



greater WELLINGTON
REGIONAL COUNCIL

Report 06.439
Date 31 August 2006
File J/01/02/02

Committee Environment Committee
Author Mike Pryce Manager Harbours/Regional
Harbourmaster

Officers' comments on submissions received on the proposed amendment to the Wellington Regional Navigation and Safety Bylaws 2003

1. Purpose

To provide the Committee with officers' comments in response to key points made in submissions received on the proposed amendment to the Wellington Regional Navigation and Safety Bylaws 2003 (the Bylaws).

2. Significance of the decision

The matters for decision in this report do not trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002.

3. Background

On 20 July 2006 the Council proposed to amend the Bylaws by removing the reserved area at Lyall Bay from schedule 3 of the Bylaws. In accordance with the requirement in the Local Government Act 2002 the special consultative procedure was initiated. Greater Wellington has received 97 submissions on its proposed amendment to the Bylaws. All submissions have been placed in a bound volume and circulated to Committee members. A summary of the submissions is provided in report 06.426 (**attachment 1**).

4. Comment

Officers have considered the key points raised in submissions. Comments on the key points follow.

4.1 Safety

Both proponents and opponents of the proposed amendment to the Bylaws discussed safety issues. Officers agree that there are safety issues with the reserved area at Lyall Bay. As noted in report 06.426, there have been reports

of jet-skiers using their Personal Watercraft (PWC) outside of the reserved area and other beach users encroaching on the reserved area when a jet-skier is operating a PWC. Officers acknowledge that due to sea currents, tides and drag, it may be difficult for other beach users to always be aware of whether they are in the reserved area or in another section of the beach.

Opponents of the proposed amendment suggest that jet-skiers will still use their PWC even if the reserved area is removed. Officers point out that removing the reserved area will not prohibit jet-skiers from using their PWC at a speed of more than 5 knots at Lyall Bay when more than 200 metres from shore and 50 metres from another water user. Jet-skiers would not be forced into shipping lanes and open water. 200 metres from shore at Lyall Bay could not in any way be termed "open water". Requiring registration of PWC would not resolve the issue of safety, monitoring the registration of jet-skiers using PWC would be costly. While Greater Wellington has not received reports of any serious injury, it is not a risk officers are prepared to accept and suggest a precautionary approach.

4.2 Effect on the environment

Officers note that this proposed amendment is not concerned with the merits of PWC, including their effect on the environment, but whether the existing Bylaws need to be amended in the interests of safety.

4.3 Noise

Officers further note that this proposed amendment, is not concerned with the merits of PWC, including the noise they emit, but whether the existing Bylaws need to be amended in the interests of safety. Officers also comment that at the time the reserved area in Lyall Bay was put in place in 1991 it was located away from residential housing so as not to create a noise nuisance. In 1991 jet-skis had un-muffled two-stroke engines. Newer craft have well muffled four-stroke engines and are far less audible in the reserved area, especially if there is surf breaking and/or aircraft landing and taking off.

4.4 New Zealand Bill of Rights Act 1990

Officers do not believe Greater Wellington is in breach of the New Zealand Bill of Rights Act 1990. We have obtained legal advice which supports this view.

4.5 Lyall Bay

Most who supported the proposed amendment commented on Lyall Bay beach and its popularity a recreational area and surf beach. The popularity of Lyall Bay is accepted and pleasing. Officers would note that Lyall Bay is a multi-functional recreational area with swimmers, kayakers, surfers and kite-surfers amongst those who use the beach. However, the merits of individual beach users are only being considered as part of this consultation on the proposed amendment to the Bylaws in so far as they in so far as they relate to safety.

4.6 Additional requests

The purpose of this consultation is to look at the proposed amendment to the Bylaws. Surf and Restriction Zones could be looked at in the future by Greater Wellington.

4.7 Possible solutions identified by submitters

Submissions were received from a small number of submitters suggesting possible solutions to the problem of safety at Lyall Bay. Officers comment that, as discussed in report 06.315, increasing signage and demarcating the area with buoys could increase the costs for Greater Wellington to maintain them. Additionally, positioning buoys around the area could provide an additional safety risk if surfers or other water users came into contact at speed with buoy moorings.

Moving the reserved area elsewhere within Lyall Bay was considered in report 06.315, but the Council did not resolve to investigate this at this stage.

5. Communication

No communication is necessary at this stage

6. Recommendations

That the Committee:

1. ***Receives the report.***
2. ***Notes the content of the report.***
3. ***Recommends that the Council:***
 - a) ***amend Part B of Schedule 3 of the Wellington Regional Navigation and Safety Bylaws 2003 by removing the Lyall Bay reserved area; or***
 - b) ***does not amend Part B of Schedule 3 of the Wellington Regional Navigation and Safety Bylaws 2003 by removing the Lyall Bay reserved area.***

Report prepared by:

Report approved by:

Mike Pryce
Regional Harbourmaster

Nigel Corry
Divisional Manager,
Environment Management

Attachment 1: Report 06.315



greater WELLINGTON
REGIONAL COUNCIL

Report 06.315
Date 3 July 2006
File J/01/02/02

Committee Policy, Finance and Strategy Committee
Author Mike Pryce Manager, Harbours

Proposed amendment to the Wellington Regional Navigation and Safety Bylaws 2003

1. Purpose

The purpose of this report is for the Council to consider the amendment of schedule 3 the Wellington Regional Navigation and Safety Bylaws 2003 (the Bylaws) relating to the Lyall Bay reserved area and, if necessary, commence the special consultative procedure.

2. Significance of the decision

Before making any decision on the Bylaws the Council will be following the special consultative procedure as set out in the Local Government Act 2002.

3. Background

The Council first adopted the Wellington Regional Navigational and Safety Bylaws in 2000. Under these bylaws a reserved area which allowed for a jet ski lane at Lyall Bay was formally put in place (a trial jet ski lane at Lyall Bay had been in place since 1991). This followed guidance from the 1999 Pleasure Boat Safety Advisory Group report and extensive consultation with the public.

In 2003 the Bylaws were reviewed, this included consultation on the status of the reserved areas outlined in the Bylaws. Included in the Bylaws was provision for the reserved area at Lyall Bay to shift along the beach in the event of an artificial reef being constructed. The 2003 Bylaws were adopted and the reserved areas remained in place.

On 27 April 2006 a petition was presented to the Policy, Finance and Strategy Committee seeking the abolition of the Lyall Bay reserved area. This petition was signed by 919 people.

On 1 June 2006 the Council resolved to initiate a review of the Bylaws in order to consider the relocation or removal of the Lyall Bay reserved area.

4. Making Bylaws

4.1 Procedure

The Local Government Act 2002 (the Act) specifies the process for making bylaws. Section 86 of the Act extends the process to any amendment or revocation of a bylaw.

The Council must first determine whether a bylaw is the most appropriate way of addressing the perceived problem (section 155(1)). If so, the Council must then determine whether the proposed bylaw is the most appropriate form of bylaw (section 155(2)(a)). Finally the Council must determine whether the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990 (section 155(2)(b)).

If the tests above are satisfied, the special consultative procedure, outlined in the Act, must be followed to amend the bylaws. In dealing with an amendment to the Bylaws or a revocation of any part of the Bylaws, the Council needs to consider not only whether the Bylaws as a whole are the most appropriate way of addressing the problem but whether the bylaw to be amended or revoked is necessary or the most appropriate form of bylaw.

4.2 Is a bylaw the most appropriate way?

The navigation and safety bylaws have been in place for many years, there is public expectation that they will continue. In addition the Local Government Act 1974, empowers the Council specifically to make navigation and safety bylaws. This in itself signals that bylaws may be the most appropriate way of addressing the issue of navigational safety. The last review of the Bylaws took place in 2003 the review was conducted in accordance with the Act.

Although the Bylaws continue to be the most appropriate way of addressing the issue of navigational safety, safety issues within Lyall Bay may no longer be best dealt with by maintaining the Lyall Bay reserved area as provided for in Schedule 3 of the Bylaws.

4.2.1 The problem

The Lyall Bay reserved area is potentially unsafe due to reports of jet skiers using their jet skis outside of the reserved area and surfers and other beach users encroaching on the reserved area. There is concern that if nothing is done to resolve this problem then serious injury could result.

4.2.2 Potential strategies to address the problem

As part of its decision making process the Council is required to identify and assess all reasonably practicable strategies that could provide the desired solution. The following potential strategies could address the problem:

- Maintain the status quo (i.e. undertake no further work on amending the bylaws); or

- Move the reserved area in Lyall Bay; or
- Public education

(a) Maintaining the status quo

One strategy the Council could employ is maintaining the status quo and not making any amendment to the Bylaws.

Increased signage

At present the reserved area is marked by black and white horizontally striped poles. These poles are situated on the beach. On occasion users have commented that there can be difficulty in determining the location of the reserved area while in the surf. In order to ensure that the reserved area is visible to all users in the area it would be necessary for Greater Wellington to delineate the area with a series of buoys. The delineation would be hard to maintain in the weather conditions this bay is subject to. Maintenance would be costly and labour intensive.

Increased enforcement

Greater Wellington's officers have the power to issue infringement notices when a reserved area is used for a purpose other than the reserved purpose. Enforcement is difficult due to the location of any breaches. Enforcement officers have advised that the most practical way to give infringement notices in this situation would be to patrol the water on a jet ski. They have advised that there would be difficulties communicating with water users breaching the Bylaws. There would also be the practical problem of physically giving out the infringement notice, it is unlikely that these water users would be able to keep the infringement notice on their person. The cost of increased enforcement of the reserved area in staff time would be not insignificant.

(b) Moving the Lyall Bay reserved area

Presently the Lyall Bay reserved area includes:

"All that area of water on the Eastern side of Lyall Bay (extending westward from Tirangi Road)..., bounded on the sides by parallel lines approximately 200 metres apart, and extending in a southerly direction 200 metres from the edge of the water."

One option available is to move the location of the reserved area in Lyall Bay. A major aim of the reserved area at Lyall Bay is to provide surf conditions for jet skiers. Moving the reserved area to another location on the beach with surf conditions would necessarily encroach

on existing users such as swimmers and surfers. This would cause significant disruption to these beach users.

(c) **Public education**

The users of the Lyall Bay beach are made aware of the reserved area through signage and the black and white horizontally striped poles mentioned above. It is normal practice throughout the country to make people aware of a reserved area in this way, moreover Greater Wellington successfully uses this method to advise water users of a reserved area in other parts of the region.

Greater Wellington has provided approximately 5,000 copies of the Bylaws to members of the public since formalising the Lyall Bay reserved area in 2000. Officers have also spoken to surfers, jet skiers and other beach users about the Lyall Bay reserved area. Practically there will always be difficulty reaching all beach users and notifying them of the Bylaws through an educational programme.

Officers believe that not much more could be done in the area of public education.

Maintaining the status quo is not a satisfactory option, increasing signage and enforcement are costly and not guaranteed to remove the safety concerns that have developed. There is nowhere to move the reserved area to at Lyall Bay which would not encroach on existing users. Public education is limited by the nature of the users. It is also worth noting that the proposed amendment will not prevent jet skis, or any other powered craft, from being used at Lyall Bay, they will however be restricted to 5 knots within 200 metres of the shore.

4.3 Are the proposed bylaws the most appropriate form of bylaws?

In deciding whether the Bylaws should be amended by deleting the Lyall Bay reserved area from Schedule 3, the Council must determine whether that proposed amendment is in the most appropriate form. The proposed amendment addresses the problem by removing the potentially unsafe reserved area.

4.4 Are there any implications under the New Zealand Bill of Rights Act 1990?

We do not believe that there are any implications under the New Zealand Bill of Rights Act 1990.

4.5 What is the special consultative procedure?

This is outlined in section 83 of the Act, essentially it is a community consultation process.

The proposed timetable for the special consultative procedure is as follows:

Regional Council approval	20 July 2006
1 st Public Notice	22 July 2006
2 nd Public Notice	5 August 2006
Close of Submissions	25 August 2006
Hearing of Submissions	September 2006
Regional Council report back and approval	September/October 2006
Bylaws come into effect	October 2006

5. Proposed Amendment

It is proposed that the Bylaws be amended by deleting the Lyall Bay reserved areas from Part B of Schedule 3 of the Bylaws.

A copy of the proposed bylaws showing the proposed amendment is included as **Attachment 1** to this report (Statement of Proposal).

The special consultative procedure requires the Council to prepare a summary of the proposed changes (Summary of Information). This is included as **Attachment 2**.

6. Communication

The Council will circulate the proposed amendment to the Wellington Regional Navigation and Safety Bylaws 2003 to territorial authorities and stakeholders and invite comment. There will be public notices inviting submissions.

We will also prepare a media statement and utilise the Council's internet site.

7. Recommendations

That the Committee:

1. **Receives** the report, **note** its contents; and
2. **Recommend** that the Council:
 - (a) **Agree** that the proposed amendments to the Regional Navigational and Safety Bylaws 2003 are:
 - (i) *the most appropriate way for the Council to address safety concerns at the Lyall Bay reserved area; and*
 - (ii) *the most appropriate form of bylaws; and*
 - (iii) *do not contravene the New Zealand Bill of Rights Act 1990;*

- (b) **Agree** to the Statement of Proposal to amend navigation and safety bylaws and the Summary of information, included as attachments 1 and 2 respectively to this report;
- (c) **Agree** to initiate the special consultative procedure outlined in section 83 of the Local Government Act 2002;
- (d) **Note** the timetable outlined in this report; and
- (e) **Delegate** to the Environment Committee the authority to consider any submissions made to the Council as a consequence of the consultative procedure and to report and make recommendation to the Council for the Council's further consideration and action.

Report prepared by:

Report approved by:



Mike Pryce
Manager, Harbours

Nigel Corry
Divisional Manager,
Environment

Attachment 1: Statement of Proposal

Attachment 2: Summary of Information