

Navigation Safety Bylaw 2014 Review

2020 Options report

Introduction

This report analyses the options available to Auckland Council in response to the review of the Tāmaki Makaurau Ture ā-Rohe Urungi Āhuru 2014, Auckland Council Navigation Safety Bylaw 2014.

The report draws on the “Findings of Navigation Safety Bylaw 2014 Review 2020”.

Staff presented the findings of the review to the Regulatory Committee on 17 March 2020. The Committee endorsed the following key findings (REG/2020/16):

- a bylaw remains the most appropriate way to manage safety and nuisance issues and the use of space on Auckland’s navigable waters to help mitigate risks and occurrences of collisions, injuries or fatalities
- the Bylaw provides regionally specific rules that complement or fill regulatory gaps in national legislation and Maritime rules, for example by requiring the wearing of personal flotation devices at all times¹ on small vessels
- the Harbourmaster proactively implements the Bylaw, including through education, warnings, infringement fines, licenses, and permits
- a number of improvements to the existing Bylaw have been suggested, for example revising speed limits for recreational and commercial vessels.

The options considered in this report flow from these findings and focus on the whether a bylaw is required for each of the 10 topics contained in the current Bylaw.

Executive Summary

To enable council to decide how to respond to the findings from the review of the Auckland Council Navigation Safety Bylaw 2014, staff prepared this options report.

Staff identified and assessed options for each of the 10 topics contained in the Bylaw using Maritime Transport Act 1994 and Local Government Act 2002 criteria.

Staff recommend that a new navigation safety bylaw is required to address nine of the 10 topics contained in the current Bylaw:

- | | |
|--|---|
| • General navigation safety requirements | • Specific restrictions in lanes, zones and areas |
| • Activities | |
| • Operating requirements | • Tankers, hazardous cargoes, hazardous works, fuel oil transfers and dangerous materials |
| • Licenses, permits and administrative matters | |
| • Large vessels | • Pilot and pilot exempt master operations |

A new (as opposed to an amended) bylaw is required because the current Bylaw expires on 31 July 2021 under the Local Government Act 2002.

A new bylaw for the above topics would be the most appropriate way to help protect public safety, protect the public from nuisance and protect public assets from damage. A new bylaw would:

¹ Unless the person in charge specifically exempts this.

- help minimise the risk of preventable drowning fatalities and nuisance on Auckland's navigable waters.
- help manage the use of space on Auckland's navigable waters, for example managing events spaces and how and where vessels operate, and activities occur
- help minimise risks of injuries, fatalities, accidents, collision, discharges, damage and obstruction.
- better align with the Maritime Transport Act 1994 and Maritime rules
- be easier to understand than the current Bylaw and meet current bylaw drafting standards.
- provide an opportunity for greater deterrence through higher infringement fines compared to equivalent Maritime Rules
- be authorised by statute, not repugnant to other legislation, or be unreasonable
- not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990
- not be inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or Auckland Unitary Plan.

A new bylaw is not required for licensing of commercial vessels for hire and reward because since 2017 this matter has been addressed by relying on other existing regulations, including the Health and Safety at Work (Adventure Activities) Regulations 2016.

Current bylaw and problem definition

Current bylaw

The Bylaw (which expires 31 July 2021) seeks to protect the public from safety risks and nuisance and to manage the use of Auckland's navigable waters. The Bylaw:

- specifies requirements for the carriage and use of personal flotation devices and buoyancy aids on recreational vessels
- regulates and controls the use or management of vessels
- prevents nuisances arising from the use of vessels
- prevents nuisances arising from the actions of persons and things on or in the water
- regulates sporting, training, ceremonial and customary events on or in the water
- regulates and controls the use of anchorages
- requires the marking and identification of personal watercraft.

Original problem statement

The problem in 2014 was defined as:

- the incidence of preventable drowning that occurs in Auckland waters because of a failure to wear personal flotation devices on small vessels
- potential hazards, incidents, injuries and fatalities that can result from recreational, transportation and commercial activities taking place on Auckland's navigable waters
- nationwide Maritime rules that may not cover all locally or regionally specific issues.

The Bylaw was introduced to respond to these issues by replacing the legacy Auckland Regional Council Navigation Safety Bylaw 2008 and aligning with the Maritime Transport Act 1994 and Maritime Rules.

Current and future problem

The current problem is the risk of fatalities, injuries, accidents, collisions and damage on Auckland's navigable waters.

Current examples of issues within Auckland's navigable waters include:

- preventable drowning fatalities due to people not carrying or wearing PFDs on recreational vessels, especially vessels six metres and under in length
- risks and occurrences of injury and fatalities, collisions, and accidents due to unsafe vessels or actions of persons in charge of a vessel
- preventable drowning fatalities, injuries, collision and damage from people undertaking varying activities and navigating vessels on certain areas of Auckland's navigable waters or in certain environmental conditions
- boats and jet skis being operated in reserved swimming areas and diving without dive flags creating risks of fatalities, injuries, nuisance and danger
- people swimming in areas reserved for vessel activities such as berthing and departing a wharf creating risk of fatalities and injuries, and nuisance and danger for vessels
- new issues have arisen that are not covered by the Bylaw, including new/novel craft such as hydrofoils and motorized surfboards creating significant risks to public safety as these novel craft are predominately operated on popular beaches.

Scale and magnitude of the problem

The scale and magnitude of the problem varies between the 10 individual topics however, data and anecdotal evidence show that:

Population growth in Auckland is driving an increase in the usage of navigable waters, increasing the risks of incidents occurring.

- Auckland has the highest proportion of recreational 'boaties' nationally. 34 per cent (520,101) of adults who are involved in recreational boating reside and carry out boating activities in Auckland.²
- The Port of Auckland is New Zealand's busiest receiving around 1,500 commercial vessels per year, more than 150 of which are cruise ships. Freight demand is forecast to increase in line with population growth and demand for exports and imports.
- In 2017, there were around 6 million passenger journeys on Auckland's ferries, this number has anecdotally increased and will continue to in line with population growth and tourism.
- The number of events on the water is set to increase further in areas such as Devonport, Takapuna, Ōrākei and the Bays. This coincides with the 36th America's Cup set to be held in March 2021, the significant event will require demarcation and separation of areas in the Hauraki Gulf.

In line with increasing usage of Auckland's navigable waters there are ongoing incidents occurring:

- Between 2009 and 2019 the total number of incidents increased by 57 per cent from 117 to 184 annually. Incidents include but are not limited to incidences of collision, explosion, fire, grounding, damage, injuries or fatalities.³

² 2019 Recreational Boating Participation Research commissioned by Maritime NZ defines 'Involved' 'as owners of a recreational vessel, non-owners in charge of or skippering a recreational vessel, and those spending time on a recreational vessel (but who do not own or skipper it). The definition of 'recreational vessels' ranges from small vessels (windsurfers/kayaks) to larger vessels (power boats/sail boats more than 6 metres long)'.

³ It is important to note that not all activities that result in fatalities are the related to matters regulated under the Bylaw. However, the data helps to show the type and frequency of similar or closely related incidents and fatalities occurring on Auckland's navigable waters.

- Preventable drowning fatalities occurring during recreational and non-recreational activities for the five-year period ranged from 12 in 2015 to 14 in 2019.

Who the problem affects, and their views

The problem affects any person using Auckland's navigable waters and organisations responsible for maritime or water safety, including:

- recreational boaters, commercial operators, commuters on ferries, tourists, residents near popular beaches and Ōrākei Basin, swimmers and divers
- Harbourmaster and team, Auckland Transport, Water Safe New Zealand, Coastguard and Drowning Prevention Auckland.

These stakeholders and members of the public identify the following particular issues of concern which effect public safety, nuisance and damage on Auckland's navigable water:

- potential collision and obstruction from the increase in demand for use of space
- recreational vessels (and novel craft) being operated by people who have limited situational awareness or awareness of the relevant rules and safety measures
- vessels operating at dangerous speeds creating safety risks to vessel operators and other users
- risk of obstruction from smaller vessels underway in areas shared by larger vessels for example in the Waitematā harbour restricted zone.

Objectives

The objectives align with the Auckland Plan 2050:

- Belonging and Participation:** supports safe access to recreational or cultural activities on the water including through reserved areas and regulation of events on the water that contribute to wellbeing
- Transport and Access:** supporting safe and efficient navigation of freight, cruise vessels and ferries.
- Māori Identity and Wellbeing:** Supports Māori to safely access cultural, recreational and economic activities on Auckland's navigable waters. Helps manage the use of space including in line with Treaty provisions.

The objectives of any regulatory response to the problems are to:

1. help minimise the risk of fatalities, injuries, nuisance, accidents, collisions and damage on Auckland's navigable waters
2. meet legislative requirements under the Maritime Transport Act 1994 (MTA1994) and the Local Government Act 2002 (LGA2002) including:
 - (i) giving effect to the identified priorities and desired outcomes in an efficient and effective manner (s14 LGA2002)
 - (ii) ensuring any bylaw is valid, including that it is authorised by statute, and is not repugnant or unreasonable
 - (iii) ensuring any bylaw does not give rise to any implications or is inconsistent with the New Zealand Bill of Rights Act 1990 (s155 LGA2002)
 - (iv) ensuring any bylaw is not inconsistent with the Maritime Transport Act 1994 or Resource Management Act 1991 (s33M(2)(d) MTA1994).

Outcomes

The key desired outcome is to help protect public safety, protect the public from nuisance and protect public assets from damage.

The findings report concludes that the Bylaw is still necessary and effective (within the constraints of the resources available and current legislation) but could be improved.

This report focuses on options to address each of the 10 topics in the findings report.

For each topic, the following options are identified to achieve the outcome sought:

- **Option 1:** Rely on other existing regulations (no Navigation Safety Bylaw) about topic
- **Option 2:** New Navigation Safety Bylaw about the topic

A more detailed description of the options is provided in each topic. In general:

- **Option 1** (rely on other existing regulations) would let the Bylaw expire and rely on other existing regulations⁴ and where no regulations exist, it would rely on non-regulatory methods, such as education
- **Option 2** (new Navigation Safety Bylaw) would address current and emerging navigation safety issues that are not appropriately addressed by other existing regulations
- both options would commence on 31 July 2021 which is the date the current Bylaw expires under section 160A of the Local Government Act 2002
- implementation of both options would be within existing resources and budgets, and staff would continue to use a graduated approach to compliance when responding to complaints.

Options assessment

Validity assessment

Any new bylaw must comply with certain legal requirements to be valid, including that they are authorised by statute, and are not repugnant or unreasonable.

Staff consider a new bylaw for nine out of 10 topics meet these preliminary legal requirements. A new bylaw about licensing of commercial vessels for hire or reward may be unreasonable because this matter can be addressed using other existing regulations.

New Zealand Bill of Rights Act 1990 assessment

Any new bylaw must consider whether it has any implications and is not inconsistent with the New Zealand Bill of Rights Act 1990. This requires an assessment of whether a bylaw limits any right or freedom and if so, whether that limitation is “demonstrably justifiable in a free and democratic society”.

In general, staff consider that a new bylaw for nine topics (for which a bylaw is recommended) satisfies this legislative requirement because it is a proportionate response to achieve its purpose. The new bylaw would not limit rights or freedoms more than necessary to help minimise the risk of fatalities, injuries, accidents, collisions, and damage on Auckland’s navigable waters.

For example, staff consider that a new bylaw about specific restrictions in lanes, zones and areas and activities raises potential limitations to the right to freedom of movement to certain locations for vessels and other users of the water. These limitations are however considered

⁴ Examples include the Maritime Transport Act 1994, Maritime Rules and Auckland Unitary Plan.

to be justified because it is a proportionate response to the significant public safety risks a new bylaw would seek to minimise.

Maritime Transport Act 1994 and Resource Management Act 1991 assessment

Any new bylaw must not be inconsistent with the Maritime Transport Act 1994 or Resource Management Act 1991 (Auckland Unitary Plan).

Staff consider that a new bylaw for nine topics (for which a bylaw is recommended) is not inconsistent with the above statutory documents because:

- the new bylaw would align with the purpose of the Maritime Transport Act to achieve navigation safety, including by making regionally specific rules
- elements of the new bylaw complement and support the objectives of the Auckland Unitary Plan, specifically the regulation of mooring areas through licensing.

Assessment against criteria

Staff used a comparative assessment against criteria for each of the 10 topics. These criteria are aligned to the 'objectives of a regulatory response' identified above:

1. To help minimise the risk of fatalities, injuries, nuisance, accidents, collisions, and damage on Auckland's navigable waters.
2. To meet legislative requirements under the Maritime Transport Act 1994 (MTA1994) and the Local Government Act 2002 (LGA2002) including:
 - (i) giving effect to the identified priorities and desired outcomes in an efficient and effective manner (s14 LGA2002)
 - (ii) ensuring any bylaw is valid, including that it is authorised by statute, and is not repugnant or unreasonable
 - (iii) ensuring any bylaw does not give rise to any implications or is inconsistent with the New Zealand Bill of Rights Act 1990 (s155 LGA2002)
 - (iv) ensuring any bylaw is not inconsistent with the Maritime Transport Act 1994 or Resource Management Act 1991 (s33M(2)(d) MTA1994).

A summary of the assessment is shown in Table 1. The full assessment is in Appendix 1.

Table 1: Summary of comparative assessment of options against stated objectives for all 10 navigation safety topics

The “✓” and “x” reflect the impact of the option against each criterion relative to other options.

Topic	Effectiveness at minimising risk of fatalities, injuries, accidents, collisions, and damage on Auckland’s navigable waters	Efficiency at minimising risk of fatalities, injuries, accidents, collisions, and damage on Auckland’s navigable waters	Valid and not inconsistent with legislation
Personal flotation devices on recreational vessels			
• Option 1 (no navigation safety bylaw)	x	✓	✓
• Option 2 (new navigation safety bylaw) (recommended)	✓	✓	✓
General navigation safety requirements			
• Option 1 (no navigation safety bylaw)	x	x	✓
• Option 2 (new navigation safety bylaw) (recommended)	✓	✓	✓
Activities			
• Option 1 (no navigation safety bylaw)	x	✓	✓
• Option 2 (new navigation safety bylaw) (recommended)	✓	✓	✓
Operating requirements			
• Option 1 (no navigation safety bylaw)	x	x	✓
• Option 2 (new navigation safety bylaw) (recommended)	✓	✓	✓
Licenses, permits and administrative matters			
• Option 1 (no navigation safety bylaw)	x	x	✓
• Option 2 (new navigation safety bylaw) (recommended)	✓	✓	✓
Large vessels			
• Option 1 (no navigation safety bylaw)	x	x	✓
• Option 2 (new navigation safety bylaw) (recommended)	✓	✓	✓

Topic	Effectiveness at minimising risk of fatalities, injuries, accidents, collisions, and damage on Auckland's navigable waters	Efficiency at minimising risk of fatalities, injuries, accidents, collisions, and damage on Auckland's navigable waters	Valid and not inconsistent with legislation
Specific restrictions in lanes, zones and areas			
• Option 1 (no navigation safety bylaw)	x	x	✓
• Option 2 (new navigation safety bylaw) (recommended)	✓	✓	✓
Tankers, hazardous cargoes, hazardous works, fuel oil transfers and dangerous materials			
• Option 1 (no navigation safety bylaw)	x	x	✓
• Option 2 (new navigation safety bylaw) (recommended)	✓	✓	x
Pilot and pilot exempt master operations			
• Option 1 (no navigation safety bylaw)	x	x	✓
• Option 2 (new navigation safety bylaw) (recommended)	✓	✓	✓
Licensing of commercial vessels for hire or reward			
• Option 1 (no navigation safety bylaw) (recommended)	✓	✓	✓
• Option 2 (new navigation safety bylaw)	x	x	✓

Analysis and recommendation

Based on analysis against assessment criteria of each option, staff recommend Option 2 (new Navigation Safety Bylaw) for nine of the 10 topics contained in the current Bylaw:

- General navigation safety requirements
- Activities
- Operating requirements
- Licenses, permits and administrative matters
- Large Vessels
- Specific restrictions in lanes, zones and areas
- Tankers, hazardous cargoes, hazardous works, fuel oil transfers and dangerous materials
- Pilot and pilot exempt master operations

Staff recommend that a new bylaw be made for nine of the 10 topics in the current Bylaw. A new bylaw for the above topics would be the most appropriate way to help protect public safety, protect the public from nuisance and protect public assets from damage. A new bylaw would:

- help minimise the risk of preventable drowning fatalities and nuisance on Auckland's navigable waters
- help manage the use of space on Auckland's navigable, for example managing events spaces and how and where vessels operate, and activities occur
- help minimise risks of injuries, fatalities, accidents, collision, discharges, damage and obstruction
- better align with the Maritime Transport Act 1994 and Maritime rules
- be easier to understand than the current Bylaw and meet current bylaw drafting standards
- provide an opportunity for greater deterrence through higher infringement fines compared to equivalent Maritime Rules
- be authorised by statute, not repugnant to other legislation, or be unreasonable
- not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990
- not be inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or Auckland Unitary Plan.

A new bylaw is not required for licensing of commercial vessels for hire or reward because since 2017 this matter has been addressed by relying on other existing regulations, including the Health and Safety at Work (Adventure Activities) Regulations 2016.

Option 1 (no Navigation Safety Bylaw and rely on other existing regulations) for these nine topics is the least effective option. The key trade-offs are:

- while it may reduce compliance costs it does not address issues that are covered in Option 2
- it may result in increased compliance activities in response to increased incidents due to an absence of preventative safety measures.

A new bylaw is not required for the issuing of licenses for commercial vessels for hire or reward

Option 1 (no Navigation Safety Bylaw and rely on other existing regulations) is recommended to address the issuing of licenses for commercial vessels for hire or reward because existing regulations already appropriately address these issues. Making a new Navigation Safety Bylaw (Option 2) would be the less appropriate because it would duplicate the regulation of these matters in Bylaw rules.

Appendix 1: Assessment of navigation safety issues

Topic 1: Personal floatation devices on recreational vessels (5.2 of findings report)	
Current Bylaw	
Requires PFDs (personal floatation devices) to be carried on all recreational vessels and worn at times of heightened risk and worn on at all times on vessels under six metres in length unless exempted by the person in charge (master). Exemptions also apply to sporting activities, wet suits and leg ropes.	
Implementation of current Bylaw by Harbourmaster	
- Proactive implementation includes regular patrols of navigable waters. - Reactive enforcement when issues reported or in an emergency. - Maritime Police report issues of non-compliance to the Harbourmaster. - Graduated compliance ranging from education and warnings, to infringements (between December 2016 – April 2019, 30 percent of all infringements issued were in the form of warnings for PFD rule breaches (147 warnings issued).	
Statutory Authority	
Maritime Transport Act 1994 (MTA) and/or the Local Government Act 2002 (LGA) Bylaws made pursuant can address issues about navigation safety on Auckland's navigable waters.⁵ - Relevant MTA bylaw powers and penalties to regulate issues include powers to obtain information and powers to infringe. Penalties include a fine not exceeding \$500 and a maximum \$1000 infringement fine.⁶ - The LGA provides for a maximum court fines of \$20,000.⁷	
Issues and outcomes sought in 2013	
Issue was preventable drowning fatalities due to people not carrying or wearing PFDs on recreational vessels, especially vessels six metres and under in length.⁸ Outcome sought was to protect public safety by minimising the risk of preventable drowning fatalities on Auckland's navigable waters.	
Issues and outcomes sought now	
The issues and outcome sought remains the same as 2013.	
Bylaw Evaluation	
Still a problem requiring a bylaw response? ✓ Yes. There is still an issue that regulation can help address. ✓ Recreational boating activities are increasing and research and data show there are ongoing risks and occurrences of fatalities that may have been prevented if people had worn correctly fitted PFDs. ✓ There are no exactly comparable alternatives to a bylaw for PFDs. For example, Maritime Rule 91 requires people to wear a PFD in dangerous conditions, whereas the Bylaw requires people to wear a PFD on a vessel 6 meters and under at all times. Is current Bylaw effective and efficient at minimising the risk of preventable drowning fatalities? ✓ Yes. Bylaw aligns with Maritime NZ guidance and research stating wearing of PFD on board vessels six metres and under can save lives. The New Zealand Safer Boating Forum⁹ recommends that all council bylaws include this provision. ✓ Relatively high awareness of rules about PFDs - 67 percent. ✓ Bylaw PFD rules regularly used by Harbourmaster.	

⁵ Maritime Transport Act 1994 section 33M, Local Government Act 2002 section 145.

⁶ Sections 33F, 33O, 33N & 33O

⁷ Local Government Act 2002, Section 242

⁸ Maritime New Zealand research suggests nationally two thirds of boating fatalities may have been avoided had PFDs been worn, and failure to wear PFDs on vessels six metres and under in length has been identified as a key safety risk to be targeted.

⁹ New Zealand Safer Boat Forum is a formal network of representatives from national and regional agencies, councils and organisations from the marine industry who promote recreational boating safety. Members include Maritime New Zealand, the Auckland Harbourmaster, Accident Compensation Corporation, Ministry of Transport Drowning Prevention Auckland, and Surf Life Saving New Zealand

✓ Anecdotal evidence of behavioural change through issuance of infringement fines. ✗ Enforcement of Bylaw on vessels six metres and under can be difficult because exemptions are at the discretion of the person in charge of the vessel. Bylaw clearly written? ✗ No. Bylaw could be written in a way that is easier to understand.	
Options	
Option 1: Status quo (Rely on Maritime Rules) • Allow Bylaw to expire on 31 July 2021. • Rely on Maritime Rules to address carrying and wearing of PFDs. Implementation • Harbourmaster and honorary officers enforce the Maritime Rules.	Option 2: New Navigation Safety Bylaw • Use new bylaw and Maritime Rules to address carrying and wearing of PFDs. • New bylaw rules and exemptions similar in effect to current Bylaw. • New bylaw written to be easier to read and to current drafting standards. Implementation • Same as current implementation.
Effective at minimising the risk of preventable drowning fatalities ✗ Less effective than Option 2 because it relies on Maritime Rules which does not emphasise the wearing PFDs on small recreational vessels which can help reduce the risk of preventable drownings. ✗ Bylaw rules have higher infringement fees which can better drive behavioural change and ensure compliance. Efficient at minimising the risk of preventable drowning fatalities ✓ Can be implemented within current budgets (including education).	Effective minimising the risk of preventable drowning fatalities ✓ Retains a rule that makes the wearing of PFDs on small recreational vessels the default rule which more people are likely to comply with, and which in turn may help reduce the risk of preventable drownings. ✓ Current \$200 infringement fines (if retained in future regulations for new bylaw) higher than equivalent Maritime Rule (\$100) which provides greater deterrence. ✗ Enforcement of wearing PFDs on small recreational vessels is still difficult. Efficient at minimising the risk of preventable drowning fatalities ✓ Can be implemented within current budgets (including education). ✓ Infringement fines are retained by Auckland Transport which helps reduce ratepayer funding for implementation.¹⁰ ✓ Bylaw easier to understand.
Risks and risk mitigation • Risk of increase in preventable drownings due to absence of rule that emphasise wearing PFDs on small recreational vessels. May be partially mitigated through increased education.	Risks and risk mitigation • Risk that person in charge of a vessel is not aware of or does not adhere to the PFD rules. May be substantially mitigated using current implementation activities.
Section 155 Local Government Act 2002 Recommendations	
Based on the analysis against the criteria above and preliminary assessment, a new bylaw (Option 2) is the most appropriate way to protect public safety. A new bylaw would: • retain current rules about the carriage and wearing of PFDs to help minimise the risk of preventable drowning fatalities • provide an opportunity for greater deterrence through higher infringement fines compared to equivalent Maritime Rules • be written to be easier to understand and meet current bylaw drafting standards • be authorised by statute, not be repugnant to other legislation, not be unreasonable, not give rise to any implications and would not be inconsistent with the New Zealand	

¹⁰ Maritime Transport Act 1994, Section 33Q.

Bill of Rights Act 1990, nor be inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or Auckland Unitary Plan.

Topic 2: General Navigation Safety Requirements (section 5.3 of findings report)	
Current Bylaw	
- The general navigation requirements emphasise the responsibility of the person in charge of a vessel for the safety of a vessel and those on board. - Requirements include nomination of person to be in charge (who must ensure safety, carriage and wearing of PFD), minimum age for operating powered vessels, speed of vessels for example near other vessels or structures etc, seaworthiness, collision prevention and reporting of accidents or collisions to the Harbourmaster.	
Implementation of Existing Bylaw by Harbourmaster	
- Proactive and reactive, graduated compliance approach including engagement, education, warnings, infringements and removal and sale of abandoned vessels. 241 infringements issued for excessive speed between December 2016 to May 2019.	
Statutory Authority	
Maritime Transport Act 1994 (MTA) and/or the Local Government Act 2002 (LGA) A bylaw made pursuant can address issues about navigation safety on Auckland's navigable waters.¹¹ - Relevant MTA bylaw powers and penalties include powers of entry, powers to obtain information and powers to infringe. Penalties include a fine not exceeding \$500 and a maximum \$1,000 infringement fine.¹² - LGA provides for powers to seize property and maximum court fines of \$20,000.¹³	
Issues and outcomes sought in 2013	
Issues were risks or incidents of injury and fatalities, collisions and accidents due to unsafe vessels or actions of persons in charge of a vessel. Outcomes sought was to protect public safety by minimising the risk of fatalities, injuries, and collisions on Auckland's navigable waters.	
Issues and outcomes sought now	
Issues and outcome sought remains the same as 2013.	
Bylaw Evaluation	
Still a problem requiring a bylaw response? ✓ Yes. There are still issues that regulation can help address. ✓ The Bylaw fills a regulatory gap for issues including person in charge, use of alcohol and drugs, seaworthiness, and reporting collisions or accidents to the Harbourmaster. ✓ While Maritime Rules do regulate some of the same matters as the Bylaw (for example collision prevention, it is less effective and efficient (see below). ✗ The Marine Mammals Protection Act 1978 already addresses conditions relating to dangerous activities and behaviour around marine animals from vessels. The Act provides a maximum fine of \$800 which is administered by the Department of Conservation (DOC).¹⁴ Is the current Bylaw effective and efficient at minimising the risk of fatalities, injuries, and collisions? ✓ Yes, Bylaw is an important tool to emphasise the responsibility of the person in charge of a vessel ✓ Fills regulatory gap and / or supplements the Maritime Rules for a range of issues ✓ Bylaw infringements have been effective for addressing speeding –34.5 per cent of warnings and infringements between December 2016 to April 2019 were for exceeding the five-knot speed limit. ✓ Good compliance with requirement to nominate a person in charge of a vessel. ✓ Relatively high awareness of rules about speed (72 per cent) and PFDs (63 per cent). ✓ Bylaw can address issues relating to alcohol/drugs. Alternative provisions under the Maritime Transport Act 1994 do not address alcohol or drug consumption by recreational boaties and there is no equivalent Maritime Rule.	

¹¹ Maritime Transport Act 1994 section 33M, Local Government Act 2002 section 145.

¹² Maritime Transport Act 1994, Section 33M, 33F, 33O, 33N.

¹³ Local Government Act 2002, Section 164 and 242.

¹⁴ Marine Mammals Protection Regulations 1992, Schedule 1.

✗ Bylaw in relation to marine mammals is outside of council's mandate to protect people and is not used. Welfare of marine mammals already addressed in existing legislation administered by DOC and Maritime Rules already address the risk of vessels colliding with any object. ✗ Current speed limit in the Waitematā harbour (12-knots) causing dangerous wake from certain vessels due to slow speed. ✗ Enforcement of Bylaw rule relating to persons in charge of a vessel under the influence of alcohol/drugs can be difficult. There are no means to test whether there is alcohol on the breath or drugs in blood of a person in charge (although there are means to prove rule breaches for example voluntary admission of guilt). Bylaw clearly written? ✗ No. Bylaw could be written in a way that is easier to understand.	
Options	
Option 1: Status quo (rely on Maritime Rules and Marine Mammals Protection Act) • Allow Bylaw to expire on 31 July 2021. • Use Maritime Rules and Marine Mammals Protection Act to address issues. Implementation • Harbourmaster and team enforce the Maritime Rules. • Department of Conservation enforce Marine Mammals Protection Act.	Option 2: New Navigation Safety Bylaw • Use new bylaw and Maritime Rules • Rely on Marine Mammals Protection Act to address issues about vessels near marine mammals. • Amend speed limits, including the Waitematā harbour to help minimise dangerous wake from vessels. • Other new bylaw rules similar in effect to current bylaw. • New bylaw written to be easier to read and to current drafting standards. Implementation • Same as current implementation. • Department of Conservation enforce Marine Mammals Protection Act.
Effective at minimising the risk of fatalities, injuries, and collisions ✗ Less effective than option 2 because there would be limited powers to adequately address regionally specific rules that help minimise the risk of fatalities, injuries and collisions. ✗ Bylaw rules have higher infringement fees which can better drive behavioural change and ensure compliance. Efficient at minimising the risk of fatalities, injuries, and collisions ✓ Can be implemented within existing budgets (including education).	Effective at minimising the risk of fatalities, injuries, and collisions ✓ Retains rules around specific requirements for persons in charge of a vessel (including ensuring the vessel is seaworthy) or speed of vessels which helps reduce the risk of fatalities, injuries and collisions. ✓ Current \$200 infringement fines (if retained in future regulations for new bylaw) higher than equivalent Maritime Rule (\$100) which provides greater deterrence. ✗ Enforcement of rules relating to alcohol/drugs is still difficult. Efficient at minimising the risk of fatalities, injuries, and collisions ✓ Can be implemented within existing budgets (including education). ✓ Bylaw easier to understand ✓ Removes duplication with Marine Mammals Protection Act 1978 in relation to protection of marine mammals.
Risks and risk mitigation • Risk of increased injuries and fatalities.	Risks and risk mitigation

May be partially mitigated through more education.	The absence of marine mammal rules may result in public confusion. May be partially mitigated through education.
Section 155 Local Government Act 2002 Recommendations	
Based on the analysis against the criteria above and preliminary assessment a new bylaw (Option 2) is the most appropriate way to protect public safety on Auckland's navigable waters. A new bylaw would: - set clear and enforceable general navigation safety requirements to help minimise the risk of fatalities, injuries, and collisions - provide an opportunity for greater deterrence through higher infringement fines compared to equivalent Maritime Rules - be written to be easier to understand and meet current bylaw drafting standards - remove duplication with Marine Mammals Protection Act 1978 in relation to protection of marine mammals - be authorised by statute, not be repugnant to other legislation, not be unreasonable, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or Auckland Unitary Plan.	

Topic 3: Activities (5.4 of findings report)	
Current Bylaw	
- Regulates activities including swimming, water skiing and towing of persons, dive operations, wake of vessels, use of engines around wharves, access lanes and reserved and special reserved areas. - Prescribes controls for where and how activities and events may occur, the approval process, speed limits and other safety requirements such as use of buoys.	
Implementation of current Bylaw by Harbourmaster	
- Proactive implementation includes regular patrols of navigable waters. - Reactive enforcement when issues reported or in an emergency. - Graduated compliance ranging from education and warnings to infringements. - Harbourmaster and officers process applications for events in reserved areas.	
Statutory Authority	
Maritime Transport Act 1994 (MTA) and/or the Local Government Act 2002 (LGA) Bylaws made pursuant can address issues on Auckland's navigable waters.¹⁵ - Relevant MTA bylaw powers and penalties include powers of entry, powers to obtain information and powers to infringe. Penalties include a fine not exceeding \$200 and a maximum \$1000 infringement fine.¹⁶ - LGA provides for powers to seize property and maximum court fines of \$20,000.¹⁷	
Issues and outcomes sought in 2013	
Issues include risk of preventable drowning, injuries, collision and damage from people undertaking varying activities and navigating vessels on certain areas of Auckland's navigable waters or in certain environmental conditions. Outcome sought is to protect public safety on Auckland's navigable waters.	
Issues and outcomes sought now	
Issues are the same as 2013. Specific public safety risks are created by people swimming in areas reserved for vessel activities, boats and jet skis being operated in reserved swimming areas and diving without dive flags. Emerging public safety risks are created by the use of new and novel craft. Novel craft can also create public nuisance when used in popular beaches and restricted areas. Outcome sought are to protect the public in terms of their safety and from nuisance by minimising the risk preventable drowning, injuries, collision, damage and nuisance.	
Bylaw Evaluation	
Still a problem requiring a bylaw response? ✓ Yes. There is still an issue that regulation can help address. ✓ No feasible alternatives to the Bylaw for some issues. Maritime Rules do not address swimming, use of engines near wharves, wake from recreational vessels or enable creation of specific reserved areas and access lanes. ✓ While Maritime Rules can regulate some of the same activities as the Bylaw (for example water skiing, towing of persons and dive regulations), it is less effective as it has lower infringement fines and less impact on driving behavioural change. Is current Bylaw effective and efficient at minimising the risk of preventable drowning, injuries, collision, damage and nuisance? ✓ Yes. The current Bylaw is in constant use and can address issues occurring. ✓ Bylaw fills a regulatory gap for a range of issues. ✓ Bylaw rules have higher infringement fees compared to similar Maritime Rules which can better drive behavioural change and ensure compliance. ✗ No. Bylaw and Maritime Rules do not set specific requirements for novel craft which may not be perceived to be vessels but can cause similar issues. ✗ Bylaw rules about swimming (e.g. a person must not jump/dive/swim within 50m of a wharf, jetty or pontoon) are difficult to enforce and infrequently used because it is	

¹⁵ Maritime Transport Act 1994 section 33M, Local Government Act 2002 section 145.

¹⁶ Sections 33H, 33F, 33O & 33N where no penalty is provided for.

¹⁷ Local Government Act 2002, Section 164 & 242

difficult to apprehend and identify people in the act. Stakeholders however indicate there are ongoing risks to safety and of potential disruption to ferries. ✗ Bylaw does not include wharf structures with reference to events which has caused difficulty for event managers to implement appropriate safety plans. Bylaw clearly written? ✗ No. The Bylaw could be written in a way that is easier to understand.	
Options	
Option 1: Status quo (Rely on Maritime Rules) • Allow Bylaw to expire on 31 July 2021. • Use Maritime Rules to address issues. Implementation • Harbourmaster and team enforce the Maritime Rules.	Option 2: New Navigation Safety Bylaw • Use new bylaw and Maritime Rules to address issues about activities. • New bylaw to clarify specific rules for novel craft for public safety and comfort (for example hydrofoils). • New Bylaw clarifies rules about swimming. • New Bylaw clarifies rules about management of events on water. • For all other activities, new bylaw rules similar in effect to current Bylaw. • New bylaw written to be easier to read (including use of maps or diagrams) and to current drafting standards. Implementation • Same as current implementation. • Further preventative measures for swimming rules, such as education and signage to aide Harbourmaster enforcement.
Effectiveness at minimising the risk of preventable drowning, injuries, collision, damage and nuisance ✗ Less effective than Option 2 because there would be a regulatory gap for key issues (including access lanes, reserved areas and vessel engine use and wake from vessels) increasing risks to public safety and nuisance. ✗ Bylaw rules have higher infringement fees or more specific offences which can better drive behavioural change and ensure compliance. Efficiency at minimising the risk of preventable drowning, injuries, collision, damage and nuisance ✓ Can be implemented within current budgets (including education).	Effectiveness at minimising the risk of preventable drowning, injuries, collision, damage and nuisance ✓ Makes rules about a range of activities (including novel craft, events, which will help minimise the risk of preventable drowning, injuries, collision, damage and nuisance. ✓ Current \$200 infringement fines (if retained in future regulations for new bylaw) higher than equivalent Maritime Rule (\$100) which provides greater deterrence. Efficiency at minimising the risk of preventable drowning, injuries, collision, damage and nuisance ✓ Can be implemented within current budgets (including education). ✓ Bylaw easier to understand.
Risks and risk mitigation • Risk of increase in preventable drownings, accidents and nuisance (for example in access lanes and reserved areas). May be partially mitigated through increased education and patrols.	Risks and risk mitigation • Risk of preventable drownings, accidents and nuisance may still occur. May be substantially mitigated using current implementation activities.

Section 155 Local Government Act 2002 Recommendations

Based on the analysis against the criteria above and preliminary assessment, a new bylaw (Option 2) is the most appropriate way to protect public safety and to protect the public in terms of their safety and from nuisance on Auckland's navigable waters. A new bylaw would:

- set clear and enforceable requirements for activities taking place on Auckland's navigable waters to help minimise the risk of preventable drowning, injuries, collision, damage and nuisance
- provide an opportunity for greater deterrence through higher infringement fines compared to equivalent Maritime Rules
- written to be easier to understand and to meet current bylaw drafting standards
- be authorised by statute, not be repugnant to other legislation, not be unreasonable, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or Auckland Unitary Plan.

Topic 4: Operating Requirements (Section 5.5 of findings report)	
Existing Bylaw	
- Sets operating requirements that ensure vessels can navigate without risk to public safety, injuries and fatalities. - Requirements address obstructions, discharges, navigation aids, sound and light signals, carriage and use of navigation and communications equipment, visibility and identification of vessels, aircraft (taking off and landing, not including drones) and anchoring and mooring.	
Implementation of Existing Bylaw by Harbourmaster	
- Proactive and reactive approach to Bylaw implementation. - Graduated compliance approach ranging from education and warnings to infringements. - For more severe or ongoing Bylaw breaches, the Harbourmaster may remove and dispose of any vessel, construction, material, thing, cargo or matter used.	
Statutory Authority	
Maritime Transport Act 1994 (MTA) and/or the Local Government Act 2002 (LGA) A bylaw made pursuant can address issues about navigation safety on Auckland's navigable waters.¹⁸ - Relevant MTA bylaw powers and penalties include powers of entry, powers to obtain information and powers to infringe. Penalties include a fine not exceeding \$500 and a maximum \$1000 infringement fine.¹⁹ - LGA provides for powers to seize property and maximum court fines of \$20,000.²⁰	
Issues and outcomes sought in 2013	
Issues were risks of fatalities, injuries, accidents, collisions and damage. Outcome sought was to protect public safety on Auckland's navigable waters by minimising risks of injuries, fatalities, accidents, collision, discharges, damage and obstruction.	
Issues and outcomes sought now	
Issues and outcomes sought remain the same as 2013.	
Bylaw Evaluation	
Still a problem requiring a bylaw response? ✓ Yes. There is still an issue that regulation can help address. ✓ No feasible alternatives to the Bylaw. Bylaw fills a regulatory gap for issues including navigation and communication equipment, visibility of paddlecraft, identification of vessels, aircraft, anchorages, limitations on anchorage and moorings. ✓ While some provisions in the Bylaw are similar to Maritime rules, the Bylaw provides the advantage of higher infringement fines (for the majority infringements). ✓ Some Bylaw rules (including types of obstructions, discharges and sound and light requirements) not addressed in the same way in Maritime rules and other legislation. Is the current Bylaw effective and efficient at protecting the public from safety risks and nuisance? ✓ Yes. Bylaw remains an important tool to address issues relating to operating requirements and is in constant use. ✓ Fills regulatory gap for key issues. ✓ Relatively high awareness of rules about navigation and communication equipment (44 per cent) and where to moor boats (34 per cent) assists compliance. ✓ Bylaw infringements have higher infringement fees compared to similar Maritime Rules which can better drive behavioural change and ensure compliance. Bylaw clearly written? ✗ No. Bylaw could be written in a way that is easier to understand.	

¹⁸ Maritime Transport Act 1994 section 33M, Local Government Act 2002 section 145.

¹⁹ Maritime Transport Act 1994, Section 33M, 33F, 33O, 33N.

²⁰ Local Government Act 2002, Section 164 and 242.

Options	
Option 1: Status quo (rely on Maritime Rules) - Let Bylaw expire on 31 July 2021. - Use Maritime Rules to address issues about operating requirements. Implementation - Harbourmaster and team enforce the Maritime Rules.	Option 2: New Navigation Safety Bylaw - Use new bylaw and Maritime Rules to address operating requirements - New bylaw rules similar in effect to current Bylaw. - New bylaw written to be easier to read (including use of maps or diagrams) and to current drafting standards. Implementation - Same as current.
Effectiveness at protecting the public from safety risks? ✗ Less effective than option 2 because there would be limited powers to adequately address regionally specific rules that help reduce risks of fatalities, injuries, accidents, collisions and damage. ✗ Bylaw rules have higher infringement fines (\$200 compared to \$100 for obstructions) which can better drive behavioural change and ensure compliance. Efficiency at protecting the public from safety risks and nuisance? ✓ Can be implemented within existing budgets (including education).	Effectiveness at protecting the public from safety risks? ✓ Retain rules relating to operating requirements which help reduce risks of fatalities, injuries, accidents, collisions and damage. ✓ Current \$200/\$300 infringement fines (if retained in future regulations for new bylaw) higher than equivalent Maritime Rule (\$100) which provides greater deterrence. Efficiency at protecting the public from safety risks and nuisance? ✓ Can be implemented within existing budgets (including education). ✓ Bylaw easier to understand.
Risks and risk mitigation Risk of increased fatalities, injuries, accidents, collisions and damage. May be partially mitigated through more education.	Risks and risk mitigation No new risks identified.
Section 155 Local Government Act 2002 Recommendations	
Based on the analysis against the criteria above and preliminary assessment a new bylaw (Option 2) is the most appropriate way to protect public safety on Auckland's navigable waters. A new Bylaw would: - set clear and enforceable operating requirements for vessels by reducing risks of fatalities, injuries, accidents, collisions and damage - provide an opportunity for greater deterrence through higher infringement fines compared to equivalent Maritime Rules - be written to be easier to understand and to meet existing bylaw drafting standards - be authorised by statute, not be repugnant to other legislation, not be unreasonable, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or Auckland Unitary Plan.	

Topic 5: Licenses, Permits and Administrative Matters (Section 5.6 of findings report)	
Current Bylaw	
- Provides requirements and processes for registration of personal watercraft and mooring licenses, vessels on moorings and mooring maintenance and construction. - Addresses vessel operations in relation to hot works that are carried out on vessels, carriage of dangerous goods and fuel oil /bunkering operations.	
Implementation of Existing Bylaw by Harbourmaster	
- Proactive and reactive, graduated enforcement approach. - Harbourmaster approves processes and applications for licenses for jetskis and moorings, inspects moorings to ensure they are correctly constructed and maintained and removes moorings that are unauthorised or where licenses are cancelled. - For hot works, fuel oil operations and bunkering the Harbourmaster can shut down operations where they are considered unsafe. - Harbourmaster may issue warnings, infringement fines and remove vessels that come free from their moorings and/or create a risk of damage or to safety. For derelict boats where the owner can be identified, Harbourmaster makes multiple attempts to contact the owner and the police are notified.	
Statutory Authority	
Maritime Transport Act 1994 (MTA) and/or the Local Government Act 2002 (LGA) A bylaw made pursuant can address issues about navigation safety on Auckland's navigable waters.²¹ - Relevant MTA bylaw powers and penalties include powers of entry, powers to obtain information and powers to infringe. Penalties include a fine not exceeding \$500 and a maximum \$1,000 infringement fine.²² - LGA provides for powers to seize property and maximum court fines of \$20,000.²³	
Issues and outcomes sought in 2013	
Issues were safety risks, nuisance and misuse of space from unmaintained and misplaced moorings, unregistered jetskis and associated risks relating to hot works, carriage of dangerous cargo and fuel oil or bunkering operations. Outcome sought was to protect public safety and to prevent nuisances by reducing safety risks, nuisance and misuse of space.	
Issues and outcomes sought now	
- The Issues and outcome sought remain the same as in 2013. Emerging public safety risks and public nuisance created from anchored vessels. For example, there is currently no regulation for anchored vessels up to 14 days in which approval from the Harbour Master would be needed.	
Bylaw Evaluation	
Still a problem requiring a bylaw response? ✓ Yes. There is still an issue that regulation can help address. ✓ Maritime rules do not contain exactly the same requirements as all of the rules in the Bylaw. For example the Maritime rules do not include a licensing regime for moorings or jetskis, and they do not contain exact comparative powers in relation to hot works, fuel oil operations and bunkering and dangerous goods which require prior notification of the harbourmaster and provide the Harbourmaster powers to forbid operations where deemed unsafe. ✓ The Bylaw provides the advantage of infringement fines for issues relating to unregistered watercraft, unlicensed moorings, hot works (approval/precautions) and fuel and bunkering operations. It also enables the Harbourmaster to recover and dispose of vessels that come free from moorings where the owner cannot be identified. ✓ While the AUP regulates people living on a moored vessel where a resource consent may be required, it does not address the licensing of moorings required under the	

²¹ Maritime Transport Act 1994 section 33M, Local Government Act 2002 section 145.

²² Maritime Transport Act 1994, Section 33M, 33F, 33O, 33N.

²³ Local Government Act 2002, Section 164 and 242.

Bylaw which reduces public safety risk and nuisance by ensuring moorings are maintained and are appropriately placed in a mooring zone. Is the current Bylaw effective and efficient at reducing safety risks, nuisance and misuse of space? ✓ Yes. Bylaw remains an important tool to address issues and is in constant use. ✓ Fills regulatory gap for issues not addressed in the same way in the Maritime rules or other legislation. ✓ Bylaw infringements has been effective to address operating requirement issues in particular jetskis. ✓ Bylaw remains an effective and efficient tool to regulate mooring activity on the water that are not addressed under the AUP. The AUP only demarcates areas for where moorings can be placed but does not address mooring licences and specifications. ✗ Bylaw does not address public safety, nuisance and misuse of space issues from anchored boats 14 days prior to needing approval from the Harbourmaster. Bylaw clearly written? ✗ No. Bylaw could be written in a way that is easier to understand.	
Options	
Option 1: Status quo (Rely on Maritime Rules and AUP) • Let Bylaw expire on 31 July 2021. • Use Maritime Rules to address issues. • Use AUP to address rules relating to moorings. Implementation • Harbourmaster and team implement the Maritime Rules. • Council to continue to determine location of moorings under AUP. • Resource consent required for individual moorings.	Option 2: New Navigation Safety Bylaw • Use new bylaw, Maritime Rules and AUP to address Licenses, Permits and Administrative Matters. • New bylaw rules similar in effect to current Bylaw. • New bylaw to further reduce safety risks, nuisance, misuse of space and issues from anchored vessels up to 14 days (including houseboats). • New bylaw written to be easier to read and to current drafting standards. Implementation • Same as current implementation.
Effectiveness at reducing safety risks, nuisance and misuse of space? ✗ Less effective than Option 2 because there would be a regulatory gap for key issues including registration of personal watercraft and mooring licenses, vessels on moorings and maintenance, hot works on vessels, carriage of dangerous goods and fuel oil bunkering operations, thus increasing risks to public safety and nuisance. ✗ Less effective than Option 2 because AUP does not prescribe conditions of owning a mooring and maintenance. Rather, it only demarcates areas for where moorings can be placed. ✗ Bylaw rules have higher infringement fees or more specific offences which can better drive behavioural change and ensure compliance. Efficiency at reducing safety risks, nuisance and misuse of space? ✓ May result in increased compliance activities in response to increased	Effectiveness at reducing safety risks, nuisance and misuse of space? ✓ Retains similar rules to the current Bylaw about licenses, permits and administrative matters which has proven to be useful and well known. ✓ Additional rules to address emerging issues around houseboats. ✓ Current \$200/\$300 infringement fines (if retained in future regulations for new bylaw) higher than equivalent Maritime Rule (\$100) which provides greater deterrence. Efficiency at reducing safety risks, nuisance and misuse of space? ✓ Can be implemented within existing budgets (including education). ✓ Bylaw easier to understand.

incidents due to an absence of preventative licensing measures. ✖ For example, council would require a resource consent under the Resource Management Act 1991 for individual moorings.	
Risks and risk mitigation • Risk of increase in damage, collisions, and fatalities due to absence of Auckland specific rules. May be partially mitigated by increased education and guidance.	Risks and risk mitigation • Risk of ongoing nuisance, safety and damage issues. May be substantially mitigated using current implementation activities.
Section 155 Local Government Act 2002 Recommendations	
Based on the analysis against the criteria above and preliminary assessment a new bylaw (Option 2) is the most appropriate way to protect public safety and prevent nuisances arising from the actions of persons and things on Auckland's navigable waters. A new bylaw would: • retain current rules about licenses, permits and administrative matters to help reduce safety risks, nuisance and misuse of space • address broader public safety, nuisance and misuse of space issues from anchored vessels up to 14 days (including houseboats) • provide an opportunity for greater deterrence through higher infringement fines compared to equivalent Maritime Rules • be written to be easier to understand and meet current bylaw drafting standards • be authorised by statute, not be repugnant to other legislation, not be unreasonable, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or Auckland Unitary Plan.	

Topic 6: Large Vessels (5.7 of findings report)
Current Bylaw
- Requires persons in charge of large vessels²⁴ to report malfunctioning or inoperative navigational equipment to the Harbourmaster, sets rules for entering or departing pilotage areas, requires smaller vessels to not impede larger vessels and sets a moving prohibited zone around large vessels. - Allows Harbourmaster to set aside areas restricted to large vessels and to require an Automatic Identification System to be fitted to a fast commercial vessel.
Implementation of current Bylaw by Harbourmaster
- Graduated compliance including communication and information to large vessel operators and the options of warnings, infringements or court prosecution. - No infringements or prosecutions for large vessels offences since the Bylaw adopted.
Statutory Authority
Maritime Transport Act 1994 (MTA) and/or the Local Government Act 2002 (LGA) A bylaw made pursuant can address issues about navigation safety on Auckland's navigable waters.²⁵ - Relevant MTA bylaw powers and penalties include powers of entry, powers to obtain information and powers to infringe. Penalties include a fine not exceeding \$2,000 and a maximum \$10,000 infringement fine.²⁶ - LGA provides for powers to seize property²⁷ and maximum court fines of \$100,000.²⁸
Issues and outcomes sought in 2013
Issues were risks of public safety, nuisance, collision with other vessels and infrastructure, grounding from the navigation of large vessels and navigation of small vessels in the vicinity of large vessels. Outcomes sought were to protect public safety, minimise nuisance and prevent damage to vessels or infrastructure on Auckland's navigable waters.
Issues and outcomes sought now
Issues and outcomes sought remain the same as 2013. - The scale and magnitude of the issues are increasing with the increase in size of large vessels, the high number of vessel movements – forecast to increase over time and increasing use of recreational vessels.
Bylaw Evaluation
Still a problem requiring a Bylaw response? ✓ Yes. There is still an issue that regulation can help address. ✓ No feasible alternatives to the Bylaw for some issues. While Maritime Rules on collision prevention can address smaller vessels impeding large vessels in a similar way to the Bylaw, the Bylaw wording can better prevent collision. ✓ There are no exactly equivalent Maritime Rules or Maritime Transport Act provisions to address reporting inoperative navigation or manoeuvring equipment to the Harbourmaster, moving prohibited zones, areas of restricted access and use of Automatic Identification Systems on commercial fast vessels. Is the current Bylaw effective and efficient at managing the use of Auckland's navigable waters and protecting the public from safety risks and nuisance? ✓ Yes. The Bylaw is a key regulatory tool which is in constant use. ✓ Rules around large vessels are well known by commercial operators. ✓ Bylaw has lower evidential thresholds and higher infringements fees to Maritime Rules. Bylaw clearly written? ✓ No. The Bylaw could be written in a way that is easier to understand.

²⁴ Large vessels include cargo ships, passenger ships and other vessels over 500 gross tonnage or 40 metres length that use Auckland's navigable waters. Fast vessels (also regulated under the large vessels clause) are power driven vessels capable of exceeding a proper speed of 25 knots.

²⁵ Maritime Transport Act 1994 section 33M, Local Government Act 2002 section 145.

²⁶ Sections 33H, 33F, 33O & 33N where no penalty is provided for.

²⁷ Local Government Act 2002, Section 164

²⁸ Local Government Act 2002, Section 242

Options	
Option 1: Status quo (Rely on Maritime Rules) • Allow Bylaw to expire on 31 July 2021. • Use Maritime Rules to regulate large vessels. Implementation • Harbourmaster and team enforce the Maritime Rules.	Option 2: New Navigation Safety Bylaw • Use Bylaw and Maritime Rules to regulate large vessels. • New bylaw rules and exemptions similar in effect to current Bylaw. • New bylaw written to be easier to read (including use of maps or diagrams) and to current drafting standards. Implementation • Same as current implementation.
Effectiveness at protecting the public from safety risks and nuisance? ✗ Less effective than Option 2 because there would be a regulatory gap for issues (for example reporting inoperative equipment, entering or departing pilotage areas, smaller vessels impeding larger vessels, prohibited moving zones and Automatic Identification Systems on fast vessels) that can help minimise risks to public safety, nuisance, collision and damage. Efficiency at protecting the public from safety risks and nuisance? ✗ Increased education and compliance costs to help address gaps created by Bylaw expiry.	Effectiveness at protecting the public from safety risks and nuisance? ✓ Makes rules about a range of large vessel issues (for example reporting inoperative equipment, entering or departing pilotage areas, smaller vessels impeding larger vessels, prohibited moving zones and Automatic Identification Systems on fast vessels) which help reduce public safety risks, nuisance, collision and damage. Efficiency at protecting the public from safety risks and nuisance? ✓ Continuation of familiar rules and implementation. ✓ Can be implemented within current budgets (including education). ✓ Bylaw easier to understand.
Risks and risk mitigation • Risk of increase in incidents (grounding and collisions), damage, injuries and fatalities. May be partially mitigated through increased guidance and compliance activities.	Risks and risk mitigation • Risk of incidents (grounding and collisions) between vessels or with infrastructure, nuisance, damage, injuries and fatalities may still occur. May be substantially mitigated using current implementation activities.
Section 155 Local Government Act 2002 Recommendations	
Based on the analysis against the criteria above and preliminary assessment, a new bylaw (Option 2) is the most appropriate way to protect public safety and prevent public nuisance in relation to large vessels on Auckland's navigable waters. A new bylaw would: • set clear and enforceable requirements for navigation of or near large vessels on Auckland's navigable waters, reduce the risk of grounding and collisions between vessels or with infrastructure, nuisance, damage, injuries and fatalities • be written to be easier to understand and meet current bylaw drafting standards • be authorised by statute, not be repugnant to other legislation, not be unreasonable, not give rise to any implications and would be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or Auckland Unitary Plan.	

Topic 7: Specific Restrictions in Lanes, Zones and Areas (5.8 of findings report)	
Current Bylaw	
- The Bylaw allows the Harbourmaster to specify restrictions and controls for certain areas and activities on Auckland's navigable waters that have a high volume of commercial and recreational vessel use. - It can require vessel operators to develop and adhere to Navigation Safety Operating Plans that are agreed to by the Harbourmaster.	
Implementation of current Bylaw by Harbourmaster	
- Proactive and reactive implementation – ongoing communication and liaison. - The Harbourmaster specifies restrictions and controls for certain areas that have a high volume of commercial and recreational vessel use. - The Harbourmaster works with vessel operators to develop Navigation Safety Operating Plans. - Commercial vessel operators may ask the Harbourmaster to establish controls for specific activities or areas etc.	
Statutory Authority	
Maritime Transport Act 1994 (MTA) and/or the Local Government Act 2002 (LGA) Bylaws made pursuant can address issues about navigation safety on Auckland's navigable waters.²⁹ Relevant MTA bylaw powers include powers to reserve the use of any waters for specified persons, ships or seaplanes.³⁰ - LGA provides for powers to seize property³¹ and maximum court fines of \$100,000.³²	
Issues and outcomes sought in 2013	
Issues were increased vessel traffic in the Waitematā Harbour, Kawau Island and Manukau Harbour and risk of collision, damage, injuries or fatalities. Additional issues included nuisance and risk of collision particularly in Waitematā. Outcomes sought to minimise nuisance, increase public safety and manage the use of space on Auckland's navigable waters.	
Issues and outcomes sought now	
Issues include risk of fatalities, injury, nuisance, damage and collisions due to a high volume of vessel traffic in some parts of Auckland's navigable waters, and interactions between vessels (including recreational and commercial). Additional issues are noise related nuisance from the use of recreational craft, particularly jetskis and water skiing on Ōrākei Basin. Outcomes sought are to ensure public safety, minimise nuisance, prevent damage and collisions between vessels or infrastructure.	
Bylaw Evaluation	
Still a problem requiring a Bylaw response? ✓ Yes. There is still an issue that regulation can help address. ✓ There are no regulatory alternatives. The specific restrictions in lanes, zones and areas are regionally specific and remain an important tool to address safety risks and nuisance and manage the use of space in Auckland's navigable waters. ✓ The use of the Public Safety and Nuisance Bylaw to regulate activities on Ōrākei Basin would be inappropriate because enforcement would be limited and there are no infringements to drive behavioural change. Is the current Bylaw effective and efficient at managing the use of Auckland's navigable waters and protecting the public from safety risks and nuisance? ✓ Yes. Controls on specific areas mean that these can be regularly patrolled and monitored. Navigation Safety Operating Plans required under the bylaw also help alert the Harbourmaster to issues.	

²⁹ Maritime Transport Act 1994 section 33M, Local Government Act 2002 section 145.

³⁰ Sections 33M & 33N where no penalty is provided for.

³¹ Local Government Act 2002, Section 164.

³² Local Government Act 2002, Section 242.

✓ Commercial operators and Auckland Transport believe the Bylaw is effective and efficient through the powers it provides the Harbourmaster to reserve specific areas and designate fast passenger ferry lanes, minimising nuisances and safety risks. ✗ The Bylaw could be improved, for example by increasing the speed limit in the Waitemata Harbour restricted zone, and the creation of a control for the Ports of Auckland boundary to minimise safety and nuisance risks with the increasing volume of large vessels entering this zone. ✗ The controls for Ōrākei Basin require updating due to better respond to changes in safety and nuisance issues over time. Bylaw clearly written? ✗ No. The Bylaw could be written in a way that is easier to understand.	
Options	
Option 1: Status quo (Rely on Maritime Rules) • Allow Bylaw to expire on 31 July 2021. • Rely on general Maritime Rules such as speed, right of way and PFD regulations to address issues. Implementation • Harbourmaster and team enforce the Maritime Rules.	Option 2: New Navigation Safety Bylaw • Include new rules or controls for a boundary around the Ports of Auckland. • Include new bylaw rules for Ōrākei Basin to better minimise safety and nuisance issues. • Other new bylaw rules and exemptions similar in effect to current Bylaw. • New bylaw written to be easier to read (including use of maps or diagrams) and to current drafting standards. Implementation • Same as current implementation, noting that the Harbourmaster is discussing possible enforcement of rules on the Ōrākei Basin with Parks and Places Specialists.
Effectiveness at managing the use of Auckland's navigable waters and protecting the public from safety risks and nuisance? ✗ Less effective than Option 2. Relying solely on the Maritime Rules means the Harbourmaster would have no ability to create restrictions or controls on certain areas or activities or require Navigation Safety Operating Plans which will increase risks to public safety, nuisance, collision and damage. ✗ Does not address Ports of Auckland risks, allowing public safety risks and risk of nuisance, collision and damage to continue. ✗ Does not address Ōrākei Basin issues, allowing safety and nuisance issues to continue. ✗ Bylaw rules have higher infringement fees or more specific offences which can better drive behavioural change and ensure compliance. Efficiency at managing the use of Auckland's navigable waters and protecting the public from safety risks and nuisance?	Effectiveness at managing the use of Auckland's navigable waters and protecting the public from safety risks and nuisance? ✓ Continues to enable enforceable restrictions in lanes, zones and areas that are targeted to the public safety, nuisance, damage and collision risks in those areas. Efficiency at managing the use of Auckland's navigable waters and protecting the public from safety risks and nuisance? ✓ Most current rules and implementation still apply - minimal change to implementation. ✓ Can be implemented within current budgets (including awareness and education). ✓ Infringement fines are retained by Auckland Transport which helps reduce ratepayer funding for implementation. ✓ Bylaw easier to understand.

✖ Less efficient for achieving outcomes sought / addressing issues because controls and restrictions would no longer exist and Navigation Safety Operating Plans no longer required, creating public safety risks. ✖ Infringement fees go to Maritime New Zealand (amounts cannot be retained by Auckland Transport).³³	
Risks and risk mitigation Risk of damage, collisions, nuisance and injuries, with particular risks for fast passenger ferries. Risk of further safety and nuisance issues occurring on Ōrākei Basin. May be partially mitigated by guidance and education or increased compliance response.	Risks and risk mitigation None identified.
Section 155 Local Government Act 2002 Recommendations	
Based on the analysis against the criteria above and preliminary assessment a new bylaw (Option 2) is the most appropriate way to ensure public safety and prevent nuisance in relation to the frequent use of Auckland's navigable waters. A new bylaw would: • set clear and enforceable restrictions in lanes, zones and areas to minimise risk of damage, collisions, nuisance and public safety • addresses issues about Orakei Basin and Ports of Auckland, ensures public safety and mitigates risk of nuisance issues • be written to be easier to understand and meet current bylaw drafting standards • be authorised by statute, not be repugnant to other legislation, not be unreasonable, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or Auckland Unitary Plan.	

³³ Maritime Transport Act 1994, Section 33Q.

Topic 8: Tankers, Hazardous Cargoes, Hazardous Works, Fuel Oil Transfers and Dangerous Materials (section 5.9 of Findings Report)	
Current Bylaw	
- Prescribes measures required for vessels / tankers to carry, load or discharge explosive / hazardous substances, including establishment of explosive safety, where vessels may berth, signals to be displayed, requirements to use international guidance and distances between vessels / tankers including during transhipment. - Cargo and substances include explosives, fuel oil and other dangerous products.	
Implementation of Existing Bylaw by Harbourmaster	
- The Harbourmaster uses a proactive, reactive, graduated approach to Bylaw implementation: - maintains close contact with key organisations including the Ports of Auckland, Maritime New Zealand, commercial operators and emergency services to plan for and respond to issues and risks. - assesses the risks associated with granting any exemptions to prescribed measures (for example distance between vessels or where they can berth) and informs the person in charge of any operating requirements. - assesses the need for and may develop new measures or the use of existing explosive safety zones or establish new ones. - are on call to respond to emerging issues or emergencies.	
Statutory Authority	
Maritime Transport Act 1994 (MTA) and/or the Local Government Act 2002 (LGA) A Bylaw made pursuant can address issues about navigation safety on Auckland's navigable waters.³⁴ - Relevant MTA bylaw powers and penalties include powers of entry powers to obtain information and powers to infringe. Penalties include a fine not exceeding \$500 and a maximum \$1,000 infringement fine.³⁵ - LGA provides for powers to seize property and maximum court fines of \$20,000.³⁶	
Issues and outcomes sought in 2013	
Issues were the risks and occurrences of collision, explosion, damage and injuries or fatalities relating to tankers / vessels carrying, loading, unloading, or transferring explosives or other hazardous substances. Outcome sought was to protect public safety and prevent nuisances by reducing risks and occurrences of collision, explosion, damage and injuries or fatalities.	
Issues and outcomes sought now	
The issues and outcomes sought remain the same as in 2013.	
Bylaw Evaluation	
Still a problem requiring a bylaw response? ✓ Yes. There is still an issue that regulation can help address. ✓ There are no feasible alternatives to a bylaw. For example, there are no provisions in the Maritime Transport Act or Maritime Rules that specify explosives safety zones, minimum distances between vessels carrying explosives, specifying where tankers must berth or moor, use of international guidance, and requirements to notify the Harbourmaster in advance of entering an explosives zone, navigating within 200m of other vessels and transhipment. ✓ Other codes and legislation only deal with aspects of safety and best practice relating to tankers and hazardous substance operations on vessels at a high level.³⁷ Is the current Bylaw effective and efficient at reducing risks and occurrences of collision, explosion, damage and injuries or fatalities?	

³⁴ Maritime Transport Act 1994 section 33M, Local Government Act 2002 section 145.

³⁵ Maritime Transport Act 1994, Section 33M, 33F, 33O, 33N.

³⁶ Local Government Act 2002, Section 164 and 242.

³⁷ International Safety Guide for Oil Tankers and Terminals and the International Chamber of Shipping Tanker Safety Guide. Health and Safety Work Act 2015 and Health and Safety at Work (Hazardous Substances) Regulations 2017.

✓ Bylaw remains a key regulatory tool in supporting the safe operation of tankers or other vessels transporting hazardous cargo in Auckland's navigable waters. ✓ Bylaw works alongside relevant rules and legislation to guide compliance and includes specific operating procedures and processes that help avoidance of doubt. ✓ Bylaw fills a regulatory gap which address safety risks as there are no other rules that exactly match the Bylaw powers for establishing explosive safety zones, where vessels may carry, load or unload hazardous cargo and the minimum distance between vessels. ✓ Non-compliance is relatively easy to detect and respond to because vessels are limited to operating in certain areas. ✓ 65 per cent of commercial survey respondents believe that the Bylaw about restricted zones and other reserved areas is working effectively, and 77 per cent of commercial respondents believe the Bylaw is working effectively with regard to the safety provisions relating to light and sound signals. ✓ Other commercial stakeholders indicated that the rules around handling of hazardous substances, including tankers work well. Bylaw clearly written? ✗ No. Bylaw could be written in a way that is easier to understand.
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Options	
Option 1: Status quo (rely on Maritime Act and Maritime Rules) • Let Bylaw expire on 31 July 2021. • Rely on Maritime Rules to address issues relating to tankers, hazardous cargoes, hazardous works, fuel oil transfers and dangerous materials. Implementation • Harbourmaster and team enforce the MTA Maritime Rules from 01 August 2021.	Option 2: New Navigation Safety Bylaw • Use Maritime Rules and a new bylaw to address issues • New bylaw rules and exemptions similar in effect to current Bylaw. • New bylaw written to be easy to understand and to meet current best practice drafting standards. Implementation • Same as current implementation.
Effectiveness at reducing risks and occurrences of collision, explosion, damage and injuries or fatalities ✗ Less effective than Option 2 because it relies on Maritime Rules which does not emphasise specify safety requirements which helps reduce risks and occurrences of incidents such as collision, explosion, damage and injuries or fatalities. ✗ Bylaw rules have higher infringement fees which can better drive behavioural change and ensure compliance. Efficiency at reducing risks and occurrences of collision, explosion, damage and injuries or fatalities ✗ May result in increased compliance activities in response to increased incidents due to an absence of preventative safety measures.	Effectiveness at reducing risks and occurrences of collision, explosion, damage and injuries or fatalities ✓ Retains rules about tankers, hazardous cargoes, hazardous works, fuel oil transfers and dangerous materials matters which has proven to be useful for operators as it is in constant use and is readily enforced. ✓ Current \$200/\$300 infringement fines (if retained in future regulations for new bylaw) higher than equivalent Maritime Rule (\$100) which provides greater deterrence. Efficiency at reducing risks and occurrences of collision, explosion, damage and injuries or fatalities ✓ Can be implemented within existing budgets (including education). ✓ Bylaw easier to understand.
Risks and risk mitigation Risk of increase in damage, collisions, and fatalities due to absence of Auckland specific rules. May be partially mitigated by increased education and guidance.	Risks and risk mitigation Risk of increase in damage, collisions, and fatalities continue to occur. May be partially mitigated by increased education and guidance.
Section 155 Local Government Act 2002 Recommendations	

Based on the analysis against the criteria above and preliminary assessment a new bylaw (Option 2) is the most appropriate way to protect public safety and prevent nuisance. A new bylaw would:

- sets clear and enforceable safety requirements for tankers, hazardous cargoes, hazardous works, fuel oil transfers and dangerous materials on vessels which helps reduce risks and occurrences of collision, explosion, damage and injuries or fatalities.
- be written to be easier to understand and meet current bylaw drafting standards
- be authorised by statute, not be repugnant to other legislation, not be unreasonable, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or Auckland Unitary Plan.

Topic 9: Pilot and Pilot Exempt Master Operations (5.10 of findings report)	
Current Bylaw	
- The Bylaw is a key regulatory tool used for the navigation of large vessels into Auckland's Harbours and sets requirements around pilotage areas³⁸ and operations. A pilot's primary duty is to protect ships from collisions or grounding while manoeuvring through specific pilotage areas. The pilot of a ship forms part of the bridge team. The bridge team works with the master to ensure the safe navigation of large vessels. - The Bylaw requires a log of transits in the pilotage area, passage plans and sets bridge team composition requirements. The Bylaw supplements the Maritime New Zealand pilotage rules that must also be adhered to by pilots and pilot exempt masters.³⁹	
Implementation of current Bylaw by Harbourmaster	
- The Harbourmaster uses a proactive and reactive approach to Bylaw implementation. - Harbourmaster maintains regular communication with bridge teams and monitors logs of transits, requirements for passage planning, the composition of the bridge team and related risks.	
Statutory Authority	
Maritime Transport Act 1994 (MTA) and/or the Local Government Act 2002 (LGA) Bylaw's made pursuant can address issues about navigation safety on Auckland's navigable waters.⁴⁰ - Relevant MTA bylaw powers and penalties include powers of entry, powers to obtain information and powers to infringe. Penalties include a fine not exceeding \$2,000 and a maximum \$10,000 infringement fine.⁴¹ - Under section 33F of the Maritime Transport Act 1994 (the Act), the Harbourmaster may issue directions that support maritime safety and help enforce navigation bylaws or regulations and rules made under the Act. Directions 2 to 20 and 3 to 20 provides requirements for the compulsory pilotage areas and is to be read alongside Maritime rule 90. The Directions complement and clarify procedures in the Bylaw but do not replace the role of the Bylaw. Infringements are not attached to Directions although court penalties on prosecution may apply up to maximum of \$100,000. ✗ LGA provides for powers to seize property⁴² and maximum court fines of \$100,000.⁴³	
Issues and outcomes sought in 2013	
Issues in 2013 were increased large vessel traffic in the Waitemata Harbour and more vessels berthing and departing the Ports of Auckland, creating public safety and nuisance risks and risk of collisions and damage. Outcomes sought were to minimise risk fatalities, injury, damage, collision and managing the use of space on Auckland's navigable waters.	
Issues and outcomes sought now	
Issues include risk of fatalities, injury, nuisance, damage and collisions due to a high volume of large vessel traffic particularly in and out of the Ports of Auckland, and the risks associated with interactions between large vessels and other vessels. Outcomes sought are to ensure public safety, minimise nuisance, prevent collisions, damage to vessels or infrastructure.	
Bylaw Evaluation	
Still a problem requiring a Bylaw response?	

³⁸ Auckland pilotage areas: The area of tidal waters inside a straight line drawn from the northern extreme of the eastern head of the Tamaki River to the southern extreme of Park Point (Te Roreomaiaaea); then by the high water mark of ordinary spring tide to the northern extreme of the western entrance to Owahanake Bay; then by a straight line to the south-western most point of Rakino Island; then by a straight line from the northernmost point of Rakino Island to Shearer Rock, then by a straight line to the southernwest extreme of Tiritiri Matangi Island, then by a straight line to the southeastern extreme of Whangaparaoa Peninsula.

³⁹ Pilot exempt master is a master who is exempted under the regulations from the requirement to engage a pilot for any particular port.

⁴⁰ Maritime Transport Act 1994 section 33M, Local Government Act 2002 section 145.

⁴¹ Sections 33H, 33F, 33O & 33N where no penalty is provided for.

⁴² Local Government Act 2002, Section 164

⁴³ Local Government Act 2002, Section 242

✓ Yes. There is still an issue that regulation can help address. ✓ There are no exactly comparable alternatives – the Bylaw rules are regionally specific and supplementary to the Maritime Rules. Is the current Bylaw effective and efficient at protecting the public from safety risks, nuisance, damage and collisions? ✓ Yes. It is a key regulatory tool that supports the safe operation of large vessels in Auckland's navigable waters. ✓ The Bylaw supplements the Maritime Rule 90 by setting regionally specific requirements not provided for in the Maritime Rule. Bylaw clearly written? ✗ No. The Bylaw could be written in a way that is easier to understand.	
Options	
Option 1: Status quo (Rely on Maritime Rules) • Allow Bylaw to expire on 31 July 2021. • Rely on Maritime Rules 90 to regulate pilotage and pilotage exempt masters. Implementation • Harbourmaster and team enforce the Maritime Rules under the Maritime Transport Act 1994.	Option 2: New navigation safety bylaw • Use new bylaw and Maritime Rules. • New bylaw rules and exemptions similar in effect to current Bylaw. • New bylaw written to be easier to read (including use of maps or diagrams) and to current drafting standards. Implementation • Same as current implementation.
Effectiveness at protecting the public from safety risks, nuisance, damage and collisions? • Less effective than Option 2 because relying solely on Maritime Rule 90 removes supplementary requirements enabled under a bylaw including provision of a log of transits, passage planning and the composition of the bridge team. The absence of the supplementary requirements increases the risks to public safety, nuisance issues, risks of damage and collisions between pilotage vessels and other vessels. Efficiency at protecting the public from safety risks, nuisance, damage and collisions? ✓ Less regulation and therefore less complexity. ✗ Less efficient as it may require additional implementation e.g. increased education or compliance activity with less certain outcomes.	Effectiveness at protecting the public from safety risks, nuisance, damage and collisions? ✓ Better to minimise risk of incidents, nuisance, damage, injuries and fatalities as the Bylaw complements Maritime Rule 90 through additional requirements such provision of a log (or logbook) of transits, passage planning and the composition of the bridge team. Efficiency at protecting the public from safety risks, nuisance, damage and collisions? ✓ Provides continuity of rules for Harbourmaster, pilots and pilot exempt masters – no need for additional communications or guidance. ✓ An updated but similar bylaw can be implemented within current budgets (including awareness and education). ✓ Bylaw easier to understand.
Risks and risk mitigation • Risk that removing specific requirements that complement the Maritime Rule could increase safety, nuisance, damage and collision risks and require additional resourcing for compliance. • May be partially mitigated by use of guidance to promote continued use previous bylaw requirements to	Risks and risk mitigation • None identified.

pilots/bridge teams without underlying legislative mandate.	
Section 155 Local Government Act 2002 Recommendations	
Based on the analysis against the criteria above and preliminary assessment a new bylaw (Option 2) is the most appropriate way protect public safety, minimise nuisance, prevent collisions and damage to vessels or infrastructure. A new bylaw would: • set clear and enforceable regulations for pilotage and pilot exempt masters to reduce risks to public safety such as fatalities and injury, minimise nuisance and risk of collisions between piloted vessels and damage • be written to be easier to understand and meet current bylaw drafting standards • be authorised by statute, not be repugnant to other legislation, not be unreasonable, not give rise to any implications and would not be inconsistent with the New Zealand Bill of Rights Act 1990, nor be inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or Auckland Unitary Plan.	

Topic 10: Licensing of Commercial Vessels for Hire or Reward (Section 5.11 of the Findings Report)	
Current Bylaw	
Bylaw requires commercial operators of vessels for hire to obtain a license from the harbourmaster to ensure safety, and prescribes the process, grounds of approval and conditions.	
Implementation of Existing Bylaw by Harbourmaster	
Not implemented (no licences, warnings or infringements issued) since 2017 due to regulatory changes (refer Bylaw evaluation).	
Statutory Authority	
Maritime Transport Act 1994 (MTA) and/or the Local Government Act 2002 (LGA) A bylaw made pursuant can address issues about navigation safety on Auckland's navigable waters.⁴⁴ - Relevant MTA bylaw powers and penalties include powers of entry, powers to obtain information and powers to infringe. Penalties include a fine not exceeding \$500 and a maximum \$1,000 infringement fine.⁴⁵ - LGA provides for powers to seize property and maximum court fines of \$20,000.⁴⁶	
Issues and outcomes sought in 2013	
Issues relate to the safety risks and misuse of space on Auckland's navigable waters related to operation of commercial vessels for hire or reward. Outcomes sought were to protect public safety and prevent nuisance by minimising safety risks and misuse of space.	
Issues and outcomes sought now	
The issues and outcomes sought remain the same as in 2013.	
Bylaw Evaluation	
Still a problem requiring a Bylaw response? × No. Alternative regulations already apply to commercial vessel services: - WorkSafe administers the Health and Safety at Work (Adventure Activities) Regulations 2016 which imposes additional safety and compliance standards for commercial operators of vessels for hire. - Penalties includes a fine not exceeding \$10,000 for unregistered commercial operators compared to a \$300 infringement under the bylaw which does not reflect the risks associated and the operator's duty of care to hirers. - The Trading and Events in Public Places Bylaw 2015 (TEPP) contains similar rules to the Bylaw about issuing licenses for commercial services hired from council controlled public places which includes water-based commercial services. This is enforced under Council's Licensing and Regulatory Compliance team. - Other Bylaw rules apply to the operation of hired vessels by the hirer to address general navigation safety issues (for example speed limits and collision avoidance). Is the current Bylaw effective and efficient at minimising safety risks and misuse of space? × Bylaw has not been used since 2017 and licenses issued were low. × Issues are addressed under the Health and Safety at Work (Adventure Activities) Regulations 2016 and Trading and Events in Public Places Bylaw 2015.	
Options	
Option 1: (status quo) Rely on other existing regulations ✓ Let Bylaw expire on 31 July 2021. ✓ Rely on Health and Safety at Work (Adventure Activities) Regulations 2016.	Option 2: New Navigation Safety Bylaw ✓ Use new bylaw and Maritime Rules to address commercial vessels for hire and reward

⁴⁴ Maritime Transport Act 1994 section 33M, Local Government Act 2002 section 145.

⁴⁵ Maritime Transport Act 1994, Section 33M, 33F, 33O, 33N.

⁴⁶ Local Government Act 2002, Section 164 and 242.

✓ Use TEPP to license and regulate the hiring of commercial vessels from council controlled public places. ✓ Rely on Navigation Safety Bylaw to address general navigation safety issues. Implementation • Council's licensing and regulatory compliance team to issue licenses for commercial services. • Harbourmaster and team can still address general navigation safety issues for example hired vessels that are speeding vessels or cause collisions.	✓ New bylaw to retain current Bylaw rules and exemptions. ✓ New bylaw written to be easier to read and to current drafting standards. Implementation ✓ Same as current implementation.
Effectiveness at minimising safety risks and misuse of space? ✓ WorkSafe regulations used for these activities since 2017. TEPP applies additional requirements where hire occurs from a council controlled public place (e.g. a beach). ✓ Penalties under regulations better reflect the risks associated, including the operator's duty of care to hirers. Efficiency at minimising safety risks and misuse of space? ✓ Avoids duplication of regulations and bylaw rules relating to licensing commercial vessels. ✓ Can be implemented within current budgets (including education).	Effectiveness at minimising safety risks and misuse of space? ✗ Bylaw is not used. Efficiency at minimising safety risks and misuse of space? ✗ Bylaw duplicates the licensing requirements of commercial vessel operators for hire and reward under WorkSafe regulations and the TEPP.
Risks and risk mitigation ✓ Risks that operators may not be aware of alternative requirement. ✓ May be mitigated using bylaw related information and communications.	Risks and risk mitigation ✓ Risks of public confusion as to which rule addresses issues related to licensing of commercial vessels for hire or reward. ✓ May be partially mitigated by increased education and patrols.
Section 155 Local Government Act 2002 Recommendations	
Based on the analysis against the criteria above and preliminary assessment, a bylaw is not (Option 1) the most appropriate way to protect public safety and prevent nuisance related to operation of commercial vessels for hire or reward, because: • Relying on other existing regulations is the more appropriate way to minimise safety risks and misuse of space related to commercial vessels for hire or reward • Remove duplication with Health and Safety at Work (Adventure Activities) Regulations 2016 and TEPP relating to licensing commercial vessels for hire • Council will continue to respond to complaints related to navigation safety issues for example hired vessels that are speeding vessels or cause collisions.	