

Navigation Safety Bylaw Hearing Panel – Deliberations Report

Topic 1 – Clutha River speed uplifting (Clause 35.1 / Schedule 2 (Table 1))

Proposal

- 1 The proposed bylaw:
 - a. Extends the speed uplifting on the Clutha River to the full stretch of water between Lake Wanaka to the Albert Town Bridge (**Upper Clutha**) for specified daytime hours, being 10 am to 4pm in the winter and 10am to 6pm in the summer.
 - b. Removes the current time restrictions on the uplifting for the stretch of water from the Albert Town Bridge to the Red Bridge (**Lower Clutha**), so that the uplifting would apply 24/7 (currently, it is for specified daytime hours).

Submissions received

- 2 285 written submissions were identified by Council officers as addressing the proposed changes to Clutha River uplifting. Of these, approximately 96% were identified as being opposed to the changes. The focal point of submissions was the proposed uplifting for the Upper Clutha. Approximately 7 submissions were identified as specifically addressing the proposed change to the uplifting for the Lower Clutha.
- 3 Around 80% of all oral submitters addressed their submission to the proposed changes to the speed uplifting in the Upper Clutha (26 out of 33). Two of the oral submitters on this topic supported the proposed changes, and 24 oral submitters were opposed.

Matters raised by submitters

Upper Clutha

- 4 The majority of the submitters opposed to the changes were concerned that the uplifting would endanger passive recreational users in the area in the Upper Clutha. Submitters noted that this area of the river contained popular spots for passive recreational activity by families and children, including swimming, floating, kayaking, paddle boarding and fishing. The proximity of Albert Town, the camping ground and fishing spots (including Deans Bank) were pointed to as reasons for this.
- 5 Some submitters noted that the use of the river for passive recreation was common during the specified daytime hours of the proposed uplifting, including during the winter. Submitters expressed concern about the risk of collision, especially with jet skis and jet boats. It was submitted that population growth would exacerbate these safety concerns.
- 6 A number of submitters opposed to the changes also said that the uplifting posed a risk to navigation safety generally. A few submitters noted that hidden tree trunks and rocks were a hazard in this area, and that the uplifting would encourage jet boaters to navigate the rapids during low water levels. Tragic incidents in other areas involving loss of life where speed was a factor were also referred to.

- 7 In addition to navigation safety concerns, submitters opposed to the changes raised the following matters:
- a. Concerns that fast boat traffic would disrupt the enjoyment or amenity of the river for other users through associated noise, wash, pollution and visual disturbance.
 - b. The Wildlife Society of the New Zealand Veterinary Association raised concerns about the impact of powered vessels in the area on the 9 species of native birds, including 2 threatened/vulnerable species.
 - c. That the current speed limit was enforceable and that concerns around enforceability were not a valid reason to extend the uplifting.
 - d. The uplifting was inconsistent with the proposed and operative versions of the Queenstown Lakes District Plan. In particular, the provisions in Part 4 of the operative District Plan (**ODP**) were referred to, including: policy 4.6.3.10, implementation method 4.6.3(i)(e), and the explanation and principle reasons for adoption. Jet Boat New Zealand disputed this claim and pointed out that the rules in the ODP and proposed District Plan (**PDP**) do not impose any restrictions on the Clutha River other than a requirement that there be no more than 6 jet boat races a year.
 - e. Preferences of a small number of seasonal jet boat users should not be prioritised over the preferences of the vast majority of users, who are based locally and use the area more frequently. Submitters also proposed that further engagement with the public around a longer term plan for managing this area was needed.
 - f. That Wanaka should differentiate itself from Queenstown by catering for passive tourists, such as walkers, bikers, fisherman, instead of adrenaline tourism.
- 8 Submitters in favour of the uplifting suggested that the uplifting upstream it was working appropriately, and boats could safely navigate this stretch of river while accommodating other users. It was further submitted that if boats could pass through this section quicker it would reduce disruption to other uses (including fishing) and lower speeds produce bigger wakes. Jet Boating New Zealand suggested that the Albert Town Swimming Area be excluded from the uplifting.
- 9 Some submitters, both in favour and against the change, expressed confusion with how the rules are expressed. In particular, some submitters were apparently confused that Part 5: Rule 35.1 creates a 5 knot speed limit from Lake Wanaka to Albert Town Bridge, which is reflected in Maps 8 and 9. This is subject to the speed uplifting located in a separate section and not referred to in the Maps.

Lower Clutha

- 10 Of the submitters that specifically addressed the proposed change to the uplifting in the Lower Clutha, some submitters sought the removal of the uplifting over this stretch of water or a ban on powered vessels. Other submitters were simply opposed to the removal of the current time restrictions or proposed that the change

be placed on hold. A few submitters noted that the Lower Clutha was more appropriate for fast boat traffic because it was used less for passive recreation.

Changes proposed by submitters

11 Some of the submitters opposed to the changes made the following suggestions:

- a. The status quo be retained.
- b. The uplifting be removed from the whole river (i.e. from Lake Wanaka to the Red Bridge).
- c. All powered vessels be prohibited from the area between Lake Wanaka and Albert Town Centre, or from the area between Lake Wanaka to the Red Bridge
- d. Any speed uplifting should exclude specific areas which are designated for passive water based activities (eg. Albert Town Swimming Area).
- e. Otago Fish and Game asked that the removal of time restrictions on the uplifting between Albert Town Centre and Red Bridge be placed on hold until the effect of current and potential surface water traffic can be assessed.

Hearing Panel deliberations

12 The panel was appreciative of the time and effort put in by a range of submitters to provide detailed written and oral submissions on this topic. The submissions were carefully considered by the panel. The panel noted in particular the significant community concern that the proposed uplifting in the Upper Clutha would elevate navigation safety risks if adopted. The panel noted that it is not able to take into account issues of amenity and wildlife concerns in making a determination.

13 The panel has had regard to the various navigation safety concerns outlined by submitters including:

- a. the heavy and increasing popularity of the Upper Clutha by passive users of all ages (eg. floaters, swimmers) and non-powered vessels;
- b. experiences of near misses of passive users and non-powered vessels with powered vessels; and
- c. the potential for a collision between a passive user of the Upper Clutha and a powered vessel if the speed limit was uplifted in light of the above.

14 The panel acknowledges the overwhelming opposition of members of the community to proposed speed uplifting changes in the Upper Clutha, and has decided to decline to support the proposed speed uplifting in the Upper Clutha at this time.

15 In relation to the proposed speed uplifting for the Lower Clutha, the panel considers that uplifting the 5 knot speed limit 24/7 will not significantly increase the navigation safety risk profile in this area. The level of usage by passive users is significantly less compared with the Upper Clutha. Accordingly, the panel supports the proposed uplifting for the Lower Clutha.

- 16 Many submitters went a step further and proposed a total prohibition on powered vessels in the Upper Clutha to reduce the risk of collisions with passive users from powered vessels entering this area. The panel considered that this proposal was worth evaluating. Council officers advised the panel that a prohibition on powered vessels in the Upper Clutha would involve a significant change to the proposed bylaw as notified, which would require further public consultation.
- 17 Council officers recommended retaining the current rules applicable to the Clutha River under the current bylaw, until further consultation can occur regarding options for regulating powered vessels in this area. The current bylaw provides for a 5 knot limit between Lake Wanaka outlet and the 5 knot buoy, and a timed speed uplifting between the 5 knot buoy and the Red Bridge.

Topic 2 - Rules relating to specific locations (Part 5, excluding clause 35.1)

- 18 The submissions relating to matters under Part 5 of the proposed bylaw, excluding the Clutha River speed uplifting (clause 35.1), are addressed below.

Proposal

- 19 The proposed bylaw proposes to largely retain existing rules concerning specific waterways in the District. The rules to be retained include an existing prohibition (clause 36.4) on powered vessels entering the section of the Kawarau River above the Arrow River confluence (**restricted area**). The rule has been in place for several decades, and was part of the current bylaw, and the former Navigation Safety Bylaw 2009.

Submissions received

- 20 There were five submissions from organisations addressing specific rules in Part 5, excluding clause 35.1 (refer Topic 1). Three submitters were identified as supporting the proposed bylaw, and two submitters as opposing it.

Matters raised by submitters

- 21 Kawarau Jet Services Holdings Ltd (**KJET**) opposes retaining the restricted area rule on grounds that it prevents KJET from carrying out a commercial jet boat operation for public ferry services and adventure tourism in that part of the Kawarau River. KJET submit that the rule is unlawful, unreasonable and unfair and have provided detailed submissions outlining these grounds. KJET argues that there is insufficient evidence suggesting that powered vessels cannot be managed safely in this area, the bylaw is being improperly used to address amenity reasons, and is inconsistent with the Council District Plan. KJET has also drawn the panel's attention to its previous engagement with Council under the former Navigation Safety Bylaw 2009, and the current bylaw, and its concerns regarding the process for the development of these bylaws.
- 22 The owner of KJET, Shaun Kelly, also presented to the panel regarding his experience taking trips into the restricted area under temporary exemptions. Mr Kelly highlighted that new boats are more powerful and heavier, and can negotiate the rapids comfortably. It was submitted that the gradient of the river had also changed significantly since a 1999 flood. Mr Kelly provided the panel with data regarding other vessels use of the restricted area in early 2015 that KJET gathered

using CCTV footage. He indicated that usage of the restricted area was low, and could be managed to allow powered vessels to safely coexist with other users of the area. Mr Kelly also described the level of training given to KJET staff who operate powered vessels, and suggested they could receive additional training to allow them to operate in the restricted area.

- 23 KJET also supplied a letter from a planner in support of its submission, which stated that ODP and PDP provisions applicable to the area do not prohibit commercial powered vessels entering the restricted area. The planner concludes that both plans allow for an application for resource consent to be lodged for the establishment of a commercial powered vessel operation in the restricted area, and considered on its merits.
- 24 KJET support the use of a resource consent process for the determination of any application to access the restricted area, rather than a bylaw process. However, KJET argue that if the current rule is to be retained that the 14 day time limit applicable to temporary exemptions (clause 54.6(b)) should be removed, or the exemption clause be amended to facilitate the processing of an application for a permanent commercial activity.
- 25 Two white-water rafting organisations (Whitewater NZ Inc and Central Otago Whitewater) provided submissions in support of retaining the restricted area rule on grounds that permitting powered vessels into the area will cause a real safety hazard. It was submitted that the restricted area is currently used by a variety of non-powered vessels such as kayaks, canoes, rafters, river bugs, river boards, and stand up paddleboards. The submitters argue that removing the prohibition would place non-powered users at significant risk of colliding with commercial and private jet boat users.
- 26 An oral submission was presented by Whitewater NZ Inc on behalf of both organisations. It was submitted that non-powered vessels and powered vessels do not mix well, and there are currently many rivers in the District available to powered vessels. The submitter also referred to a near miss he had with a jet boat in Skipper's Canyon, and how frightening it was.
- 27 Further, Whitewater NZ Inc argues that non-powered vessel users would be at risk of losing access to the area to mitigate safety issues created by the introduction of commercial jet boating operations to the restricted area. Modifications are recommended by Whitewater NZ Inc to the exemption provision in the proposed bylaw to restrict the granting of exemptions to exceptional circumstances. The proposed bylaw should notify exemptions to affected parties to avoid risks posed to users not aware of sudden changes in navigation safety requirements. Whitewater NZ Inc argue that if permanent exemptions can be issued this would undermine the point of having the restricted area in the first place.
- 28 Whitewater NZ Inc submitted that there was not a significant change to the restricted area in 1999 as argued by KJET. It is fundamentally still the same, a high gradient with boils. There are also visibility issues for a jet boat going back upstream because of sunlight. KJET boats are huge and it would be difficult to see smaller, non-powered users.

- 29 Whitewater NZ Inc also propose that non-powered vessels are excluded from the river rules in clause 32, due to hazardous features that may exist on the right side of a river which pose risks to non-powered vessels.
- 30 Jet Boating NZ submit that the dates specified in Schedule 2 for the speed uplifting for the Rees River are not correct. They also propose adding the words “daylight saving time” after the speed uplifting for the Clutha River. The suggest adding the words “each year” to the Hunter River speed uplifting. The submitter also recommends changes to maps in Schedule 2 to improve consistency of colour coding.
- 31 The panel also heard a submission opposing the current uplifting on the Hunter River on grounds that it has adversely impacted fly fishing in this area. The submitter sought better enforcement of 5 knot limits on smaller rivers, and better signage to inform powered vessel operators.

Hearing Panel deliberations

Restricted area rule (Clause 36.4)

- 32 Careful consideration was given by the panel to all the helpful submissions and evidence from KJET, Whitewater NZ Inc and Central Otago Rafting in relation to the restricted area rule and the exemption clause in the proposed bylaw.
- 33 During deliberations, the panel referred again to the power to make a navigation safety bylaw under s33M of the Maritime Transport Act 1994 (**MTA**), which are also outlined in the purpose clause of the proposed bylaw (clause 3). The purposes of the proposed bylaw include the power to regulate and control the use or management of ships, and to prevent nuisances arising from the use of vessels, actions of persons and things on, in, or near the water. The MTA requires that these controls can only be imposed for the purposes of maritime safety. There are restrictions on the Council adopting a navigation safety bylaw regulating certain matters outlined in s33M(2) of the MTA, including if it is inconsistent with maritime rules or the Resource Management Act 1991.
- 34 It is recognised that non-powered vessels such as whitewater rafts regularly use the restricted area, and the Council has to factor in the risk profile of the area for multiple users if powered vessels were to be introduced. The panel considers that it is not just a question of the safety of occupants of powered vessels, but all users of the restricted area.
- 35 Council staff confirmed to the panel that the inclusion of clause 36.4 in the proposed bylaw had been based on advice of the Harbourmaster that the rule is necessary to ensure navigation safety in the area. Prior to consultation on the proposed bylaw, the Council had determined under s155 of the Local Government Act 2002 that a navigation safety bylaw was the most appropriate solution for regulating local navigation safety risks in specific locations in the District, including on the Kawarau River. A determination was also made at the time that the proposed bylaw was the most appropriate form of bylaw, and was not inconsistent with the NZ Bill of Rights Act 1990.
- 36 Policy 4.6.1 of the ODP states that the restricted area is “too rough for commercial jetboating but is suitable for rafting, surfing and kayaking”. The objectives and

policies in 4.6.3 of the Operative District Plan note that the different natural characteristics of the parts of the Kawarau River above and below the Arrow River confluence prevent much of the conflict between different activities on the river. The provision states that the section below the Arrow River confluence is particularly suitable for rafting and kayaking, as one of the few remaining major unmodified whitewater rivers in NZ. The provision also notes that the Council seeks to support the retention of this characteristic and the activities and values which benefit from it. In light of these provisions, it is considered that maintaining the long standing restriction in this area would not be inconsistent with the Council's ODP as suggested by KJET.

37 The panel sought input from the Harbourmaster regarding the specific navigation safety risks he is concerned about in the restricted area. A summary of the key risks identified by the Harbourmaster in relation to the part of the river between the Arrow River Confluence and Smith Falls include:

- a. There is poor visibility. It is very difficult for vessels at the top of the rapids from seeing vessels at the bottom of the rapids, which poses an unacceptable risk if powered vessels are travelling at speed through the area.
- b. There is a risk of a powered vessel flipping if the vessel became side on, is travelling too slow, or too fast.
- c. The river narrows to approximately 30-40 metres wide in parts, there is poor line of sight, and a lack of passing points for vessels to use if they are both using the restricted area.
- d. Due to the risks outlined above there is likely to be a risk of collision if a powered and non-powered vessels both travel through the restricted area at the same time.

38 The panel recognises the navigation safety concerns raised by the Harbourmaster, Whitewater NZ and Central Otago Rafting regarding KJET's proposal. The panel is satisfied that clause 36.4 is for the purposes of navigation safety, and within the scope of the Council's bylaw making powers in s33M of the MTA.

39 The panel declined to recommend removing the prohibition or any liberalisation of the exemption clause as proposed by KJET. The panel is concerned that navigation safety risks would be increased if the current rule was liberalised to allow powered vessels access, or if permanent exemptions were to be issued by Council.

Maps, other speed upliftings

40 The panel has recommended the development of updated maps to improve consistency of colour coding. The panel agrees that the Rees River speed uplifting should be updated to remove the error, so that it states 30 October to 1 May.

41 The changes proposed to include "every year" and "daylight savings" are not necessary, as it is clear that the uplifting applies every year, and daylight savings time takes effect automatically. The panel does not support removing the speed uplifting on the Hunter River to due to concerns

regarding fly fishing. The panel also rejects the proposal to exempt non-powered vessels from the river rules, as it is appropriate that all vessels apply these rules.

Topic 3 – Specific water based activities (Part 4)

Proposal

- 42 Part 4 sets out the rules applicable to specific water based activities. The proposed bylaw includes clauses to clarify that parasailing, whitewater boarding, and jet boating operators are to comply with applicable maritime rules and guidelines set by Maritime New Zealand. New rules dealing with the carriage of dangerous goods and carrying out of hot works are also proposed.

Submissions received

- 43 Four submitters (including two organisations) have commented on Part 4 of the proposed bylaw: one is supportive, two are opposed, and another does not specify their position.

Matters raised by submitters

- 44 One submitter supports the simplification of rules in the proposed bylaw, but argues that the new rules relating to hot works / dangerous goods (clause 29-30) are duplicative as they are covered in NZ commercial safety management systems. Real Journeys Ltd, opposes the dangerous goods clause (clause 30) noting that they have carried small quantities of dangerous goods for decades without incident. Real Journeys Ltd point out that the carriage of dangerous goods is already covered in its Maritime Transport Operator Plan.
- 45 Million Dollar Cruise argues that swimming should be prohibited in the heart of Queenstown Bay to prevent collisions with vessels (clause 28). The submitter notes that no swimming signs were previously in place but removed in 1983 by the Town Secretary. The submitter also proposes to ban kite surfing at the entrance to Queenstown Bay on grounds that it is a safety concern.
- 46 Another submitter pointed out that white-water boarding is not regulated by Maritime NZ or covered by Maritime Rule 81, and does not seem to be addressed in the proposed bylaw.

Hearing Panel deliberations

- 47 The panel agrees in part that a requirement to give 24 hours notice to the Harbourmaster may be onerous and unnecessary if adequate records are maintained, particularly by commercial operators. Provided vessel operators meet maritime rules which require they maintain full records of hazard classifications, quantity and stowage position, that would satisfactorily address the navigation safety risk. To ensure compliance the panel considered records should be available for inspection.
- 48 The installation of a “no swimming” sign is an operational matter, and does not require an amendment to the proposed bylaw. However, the panel considered that the issue of when a “no swimming” sign has effect should be clarified in the proposed bylaw.

- 49 The term whitewater boarding in the proposed bylaw should be amended to state whitewater rafting, for consistency with Maritime Rule 81. The panel considered that a separate clause may be required for river bugs and like vessels, which are currently not regulated in Part 4. The panel considered this could be a significant change that would require public consultation.
- 50 In summary, the panel recommends the following changes to the proposed bylaw:
- a. clause 28 is amended to clarify that signs must be approved by the Harbourmaster or Council officer;
 - b. the notification requirement in clause 30 is removed and replaced by a requirement that vessels carrying dangerous goods maintain adequate records, and make them available for the Harbourmaster or Council officer on request.
 - c. references in the proposed bylaw to “whitewater board” are changed to “whitewater raft”.

Topic 4 - Structures and moorings (Part 9)

Proposal

- 51 It is proposed that commercial vessels obtain Council permission to load or unload vessels using a structure under Council ownership or control. The occupation and use of Council maritime structures will require Council permission in certain circumstances. The current moorings permit requirements are to be retained with guidance to be issued by Council as to matters of technical detail, and processing requirements.

Submissions received

- 52 Three submitters (including two organisations) have commented on Part 9 of the proposed bylaw: two are opposed, and another does not specify their position.

Matters raised by submitters

- 53 One submitter argues that boat ramp charges should not apply to persons fishing, walking, or having picnics on the launch ramp. The submitter supports the use of a parking ticket dispenser to recover fees for using the launch ramp to apply for 48 hours.
- 54 Million Dollar Cruise proposes that chain moorings are used instead of floating moorings due to the proliferation of moorings causing jetties to become inaccessible and trapping boats at night. Queenstown Water Taxis Ltd also support requiring chain moorings, and a requirement that the mooring be positioned 50m from a jetty.

Hearing Panel deliberations

- 55 Fees applicable to the use of launch ramps will be imposed under the Local Government Act 2002 rather than through the proposed bylaw.

- 56 The panel considered that any technical requirements applicable to moorings could be addressed in guidelines issued under the proposed bylaw. No amendment to the proposed bylaw is needed.

Topic 5 - Carriage and wearing of lifejackets (Part 3)

Proposal

- 57 Part 3 of the proposed bylaw largely retains existing requirements for carriage and wearing of life jackets but specifies that life jacket rules only apply to recreational vessels (other than when a person is being towed). Persons using surfboards are to be exempt from wearing a lifejacket provided they wear a full wetsuit.

Submissions received

- 58 Four submitters have commented on Part 3: one is opposed, and three have not specified a position.

Matters raised by submitters

- 59 Three submitters oppose the use of the term “lifejacket” in place of “personal flotation device”, on grounds that the latter term is used in the maritime rules.
- 60 NZ Stand up paddle boarding (**NZ SUP**) oppose allowing an exemption from wearing a lifejacket for stand up paddle boarders who wear a full wet suit. NZ SUP argue that paddle boarders should also be required to use a leash appropriate for the conditions, particularly if the life jacket exemption is adopted. The submitter also proposes that the term “wetsuit” is defined.
- 61 Jet Boating New Zealand propose the deletion of clause 19.4 dealing with recreational jet boats on grounds that it is unnecessary to single out jet boats.
- 62 Otago Regional Council (**ORC**) are developing a navigation safety bylaw applicable to all waters in the region other than what is covered by the proposed bylaw. They are seeking consistency with the proposed bylaw. One issue the ORC is investigating is whether there is an exception from wearing lifejackets on those inside the cabin, such as children.

Hearing panel deliberations

- 63 The panel considered that the term lifejacket is more widely recognised than personal flotation device. This is particularly relevant in a District that has a large volume of tourists for whom English may be a second language. The panel recommends retaining the current term, but including an explanatory note to specify that it has the same meaning as personal flotation device for the purposes of the proposed bylaw.
- 64 As stand up paddleboards are similar to a surfboard, they are subject to an exemption from wearing a lifejacket under the maritime rules, provided the user wears a full wetsuit. The proposed bylaw should be consistent with maritime rules where possible, and therefore the proposed amendment is not accepted. However, the panel have recommended that NZSUP’s proposal that paddleboarders be required to wear a leg leash, is included in further consultation with the public on possible amendments to the proposed bylaw.

- 65 The panel considers that it is important that jet boat operators ensure lifejackets are worn even if the vessel is over 6m long, due to the speed and conditions these vessels encounter. The proposal to remove clause 19.4 is rejected. The panel also does not support ORC's proposal that exemptions from wearing lifejackets for children inside from wearing lifejackets as this would result in inconsistency with maritime rules.

Topic 6 – Commercial vessels (Part 8)

Proposal

- 66 Commercial vessels will only be required to be licensed if they are not subject to a licensing requirement under applicable maritime rules. Detailed requirements for the licensing process will be set out in a guidance document to be adopted by Council. The Harbourmaster will have the power to inspect commercial vessel licences for the purposes of determining compliance with this clause.

Submissions received

- 67 Three submissions were received in relation to Part 8 by organisations: two submitters were generally opposed to the proposed bylaw, and one submitter did not specify a position.

Matters raised by submitters

- 68 Million Dollar Cruise argues that the Maritime Operation Safety System (**MOSS**) has higher thresholds of passenger safety than the proposed bylaw. They say they have identified many areas of concern that could lead to death or injury on Lake Wakatipu. Million Dollar Cruise argues that the term "commercial vessel" is incorrect in its insinuation. Queenstown Water Taxis Ltd wish to confirm whether all powered vessels required consent to operate on District waterways.
- 69 Real Journeys Ltd submit that the requirement as to survey in clause 45 of the proposed bylaw requires amendment, and that a vessel operator cannot be in survey if they have a Maritime Transport Operator Certificate. Real Journeys Ltd also submit that if commercial rafters hold a certificate of compliance under the MTA they are not in survey.

Hearings panel deliberations

- 70 The proposed bylaw is not aiming to replicate the MOSS system. Commercial vessels operating in compliance with the MOSS system will not be required to obtain a Council licence, so there will not be an overlap between the two regimes. The term "commercial vessel" is defined in the MTA ("commercial ship"), and it is preferable to retain a definition consistent with legislation.
- 71 The panel does not consider any amendment to clause 45 is necessary. Any vessel that is complying with the applicable regime (MOSS or certificate of compliance) will also be complying with clause 45.

Topic 7 – Preliminary (Part 1)

Proposal

- 72 A number of changes to definitions have been proposed to reflect proposed changes to the bylaw, remove definitions that are no longer necessary, and update definitions to align with the Maritime Transport Act 1994 and maritime rules.

Submissions received

- 73 A small number of submissions addressed concerns relating to definitions.

Matters raised by submitters

- 74 ORC queried the inclusion of a definition for Flag B when the term is not used anywhere in the proposed bylaw. Real Journeys Ltd propose that the public notice definition allows for notification on the Council website. NZ SUP queried why the term “wet suit” is not defined.

Hearings panel deliberations

- 75 The panel accept that the Flag B definition is not needed, so this is recommended for deletion. The panel support the proposal that notification on the Council website to be added into the definition of “public notice”. The term wet suit is also referred to in the maritime rules, but is not defined there. The panel considers that it is appropriate for the natural ordinary meaning of the term to be used, and rejects the proposal to add a new definition.
- 76 The panel considered that the definition of “vessel” in the proposed bylaw should not exclude surfboards. Surfboarders are subject to an exemption from wearing lifejackets provided a full wetsuit is worn at all times. The panel recommends that public feedback is also sought regarding amending the definition of vessel to include a surfboard.

Topic 8 – General navigation safety requirements (Part 2)

Proposal

- 77 The proposed bylaw incorporates changes to navigation safety rules to improve consistency with Maritime Rule 91 – Navigation Safety.

Submissions received

- 78 A small number of submissions raised concerns relating to Part 2.

Matters raised by submitters

- 79 Real Journeys Ltd propose the inclusion of an emergency exception for anchoring a vessel in a manner that obstructs or causes a hazard (clause 13), and requiring persons who observe damaged navigation aids report it to the Harbourmaster (clause 15). Real Journeys Ltd also proposed that the bylaw specify that a person cannot dive off a vessel, except with permission of the skipper.
- 80 Million Dollar Cruise proposed that the term intoxication have some sort of test provided in the proposed bylaw, and that yachts should be required to keep a minimum distance of 200m from other vessels (clause 9.2-9.3). Million Dollar Cruise propose that the duty of care of commercial vessels to their passengers

should be acknowledged in the proposed bylaw. They also submitted that it should be an offence to impede passenger vehicles.

Hearings panel deliberations

- 81 Clause 13 is based on maritime rules and an emergency exception is not required. The Harbourmaster can direct that a vessel remain in a location to prevent the vessel operator being in breach of the proposed bylaw (clause 59). The panel does not support adding a requirement that a person report a damaged navigation aid as it would be impractical to enforce.
- 82 Clause 12 prevents a person from disembarking a moving vessel except in an emergency situation. The panel does not support a wider exemption for when a skipper's permission is given.
- 83 The panel considered that the definition of intoxication is currently appropriate, as it is based on the well established definition in the Sale and Supply of Alcohol Act 2012. The adoption of a specific regime for testing intoxication using the proposed bylaw is not supported by the panel.
- 84 Clauses 9.2 - 9.3 are based on maritime rules. The panel does not support the proposed amendment as it would be inconsistent with maritime rules. The panel considered that clause 7 of the proposed bylaw provides clear duties on persons in charge of a vessel, and the panel do not support amendments relating to commercial vessels.
- 85 Clauses 13.3 and 16.2 prevent people from causing obstructions to other vessels in various circumstances. The panel does not consider that further rules are required to prevent obstructions beyond what is already proposed.

Topic 9 – Access lanes and reserved areas (Part 7)

Proposal

- 86 The proposed bylaw incorporates changes to navigation safety rules to improve consistency with Maritime Rule 91 – Navigation Safety.

Submissions received

- 87 A small number of submissions raised concerns relating to Part 7.

Matters raised by submitters

- 88 Real Journeys Ltd submits that references to “sea” in the proposed bylaw should be removed as there is no sea in the District (clause 43).

Hearings panel deliberations

- 89 The panel agrees that amendments should be made to the proposed bylaw to remove references in the proposed bylaw to “sea”, or similar terms from maritime rules, given there is no sea in the District.