be made available.
- (c) Send copies of the Bylaw to those people or organisations that made submissions, and send a letter to those to whom the consultation notification was initially sent, advising them of the outcome.

[Note: Attached to this report are two copies of the bylaw – a marked up copy (showing the changes to the proposed bylaw, as consulted on) and a clean copy (for adoption)]