

Statement of Proposal – Proposed amendment to the Wellington Regional Navigation and Safety Bylaws 2003

1. Introduction

The Wellington Regional Council is proposing to introduce one amendment to the Wellington Regional Navigation and Safety Bylaws 2003 to further improve the safety of people within the Lyall Bay reserved area. Section 648B of The Local Government Act 1974 provides for the Council to make a bylaw for navigation and safety in relation to waters within its region.

The Local Government Act 2002 (the Act) requires that Council follows the special consultative procedure to make any proposed bylaw or amendment to any bylaw. This Statement of Proposal has been prepared in accordance with the requirements set out in section 86 of the Act for the adoption of the special consultative procedure. It includes:

- the reason for the proposal;
- consideration of whether a bylaw is the most appropriate way to address the perceived problem;
- consideration of whether the proposed bylaw is the most appropriate form of the bylaw;
- implications under the New Zealand Bill of Rights Act 1990; and
- a draft of the proposed amendment to the Wellington Regional Navigation and Safety Bylaws 2003.

2. Reason for proposal

It is proposed that the Wellington Regional Navigation and Safety Bylaws 2003 be amended so that the Lyall Bay reserved area referred to in Part B of Schedule 3 is removed. Wellington Regional Council proposes to remove the Lyall Bay reserved area on the grounds of safety. Based on information and concerns raised by Councillors, officers and members of the public, the problem has been identified as a general concern about unsafe behaviour and potential risks within the Lyall Bay reserved area.

The desired outcome is the mitigation or reduction of unsafe behaviour in the Lyall Bay reserved area.

3. Ways to address the problem

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

- Maintain the status quo (i.e. undertake no further work on amending the bylaws); or
- Move the reserved area in Lyall Bay; or
- Public education.

3.1 Maintaining the status quo

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

3.2 Increased signage

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

3.3 Increased enforcement

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

3.4 Moving the Lyall Bay reserved area

Presently the Lyall Bay reserved area includes:

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

One option available is to move the location of the reserved area in Lyall Bay. A major aim of the reserved area at Lyall Bay is to provide surf conditions for jet skiers. Moving the reserved area to another location on the beach with surf conditions would necessarily encroach on existing users such as swimmers and surfers. This would cause significant disruption to these beach users.

3.5 Public education

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

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

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

Maintaining the status quo is not a satisfactory option, increasing the signage and enforcement are costly and not guaranteed to remove the safety concerns that have developed. There is nowhere to move the reserved area to at Lyall Bay which would not encroach on existing users. Public education is limited by the nature of the users.

4. Most appropriate form of bylaw

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

5. New Zealand Bill of Rights Act 1990

In addition to the considerations undertaken above, the proposed bylaw must meet the legal standards of reasonableness, and cannot be inconsistent with the freedoms protected and affirmed in the New Zealand Bill of Rights Act 1990. We do not believe that there are any implications under the New Zealand Bill of Rights Act 1990.

(At copy of the Proposed amendment to the Navigational and Safety Bylaws is attached as Attachment 1A.)