

Statement of Proposal

Introduction

The Marlborough District Council is proposing to introduce a mooring management bylaw that ensures that moorings in mooring management areas are allocated in a fair and safe manner and thereby avoid hazards to navigation safety.

Section 684B of the Local Government Act 1974 provides for Council to make a bylaw to regulate the placing and maintenance of moorings and maritime facilities.

The Local Government Act 2002 (the Act) requires that Council follows the special consultative procedure to make the proposed 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 reasons for the proposal
- consideration of whether a bylaw is the most appropriate way to address the perceived problem
- whether the proposed bylaw is the most appropriate form of bylaw
- implications under the New Zealand Bill of Rights Act 1990
- a draft of the proposed bylaw.

Reason for proposal

Council has received a private plan change to the Marlborough Sounds Resource Management Plan from Port Marlborough New Zealand Limited (PMNZ) addressing issues of boat accommodation in Waikawa Bay. The private plan change promotes the establishment of a new mooring management area in the water space at Waikawa Bay.

Problem definition

Council currently has problems in managing areas where large numbers of moorings are permitted (the resource consent application referred to above highlight this issue) and given the possibility of mooring management areas being created, Council anticipates a problem in ensuring that moorings in such areas are allocated in a fair and safe manner and thereby avoiding hazards to navigation safety.

Desired outcome

The desired outcome is the safe and efficient management of the water space at Waikawa Bay by implementing a long-term, integrated planning solution to resolve conflicts in mooring allocation within the waters of Waikawa Bay by balancing the needs and aspirations of mooring owners and applicants, aspirant marina berth holders, and the commercial marina operator (PMNZ) and other commercial interests with the needs and aspirations of tangata whenua, adjacent property owners, non-boating users of the area, other stakeholders and environmental considerations.

Identification of practicable strategies

As part of its decision making process Council is required by the Act to identify and assess all reasonably practicable strategies that could provide the desired solution. The section 32 report accompanying the private plan change request also covers this issue. One of the strategies is simply to do nothing. It is considered that this is not an option as there are numerous users of the bay and without a system for controlling who may moor and where, there will be environmental and navigation safety issues.

Without a bylaw, Council would have to develop an alternative method of managing the location and use of swing moorings within the mooring management area. Such an alternative method may not be as effective as the licence system promoted by the bylaw, which is a method easily applicable to any future

mooring management areas, and enables the management of a large number of moorings in a holistic way. Any alternative would in all likelihood be resource consent reliant which has the potential to be piecemeal and inefficient as each applicant would be required to justify the use of the water space and the effects on the environment, rather than as one process through the plan change.

In order to assess the ability of the strategies to address the defined problem staff have followed the legislative requirements in relation to decision making as set out in section 77 of the Local Government Act 2002.

There are procedural costs associated with the preparation and implementation of the bylaw, and the initial allocation of licenses under the new bylaw would require significant resourcing. A limited and short-term benefit of not enacting the bylaw would be to avoid these costs, however much of this work is already completed by a consultant under contract for Council. It should be noted that the alternative method (consent) discussed above would also involve considerable cost and resources.

Any alternative method for managing the mooring management area would require some type of cost to operate however, so this may not result in a benefit overall.

The bylaw would result in a simple, straightforward mechanism for the allocation and management of swing moorings. The bylaw is more flexible than the resource consenting process and provides increased certainty to existing and would-be mooring holders. If the bylaw is not enacted, these benefits will not be available and so would be an opportunity cost of this option.

Having the bylaw in place would provide considerable efficiencies in the administration and monitoring of swing moorings, providing a simple and certain process for licensees and the moorings manager. Such systems are operative in other regional jurisdictions and are proven to be functional and efficient. They allow the comprehensive management of a large number of swing moorings, and the same system can be applied over numerous locations should that be appropriate. If a bylaw was not in place an alternative method would be required, such as individual resource consents which may not be as efficient.

If the bylaw did not proceed, Council would need to establish an alternative method of managing swing moorings within the zone.

A bylaw is considered to be an efficient, appropriate and robust option for the management of some aspects of swing moorings. However, if the bylaw is not enacted space allocation can still be managed, but this is more likely to need to be consent based which is more cumbersome.

Most appropriate form of bylaw

In drafting the bylaw, the council must determine whether the proposed bylaw is the most appropriate form of bylaw. Council believes it has developed the most appropriate form of bylaw. In drafting the bylaw Council has considered the following issues:

Significance

Under the Local Government Act 2002 Council must consider the significance of an issue, decision or matter in accordance with Council's significance policy. The significance of an issue helps determine the extent of compliance with the decision-making requirements.

Advice received is that this particular decision (that a bylaw is the most appropriate method of dealing with the problem identified) is unlikely to be at the high end of the significance spectrum. Staff analysis of this issue also supports this conclusion and consequently staff have determined that this decision is not significant.

The views and preferences of the public

Council is bound to consider the views and preferences of persons likely to be effected by, or to have an interest in the proposed bylaw. The private plan change application is the culmination of comprehensive planning and research undertaken by PMNZ, with much of this planning and research involving consultation with a wide range of stakeholders.

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. Legal advice and staff analysis considers that the proposed bylaw does interfere with some freedoms (ability to moor where a person wants to or move through water where a person wants to because other boats are moored there) but on balance the interference is thought to be reasonable because it will assist with the overall management of the bay in a way that promotes safety for boat owners and other water users.

Explanation of bylaw provisions

Definitions

The bylaw contains a number of definitions. These definitions have been included to ensure ease and clarity of understanding relating to the conditions set out in the bylaw.

Fines for breach of bylaw

A fine is the only available penalty option for breach of bylaw under section 239 of the Act. The court has a general discretion to impose a fine up to the maximum amount of up to \$20,000.

Public notices

Council must publicly notify the adoption of this bylaw under section 157 of the Act.

DRAFT MOORING MANAGEMENT BYLAW

MARLBOROUGH DISTRICT COUNCIL

MOORING MANAGEMENT BYLAW 2010

The Marlborough District Council hereby makes by resolution the following Marlborough District Council Mooring Management Bylaw 2010 pursuant to the powers contained in Section 684B of the Local Government Act 1974, and any other Act or authority in any way enabling the Council in that behalf

1.0 **Title & Commencement**

- 1.1 This Bylaw is the Marlborough District Council Mooring Management Bylaw 2010.
- 1.2 This Bylaw shall come into force on the same day as any Plan Change in respect of the Marlborough Sounds Resource Management Plan which provides for Moorings Management Areas becomes operative in terms of the Resource Management Act 1991.
- 1.3 It is an offence not to comply with the provisions of this Bylaw.

2.0 **Areas Within Which this Bylaw Applies**

- 2.1 This Bylaw applies to all areas which in terms of the Marlborough Sounds Resource Management Plan have been zoned Moorings Management Areas.

3.0 **Definition of Terms**

- 3.1 In this Bylaw, unless the context otherwise requires:

Management Plan means any management plan prepared and adopted by the Moorings Manager for application to Moorings Management Areas. Specific Management Plans may be

adopted for specific Moorings Management Areas.

Moor means the securing of any vessel by attachment to a rope chain or other connective device which in turn is fastened to a weight or screw on the seabed but the temporary securing of a vessel utilising an anchor is not included.

Moorings means:

- (a) Any weight or article placed in or on the foreshore or seabed for the purpose of securing a vessel; and
- (b) Includes any wire, rope, chain, buoy or other device attached or connected to the weight; but
- (c) Does not include an anchor that is normally removed with the vessel when it leaves the site or anchorage.

Moorings Management Area or *Moorings Management Areas* means such area or areas as are zoned within the Marlborough Sounds Resource Management Plan as a *Moorings Management Area* in terms of such Plan.

Moorings Manager means the person appointed by Marlborough District Council to exercise authority under this Bylaw and all relevant associated legislation.

Owner means the person who is for the time being responsible for the management of the vessel.

Rules means Rules made by the Moorings Manager pursuant to this Bylaw.

Vessel includes any ship, recreational craft whether driven by power, sail or otherwise and any floating structure.

4.0 **Placement of Moorings**

- 4.1 No person may place a mooring in any Moorings Management Area unless such person has been issued with a licence by the Moorings Manager enabling the placement of such mooring.

5.0 **Maintenance of Moorings**

- 5.1 Every person who is the holder of a licence allowing the placement of a mooring in a Moorings Management Area shall at all times:

- (a) Meet all of the requirements for maintenance, supervision and replacement of such mooring as may be contained in the licence;
- (b) Meet and comply with all of the requirements of any Management Plan or Rules; and
- (c) Comply with all other reasonable directions issued by the Moorings Manager for the maintenance, supervision and replacement of such mooring on the basis that such directions by the Moorings Manager shall be in writing unless the exigencies of the situation require an oral notice to be given.

6.0 **Moorings of Vessels**

6.1 No person may moor or permit any vessel to be moored in any Moorings Management Area unless such person has been issued with a licence by the Moorings Manager enabling the mooring of such vessel in such Area.

6.2 Every person who is the holder of a licence allowing a vessel to be moored in a Moorings Management Area shall at all times:

- (a) Meet all of the requirements for mooring, vessel placement, vessel safety and otherwise as may be contained in the licence;
- (b) Meet and comply with all of the requirements of any Management Plan or Rules; and
- (c) Comply with all other reasonable directions issued by the Moorings Manager relating to the mooring of such vessel on the basis that such directions by the Moorings Manager shall be in writing unless the exigencies of the situation require an oral notice to be given.

7.0 **Terms of Mooring Licence**

7.1 A mooring licence is required for each component being:

- (a) The placement of the mooring;
- (b) The mooring of a vessel.

7.2 The conditions of any mooring licence issued by the Moorings Manager may include but are not limited to:

- (a) The design and specifications of the mooring;

- (b) The precise location of the mooring;
- (c) The type of anchoring device;
- (d) The type of mooring structure which is attached to the anchoring device;
- (e) The type of buoy or float;
- (f) The markings or colours required on any part or parts of the mooring structure;
- (g) The size and type of any vessel which may be attached to the mooring;
- (h) The manner in which any vessel shall be attached to the mooring;
- (i) That the licence holder shall comply with the terms of any Rules or Management Plan.

7.3 The Moorings Manager shall not grant any licence for a mooring unless satisfied that:

- (a) There is adequate space in the Moorings Management Area for the proposed mooring;
and
- (b) The proposed mooring is of a design and specifications and of a type as to make economical use of water space while maintaining safety.

7.4 Every mooring licence shall include the following terms and conditions:

- (a) A term that the licence shall end on the 30th day of June next following the date on which the licence was issued but on the basis that unless the Moorings Manager determines otherwise, the licence shall be renewed for a further term of one year commencing on the 1st day of July next following and shall thereafter continue on a rolling term basis unless and until terminated by the Moorings Manager;
- (b) A term that the holder of the licence shall pay all reasonable fees as shall be determined by Marlborough District Council in terms of the Local Government Act 2002 Part 6 Subpart 3. Such fees shall not be unfairly discriminatory against any particular licensee and shall be of uniform application according to reasonable classifications;
- (c) A term that neither Marlborough District Council nor the Moorings Manager nor any of Council's employees or agents shall be responsible for any damage or loss that may arise to any vessel or property associated with any vessel where that vessel is within a

Moorings Management Area including loss or damage that may arise out of negligence;

- (d) An acknowledgement and acceptance by the licensee that the whole of the mooring swing circle shall not be exclusive to the licensee and that there will be some overlap of the swing circle by another or other swing circles adjoining.

Quantification of Reasonable Fees

7.5 The reasonable fees which Marlborough District Council shall be entitled to recover shall be such as to allow a fair and proper recovery of all costs incurred or likely to be incurred by Council in relation to the particular Moorings Management Area and shall include:

- (a) A fair allowance for overheads including overheads associated with staff, contractors and others required to be engaged by Council;
- (b) A fair allowance for insurances;
- (c) A fair allowance for administration.

8.0 Rules and Management Plan

- 8.1 (a) The Moorings Manager may make such Rules or may adopt such Management Plan as the Moorings Manager shall consider fair, reasonable, necessary or appropriate for the management of the Moorings Management Area or for such other reasonable purposes as may be associated with the Moorings Management Area;
- (b) Such Rules or Management Plan shall when made or varied be posted to each Licensee at that Licensee's last known address and shall be deemed to have been received by such Licensee.

9.0 Administrative Matters

- 9.1 (a) The holder of any mooring licence shall be responsible for compliance with this Bylaw in respect of any mooring or vessel to which the Licence relates and in the event of any non compliance with the Bylaw such Licensee shall have committed an offence notwithstanding the fact that some other person or persons may have also committed such an offence.