

Analysis of submissions

Maritime Facilities Bylaw

1 Background

The Maritime Facilities and Mooring Charges Bylaws were made by Council on 02 August 2002.

On 07 April 2022 (resolution 2022/18 refers), after a review of the two bylaws, the Council approved the development of a new Maritime Facilities Bylaw, under sections 145 and 146 of the Local Government Act 2002.

On 06 September 2022 (resolution 2022/56 refers), the Council approved a proposal for the proposed new Bylaw to be released for public consultation. This consultation was put on hold by the CEO at the time.

On 21 September 2023 (resolution 2023/113 refers), the Council approved a new proposal for the proposed new Bylaw to be released for public consultation. The period during which people could make submissions on the proposal was 12 October to 16 November 2023. Oral submissions were delayed until 09 July 2024, due to the need to wait for an available time slot as Long-Term Planning hearings took precedence.

This report analyses the submissions and makes recommendations for amendments to the draft proposed Bylaw. A numbered list of people who made submissions is in the Appendix and these numbers are used to refer to the individual submissions in the body of this report.

Council staff from the following teams contributed to the analysis of the submissions:

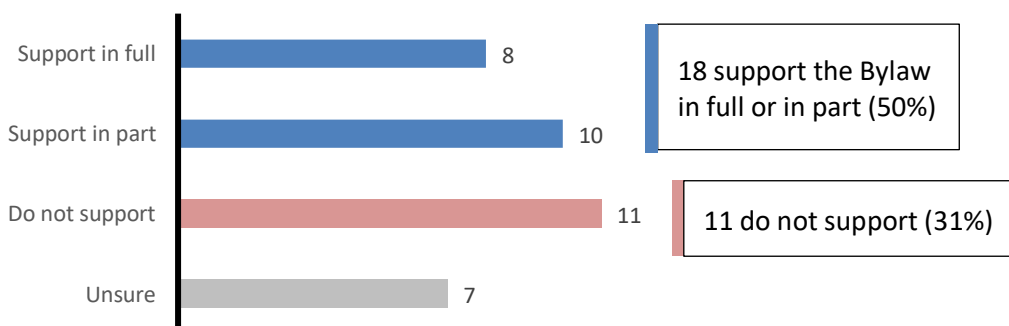
- Strategy and Policy
- Legal Services.

Staff from Far North Holding Limited also contributed to this analysis.

2 Summary of submissions

Forty-two submissions were received, thirty-six were written submissions (21 online and 15 by email) and six were oral submissions. The chart below shows the level of support for the proposed bylaw among the written submissions:

Figure 1 – Level of support for the proposed Bylaw



Base: n=36 written submissions

Six people who made written submissions asked to submit verbally to Council and were heard by Council on 09 July 2024. Three of these submitters supported the proposed Bylaw in part, two were fully opposed and one was unsure.

3 General feedback

The following feedback was received that is not related to specific clauses in the draft Bylaw.

3.1 General support for the proposed Bylaw

Submissions received

Support for the principles and values of the proposed Bylaw

Submission 29 (representing ~80% of Option Bay residents) supported the Bylaw's principles and values but requested further consultation on specific plans for the Opito Bay ramp.

General support (reasons not specified)

General support was expressed in submissions 04, 06, 33, 41, and 42.

The Bylaw is reasonable and fair

Four submitters (06, 10, 19 and 22) who supported the Bylaw in full, made general comments that they support the proposed Bylaw as it is reasonable and will lead to fairer, more appropriate uses of maritime facilities.

Support for combining the two existing Bylaws

Submitters 22 and 28 supported combining the two existing bylaws into one new bylaw to facilitate streamlined charging, easier identification of non-compliance, and simplified enforcement.

Staff analysis

Re general supportive feedback

General feedback in support of the proposed Bylaw is that the proposed Bylaw is fair, reasonable, and practical, combining the two existing Bylaws into one Bylaw is appropriate, and the Bylaw will lead to appropriate use of maritime facilities.

Re request for further consultation re the Opito Bay ramp

Regarding plans for the Opito Bay ramp, the building of ramps is outside the scope of the Bylaw. However, staff have communicated the Opito Bay community's desire for input into plans for the Opito Bay road map.

Staff recommendation

Council staff recommend no changes in response to these submissions in support of the Bylaw.

3.2 Two main general concerns about the proposed Bylaw

Submissions received

Two main concerns expressed were as follows:

1) Concerns re enforcement of the Bylaw

- Lack of enforcement or policies to ensure commercial users can use facilities when needed (Submitters 12, 24).
- Lack of enforcement of the prohibition on people swimming and fishing from wharves (see section 4.2 re Clause 6(7) and section 4.2.3 re Clause 10) (Submitters 12,16)
- Submission 26 (from Opito Bay residents) questioned the Bylaw's enforceability and questioned how the council will monitor and enforce fees for vessels hired or chartered outside the Far North. They highlighted the lack of enforcement and fee collection under the existing bylaw.

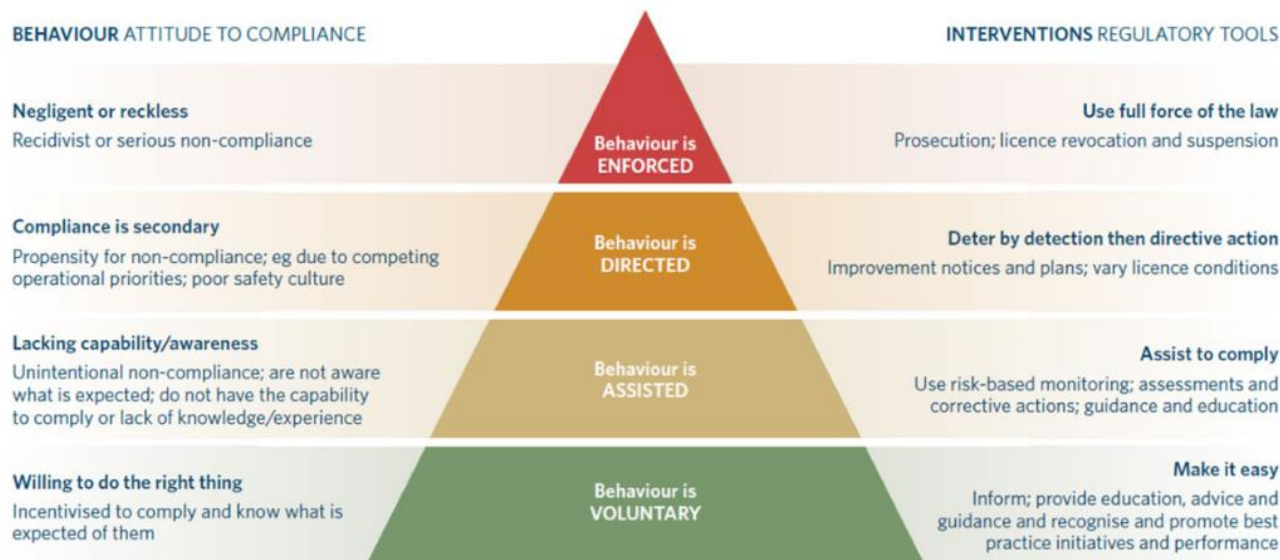
Staff analysis

Far North Holdings are responsible for management and administration and will call upon the monitoring team if and when they experience compliance issues that require enforcement.

This Bylaw is intended to address these issues. The use of licencing will enable Far North Holding to manage the use of facilities appropriately for each maritime facility and its users. This will be addressed further when reviewing each clause below.

Council will look to use the VADE approach for enforcement – see Figure 2 below:

Figure 2 – VADE approach to Compliance



Source: Report by the Environmental Services Monitoring and Compliance Team to the Regulatory Compliance Committee 08 September 2020

Using this model, “V” stands for **Voluntary compliance** where most people will comply through information and education. “A” stands for **Assistance to comply** where someone may be asked by a Council officer to comply with the Bylaw. “D” stands for **Directed enforcement** where the offender may receive a letter from Council noting a fine of up to \$20,000 for breaching the bylaw. “E” stands for **full Enforcement** where someone may be prosecuted or receive an injunction. Most enforcement activity by Council will always involve Voluntary and Assisted behaviour.

Staff recommendation

Council staff recommend no changes to the proposed Bylaw in response to these submissions about enforcement of the proposed Bylaw.

2) Balance between recreational versus commercial users

Submissions received

Re equity for commercial and recreational users

- Calls for equitable treatment of commercial and recreational users (Submitters 15, 22)
- Need for a balanced approach to ensure sustainable operations for both sectors (Submitters 22, 24)
- Concerns about prioritization of recreational over commercial use during peak times (Submitter 12).

Re Council’s response to complaints about commercial vessels

Concerns about Council not responding to complaints about commercial vessels (Submitter 21).

Staff analysis

Re equitable treatment of commercial and recreational users

This consultation has received submissions from both recreational and commercial users of maritime facilities. Council does not favour either group but rather intends the Bylaw to ensure shared and fair use for both recreational and commercial users. The intention of this Bylaw is to address providing fair, safe, shared use of maritime facilities for both recreational users and commercial operators.

Re having a balanced approach to ensure sustainable operations for both sectors

The Bylaw does not prioritise commercial over recreational use. The purpose of the Bylaw is to ensure a balance of all activities, both commercial and recreational.

Recreational and commercial sectors have different uses for the facilities. Far North Holdings Limited acts as the agent for the collection and distribution of any administrative fees associated with the maritime facility assets. One of the reasons for the bylaw is to better understand how many commercial operators are operating and from which facilities. Requiring commercial operators to make applications for use will enable Far North Holdings to understand the intended use of maritime facilities and to consider whether the equipment for each facility is appropriate and/or whether a modified or larger facility is required to operate from. Information from these applications will also indicate what facilities may need to be improved over time to ensure they are fit for purpose.

Currently, Council does not require recreational users of maritime facilities, including local ratepayers to pay fees for use. This will not change without further public consultation on the Maritime Facilities Bylaw.

Re Council not responding to complaints about commercial vessels

Council staff agree that not responding to complaints about commercial vessels is a concern. This concern has been shared with Far North Holdings who have systems in place to ensure that complaints are heard and responded to.

Staff recommendation

Council staff recommend no changes to the proposed Bylaw in response to these submissions about the balance between recreational versus commercial users.

3.3 Concerns about Council's role regarding the proposed Bylaw

Submissions received

Three submitters (8, 26, 17) expressed concerns about Council's role:

Council does not have the authority to make the Bylaw

Submitter 08 stated that the Council has no legal basis to maintain facilities, demand fees, or to engage with the people of Northland in any way.

Duplication of the powers of Council and NRC

Submitter 26 also pointed out the duplication of the proposed Bylaw with the Northern Regional Council harbourmaster's existing powers.

Suspicion about Council's hidden agenda

Submitter 17 suspected a hidden agenda by Council, more regulation, more expense, and more restrictions.

Responsibility for improvements of maritime facilities

Submission 19 states *'it is not clear who is responsible or what steps will be taken to fix or enforce improvements'*.

Staff analysis

Regarding the authority to make the Bylaw

Under the Local Government Act, Council has broad powers to make bylaws under sections 145 and 146 of the Local Government Act 2002, including for the purposes of addressing public nuisance, public health and safety and offensive behaviour in public places.

Also, under section 150 of the Local Government Act 2002, Council may prescribe a fee or charge for permits, approvals, and consents provided for under a Bylaw. Any such fee must not provide for Council to recover any more than the reasonable costs incurred by the Council for the matter for which the fee is charged.

Regarding duplication of the powers of Council and NRC

Council Staff advise that there is no intent for the Council to duplicate the powers of Northland Regional Council. The intent of the proposed Bylaw is to support the Northern Regional Council harbourmaster's existing powers and to sit alongside the policies of Northland Regional Council.

Regarding suspicion about Council's hidden agenda

Council staff advise that there is no hidden agenda. The Bylaw intends to regulate the use of Council's maritime facilities to protect public health, prevent nuisance, and ensure safe use of maritime facilities. The Bylaw intends

to impose reasonable limitations on behaviour and access. Costs associated with permits, approvals, and consents are to offset administration costs and to be put towards the future maintenance and development of maritime facilities in the Far North District.

Regarding responsibility for improvements of maritime facilities

Far North Holdings Limited holds the management contract from the Council for maritime facilities in the Far North. They will also assess the need for fixing or improving maritime facilities.

Staff recommendation

Council staff recommend no changes to the proposed Bylaw in response to these submissions about Council's role.

3.4 Other general concerns regarding the proposed Bylaw

Submissions received

Removal of the rights of mooring holders

Submitter 26 raised concerns about the removal of rights for mooring owners as ratepayers. They argued for retaining the Mooring Fees Bylaw.

Re fees and charges by weight limits and/or discharge of polluting material

Submitter 19 stated that they agree that commercial interests should pay to use the facilities but suggest weight limits and discharge of bio-matter pollution (e.g. oyster debris) and other fouling of ramps be factored into charges. However, locals who pay rates should not have additional charges for ramp use.

The maritime facilities should be privatised

Submission 03 stated *"Revoke the bylaws. Sell the maritime facilities, privatise."*

Staff analysis

Re removal of the rights of mooring holders

FNDC is responsible for 32 swing moorings. Swing mooring charges are levied and collected by Northland Regional Council. It is charged via the Navigation Safety Bylaw (Section 4) and charges are levied through Council's Fees and Charges.

There is no provision for free water or water services via FNDC maritime assets. None are provided other than historical provisions (Waipapa landing, Pukenui Wharf, Totara North, Kerikeri Basin). These have had historic provisions that are not 'maintained' by Far North Holdings Limited. Totara North water will be supplied with a charge as this comes from Far North Holdings Limited water tanks. The other sites are in kind until an effective control measure can be implemented.

The owner of a mooring can rent it out but the Harbourmaster can move them off. The Northland Regional Council Navigation Safety Bylaw only contracts (Licences) the mooring owner, not the renter (unless it is a mooring owned by the Northland Regional Council).

Re fees and charges by weight limits and/or discharge of polluting material

Regarding weight limits, Far North Holdings Limited advises they use a condition assessment not a structural rating for each maritime asset. There is a correlation between the condition of each asset and what activities vehicles and machinery are suitable for use on each asset.

Regarding the discharge of polluting material, this is discussed further in this report when reviewing clause 20 in Section 4. Staff agree that it is unnecessary for this provision to be included in the Bylaw, as issues regarding discharges to water are already covered by the Resource Management Act 1991 and administered by Northland Regional Council and others. Due to this, fees and charges relating to the discharge of polluting material is not appropriate to the Bylaw.

Re maritime facilities should be privatised

Council is not intending to sell or privatise the maritime facilities of the Far North District. Maritime facilities will continue to be managed by Far North Holdings Limited.

Staff recommendation

Council staff recommend that clause 20 be omitted from the Bylaw as discussed below in section 4.

No other changes are recommended by Council staff regarding these submissions.

3.5 Concerns from commercial users

Submitters 12, 15, 21, 22, 24, 38 expressed concerns around commercial operators. Submissions 24 (written submission) and 38 (oral submission) were from Leigh Commercial Fishermen's Association Incorporated, and submission 21 was from Electric Boat Co NZ Ltd.

Main themes from this feedback are listed below:

1) Re the fee structure and fairness

Submissions received

- High costs already borne by commercial operators, including mooring fees (Submitters 12, 15)
- Potential for unfair or unrealistic fees for commercial users (Submitters 12, 22)
- Questions about fairness and monitoring of recreational user fees (Submitters 15, 24)
- Concern that current and proposed fees are seen as a revenue-generating "tax grab" (Submitters 12, 15).

Staff analysis

Re high costs already borne by commercial operators, the potential for unfair or unrealistic fees for commercial users, and fairness and monitoring of recreational user fees

The fees provisions under clauses 21 of the Bylaw allow for fees to be set under Council's Fees and Charges Schedule, which is standard practice. This allows fees to be reviewed as appropriate annually. Any fees so set must still comply with the cost recovery limitation provided for in section 150(4) of the Local Government Act 2002 i.e. costs charged can only involve the recovery of reasonable costs incurred by the Council.

Re current and proposed fees are a revenue-generating "tax grab"

Staff advise that current and proposed fees are to ensure appropriate funds are collected to cover maintenance and improvements to existing maritime facilities, and administration costs. They are not intended to be a revenue-generating "tax grab".

There is no intention for Council to collect fees and charges for recreational users currently. However, there are provisions in the Bylaw for these to be established in the future. This would need to go through the consultation process of the fees and charges section of the long-term plan if recreational fees and charges are to be established in the future.

Recreational users will be monitored and managed by Far North Holdings Limited and will be expected to display fair, safe, shared use of maritime facilities.

Staff recommendation

Council staff recommend no changes to the proposed Bylaw in response to these submissions.

2) Commercial Access

Submissions received

- Limited access to wharves for commercial operators due to recreational users (Submitters 12, 24).

Staff analysis

Re limited access for commercial users

Council staff acknowledge that there will be limited access to wharves for commercial operators as restrictions (e.g. weight restrictions), necessary to each asset for safe use will impact on whether a commercial operator will be approved to use each maritime facility.

Maritime facilities are monitored and enforced by Far North Holdings Limited. Applications for use of maritime facilities will inform who can hold a license, who can use specific facilities (taking into consideration vehicles and equipment), and where bottlenecks are created with recreational usage.

Staff recommendation

Council staff recommend no changes to the proposed Bylaw in response to these submissions.

3) Clarity around implementation details

Submissions received

- Vague language and lack of detail in the bylaw (Submitters 24, 38)
- Unclear processes for authorizations, such as handling dangerous goods or obtaining permits (Submitters 24, 38)
- Need for clarity on permit costs, renewal frequency, and commercial designation requirements (Submitters 22, 24).

Staff analysis

Re vague language and lack of detail

Council staff agree that the Bylaw should be clear and have relevant detail. This will be addressed later in this submission analysis report where each specific Bylaw clause is looked at in further detail.

Re unclear processes for authorisations, such as handling dangerous goods or obtaining permits

Council staff advises that authorization of dangerous goods is covered under the application for use and ensures that the user is complying with health and safety, and Maritime New Zealand requirements.

Re need for clarity on permit costs, renewal frequency, and commercial designation requirements

Council staff agree that clarity on permit costs, renewal frequency, and commercial designation requirements are required. These are not covered in the Bylaw as they will be addressed by the Annual Plan and the setting of fees within the fees and charges process, which has its own consultation process. This process will ensure clarity for commercial users.

4) Impact on small businesses and industries

Submissions received

- Negative effects on small-scale food growers like oyster farmers (Submitter 15).
- Potential adverse impact on the Northland aquaculture industry due to restricted access (Submitter 22).
- Concerns that compliance burdens disproportionately affect small businesses (Submitter 15).
- Concerns that the proposed bylaw might hinder the provision of hard stand and anti-fouling services (Submitter 34).

Staff analysis

Re negative effects on small-scale food growers and potential adverse impact on the Northland aquaculture industry due to restricted access

The intent of this Bylaw is to ensure that all users of maritime facilities can do so safely and fairly. It is not the intent of the bylaw to favour one group over another group but to allowed shared use of facilities where appropriate to each maritime facility. Supporting businesses within the region is important to Council and ensures positive economic stability and growth.

Re the provision of hard stand and anti-fouling services

Hard stand and anti-fouling services are not an activity monitored or managed by the Far North District Council. Any such provision is way of approval from Northland Regional Council.

5) Infrastructure maintenance and revenue use

Submission received

- Perceived inadequacy of funds collected (e.g., cruise ship docking fees) being used for maintaining maritime facilities (Submitter 15).

Staff analysis

Re perceived inadequacy of funds collected and lack of investment in facilities

As stated above, funds collected should be used for maintaining maritime facilities. This perceived inadequacy of funds is an issue that has been raised by Council, Far North Holdings, Commercial Operators and the public. The intent of this Bylaw is to ensure that all commercial operators are paying a fair rate for facility use and that this will contribute to the costs of maintaining facilities at the expected levels of service.

Northland Regional Council collects pilotage and booking fees for cruise ships as per their Bylaw and fees and charges.

Far North Holdings Limited collects a 'Pax Cap' (passenger capacity) fee from each cruise ship vessel, and a fee for use of the Place of First Arrival (PoFA) at Waitangi Wharf. To receive offshore craft, vessels, persons and cargo, an airport or a seaport must be approved as a PoFA under section 37 of the Biosecurity Act 1993.

6) Regulatory burden

Submissions received

- View that the bylaw introduces unnecessary compliance burdens (Submitters 12, 15)
- Frustration with perceived over-regulation of commercial maritime activities (Submitters 12, 15).

Staff analysis

Re unnecessary compliance burdens and perceived over-regulation of commercial maritime activities

Maritime facilities are monitored and enforced by Far North Holdings Limited. Applications for use of maritime facilities will inform who can hold a license, who can use specific facilities (taking into consideration vehicles and equipment), and where bottlenecks are created with recreational usage. Licenses for commercial operations will be looked at annually rather than each individual instance of use.

The Bylaw is more about regulating use that is inappropriate and unreasonable, and/or a risk to people or assets. Given the public nature of maritime facility assets, it is necessary to regulate this as it underpins the intent of the Bylaw.

Staff recommendation re commercial operators' feedback

Council staff recommend no changes to the proposed Bylaw in response to these submissions from commercial operators.

3.6 Māori and Treaty Matters

Submissions 10 and 13 addressed issues regarding Māori and Treaty of Waitangi. Five themes were generated from these submissions.

1) Treaty of Waitangi Obligations

Submission received

- Emphasis on addressing unresolved Treaty claims (e.g., Wai 49) before implementing new bylaws (Submitter 10)
- Need for the Bylaw to explicitly recognize and adhere to Te Tiriti o Waitangi (Submitter 13).

Staff analysis

Council staff recognise that the common marine and coastal area is accorded special status under the Marine and Coastal Area (Takutai Moana) Act 2011, including the ability to seek recognition/confirmation of protected customary rights and customary marine title.

A number of claims under the Marine and Coastal Area (Takutai Moana) Act 2011 are currently before the Courts. However, under the Marine and Coastal Area (Takutai Moana) Act 2011, structures such as wharves and other maritime facilities are specifically excluded from coverage and the ability of Council to regulate and potentially restrict the use of such structures is expressly confirmed.

Having sought legal opinion on the Bylaw, under the Marine and Coastal Area (Takutai Moana) Act 2011, structures in the common marine and coastal area such as maritime facilities are personal property and do not form part of the common marine and coastal area. The Act also recognises that public access to such structures can be subject to any "authorised prohibitions or restrictions" imposed under any enactment, including a bylaw.

Maritime facilities, even when located in the Marine and Coastal Area (Takutai Moana) Act 2011, do not come within the scope of the protections under the Marine and Coastal Area (Takutai Moana) Act 2011, and remain within the control of Council.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions regarding Treaty of Waitangi obligations.

2) Māori Rights and Access

Submission received

- Recognition and protection of Māori rights as tangata whenua to access and use customary waterways, the foreshore, and the seabed (Submitter 13)
- Concern about potential discriminatory impacts of the Bylaw on Māori (Submitter 13).

Staff analysis

Section 11 of the Marine and Coastal Area (Takutai Moana) Act 2011 makes it clear that the special status of the common marine and coastal area does not prevent restrictions in the common marine and coastal area from being imposed under enactments, including bylaws. The Marine and Coastal Area (Takutai Moana) Act 2011 does not restrict Council's powers under the Local Government Act 2002, to make bylaws regulating the use of structures such as wharves and other maritime facilities located within the common marine and coastal area.

The Bylaw is intended to ensure the free use of facilities and protect customary rights so that one individual person cannot solely use the whole facility and prevent others using it. The Bylaw is intended to protect tangata whenua rights to have free and unobtrusive use.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions regarding Māori rights and access.

3) Consultation and Inclusivity

Submission received

- Recommendation to consult the Waitangi Tribunal for guidance and timelines on Treaty settlements (Submitter 10)
- Call for greater consultation and inclusion of Māori perspectives in bylaw development (Submitter 13).

Staff analysis

Council addresses the importance of the views of Māori and highly values engagement with Māori as part of the decision-making process. This is outlined in Council's Te Pae Uta document.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions regarding consultation and inclusivity.

4) Free and Accessible Marine Assets

Submission received

- Importance of ensuring free and equitable access to marine facilities like wharves, jetties, and ramps for Māori and local communities (Submitter 13)
- Highlighting how changes in local areas (e.g., Opuā) have reduced accessibility and inclusivity for locals, especially children (Submitter 13).

Staff analysis

The Bylaw states that recreational users may be asked to pay fees for recreational use. Council is not asking for this. If this is to change, then further public consultation would be necessary to implement this. There are already existing bylaw charges fees for commercial use, so there is no change for recreational users. Fees and charges will be discussed as part of the Fees and Charges policy which is renewed annually.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions regarding free and accessible marine assets.

5) Accountability and Mitigation of Harm

Submission received

- Criticism of the Bylaw's lack of information on its purpose and potential impacts on Māori (Submitter 13)
- Advocacy for proactive measures to prevent harm to Māori interests and rights (Submitter 13).

Staff analysis

The Bylaw is intended to ensure the free use of facilities and protect customary rights so that one individual person cannot solely use the whole facility and prevent others using it. The Bylaw is intended to protect tangata whenua rights to have free and unobtrusive use.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions regarding accountability and mitigation of harm.

3.7 Concerns that are wider than the proposed Bylaw

Several broad concerns were raised, which were not directly about the proposed Bylaw:

1) Concerns about health and safety

Submission received

Submitter 19 expressed concerns around health and safety on and around maritime facilities. They suggest that commercial users make facilities unsafe. They state their ramp is damaged and the seabed churned up in the launching and retrieval zone, and that safety is compromised on the road by overweight vehicles using the ramp. The submitter requests that Council consider access and ease for use for disabled or one person launching.

Staff analysis

As discussed above, the application process is required for Far North Holdings to assess the use of maritime facilities by commercial users. This process will assess whether the maritime facilities are able to be safely utilised by commercial users and that the facilities are appropriate for the use required.

Safety of all users, including those who are disabled will be taken into consideration when assessing and implementing facility maintenance and improvement. Fees and charges are monitored and enforced by Far North Holdings Limited. Applications for use of maritime facilities will also inform the need for further infrastructure such as parking, public toilets, and rubbish collection.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions.

2) Council should use other methods of charging

Submission received

Submission 26 (from Opito Bay residents) suggested Council should use alternative fair and proven methods of charging, such as coin-operated barriers or annual stickers.

Staff analysis

Council staff looked at various methods of charging used throughout New Zealand. In discussion with Far North Holdings Limited, this form of charging commercial operators has been identified as the most practical.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions.

3) Concerns about the Opito Bay ramp

Submission received

Submission 26 (from Opito Bay residents) raised concerns about the lack of resource consent for the Opito Bay boat ramp and potential breaches of consent for other facilities.

Staff analysis

Far North Holdings Limited advises that Opito Bay is a unique scenario that will require a specific strategy to address long term. Far North Holdings Limited has been informed of these concerns and the view expressed by the submission will carry weight when the Long-Term Plan is next revised.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions.

4) Concerns about the Windsor Landing ramp

Submission received

Submitter 35 raised concerns about the inadequate and dangerous condition of the Windsor Landing boat ramp.

Staff analysis

Far North Holdings Limited has been informed of these concerns and the view expressed by the submission will carry weight when the Long-Term Plan is next revised.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions.

5) Need to take a broad view of a complex issue

Submission received

Submitter 27 emphasised the need to consider social, cultural, environmental, and ecological impacts in all decisions. They highlighted the potential impact on roading infrastructure due to increased heavy vehicle traffic and call for location-specific plans developed in consultation with affected parties. They also stress the complexity of the issue and the need to address the needs and safety of all stakeholders.

Staff analysis

Council staff agree that maritime facilities have a broader socioeconomic impact. Managing this can be achieved through the Council's Long Term and Annual Plans and other strategies developed by the Council. However, in this case, the consultation covers a relatively narrow question around the wording of the bylaw.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions.

6) Lack of investment

Submission received

Submitter 15 said there has been a lack of investment in maintaining or improving wharves and ramps despite significant revenue.

Staff analysis

Perceived lack of investment in maritime facilities is outside the scope of the consultation on the wording of the proposed Bylaw but is part of the wider discussion regarding the future of these facilities.

Far North Holdings have been informed of this concern and the view expressed by the submission will carry weight when the Long-Term Plan is next revised.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions.

7) Rules for privately owned maritime facilities

Submission received

Submitter 20 questioned rules for privately owned maritime facilities and the impact of potential Council and/or Far North Holdings facility sales.

Staff analysis

The proposed Bylaw is concerned with maritime facilities owned by Far North District Council and not privately owned facilities. The Bylaw does not cover the selling or acquiring of private maritime facility assets.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions.

8) Regarding 'further engagement'

Submission received

Submitter 31 requested an explanation of the term 'further engagement' in the consultation proposal.

Staff analysis

It is expected that in the future Council may want to amend certain aspects of this Bylaw such as recreational fees. Further engagement and consultation with public is necessary whenever Council make decisions on bylaws.

Staff recommendation

Council staff recommend no changes to the Bylaw wording in response to these submissions.

4 Analysis and recommendations regarding the Bylaw wording

The following section analyses submissions made about specific clauses in the draft Bylaw and recommends how to address these submissions.

4.1 Clauses not referred to in submissions

No submissions were made about the following clauses in the draft Bylaw:

Part 1: Preliminary provisions

- Clause 1 Title

- Clause 2 Commencement
- Clause 3 Application
- Clause 4 Purpose
- Clause 5 Interpretation

Part 2: Substantive provisions

- Clause 9 Vessels Coming Alongside Wharves
- Clause 11 Cleaning Maritime Facilities
- Clause 14 Removal of Goods
- Clause 16 Closure of maritime facilities
- Clause 17 Requirement to Obey Council Signage
- Clause 19 Removal of Vessels

Part 4: Enforcement

- Clause 22 Offences

Part 5: Savings and transitional provisions

- Clause 23 Bylaw does not limit any other enactment

4.2 Submissions on substantive provisions (clauses 6 to 20)

Clause 6(1) - Nuisance on, under or about any maritime facility

Submissions received

Submitter 29 stated strong agreement with the Bylaw's purpose to protect public health, prevent nuisance, and ensure safe use of maritime facilities, the bylaw's aim to impose reasonable limitations on behaviour and access, and highlights the importance of preserving the serenity of seaside communities.

Submission 31 suggests addressing priorities and 'give way' rules at the specific facility level in individual ramp plans.

Staff analysis

Safety of all users (including 'give way' rules) will be taken into consideration when assessing and implementing specific plans for maritime facilities.

Staff recommendation

Council staff recommend no changes in response to these submissions.

Clause 6(2) - Prohibition of unsafe practices on, under or about any maritime facility

Submission received

Submission 23 suggests rewording to clarify that the prohibition applies to unsafe activities, not all activities.

Staff analysis

Council staff agree that a change of wording is required for clause 6(2) to make this clause clearer.

Staff recommendation

To improve clarity in clause 6(2), staff recommend inserting the word 'unsafe' before the words 'activity or unsafe practice'.

Tracked changes to the clause as recommended

6(2) No persons shall engage in any unsafe activity or unsafe practice on, under or about any maritime facility.

Clause 6(3) - Prohibition of intimidation, endangerment or obstruction of any other person in their use of any maritime facility

Submission received

Submission 29 expressed strong agreement with this clause.

Staff analysis

Staff agree that all people should feel safe when using maritime facilities.

Staff recommendation

Council staff recommend no changes in response to this submission.

Clause 6(7) - Prohibition of people fishing, swimming from, or engaging in any underwater swimming or underwater activities from or near any maritime facility while that maritime facility is being used

Submission received

Submission 16 questioned the enforceability of this clause and raised concerns about the lack of enforcement observed in relation to swimming and fishing from wharves.

Staff analysis

In order to manage clause 6(7), Council would look to use the VADE approach for enforcement (see the discussion in section 3.2)

Far North Holdings Limited advise that signage will outline prohibited unsafe and nuisance behaviour on maritime facility assets.

Staff recommendation

Council staff recommend no changes in response to this submission.

4.2.1 Clause 7 - Fees for the recreational use of maritime facilities

Submissions received

Submitter 19 agreed that commercial interests should pay to use facilities, suggested factoring in weight limits and pollution into charges, and proposed no additional charges for locals who pay rates

Submission 26 challenged the classification of users as solely commercial or recreational, and provided examples of vessels that fall outside these categories. They raised concerns about discrimination against public who hire vessels and argue that fees for commercial hire operators unfairly burden recreational users and create a disadvantage for local hire operators.

Submitter 26 also emphasised the role of maritime facilities as essential infrastructure and argued against relegating these facilities to purely recreational use. They questioned the prioritisation of recreational use over commercial use. They advocated prioritising commercial vessels due to the economic contributions of commercial users.

Staff analysis

Section 150 of the Local Government Act 2002 allows Council to prescribe a fee or charge for permits, approvals, consents provided for under a Bylaw. Any such fee must not provide for Council to recover any more than the reasonable costs incurred by the Council for the matter for which the fee is charged.

The fees provisions under clauses 7 and 21 of the Bylaw simply allow for fees to be set under Council's Fees and Charges Schedule, which is standard practice. This allows fees to be reviewed as appropriate annually. Any fees that are set must still comply with the cost recovery limitation provided for in section 150(4) of the Local Government Act 2002.

Staff recommendation

Council staff recommend no changes in response to these submissions.

4.2.2 Clause 8 - commercial operators

Submissions received

a) Support for Regulating Commercial Use

Submitters 29 and 31 agree with regulating commercial operators and requiring approvals to use maritime facilities, emphasizing the need for transparent processes and written approvals.

b) Development of Location-Specific Plans

Submitters 29 and 31 call for specific plans for each maritime facility, considering unique factors such as structural capacity, environmental impacts, safety, and current use patterns.

Balancing Recreational and Commercial Use

Submission 29 highlights the importance of balancing the needs of recreational and commercial users to ensure fair and efficient facility use.

Concerns About Practicality of Written Approvals

Submission 25 argues that requiring written approval for commercial operators is impractical and may impede safe operations.

c) Proposal for a Ramp Grading System

Submission 32 suggests implementing a grading system (A, B, C, D) to classify ramps based on various factors such as construction, safety, environmental impact, and congestion.

d) Input from Opito Bay Residents

Submissions related to Opito Bay (e.g., Submission 31, identified as "from Opito Bay residents") emphasize location-specific concerns, including the balance between recreational and commercial use and the need for tailored management plans.

Staff analysis

a) Support for regulating commercial use

The Bylaw does not prioritise commercial over recreational use. The purpose of the Bylaw is to ensure safe and appropriate use in the public landscape of the maritime facilities. Far North Holdings Limited are concerned with ensuring that maritime facilities will cope with whatever use is required. Each maritime facility will have specific loading specification and limits. Therefore, if a ramp or wharf is unable to cope with a particular commercial activity then a license will not be issued for that maritime asset.

b) Development of location-specific plans

One of the reasons for a license is to identify commercial activity, where and how it is occurring, and to then plan for future maritime facility development. These improvements will be outlined in future Long-Term Plans.

c) Proposal for a ramp grading system

Far North Holdings Limited advises that they do have a grading system for the maritime assets. However, it is a condition assessment not a structural rating. There is a correlation between the condition of each asset and what activities vehicles and machinery are suitable for use on each asset.

d) Input from Opito Bay Residents

As discussed above, Far North Holdings Limited advises that Opito Bay is a unique scenario that will require a specific strategy to address long term. Far North Holdings Limited has been informed of these concerns and the view expressed by the submission will carry weight when the Long-Term Plan is next revised.

Staff recommendation

Council staff recommend no changes in response to these submissions.

4.2.3 Clause 10 - berthing directions

Clause 10(2) states that no vessel shall remain berthed at any maritime facility, longer than is necessary to load or unload passengers or goods, provided that no vessel shall remain berthed at any wharf for more than 30 minutes without approval from Council or any authorised officer.

Submissions received

Submission 16 questions the enforceability of this clause and raises concern about the lack of enforcement observed related to swimming and fishing from wharves.

Staff analysis

To manage clause 10(2), Council would look to use the VADE approach for enforcement (See clause 6(7) and section 3.2).

Staff recommendation

Council staff recommend no changes in response to this submission.

4.2.4 Clause 12 - Animals on maritime facilities

This clause states - No person shall permit any animal to remain on any Maritime Facility for any time longer than is necessary for the loading or unloading of that animal onto a Vessel.

Submission received

Respondent 16 stated that this clause is unfair and suggests allowing pets on a leash.

Staff analysis

Under the Council's Dog Management Policy, maritime facilities are considered public places, where dogs must be kept on a leash as per the Dog Management Bylaw and the Dog Control Act 1996. This means dog owners must ensure their dogs are controlled by a leash held by someone capable of restraining them.

Clause 4 of the Dog Management Bylaw enforces this requirement in "On-Leash Areas," while Section 53 of the Dog Control Act 1996 outlines specific offences for failing to control a dog. Enforcement of these rules would follow the VADE approach (As discussed in section 3.3 report).

Staff recommendation

Council staff recommend no changes in response to this submission.

4.2.5 Clause 13 - Goods, items and dangerous goods

Submissions received

a) Re clause 13(3)

Clause 13(3) states that no goods may remain on any maritime facility for more than 2 hours. Submission 31 raises concerns about the 2-hour limit potentially blocking access for others.

Staff analysis

It is fair and reasonable for larger vessels that have a large capacity for storage or fuel to require 2 hours to load or unload at a maritime facility. Far North Holdings Limited will take this into considerations when approving licenses and will ensure that facilities that can accommodate this length of time will be used by these larger vessels.

Staff recommendation

Council staff recommend no changes in response to this submission.

b) Re clause 13(7)

Clause 13(7) states that "Fuel bunkering on Maritime Facilities is prohibited unless prior Approval has been obtained from the Council. No bunkering will be approved by Council on wharves which have an operating on-site fuel service"

Submission 23 finds the wording unclear and suggests revising to clarify that approval will not be given for bunkering from personal supplies at facilities with commercial fuel services.

Submission 25 opposes restrictions on fuel bunkering, arguing that it is anti-competitive and could lead to unreasonable fuel prices.

Staff analysis

Far North Holdings Limited advises that goods and dangerous goods, such as fuel, on maritime assets are prescriptive according to the Resource Management (Marine Pollutions) Regulations 1998 linked to the Maritime Transport Act 1994.

Far North Holdings Limited advises that where bunkering facilities are provided, they do not allow private bunkering (e.g. Totara North, Pukenui, and Clansman wharves). This is to ensure that licensed providers are not undermined where these facilities already exist. However, where there are no bunkering facilities available (e.g. Opononi wharf), Far North Holdings will allow private bunkering with prior approval. Commercial operators would need a tier 1 plan as per the requirement under the Maritime Transport Act. Trucks and suppliers will have these, and approvals will be site specific.

Bunkering at sites where prior approval has not been established would still be possible by exception (e.g. emergency situations), but this is not the norm.

Staff recommendation

Council staff recommend no changes in response to this submission.

4.2.6 Clause 15 - Vehicles and maritime facilities

Submissions received

a) Temporarily unattended vehicles

Submitter 20 requested an amendment to address situations where vehicles are temporarily unattended while manoeuvring a boat trailer single-handed.

b) Inclusion of road vehicles

Submitter 26 criticised the inclusion of road vehicles used for launching in the commercial/recreational distinction.

Staff analysis

a) Temporarily unattended vehicles

It is reasonable to expect that someone utilising a maritime facility will not leave their 'vehicle unattended' for an 'extended' period. However, leaving a vehicle to sort out their boat briefly whilst launching or relaunching is normal not for an 'extended' period. An example of an extended period would be leaving a vehicle unattended on a boat ramp while fishing for a couple of hours. This would block the facility for an extended period until the vehicle is removed.

a) Inclusion of road vehicles

Each maritime asset has its limitations in terms of what it can safely accommodate in the way of vehicles and machinery. Road vehicles using these facilities will need to ensure that they are adhering to any size or weight restrictions to ensure safety and minimisation of damage to the maritime assets.

Staff recommendation

Council staff recommend no changes in response to these submissions.

4.2.7 Clause 18 - Obstruction of wharves

Submissions received

Submission 40 (oral submission), highlighted challenges for marine contractors and the need for urgent decision-making in accessing wharves and ramps.

Staff analysis

Subclause 21(8) allows authorised officers to make urgent decisions regarding accessing of wharves and ramps should the need arise.

Staff recommendation

Council staff recommend no changes in response to this submission.

4.2.8 Clause 20 - Wastewater discharge

Submissions received

Submission 25 considers this clause an overreach as rules and regulations are already enforced by Northern Regional Council and Maritime New Zealand.

Staff analysis

This submission is less about the use of maritime facilities and more about pollution of the body of water surrounding those facilities.

Within 12 miles from shore (the New Zealand Territorial Sea), discharges to water are regulated by the Resource Management Act 1991. Regional coastal plans and marine pollution regulations are made under that Act with monitoring and enforcement carried out by regional councils.

Staff agree that it is unnecessary for this provision to be included in our Bylaw, as issues regarding discharges to water are already covered by the Resource Management Act 1991 and administered by Northern Regional Council and others.

Staff recommendation

Staff recommend that clause 20 is removed from the Bylaw.

N.B. This will alter the subsequent numbering of the clauses in the Bylaw (i.e. clauses 21-24 will become clauses 20-23). However, this report uses the current numbering.

4.3 Clause 21 - Approvals

Submissions received

a) Conflict between clauses 21(3) and 21(8)

Submission 31 (from Opito Bay residents) highlights clause 21 and questions potential conflict between subclauses (3), 'The Approval from Council will be in written form and may include a licence, permit, order, letter or other written document' and subclause (8), 'Where an approval can be granted by an authorised officer under this bylaw, that approval may be a verbal or written approval and may be granted on such terms and conditions as the authorised officer considers appropriate. The authorised officer may cancel said approval at their discretion at any time.' They suggest expanding the clause to list factors to consider when granting a license.

b) Fees for recreational users

Submission 29 expresses strong agreement with no fees for recreational users. However, they also suggest the need for location-specific plans. They believe that this emphasizes the importance of considering factors such as location, current use, structural capability, impact on residents and other users, infrastructure, environmental/ecological issues, health and safety, and specific rules for each facility. They have particular emphasis on protecting cultural and environmental values

They also promote consultation with affected parties and stressed the need for consultation in developing location-specific plans. They have raised concerns about commercial operators at Opito Bay Ramp, which they believe highlights issues with commercial operators. They go on to suggest land purchase for dedicated commercial use.

c) Bill of Rights Act 1990 (Section 18: Freedom of Movement)

Submission 30 (Moturoa Island Manager) has jurisdictional concerns and questions whether the bylaw complies with existing legislation, specifically the Bill of Rights Act 1990 (Section 18: Freedom of Movement).

They argue that the Bylaw's proposed limitations on commercial access may exceed the council's authority and highlight that revenue gathering is not a valid reason for introducing a new bylaw. The submission suggests the council needs empirical data to justify the bylaw's restrictions on commercial use and goes on to propose considering alternative solutions like widening the ramp, designated lanes, or time/tide limits instead of blanket exclusions.

d) Approvals for maritime facility use

Submission 30 also has specific Concerns for Moturoa Island:

- Explains Moturoa Island's reliance on the Opito Bay ramp for essential operations, including refuse collection, shareholder access, and services for DOC and Top Energy
- Emphasizes the lack of alternative suitable ramps in the region
- Suggests upgrading the Opito Bay ramp to accommodate all ratepayers
- Expresses willingness to adhere to reasonable time, tide, speed, and designated area restrictions
- Raises concerns about a potential blanket exclusion of commercial vessels, which could impact Moturoa Island's operations
- Offers to meet with the council to address concerns and ensure continued access.

Submission 40 (oral submission) opposes the requirement for written approval for facility use.

Submission 07 suggests banning oyster barge activity from the Opuia Marina Ramp.

Staff analysis

a) Re conflict of clauses 21(3) and 21(8)

There is no conflict between subclauses 21(3) and 21(8). Subclause 21(8) accommodates situations, such as emergencies, where authorised officers may need to grant or cancel approvals quickly, making verbal approval more practical. However, in most cases, written approval as outlined in subclause 21(3) will suffice.

b) Fees for recreational users

Under Section 150 of the Local Government Act 2002, the Council can charge fees for permits, approvals, or consents under a Bylaw, but these fees must not exceed the reasonable costs incurred by the Council.

Clause 21 of the Bylaw aligns with this by allowing fees to be set through the Council's Fees and Charges Schedule, a standard practice enabling annual reviews. Any fees established must comply with the cost-recovery limitation outlined in section 150(4) of the Local Government Act 2002.

c) Bill of Rights Act 1990 (Section 18: Freedom of Movement)

Council staff acknowledge that the Bylaw may limit access to maritime facilities but argue these limitations are justified as reasonable, aiming to enhance community safety and reduce public disturbance.

In response to the submitter's concern that clause 21(2) allows Council to refuse access, staff emphasize that such decisions must be made on reasonable grounds in accordance with natural justice. They argue that refusals are not unreasonable as they apply only to specific applicants and facilities on a case-by-case basis and do not constitute a blanket prohibition on access.

Staff further clarify that under the Marine and Coastal Area (Takutai Moana) Act 2011, maritime facilities are considered personal property, and public access can be subject to authorized restrictions, such as those imposed by a bylaw.

d) Approvals for maritime facility use

All commercial operators will be required to make an application for the use of maritime facilities and will be approved or declined by an appropriate Authorised Officer.

Each maritime asset is subject to their capabilities. For example, Houhora is not capable of commercial use. Far North Holdings Limited advises that each asset will be looked at for capability and applications for use will be approved based on asset capability. Restrictions on which assets may be used and other terms of use, such as days and times of use or restrictions on vehicle tonnage, may be put in place as part of the commercial license.

Far North Holdings Limited advises that they expect to establish relationships with 50 new commercial operators through the licensing process. If license applicants are successful, Far North Holdings Limited will let those applying for a license know their fee and which maritime assets may be used and with what restrictions.

Staff recommendation

Council staff recommend no changes in response to these submissions.

Clause 24 - Applications, approvals in force as at commencement of this bylaw

Submissions received

a) Policy transition

Submission 31 proposed that current approvals should cease once the new policy is adopted, and individual ramp plans are agreed upon.

b) Management of busy periods

Submission 14 suggested employing staff, such as security guards or boat ramp marshals, during peak periods as an alternative to enforcing a bylaw.

c) Commercial operations

Submission 29 raised concerns about the number of commercial operators and a lack of enforcement under the existing bylaw.

Submission 40 (oral submission) recommended increasing commercial facilities to mitigate conflicts with recreational users. The submitter expressed willingness to pay wharf fees but requested these fees be reviewed to ensure they are reasonable and not prohibitive.

Staff analysis

a) Policy transition

The submissions primarily focused on the practicalities of implementing the Bylaw rather than its specific content. Currently, there are no existing approvals for maritime facility use in the Far North District, emphasizing the necessity of individual licensing for managing facility usage effectively.

b) Management of Busy Periods

Far North Holdings Limited advised they have tried employing security guards or boat ramp marshals during peak times previously and that they were deemed inequitable and impractical for addressing the Council's need to regulate maritime facilities.

c) Commercial operations

The Bylaw is considered the most appropriate mechanism for regulating access to maritime facilities, as permitted under section 145 of the Local Government Act 2002, which covers issues related to nuisance, public health and safety, and offensive behaviour in public spaces. However, addressing the demand for additional maritime facilities lies beyond the scope of this Bylaw.

Staff recommendation

Council staff recommend no changes in response to these submissions.

5 Staff recommendations for drafting clarifications and amendments

A further technical review of the wording of the Bylaw was undertaken and amendments to clarify the meaning of several clauses have been recommended. Staff also identified typographical errors and these changes have been incorporated throughout the Bylaw. These amendments and corrections are addressed in this subsection.

Preliminary enabling provision

Council staff recommend a change to the preliminary provision of the Bylaw to clarify the enabling powers and ensure all potential enabling powers and authorities under which the Bylaw could be made are covered off.

Staff recommendation

Preliminary clause amended by adding the words “and every other enabling power and authority” “after the number “2002”.

Tracked changes to the clause as recommended to be amended

This bylaw is made pursuant to section 145 ~~and 146~~ of the Local Government Act 2002 and every other enabling power and authority.

Clause 4 Purpose

Council staff recommend a minor change to clause 4 to clarify the scope of the purpose of the Bylaw based on the enabling powers under section 146(1)(b)(vi) Local Government Act 2002 which allows Council to regulate infrastructure on land under council control (in other words those maritime facilities attached to or extending from the land).

Staff recommendation

Amend clause 4 by adding the wording “while also protecting these facilities from damage” after the word “behaviour”.

Tracked changes to the clause as recommended to be amended

4 Purpose

The purpose of this Bylaw is to regulate the use of maritime facilities under the control, management or ownership of the Far North District Council or Far North Holdings Limited, to ensure the public can utilise these

spaces safely, free from nuisances and offensive behaviour, while also protecting these facilities from damage and where applicable imposing fees or charges for the use of said maritime facilities.

Clause 5 Definitions

Council staff recommend several minor amendments to the definitions provisions under clause 5, to correct and clarify the scope of those definitions.

Staff recommendations

- Amend definition of “Authorised Officer” to “Authorised Person” and add wording to clarify the inclusion of warranted enforcement officers and Far North Holdings Limited staff within those definitions.
- Remove the definition of “Coastal Marine Area” on the basis that the term “Coastal Marine Area” is no longer used within the body of the Bylaw
- Amend all references to “equipment” throughout clause 5 and the body of the Bylaw to “associated equipment” to clarify the connection between “equipment” and the “Vessels” that the equipment is associated with.
- Amend all references to “Council’s Fees and Charges Policy” to “Council’s Fees and Charges Schedule” as a correction.
- Amend the definition of “Maritime Facility” to include reference to the Northland Regional Council and Far North District Council Vesting and Empowering Act 1992 as underlying the basis for Council’s regulation and control of maritime assets.
- Amend the definition of “Maritime Facility” to include reference to “moorings” to make it clear that “moorings” are “Maritime Facilities”
- Amend definition of “Mooring” to make it clear that the definition covers mooring assets rather than the physical act of mooring by inserting a new definition of mooring based on the definition of “mooring” under the NRC Bylaw definition of “Mooring” for purposes of consistency.
- Amend the definition of “Vessel” to clarify that a vessel may be classified as such whether it has a means of propulsion or not.
- Delete the reference to the Interpretation Act 1999, which has been repealed, from clause 5(2) and replace it with a reference to the Legislation Act 2019, which replaces the repealed Act.

Tracked changes to the clause as recommended to be amended

5 Interpretation

(1) In this Bylaw, unless the context otherwise requires:

Approval means an Approval granted under this Bylaw and includes all conditions to which the Approval is subject.

Authorised Person means any person authorised in writing, or warranted as an authorised officer or enforcement officer under the Local Government Act 2002, as the case may be, by the Council or by the Council’s Chief Executive Officer to carry out and enforce the obligations and requirements of this Bylaw. An Authorised Person may include any officer of Far North Holdings Limited so authorised by the Council or by the Council’s Chief Executive Officer except under clauses 14 (Removal of Goods), 19 (Removal of Vessels) and 21 (Offences) of this Bylaw.

Boat Ramp means a constructed ramp sloping from the land toward the sea or a river for the purpose of launching a Vessel into the sea or a river.

~~**Coastal Marine Area** means a coastal marine area as defined in section 2 of the Resource Management Act 1991.~~

Commercial Operator means a person who operates or hires out a Vessel or associated equipment as part of any form of commercial enterprise for any kind of reward.

Council means the Far North District Council.

Fees means any due, fee or charge payable or able to be levied under this Bylaw. Fees and charges payable under this Bylaw are incorporated in the Far North District Council Fees and Charges Schedule which is reviewed annually as part of the Council's Annual Plan.

Goods includes wares and merchandise of every description and all chattels, livestock and other articles.

Maritime Facility means any facility under the ownership or control of Far North District Council or Far North Holdings Limited, whether in accordance with the Northland Regional Council and Far North District Council Vesting and Empowering Act 1992 or otherwise, which is constructed and used for the launching and landing of Vessels or associated equipment and includes wharves, marinas, boat ramps, moorings and any other such man-made structure.

Master means the any person, except a pilot, having command or charge of any Vessel

Mooring means any weight, pile or article placed in or on the foreshore or the bed of a waterway for the purpose of permanently securing a vessel, raft, aircraft, or floating structure; and pile or swing moorings, including any wire, rope, chain, buoy, or other device attached or connected to the pile or weight; but does not include an anchor that is normally removed with the vessel, raft, aircraft, or floating structure when it leaves the site or anchorage. anchoring or making fast to the shore, dock, seabed or foreshore; the securing or confining of a Vessel in a particular station, as by cables, anchors, line or chain.

Pilot means any person not being the master or a member of the crew of not belonging to a Vessel who has the conduct of the Vessel.

Recreational Operator means a person who operates a Vessel or associated equipment for personal recreation.

Vessel means a ship, boat, hovercraft, kayak, floating platform, pontoon or any other description of a vessel or associated equipment used or designed to be used in navigation whether or not it has any means of propulsion.

Wharf means a structure extending from the land into the sea, supporting a footpath or vehicle accessway leading to a means of access to board a Vessel moored to the structure.

(2) The Legislation Act 2019 applies to this Bylaw.

(3) Explanatory notes and related information boxes are for information purposes only, do not form part of this Bylaw, and may be inserted, amended, or removed by the Far North District Council without any formality at any time.

Clause 6 Use of Maritime Facilities

Council staff recommend a minor change to clause 6(6), to ensure clarity and consistent use of language.

Staff recommendations

Amend clause 6(6) to add the word “associated” before “equipment” and to add the words “associated equipment, trailer or motor vehicle” to the end of the subclause.

Tracked changes to the clause as recommended to be amended

(6) No person shall leave on or near any Maritime Facility any Vessel, associated equipment, trailer, equipment or motor vehicle which may obstruct the use of that Maritime Facility for a period of time longer than is reasonably expected to launch, secure or retrieve the Vessel, associated equipment, trailer or motor vehicle.

Clause 7 Fees for the Recreational use of Maritime Facilities

Council staff recommend minor changes to clause 7 to replace the reference to “Council’s Fees and Charges Policy” with “Council’s Fees and Charges Schedule” as a correction and by adding wording the word mooring to clause 7(1) to make it clear that fees for the use of Maritime Facilities can include fees for moorings.

Staff recommendations

Amend clause 7(1) to add the words “including moorings” after “Facilities” and replace the word “Policy” with the word “Schedule” in both clause 7(1) and 7(3).

Tracked changes to the clause as recommended to be amended

7 Fees for the Recreational use of Maritime Facilities

(1) All Recreational Operators must pay the any applicable Fees for the use of Maritime Facilities, including moorings, as set out in the Council's Fees and Charges Schedule. This may include Fees for specific types of activities or operations that may be carried out by the Recreational Operators.

(2) No Recreational Operator may use any Maritime Facilities unless that have paid the required Fees under clause 7(1) of this Bylaw.

(3) The above clauses shall have no effect if the Council has not included Fees for the use of Maritime Facilities by Recreational Operators within the Council's Fees and Charges Schedule.

Clause 8 Commercial Operators

Council staff recommend minor changes to clause 8 to align it with clause 7 and ensure the reference to fees that may be charged to Commercial Operators sits within the appropriate position in the Bylaw.

Staff recommendations

- Amend clause 8(1) to replace the wording "Far North Holdings Limited" with the wording "Authorised Person" given that the revised definition of "Authorised Person" expressly includes Far North Holdings Limited officers where authorised.
- Add new subclauses 8(2) to 8(4) based on subclauses 7(1) to 7(3) to ensure that the provisions that allow for fees to be charged to Commercial Operators mirror similar provisions for Recreational Operators. The existing reference to charging Commercial Operators under clause 20(1)(d) can then be deleted.

Tracked changes to the clause as recommended to be amended

8 Commercial Operators

(1) No Commercial Operator shall use any Maritime Facility without written Approval from the Council or an Authorised Person.

(2) All Commercial Operators must pay any applicable Fees for the use of Maritime Facilities, including moorings, as set out in the Council's Fees and Charges Schedule. This may include fees for specific types of activities or operations that may be carried out by Commercial Operators.

(3) No Commercial Operator may use any Maritime Facilities unless they have paid the required Fees under clause 8(2) of this Bylaw.

(4) The above clauses shall have no effect if the Council has not included Fees for the use of Maritime Facilities by Commercial Operators within the Council's Fees and Charges Schedule.

Clause 9 Vessels Coming Alongside Wharves

Council staff recommend minor typographical and formatting changes to clause 9.

Staff recommendations

Amend clause 9(3) to replace the word "charge" with the word "recover" and delete the words "such cost being recoverable by action in the appropriate Court of Law". The word "recover" better aligns with legislative drafting convention while it goes without saying that recover can be achieved through the Courts. Likewise, recover may be achieved without recourse to formal legal proceedings and in that respect such action should not be inadvertently precluded by the wording of the Bylaw.

Tracked changes to the clause as recommended to be amended

9 Vessels Coming Alongside Wharves

(1) The Master of any Vessel coming alongside any Wharf shall be responsible for the proper and safe berthing of that Vessel.

(2) The Master and owner of the Vessel shall be responsible for any damage done to any Wharf in connection with that Vessel.

(3) The Council may repair any such damage and recover the cost of doing so against from the Master or owner of the Vessel that caused the damage ~~such cost being recoverable by action in the appropriate Court of Law.~~

Clause 10 Berthing Directions

Council staff recommend minor typographical changes to clause 10.

Staff recommendations

Amend clause 10 to replace the word “Officer” with the word “Person” and replace the word “Wharf” with the word “Maritime Facility” to ensure consistent wording is being used throughout the clause.

Tracked changes to the clause as recommended to be amended

10 Berthing Directions

- (1) The Master of any Vessel berthing at any Maritime Facility, shall obey any instructions of the Council or any Authorised Person
- (2) No Vessel shall remain berthed at any Maritime Facility, longer than is necessary to load or unload passengers or Goods, provided that no Vessel shall remain berthed at any Maritime Facility for more than 30 minutes without Approval from the Council or any Authorised Person.
- (3) Any Master required by the Council or any Authorised Person to move any Vessel from any Maritime Facility, must do so immediately.

Clause 14 Removal of Goods

Council staff recommend amendments to clause 14 to ensure that the powers of removal align with the relevant powers of seizure, disposal and cost recovery under sections 164, 167 and 168 of the Local Government Act 2002.

Staff recommendations

- Amend clause 14 to delete the word “hinder” and replace it with the word “obstruct”
- Amend clause 14 to delete the wording “are an impediment to” and replace it with the word “obstruct”
- Amend clause 14 by adding the wording “authorise seizure and removal of the Goods in accordance with the requirements of section 164 of the Local Government Act 2002” after the word “may”
- Amend clause 14 by deleted the wording “have the Goods removed at the expense of the owner, and the cost of removal shall be payable by the owner before taking receipt”

Tracked changes to the clause as recommended to be amended

14 Removal of Goods

(1) Where any Goods remain on any Maritime Facility for more than 2 hours, or where any such Goods ~~hinder obstruct~~ the loading or unloading of any Vessel, ~~are an impediment to obstruct~~ Vessels approaching any Maritime Facility or obstruct any Maritime Facility, the Council or any Authorised Person may authorise the seizure and removal of the Goods in accordance with the requirements of section 164 of the Local Government Act 2002.

(2) ~~The Council or an Authorised Person must either return or dispose of any Goods seized under clause 14(1) in accordance with sections 167 and 168 of the Local Government Act 2002 and may recover any costs incurred by the Council in seizing, impounding, transporting, storing or disposing from the owner have the Goods removed at the expense of the owner, and the cost of removal shall be payable by the owner before taking receipt~~ of the Goods.

Clause 19 Removal of Vessels

Council staff recommend amendments to clause 19 to ensure that the powers of removal align with the relevant powers of seizure, disposal and cost recovery under sections 164, 167 and 168 of the Local Government Act 2002.

Staff recommendations

- Amend clause 18(1) to delete the wording “or cannot be readily located” and add the wording “seizure of the Vessel in accordance with the requirements of section 164 of the Local Government Act 2002 and”
- Amend clause 18(3) to add the wording “The Council or an Authorised Person must either return or dispose of any Vessel seized under clause 19(1) in accordance with sections 167 and 168 of the Local Government Act 2002 and may recover” to the beginning of the subclause.
- Amend clause 18(3) to replace the word “expense” with the word “costs”.
- Amend clause 18(3) to add the wording “in seizing, impounding, transporting, storing or disposing” after the word “Council”.
- Amend clause 18(3) to delete the wording “during such removal”, “may be recovered” and “in an appropriate Court”

Tracked changes to the clause as recommended to be amended

19 Removal of Vessels

(1) If the owner or Master of any Vessel does not comply with this Bylaw or any direction of the Council or an Authorised ~~Person under this Bylaw or cannot be readily be located~~, the Council or an Authorised Person may authorise the seizure of the Vessel in accordance with the requirements of section 164 of the Local Government Act 2002 and removal of the Vessel to another place of reasonable safety.

(2) ~~Neither the Council nor an~~ Authorised Person shall be responsible for any loss of or damage to such a Vessel or its associated equipment sustained for any reason during the course of or subsequent to its removal.

(3) The Council or an Authorised Person must either return or dispose of any Vessel seized under clause 19(1) in accordance with sections 167 and 168 of the Local Government Act 2002 and may recover any costs incurred by the Council in seizing, impounding, transporting, storing or disposing ~~during such removal~~ the Vessel ~~may be recovered~~ from the owner or Master ~~in an appropriate Court.~~

Clause 20 Approvals

Council staff recommend minor amendments to clause 20 correct typographical errors, delete references to charging Commercial Operators from the Approvals clause and to make it clear when verbal approvals by Authorised Persons (as opposed to written approvals) may be appropriate.

Staff recommendations

- Amend subclauses 20(1)(c) and (d) to replace the word “Policy” with the word “Schedule”.
- Amend clause 20(1)(d) to delete the wording “This may include fees for specific types of activities or operations that may be carried out by the Commercial Operator”
- Amend clause 20(8) to replace the word “Officer” with the word “Person”
- Amend clause 20(8) to add the wording “under clauses 10, 15 or 16 of” after the word “under” and to “where appropriate” after the word “Bylaw” and delete the wording “or in written form”

Tracked changes to the clause as recommended to be amended

20 Approvals

(1) Where any Approval from the Council is required by this Bylaw, a person who seeks that Approval must:

- Apply in writing to the Council for the Approval which may include using the any applicable application form for that Approval;
- Provide the information required or requested by the Council; and
- If applicable, pay the fee for that Approval as set out in the Council’s Fees and Charges Schedule.
- Pay any applicable fees for the use of Maritime Facilities as set out in the Far North District Council’s Fees and Charges Schedule. ~~This may include fees for specific types of activities or operations that may be carried out by the Commercial Operator.~~

- (2) The Council may grant or refuse to grant the requested Approval.
- (3) The Approval from the Council will be in written form and may include a licence, permit, order, letter or other written document.
- (4) The Approval may be granted on such terms and conditions as the Council considers appropriate.
- (5) The Approval may be granted for a set term after which the Approval will expire.
- (6) Council may revoke the Approval if any of the terms and conditions of the Approval are not complied with.
- (7) Council may revoke any Approval that has been granted at any time if the circumstances under which the Approval was granted have changed since the Approval was granted.
- (8) Where any Approval can be granted by an Authorised Person under clauses 10, 15 or 16 of this Bylaw, where appropriate that Approval may be given verbally ~~or in written form~~ and may be granted on such terms and conditions as the Authorised Person considers appropriate. The Authorised Person may cancel said such an Approval at their discretion at any time.

Clause 21 Offences

Council staff recommend amendments to clause 21 to cross reference the mode of enforcement of offences available under revised clause 18 by referencing the power of seizure under that clause in accordance with section 164 Local Government Act 2002.

Staff recommendations

Amend clause 21 to add a new clause cross referencing clause 18 by adding the wording “(3)Under clause 18 of this Bylaw the Council or an Authorised Person may authorise the seizure of a Vessel in accordance with the requirements of section 164 of the Local Government Act 2002”.

Tracked changes to the clause as recommended to be amended

21 Offences

- (1) Every person who fails to comply with the requirements of this Bylaw or breaches this Bylaw commits an offence under the Local Government Act 2002 and is liable to the penalties set out in that Act
- (2) The Council may apply to the District Court under section 162 of the Local Government Act 2002 for an injunction restraining a person from committing a breach of this Bylaw.

(3) Under clause 18 of this Bylaw the Council or an Authorised Person may authorise the seizure of a Vessel in accordance with the requirements of section 164 of the Local Government Act 2002.

APPENDIX 1 – LIST OF SUBMISSIONS RECEIVED

Number	Organisation
1	Individual submission
2	Individual submission
3	Individual submission
4	Individual submission
5	Individual submission
6	Individual submission
7	Individual submission
8	Individual submission
9	Individual submission
10	Individual submission
11	Taniwha Oysters
12	Individual submission
13	Te Kapotai, Ngāti Hine, Te Whare Wananga o Awanuiārangi
14	Individual submission
15	Individual submission
16	Bayscapes Charters
17	Individual submission
18	Individual submission
19	Individual submission
20	Individual submission
21	Electric Boat Co NZ Ltd.
22	Individual submission
23	Individual submission
24	Leigh Commercial Fishermen’s Association Incorporated
25	Johnson Bros Limited Marine Construction
26	Electric Boat Co NZ Ltd.
27	Individual submission
28	Individual submission
29	Residents of Opito Bay
30	Moturoa Island Limited
31	Individual submission
32	Individual submission
33	Individual submission
34	Individual submission
35	Ben Tombs Carpentry
36	Individual submission
37	Electric Boat Co NZ Ltd.
38	Leigh Commercial Fishermen’s Association Incorporated
39	Individual submission– did not attend due to illness
40	Johnson Bros Limited Marine Construction
41	Individual submission
42	Residents of Opito Bay

1-21	Online survey submissions
22-36	Written submissions
37-42	Verbal submissions