

Maritime Facilities Bylaw 2002 Proposal

1 Context and Situation

The Maritime Facilities Bylaw and the Mooring Charges Bylaw were made in Council on 02 August 2002.

As a result of a review of the two bylaws, Council determined to develop a new Maritime Facilities Bylaw, under section 145 and 146 of the Local Government Act 2002 on 07 April 2022.

2 The proposal

The Council proposes to make a new Maritimes Facilities Bylaw under section 145 and 146 of the Local Government Act 2002 to protect public health and prevent nuisance by regulating 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, and where applicable impose charges for the use of said maritime facilities.

3 Reasons for the proposal

The proposed new Maritime Facilities Bylaw:

- keeps the general intent of the previous maritime related bylaws in that it provides for protection from damage to the facilities and allows for Council to collect fees and charges.
- enables Council to restrict specified maritime facilities to recreational use protecting council's assets from damage by ensuring the maritime facility is suitable for its intended purpose based on their design, construction, and maintenance standard.
- enables users of maritime facilities to use the facilities safely, free from nuisance and offensive behaviour.

4 Analysis of the reasonably practicable options

On 22 March 2022, Council considered four options with regards to addressing the perceived problems regarding maritime facilities. The advantages and disadvantages of the options are summarised in the following table.

Options	Advantages	Disadvantages
Option One: Make a new Maritime Facilities Bylaw (recommended option) A new bylaw is developed	Bylaw will align with relevant laws and legislation. Bylaw will allow for easier enforcement of provisions.	None.

<p>which amalgamates both the Maritime Facilities Bylaw and Mooring Charges Bylaw into a single Maritime Facilities Bylaw made under the Local Government Act 2002.</p> <p>The new Maritime Facilities Bylaw should include:</p> <ul style="list-style-type: none"> - a sliding scale fees system for both commercial and recreational users - the establishment of pre-specified commercial and recreations maritime facilities (zones). <p>Further engagement is required to draft the most appropriate form of bylaw.</p>	<p>Bylaw will have improved clarity and certainty.</p> <p>Bylaw will facilitate an appropriate balance of recreational and commercial use of maritime facilities.</p> <p>Bylaw will support the ongoing maintenance and long-term improvements required for maritime facilities.</p> <p>Having one bylaw relating to maritime facilities is an efficient and effective use of Council resources and will further support clarity regarding the regulation of maritime facilities.</p>	
<p>Option Two: Continue both the Maritime Facilities Bylaw and Mooring Charges Bylaw with amendments</p> <p>Both bylaws stay in force and amendments are made to ensure the bylaws:</p> <ul style="list-style-type: none"> -are made under the Local Government Act 2002. -are clear and certain. -allow for enforcement opportunities. -have an appropriate sliding scale fees system for both commercial and recreational users. -include the establishment of pre-specified commercial and recreations maritime facilities (zones). <p>Further engagement will be required to draft the most appropriate form of bylaw.</p>	<p>Bylaws will align with relevant laws and legislation</p> <p>Bylaws will allow for easier enforcement of provisions</p> <p>Bylaws will have improved clarity and certainty</p> <p>Bylaws will facilitate an appropriate balance of recreational and commercial use of maritime facilities</p> <p>Bylaws will support the ongoing maintenance and long-term improvements required for maritime facilities.</p>	<p>Having two bylaws relating to maritime facilities is not an efficient and effective use of Council resources and may lead to public confusion regarding the regulation of maritime facilities.</p>

<p>Option Three: The Maritime Facilities Bylaw and Mooring Charges Bylaw continue without amendment</p> <p>The Bylaws stay in force with no changes</p>	<p>None.</p>	<p>The current form of both bylaws does not effectively address the perceived problem and is therefore not a viable option.</p>
<p>Option Four: Revoke both the Maritime Facilities Bylaw and Mooring Charges Bylaw and not make a new bylaw.</p>	<p>None.</p>	<p>There is no other regulatory instrument or method with which Council could otherwise manage and regulate the maritime facilities under its jurisdiction. Not having a bylaw in place would leave the maritime assets open to physical neglect and potentially inappropriate and hazardous use. For this reason, having no bylaw at all is not considered an option.</p>

Council determined that Option 1: Make a new Maritime Facilities Bylaw was the most appropriate option.

5 New Zealand Bill of Rights Act 1990 implications

Part 2 of the New Zealand Bill of Rights Act 1990 sets out twenty rights that are affirmed and protected, that may only be subject to reasonable limits that can be demonstrably justified in a free and democratic society. Section 155(2)(b) of the Local Government Act 2002 requires the Council to determine if the proposed bylaw gives rise to any implications under the New Zealand Bill of Rights Act 1990. The Council will fully assess these implications before it makes the Maritime Facilities Bylaw.

A preliminary assessment has identified that Section 18: Freedom of Movement, may be impacted by the new bylaw in that the Council may limit access to maritime facilities according to commercial or recreational use and to ensure health and safety.

The purpose of the bylaw is to impose reasonable limitations on behaviour and access to maritime facilities to enhance the safety of the community and minimise the incidence of public disturbance. The provisions in the Proposed Maritime Facilities Bylaw are justified because they only limit the rights of individuals to the extent it is reasonable to do so, in order for other people's rights and freedoms to be maintained.

Therefore, any limitations on the right to freedom of movement are likely to be justified in accordance with the New Zealand Bill of Rights Act 1990.

A full assessment of the impact of the bylaw on these rights cannot be done until the content of the bylaw is finalised.

6 How to give your views on the proposal

The Council encourages any person or organisation affected by, or having an interest in the Maritime Facilities Bylaw 2002 to present their views on the proposal to the Council by making a submission. Submissions can be made by using any of the following methods:

- online at the Council's website www.fndc.govt.nz/have-your-say
- email your submission to submissions@fndc.govt.nz
- drop-off your submission at any Council service centre or library, details of their locations and opening times are listed at www.fndc.govt.nz/contact or you can get that information by phoning the Council on 0800 920 029
- post your submission to: Strategy Development Team, Far North District Council, Private Bag 752, Kaikohe 0440
- make an oral presentation of your submission at a meeting of the Council's Strategy and Policy Committee

Please include your full name and email address or postal address in your submission if you want:

- the Council to acknowledge receipt of your submission
- to make an oral presentation – you will be contacted about when and where the meetings for this are taking place.

Consultation will take place between 12 October and 16 November 2022. The dates of oral submissions will be dependent on incoming council structure.

Privacy statement

Please be aware, any submissions that are made on the new Maritime Facilities Bylaw become part of the public consultation process. As such, all submissions, any summaries of submissions, and any documents provided with your submission, are copied and made available to the Council's governing body as well as the public. Any personal information included with a submission such as your name is treated as part of the submission and will also be released publicly. Your submission and any personal information that you supply such as your name will not be treated as confidential unless you specifically request it in your submission.

6.1 Draft Maritime Facilities Bylaw

Part 1: Preliminary provisions

1 Title

This bylaw is the Maritime Facilities Bylaw 2022.

2 Commencement

This Bylaw comes into force on XX Month 2022.

3 Application

This Bylaw applies to all maritime facilities owned, controlled or managed by the Far North District Council or Far North Holdings Limited.

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, and where applicable impose charges for the use of said maritime facilities.

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 Officer means any person authorised in writing by the Council or by the Council's Chief Executive Officer to carry out and enforce the obligations and requirements 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 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 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 is incorporated in the Far North District Council Fees and Charges Policy which is reviewed annually as part of the Council's annual plan.

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

Maritime Facility means any facility under the ownership, management or control of Far North District Council or Far North Holdings Limited which is constructed and used for the launching and landing of Vessels or equipment and includes wharves, marinas, boat ramps and any other such man-made structure.

Master means the person, not being a pilot, having command or charge of any Vessel

Mooring means 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 belonging to a Vessel who has the conduct thereof.

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

Vessel means a ship, boat, hovercraft, kayak, floating platform, pontoon or any other description of vessel or equipment used or designed to be used in navigation by any form 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 Interpretation Act 1999 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.

Part 2: Substantive provisions

6 Use of Maritime Facilities

- (1) No person shall commit a nuisance on, under or about any Maritime Facility.
- (2) No person shall engage in any activity or unsafe practice on, under or about any Maritime Facility.
- (3) No person shall intimidate, endanger or obstruct any other person in their use of any Maritime Facility.
- (4) No person shall allow any Vessel that is not using a Maritime Facility to be so near to any Maritime Facility as to obstruct the approach of other Vessels.
- (5) No person shall undertake any behaviour or activity on or near any Maritime Facility that causes damage to that Maritime Facility or any Council property located in the vicinity of that Maritime Facility.
- (6) No person shall leave on or near any Maritime Facility any Vessel, 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
- (7) No person shall fish, nor swim from, nor engage in any underwater swimming or underwater activities from or near any Maritime Facility while that Maritime Facility is being used by any Vessel or any Vessel is approaching or departing that Maritime Facility.

7 Fees for the Recreational use of Maritime Facilities

- (1) All Recreational Operators must pay the applicable Fees for the use of Maritime Facilities as set out in the Far North District Council's Fees and Charges Policy. This may include Fees for specific types of activities or operations that may be carried out by the Recreational Operator.
- (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 Council has not included Fees for the use of Maritime Facilities by Recreational Operators within the Far North District Council's Fees and Charges Policy.

8 Commercial Operators

- (1) No Commercial Operator shall use any Maritime Facility without written Approval from the Council, or Far North Holdings Limited.

9 Vessels Coming Alongside Wharves

The Master of any Vessel coming alongside any Wharf shall be responsible for the proper and safe berthing of that Vessel, and the Master and owner of the Vessel shall be responsible for any damage done to any Wharf in connection with that Vessel. The Council may repair any such damage and charge the cost of doing so against the Master or owner of the Vessel that caused the damage, such cost being recoverable by action in the appropriate Court of Law.

10 Berthing Directions

- (1) The Master of any Vessel berthing at any Maritime Facility, shall obey the instructions of the Council or any Authorised Officer
- (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 Wharf for more than 30 minutes without Approval from Council or any Authorised Officer.
- (3) Any Master required by the Council or any Authorised Officer to move any Vessel from any Maritime Facility, must do so immediately.

11 Cleaning Maritime Facilities

Before any Vessel is departs from any Maritime Facility, the Master or owner of that Vessel shall ensure that all dirt and rubbish deposited from that Vessel is cleared from the Maritime Facility.

12 Animals on Maritime Facilities

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.

13 Goods, Items and Dangerous Goods

- (1) No person shall leave any goods or items unattended on any Maritime Facility.
- (2) The owner of any goods or items that are landed, loaded or placed on any Maritime Facility are liable and responsible for those goods.
- (3) No goods may remain on any Maritime Facility for more than 2 hours.
- (4) No person shall load or unload or caused to be loaded or unloaded from any Vessel on to any Maritime Facility any explosives, kerosene, motor spirits, fuel, oil or goods of a dangerous or flammable character other than in sealed containers unless prior Approval has been obtained from Council.
- (5) Any person landing or causing to be landed from any Vessel on to any Maritime Facility any explosives, kerosene, motor spirits, fuel, oil or goods of a dangerous or flammable character shall cause the same to be removed from the Maritime Facility immediately on being landed.
- (6) 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.

14 Removal of Goods

Where any Goods remain on any Maritime Facility for more than 2 hours, or where any such Goods hinder the loading or unloading of any Vessel, are an impediment to Vessels approaching

any Maritime Facility or obstruct any Maritime Facility, the Council or any Authorised Officer may 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

15 Vehicles and Maritime Facilities

- (1) No person shall operate or move any vehicle on any Maritime Facility at a speed exceeding 10 km per hour.
- (2) No person shall leave any vehicle unattended on any Maritime Facility.
- (3) No person shall park a vehicle on any Maritime Facility other than in accordance with the Approval of Council or any Authorised Officer.

16 Closure of Maritime Facilities

The Council or any Authorised Officer may close all or part of any Maritime Facility whenever it is considered advisable to do so, and no person shall enter upon or use any Maritime Facility that is closed without the prior Approval of Council.

17 Requirement to Obey Council Signage

All persons in their use of Maritime Facilities must comply with any Council signage that has been erected in the vicinity of said Maritime Facilities.

18 Obstruction of Wharves

No person shall in any way obstruct or impede vehicle or foot traffic on any wharf.

19 Removal of Vessels

If the owner or Master of any Vessel does not comply with this Bylaw or any direction of Council or an Authorised Officer or cannot readily be located, Council or an Authorised Officer may authorise the removal of the Vessel to another place of reasonable safety. The Council nor the Authorised Officer shall be responsible for any loss of or damage to such Vessel or its equipment sustained for any reason during the course of or subsequent to its removal. Any expense incurred by the Council during such removal may be recovered from the owner or Master in an appropriate Court.

20 Wastewater Discharge

When berthing at, coming alongside or using any Maritime Facility the Master or owner of every Vessel must ensure that they have sealed all waste water discharge seacocks with the exception of bilge, refrigeration and engine cooling system discharge points and shall permit officers of the Northland Regional Council, Far North District Council or their agents to board Vessels at any time to inspect the Vessel and/or to check any discharges.

Part 3: Approvals

21 Approvals

- (1) Where any Approval from Council is required by this Bylaw, a person who seeks that Approval must:
 - a. Apply in writing to Council for the approval which may include using the applicable application form for that Approval;
 - b. Provide the information required or requested by Council; and

- c. If applicable, pay the fee for that Approval as set out in the Far North District Council Fees and Charges Policy.
 - d. Pay any applicable fees for the use of Maritime Facilities as set out in the Far North District Council's Fees and Charges Policy. This may include fees for specific types of activities or operations that may be carried out by the Commercial Operator.
- (2) Council may grant or refuse to grant the requested Approval.
- (3) The Approval from 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 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 an Approval can be granted by an Authorised Officer under this Bylaw, that Approval may be a verbal or in written form 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.

Part 4: Enforcement

22 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.

Part 5: Savings and transitional provisions

23 Bylaw does not limit any other enactment

This Bylaw does not limit or affect the application of or the requirements in or under any other enactment.

24 Applications, Approvals in force as at commencement of this bylaw

Any licence, permit, order, letter or other written Approval provided by Council in respect of a Maritime Facility that was current as at the commencement of this Bylaw shall constitute an Approval under this Bylaw.