

# Auckland Council Navigation Safety Bylaw 2014

## 2020 Review Findings Report



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## 1. Summary of key findings

### **Commercial and recreational use of Auckland's navigable waters continues to pose risks to safety or of damage or nuisance**

- There have been incremental increases over time in reported incidents, injuries and fatalities in line with population growth and increased recreational and commercial use.

### **A number of factors can impact on risk and safety**

- These include human, environmental / geographical, vessel / mechanical. Specific risks could include lack of knowledge, adherence to rules or failure to carry correct equipment, weather / conditions.
- There is relatively low participation in training and education (which is not mandatory). There is relatively low awareness of the Bylaw amongst People's Panel survey respondents. There is higher awareness of some national rules.

### **Certain population groups are more at risk of fatalities than others**

- The majority of fatalities in Auckland occur in relation to recreational activities. Pacific peoples have the highest representation amongst related fatalities occurring on the water relative to population size followed by people of Asian ethnicity.
- There has been a decrease in the number of Māori fatalities in Auckland in line with a trend nationally.

### **The type and scale of issues have not changed significantly but there are some new issues**

- The type of activities and issues occurring have not changed significantly since the Bylaw was adopted in 2014. Although there are some emerging issues such as the increasing use of novel craft such as hydrofoil and motorised surfboards.

### **The Bylaw implementation is effective and efficient**

- The Bylaw is administered by the Harbourmaster as one part of a wider strategic framework administered by multiple agencies working collaboratively. These include Maritime New Zealand, Maritime Police, Ports of Auckland, Surf Lifesaving Northern region and Drowning Prevention Auckland.
- The Harbourmaster uses a graduated, proactive and reactive approach to enforcement supported by the ability to issue strict liability infringement fines which provide an alternative to warnings or court prosecution.

### **The Bylaw remains appropriate (effective and efficient) for addressing issues**

- The Bylaw can address risks and safety and nuisance issues occurring on Auckland's navigable waters.
- The Bylaw can be implemented including through education, warnings, infringements, licenses and permits or court prosecution.

- The Bylaw fills a regulatory gap / complements the Act and rules for a range of key issues including:
  - requirements for the wearing of Personal Flotation Devices (PFD) on vessels 6 meters and under
  - requirements to carry navigational and communications equipment on recreational vessels
  - activities, controls and reserved areas
  - specific operating procedures relating to large vessels such as rules for operating in pilotage vessels
  - requirements for tankers – including reserved areas and minimum distances between vessels
  - large and fast vessels
  - pilotage areas
  - licensing of moorings and jet skis
  - permits for events.

**Some opportunities to improve the Bylaw have been identified**

- Suggested Bylaw improvements by the Harbourmaster, stakeholders and staff include for example:
  - reviewing speed limits
  - removing the licensing provisions for commercial vessels for hire and reward in line with the Health and Safety at Work (Adventure Activities) Regulations 2016
  - considering whether potential amendments may be required in response to novel craft such as hydrofoil and motorised surfboards.
- Suggested improvements should be assessed in an options report.

**The Bylaw is not inconsistent with the Bill of Rights Act 1990, Maritime Transport Act 1994, Resource Management Act 1991 and the Auckland Unitary Plan.**

## 2. Introduction

### Purpose of the report

This report presents findings from the review of the Tāmaki Makaurau Ture ā-Rohe Urungi Āhuru 2014, Auckland Council Navigation Safety Bylaw 2014 (Bylaw) and controls. The Bylaw will expire on 31 July 2021.

### Key questions

The review asked the following questions to meet council's statutory requirements under section 155 of the Local Government Act 2002:

- Are the issues the Bylaw sets out to address still evident?
- Has the nature and scale of the issues changed since 2014?
- Has implementation of the Bylaw been effective and efficient?
- Is a bylaw the most appropriate way to address current and future issues?
- Is the Bylaw the most appropriate form of bylaw?
- Does the Bylaw have any implications under the New Zealand Bill of Rights Act 1990, Resource Management Act 1991, or Auckland Unitary Plan<sup>1</sup>?

### Methodology

Research and engagement to answer the key questions included:

- **meetings** with the Harbourmaster
- **key stakeholder face-to-face interviews and meetings** with community, safety, recreational and commercial stakeholders, and staff from council, council-controlled organisations and government (Appendix A)
- attending **sector forums** on water safety and safer boating (Appendix A)
- **cluster workshops** with Local Boards
- **Māori engagement** through an online survey
- attending advisory panel **business meetings** (Appendix A)
- **survey** of 'People's Panel', recreational clubs, commercial operators, business, Pacific peoples, Māori, new migrants, and attendees at the Boat Show in May 2019
- analysis of **data and research** from the Harbourmaster and external organisations (Appendix A).

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<sup>1</sup> It is a requirement under the Maritime Transport Act 1994 to ensure that bylaws made pursuant to 33M in the Act must not be inconsistent with the Resource Management Act 1991 or the Auckland Unitary Plan.

## Bylaw context

### Original problem and outcomes sought in 2014

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 outcomes sought in 2014 to address the problem were defined as:<sup>2</sup>

- facilitating safe, efficient and orderly control of navigable waters in Auckland
- ensuring safe passage of the travelling public and the transport of goods on and off vessels
- ensuring navigable waters are accessible to the public, recreational and commercial vessel owners subject to appropriate conditions.

### Regulatory bylaw approach

The Bylaw was made by the Auckland Council Governing Body on 31 July 2014 (GB/2014/66) under the Maritime Transport Act 1994, Local Government Act 2002, and Local Government (Auckland Council) Act 2009.

The Bylaw came into force on 25 October 2014 and replaced the legacy Auckland Regional Council Navigation Safety Bylaw 2008.

The Bylaw seeks to protect the public from safety risks and nuisance, and to manage the use of Auckland's navigable waters. The Bylaw (Figure 2.4.1):

- specifies requirements for the carriage and use of personal flotation devices and buoyancy aids on recreational vessels (clauses 7 -11)
- regulates and controls the use or management of vessels (clauses 12-17, 27-75)
- prevents nuisances arising from the use of vessels (clauses 12-17)
- prevents nuisances arising from the actions of persons and things on or in the water (clauses 18-26)
- regulates sporting, training, ceremonial and customary events on or in the water (clauses 24-26)
- regulates and controls the use of anchorages (clauses 36-38)
- requires the marking and identification of personal watercraft (clause 39)

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<sup>2</sup> Auckland Council, Ture ā-Rohe Urungi Āhuru 2014, December Statement of Proposal Statement of Proposal, Navigation Safety, Bylaw 2014

- regulates the placing and maintenance of moorings and maritime facilities (clauses 40-47)
- reserves the use of any waters for specified persons or vessels (clauses 58-64)
- prescribes vessel traffic separation and management schemes (clauses 58-64).

A copy of the Bylaw is attached in Appendix B.

**Figure 2.1: Navigation Safety Bylaw 2014 Framework**



### 3. Bylaw status

The Bylaw will expire on 31 July 2021 under section 158 and 160A of the Local Government Act 2002. Any new bylaw (if required) must be made before 31 July 2021 to avoid a regulatory gap.

#### 3.1 Regulatory and strategic context

The Bylaw forms part of a wider regulatory and strategic framework (Figure 2.5.1). An overview of this framework is provided in Tables 2.5.1, 2.5.2 and 2.5.3.

**Figure 3.1.1: Regulatory and Strategic Framework**

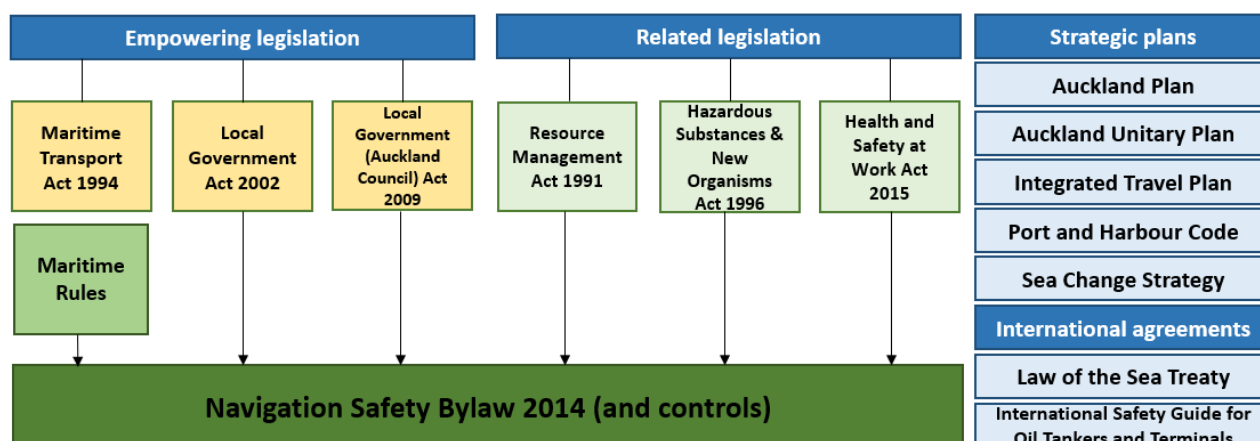


**Table 3.1.1: Legislation and regulations authorising or informing the Bylaw**

| Legislation / Regulation                                                                                             | Relationship to Bylaw                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Local Government Act 2002                                                                                            | Empowers local authorities to make bylaws to: <ul style="list-style-type: none"> <li>protect from nuisance</li> <li>protect, promote and maintain public health and safety, minimise the potential for offensive behaviour in public places</li> <li>provide local authorities with enforcement powers, including prosecution.</li> </ul> |
| Local Government (Auckland Council) Act 2009                                                                         | Empowers Auckland Council and Auckland Transport to make / enforce the Bylaw.                                                                                                                                                                                                                                                             |
| Maritime Transport (Infringement Fees for Offences – Auckland Council Navigation Safety Bylaw 2014) Regulations 2015 | Auckland Navigation Safety Bylaw 2014 infringement offences are made under the Maritime Transport Act 1994                                                                                                                                                                                                                                |
| Maritime Transport Act 1994                                                                                          | Empowers Auckland Council to make a bylaw to regulate navigation safety and prevent nuisance.                                                                                                                                                                                                                                             |
| Maritime rules                                                                                                       | Nationwide rules under the Maritime Transport Act 1994 for vessels and activities. Infringements and court penalties apply.                                                                                                                                                                                                               |
| Hazardous Substances (Classification) Regulations 2001                                                               | The Bylaw uses the definition of ‘hazardous substances’ in this regulation in relation to ‘explosive substances’.                                                                                                                                                                                                                         |

| Legislation / Regulation     | Relationship to Bylaw                                                                                                                                   |
|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| Resource Management Act 1991 | Bylaws made under section 33M of the Maritime Transport Act may not be inconsistent with the Resource Management Act 1991 or the Auckland Unitary Plan. |

**Table 3.1.2: Auckland Plan Outcomes**

| Outcome                                                                                                                                                                                                                               | Direction                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Bylaw alignment                                                                                                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><i>Outcome: Transport and Access - Ngā mahi kawenga me te noho wātea mai:</i></p> <p>Aucklanders will be able to get where they want to go more easily, safely and sustainably.</p>                                                | <ul style="list-style-type: none"> <li>Direction 1: Better connect people, places, goods and services</li> <li>Direction 2: Increase genuine travel choices for a healthy, vibrant and equitable Auckland</li> <li>Direction 3: Maximise safety and environmental protection</li> </ul>                                                                                                                                                                    | Aligns to Bylaw through supporting safe and efficient navigation of freight and cruise vessels and ferries                                                                             |
| <p><i>Outcome: Belonging and Participation -Te whai pānga me te whai wāhi atu:</i> All Aucklanders will be part of and contribute to society, access opportunities, and have the chance to develop to their full potential.</p>       | <p>Direction 2:</p> <ul style="list-style-type: none"> <li>Improve health and wellbeing for all Aucklanders by reducing harm and disparities in opportunities</li> <li>Improving Aucklanders' physical and mental health and wellbeing means people will be happier, healthier, and more able to participate in activities that they value.</li> </ul> <p>Focus area 7: Recognise the value of arts, culture, sports and recreation to quality of life</p> | 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           |
| <p><i>Outcome: Māori Identity and Wellbeing -Te tuakiri Māori me tōna oranga</i></p> <p>A thriving Māori identity is Auckland's point of difference in the world – it advances prosperity for Māori and benefits all Aucklanders.</p> | <p>Direction 3: Recognise and provide for te Tiriti o Waitangi outcomes.</p>                                                                                                                                                                                                                                                                                                                                                                               | 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. |

**Table 3.1.3: The Māori Plan for Tāmaki Makaurau**

| Key directions                                                                                                      |                                                                                                                                                                                                                                                                                                                                     | Bylaw alignment                                                                                         |
|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| <p><b>Whanaungatanga</b></p> <p>Develop vibrant communities</p> <p>"A city/region that caters for diverse Māori</p> | <p><i>Cultural:</i> Māori communities are culturally vibrant across Tāmaki Makaurau</p> <ul style="list-style-type: none"> <li>Accessibility to Māori culture</li> </ul> <p><i>Social:</i> Māori communities are connected and safe</p> <ul style="list-style-type: none"> <li>Access to transport and public facilities</li> </ul> | Supports Māori communities to more safely access and participate in safe activities on navigable waters |

| Key directions                                                                                                 |                                                                                                                                                                                                                                                                                                                                        | Bylaw alignment                                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| lifestyles and experiences.”                                                                                   | <ul style="list-style-type: none"> <li>Safe and connected whānau and communities Participation in communities</li> </ul>                                                                                                                                                                                                               |                                                                                                                                                                      |
| <b>Manaakitanga</b><br>Improve quality of life<br>“Satisfaction with our environments and standard of living.” | <i>Social:</i> Māori enjoy a high quality of life <ul style="list-style-type: none"> <li>Health and wellness</li> </ul>                                                                                                                                                                                                                | Supports Māori to safely access activities on navigable waters that support improved quality of life and health and wellness                                         |
| <b>Wairuatanga</b><br>Promote distinctive identity “Recognised sense of identity, uniqueness and belonging”.   | <i>Cultural:</i> Māori heritage of Tāmaki Makaurau is valued and protected <ul style="list-style-type: none"> <li>Māori cultural values and heritage</li> <li>Sense of pride and belonging</li> </ul> <i>Social:</i> Māori social institutions and networks thrive <ul style="list-style-type: none"> <li>Sport and leisure</li> </ul> | Supports Māori to more safely deliver and participate in cultural and traditional activities for example waka ama or events such as the Tāmaki Herenga Waka Festival |
| <b>Kaitiakitanga</b><br>Ensure sustainable futures<br>“Intergenerational reciprocity”                          | <i>Cultural:</i> Māori cultural wellbeing is future-proofed<br><i>Social:</i> Whānau wellbeing <ul style="list-style-type: none"> <li>Social equity</li> <li>Whānau wellbeing.</li> </ul>                                                                                                                                              | Supports current and future generations to participate safely in cultural, economic and recreational activities on navigable waters.                                 |

## Maritime Transport Act 1994

The Maritime Transport Act 1994 (the Act) stipulates principles of maritime law to regulate ship safety, maritime liability, and marine environmental protection. It establishes offences and penalties for breaches of the Act and any bylaw.

The Act<sup>3</sup> enables Auckland Council to provide for additional regulation through a bylaw to provide for local conditions to achieve navigation safety. This includes to:

- regulate and control the use or management of ships
- regulate the placing and maintenance of moorings and maritime facilities
- prevent nuisances arising from the:
  - use of ships and seaplanes
  - actions of persons and things on or in the water
- reserve the use of any waters for specified persons, ships, or seaplanes
- in relation to boat races, swimming races, or similar events —
  - prohibit or regulate the use of ships:
  - regulate, or authorise the organisers of an event to regulate, the admission of persons to specified areas:
- regulate and control the use of anchorages
- prescribe ship traffic separation and management schemes

<sup>3</sup> Only Auckland Council (and not Auckland Transport) is empowered to make bylaws under the Act. Section 33M of the Act empowers “regional councils” to make navigation bylaws. Regional councils are defined by section 33B of the Act as regional councils or unitary authorities as defined under section 5(1) Local Government Act 2002 which does not include Auckland Transport.

- specify requirements for the carriage and use of personal flotation devices and buoyancy aids on pleasure craft
- require the marking and identification of personal watercraft.

A bylaw made by the council under this provision must not be inconsistent with the Resource Management Act 1991 or the Auckland Unitary Plan.

## **Maritime Rules**

The maritime and marine protection rules (Maritime Rules) apply nationwide.

Maritime Rules are made by the Minister of Transport under the Maritime Transport Act 1994. Failure to comply with Maritime Rules is an offence and can result in prosecution or fines specified in the Maritime (Offences) Regulations.

Maritime rules provide for the safety of vessels and people. The rules cover:

- ship operations and personnel
- design, construction and equipment
- health, safety and welfare of ships personnel
- documentation
- marine craft
- pilotage
- navigation Safety Rules
- general marine protection
- oil pollution prevention
- planning and response to marine oil spills
- noxious liquid/other harmful substances pollution prevention
- other marine protection rules (for example dumping of waste or other matter, ballast, mandatory routeing).

## **About the Auckland Harbourmaster**

The Auckland Harbourmaster (Harbourmaster) refers to a person within Auckland Transport<sup>4</sup> appointed to this role by Auckland Council.<sup>5</sup>

The Harbourmaster is responsible for maritime safety on Auckland's navigable waters, including:

- management of moorings in management areas
- marine oil spill response
- administering the Auckland Council Navigation Safety Bylaw 2014
- directing how and when vessels enter, move within or depart from Auckland's waters

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<sup>4</sup> The Harbourmaster transferred from Auckland Council to Auckland Transport on 27 April 2015

<sup>5</sup> Section 33D Maritime Transport Act 1994

- mooring and placement of ships, including use of tugs or other assistance such as pilotage
- how ships receive or discharge cargo
- how cargo is secured – to mitigate risks of navigational hazard
- controlling navigation for extraordinary or unusual maritime traffic.

### **Area regulated by the Bylaw**

The Bylaw applies to Auckland's navigable waters, these include any waters<sup>6</sup> in the Auckland region whether coastal or inland which are able to be navigated, out to the 12-mile territorial limit<sup>7</sup> (Figure 3.1.1).

**Figure 3.1.1: Map to show area regulated under the Auckland Navigation Safety Bylaw 2014 (darker blue shaded area)**



<sup>6</sup> Includes any relevant lakes, rivers, and estuaries

<sup>7</sup> Includes an area from a line between the entrance to the Kaipara Harbour on the west coast, to Mangawhai Heads on the east coast, then south to a line between Kariotahi Beach on the west coast, to Miranda in the Firth of Thames to the east, out to 12 miles to seaward of Great Barrier Island and 12 miles offshore from the West Coast.

## 4. Global findings

### 4.1 Summary of review findings

- Commercial and recreational use of Auckland's navigable waters continues to pose risks to safety or of damage or nuisance
- Demand for space is increasing
- Incidents and fatalities are occurring in line with population growth and increased use
- A range of factors impact on safety - human, environmental / geographical, or of the vessel / mechanical. Specific risks include lack of knowledge of or adherence to the rules or failure to carry correct safety equipment
- Certain population groups are more at risk than others. Pacific peoples are overrepresented amongst fatalities occurring on the water relative to population size. People of Asian ethnicity are also highly represented
- There has been a decrease over time in the number of Māori fatalities in line with a trend nationally
- For the most part the types of issues and activities regulated by the Bylaw have stayed the same since the Bylaw was adopted
- Some new issues have arisen however, including new/novel craft such as hydrofoils and motorized surfboards
- The Bylaw is administered by the Harbourmaster as one part of wider strategic framework administered by multiple agencies working collaboratively
- The Bylaw is the most appropriate way to help mitigate and manage issues specific to Auckland in a way that other regulations cannot, and is a key tool to manage events spaces and how and where vessels operate and activities occur as well as providing licensing and permits for events, jetskis and moorings
- The Bylaw could be improved, for example the review of speed limits and revisiting wording around commercial vessels for hire or reward in response to the introduction of the Health and Safety at Work (Adventure Activities) Regulations 2016.

### 4.2 Are the issues that the Bylaw sets out to address still evident?

#### 4.2.1 Commercial and recreational use of Auckland's navigable waters continues to pose risks to safety and can cause damage or nuisance

There are inherent risks associated with recreational and commercial use of Auckland's navigable waters by vessels or for activities. These include but are not limited to risks or incidences of collision, explosion, fire, grounding or damage (for example to vessels or structures like wharves), injuries or fatalities.

Contributing risk factors can be human, environmental / geographical, or vessel / mechanical, for example:

- relevant legislation / regulations
- unsafe practices / risk taking behaviour / failure to adhere to regulations (for example consumption of drugs or alcohol, speeding, not carrying or wearing personal flotation devices)
- errors / misjudgements
- failure of navigational or other equipment:
- inexperience / ill-preparedness (for example limited knowledge of safe practice or rules, not carrying sufficient / using safety or communications equipment)
- risks to navigation safety due to weather and geographical conditions
- interaction between vessels
- carriage and handling of hazardous substances
- operations or activities on board vessels such as hot works.<sup>8</sup>

Data (Table 4.2.1) show that there are relatively regular incidents on Auckland's navigable waters, including collisions, near misses, groundings or mechanical failure<sup>9</sup>. Injuries, fatalities, and major damage are however relatively low in number relative to the high level of commercial and recreational activities (Figures 4.2.1.1 to 4.2.1.3).

**Table 4.2.1: Data sources and type**

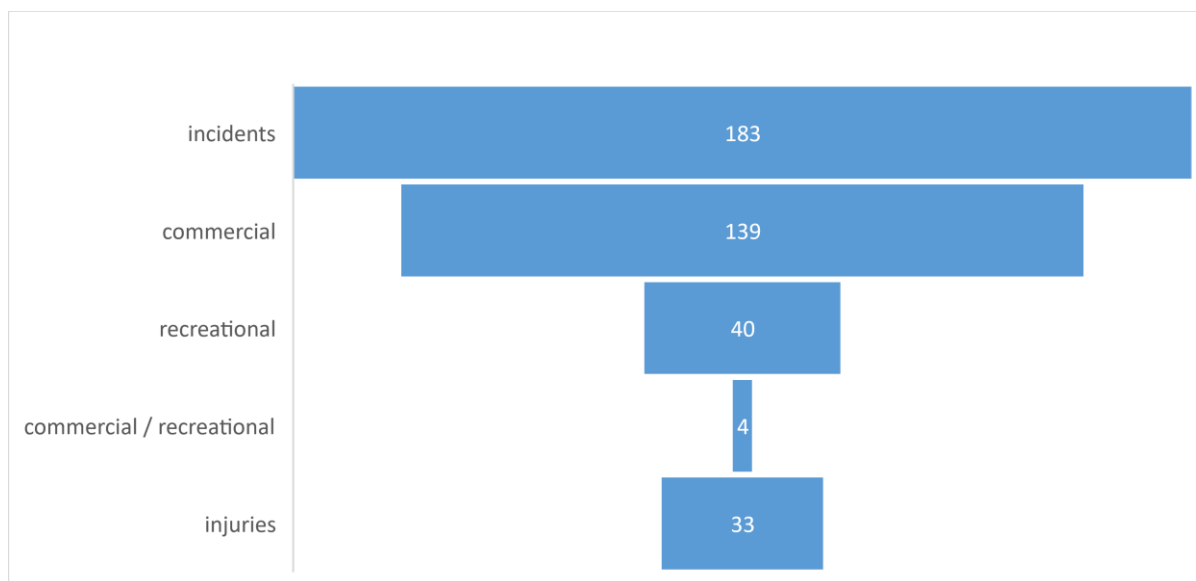
| Organisation             | Data type                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Harbourmaster            | Infringements and warnings <sup>10</sup>                                                                                                                                                                                                                                                                                                                                             |
| Maritime New Zealand     | Incidents in breach of the Maritime Act, Health and Safety at Work Act, Maritime rules and related injuries<br>Fatalities<br>Data from the 'No Excuses' Campaign 2019/20<br><b><i>Note: Reported incidents include matters that may not be specifically not regulated under the Bylaw. The data do however confirm that related incidents are occurring on navigable waters.</i></b> |
| Water Safety New Zealand | DrownBase data 2015-2019 – drowning fatalities in Auckland's navigable waters, by recreational and commercial activity, gender, age, ethnicity, location.<br>Data excludes fatalities occurring in non 'navigable waters' for example excludes swimming pools, drains, ponds and reservoirs                                                                                          |
| Ministry of Justice      | Charges under the Maritime Transport Act 1994, the Maritime rules and Bylaw.                                                                                                                                                                                                                                                                                                         |

<sup>8</sup> Hot works is welding, brazing (joining together of metal), cutting by flame or heat operating equipment. This may pose hazards including of fire or explosions, burning, exposure to toxic gases or fumes, electric shocks, noise or vibration

<sup>9</sup> Under the Maritime Act 1994 incidents must be reported to Maritime New Zealand. Information is gathered from a range of sources including from Police, Harbourmasters, Coastguard or media. There are therefore limitations in the accuracy of the data as not all incidents are reported to Maritime New Zealand.

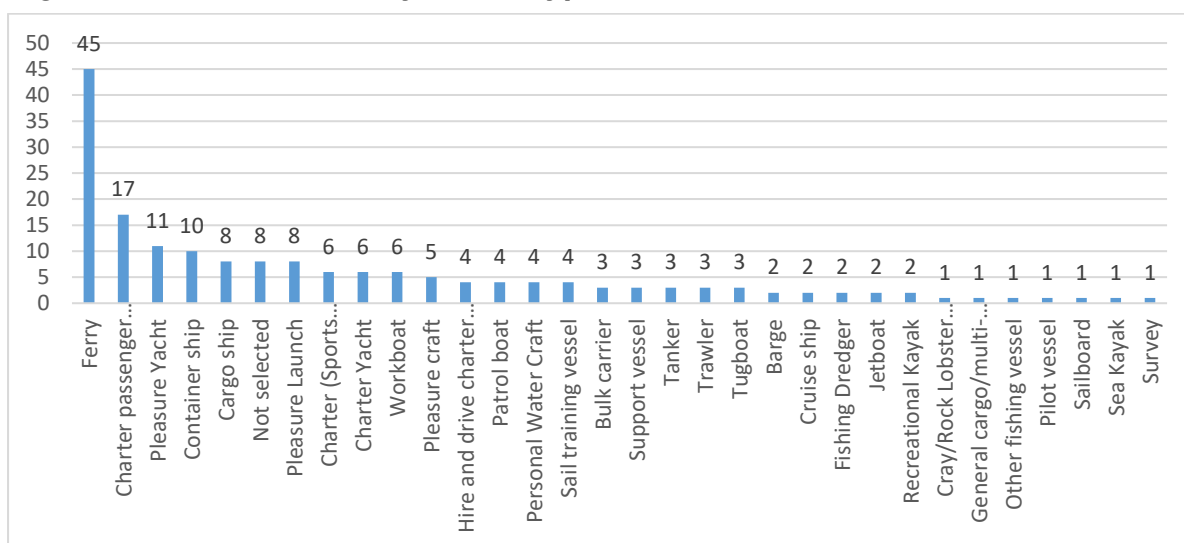
<sup>10</sup> The Harbourmaster is migrating to a new data management system therefore it is difficult to reliably analyse current complaints and response data.

**Figure 4.2.1.1: Maritime New Zealand incident and injury data 2019**



In 2019, 183 incidents<sup>11</sup> and 33 associated injuries were reported. The majority of the incidents involved commercial vessels (139 or 75.9 per cent) (Figure X).

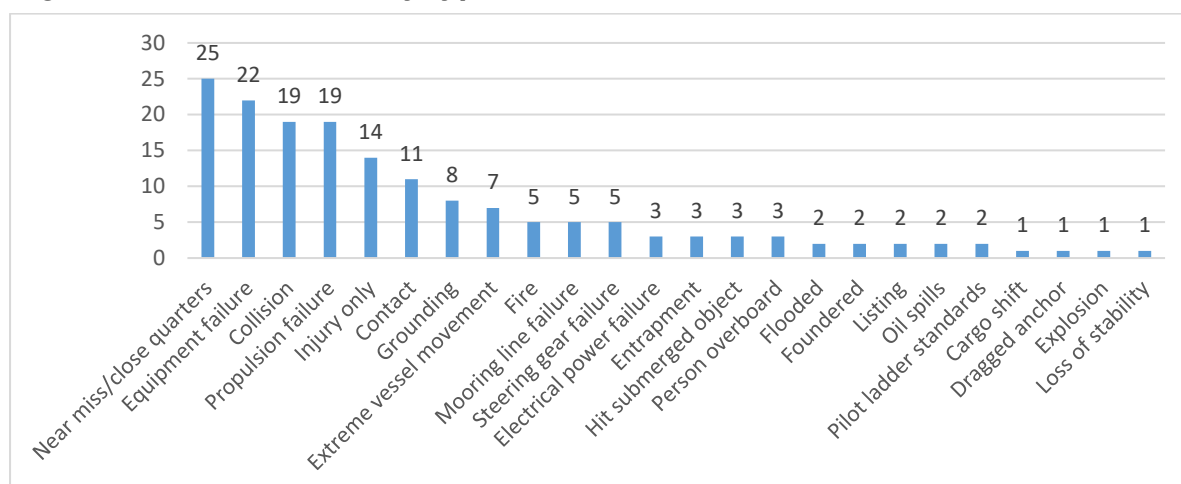
**Figure 4.2.1.2: Incidents by vessel type 2019**



Most reported incidents involved ferries (45), charter passenger vessels (17), pleasure yachts (11), container ships (10) and cargo ships (8).

<sup>11</sup> Data include incidents regulated under the Health and Safety at Work Act 2015.

**Figure 4.2.1.3: Incidents by type 2019**



The most commonly reported incident types involve commercial vessels and include near misses at close quarters (25), equipment failure (22), collision (19) and propulsion failure (19). (Figure 4.2.1.3).

The Harbourmaster, stakeholders and Local Boards and People's Panel survey respondents believe, in line with the data that there are a range of risks, issues and incidents occurring on Auckland's navigable waters.

For example, in the past year, the most common issues were<sup>12</sup>:

- people travelling too fast on boats (speeding) near other boats or swimmers (43 per cent had seen/experienced this in the last year)
- people not wearing PFDs on boats 6 metres or under in length (37 per cent)
- people using boats or jet skis in areas reserved for swimmers / events (28 per cent).

#### **4.2.2 There is strong demand for use of Auckland's navigable waters, and this can pose risks**

##### **Recreational use of Auckland's navigable waters**

In New Zealand, around 1,529,711 adults are involved in recreational boating.<sup>13</sup> Auckland has the highest proportion of recreational boaties representing 34 per cent of the total (520,101). In 2016, it was estimated that there were approximately 150,000 recreational vessels in Auckland<sup>14</sup>.

Recreational vessels include for example waka, kayaks, canoes and stand up paddleboards, dinghies, sailboats, yachts, launches, jetboats and jet skis.

<sup>12</sup> People's Panel survey

<sup>13</sup> 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)'.

<sup>14</sup> Deep Dive – Harbourmaster, AT Board report 29 April 2016, Agenda item no. 12.2.

In 2019, 1,494 jet skis were registered by the Harbourmaster.

The People's Panel survey respondent's feedback showed participation in activities in and on the water (in the past year) as follows:

- swimming (70 per cent)
- kayaking / canoeing (25 per cent)
- body boarding or boogie boarding (18 per cent)
- stand up paddle boarding (15 per cent)
- diving / snorkelling (14 per cent).

### **Commercial use of Auckland's navigable waters**

Commercial vessels include for example trawlers, barges, charter fishing vessels, ferries, tugboats, patrol boats, pilot vessels, cruise ships, cargo ships, bulk carriers and tankers, naval vessels, commercial fishing operators and charter boat operators.

Auckland's Port is New Zealand's busiest receiving around 1,500 commercial vessels per year, more than 150<sup>15</sup> of which are cruise ships.

In 2017, there were around 6 million passenger journeys on Auckland's ferries<sup>16</sup>.

Freight demand is forecast to increase in line with population growth and demand for export and imports<sup>17</sup>.

### **Events on Auckland's navigable waters**

Most events permitted under the Bylaw are large scale sailing club events, triathlons, dragon boating, Thundercat races and swims.

Council's Arts, Community and Events team report that for the month of January 2020, 27 event permit applications have been received.

### **Moorings, berths and anchorage on Auckland's navigable waters**

The Bylaw regulates the allocation, construction and maintenance of moorings, berthing and anchoring of vessels. In 2019, 543 mooring licenses were issued by the Harbourmaster.

#### **4.2.3 Some recreational users have limited awareness of rules, safety precautions, take safety risks or face barriers to compliance**

The People's Panel survey responses showed that awareness of the Bylaw across all respondents was low at 15 per cent (this increases to 32 per cent if those who

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<sup>15</sup> Heart of the City, Resources and information <https://www.hotcity.co.nz/resources-and-information/cruise-ships>

<sup>16</sup> Auckland's Future Ferry Strategy, ARUP, 2017

<sup>17</sup> Transport Outlook: Future State A starting discussion on the future of transport in New Zealand, Ministry of Transport, 2017

responded with 'maybe' are included). There was however higher awareness of certain rules including:

- speed limits for boats (72 per cent are aware of these rules)
- when you need to wear a life jacket (PFD) (67 per cent)
- when life jackets (PFD) need to be carried (63 per cent)
- reserved areas for example for swimmers or certain types of boats (53 per cent)
- where you can swim (52 per cent).

Research by the Safer Boating Forum showed boaties' attitudes to the importance of boating safety were shown to be higher than those of the general population (90 per cent in 2019 compared with 73 per cent respectively).

There is no mandatory requirement for people in charge of recreational vessels to undergo training or certification. Only one in five boaties has completed any formal boating education course. The most commonly undertaken boating education courses are the Day Skipper, Boatmaster and Radio operator courses.

Different factors influence peoples' actions around safety including:

- motivational – such as response to different goals, intentions, incentives and disincentives
- capability – such as inability to use equipment, lack of know awareness of rules and safety precautions
- physical factors – such as ease of access to PFD on board a vessel,
- social factors – such as social norms and role modelling, visibility of good behaviour such as role models wearing PFD<sup>18</sup>

Stakeholders have highlighted that:

- people may purchase recreational vessels and without sufficient knowledge about how to safely navigate these vessels / lack situational awareness when on the water
- while adults are committed to taking appropriate safety precautions for their children, they may be less inclined to do so for themselves
- some boaties may have a 'bulletproof' attitude to safety which may mean that they do not take adequate safety precautions
- education should be provided at point of sale of personal flotation devices to help ensure people select the correct type.

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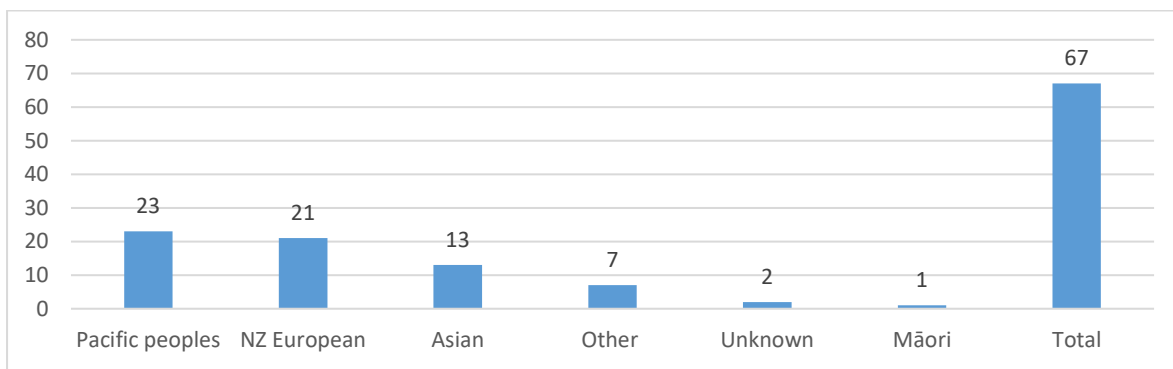
<sup>18</sup> 2019 Recreational Boating Participation Research, July 2019, Richard Griffiths Jonathan Dodd Sara Beccari Ruth Davy Yazad Karkaria Hanrie Le Roux.

#### 4.2.4 Certain population groups appear more at risk / or are overrepresented in fatalities

Peoples Panel survey responses show that:

- a high proportion of Māori, Pacific peoples and recent migrants are not participating in water activities (41, 48 and 33 per cent respectively)
- for all groups participating in activities, swimming is the most frequent 'in water' activity, followed by diving or snorkelling, surfing and other
- for all groups kayaking, canoeing, body boarding or boogie boarding and stand-up paddle boarding are the most frequent 'on water' activities.

**Figure 4.2.4.1: Recreational and non - recreational fatalities by ethnicity 2015-2019**



(Source: Water Safety NZ – DrownBase)

Water Safety New Zealand data show that between 2015-2019 there was a total of 67 preventable<sup>19</sup> recreational and non-recreational<sup>20</sup> fatalities in Auckland.

Pacific peoples are overrepresented<sup>21</sup> amongst fatalities for this period (23). The next highest number of fatalities were New Zealand European people (21), and people of Asian ethnicity (13). There was one Māori fatality. Non recreational fatalities made up 13 (9.4 per cent) of the total fatalities. Data from Census 2018<sup>22</sup> show that:

- 15.5 per cent of Aucklanders identified as Pacific Peoples<sup>23</sup> - 34 per cent of fatalities
- 53.5 per cent of Aucklanders identified as European - 31 per cent of fatalities

<sup>19</sup> Preventable fatalities include recreational and non-recreational drowning deaths. They do not include those fatalities classified as 'other' (arising as a result of road or air vehicle accidents, homicide, suicide or of unknown origin) as these are not considered applicable to the prevention and rescue efforts of the water safety sector.

<sup>20</sup> Recreational fatalities exclude those occurring outside of the areas regulated under the Bylaw for example domestic or public swimming pools, drains, ponds or reservoirs, non-recreational fatalities include accidental immersion such as those occurring while rescuing others.

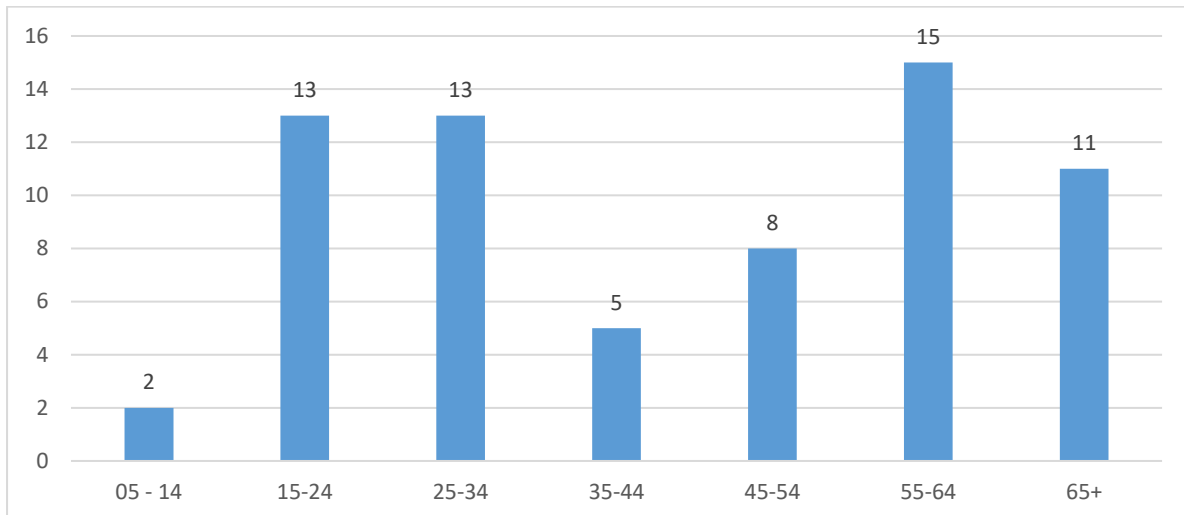
<sup>21</sup> Proportionate the overall representation of Pacific peoples in Auckland

<sup>22</sup> <https://www.knowledgeauckland.org.nz/assets/publications/Auckland-2018-Census-info-sheet.pdf>

<sup>23</sup> Up 0.5 per cent from 15 per cent in Census 2013.

- 28.2 per cent of Aucklanders identified as being of Asian ethnicity - 19 per cent of fatalities
- 11.5 per cent of Aucklanders identified as Māori - 1.5 per cent of fatalities.
- Males make up 60 or 89.5 per cent of total fatalities.

**Figure 4.2.4.2: Recreational and non - recreational fatalities by age 2015-2019**



(Source: Water Safety NZ – DrownBase)

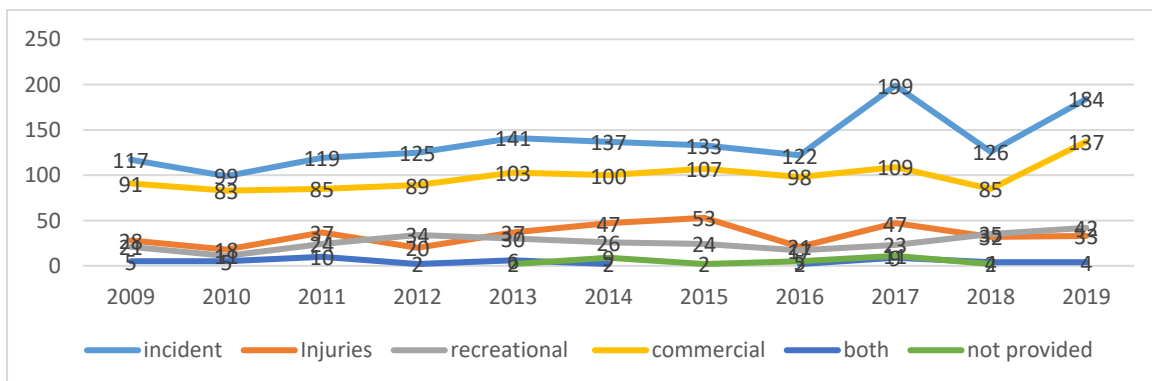
People aged between 15 and 34 (38 per cent) made up the highest number of fatalities (26) followed by people aged 55 to 65+(11) (38 per cent).

### 4.3 Has there been any change in the nature and scale of problems?

#### 4.3.1 Data show an increase in related incidents and injuries occurring on Auckland's navigable waters

**Data Limitation:** Not all activities that result in fatalities are the related to matters regulated under the Bylaw. However, the data shown here help show the type and frequency of incidents and fatalities occurring on Auckland's navigable waters.

**Figure 4.3.1.1: Maritime NZ Data of incidents and injuries: Auckland region 2009 to 2019**

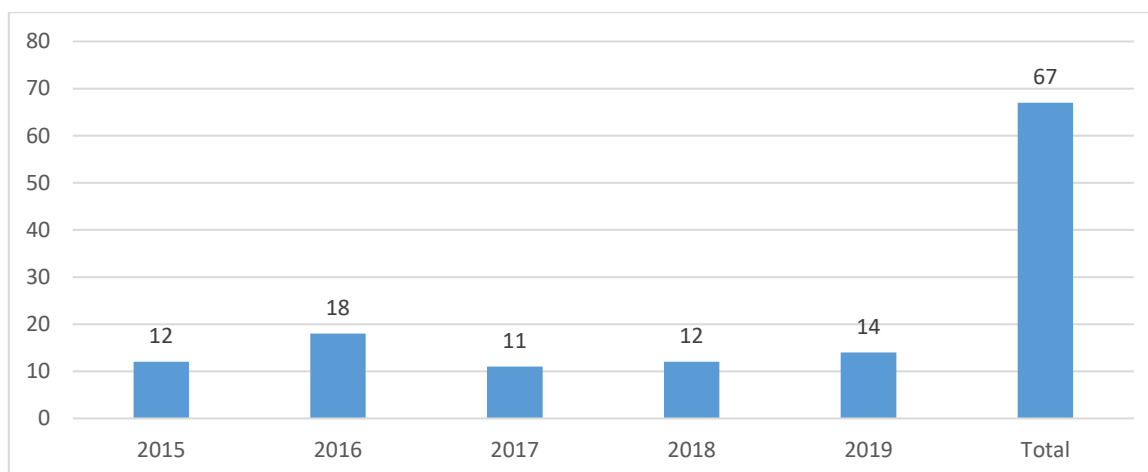


(Source: Maritime NZ incidents and injury data)

Data show an increase in incidents<sup>24</sup> occurring. Between 2009 and 2019 the total number of incidents by 57 per cent increased from 117 to 184 annually.

Injuries remain relatively low overall relative to incidents (approximately one injury per 4 incidents). Injury numbers peaked at 53 in 2015 but decreased to 33 in 2019.

**Figure 4.3.1.2: Preventable drowning recreational and non-recreational fatalities Auckland region 2015-2019**



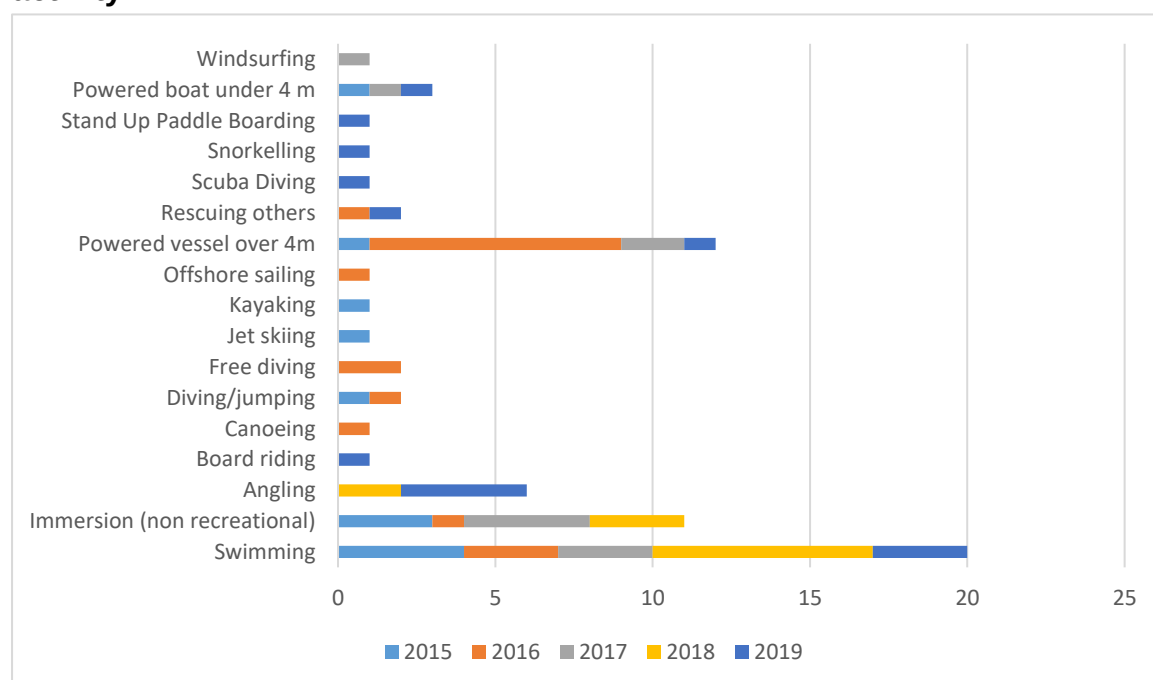
(Source: Water Safety NZ – DrownBase)

Recreational and non-recreational<sup>25</sup> drowning fatalities peaked in 2016 at 18, decreased to 11 in 2017 and increased to 14 in 2019.

<sup>24</sup> Incidents include collision, grounding, mechanical, power or structural failure, near miss, sinking, fire, dragged anchor, hitting submerged objects, capsize, persons overboard and extreme vessel movement.

<sup>25</sup> Non recreational fatalities include accidental immersion such as those occurring while rescuing others.

**Figure 4.3.1.3: Preventable drowning fatalities Auckland region 2015-2019 by activity**



(Source: Water Safety NZ – DrownBase)

Data show an increase in reported incidents<sup>26</sup>. Between 2009 and 2019 the total number of incidents totalled 1,492. The number of incidents reported annually increased from 117 to 184 annually a 57 percent increase. The highest reported number of annual incidents was 189 in 2017.

### 4.3.2 Demand for space on Auckland's navigable waters is increasing

#### Events

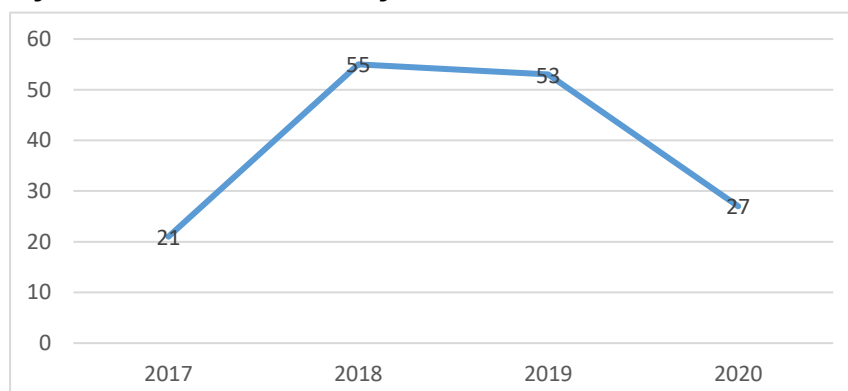
The number of events permitted under the Bylaw are increasing. As at January 2020, applications for 2020 were at the midpoint for the years previous (figure 4.32.1).

The number of events is likely to increase further in areas such as Devonport, Takapuna, Ōrākei and the Bays to coincide with the America's Cup in 2021.

One of the most significant events that the Bylaw will help regulate is the 36<sup>th</sup> America's Cup to be held in March 2021. The event will require demarcation and separation of areas in the Hauraki Gulf. The Harbourmaster is working closely with event organisers on planning and logistics.

<sup>26</sup> Incidents include collision, grounding, mechanical, power or structural failure, near miss, sinking, fire, dragged anchor, hitting submerged objects, capsized, persons overboard and extreme vessel movement.

**Figure 4.3.2.1. Events on the water that require a permit from council under the Bylaw 2017-2020 January YTD**



(Source: Auckland Council Arts, Community and Events)

### Recreational activities on the water

The Harbourmaster, stakeholders and Local Boards believe there has been an increase in activities occurring on navigable waters. While there are limited regional data sources to accurately quantify the increased participation in recreational activities on and in the water in Auckland, there are some indicators that may support this finding.

Census 2018 data show the population of Auckland has increased 11 per cent (156,168) from 2013 to 1,571,718. This means that more people are likely to participate in water related activities.

NZ Safer Boating Forum survey data<sup>27</sup> show:

- In 2019, nationally the total number of boaties increased by 79,354 over the previous three years with 34 per cent of boaties living in Auckland
- The majority of boaties who go boating at least once a month reported that their boating usage remained similar to the previous year.

From 2017 to 2018 there were increases in use as follows:

- kayaks (28 to 30 per cent)
- large power boats (27 to 29 per cent)
- dinghies (27 to 28 per cent)
- jet skis (26 to 30 per cent)
- canoes (23 to 27 per cent)

From 2018 to 2019 there were increases in use as follows:

- sail boats more than six metres long (22 to 26 per cent)
- windsurfers (31 to 33 per cent)
- power boats over six metres (29 to 30 per cent)

<sup>27</sup> 2019 base: New Zealanders 18 and over recreational boating owners/users 2019 n=900, 2018 n=1227, 2017 n = 902

From 2017 to 2018 there were decreases in use as follows:

- stand-up paddleboards (40 to 34 per cent)
- windsurfer (36 to 31 per cent)
- sail boats up to six metres (32 to 30 per cent)
- sailboat more than six metres (31 to 22 per cent)

From 2018 to 2019 there were decreases in use as follows:

- stand-up paddleboards (34 to 33 per cent)
- powerboats up to six metres (37 to 36 per cent),
- sail boats up to six metres (30 to 29 per cent)
- dinghies (28 to 24 per cent)
- jet skis (30 to 29 per cent).

Peoples Panel survey responses from 2013<sup>28</sup> and 2019 show boaties participation in boating activities compared.

| Vessel type                                      | Year | Frequency           |                                     |                        |
|--------------------------------------------------|------|---------------------|-------------------------------------|------------------------|
|                                                  |      | Once a week or more | Fortnightly / several times a month | Once a month / or less |
| larger yachts 6 metres in length and over        | 2013 | 11 per cent         | 19 per cent                         | 43 per cent            |
|                                                  | 2019 | 26 per cent         | 19 per cent                         | 51 per cent            |
| Smaller yachts & sailing dinghies under 6 metres | 2013 | 7 per cent          | 17 per cent                         | 57 per cent            |
|                                                  | 2019 | 25 per cent         | 23 per cent                         | 50 per cent            |
| Larger launches or motorboats 6 metres & over    | 2013 | 5 per cent          | 10 per cent                         | 67 per cent            |
|                                                  | 2019 | 14 per cent         | 10 per cent                         | 56 per cent            |
| Small & medium sized motorboats under 6 metres   | 2013 | 3 per cent          | 13 per cent                         | 65 per cent            |
|                                                  | 2019 | 14 per cent         | 21 per cent                         | 57 per cent            |
| Kayaks or canoes                                 | 2013 | 6 per cent          | 13 per cent                         | 66 per cent            |
|                                                  | 2019 | 20 per cent         | 22 per cent                         | 51 per cent            |
| Waka ama/ dragon boats                           | 2013 | 8 per cent          | 3 per cent                          | 52 per cent            |
|                                                  | 2019 | 57 per cent         | 19 per cent                         | 14 per cent            |
| Jet skiing                                       | 2013 | 2 per cent          | 7 per cent                          | 57 per cent            |
|                                                  | 2019 | 21 per cent         | 13 per cent                         | 46 per cent            |
| Stand-up paddle boarding                         | 2013 | 5 per cent          | 11 per cent                         | 69 per cent            |
|                                                  | 2019 | 33 per cent         | 18 per cent                         | 42 per cent            |

<sup>28</sup> People's Panel survey 2013 (July 2013) N= 4,229, People's Panel survey 2019 (May/June 2013) N = 4,113

The overall trend is that there are a higher proportion of respondents in 2019 indicating they are participating more frequently than in 2013.

A higher proportion of respondents indicated that they are participating *once a week or more* in activities in 2019 compared to 2013. There is a similar trend for participation in activities *fortnightly or several times a month*.

For participation in activities once a month or less the picture is more mixed.

### Moorings

As participation in recreational boating and commercial vessel's activity in Auckland increases so does the demand for moorings. The number of mooring licenses issued is increasing annually. In 2013, 336 mooring licenses were issued with 543 issued in 2019.

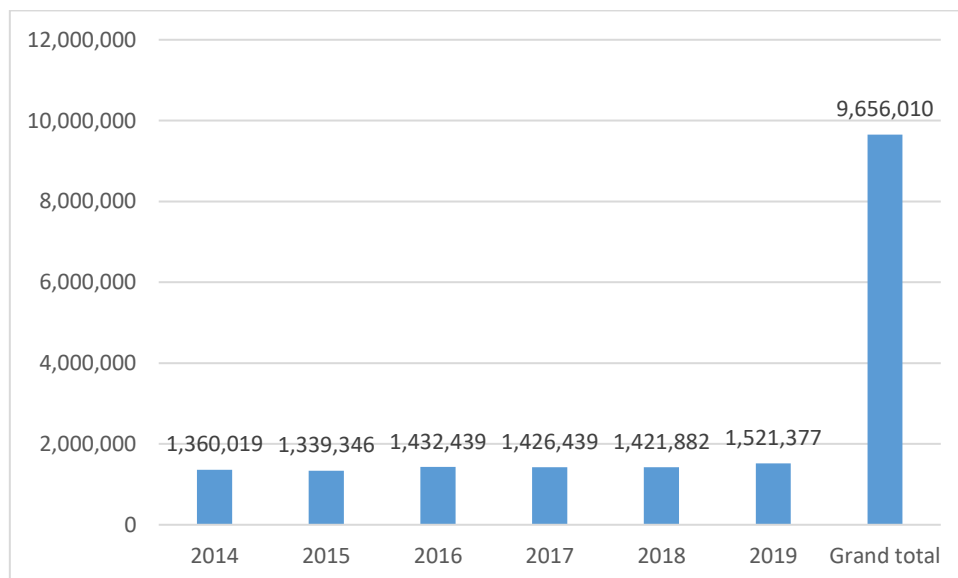
The Harbourmaster, stakeholders and Local Boards consider that the demand for space remains and recognise the importance of managing the demand for this space to ensure safety, efficiency, effectiveness and equity.

### Commercial vessels

There is a trend towards larger vessels which enable more efficient and effective transportation of people<sup>29</sup> and goods<sup>30</sup>. Alongside this the overall volume of commercial vessels is expected to grow alongside population growth, increased demand for tourism, goods and increasing export volumes.

### Ferries

**Figure 4.3.2.2: Growth in ferry journeys Auckland 2014 - 2019**



(Source: Auckland Transport)

<sup>29</sup> <https://ourauckland.aucklandcouncil.govt.nz/articles/news/2017/11/plan-approved-for-berthing-large-cruise-ships/>

<sup>30</sup> In 2006, the largest cruise ship to visit Auckland was 294 metres long now visiting cruise ships reach up to 350 metres long and 50 per cent of new ships on order are often too large to berth in allocated areas

With Auckland's increasing population, urban development and tourism there has been a steady increase demand for ferry services. In 2017, there were six million ferry journeys.<sup>31</sup> Data from Auckland Transport show that ferry journeys are increasing incrementally over time. Available annual data show there was a total of 9,656,010 journeys over the six years between 2014 to 2019. Annual journeys peaked at 1,521,377 in 2019.<sup>32</sup>

### 4.3.3 Some new activities are occurring / issues have emerged since the Bylaw was adopted

#### Novel craft

Since the Bylaw was adopted in 2014 there has been a trend toward new types of vessels such as hydrofoil and motorised surfboards. The Bylaw does specifically refer to these types of vessel specifically or related risks. However, it does address similar vessel types.

#### Public fireworks displays

Feedback from Council's Arts, Community and Events (ACE) suggests that there is an emerging demand for permits for fireworks displays on the water, for example on barges. The Harbourmaster approves events that require reserved areas, temporary speed limit suspensions, installation of course markers or other safety controls.

#### Houseboats

The Harbourmaster, stakeholders and local boards have all highlighted a potential issue around increasing numbers of houseboats on moorings.

## 4.4 Has implementation of the Bylaw been effective and efficient?

### 4.4.1 Multiple organisations play a role in navigation safety in Auckland

Alongside the Harbourmaster, other organisations also play a role in maritime and navigational safety:

| Agency                       | Role                                                                                                                                                                                                                                                                                       |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Ministry of Transport</b> | <ul style="list-style-type: none"> <li>Government's principal policy advisor.</li> <li>Supports the development of legislation, regulations and rules.</li> </ul>                                                                                                                          |
| <b>Maritime New Zealand</b>  | <p>Crown entity, national focus. Core functions are:</p> <ul style="list-style-type: none"> <li><i>Regulation and compliance:</i> developing safety, security and environmental regulations for vessels and ports, licensing, education, auditing, investigations, enforcement.</li> </ul> |

<sup>31</sup> Including commercial services.

<sup>32</sup> Excludes commercial services (Waiheke and Devonport)

| Agency                                             | Role                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                    | <ul style="list-style-type: none"> <li>• <i>Infrastructure provision:</i> maintaining navigational aids to shipping, distress and radio service, emergency locator beacon detection on land, sea and air</li> <li>• <i>Incident response:</i> providing national land, sea and air search and rescue coordination service, manage maritime incident and oil spill response capability, and lead responses to significant maritime incidents and emergencies, including oil spills.</li> <li>• New Zealand Port and Harbour Marine Safety Code: leading and coordinating</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Maritime Police</b>                             | <ul style="list-style-type: none"> <li>• <i>Crime and disorder:</i> attending, investigating and reporting offences, (for example) stolen boats, protest activity, drug recovery</li> <li>• <i>Protecting boaties:</i> from danger, crime and reckless behaviour</li> <li>• <i>Security checks:</i> on international cruise ships and warships</li> <li>• <i>Search and rescue</i></li> <li>• <i>Public events:</i> overseeing events, controlling spectator craft</li> <li>• <i>National security:</i> with agencies such as Customs, Ministry of Primary Industries, Immigration, Department of Conservation, Maritime New Zealand, Ministry of Transport and councils</li> <li>• <i>Support for the Police National Dive Squad and Special Tactics Group</i></li> <li>• <i>Conducting checks on boat operators:</i> on and off the water providing assistance, education and enforcement of marine legislation</li> <li>• <i>Body recovery, medical emergencies</i></li> </ul> |
| <b>Ports of Auckland</b>                           | <ul style="list-style-type: none"> <li>• Ports of Auckland (POAL) operates the majority of the commercial wharf areas within the Auckland Central Business District. It provides container terminal handling, bulk cargo handling, freight hubs, cruise industry facilities, and other services<sup>33</sup></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Coast Guard</b>                                 | <ul style="list-style-type: none"> <li>• Voluntary organisation. Rescue crews provide the primary maritime search and rescue service</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Transport Accident Investigation Commission</b> | <ul style="list-style-type: none"> <li>• Investigates and determines the circumstances and causes of aviation, marine,</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

<sup>33</sup> Auckland Council owns 100 per cent of POAL, it is governed under the Port Companies Act 1988 and is not a council-controlled organisation (CCO).

| Agency | Role                                                                                        |
|--------|---------------------------------------------------------------------------------------------|
|        | and rail accidents and incidents with a view to avoiding similar occurrences in the future. |

There is strong collaboration and coordination across organisations aimed at addressing safety risks, ensuring efficient and effectiveness of activities on the water and minimising potential damage and nuisance.

### **Port and Harbour Safety Code**

The Port and Harbour Safety Code is a voluntary national standard for safe management of marine activities in ports and harbours to complement local (bylaws) and national legislation. The Code applies to operators of commercial ports; councils, as local regulators of maritime activity within their regional waters; and Maritime New Zealand. The Harbourmaster is a member of the working group that supports the implementation of the Code. The Code informs the Harbourmaster's Safety Management Plans which along with a range of procedures and processes articulates how the Bylaw will be implemented.

### **Memoranda of Understanding and regular engagement with Ports of Auckland**

The Memoranda of Understanding between Auckland Transport and the Ports of Auckland helps to clarify roles and responsibilities between parties including the Harbourmaster and related functions to maintain safe and efficient operations. Regular meetings are held between the Port's General Manager Marine, Engineering and General Wharf Operations and the Harbourmaster. Ongoing exchange of information also occurs between the Ports and Harbourmaster to ensure smooth functioning of operations and mitigate risks.

### **Northern Harbourmasters forum**

Exchange of information and best practice also occurs between northern Harbourmasters and Maritime New Zealand. Northern Harbourmasters include the Harbourmasters from Northland, Waikato and the Hawkes Bay.

### **'No Excuses' on-water enforcement campaign**

The 'No Excuses' on-water enforcement campaign is an initiative involving collaboration between Maritime New Zealand and regional councils. This complements educational programmes run during the Summer Boating Campaign. The aim is to help ensure boaties know, understand and follow the applicable rules. The campaign runs from 12 October to 31 March annually.

Enforcement action is taken against people found in breach of safety rules including those relating to carriage or use of PFD and speed. Harbourmasters may use limited discretion with regard to jet ski registrations. For example, they may issue a warning

or a deferred infringement provided that compliance occurs within specified timeframes.

### Regular collaboration

Regular informal collaboration occurs between the Harbourmaster, Maritime Police Coastguard and Ports of Auckland.

Police alert the Harbourmaster to issues of non-compliance for example speeding or failure to carry Personal Flotation Devices.

Behaviour not regulated under the Bylaw or reaching a criminal threshold will be reported to the Police/Maritime NZ by the Harbourmaster.

### The Harbourmaster has a range of enforcement powers under the Local Government Act 2002 and Maritime Transport Act 1994 and the Bylaw

The Harbourmaster and officers have a range of powers to enforce the Maritime Transport Act 1994, Maritime Rules and Bylaw to ensure safe management of navigable waters (Tables 4.4.1.1, 4.4.1.2). For example, the Harbourmaster can board vessels, require people to comply with their instructions, issue infringement notices or prosecute offenders, and can seize and sell abandoned vessels.

**Table 4.4.1.1: Bylaw enforcement powers relevant to large vessels**

| Power                                                                                                                                                                                                                                                                                                          | Authority                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>require name and address</li> <li>enter and remain on any ship</li> <li>direct when and how ships enter, depart or move within their waters</li> <li>direct person in charge to anchor/moor or place a vessel</li> <li>regulate and control maritime traffic</li> </ul> | Maritime Transport Act 1994, Section 33F                                 |
| <ul style="list-style-type: none"> <li>court injunction</li> <li>removal of works</li> <li>seizure of property</li> <li>entry</li> <li>cost recovery for removal, disposal, damage</li> <li>power of entry, request name and address</li> </ul>                                                                | Local government Act 2002, sections 162, 163, 164-168, 171-174, 176, 178 |

**Table 4.4.1.2: Bylaw penalties relevant to large vessels**

| Offence                                                                        | Penalty (authority)                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Breach of Bylaw (any clause)</li> </ul> | <ul style="list-style-type: none"> <li>fine not exceeding \$500 where no penalty is provided for<sup>34</sup><br/>(Section 33N, Maritime Transport Act 1994)</li> <li>a maximum \$20,000 court fine<br/>(Section 242(4), Local Government Act 2002)</li> </ul> |
| <ul style="list-style-type: none"> <li>Failure to comply with bylaw</li> </ul> | <ul style="list-style-type: none"> <li>\$200/300 Infringement fees<br/>(Maritime Transport (Infringement Fees for Offences—Auckland Council Navigation Safety Bylaw 2014) Regulations 2015.<sup>35</sup>)</li> </ul>                                           |

<sup>34</sup> The Act enables the Governor General to prescribe a fine up to \$2500 which no fines have been prescribed to date

<sup>35</sup> The infringement fee regulations were made by the Governing General using section 33O of the Maritime Transport Act 1994

The Navigation Safety Bylaw is the only Auckland Council Bylaw with an infringement regime. Infringement notices are issued by the Harbourmaster and warranted officers. Fines are between \$200 and \$300. Auckland Transport retains infringement fines collected.

### **The Harbourmaster can also issue directions to ensure maritime safety**

The Harbourmaster may issue directions or requirements to masters of vessels under 33F of the Maritime Transport Act 1994 to ensure maritime safety, enforce navigation bylaws or regulations and rules made under the Act. These are set out on the [Harbourmaster's webpage](#). They set out procedures for various regional locations, conditions and circumstances. They may apply:

- to a vessel, or all vessels of a defined class
- at specific times
- requirements for speed and manoeuvring.

The power of the Harbourmaster to make directions or issue requirements under section 33F complements rules in the Bylaw. They do not replace the need for a Bylaw. Section 33F enables maritime safety as well as making a breach of the Bylaw an offence under the Maritime Transport Act 1994. While infringement fines are not attached to directions, court penalties apply<sup>36</sup>.

#### **4.4.2 The Harbourmaster and officers use a graduated compliance approach**

The Harbourmaster and officers use a graduated compliance approach to ensuring maritime safety and undertake proactive and reactive patrols on Auckland's navigable waters.

Where Bylaw breaches do not present an imminent risk, the Harbourmaster and officers will seek to educate and warn people who are breaching the rules.

There is a 'no excuses' approach to offences relating to PFDs, or other offences that directly/imminently risk safety or damage and infringement notices will be issued. When offences escalate to a criminal threshold the Harbourmaster will involve the Police and / or Maritime New Zealand.

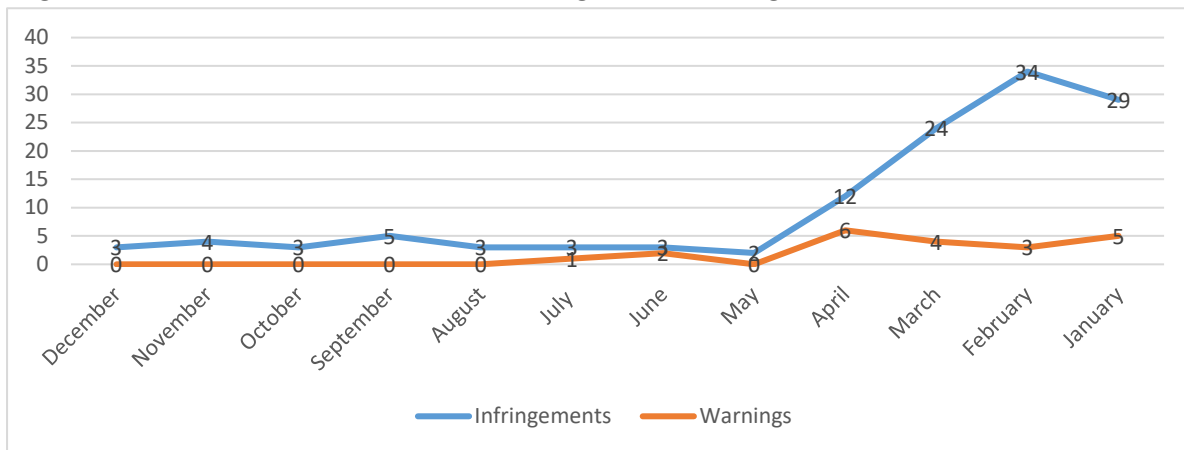
For abandoned vessels, the Harbourmaster seeks to identify the owners, if this is not possible the vessels may be sold.

In 2019, 125 infringements and 21 warnings were issued by the Harbourmaster. The most commonly occurring issues for which warnings or infringements are issued under the Bylaw are vessels exceeding the 5 Knot rule, failure to carry sufficient / appropriate personal flotation devices and vessels exceeding the 12 Knot speed rule.

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<sup>36</sup> 12 months imprisonment or a fine not exceeding \$10,000 for an individual or \$100,000 for a body corporate on prosecution.

**Figure 4.4.2.1: Harbourmaster warnings and infringements 2019**



(Source: Auckland Harbourmaster)

For 2018/19 year there were three convictions under the Maritime Safety Act 1994 in the Auckland Area.

No court charges were brought under the Bylaw for the period between 2008/09 and 2018/19.<sup>37</sup>

#### 4.4.3 Bylaw implementation can help minimise issues, but are there limitations

There are recreational incidents, injuries and fatalities occurring on Auckland's navigable waters. In 2019, 40 recreational incidents were reported to Maritime New Zealand.

Awareness of the Bylaw is relatively low (15 per cent had heard of the Bylaw, and 17 per cent had 'maybe' heard of the Bylaw). Awareness is highest for 'boaties' and lowest for recent migrants, Māori and Pacific peoples. Awareness of certain rules is higher however (across all respondents):<sup>38</sup>

- for speed (71 per cent of responses)
- when to wear or carry a personal flotation device (67 per cent of responses)
- where you can swim (53 per cent of responses)
- reserved areas (52 per cent of responses).

Around 40 per cent believed that the incidence of people breaking the rules is about the same as five years ago.

For some issues however a higher proportion of respondents reported having observed people breaking rules more often in 2019, including:

- people using jet skis in areas reserved for swimmers (47 per cent of responses)

<sup>37</sup> Source Ministry of Justice

<sup>38</sup> People's Panel survey

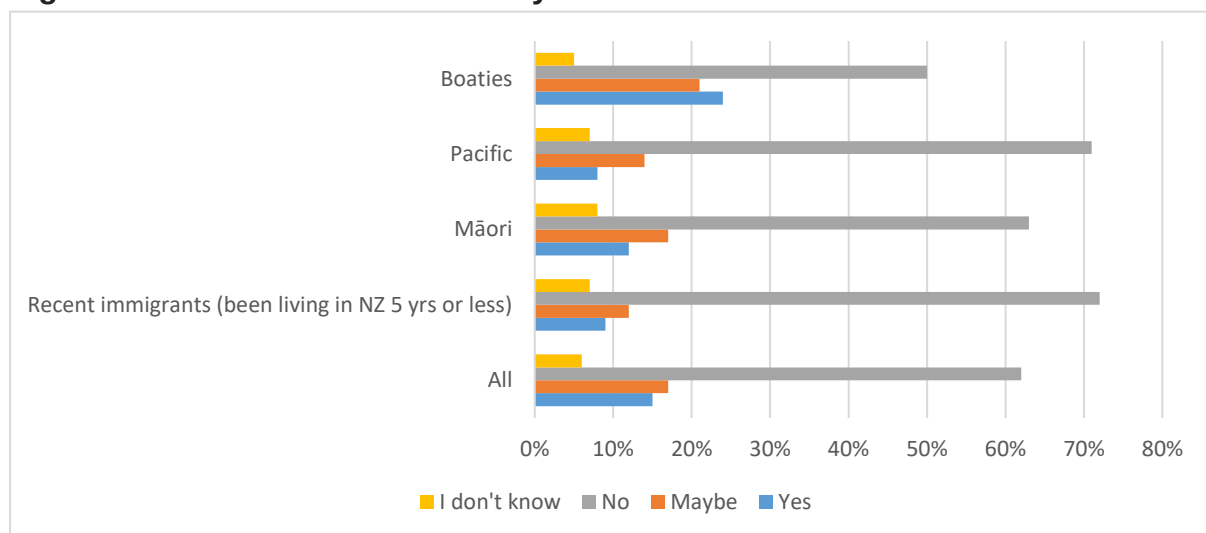
- people travelling too fast on boats (37 per cent of responses)
- People using boats or jet skis in areas reserved for swimmers / events (27 per cent of responses).

Data from the 2018 to 2019 'No Excuses' Campaign show some changes in the level of compliance with key rules, including:

- personal flotation devices: for vessels where occupants were legally required to wear a PFD, 83 per cent were compliant (two per cent reduction from previous year)
- communication devices: (recreational boating participants are recommended to carry at least two forms of communication device – a requirement in the Bylaw) 57 per cent of those surveyed did so almost the same as the previous year.

Stakeholders and Local Boards have observed that more recreational vessels being operated by people who have limited situational awareness or awareness of the relevant rules and safety measures.

**Figure 4.4.3.1: Awareness of the Bylaw**

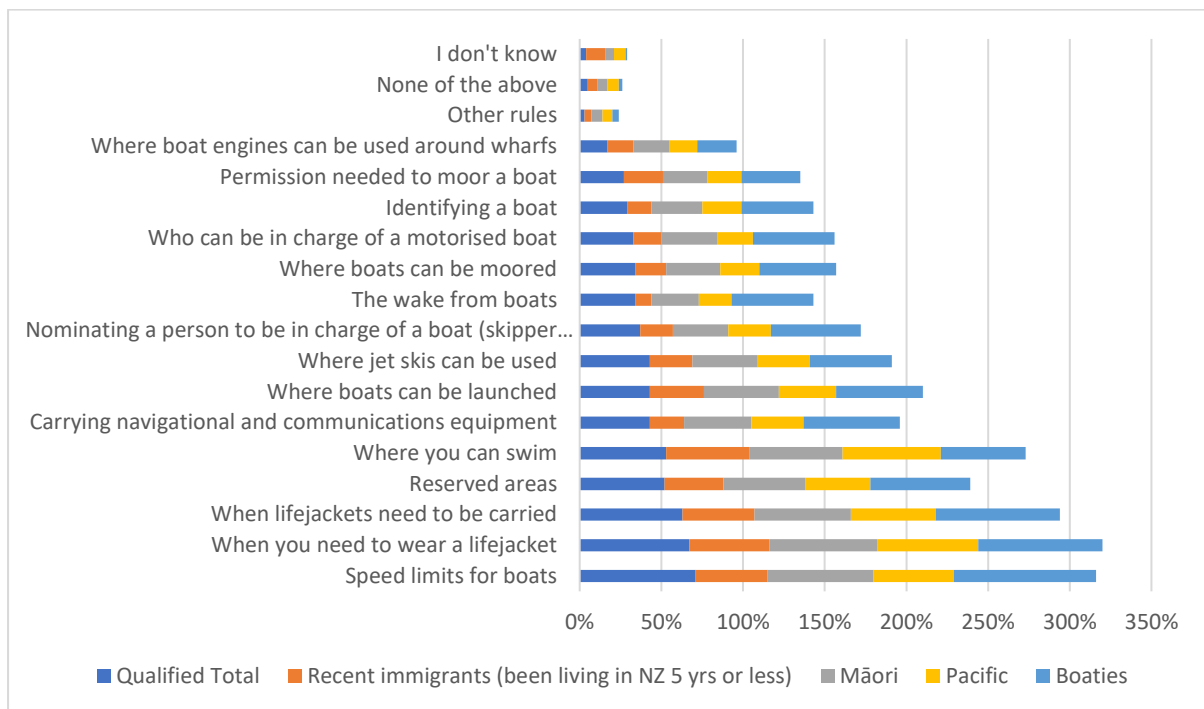


(Source: People's Panel Survey 2019)

Awareness of the Bylaw was relatively low across all groups surveyed. Boaties<sup>39</sup> had the highest awareness with 24 per cent having heard of the Bylaw before they took the survey. Māori had the second highest awareness 12 per cent, recent migrants' nine per cent and Pacific peoples eight per cent.

<sup>39</sup> This is the group of respondents who most regularly participate in boating activities.

**Figure 4.4.3.2: Awareness of rules**



**Key results included:**

- speed limits, carrying and wearing PFDs (personal flotation devices), reserved areas and where you can swim are the most well-known rules
- Pacific peoples had the highest awareness of rules about where to swim (60 per cent – a statistically significant difference)
- across all rules (except those rules about where you can swim) recent migrants had lower awareness of the rules (a statistically significant difference)
- boaties had greater awareness of all the rules compared to other groups (a statistically significant difference).

In response to high / overrepresentation in preventable drowning fatalities, Drowning Prevention Auckland provides a range of tailored outreach and education programmes for Māori, Pacific peoples and recent migrants<sup>40</sup>.

They have also undertaken research to find out more about a trend toward older people's sustained, high representation amongst fatalities on the water<sup>41</sup>. Based on the research, recommendations have been made to inform water safety education initiatives.

<sup>40</sup> Preventable fatalities include recreational and non-recreational drowning deaths. They do not include those fatalities classified as 'other' (arising as a result of road or air vehicle accidents, homicide, suicide or of unknown origin) as these are not considered applicable to the prevention and rescue efforts of the water safety sector. The scope of Drowning Prevention Auckland's work spans all environments therefore it includes fatalities occurring in environments that the Bylaw does not regulate for example swimming pools.

<sup>41</sup> Drowning Among Older Adults –Review of Literature and Perceptions of Water Competencies, Drowning Risk and Aquatic Participation, Teresa Stanley & Kevin Moran, Drowning Prevention Auckland, July 2019.

Other stakeholders including the Pacific People's and Ethnic People's Advisory panels, all shared concerns about the high representation of relevant groups amongst fatalities on the water. Both Panels wished to contribute further to the Bylaw review process.

The Ethnic People's Advisory Panel suggested that different channels (such as social media and videos) could be used to raise awareness around that Bylaw rules with people from ethnically diverse backgrounds. They also highlighted potential cultural differences in response to rules and regulations hence the need for promoting safety messages alongside the rules.

## **4.5 Is a Bylaw the most appropriate way to address issues?**

### **4.5.1 The Bylaw can help mitigate and manage issues and risks**

Data and feedback show that the Bylaw can be effectively and efficiently implemented for a range of issues and can therefore help minimise safety risks, nuisance and manage the use of space. Key examples of this include:

- the construction, maintenance and licensing requirements for moorings and the associated audit process
- to inform and educate commercial and recreational users about safe practices
- to issue infringement notices
- to control where vessels may navigate at what distance from other vessels and at what speed
- to require carriage and / or wearing of personal flotation devices
- to reserve areas for specific purposes or vessels
- to require large or fast vessels to follow specific operating and reporting procedures
- to require people to nominate a person in charge of a vessel
- to require the carriage of communications or navigational equipment
- to require the licensing of jet skis.

### **4.5.2 The Bylaw fills a regulatory gap for a range of issues / complement other regulations and legislation**

There are a range of issues addressed in the Bylaw which are not addressed in the same manner in legislation or Maritime Rules.

## **Controls, reserved areas and special reserved areas**

The Maritime Transport Act 1994 and Maritime Rules provide relevant powers to make local and regional controls. The Bylaw is the means by which these controls are made.

Controls include:

- areas reserved for swimmers and non-mechanically powered vessels only – including Point Chevalier, Hellyers Creek and Judges Bay
- access lanes reserved for the purpose of allowing power driven vessels for activities such as towing waterskiers, wake boards or sea biscuits navigating from a beach or launch area – including Waitematā and Hauraki Gulf, Waiheke Island, Rodney, Manukau Harbour and individual locations in each area.
- areas reserved as prohibited anchorage areas – including Hauraki Gulf, Waiheke Island, Devonport (Naval Base), Kauri Point (Naval Base)
- area reserved as the Waitematā Harbour Restricted Zone (12 knot speed zone)

For all controls please refer to page 30 of the Bylaw attached as Appendix A.

## **Licensing**

The licensing of jet skis and moorings is enabled through powers under the Bylaw and are not addressed in other legislation.

## **Requirement to wear a personal flotation device at all times on small vessels**

The Bylaw requires that people on board small vessels (six metres and under) wear a personal flotation device at all times unless specifically exempted from doing so by the person in charge if they have determined that there would be no reduction in safety.

Maritime Rules differ as they require persons in charge of a recreational vessel to require every person on board to wear a personal flotation device in hazardous circumstances including dangerous tides, river flows or emergencies which can cause a danger to those on board.

## **Pilotage**

The location of pilotage areas, rules for operation in a pilotage area, the requirement to submit a log of transits to the Harbourmaster, passage plan requirements, bridge team composition and exemptions are specific to Auckland and not addressed in other legislation and regulations.

## **Moorings**

Requirements for the licensing of moorings and their construction and maintenance requirements are not provided for in other legislation and regulations.

#### **4.5.3 Bylaw infringements are an effective compliance tool**

Infringement notices are an established tool in the justice system, commonly used in the transport sector, fisheries and hazardous substances. An infringement can send a strong message about the importance of compliance.

Without the infringements under the Bylaw, the Harbourmaster would be limited to court prosecution. While the court penalties may be higher (imprisonment or a fine of up to \$10,000 for an individual), a higher penalty may not be proportionate to lower levels of offending and is time consuming and costly.

There is also a difference in the required evidential threshold, a successful court prosecution may require proof that the defendant knowingly breached the rule (intent) whereas an infringement fine is a strict liability offence.

Anecdotally, stakeholders have reported examples of people who have received infringements from the Harbourmaster for not wearing a PFD. Following this these individuals have worn a PDF as well as encouraging their friends and whānau to do so.

As with all matters of compliance there will be a minority of people who choose not to comply despite warnings or infringements. However, for most people, the Harbourmaster and stakeholders believe, the Bylaw and infringement regime are effective in responding to unsafe or nuisance behaviour in breach of the Bylaw.

#### **4.5.4 The Bylaw is a key regulatory tool for managing on-water events and moorings**

The Bylaw is effective and efficient for managing the use of space on Auckland's navigable waters. It is in constant use enabling the management and registration of moorings and setting controls for reserved or special reserved areas for events. It helps mitigate risk between the interaction of large commercial vessels, recreational vessels and activities.

The Bylaw is also the key regulatory tool for implementing the Auckland Unitary Plan as it relates to moorings.

#### **4.5.5 The Bylaw can contribute to Māori outcomes, aspirations and priorities**

The Bylaw can contribute to key directions and aspirations in the Māori Plan by supporting safe recreational, cultural and economic activities on Auckland's navigable waters.

People's Panel data show although a high proportion of Māori respondents do not participate in activities on the water. Those who do however have high participation in recreational, sporting and cultural activities on the water including swimming and waka ama. They also show that awareness of the Bylaw for Māori is lower at 12 per cent compared with 15 per cent for all respondents.

There has been a decrease in the number of Māori fatalities from preventable drowning incidents in Auckland's navigable waters. From 2015 to 2019 there was one Māori fatality recorded.

Over the past 10 years across "navigable waters" nationally 54 Māori fatalities were recorded from 2010-2014 this reduced to and 35 from 2015-2019<sup>42</sup>.

Mana whenua and Mataawaka organisations have indicated that they would like to provide feedback on any proposed changes to the Bylaw.

#### 4.5.6 The Bylaw shares similarities with other council's bylaws

A comparative assessment of other council's bylaws was undertaken as part of the review. The Bylaw shares similarities and aligns with common practice nationally.

Key notable differences are:

- differences in controls – which are designed to take account of regional conditions
- varied approach to PFD regulations within the structure of national legislation.

#### 4.5.7 Non regulatory measures can complement (but not replace) the Bylaw

Information provision, educational and promotional initiatives can support safety, awareness of the Bylaw and compliance for Commercial or recreational users.

These methods are complimentary to, and not alternatives to a bylaw. Key examples include:

- Education is a core component of the Harbourmaster's compliance approach. One tool that is promoted by the Harbourmaster is the [Marine Mate App](#)<sup>43</sup>. This provides national and regional rules and updates on local conditions. An A5 summary of the Bylaw (right inset) targeted at recreational users has also been developed. The Harbourmaster's participation in the 'No Excuses' Campaign also includes an education focus.
- *Drowning Prevention Auckland*<sup>44</sup> has a mandate to deliver education, training and safety promotion for the Auckland region as well as a research focused on causation and prevention. Drowning Prevention Auckland's education programmes and community outreach include: professional learning and development for teachers and associated resources, new to New Zealand workshops and resources, workplace water



<sup>42</sup> Based on DrownBase data and analysis from WaterSafety NZ

<sup>43</sup> Developed by Safer Boating forum members including the Auckland Harbourmaster

<sup>44</sup> receives funding support from Auckland Council

safety courses, programmes for Māori and Pacific peoples – with dedicated Māori, Pacific and new migrant educators

- *Water Safety NZ* has an advocacy, education and promotional role focused on drowning prevention delivering a range of educational initiatives, promotional campaigns and community engagement to all ages
- *Coastguard NZ* is a charity organisation that delivers a search and rescue function on navigable waters and delivers a range of training courses including: the Day Skipper Course, Maritime VHF Radio Operator Certificate, Waka Ama Safety, Sea Kayak and In water survival
- *Surf Lifesaving Northern Region* – provides a surf lifesaving for Auckland and the north. It also provides lifeguard training and education on safety targeted to children and youth.

## **4.6 Is the Bylaw the most appropriate form of Bylaw?**

### **4.6.1 The Harbourmaster has suggested a range of minor amendments**

The Harbourmaster identified a range of potential minor wording updates that could improve the Bylaw form, including:

- the opportunity to update the controls in the bylaw which are in the form of maps<sup>45</sup>
- review of speed limits in reserved areas
- investigating whether issues with marine mammals may be more appropriately addressed through other legislation
- updating wording to take account of new / novel craft for example hydrofoils
- updating definitions and wording around aircraft and moorings
- including conditions of mooring licenses in the Bylaw
- updating the wording to reflect changes in operating requirements for example for berthing of oil tankers
- revisiting wording around commercial vessels for hire or reward in response to the introduction of the Health and Safety at Work (Adventure Activities) Regulations 2016.

### **4.6.2 Staff have also identified a range of possible amendments**

Based on research and stakeholder engagement staff have also identified potential improvements to the Bylaw, including:

- separating out more clearly clauses relevant to commercial and recreational users

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<sup>45</sup> Since the Bylaw was adopted in 2013 there is now improved software and tools to make improved maps

- grouping like issues with like issues to help ease of use
- translating the Bylaw /rules into different languages
- making personal flotation devices mandatory for rock fishing
- making Automatic Identification Systems mandatory on all commercial vessels
- mandatory education, licensing and registration for recreational vessels.
- increasing the Waitematā harbour 12-knot speed limit to 18-20 knots
- increases to the infringement fine amounts for certain Bylaw breaches
- investigating whether a safety plan should be required for events in reserved and public areas.

#### **4.6.3 Bylaw rules about Ōrākei Basin could be improved**

The Auckland Council Navigation Safety, Public Safety and Nuisance and Trading and Events Bylaws replaced the legacy Ōrākei Basin Bylaw in 2015. These bylaws were intended to manage issues on Ōrākei Basin in a similar way to the Ōrākei Basin Bylaw.

The Harbourmaster, stakeholders and Local Board members have however, identified issues including:

- noise nuisance to surrounding residents from jet skis, particularly in the evenings
- jet skis are operating at dangerous speeds creating safety risks to jet ski operators or other users
- the need for clarification of rules on waterskiing.

The Harbourmaster also notes that monitoring the Ōrākei Basin is difficult as Harbourmaster vessels cannot access the basin in order to patrol the area.

There are also potential opportunities to update the Bylaw to align with Auckland Council bylaw drafting standards.

Further analysis of suggested amendments to the Bylaw form will be included a report that assesses options in response to this findings report.

#### **4.7 Are there any implications under the New Zealand Bill of Rights Act 1990?**

Under the Local Government Act 2002, a bylaw review must consider whether a bylaw has any implications under the New Zealand Bill of Rights Act 1990. Legally a bylaw may not be inconsistent with the Act. This requires consideration of:

- whether the Bylaw limits any of the rights or freedoms contained in the Act

- if so, whether this limitation is “demonstrably justifiable in a free and democratic society”.

#### **4.7.1 Does the Bylaw limit rights under the Act?**

The Bylaw could potentially limit rights under the New Zealand Bill of Rights Act 1990. For example:

- the right to freedom of peaceful assembly (section 16) may be limited where people wish to protest in reserved areas
- the right to freedom of movement (section 18) may be limited where the Bylaw restricts movement or access to certain locations to manage the use of space and ensure safety for events
- the right to be secure against unreasonable search and seizure may be limited because the Bylaw enables the Harbourmaster remove or move a vessel if the person in charge of the vessel fails to comply with the direction of the Harbourmaster or if the owner or person in charge of the vessel cannot be located.

#### **4.7.2 Would any limitations be justifiable under the Act?**

For a limitation to be “demonstrably justifiable in a free and democratic society” it must serve a sufficiently important purpose to justify the limitation. Hansen v R [2007] 3 NZLR 1 (SC) provides that the limitation must:

- be rationally connected to its purpose
- not limit the right or freedom more than necessary to achieve the purpose
- be proportionate to the importance of the objective.

There is evidence that activities on Auckland’s navigable waters can cause risks of nuisance, damage, harm and fatalities. Potential bill of rights limitations are therefore justifiable because of the potential severity of associated risk.

### **4.8 Is the Bylaw consistent Maritime Transport Act 1994, Resource Management Act 1991 and Auckland Unitary Plan**

A bylaw made by council under the Maritime Transport Act 1994 must not be inconsistent with the Resource Management Act 1991 or the Auckland Unitary Plan.

The Bylaw is considered consistent with the Maritime Transport Act 1994, Reserve Management Act 1991 and the Auckland Unitary Plan. Elements of the Bylaw complement and support the objectives of the Auckland Unitary Plan, specifically the regulation of mooring areas through the Bylaw’s mooring licensing regime.

The Bylaw is not considered inconsistent with the Maritime Transport Act 1994. The Bylaw aligns with the purpose of the Act to achieve navigation safety, including by making regionally specific rules.

## 5. Issues analysis

This section provides more detailed clause by clause findings.

### 5.1 Controls and demarcations specified under the bylaw

Controls made pursuant to the Bylaw are addressed in section 4.4 Activities.5.2

Personal flotation devices on recreational vessels

#### 5.2.1 Key findings

- Carrying and wearing the right type of correctly fitted Personal Flotation Device or lifejackets (PFDs) can prevent incidences of preventable drowning.
- There were 21 related fatalities in Auckland from 2015 to 2019. It is likely that some of these fatalities may have been prevented had the correct type and fit of PFD been worn.
- There is a relatively high rate of carriage and use of PFDs nationally. In 2018/19 95 per cent (averaged across vessel types) or 3485 of people surveyed *carried enough appropriate PFDs* and 83 per cent or 3016 of people surveyed *wore PFDs where legally required*.
- There is relatively high awareness of rules about PFDs amongst Peoples' Panel respondents – 67 per cent.
- People's Panel respondents reported that more people on small yachts or sailing dinghies under six metres long were wearing PFDs more often - 63 per cent in 2019 compared with 52 per cent in 2013.
- The Bylaw is in constant use and is readily used to require carriage of personal flotation devices.
- Compliance with the requirement to wear personal flotation devices on vessels 6 metres under and under can be challenging because exemptions are at the discretion of the person in charge of the vessel.
- The Bylaw is however a key education tool that promotes safe practice and the requirement to wear a PFD on vessels six metres and under is not addressed in the same manner in the Maritime rules or legislation.
- Of warnings issued 30 per cent (147) were issued about breaches of the Bylaw regarding PFDs between December 2016 to April 2019.
- Some improvements to the Bylaw have been suggested including translating the Bylaw into different languages.

#### 5.2.2 Explanation

PFDs or life jackets help prevent people from drowning while navigating in vessels.

#### 5.2.3 Safety, nuisance or sharing of waters related issues

The issues are risks or preventable drowning fatalities as a result of people not wearing a PFD on recreational vessels.

### 5.2.4 Bylaw response

The Bylaw requires PFDs to be carried on all recreational vessels and requires PFDs to be worn on vessels six metres in length and (unless exempted by person in charge).<sup>46</sup> Exemptions apply, for example for boarding activities and when wearing a wet suit or leg rope (Table 5.2.4.1).

**Table 5.2.4.1: Summary of Bylaw clauses about PFDs**

| Requirement                                                                                                                                                                                                                                                                                                                           | Clause        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| <b>Must carry PFDs on recreational vessels</b>                                                                                                                                                                                                                                                                                        |               |
| <ul style="list-style-type: none"><li>person in charge of vessel must carry PFDs that fit each person on board</li><li>PFD's must be readily accessible and in good working condition.</li></ul>                                                                                                                                      | 7(1), (2)     |
| <b>Exemptions to carrying PFDs on recreational vessels</b>                                                                                                                                                                                                                                                                            |               |
| <ul style="list-style-type: none"><li>PFDs not required on surfboard; on stand-up paddle board while using a leg rope; on sailboard while wearing a wetsuit; when diving from a small vessel near shore while wearing a wetsuit; when training for or participating in an approved sporting, ceremonial or customary event.</li></ul> | 10(1)         |
| <b>Must wear PFDs at times of heightened risk</b>                                                                                                                                                                                                                                                                                     |               |
| <ul style="list-style-type: none"><li>person in charge of vessel must ensure every person on board is wearing a</li><li>PFD in adverse conditions, emergency or other similar situations.</li><li>persons in charge of the towing vessel and vessel being towed must ensure a PDF worn by person being towed.</li></ul>               | 8(1)<br>11(1) |
| <b>Must wear PFDs on small recreational vessels</b>                                                                                                                                                                                                                                                                                   |               |
| <ul style="list-style-type: none"><li>person must wear PFD on a small vessels six metres or less in length unless person in charge of vessel says it is safe not to</li></ul>                                                                                                                                                         | 9(1), (2)     |

### Enforcement powers

The Harbourmaster has a wide range of enforcement powers to enforce the Bylaw (Refer to Global 4.4 of this report).

### 5.2.5 Bylaw Implementation

The Harbourmaster and his team undertake regular patrols of areas but also respond reactively when issues come to their attention or in an emergency.

People in charge of recreational vessels that are not carrying PFDs or not requiring those on board to wear a PDF onboard vessels six metres and under without a justifiable reason will receive an infringement penalty.

Maritime Police also report issues of noncompliance to the Harbourmaster.

The Harbourmaster also works with Maritime New Zealand on the 'No Excuses' campaign. This is an annual, national campaign held during the summer. It focuses

<sup>46</sup> The person in charge must after assessing all circumstances and determining there would be no reduction in safety, expressly authorises any person on board to remove a personal flotation device.

on education and compliance focused on rules for carrying and wearing PFDs and speed limits close to the shore and near diving flags.

Between December 2016 to April 2019, 30 per cent (147) of warnings and complaints issued were about breaches of the Bylaw regarding PFDs.

### 5.2.6 Are safety, nuisance or sharing of waters related issues still an issue?

Data on fatalities occurring on Auckland's navigable waters show that 21 fatalities occurred on vessels regulated under the Bylaw from 2015 to 2019. Of these fatalities 12 (57 per cent) occurred on powered vessels over four metres.

There are gaps in the data around wearing of PFDs. However, PFDs were reported to have been worn in six (28 per cent) of recorded fatalities. Of these fatalities, there was one incidence where a PFD was reported to be correctly fitted and one was reported to be incorrectly fitted.

| Year         | Fatality  | Personal Flotation Device | Activity                 |
|--------------|-----------|---------------------------|--------------------------|
| 2015         | 1         | Worn                      | Over 4m (Powered)        |
|              | 1         | Not Available             | Under 4m (Powered)       |
|              | 1         | Not Available             | Kayaking                 |
|              | 1         | Worn - Correctly Fitted   | Jet Skis                 |
| 2016         | 1         | Not Available             | Offshore Sailing         |
|              | 8         | Not Available             | Over 4m (Powered)        |
|              | 1         | Worn                      | Canoeing                 |
| 2017         | 1         | Worn                      | Under 4m (Powered)       |
|              | 1         | Not Applicable            | Over 4m (Powered)        |
|              | 1         | Worn                      | Windsurfing              |
|              | 1         | Not Available             | Over 4m (Powered)        |
| 2019         | 1         | Unknown                   | Stand Up Paddle Boarding |
|              | 1         | Not Available             | Under 4m (Powered)       |
|              | 1         | Worn - Incorrectly Fitted | Over 4m (Powered)        |
| <b>Total</b> | <b>21</b> |                           |                          |

(Data: Water Safety NZ – DrownBase)

Maritime New Zealand research suggests that nationally two thirds of boating fatalities may have been avoided had PFDs been worn.<sup>47</sup> The Safer Boating Forum has identified failure to wear PFDs in small craft (less the six metres in length) as one of the key risk factors to be targeted.<sup>48</sup>

<sup>47</sup> <https://www.maritimenz.govt.nz/recreational/documents/Lifejackets-fact-sheet.pdf>

<sup>48</sup> Other factors are inability to communicate in an immersion incident, bad weather and sea conditions and alcohol.

## 5.2.7 Other approaches

### Maritime Transport Act 1994 and Maritime Rules

The Maritime Transport Act 1994 does not include provisions about PFDs but it does set a requirement for the master<sup>49</sup> of a vessel to maintain the safety of those aboard and prevents dangerous activity involving vessels of their operation. The Act also requires compliance with the Maritime Rules.

Maritime Rules: Part 91 Navigation Safety contains similar requirements to the Bylaw. There are some differences however, including that the Bylaw:

- has a higher infringement fine (\$200 rather than \$100 for a related offence under the Maritime Rule)
- requires mandatory wearing of a PFD on board a recreational vessel six metres or under (unless specifically exempted by the person in charge) - whereas the Maritime Rule requires people to wear a PFD in unsafe conditions
- exempts someone on a stand-up paddleboard riding breaking waves from wearing a PFD if they are attached by a leg rope.

The Harbourmaster and some stakeholders have noted potential advantages in having a national rule about wearing PFDs at all times on smaller vessels. They believe it would reduce confusion for boaties when outside their regions and can assist with education, promotion and enforcement. This would require amendment to the rule by Parliament.

Of the 13 regional council bylaws about PFDs, six align with Maritime Rule 91.4 but may be tailored to local conditions. Seven require that they are worn on smaller recreational vessels (for example vessels six meters or under).

**Table 5.2.7.1: Infringement Comparison between Maritime Transport Act 1994, Maritime Rules and Bylaw**

| TOPIC                                    | Bylaw Rule | Fine  | MTA / Maritime Rule | Fine             | Comparative assessment                                                                                                                                                                |
|------------------------------------------|------------|-------|---------------------|------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Carriage of personal flotation devices.  | ✓          | \$200 | ✓                   | \$100/<br>\$1000 | Better infringement powers under the bylaw. No equivalent rule in the Act.<br>Slightly different standards under rule but same intent -for example good working condition/appropriate |
| Wearing of personal flotation devices in | ✓          | \$200 | ✓                   | \$100/<br>\$1000 | Better infringement powers under the Bylaw.                                                                                                                                           |

<sup>49</sup> Person in charge of vessel

|                                                                                         |   |       |   |                  |                                                                                                    |
|-----------------------------------------------------------------------------------------|---|-------|---|------------------|----------------------------------------------------------------------------------------------------|
| times of heightened risk: Requires PFD to be worn during times of heightened risk.      |   |       |   |                  |                                                                                                    |
| Wearing of personal flotation devices on small recreational vessels six metres or less. | ✓ | \$200 | * | *                | Better infringement powers under the Bylaw.<br>No exactly equivalent rule or provision in the Act. |
| Wearing of personal flotation devices by persons being towed.                           | ✓ | \$200 | ✓ | \$100/<br>\$1000 | Better infringement powers under the Bylaw.<br>No exactly equivalent rule or provision in the Act. |

## Education

Education and promotion of the requirement to carry a PFD can support awareness and compliance. However, education in combination with powers in the Bylaw are likely to be more effective in driving more immediate and sustained compliance.

Maritime New Zealand, the Harbourmaster, WaterSafety New Zealand and Drowning Prevention Auckland all play a role in educating the public about when to wear or carry PFDs and the most appropriate types of PFDs.

## Other interventions

Stakeholders believe that education at the point of sale is required to provide guidance to people purchasing PFDs as to what types are appropriate.

Some stakeholders also highlighted that cost or knowledge barriers may affect the wearing of PFDs. Drowning Prevention Auckland runs PFD loan programmes through the Manukau Cruising Club, Fulton Swim School Patumahoe, and their offices at Westhaven and the Stanmore Bay Pool & Leisure Centre.<sup>50</sup>

### 5.2.8 Is the Bylaw effective and efficient?

Data show that the Bylaw can play a role in addressing safety risks. It is in regular use by the Harbourmaster and team to address noncompliance – 30 per cent of warning and infringements related to PFDs.

The Safer Boating Forum support the mandatory wearing of PFDs at all times on vessels six metres and under.<sup>51</sup> It recommends that all council's bylaws should contain this provision.

<sup>50</sup> <https://www.scoop.co.nz/stories/AK1911/S00545/no-lifejacket-no-problem-borrow-one.htm>

<sup>51</sup> New Zealand Safer Boating Forum (formerly the National Pleasure Boat Safety Forum) is formal a network representing national and regional government agencies, councils and organisations and the marine industry, involved in promoting recreational boating safety in New Zealand. Members include Maritime NZ and the Harbourmaster, ACC, Ministry of Transport, Drowning Prevention Auckland and Surf Life Saving NZ.

The Harbourmaster indicates that the rule about compulsory wearing of PFDs on vessels six metres and under can be harder to enforce than the other PFD Bylaw rules. This is because it relies on the person in charge of the vessel to make a determination for those on board. Regardless, this rule is also a key education tool and the Harbourmaster can use powers under the bylaw to require people to put on a PFD.

National level research (refer tables below) from Maritime New Zealand showed 95 per cent compliance with the Maritime rules or bylaw requirements to carry enough appropriate PFDs available on board across vessel type. There is also a high level of compliance (83 per cent) with the Maritime rule or bylaw requirements to wear PFDs.

#### **Sufficient, appropriate PFD available**

| Count       | Vessel                | %          |
|-------------|-----------------------|------------|
| 142         | Yacht                 | 99%        |
| 2315        | Powerboat             | 98%        |
| 342         | Jetski                | 96%        |
| 244         | Kayak                 | 90%        |
| 199         | Dinghy                | 90%        |
| 60          | Other                 | 90%        |
| 183         | Stand Up Paddle Board | 79%        |
| <b>3485</b> | <b>-</b>              | <b>95%</b> |

(Source: Maritime New Zealand - Data Summary of On-Water Survey 2018/19 June 2019)**PFDs worn where legally required**

| Required    | Vessel                | Worn        | % Worn     |
|-------------|-----------------------|-------------|------------|
| 351         | Jetski                | 342         | 97%        |
| 268         | Kayak                 | 245         | 91%        |
| 189         | Dinghy                | 156         | 83%        |
| 220         | Stand Up Paddle Board | 183         | 83%        |
| 1863        | Power Boat            | 1502        | 81%        |
| 55          | Other                 | 41          | 75%        |
| 69          | Yacht                 | 36          | 52%        |
| <b>3016</b> |                       | <b>2505</b> | <b>83%</b> |

(Source: Maritime New Zealand - Data Summary of On-Water Survey 2018/19 June 2019)

In Auckland Peoples Panel survey responses showed:

- 15 per cent of respondents were aware of the Bylaw. However, awareness of the rules about PFDs is high with 67 per cent of survey respondents being aware of PFDs rules
- *'boaties' wear PFDs less often compared with people who participate in boating activities less frequently (a finding in 2013 and 2019)*

- people are wearing of PFDs *at times of heightened risk* more often with 31 per cent of survey respondents saying this happens more often over the last five years
- *people in charge of smaller recreational vessels six metres and under* (for example dinghies, inflatables, tinnies, small yachts and small motorboats) either always or usually require occupants to wear PFDs (57 and 15 per cent respectively in 2019)
- *people on smaller yachts or sailing dinghies six metres and under* are wearing PFDs more often (63 per cent in 2019 compared with 52 per cent in 2013)
- *people on larger yachts six metres length and over* wear a PFD usually or usually when underway (13 or 25 per cent of the time respectively in 2019) this is an increase from 2013 when 10 per cent of respondents wore a PFD usually at all times
- *people on small and medium motorboats under six metres* wore a PFD 50 per cent of the time compared with 39 per cent of the time in 2013
- *people on larger launches or motorboats over six metres* always wore a PFD 14 per cent of the time compared with nine per cent in 2013
- *people on jetskis* wore a PFD always wore a PFD 80 per cent of the time compared with eight per cent in 2013 (86 per cent of respondents in 2013 said they almost always wore a PFD)
- *people kayaking or canoeing* always wore a PFD 72 per cent of the time in 2019 compared with six per cent (and 73 per cent almost always) in 2013.

The Harbourmaster and stakeholders believe the Bylaw remains necessary and it provides an effective and efficient compliance tool.

### 5.2.9 Is the Bylaw the most appropriate form of Bylaw?

There are mixed views about whether the Bylaw for PFDs is the most appropriate form. Some stakeholders believe that:

- the Bylaw about PFDs may be challenging for the general public to interpret, particularly when English is a second language and suggest rules be translated into different languages
- the Bylaw is easy to understand for a wide range of people and useful as a communication or education tool
- PFDs should be mandatory for rock fishing as they are in New South Wales in Australia.<sup>52</sup>

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<sup>52</sup> <https://www.watersafety.nsw.gov.au/Pages/Rock-fishing/Rock-fishing.aspx>

There are also potential opportunities to update the Bylaw to align with Auckland Council bylaw drafting standards.

**5.2.10 Does the Bylaw have any implications under the New Zealand Bill of Rights Act 1990?**

No. Refer to section 3.6 (Global Findings) of this report for further discussion.

**5.2.11 Is the Bylaw inconsistent with the Resource Management Act 1991, Auckland Unitary Plan or Maritime Transport Act 1994 and Maritime Rules?**

No. Refer to section 4.8 (Global Findings) of this report for further discussion.

## 5.3 General navigation safety requirements

### 5.3.1 Key findings

- The risk of collisions, injuries, fatalities and damage from actions of persons in charge of vessels on Auckland's navigable water remain.
- The Bylaw is used to address the issues. For example, a total of 241 infringements were issued for excessive speed between December 2016 to May 2019.
- People's Panel responses indicate that there is a relatively high awareness of some rules (for example speed limits 72 per cent and when to wear and carry a PFD (67 and 63 per cent respectively).
- The Bylaw fills a regulatory gap with issues not addressed in the same manner in the Maritime Transport Act 1994 or the Maritime Rules.
- While the Bylaw is an appropriate (effective and efficient) way to address these issues, the Bylaw could be improved. Stakeholders have suggested making the Bylaw more accessible or 'user friendly' for the general public to help raise awareness of the rules.

### 5.3.2 Explanation

The general safety requirement provisions emphasise the responsibility of the person in charge of a vessel for the safety of the vessel and those on board.

### 5.3.3 General navigation safety issues

The issues are risks and incidences of collision, injuries, fatalities and damage related to navigation of vessels. In 2019, 183 incidents were reported to Maritime New Zealand.

### 5.3.4 Bylaw approach

The Bylaw requires that before a vessel leaves the shore, a person must be appointed in charge and not be under the influence of drugs or alcohol.

It also sets an age limit for operating a powered vessel and requires that vessels are seaworthy. It requires that the person in charge must also ensure carriage and wearing of PFDs. It sets guidelines for collision prevention and rules for notification of collisions. The Bylaw also sets in place a speed restriction of five knots where there are risks to persons, vessels or marine mammals.

**Table 5.3.4.1: Types of general navigation safety requirements**

| Requirement                                                                                                                                                                       | Clause    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>Minimum requirements of person in charge of vessels</b>                                                                                                                        |           |
| • must be nominated before leaving shore and not under the influence of alcohol or drugs                                                                                          | 12(1),(3) |
| • must be older than 15 years of age for vessels capable of exceeding 10 knots                                                                                                    | 13(1),(2) |
| • must report all collisions or accidents to the Director and Harbourmaster                                                                                                       | 17(1)-(3) |
| <b>Minimum requirements of a vessel</b>                                                                                                                                           |           |
| • must ensure vessel is seaworthy                                                                                                                                                 | 15(1)-(5) |
| <b>Minimum requirements for safe operation of vessels</b>                                                                                                                         |           |
| • a speed restriction of five knots where there are heightened risks to other persons, vessels, structures or marine mammals. Includes certain exceptions for commercial vessels. | 14(1)-(5) |
| • person in charge must ensure carriage and wearing of PFDs                                                                                                                       | 12(2)     |
| • ensure compliance with Maritime Rule Part 22 (Collision Prevention)                                                                                                             | 16(1)     |

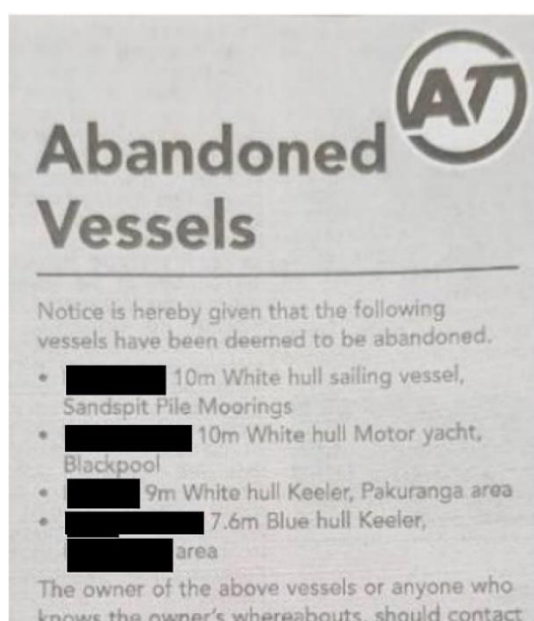
### Enforcement powers

The Harbourmaster has a wide range of enforcement powers to enforce the Bylaw (Refer to global 4.4 of this report).

### 5.3.5 Bylaw implementation

The Harbourmaster uses a graduated compliance approach which ranges from engagement, education, infringements and removal and sale of abandoned vessels. This approach includes:

- a total of 241 infringements issued for exceeding the Bylaw rules about speed limits between December 2016 to May 2019<sup>53</sup>
- notices are placed in local papers and on vessels that appear to be abandoned



<sup>53</sup> 169 infringements were issued for exceeding 5 knot speed limits and 72 issued for exceeding 12 knot speed limits

- five to six abandoned vessels are sold on Trade Me each year
- on average, removal and disposal of abandoned vessels to landfill costs \$5000 to \$10,000 per vessel
- mooring fees including a recent \$50 increase in mooring fees support cost recovery.<sup>54</sup>

### 5.3.6 Are the general navigation safety issues still an issue?

Risks and incidences of collisions, injuries, fatalities and damage from actions of persons in charge of vessels on Auckland's navigable water remain, for example:

- there is a comparatively high volume of complaints relating to speed, including on the Tamaki river
- stakeholders report recreational craft users such as kite boarders are breaching speed and craft restrictions in flagged areas
- dangerous wake and wash from speeding vessels around ferries can cause safety risks to ferry passengers particularly in the Waitematā restricted speed zone
- maritime fatalities since 2010 showed that nine out of 17 deceased commercial fishermen returned a positive result for alcohol and illicit drug use<sup>55</sup>
- Surf Lifesaving Northern Region highlighted that younger and inexperienced users of powered vessels remain a safety concern
- nationally there was a significant increase in children aged six to 12 years of age going out on regular boat trips (11 per cent in 2018 compared with seven per cent in 2017)<sup>56</sup>
- an Auckland ferry master has been fined \$2000 for not keeping a proper look-out and colliding with a recreational vessel.<sup>57</sup>

### 5.3.7 Other approaches

#### Maritime Transport Act 1994 and Maritime Rules

Maritime Rules Part 91 and Part 22 contain similar rules to the Bylaw about general navigation safety requirements. A comparative assessment below shows (Table 5.3.7.1) however indicates that there are some differences including:

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<sup>54</sup> [Abandoned boats costing Auckland ratepayers thousands of dollars annually | Stuff.co.nz](http://www.stuff.co.nz/auckland/news/local-news/105444444-abandoned-boats-costing-auckland-ratepayers-thousands-of-dollars-annually)

<sup>55</sup> An example can be found in the coroners' 2014 reports on Maritime fatalities

<sup>56</sup> <https://www.maritimenz.govt.nz/recreational/safety-campaigns/documents/2018per cent20Recreationalper cent20Boatingper cent20Participationper cent20Research.pdf>

<sup>57</sup> [Auckland ferry master has been fined \\$2000 for not keeping a proper look-out and colliding with a recreational boat](#)

- some rules that address similar issues to the Bylaw do not exactly match the Bylaw as they contain additional requirements under the Bylaw or regional differences
- some rules have the same infringement fine as the Bylaw (for example \$200 for speeding)
- the Act is targeted at the highest threshold of offending whereas the Bylaw addresses lower level offending
- the Act specifies broad principles of maritime law (for example the master of the ship shall be responsible for safe ship operation). The Bylaw specifies expected behaviours (for example no vessel may leave shore unless a person in charge has been nominated)
- the Bylaw has a higher infringement fine \$200 compared to \$100 under the rules
- some penalties under the Act and Maritime rules are fines on summary conviction, as opposed to strict liability infringements enabled under the Bylaw.

**Table 5.3.7.1: Infringement Comparison between Maritime Transport Act 1994, Maritime Rules and Bylaw**

| TOPIC                                     | Bylaw Rule | Fine  | MTA/ Maritime Rule | Fine                 | Comparative assessment                                                                                                         |
|-------------------------------------------|------------|-------|--------------------|----------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Person in charge of vessel                | ✓          | \$200 | ×                  | ×                    | Better infringement powers under the bylaw. No national rule in the Act. No infringement fine under Maritime Rules or the Act. |
| Minimum age for operating powered vessels | ✓          | \$200 | ✓                  | \$100                | Better infringement powers under the bylaw. No national rule in the Act.                                                       |
| Speed of vessels                          | ✓          | \$200 | ✓                  | \$200/\$10,000       | Bylaw and Maritime rule compatible. Fine under the Act on summary conviction.                                                  |
|                                           | ✓          | \$200 | ✓                  | \$100                | Better infringement powers under the bylaw. No national rule in the Act.                                                       |
| Vessels to be seaworthy                   | ✓          | \$200 | ×                  | ×                    | Better infringement powers under the bylaw. No national rule in the Act. No infringement fine under Maritime Rules or the Act. |
| Collision preventions                     | ✓          | \$200 | ✓                  | \$5000 <sup>58</sup> | Better infringement powers under the bylaw. Maritime rules fine on summary conviction.                                         |

<sup>58</sup> Maritime Rule 22.39: Responsibilities of owners and persons responsible for navigation of vessel re observance of collision prevention requirements

|                                         |   |       |   |   |                                                                                                                                |
|-----------------------------------------|---|-------|---|---|--------------------------------------------------------------------------------------------------------------------------------|
| Notification of collisions or accidents | ✓ | \$200 | × | × | Better infringement powers under the bylaw. No national rule in the Act. No infringement fine under Maritime Rules or the Act. |
|-----------------------------------------|---|-------|---|---|--------------------------------------------------------------------------------------------------------------------------------|

## Education

Education and promotion of general navigation safety requirements can support awareness and compliance. However, education in combination with powers in the Bylaw are likely to be more effective in driving more immediate and sustained compliance.

### 5.3.8 Is the Bylaw effective and efficient?

The Bylaw remains an important tool to emphasise the responsibility of the person in charge of a vessel.

It fills a regulatory gap with issues not addressed in the same manner in the Maritime Transport Act 1994 or the Maritime Rules.

Infringements are an important part of the graduated response rather than relying on court prosecution which is costly and time consuming and with different evidential requirements.

The Harbourmaster has also indicated however, that the Bylaw may not be the most appropriate tool for addressing issues relating navigating near marine mammals and to a person in charge of a vessel while under the influence of alcohol or drugs.<sup>59</sup> This is because there are legislative alternatives that can address issues relating to animal protection, for example under the Marine Mammals Protection Act 1978.

Court records show that from 2008 to 2009 and 2018 to 2019 no charges were prosecuted under the Navigation Safety Bylaw.<sup>60</sup> Rather, it has been the use of the infringement framework which enforces the Bylaw that has been most effective to address issues such as speeding.

Engagement and research showed:

- the majority of boaties nominate a person to be in charge of a vessel before setting out<sup>61</sup>
- nationally more boaties are choosing to avoid alcohol every time either before or during their time on the water with this total increasing from 67 per cent in 2018 compared with 61 per cent in 2017<sup>62</sup>

<sup>59</sup> Interview with Harbourmaster 18 Dec 2019

<sup>60</sup> Ministry of Justice OIA document

<sup>61</sup> Peoples Panel survey

<sup>62</sup> <https://www.maritimenz.govt.nz/recreational/safety-campaigns/documents/2018per cent20Recreationalper cent20Boatingper cent20Participationper cent20Research.pdf> Recreational Boating Participation Research commissioned for Maritime NZ in 2018

- speed enforcement has improved supported by the continued focus of harbourmaster<sup>63</sup>
- relatively high awareness of the rules about speeding (72 per cent) and PFDs (63 per cent) than with other rules.<sup>64</sup>

### **5.3.9 Is the Bylaw the most appropriate form of Bylaw?**

Through research and engagement staff have identified a range of possible improvements to the Bylaw, these include:

- increasing the Waitematā harbour 12-knot speed limit to 18-20 knots to minimise dangerous wake from certain vessels
- making the Bylaw more accessible or ‘user friendly’ for the general public may help increase awareness of the rules. This includes translating the Bylaw rules in different languages for people with English as a second language.

There are also potential opportunities to update the Bylaw to align with Auckland Council bylaw drafting standards.

### **5.3.10 Does the Bylaw have any implications under the New Zealand Bill of Rights Act 1990?**

No. Refer to section 4.7 (Global Findings) of this report for further discussion.

### **5.3.11 Is the Bylaw inconsistent with the Maritime Act 1994, Maritime rules, Resource Management Act or the Auckland Unitary Plan?**

No. Refer to section 4.8 (Global Findings) of this report for further discussion.

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<sup>63</sup> [Boaties say vessels are being damaged by others exceeding speed limit | Stuff.co.nz](#)

<sup>64</sup> Peoples Panel survey

## 5.4 Activities

### 5.4.1 Key findings

- There is strong demand for the use of Auckland's navigable waters for activities that are perceived to have increased over time with population growth.
- Activities regulated include swimming, water skiing, diving and organised events.
- Data and feedback indicate participation in activities is increasing.
- Issues related to these activities remain including incidents and risks of collision, accidents, injuries, preventable drowning fatalities, misuse of space and nuisance.
- The Bylaw fills a regulatory gap and provides for a proportionate and graduated approach to enforcement using infringement fines.
- There is a relatively high awareness of some rules (for example speed limits and where people can swim) and is in constant use to regulate activities and manage events.
- Some improvements to the Bylaw have been suggested including specific rules for new and novel craft such as hydrofoils and motorised surf boards.

### 5.4.2 Explanation

Activities in and on Auckland's navigable waters are diverse and include informal activities like swimming, water skiing and diving. They also include organised Beach Series swim events, Thunder cat races, waka ama, triathlons, youth sailing and major racing events such as the America's Cup.

### 5.4.3 Safety, nuisance or sharing of waters related issues

Issues related to activities include incidences and risks of collision, injuries, preventable drowning fatalities, misuse of space and nuisance. Key issues and risks include:

- high and increasing participation in activities regulated under the Bylaw
- risk of collision between vessels
- people swimming in areas that are reserved for specific events and commercial operations
- incidences of power boats and jet skis being operated in reserved swimming areas creating potential risks to swimmers
- diving without dive flags risking collision with divers
- wake from vessels can cause safety hazards and nuisance for commercial operations such as ferries, particularly within the Waitematā Harbour
- increases in requests for licenses for fireworks displays on boats and barges

- the need to manage prioritisation of events and ensuring fairness around the allocation and use of space.

#### 5.4.4 Bylaw approach

The Bylaw regulates activities including swimming, water skiing and towing of persons and dive operations. It also regulates issues including wake of vessels' use of engines around wharves, access lanes, and reserved and special reserved areas (controls).

It prescribes where and how activities and events may occur, the process for them to be permitted, speed limits, and other safety requirements such as use of buoys.

Table 5.4.4.1 provides a summary of the Bylaw approach.

**Table 5.4.4.1: Summary of Bylaw clauses about activities**

| Requirement                                                                     | Clause    |
|---------------------------------------------------------------------------------|-----------|
| <b>Swimming</b>                                                                 |           |
| • No swimming near berthing or departing vessels                                | 18(1)     |
| • No swimming in prohibited areas                                               | 18(1)     |
| • Only swimming and body boarding between Surf Life Saving flags                | 18(2),(3) |
| <b>Water skiing and towing of persons</b>                                       |           |
| • Must have person older than 10 years to observe towed person                  | 19(1)-(4) |
| • Must not tow person between sunset and sunrise                                | 19(2)-(4) |
| • Must immediately recover objects dropped by towed person.                     | 19(3)-(4) |
| <b>Dive Operations</b>                                                          |           |
| • Must use dive flag clearly visible from 200m of dive spot.                    | 20(1),(2) |
| <b>Wake of recreational vessels</b>                                             |           |
| • Wake must not negatively impact other vessels, structures or navigation aids. | 21(1)     |
| <b>Use of vessel engine around wharves and ramps</b>                            |           |
| • Vessel engines must not cause safety risk or damage to vessels or structures  | 22(1)     |
| • Must have a person on vessel to warn persons nearby of engine test.           | 22(2)     |
| <b>Access lanes</b>                                                             |           |
| • Harbourmaster may specify high speed access lanes and controls                | 23(1)     |
| • Must comply with controls when using access lanes                             | 23(2)-(6) |
| • Access lanes must be marked with orange posts, buoys or signage.              | 23(7)     |
| <b>Reserved areas</b>                                                           |           |
| • Harbourmaster may reserve an area and specify controls.                       | 24(1)     |
| <b>Special reserved areas</b>                                                   |           |
| • Harbourmaster approval required for events that affect other vessels          | 25(1)     |
| • Harbourmaster may temporarily reserve an area for a special event             | 25(2)     |
| • Application to include information and fees required by Harbourmaster         | 25(3)     |
| • Application may be granted or refused                                         | 25(4)     |
| • Harbourmaster may recover any associated costs.                               | 25(5)     |
| <b>Conduct in reserved areas</b>                                                |           |
| • Must comply with controls and use area for the purpose specified              | 26(1),(2) |
| • Must not obstruct the authorised users or remain in a reserved area           | 26(3)     |
| • Reserved area must be marked with adequate signage or buoys.                  | 26(4)-(6) |

#### Enforcement powers

The Harbourmaster has a wide range of enforcement powers to enforce the Bylaw (Refer to global 4.4 of this report).

#### 5.4.5 Implementation

The most frequently used infringement relating to activities is that relating to the towing of persons. A person can be issued with an infringement fine if they do not have an appropriate lookout while towing other persons or being towed.

Surf Life Saving Northern Region, Drowning Prevention Auckland and Water Safety New Zealand all promote education on safe swimming in Auckland's navigable waters. These organisations also promote the Bylaw and the wider regulations within it, such as swimming and diving regulations.

For events, council's Arts, Community and Events and the operations team at ATEED receive applications from organisations or the public about reserving areas on the water for their event. The Harbourmaster's office processes and approves these applications.

#### 5.4.6 Are the issues under activities still issues?

Issues remain including incidents and risks of collision, accidents, injuries, preventable drowning fatalities, misuse of space and nuisance from a range of activities on Auckland's navigable waters. For example:

- commercial operators and Auckland Transport have cited examples of people entering the water from a wharf that a ferry is attempting to berth at. This can cause safety risks as well as delays to ferry schedules, which will become more problematic as demand for ferry services increase
- risks of collision and nuisance from people jumping into the water or swimming around wharves and boat ramps, potentially impacting commercial vessels that are time restricted
- of People's Panel respondents:
  - 47 per cent of survey believe jet skis and power boats are operating in reserved swimming areas more often over the last five years
  - eight per cent reported seeing people diving without dive flags
  - 34 per cent reported seeing people, boats and items are obstructing access lanes, wharfs and boat ramps more often over the past five years.
- Surf Life Saving Northern Region and Maritime Police note that the number of swimming related incidents have increased as Auckland's population grows. Between Labour weekend 2018 and Easter weekend 2019 Surf Life Saving Northern Region rescued 259 people and performed first aid treatment (both minor and serious) on 881 people who received injuries from water activities<sup>65</sup>
- commercial operators note that wake from vessels on the Waitematā Harbour can impact ferry schedules

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<sup>65</sup> Surf Life Saving Northern Region, 2019

- risks of damage to the telecommunications cable at Takapuna Beach from water activities.

### **Emerging issues and trends**

The Harbourmaster has noted an emerging potential risk to safety or of nuisance relating to increased use of new and novel craft including hydrofoils and motorised surfboards, which are not specifically regulated under the Bylaw. The issues include:

- newness / novelty has prompted more people to try them out
- easy access to these vessels
- no requirement for licensing or education before purchase or use
- inexperienced users
- the ability for these vessels to reach higher speeds than similar vessels
- lack of specific regulation or rules
- concerns their use and speeds within the 200m shoreline speed zone.

#### **5.4.7 Other approaches?**

##### **Maritime Transport Act 1994 and Maritime Rules**

Maritime Rules contain similar (but not exact) rules to the Bylaw about activities except in relation to access lanes.

A comparative assessment (Table 5.4.7.1) indicates that:

- the Maritime Transport Act 1994 specifies broad principles of maritime law with specific rules contained in Maritime Rules
- Maritime Rules do not define the areas of access lanes, this function is enabled under the Bylaw
- the Bylaw provides for a higher infringement fine than the rule for some issues
- the Maritime Act provides higher court penalties
- there are no specific rules for new novel craft (for example Hydrofoils and motorised surfboards). The Bylaw and Maritime Rules may however apply to their general use (for example where they can be used, speed limits and use of personal flotation devices)

**Table 5.4.7.1: Infringement Comparison between Maritime Transport Act 1994, Maritime Rules and Bylaw**

| Topic             | Bylaw Rule | Fine  | MTA / Maritime Rule | Fine  | Comparative assessment                                                                                                                                   |
|-------------------|------------|-------|---------------------|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Swimming          | ✓          | \$200 | ✗                   | ✗     | The bylaw is the only legislation that regulates the activity of swimming.                                                                               |
| Wake              | ✓          | \$200 | ✓                   | \$100 | Maritime Rule is narrower in scope than Bylaw. Better infringement powers under the Bylaw. Better court penalties under MTA.                             |
| Towing            | ✓          | \$200 | ✓                   | \$100 | Maritime Rule is broader in scope than Bylaw. Better infringement powers under the Bylaw. Better court penalties under MTA.                              |
| Towing            | ✓          | \$200 | ✓                   | \$100 | Maritime Rule is broader in scope than Bylaw. Better infringement powers under the Bylaw. Better court penalties under MTA.                              |
| Vessel engine use | ✓          | \$200 | ✗                   | ✗     | Bylaw is the only legislation that regulates the use of vessel engines and engine testing.                                                               |
| Access lanes      | ✓          | \$200 | ✓                   | ✗     | No national rule in the Act. No infringement fine under Maritime Rules or the Act. Better infringement powers under the bylaw.                           |
| Reserved areas    | ✓          | \$200 | ✓                   | \$100 | Maritime rule narrower in scope. No national rule in the Act. Better infringement powers under the bylaw.                                                |
| Diving            | ✓          | \$200 | ✓                   | \$100 | Bylaw is boarder as it includes divers with and without vessels. No national rule in the Act. Better infringement powers under the bylaw.                |
| Novel craft       | ✗          | ✗     | ✗                   | ✗     | General Bylaw and Maritime Rules apply, for example Speed rules and PFD regulations. There are no rules that specifically mention or define novel craft. |

## Education

Education and promotion of the rules applying to activities on the water can support awareness and compliance. Education, however, in combination with powers in the Bylaw is likely to be more effective in driving more immediate and sustained compliance.

Maritime New Zealand, the Harbourmaster and Coastguard New Zealand all play a role in educating the public on the risks and safety measures of activities on the water including using novel craft.

## Other interventions

Some stakeholders believe that point of sale education is required to provide guidance to people purchasing novel craft on appropriate safety measures.

### 5.4.8 Is the Bylaw effective and efficient?

The Bylaw is an effective and efficient tool to enable the Harbourmaster to respond to issues and risks on Auckland's navigable waters. Feedback about activities showed:

- issues are occurring and are activities and events regulated under the Bylaw appear to be increasing in line with population growth
- incidents and fatalities are occurring as evidenced by Maritime New Zealand and DrownBase data
- access lanes, reserved and special reserved areas are in constant use and help manage the use of space and minimise the interaction between vessels and different activities
- the Bylaw addresses issues for which there are no alternative regulations
- staff believe areas reserved for events and related approvals work well.

#### **5.4.9 Is the Bylaw the most appropriate form of Bylaw?**

Staff, through research and engagement have identified a range of possible improvements to the Bylaw:

- amending the Bylaw to include wharf structures to account for issues during events
- translating the Bylaw into different languages for people for whom English is a second language
- investigating whether a safety plan should be required for events in reserved and public areas
- considering whether rules in the Wharves Bylaw 2015<sup>66</sup> are still required or whether the Bylaw could replace the need for this Bylaw
- whether the emerging issue of fireworks displays being held offshore on boats or barges may require changes to the Bylaw. It is currently unclear to what extent this issue could be regulated under the Navigation Safety Bylaw or Auckland Unitary Plan
- whether amendments to the Bylaw are required for novel craft and new technology.

There are also potential opportunities to update the Bylaw to align with Auckland Council bylaw drafting standards.

#### **5.4.10 Implications under the New Zealand Bill of Rights 1990?**

No. Refer to section 4.7 (Global Findings) of this report for further discussion.

#### **5.4.11 Is the Bylaw inconsistent with the Resource Management Act 1991, Auckland Unitary Plan or Maritime Rules?**

No. Refer to section 4.8 (Global Findings) of this report for further discussion.

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<sup>66</sup> The Wharves Bylaw 2015 was adopted to regulate the use of council-owned or operated wharves and boat ramps in the former Auckland City and Rodney districts. Parts of this Bylaw may more appropriately fit in the Navigation Safety Bylaw. A full review of the Wharves Bylaw 2015 will be undertaken in 2020.

## 5.5 Operating Requirements

### 5.5.1 Key findings

- Issues and risks around operating requirements remain. This includes related incidents occurring with near miss (25), collisions (19) and groundings (eight) occurring in 2019
- People's Panel responses show that most issues appear to be occurring at about the same frequency as in 2013
- The Bylaw is used to address the issues. For example, between December 2016 to April 2019 the Harbourmaster issued 20 warnings / infringement notices for vessels with no identification and one complaint about anchoring in a prohibited anchorage
- The Bylaw also fills a regulatory gap for fundamental safety provisions such as communications and navigation equipment.
- For other issues where there are similar Maritime Rules the Bylaw provides for a higher infringement fine, for example preventing discharge from a vessel or wharf which may affect navigation equipment
- Some improvements to the Bylaw have been suggested by the Harbourmaster including improving key definitions relating to moorings.

### 5.5.2 Explanation

The operating requirements in the Bylaw seeks to ensure vessels can navigate without risk of obstruction or collision, wider risks to safety or nuisance.

### 5.5.3 Safety, nuisance or sharing of waters related issues

The issues are risks and incidences of nuisance, use of space, damage and risk of collision, injuries or fatalities, the need to identify vessels and manage the use of space.

### 5.5.4 Bylaw approach

**Table 5.5.4.1: Summary of Bylaw clauses about the operation of vessels**

| Requirement                                                                                                                                                                                                               | Clause             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| <b>Obstruction</b>                                                                                                                                                                                                        |                    |
| <ul style="list-style-type: none"> <li>• Prevents obstruction of access to navigable waters and facilities either by a vessel or any other equipment</li> </ul>                                                           | 27 (1)(2)(3)       |
| <b>Discharges</b>                                                                                                                                                                                                         |                    |
| <ul style="list-style-type: none"> <li>• Prevents discharging cargo or anything from any vessel, wharf or from land that may affect navigation safety.</li> </ul>                                                         | 28 (1)             |
| <b>Navigation aids</b>                                                                                                                                                                                                    |                    |
| <ul style="list-style-type: none"> <li>• Prohibits erecting or altering, damaging, removing or tying a vessel to any navigation aid, or erecting lights or structures that may be mistaken as a navigation aid</li> </ul> | 29 (1)(2)(3)(4)(5) |
| <b>Sound and light signals</b>                                                                                                                                                                                            |                    |

| Requirement                                                                                                                                                                                                                                             | Clause                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Prevents fitting or using any lights, sirens or other sound that are not prescribed in a Maritime Rule.</li> </ul>                                                                                               | 30(1)(2)(3)(4)(5)(6)                                               |
| <b>Vessels to carry navigational equipment</b>                                                                                                                                                                                                          |                                                                    |
| <ul style="list-style-type: none"> <li>Requires person in charge to ensure an appropriate means to navigate safely.</li> </ul>                                                                                                                          | 31(1)(2)(a)(b)                                                     |
| <b>Means of communication</b>                                                                                                                                                                                                                           |                                                                    |
| <ul style="list-style-type: none"> <li>A person in charge of a vessel must be able to communicate with a land-based person for the duration of the voyage.</li> </ul>                                                                                   | 32(1)(2)(3)                                                        |
| <b>Visibility of paddle craft</b>                                                                                                                                                                                                                       |                                                                    |
| <ul style="list-style-type: none"> <li>A person must not operate a paddle craft of less than seven metres beyond sheltered waters unless the person in charge of the vessel has ensured its visibility.</li> </ul>                                      | 33(1)                                                              |
| <b>Vessels to be identified</b>                                                                                                                                                                                                                         |                                                                    |
| <ul style="list-style-type: none"> <li>A person must not use a vessel on navigable waters unless it displays a name.</li> </ul>                                                                                                                         | 34(1)(2)(a)(b)(3)(4)                                               |
| <b>Aircraft</b>                                                                                                                                                                                                                                         |                                                                    |
| <ul style="list-style-type: none"> <li>Prevents vessels impeding an aircraft landing or taking off, prevents taking off or land an aircraft on navigable waters; or from any vessel, or structure within a coastal marine area.</li> </ul>              | 35(1)(2) (a)(b)                                                    |
| <b>Prohibited and restricted anchorages</b>                                                                                                                                                                                                             |                                                                    |
| <ul style="list-style-type: none"> <li>Prevents anchoring or mooring a vessel within a prohibited or restricted anchorage</li> </ul>                                                                                                                    | 36(1)(a)(b)                                                        |
| <b>Limitation on anchoring</b>                                                                                                                                                                                                                          |                                                                    |
| <ul style="list-style-type: none"> <li>Prohibits a person from anchoring within the same location more than 14 consecutive days or leaving any vessel unattended at any wharf, breakwater, ramp or pontoon</li> </ul>                                   | 37(1)(2)(3)                                                        |
| <b>Vessels to be adequately anchored, moored or secured</b>                                                                                                                                                                                             |                                                                    |
| <ul style="list-style-type: none"> <li>Requires vessels are anchored or moored to required specifications, prevents person damaging an anchor or mooring, or the securing of any vessel at a wharf, quay, jetty or pontoon unless permitted.</li> </ul> | 38(1)(a)(b)<br>(2)(a)(b)(c)(d)<br>(3)(a)(b)(c)<br>(4)(a)(b)<br>(5) |

## Enforcement powers

The Harbourmaster has a wide range of enforcement powers to enforce the Bylaw (Refer to global 4.4 of this report).

### 5.5.5 Bylaw Implementation

The Harbourmaster uses a proactive and reactive approach to Bylaw implementation (Refer to global 4.4). For more severe or ongoing Bylaw breaches the Harbourmaster may remove and dispose of any vessel, construction, material, thing, cargo or matter used.

For issues where vessels come free from their moorings for example in storms, the Harbourmaster will attempt to identify and notify the owner, they may mark a wreck with a buoy or issue a navigational warning.

### 5.5.6 Are safety, nuisance or sharing of waters related issues still an issue?

Risks and occurrences of nuisance, misuse of space, obstruction, grounding, collision, damage, fatalities from issues related to operating requirements remain / are still occurring.

There are ongoing incidents of near misses (25), collisions (19) and groundings (eight) occurring in 2019.

In Auckland there are related fatalities<sup>67</sup> with four fatalities occurring while people were kayaking, canoeing, stand up paddle boarding and board riding between 2015 and 2019. However, their exact causation cannot be determined by available data<sup>68</sup>.

Of respondents to the People's Panel survey

- 16 per cent reported witnessing or experiencing issues over the past year related to people, boats or items blocking or getting in the way of others / other boats for example when accessing wharfs, boat ramps or in access lanes
- 44 per cent believed that over the last five year these issues were happening about the same and 34 per cent believed they were happening more often<sup>69</sup>

Stakeholders also raised concerns about the risk of obstruction from smaller vessels underway in areas shared by larger vessels for example in the Waitematā harbour restricted zone.

Of respondents to the People's Panel survey:

- 10 per cent reported witnessing or experiencing issues over the past year related to people not mooring or anchoring their boats properly. For example, in a location that could block the path of others/other boats, create a hazard, or is inadequately secured
- 47 per cent believed that over the last five years this issue was happening at about the same frequency, 30 per cent believed they were happening more often
- 17 per cent reported witnessing or experiencing issues over the past year related to people dropping things into the water. This includes dropping fishing tackle, nets, cargo, or any other items
- 41 per cent believed that over the last five years the issue was happening at about the same frequency, 33 per cent believed they were happening more often

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<sup>67</sup> From available information it is difficult to determine whether the causation of fatalities exactly match provisions in the Bylaw and therefore whether the Bylaw may have played any role in their prevention

<sup>68</sup> It is therefore difficult to determine whether or not the Bylaw could have played a role in prevention.

<sup>69</sup> Compared with five years ago

- eight per cent reported witnessing or experiencing issues over the past year related to people not carrying functioning navigational / communication equipment
- 47 per cent believed that over the last five years the issue was happening at about the same frequency, 15 per cent believed they were happening more often.

Between December 2016 to April 2019 the Harbourmaster issued warnings / infringement notices in response to:

- 20 incidences of vessels with no Identification
- One incident of anchoring in a prohibited anchorage

Maritime New Zealand research shows that nationally more focus is still required on encouraging people to carry at least two forms of functioning, waterproof communications equipment.

- 91 per cent of boaties carried at least one way to call for help, but only 79 per cent of those had equipment that was waterproof
- there has been a significant increase in the number of people having at least two ways to either call or signal for help if needed 'every time'
- use of Personal Locator Beacons ('PLBs') has continued to increase but Emergency Position Indicating Radio Beacon ('E-PIRB') usage has significantly decreased 2018
- carriage of E-PIRBs has decreased from 42 per cent in 2018 to 52 per cent in 2017. This may be because PLBs are becoming more popular as they are cheaper and smaller.
- a cell phone in a plastic bag is the commonly carried communication device (55 per cent) followed by flares (27 per cent).

The Safer Boating Forum highlights the importance of carrying two forms of waterproof communications equipment when boating. Research from 2007 indicates that this could have prevented more than 58 per cent of fatalities occurring over the six years prior.<sup>70</sup>

Maritime New Zealand also promotes the use of navigational equipment as a key safety measure on board a recreational vessel. This is not however required by legislation.

Stakeholders also shared a specific example of an incident where people aboard had to be rescued because they got into difficulty crossing a bar and did not have sufficient functioning communications equipment.

Stakeholders have also highlighted incidences of vessels that are not identified as creating challenges for enforcement.

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<sup>70</sup> New Zealand Safer Boating Forum Position on the Carriage of Communications Equipment on Recreational Vessels, January 2019

There has been one recent incident of a sea plane flipping when landing into Waitematā harbour with the plane then becoming partially submerged and the pilot requiring rescue.<sup>71</sup>

In December 2018, the Civil Aviation Authority investigated an incident where a seaplane flew under the Harbour bridge.<sup>72</sup> The incidents were not known to have caused an imminent risk to vessels or people undertaking activities in the water.

There are incidences of people anchoring in locations for more than 14 days including in the Tamaki river. The issue of people living on board boats and house boats have also been highlighted.

There are examples of where vessels can off their moorings. During storms in Auckland in 2018, 20 vessels came off their moorings or dragged anchor ending up washed ashore.<sup>73</sup>

Stakeholders have raised issues with ballast water pollution and sewerage however these issues<sup>74</sup> are addressed by other legislation).<sup>75</sup>

### 5.5.7 Other approaches

#### Education

Education is used to complement the Bylaw and relevant Maritime rules for issues including communications and navigational equipment. Maritime New Zealand also provides guidance on navigation aids.

Education on its own however, is unlikely to send a sufficient message to people who are breaching the Bylaw.

While there are some provisions in the Bylaw that are also addressed under the Maritime rules the Bylaw provides the advantage of higher infringement fines (for the majority infringements) and fills regulatory gaps for some key issues. Key examples of where the Maritime rules and other legislation do not exactly match the Bylaw include:

- Bylaw clauses about discharges are not addressed in the same manner in Maritime rules and other legislation where these are limited to sewerage and pollutants
- Bylaw clauses are more specific and cover a broader range of obstructions than the maritime rules.

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<sup>71</sup> <https://www.rnz.co.nz/news/national/383668/sea-plane-flips-in-auckland-s-waitemata-harbour>

<sup>72</sup> [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11976649](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11976649)

<sup>73</sup> <https://i.stuff.co.nz/auckland/local-news/east-bays-courier/100415189/storm-leaves-boat-drambuie-shaken-not-stirred-and-smashed-on-tamaki-drive>

<sup>74</sup> <http://www.seachange.org.nz/assets/Sea-Change/5086-SCTTTP-Marine-Spatial-Plan-WR.pdf>

<sup>75</sup> The discharge of ballast water is addressed by such as the Part 19A of the Maritime Transport Act 1994 and Marine Protection Rules Part 300 – Ballast Water Management. Marine protection rules, pursuant to the Maritime Transport Act 1994 prevent the disposal of waste and marine pollution from ships. Marine protection rules implement international conventions and standard.

There are also no Maritime Rules or other rules that:

- require recreational boaties to carry a navigational or communications device although this is encouraged via guidance and education – the legal requirement is limited to commercial operators
- require recreational boaties who own or are the person in charge of a vessel to identify their vessel – with this requirement limited to commercial operators
- address issues with aircraft in the same manner that they are addressed in the Bylaw and that regulate the same risks.

### Education and information provision

The Harbourmaster, Maritime New Zealand, Surf Lifesaving Northern Region, Coast Guard, Drowning Prevention Auckland undertake education and promotion about safety and compliance.

For obstructions (and other matters as required) the Harbourmaster issues Local notices to mariners. These advise of safety risks across the local areas, their nature, whereabouts and other relevant details. Maritime New Zealand provides guidance about the placement and maintenance of navigation aids, communication and navigation devices.

**Table 5.5.7.1: Infringement Comparison between Maritime Transport Act, Maritime Rules and Bylaw**

| TOPIC                                   | Bylaw Rule | Bylaw Fine | MTA | MTA fine               | Maritime Rule | Maritime Rule Fine | Comparative assessment                                                                             |
|-----------------------------------------|------------|------------|-----|------------------------|---------------|--------------------|----------------------------------------------------------------------------------------------------|
| Obstructions                            | ✓          | \$200      | -   | \$10,000/<br>\$100,000 | -             | \$100/<br>\$1000   | Bylaw and rule similar but not the same. Bylaw provides for infringement penalty of higher amount. |
| Discharges                              | ✓          | \$200      | -   | \$10,000/<br>\$100,000 | ✓             | \$100/<br>\$1000   | Bylaw and rule similar. Bylaw provides for infringement penalty of higher amount.                  |
| Navigation aids                         | ✓          | \$200      | -   | \$10,000/<br>\$100,000 | ✓             | \$200/<br>\$2000   | Rule and bylaw similar. Equal infringement amounts                                                 |
| Sound and light signals                 | ✓          | \$300      | -   | \$10,000/<br>\$100,000 | ✓             | \$5000/<br>\$30000 | Bylaw and rule similar. Bylaw helps clarify requirements.                                          |
| Vessels to carry navigational equipment | ✓          | -          | -   | \$10,000/<br>\$100,000 | -             | -                  | No exactly equivalent provision in Act and rule. No infringement fine.                             |
| Means of communication                  | ✓          | \$200      |     | \$10,000/<br>\$100,000 | -             | -                  | No similar rule or provision in the Act                                                            |
| Visibility of paddle craft              | ✓          | \$200      |     | \$10,000/<br>\$100,000 | -             | -                  | No similar rule or provision in the Act                                                            |

| TOPIC                                                | Bylaw Rule | Bylaw Fine | MTA | MTA fine               | Maritime Rule | Maritime Rule Fine | Comparative assessment                           |
|------------------------------------------------------|------------|------------|-----|------------------------|---------------|--------------------|--------------------------------------------------|
| Vessels to be identified                             | ✓          | \$200      |     | \$10,000/<br>\$100,000 | -             | -                  | No similar rule or provision in the Act          |
| Aircraft                                             | ✓          | \$200      |     | \$10,000/<br>\$100,000 | -             | -                  | No exactly similar rule or provision in the Act  |
| Prohibited and restricted anchorages                 |            | \$200      |     | \$10,000/<br>\$100,000 | -             | -                  | No exactly similar rule or provision in the Act  |
| Limitation on anchoring                              |            | \$200      |     | \$10,000/<br>\$100,000 | -             | -                  | No exactly similar rule or provision in the Act  |
| Vessels to be adequately anchored, moored or secured |            | \$200      |     | \$10,000/<br>\$100,000 | -             | -                  | No exactly similar rule or provision in the Act. |

### 5.5.8 Is the Bylaw effective and efficient?

Awareness of the Bylaw across People's Panel respondents of the Bylaw is low with 15 per cent having heard of the Bylaw before completing the survey. However, there is higher awareness of some key rules that are included in the Bylaw. Of People's Panel survey respondents:

- 34 per cent were aware of rules about: Where boats can be moored for example only in certain areas with a licence issued by the Harbourmaster
- 44 per cent were aware of rules about: Carrying navigational and communications equipment
- 28 per cent were aware of rules about: Identifying a boat for example boats must display either a distinct name or the current owner's name and contact details somewhere on the vessel.

The Harbourmaster and stakeholders have indicated that the Bylaw is effective and efficient because it:

- is regularly used including through the issuing of infringement fines
- data and feedback show issues addressed by the Bylaw are still occurring and if not addressed can present safety and nuisance issues
- sets in place fundamental safety provisions, not addressed / not addressed in the same manner in other legislation or the Maritime rules including the requirement to carry navigational and communications equipment and rules around visibility of paddle craft
- supports the objectives of the Auckland Unitary Plan by regulating anchoring and mooring

- provides for higher infringement fines than similar provisions in the rules (for example damaging, removing or interfering with a navigation aid \$300 versus \$200 under rule 91.14(2) and \$100 versus \$200 for other similar rules).

#### **5.5.9 Is the Bylaw the most appropriate form of Bylaw?**

The Harbourmaster and stakeholders have highlighted some potential wording changes to improve the Bylaw:

- define moorings more clearly
- better define 'proximate' location in relation to limitations on anchoring
- adjust the definition of 'aircraft' so as not to include drones which are addressed in other regulations / legislation.

Other stakeholders believed the Bylaw is clear and easy to understand.

There are also potential opportunities to update the Bylaw to align with Auckland Council bylaw drafting standards.

#### **5.5.10 Does the Bylaw have any implications under the New Zealand Bill of Rights Act 1990?**

No. Refer to section 4.7 (Global Findings) of this report for further discussion.

#### **5.5.11 Is the Bylaw inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or the Auckland Unitary Plan?**

No. Refer to section 4.7 (Global Findings) of this report for further discussion.

## 5.6 Licenses, permits and administrative matters

### 5.6.1 Key findings

- Demand for space and usage of Auckland's navigable waters is increasing in line with population growth. It is expected that more mooring sites and moorings will be required as demand increases over time. The number of mooring licenses issued has increased from 336 to 543 between 2013 and 2019.
- The Bylaw is used to address the issues. For example, between December 2018 to May 2019, 58 warnings and infringements were issued related to unregistered personal watercraft (jetskis).
- The Bylaw is the key regulatory tool used for managing the use of space and licensing moorings and personal watercraft (jetskis).
- Issues around safety and nuisance risks from abandoned or unkept moorings, unregistered personal watercrafts and illegally moored boats remain. For example, there have been more than 50 abandoned boats recorded in Auckland's Waitematā Harbour, with at least one pulled from the water every week.
- The Bylaw remains as an effective and efficient tool to manage the use of space and licensing moorings and personal watercraft (jetskis).
- The Bylaw fills a regulatory gap and provides for a proportionate and graduated approach to enforcement, including through the use of infringement fines.
- Some improvements to the Bylaw have been suggested, for example, more specific rules for moorings.

### 5.6.2 Explanation

This section of the Bylaw provides detailed information about the registration of personal watercraft, mooring licenses and vessels on moorings. It also explains how the Bylaw addresses vessel operations in relation to hot works that are carried out on vessels, dangerous goods on vessels and fuel/bunkering operations.

### 5.6.3 Issues related to licenses, permits and administrative matters

The issues are incidents, safety risks, nuisance and the need to manage the use of space. Specific issues include:

- moorings which have either been abandoned or have been badly maintained, posing a risk to safety or of damage or nuisance
- unregistered jet skis exceeding speed limits or undertaking other risky behaviour
- illegally moored boats
- risks associated with hot works, transportation of dangerous goods, fuel oil or bunkering.

### 5.6.4 Bylaw approach

The Bylaw regulates the registration of personal watercraft, mooring licenses, vessels on moorings, vessel operations in relation to hot works that are carried out on vessels, dangerous good on vessels and fuel oil or bunkering operations (Table 5.6.4.1).

**Table 5.6.4.1: Summary of bylaw provisions related to licenses, permits and administrative matters**

| Requirements                                                                                                 | Clause |
|--------------------------------------------------------------------------------------------------------------|--------|
| <b>Registration</b>                                                                                          |        |
| • personal watercraft must be registered with the Harbourmaster or another New Zealand regional council      | 39     |
| <b>Moorings</b>                                                                                              |        |
| • must be placed in accordance with a licence issued and approved by the Harbourmaster                       | 40     |
| • application for a mooring license must be made in a prescribed form                                        | 41     |
| • Harbourmaster may consider the suitability of the applicant to hold a licence                              | 42     |
| • moorings must be held in accordance to the terms and conditions of the mooring license                     | 43     |
| • license holder may not assign, transfer or sublease the mooring site unless approved                       | 44     |
| • must be maintained in a safe and efficient manner                                                          | 45     |
| • a mooring licence may be cancelled where the licence holder fails to comply with conditions of the license | 46     |
| • must not leave a mooring vacant or unattended for longer than six months without prior approval            | 49     |
| <b>Person in charge of vessel operations</b>                                                                 |        |
| • council is not liable for any damage to vessels under certain events or consequences                       | 47     |
| • Harbourmaster may remove or secure a vessel where it may cause a navigational safety issue                 | 48     |
| • permission of the owner of the facility is required before any hot works may be proceeded with             | 50     |
| • must notify berth operator and Harbourmaster of the carriage of dangerous goods 48 hours prior to arrival  | 51     |
| • certain procedures must be carried out before any fuel oil or bunkering operations take place on a vessel  | 52     |

### Enforcement powers

The Harbourmaster has a wide range of enforcement powers to enforce the Bylaw (Refer to global 4.4 of this report).

### 5.6.5 Bylaw implementation

The Harbourmaster has the power to issue an infringement fine or remove a vessel of the person in charge who breaches the Bylaw regarding licenses, permits and administrative matters. The following process applies:

- once a derelict boat is identified, the Harbourmaster makes multiple attempts to contact the owner and the police are notified
- notices are placed in the local paper and a notice warning of the removal of the boat is attached to its hull

- if the owner of the vessel or the licence holder cannot be located, or fails to pay for any storage cost, the Harbourmaster may recover cost from the sale of the vessel, its fittings, equipment and cargo.<sup>76</sup>

The mooring licensing system provides the Harbourmaster with a range of powers to regulate license holders, placement and construction of moorings. Mooring licenses can be terminated if conditions are not met.

An online registration system for jet skis was recently introduced and there has been a significant increase in subsequent registrations.

Powers to remove or secure a vessel where it may cause a navigational safety issue, requirements to seek permission of a facility before hot works are undertaken and to notify the Harbourmaster of the carriage of dangerous goods also aid risk management.

### 5.6.6 Are issues relating to licenses, permits and administrative matters still an issue?

Safety risks and nuisance on Auckland's navigable waters remain issues. While data is limited, available data show that:

- between December 2018 to May 2019:
  - 58 warnings and infringements were issued related to unregistered personal watercraft<sup>77</sup>
  - 20 warnings and issued infringements related no identification of vessels<sup>78</sup>
- issues where moorings have been abandoned or which have been badly maintained, posing a risk to others
- council issued 21 abatement notices to owners of boats illegally moored on Waiheke Island<sup>79</sup>
- in early 2019 more than 50 abandoned boats were recorded in Auckland's Waitematā Harbour, with at least one pulled from the water every week.<sup>80</sup>

### Emerging issues

The Harbourmaster and other stakeholders identified the growth in the number of houseboats on the water as a 'grey area' which is currently not addressed under either the Bylaw or the Auckland Unitary Plan. The growth of Auckland ensures more people will access the navigable waters and recreational boat ownership is likely to increase.

It is expected that more mooring sites and moorings will be required. They suggested that this issue be assessed to see whether this issue could be addressed under the bylaw as a means of managing the growing issue.

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<sup>76</sup> 33L Maritime Transport Act 1994

<sup>77</sup> [Data from Harbourmaster Dec 2018-May 2019](#)

<sup>78</sup> [Data from Harbourmaster Dec 2018-May 2019](#)

<sup>79</sup> [Council cracks down on Waiheke illegal moorings](#)

<sup>80</sup> [Auckland's abandoned boats: One pulled from the water every week](#)

### 5.6.7 Other approaches

A comparative assessment table indicates that alternative regulations are not an exact match, albeit some can achieve the same outcome:

The Act is targeted at the highest threshold of offending whereas the Bylaw clauses can address lower level of breaches that can cause risks or issues with safety.

#### Maritime Transport Act 1994 powers

The assessment above indicates that while there are some clauses in the Act and some Maritime rules that can direct similar behaviours and compliance to those in the Bylaw, they are not an exact match because:

- infringement fines are of a lesser amount than for the similar rule
- there are no exactly comparative Maritime rules – the Bylaw makes specific provisions for procedures to mitigate the risk that are not contained in the rules or Act. For example, personal watercraft must be registered with the Harbourmaster or another New Zealand regional council
- the Act is targeted at the highest threshold of offending whereas the Bylaw clauses can address lower level breaches that can cause risks or issues with safety, nuisance of the use of space.

**Table 5.6.7.1<sup>81</sup>: Infringement Comparison between Maritime Transport Act, Maritime Rules and Bylaw**

| TOPIC                                                 | Bylaw Rule | Fine  | MTA / Maritime Rule | Fine | Comparative assessment                                                                                              |
|-------------------------------------------------------|------------|-------|---------------------|------|---------------------------------------------------------------------------------------------------------------------|
| Unregistered personal watercrafts                     | ✓          | \$200 | ×                   | ×    | Better infringement powers under the bylaw. No national rule in the Act. No infringement fine under Maritime Rules. |
| Unlicensed moorings                                   | ✓          | \$200 | ×                   | ×    | Rule addressed only under the bylaw. No national rule in the Act. No infringement fine under the maritime rule.     |
| Application for mooring license                       | ✓          | ×     | ×                   | ×    | Rule addressed only under the bylaw. No national rule in the Act.                                                   |
| Consideration of application for a mooring licence    | ✓          | ×     | ×                   | ×    | Rule addressed only under the bylaw. No national rule in the Act.                                                   |
| Conditions of licence                                 | ✓          | ×     | ×                   | ×    | Rule addressed only under the bylaw. No national rule in the Act.                                                   |
| Transfer of ownership and mooring licence termination | ✓          | ×     | ×                   | ×    | Rule addressed only under the bylaw. No national rule in the Act.                                                   |

<sup>81</sup> (\*) imprisonment not exceeding 12 months or a fine on summary conviction

| TOPIC                                                                    | Bylaw Rule | Fine  | MTA / Maritime Rule | Fine   | Comparative assessment                                                                                       |
|--------------------------------------------------------------------------|------------|-------|---------------------|--------|--------------------------------------------------------------------------------------------------------------|
| Maintenance and construction requirements                                | ✓          | ×     | ×                   | ×      | Rule addressed only under the bylaw. No national rule in the Act.                                            |
| Powers of Harbourmaster with respect to moorings and vessels on moorings | ✓          | ×     | ×                   | ×      | Rule addressed only under the bylaw. No national rule in the Act.                                            |
| Liability of the council                                                 | ✓          | ×     | ×                   | ×      | Rule addressed only under the bylaw. No national rule in the Act.                                            |
| Removal of vessels                                                       | ✓          | ×     | ×                   | ×      | Rule addressed only under the bylaw. No national rule in the Act. No infringement fine under Maritime Rules. |
| Ongoing use of mooring                                                   | ✓          | ×     | ×                   | ×      | Rule addressed only under the bylaw. No national rule in the Act. No infringement fine under Maritime Rules. |
| Hot works approval                                                       | ✓          | \$200 | ×                   | ×      | Rule addressed only under the bylaw. No national rule in the Act. No infringement fine under Maritime Rules. |
| Hot works precautions                                                    | ✓          | \$300 | ×                   | ×      | Rule addressed only under the bylaw. No national rule in the Act. No infringement fine under Maritime Rules. |
| Dangerous goods                                                          | ✓          | \$300 | ✓                   | \$5000 | Rule addressed under the bylaw and maritime rule. Better infringement under the maritime rule.               |
| Fuel Operations and Bunkering                                            | ✓          | \$300 | ×                   | ×      | Rule addressed only under the bylaw. No national rule in the Act. No infringement fine under Maritime Rules. |

## Education

Education and promotion of the license and permit conditions can support awareness and compliance. However, education in combination with powers in the Bylaw are likely to be more effective in driving more immediate and sustained compliance.

## Auckland Unitary Plan

### On a mooring

The Auckland Unitary Plan regulates people who are living on a moored vessel where a resource consent may be required. It does not address the licensing of moorings which is required by the Harbourmaster under the Bylaw.<sup>82</sup>

<sup>82</sup> Navigation Safety Bylaw 2014, clauses 40 to 49.

The Bylaw enables the Harbourmaster to assess mooring licence applications which include whether there is adequate space for the proposed mooring and vessel, and whether it could result in any navigation safety issues such as congestion or diminishing the level of safety for other activities in the area.<sup>83</sup>

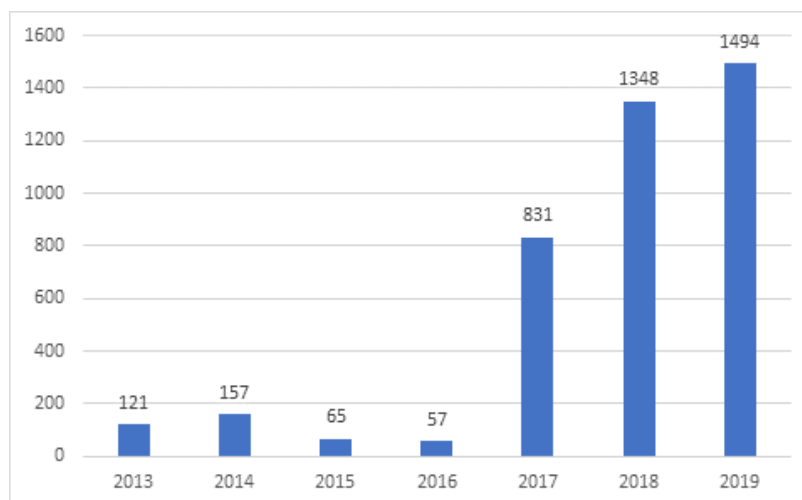
In all zones, a mooring requires a mooring licence issued pursuant to the Navigation Safety Bylaw.<sup>84</sup>

#### 5.6.8 Is the Bylaw effective and efficient?

The Bylaw remains an effective and efficient tool to enable the Harbourmaster to respond to issues and risks on Auckland's navigable waters. It is the central tool for managing allocation of moorings and associated audit processes.

It is relatively effective and efficient to implement including licensing requirements and powers, associated infringement powers and through cost recovery mechanisms attached.

**Figure 5.6.8.1: Number of registrations issued for personal watercraft 2013-2019**



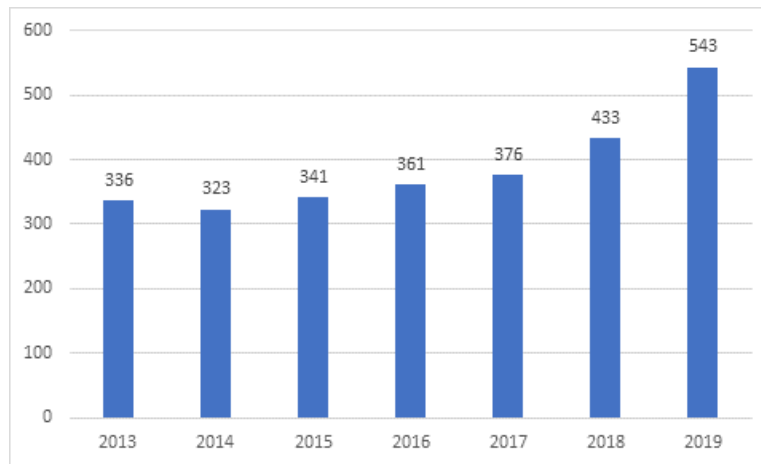
(Source: Harbourmasters office)

The number of registered jetskis increased from 121 in 2013 to 1494 in 2019. The introduction in 2017 of an online registration system has made it easier for people to register and contributed to a strong increase in registrations.

<sup>83</sup> Houseboats and living abroad fact sheet.

<sup>84</sup> Navigation Safety Bylaw 2014 clauses 40 to 49.

**Figure 5.6.8.2: Number of mooring licences issued per year 2013-2019**



(Source: Harbourmasters office)

Mooring licenses issued annually have increased from 336 in 2013 to 543 in 2019.

Other feedback showed:

- 58 per cent reported they had heard of the Bylaw rules relating to the licensing and maintenance of moorings 89 per cent thought the rules were working well<sup>85</sup>
- 53 per cent of survey participants reported that they had heard of the Bylaw rules relating to the registration requirements for licensing jet skis and 88 per cent thought the rules were working well<sup>86</sup>
- the Bylaw remains an effective and efficient tool to regulate mooring activity on the water as without the Bylaw, each mooring would have to get approval under the Resource Management Act<sup>87</sup>
- stakeholders also noted the regulatory role the Bylaw plays in giving effect to the to the Auckland Unitary Plan where it relates to regulating mooring activities within demarcated zones within the plan.<sup>88</sup>

### 5.6.9 Is the Bylaw the most appropriate form of Bylaw?

Staff, through research and engagement have identified a range of possible improvements to the Bylaw. The Harbourmaster identified:

- the effectiveness of Clause, 52(1) which addresses Bunkering could be improved if an infringement fine were attached
- potential improvements to the moorings clauses including:
  - switching the order of clause 45 (2) and (3) in relation to moorings and swing moorings

<sup>85</sup> People's Panel survey

<sup>86</sup> People's Panel survey

<sup>87</sup> Interview with staff member Auckland Council Plans and Places

<sup>88</sup> ibid

- including possible diving inspections for maintenance
- give the ability for Auckland Transport to recover debt recovery charge incurred from Bay Corp
- including conditions of the license in the bylaw
- better defining moorings for example, showing the difference between a mooring and a swing mooring
- including a clause that specifies the size of moorings and relevant vessel types
- removing the six-month sub-leasing option.

Other stakeholders suggested that:

- registration should apply to all recreational vessels and not just jetskis
- the Bylaw functions well but education of the rules should be made compulsory for all boat users
- while anyone can register a jetski there is no way to identify whether that person knows how to safely operate the jetski.

There are also potential opportunities to update the Bylaw to align with Auckland Council bylaw drafting standards.

#### **5.6.10 Does the Bylaw have any implications under the New Zealand Bill of Rights Act 1990?**

No. Refer to section 4.7 (Global Findings) of this report for further discussion.

#### **5.6.11 Is the Bylaw inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or the Auckland Unitary Plan?**

No. Refer to section 4.8 (Global Findings) of this report for further discussion.

## 5.7 Large vessels

### 5.7.1 Key findings

- Vessels are getting larger in size. There are a high number of vessel movements and these are forecast to increase over time.
- Risks relating to large vessels remain and incidents are relatively frequent. From 2009 to 2019, there were 487 related incidents reported to Maritime involving large or fast vessels with 119 related injuries.
- The main incidents are equipment failure, contact and collision - issues the Bylaw can help mitigate.
- On balance the Bylaw is an efficient and effective way help mitigate issues.
- The Bylaw is in constant use to address risks or issue.
- It provides requirements and operating procedures that complement or fill regulatory gaps and help with avoidance of doubt (for example early reporting of malfunctioning equipment to the Harbourmaster and moving prohibited zones).
- Stakeholders have suggested some improvements to the Bylaw and its implementation including mandatory education, licensing and registration for recreational vessels and making Automatic Identification Systems mandatory on all commercial vessels.

### 5.7.2 Explanation

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.

### 5.7.3 Safety, nuisance or sharing of waters related issues

Incidents are occurring including grounding and collision between vessels or with infrastructure and nuisance, damage, injuries or fatalities.

Contributing factors include operational failures or errors of large and fast vessels or by smaller vessels navigating near large vessels, and varying geography or conditions (for example depth or fog).

### 5.7.4 Bylaw approach

The Bylaw requires persons in charge of large<sup>89</sup> vessels to report malfunctioning navigational equipment to the harbourmaster and seek permission to enter a wharf

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<sup>89</sup> Large vessel means any vessel of 500 gross tonnage or greater, and any vessel of 40 metres length overall or greater. A tug and tow are considered a composite unit

or anchorage in a pilotage area. It specifies required timeframes and formats for reporting issues.

The Bylaw also establishes a moving prohibited zone<sup>90</sup> around a large vessel that other vessels may not enter, states powers to restrict access by large vessels to certain areas and sets requirements for fast vessels to have Automatic Identification Systems.<sup>91</sup> Table 5.7.4.1 provides a summary of the Bylaw approach.

**Table 5.7.4.1: Summary of Bylaw clauses about Large vessels**

| Requirement                                                                                                                                                                                                                                                                                                                                                        | Clause          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| <b>Navigating with inoperative equipment</b>                                                                                                                                                                                                                                                                                                                       |                 |
| <ul style="list-style-type: none"> <li>Inoperative / malfunctioning navigational or manoeuvring equipment must be reported to the harbourmaster 24 hours prior to entering/departing navigable waters/berth/anchorage.</li> </ul>                                                                                                                                  | 53 (1)(2)(3)(4) |
| <b>Duty of person in charge of a vessel under 500 gross tonnage</b>                                                                                                                                                                                                                                                                                                |                 |
| <ul style="list-style-type: none"> <li>Vessel under 500 gross tonnage must not impede a large vessel in a pilotage area.</li> </ul>                                                                                                                                                                                                                                | 54 (1)          |
| <b>Moving prohibited zone<sup>92</sup></b>                                                                                                                                                                                                                                                                                                                         |                 |
| <ul style="list-style-type: none"> <li>Vessel must not navigate within the moving prohibited zone of a large vessel underway within the pilotage areas of Auckland.</li> </ul>                                                                                                                                                                                     | 55 (1)(2)(3)(4) |
| <b>Areas of restricted access for large vessels</b>                                                                                                                                                                                                                                                                                                                |                 |
| <ul style="list-style-type: none"> <li>Harbourmaster may set aside an area for large vessels and specify controls (or rules) for use and permission for entry</li> </ul>                                                                                                                                                                                           | 56 (1)(2)       |
| <b>Automatic identification system</b>                                                                                                                                                                                                                                                                                                                             |                 |
| <ul style="list-style-type: none"> <li>Harbourmaster may require a commercial fast vessel to have an Automatic Identification System</li> <li>An Automatic Identification System must be used in an area declared affected by fog</li> <li>Large vessels must have a pilot when in a pilotage area unless they have an Automatic Identification System.</li> </ul> | 57 (1)(2)(3)    |

## Enforcement powers

The Harbourmaster has a wide range of enforcement powers to enforce the Bylaw (Refer to global 4.4 of this report).

## 5.7.5 Bylaw Implementation

The Harbourmaster uses a graduated compliance approach ranging from information provision (via the website) and warnings. While offenders may be issued

<sup>90</sup> A moving prohibited zone extending to 100 metres astern and 100 metres to each side of a large vessel, and continuing at such width to 500 metres ahead, following the line of the buoyed channel when changing course, is reserved around a large vessel, when that large vessel is underway within the pilotage areas of Auckland (excluding Tāmaki River) and Manukau.

<sup>91</sup> Automatic Identification Systems are tracking systems that display the location of other nearby vessels

<sup>92</sup> The Bylaw establishes a moving prohibited zone is reserved 100 metres astern, to each side and 500 metres ahead of a large vessel in a pilotage area.

infringements or prosecuted there have been no court prosecutions for breaches of the Bylaw relating to large vessels since the Bylaw was adopted.

The Harbourmaster maintains close contact with commercial operators, relevant personnel on vessels, pilots, tug operators, the Ports of Auckland<sup>93</sup>, Maritime New Zealand and commercial operators to plan how they will respond to and mitigate issues and risks related to large and fast vessels.

Bylaw implementation aligns with best practice including through the Harbourmaster's membership of the New Zealand Port and Harbour Marine Safety Code and related Safety Management System. The Code requires the development of Risk Assessment and pursuant Safety management Plans that outline the relevant policies and procedures.

#### **5.7.6 Are the issues related to large vessels still issues?**

The Auckland Harbourmaster's Harbour Safety Management System 2019 adopted under the New Zealand Port and Harbour Code highlights ongoing risks and mitigation including:

- specific locations and conditions where risks for large vessels are higher including pilotage areas
- operating requirements in high risk locations including berthing facilities for large of fast vessels
- roles and responsibilities of key parties regarding safety and risk mitigation
- processes for review of safety plans and ongoing review, identification and mitigation of risks.

Anchorage in Auckland are generally unsuitable for vessels above 500 gross tonnage and therefore require permission from the Harbourmaster to enter the Auckland pilotage area and must be managed on a case by case basis including through procedures contained in the Bylaw.<sup>94</sup>

The Transport Accident Investigation Commission has highlighted that specific risks occur in relation to pilotage areas. It has placed this issue on its 'Watchlist'<sup>95</sup> and has

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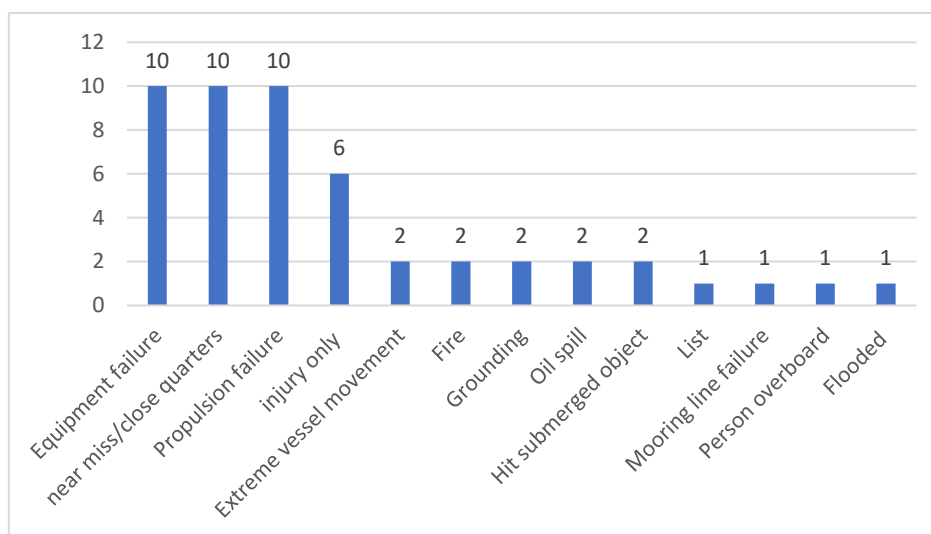
<sup>93</sup> A formal Memorandum of Understanding exists between Ports of Auckland and Auckland Transport that states responsibilities for safety in the Waitematā and Manukau Harbours.

<sup>94</sup> AT Harbourmaster-Harbour Safety Plan. Part B – pg.5

<sup>95</sup> Through its Watchlist the Commission notes that 'policy makers, regulatory agencies, and transport sector participants need to take faster action to deal with these long standing and serious transport safety concerns'. The Watchlist draws attention of regulators, operators, the Government and the people involved in transport every day to transport-related concerns of high social, economic or environmental risk; and systemic transport safety risks

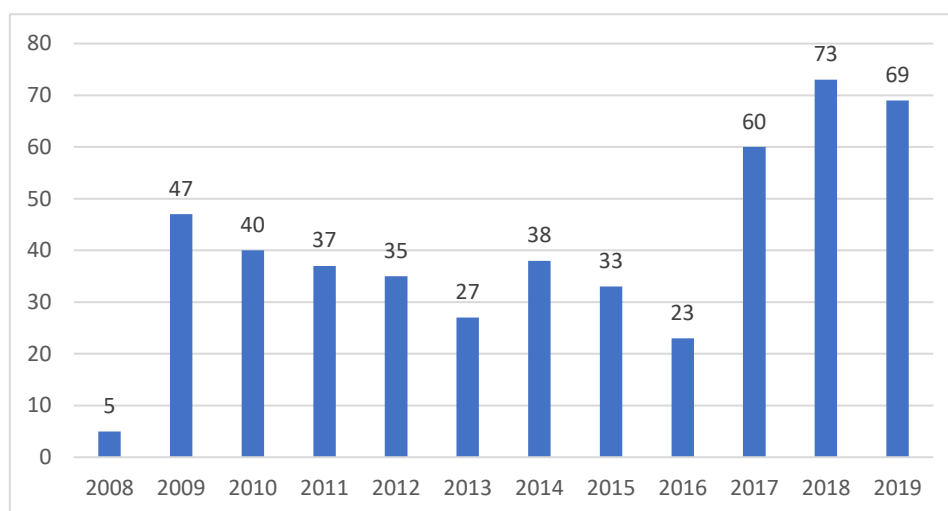
stated errors in navigation in pilotage waters carry the risk of serious consequences for people, the environment, and the economy.<sup>96</sup>

**Figure 5.7.6.1: Incidents - Large and fast vessels 2019**



In 2019 there were 69 incidents were reported involving large or fast vessels<sup>97</sup> with 12 associated injuries. Reported incidents for 2008 to 2019 are represented below in figure 5.7.6.2.

**Figure 5.7.6.2: Incidents - Large and fast vessels mid-year 2008 to end 2019**



There were 487 incidents reported involving large or fast vessels between mid-year 2008 and end 2019 with a total of 119 related injuries.

## Emerging trends / issues

<sup>96</sup> <https://taic.org.nz/news/taic-adds-navigation-pilotage-waters-watchlist>

<sup>97</sup> Large and fast vessels counted include passenger/vehicular ferries, container ships, bulk carriers, bulk cement carriers, general cargo/multipurpose, cargo ships, chemical tankers, combination carriers, cruise ships, NZSIM Cargo dredger, Oil tankers, pilot vessels, tankers, vehicle carriers.

Changes in the use of Auckland's navigable waters are likely to increase the risk of issues related to large vessels occurring, for example:

- vessels growing in size in the context of New Zealand's largest and busiest port
- passenger transport ferry services are increasing in frequency due to increasing population, urban growth and growing passenger demand
- increasing use of recreational vessels.<sup>98</sup>

Stakeholders have also shared anecdotal examples of smaller recreational vessels being navigated too closely to larger vessels.

### 5.7.7 Other approaches

#### Maritime Transport Act 1994 and Maritime rules

The Maritime Transport Act 1994 and Maritime Rules<sup>99</sup> contain similar provisions to the Bylaw about large vessels. A comparative assessment indicates that these regulations are not an exact match, albeit some can achieve the same outcome:

- for some bylaws there is no exactly comparative rule for example:
  - the requirement to report inoperative navigational equipment to the Harbourmaster
  - the moving prohibited zone around large vessels
- the Act is targeted at the highest threshold of offending whereas the Bylaw clauses can address lower level breaches that can cause risks or issues with safety.

**Table 5.7.7.1: Infringement Comparison between Maritime Transport Act 1994, Maritime Rules and Bylaw**

| TOPIC                                  | Bylaw Rule | Bylaw Fine | Maritime rule | Fine | MTA rule | MTA fine               | Comparative assessment                                                                                    |
|----------------------------------------|------------|------------|---------------|------|----------|------------------------|-----------------------------------------------------------------------------------------------------------|
| Inoperative equipment on large vessels | ✓          | \$300      | -             | -    | -        | \$10,000/<br>\$100,000 | No exactly equivalent provision in Act and rule.<br><br>Act includes general provisions to ensure safety. |

<sup>98</sup> In 2016 the proportion of people from Auckland surveyed by Maritime NZ who indicated they participated in recreational boating increased from 22 per cent to 37 per cent in 2018 <https://www.maritimenz.govt.nz/recreational/safety-campaigns/recreational-research.asp>

<sup>99</sup> Maritime Rules are made by the Minister of Transport under the Maritime Transport Act 1994 and apply nation-wide

| TOPIC                                                       | Bylaw Rule | Bylaw Fine | Maritime rule | Fine             | MTA rule | MTA fine               | Comparative assessment                                                                        |
|-------------------------------------------------------------|------------|------------|---------------|------------------|----------|------------------------|-----------------------------------------------------------------------------------------------|
| Vessel under 500 gross tonnage to give way to large vessels | ✓          | \$200      | -             | \$200/<br>\$2000 | -        | \$10,000/<br>\$100,000 | No exactly equivalent provision in Act and rule.                                              |
| Large vessels have a moving prohibited zone                 | ✓          | \$200      | -             | \$100/<br>\$1000 | -        | \$10,000/<br>\$100,000 | No exactly equivalent provision in Act and rule.                                              |
| Areas of restricted access for large vessels                | ✓          | \$300      | ✓             | \$100/<br>\$1000 | -        | \$10,000/<br>\$100,000 | No exactly equivalent provision in Act and rule.                                              |
| Use of automatic identification system on large vessels     | ✓          | \$500      | ✓             | \$100/<br>\$1000 | -        | \$10,000/<br>\$100,000 | Rules and Bylaws similar. Higher court prosecution amount. Different evidential requirements. |

## Port and Harbour Safety Management Systems

Safety Management Systems developed as part of the Port and Harbour Maritime Safety Code guide risk management and the use of Bylaws to mitigate risks. They complement the use of Bylaws and rules but do not replace them as they guide the use of, rather than duplicate existing legislation, rules and Bylaws.

## Education and information provision

Education and information provision can help make a person in charge of a recreational vessel aware of the rules about where they may navigate a vessel. Maritime NZ provides guidance about the 'rules of the road' for all vessels.

Education and information provision are unlikely to be efficient and effective for addressing issues and risks as they occur with large vessels as they do not have the necessary tools for enforcement such as infringements and prosecution.

### 5.7.8 Is the bylaw effective and efficient?

The Bylaw about large vessels sets in place operating requirements, procedures and controls to address risks with large vessels. It is a key regulatory tool for managing risks and is in constant use.

While provisions under the Act and Maritime rules could feasibly be used to address issues occurring, the Bylaw can help set in place complementary or preventative procedures and requirements.

For example, the Bylaw enables the Harbourmaster to require a fast vessel to have an Automatic Identification System fitted which aligns with safe practice highlighted by the Transport Accident and Investigation Commission's recommendation and watchlist.<sup>100</sup>

The moving prohibited zone complements the maritime rules for collision avoidance by establishing the requirement to provide a minimum distance around a large vessel to minimise the risk of collision or obstruction provides another example of this.

The requirement to report inoperative or malfunctioning navigational or manoeuvring equipment enables early warning and mitigation.

The Bylaw can be efficiently enforced by the Harbourmaster who is often notified or required to respond to incidents occurring. This is aided by regular and ongoing communication between large vessels, Ports of Auckland and the Harbourmaster.

Stakeholder feedback indicates that the rules around large and fast vessels are reasonably well known. Feedback about recreational vessels indicates that the rules around navigating smaller vessels are not always well known.

Of commercial operators responding to the People's Panel commercial survey, there was relatively high awareness of the Bylaw about large vessels. Respondents rated their knowledge as five very knowledgeable (23 per cent) and four knowledgeable (38 per cent).

### 5.7.9 Is the Bylaw the most appropriate form of Bylaw?

Staff, through research and engagement identified that commercial operators believe the Bylaw is easy to understand and apply.<sup>101</sup> Possible improvements to the Bylaw have also been identified, including:

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<sup>100</sup> The Bylaw about Automatic Identification Systems aligns with the Transport Accident and Investigation Commission's recommendation on its Watchlist. The Commission has highlighted that transport regulators could do more to encourage and (where reasonable) require the operators of air, rail and maritime vehicles to use available tracking and location technologies. Automatic Identification Systems are identified amongst these.

<sup>101</sup> Commercial survey respondents believed that the Bylaw is easy to understand and apply with 23 per cent rating it at 5 (very easy), 54 per cent rating it 4 and 23 per cent rating it 3.

- Automatic Identification Systems should be made mandatory on all commercial vessels
- mandatory education, licensing and registration for recreational vessels.

There are also potential opportunities to update the Bylaw to align with Auckland Council bylaw drafting standards.

#### **5.7.10 Does the Bylaw have any implications under the New Zealand Bill of Rights Act 1990?**

No. Refer to section 4.7 (Global Findings) of this report for further discussion.

#### **5.7.11 Is the Bylaw inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or the Auckland Unitary Plan?**

No. Refer to section 4.8 (Global Findings) of this report for further discussion.

## 5.8 Specific restrictions in lanes, zones and areas

### 5.8.1 Key Findings

- The Bylaw sets restrictions and rules to prohibit and/or restrict activities and vessels from defined areas.
- Risk factors include a high volume of traffic in some parts of Auckland's navigable waters, and the risks associated with interactions between recreational and commercial vessels.
- 241 infringements were issued between December 2016 to May 2019 for excessive speed, which the Harbourmaster notes relates to incidents occurring in restricted areas in the Waitematā Harbor.
- The Bylaw fills a regulatory gap and sets in place specific area restrictions that are not found in any other legislation as they are regionally specific.
- The Bylaw remains an important tool to address safety risks and manage the use of space in Auckland's navigable waters.
- Improvements to the Bylaw have been suggested to address new and ongoing issues more effectively. For example, the Harbourmaster and stakeholders note that the rules could be amended to further support this the objectives in the Auckland Transport Integrated Transport Plan.

### 5.8.2 Explanation

Restrictions on Auckland's navigable waters set controls to prohibit and/or restrict activities and vessels from defined areas.

### 5.8.3 Issues related to specific restrictions in lanes, zones and areas

Risk factors include a high volume of traffic in some parts of Auckland's navigable waters, and the interaction between recreational and commercial vessels.<sup>102</sup> These factors contribute to nuisance, obstruction, grounding, near misses or collisions and risks of damage or safety risks and incidents.

### 5.8.4 Bylaw approach

The Bylaw allows the Harbourmaster to specify restrictions and controls for certain areas that have a high volume of commercial and recreational vessel use. These restrictions seek to address nuisance and mitigate safety risks within specific areas of Auckland's navigable waters.

Table 5.8.4.1 provides a summary of the Bylaw approach.

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<sup>102</sup> Official and emergency vessels, passenger ferries and commercial operators.

**Table 5.8.4.1: Summary of Bylaw clauses about specific restrictions**

| Requirement                                                                                      | Clause          |
|--------------------------------------------------------------------------------------------------|-----------------|
| <b>Operation of commercial fast vessels</b>                                                      |                 |
| • Harbourmaster may require an operating plan                                                    | 58(1), (2)      |
| <b>Motuihe Channel fast passenger ferry lane</b>                                                 |                 |
| • Vessels must not impede the passage of fast ferry in lane<br>• Piloted vessels exempt          | 59(1), (2), (3) |
| <b>Waitematā Harbour restricted zone</b>                                                         |                 |
| • Most vessels must not exceed 12 knots<br>• Official, emergency or fast ferries may be exempted | 60(1), (2), (3) |
| <b>Harbour Bridge precautionary area</b>                                                         |                 |
| • Harbourmaster may specify controls for the area                                                | 61(1)           |
| • Vessels must not impede warships                                                               | 61(2)           |
| <b>Kawau Island restricted speed area</b>                                                        |                 |
| • Harbourmaster may specify controls for the area                                                | 62(1)           |
| • Vessels must not exceed a speed of 5 knots                                                     | 62(2)           |
| <b>Auckland ferry terminal basin</b>                                                             |                 |
| • Harbourmaster may specify controls for the area                                                | 63(1)           |
| • Only official vessels, ferries and emergency response vessels may enter                        | 63(2), (3)      |
| <b>Manukau Harbour bar crossing</b>                                                              |                 |
| • Vessels must not transit between sunset and sunrise                                            | 64(1)           |

## Enforcement powers

The Harbourmaster has a wide range of enforcement powers to enforce the Bylaw (Refer to global 4.4 of this report).

### 5.8.5 Bylaw implementation

Commercial vessel operators must seek permission from the Harbourmaster to request establishment of controls in specific areas and if required, must work with the Harbourmaster to develop Navigation Safety Operating Plans.

The Harbourmaster has effective relationships with commercial operators of passenger ferries and those operators in Ports of Auckland who operate vessels in restricted areas. The ongoing and regular communication between parties supports effective management of emerging issues and risks and ensures adherence to the Bylaw.

Data from the Harbourmaster show 34.5 per cent of warnings and infringements issued between December 2016 to April 2019 were for exceeding the five-knot speed limit.<sup>103</sup> A further 14.7 per cent of warnings and infringements were for exceeding the 12-knot speed, mainly in the Waitematā Harbour zone.

<sup>103</sup> Harbourmaster data, May 2019.

The Harbourmaster uses a proactive and reactive approach to Bylaw implementation (Refer to global 4.4 of this report).

### 5.8.6 Are issues in restricted lanes, zones and areas still issues?

The issues the Bylaw sets out to address are still issues and these include:

- Risk management:
  - stakeholders, including the Ports of Auckland identified that container vessels are becoming larger. Some vessels can be more safely navigated at higher speeds due to the vessel design; the risk could be safely mitigated by increasing speeds limits – stakeholders highlighted that any such changes would require a comprehensive safety assessment
  - recreational vessels are still exceeding speed limits through the Waitematā Harbour restricted zone (reflected through infringement data)
  - the use of recreational craft, particularly jetskis and water skis on Ōrākei Basin is problematic for some local residents and the Harbourmaster, due to noise and challenges with access.
- Managing the use of space:
  - Auckland Transport has highlighted the concern around the growth and development of Auckland's northern suburbs. This means an increase to daily commuters which puts pressure on passenger ferry operators to increase efficiency and frequency of trips through dedicated operating areas. This poses a higher risk of collision predominately through the Waitematā Harbour
  - ensure that the use of space on the water is allocated fairly and appropriately while ensuring safety is maintained.

### 5.8.7 Other approaches

#### Maritime Transport Act 1994

The Maritime Transport Act 1994 (the Act) gives power to regional councils to make bylaws that Harbourmasters can enforce. Section 33M of the Act empowers regional councils to make bylaws to “reserve the use of any waters for specified persons, ships or seaplanes”.

The Bylaw is the only regulatory measure which enables the Harbourmaster to make controls and restrictions for certain areas and activities in line with the powers provided under section 33M of the Act.

#### Integrated Transport Plan

The Integrated Transport Plan aligns with the Auckland Unitary Plan and the overarching direction ‘to create better connections and accessibility within Auckland, across New Zealand and to the world’.

The Integrated Transport Plan cannot replace the Bylaw as it does not contain its own regulatory powers. However, the Bylaw can help contribute to its objectives by ensuring safe navigation of vessels.

**Table 5.8.7.1: Infringement Comparison between Maritime Transport Act 1994, Maritime Rules and Bylaw**

| Navigation Safety Bylaw 2014 / Penalties  | Maritime Transport Act 1994 / Penalties | Maritime Rules / Penalties | Comparative Assessment<br>(✓ is similarity, ✗ is difference)                           |
|-------------------------------------------|-----------------------------------------|----------------------------|----------------------------------------------------------------------------------------|
| Operation of commercial fast vessels      | No comparable clause                    | No similar Maritime Rule.  | ✗ There is no comparable legislation to the Bylaw.                                     |
| Motuihe Channel fast passenger ferry lane | No comparable clause                    | No similar Maritime Rule.  | ✗ There is no comparable legislation to the Bylaw as the Bylaw is regionally specific. |
| Waitematā Harbour restricted zone         | No comparable clause                    | No similar Maritime Rule.  | ✗ There is no comparable legislation to the Bylaw as the Bylaw is regionally specific. |
| Harbour bridge precautionary area         | No comparable clause                    | No similar Maritime Rule.  | ✗ There is no comparable legislation to the Bylaw as the Bylaw is regionally specific. |
| Kawau Island restricted speed area        | No comparable clause                    | No similar Maritime Rule.  | ✗ There is no comparable legislation to the Bylaw as the Bylaw is regionally specific. |
| Auckland ferry terminal basin             | No comparable clause                    | No similar Maritime Rule.  | ✗ There is no comparable legislation to the Bylaw as the Bylaw is regionally specific. |
| Manukau Harbour bar crossing              | No comparable clause                    | No similar Maritime Rule.  | ✗ There is no comparable legislation to the Bylaw as the Bylaw is regionally specific. |

### 5.8.8 Is the Bylaw effective and efficient?

The Bylaw can be readily (efficiently) enforced. Controls on specific areas mean that these can be regularly patrolled and monitored. Relationships with commercial operators help alert the Harbourmaster of issues or mitigate emerging issues.

The Bylaw fills a regulatory gap, as there are no other comparable legislative provisions and rules that enable the Harbourmaster to establish controls for specific areas.

The Harbourmaster and stakeholders believe the Bylaw is functioning effectively and efficiently. Key feedback includes:

- commercial operators and Auckland Transport suggest that the Bylaw is effective through the powers it provides the Harbourmaster to reserve specific areas and designate fast passenger ferry lanes
- infringement fines for recreational vessels exceeding speeds in Waitematā Harbour restricted zone are effective in helping encourage compliance with the Bylaw
- commercial vessels such as passenger ferries should have exemptions to operate at high speeds to meet public transport schedules and objectives.

### 5.8.9 Is the Bylaw the most appropriate form of Bylaw?

The Harbourmaster has highlighted potential technical and wording changes to the Bylaw, subject to comprehensive safety assessments. Suggestions include:

- increasing the speed limit in the inner harbour (Waitematā Harbour restricted zone) from the current 12 knots to 18 knots
- creating a control in relation to the Ports of Auckland boundary
- redrafting clauses 59 and 60, which cover restrictions on the Motuihe Channel fast passenger ferry lane and the Waitematā Harbour restricted zone for consistency with other clauses in the Bylaw (clause 24, reserved areas)
- providing time restrictions on Ōrākei Basin and exemptions for water sports such as water-skiing to continue.

Other stakeholders have suggested that:

- infringement fines should be reviewed and increased for some recreational vessels to ensure compliance.

Stakeholders have also identified some potential changes to improve the Bylaw, such as:

- the Bylaw about Specific Restrictions in lanes, zones and areas may be challenging for the general public to interpret, particularly when English is a second language and suggest that the rules be translated
- passenger ferries be exempt from the current speed restrictions to cater to high commuter volumes. Stakeholders suggested an appropriate speed for passenger ferries should be between 15 to 16 knots
- Auckland Transport staff suggest that the Auckland ferry terminal basin be extended out by 150 metres to allow for more vessels in the future.

There are also potential opportunities to update the Bylaw to align with Auckland Council bylaw drafting standards.

#### **5.8.10 Does the Bylaw have any implications under the New Zealand Bill of Rights Act 1990?**

No. Refer to section 4.7 (Global Findings) of this report for further discussion.

#### **5.8.11 Is the Bylaw inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or the Auckland Unitary Plan?**

No. Refer to section 4.8 (Global Findings) of this report for further discussion.

## 5.9 Tankers, hazardous cargoes, hazardous works, fuel oil transfers and dangerous materials

### 5.9.1 Key findings

- Issues relating to tankers and other vessels transporting hazardous cargoes include collisions, explosions, damage, and injuries or fatalities while carrying, loading, unloading, or transferring explosives or other hazardous substances.
- From 2011 to 2019 there were 13 incidents reported involving tankers. Incidents included near misses, contact, propulsion failure, oil spill, mooring line failure, flooding, equipment failure and electrical power failure.<sup>104</sup>
- Knowledge of the Bylaw was high with 23 per cent of commercial survey respondents having a high level of knowledge and 38 per cent rating their knowledge relatively high at four or three.
- Commercial stakeholders indicated that the rules around handling of hazardous substances and including tankers are working well.
- The Bylaw fills a regulatory gap and sets in place operating procedures that are not addressed as in other regulations. For example, the Bylaw includes specific explosives safety zones and minimum distances between vessels carrying explosives.
- On balance the Bylaw is efficient and effective because is in constant use and can be readily enforced.
- The Harbourmaster has suggested that the Bylaw be updated to take into account changes in berthing requirements for the oil tankers.

### 5.9.2 Explanation

The Bylaws enables the demarcation of explosive safety-controlled zones and prescribes the measures required for tankers to load or discharge explosive substances on Auckland's navigable waters. Cargo and substances include explosives, fuel oil and other dangerous products.

### 5.9.3 Safety, nuisance or sharing of waters related issues

The issues are risks and incidents relating to tankers carrying, loading, unloading, or transferring explosives or other hazardous substances. For example a collision, explosion, damage, and injuries or fatalities.

<sup>104</sup> Note Maritime New Zealand data does not provide sufficient detail about the causation of incidents to determine whether or not the Bylaw could play a role in direct mitigation

### 5.9.4 Bylaw approach

The Bylaw specifies designated areas or facilities where vessels or tankers carrying, loading or unloading explosives must be berthed or moored. To ensure safety, the Bylaw also states minimum distances required between vessels, flags and signals to be displayed, and safety guidance and procedures.

Persons in charge of tankers or vessels must seek permission from the Harbourmaster before they enter a vessel into an explosive safety zone or where a vessel wishes to come within 200 metres of a vessel carrying explosives.

Tankers must not lie within 30 metres of another vessel unless the Harbourmaster gives instructions otherwise. The aim is to create enough distance between vessels to mitigate risks. Tankers must also adhere to international best practice guidelines which provide detailed technical guidance and operational procedures for vessels carrying and handling crude oil, petroleum products and other hazardous substances.<sup>105</sup>

Table 5.9.4.1 provides a summary of the Bylaw approach.

**Table 5.9.4.1: Summary of Bylaw clauses about tankers hazardous cargoes, hazardous works, fuel oil transfers and dangerous materials**

| Requirement                                                                                                                                                                                                                                                                                                                                                          | Clause              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| <b>Explosives safety zone</b>                                                                                                                                                                                                                                                                                                                                        |                     |
| <ul style="list-style-type: none"> <li>The Harbourmaster may specify explosives safety zones and controls</li> <li>Vessels carrying / loading / discharge explosive substances must do so at approved facility or explosives safety zone</li> <li>Vessels must not enter an explosives safety zone while any vessel anchored / berthed is showing Flag B.</li> </ul> | 65 (1)(2)(3)(4)(5)  |
| <b>Vessels carrying explosive substances as cargo</b>                                                                                                                                                                                                                                                                                                                |                     |
| <ul style="list-style-type: none"> <li>Vessels must remain 200 metres of a vessel carrying / loading explosive substances, unless with permission of Harbourmaster or for the purpose of loading or unloading that other vessel or assisting that other vessel in an emergency (and vice versa).</li> </ul>                                                          | 66 (1)(a-c)(2)(a-c) |
| <b>Signals to be displayed</b>                                                                                                                                                                                                                                                                                                                                       |                     |
| <ul style="list-style-type: none"> <li>Vessels carrying or loading bulk oil or explosives must hoist Flag B after sunrise and display a red light after sunset.</li> </ul>                                                                                                                                                                                           | 67(1)(a-b)          |
| <b>Duties of person in charge of the vessel while tanker is in port</b>                                                                                                                                                                                                                                                                                              |                     |
| <ul style="list-style-type: none"> <li>Tankers must comply with current International Safety Guides for tankers and chemicals, berth / moor the vessel at Wynyard Wharf, the navy base at Devonport or authorised places, keep the tanks closed, except when loading or discharging; ensure vessel can be moved immediately.</li> </ul>                              | 68 (1)(2) (a-c)     |
| <b>Tankers not to lie close to other vessels</b>                                                                                                                                                                                                                                                                                                                     |                     |
| <ul style="list-style-type: none"> <li>A tanker must not lie within 30 metres of another vessel except during transshipment.</li> </ul>                                                                                                                                                                                                                              | 69 (1)              |

<sup>105</sup> Guidelines contained in the International Safety Guide for Tankers and Terminals and ICS Tanker Safety Guide (Chemicals).

## Enforcement powers

The Harbourmaster has a wide range of enforcement powers to enforce the Bylaw (Refer to global 4.4 of this report).

### 5.9.5 Bylaw Implementation

The Harbourmaster 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.

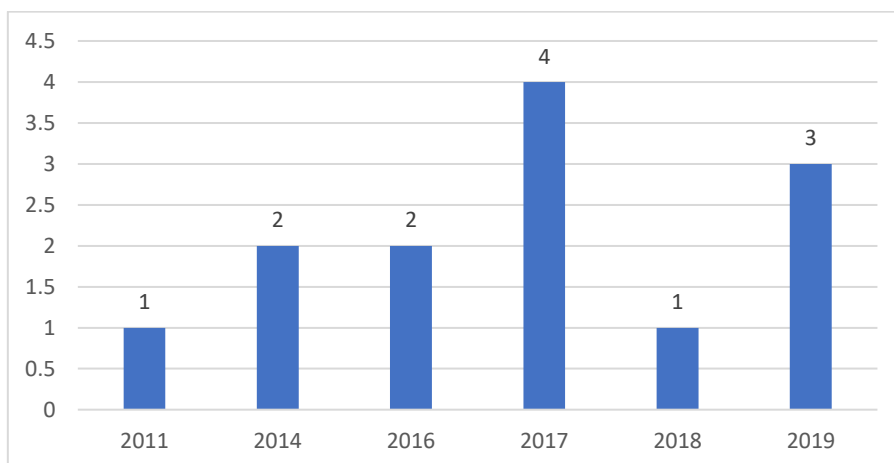
The Harbourmaster must assess the risks associated with granting vessels permission for any exemptions (for example distance between vessels or where they can berth) and inform the person in charge of any operating requirements. The Harbourmaster also assesses the need for and may develop new controls for the use of existing explosive safety zones or establish new ones.

The Harbourmaster and team are on call to respond to emerging issues or emergencies. The Harbourmaster uses a proactive and reactive approach to Bylaw implementation (Refer to global 4.4 of this report).

### 5.9.6 Are safety, nuisance or sharing of waters related issues still an issue?

Occurrences / risks of collision, explosion, injuries or fatalities and damage from the carriage, loading and unloading and transference of explosive and other dangerous substances by tankers on Auckland's busy navigable waters remain issues.

**Figure 5.9.6.1: Total incidents involving tankers Auckland 2008 - 2019**



Maritime New Zealand data show that 13 related incidents were reported involving tankers on Auckland's navigable waters between 2011 and 2019 with one associated injury. Incidents consisted of near miss / close quarters (3), contact (3), propulsion failure (2), oil spill (1), mooring line failure (1), flooding (1), equipment failure (1), electrical power failure (1).

Risks of incidents are ongoing due to increases in the number of tankers and other vessels carrying hazardous cargo in the context of New Zealand's largest and busiest port.<sup>106</sup>

### 5.9.7 Other approaches

#### Maritime Transport Act 1994 and Maritime Rules

The Maritime Transport Act 1994 (the Act) and Maritime Rules contains some similar requirements to the Bylaw about tankers and hazardous substances. A comparative assessment (Table 5.9.7.1) indicates however, that these regulations are not an exact match, for example:

- the Act:
  - is targeted at the highest threshold of offending
  - focuses on prosecution after an incident has occurred
  - does not specify the means by which safety issues must be mitigated (this is laid out in the bylaw and rules).
- the Maritime rules:
  - do not contain the same operational directions and requirements as the Bylaw so cannot assist with the avoidance of doubt
  - do not contain infringement fines
  - do not contain the same requirements as the Bylaw.<sup>107</sup> For example there are no provisions in the legislation or in the maritime rules that specify explosives safety zones, minimum distances between vessels carrying explosives, specifying where tankers must berth or moor.

**Table 5.9.7.1: Infringement Comparison between Maritime Transport Act 1994, Maritime Rules and Bylaw**

| TOPIC                                          | Bylaw Rule | Fine           | MTA/ MTA Rule | Fine | Comparative assessment                                                                                        |
|------------------------------------------------|------------|----------------|---------------|------|---------------------------------------------------------------------------------------------------------------|
| Explosives safety zone                         | ✓          | \$300<br>\$200 | ✗             | ✗    | No exactly comparative provision in the Act or rules – Act can address safety issues after they have occurred |
| Vessels carrying explosive substances as cargo | ✓          | \$200          | ✗             | ✗    | No exactly comparative provision in the Act or rules                                                          |
| Signals to be displayed                        | ✓          | \$300          | ✗             | ✗    | No exactly comparative provision in the Act or rules                                                          |
| Duties of person in charge of the vessel while | ✓          | \$200          | ✗             | ✗    | No exactly comparative provision in the Act or rules                                                          |

<sup>106</sup> <http://www.portfuturestudy.co.nz/docs/pfsconsultantsreport072016.pdf>

<sup>107</sup> Maritime rule 24A: Carriage of Cargoes, Dangerous Goods requires

| TOPIC                                     | Bylaw Rule | Fine  | MTA/ MTA Rule | Fine | Comparative assessment                               |
|-------------------------------------------|------------|-------|---------------|------|------------------------------------------------------|
| tanker is in port                         |            |       |               |      |                                                      |
| Tankers not to lie close to other vessels | ✓          | \$300 | ×             | ×    | No exactly comparative provision in the Act or rules |

## Codes and guides

The Bylaw requires vessels to comply with the International Safety Guide for Oil Tankers and Terminals and the International Chamber of Shipping Tanker Safety Guide. These documents provide detailed specifications, systems and procedures and help achieve the requirements of safety management plans required under the rules.

The Codes are commonly regarded as best practice and is recommended they are kept on board tankers.

## Health and Safety at Work Act 2015

The Health and Safety at Work Act 2015 requires operators of vessels to identify and manage hazards on board vessels classified as a workplace. This includes managing hazardous substances their crews may come into contact with.

Broadly the Maritime Transport Act 1994 and the Maritime Rules focus on the safety of the vessel and navigational safety, while Health and Safety at Work Act 2015 focuses on the health and safety of people on board the vessel. However, there is some overlap.

## Health and Safety at Work (Hazardous Substances) Regulations 2017

This regulation requires specific procedures for the inventory, storage, labelling of hazardous substances in a workplace. It does not match the provisions in the Bylaw although it is complementary.

## Education and information provision

Education and information provision are unlikely to be efficient and effective on their own for addressing issues and risks as they occur with tankers transporting hazardous substances as they do not have the necessary tools for enforcement such as infringements and prosecution.

### 5.9.8 Is the Bylaw effective and efficient?

The Bylaw is effective and efficient. It is a key regulatory tool in supporting the safe operation of tankers or other vessels transporting hazardous cargo in Auckland's navigable waters. It works alongside relevant rules and legislation to guide compliance and includes specific operating procedures and processes that help avoidance of doubt.

The Maritime Transport Act 1994 and rules do not exactly duplicate the Bylaws for tankers and hazardous substances. For example, 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.

The Bylaw is part of a graduated enforcement approach. This includes the use of engagement, education, warnings and infringements through to court prosecution.

Non-compliance is relatively easy to detect and respond to because vessels are limited to operating in certain areas and variations to this must be permitted by the Harbourmaster.

Safety Management Systems required of Safety of Life at Sea<sup>108</sup> vessels (including non-passenger ships of 300 or above but less than 500 gross tonnage in maritime transport operations that undertake international voyages) may or may not mitigate safety risks in relation to hazardous substances in the same manner as the Bylaw.<sup>109</sup> Safety Management Systems vary by vessel type and function.

The People's Panel commercial survey indicated that 65 per cent of respondents believe that the Bylaw about restricted zones and other reserved areas is working effectively.<sup>110</sup> 77 per cent of commercial respondents believe the Bylaw is working effectively with regard to the safety provisions relating to light and sound signals.<sup>111</sup>

Knowledge of the Bylaw was high, with 23 per cent commercial survey respondents having a high level of knowledge and 38 per cent rating their knowledge relatively high.<sup>112</sup>

Commercial stakeholders indicated that the rules around handling of hazardous substances, including tankers work well.

### 5.9.9 Is the Bylaw the most appropriate form of Bylaw?

Stakeholders believe the Bylaw relating to tankers, hazardous cargoes and works, fuel oil transfers and dangerous materials is clear and easy to interpret.

The Harbourmaster has highlighted that the current Bylaw wording be updated to effectively reflect operating requirements for the bunker barge Awanuia<sup>113</sup> relating to berthing locations.

<sup>108</sup> Safety of Life At Sea (**SOLAS**) is an international Marine treaty that specifies minimum standards for the construction, equipment and operation of ships. Some SOLAS provisions are implemented by the Maritime rules.

<sup>109</sup> The Safety Management Systems will vary between vessels and operational requirements.

<sup>110</sup> Of commercial survey respondents (N=31) 10 per cent believed the Bylaw about restricted areas or zones is working very well (5), 23 per cent (4) and 32 per cent (3), 19 per cent of respondents said this wasn't applicable or they didn't know

<sup>111</sup> N=31, 100 per cent of respondents, affirmative responses were 5 - 16 per cent, 4 - 26 per cent, and 3 - 35 per cent

<sup>112</sup> N=13, 42 per cent of respondents.

<sup>113</sup> The Awanuia is a bunker barge that collects fuel from the Marsden Point Oil Refinery through a purpose-built berth, transferring it directly into ships berthed at Waitematā seaport or at a nearby Auckland anchorage. The Awanuia is part of a partnership between Ports of Auckland, Seafuels and Z Energy providing certainty of fuel supply for ships visiting Auckland, which is essential to the

There are also potential opportunities to update the Bylaw to align with Auckland Council bylaw drafting standards.

**5.9.10 Does the Bylaw have any implications under the New Zealand Bill of Rights Act 1990?**

No. Refer to section 4.7 (Global Findings) of this report for further discussion.

**5.9.11 Is the Bylaw inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or the Auckland Unitary Plan?**

No. Refer to section 4.8 (Global Findings) of this report for further discussion.

## 5.10 Pilot and pilot exempt master operations

### 5.10.1 Key findings

- The Bylaw is the key regulatory tool used for coordinating the navigation of large ships into Auckland's Harbours.
- Issues relating to pilotage, include incidents and risks of collisions and grounding.
- Risk of grounding or collisions with other vessels and structures are ongoing due to the high volume of large vessels that berth in and depart from the Port of Auckland.
- For example, in 2019, 69 incidents were reported relating large or fast vessels with 12 associated injuries involving pilotage vessels.
- On balance the Bylaw is efficient and effective for addressing the risks and issues.
- The Bylaw fills a regulatory gap and sets in place operating procedures that can remove avoidance of doubt while complementing other regulation and legislation.
- No specific amendments to this clause have been identified.

### 5.10.2 Explanation

The 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 pilotage area in Auckland is set out in Maritime Rule 90. It is defined in the rules as:

**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 Owhanake 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 southwestern extreme of Tiritiri Matangi Island, then by a straight line to the southeastern extreme of Whangaparaoa Peninsula.

In accordance with Maritime Rule 90 provisions in the Bylaw also apply to pilot exempt masters. Ship masters who have obtained a Pilot Exemption Certificate may operate without a pilot having met the necessary training or other requirements.

### 5.10.3 Pilot and pilot exempt master operation related issues

There are incidents occurring and ongoing risks relating to large vessels coming aground or colliding with other vessels or structures when navigating or coming in to berth in Auckland.

### 5.10.4 Bylaw approach

The Bylaw addresses navigation of large vessels into Auckland navigable waters. It requires provision of the log (or logbook) of transits within the Auckland pilotage area and sets requirements for passage planning and the composition of the bridge team for pilots and pilot exemptions.

| Requirement                                                           | Clause |
|-----------------------------------------------------------------------|--------|
| Log of transits within pilotage area                                  |        |
| • Pilot or pilot exempt master must annually submit a log of transits | 70(1)  |
| Passage plan                                                          |        |
| • Pilot and pilot exempt master must use a passage plan for voyages   | 71(1)  |
| • Sufficient crew is required on bridge to carry out the passage plan | 71(2)  |
| Bridge team composition requirements                                  |        |
| • Bridge team must meet all steering and manoeuvring requirements     | 72(1)  |
| • Must navigate within marked channels                                | 72(2)  |

### Enforcement powers

The Harbourmaster has a wide range of enforcement powers to enforce the Bylaw (Refer to Global 4.4 of this report).

### 5.10.5 Implementation

The Harbourmaster uses a proactive and reactive approach to Bylaw implementation (Refer to global 4.4 of this report).

### 5.10.6 Are issues relating to pilot and pilot exempt master operations still issues?

The risk of grounding or collisions with other vessels and structures are ongoing due to the high volume of large vessels that berth in and depart from the Port of Auckland.

Maritime New Zealand data show incidents involving Pilot vessels which are represented in the data on commercial vessels (refer to Global findings 4.2 of this report).

### 5.10.7 Other approaches

#### Maritime Rules

Maritime Rule 90 sets the national requirements for when a pilot is required (this includes exemptions), licensing and training of pilots, and pilotage areas in each region.

Maritime Rule 90 is supplemented by regional rules and operating procedures in the Bylaw. This includes reporting a logbook of transits to the Harbourmaster by 31 March every year (summary in Table 5.10.7.1).

There are no alternatives for the matters in the Bylaw.

**Table 5.10.7.1: Infringement Comparison between Maritime Transport Act 1994, Maritime Rules and Bylaw**

| Topic             | Bylaw Rule | Fine  | MTA/ Maritime Rule | Fine | Comparative assessment                               |
|-------------------|------------|-------|--------------------|------|------------------------------------------------------|
| Log of transits   | ✓          | \$200 | x                  | x    | Only infringement power and rule is under the bylaw. |
| Passage Plan      | ✓          | \$200 | x                  | x    | Only infringement power and rule is under the bylaw. |
| Passage Plan Crew | ✓          | \$200 | x                  | x    | Only infringement power and rule is under the bylaw. |
| Bridge Team       | ✓          | \$300 | x                  | x    | Only infringement power and rule is under the bylaw. |

### Harbourmaster Directions

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<sup>114</sup> may apply.

#### 5.10.8 Is the Bylaw effective and efficient?

The Bylaw is effective and efficient. It is a key regulatory tool that supports the safe operation of large ships in Auckland's navigable waters. The Bylaw supplements the Maritime Rule 90 by setting regionally specific requirements.

The Bylaw requirements enable the Harbourmaster to monitor the passage and movement of large vessels entering and departing Auckland's navigable waters and require that a bridge team has the right composition to navigate safely. The Bylaw ensures pilots submit their logbook annually before the end of the financial year, to allow auditing by the Harbourmaster team.

There are no regulatory alternatives to the Bylaw regulating pilotage.

<sup>114</sup> 12 months imprisonment or \$10,000 court fine for an individual or \$100,000 for a body corporate.

The Harbourmaster and staff believe the Bylaw is efficient and effective in that it is necessary and readily enforceable.

**5.10.9 Is the Bylaw the most appropriate form of Bylaw?**

No specific amendments to this clause have been identified.

There may, however, be potential opportunities to update the Bylaw to align where required with Auckland Council bylaw drafting standards.

**5.10.10 Does the Bylaw have any implications under the New Zealand Bill of Rights Act 1990?**

No. Refer to section 4.7 (Global Findings) of this report for further discussion.

**5.10.11 Is the Bylaw inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or the Auckland Unitary Plan?**

Yes. Refer to section 4.8 (Global Findings) of this report for further discussion.

## 5.11 Licensing of commercial vessels for hire or reward

### 5.11.1 Key findings

- The recreational use of Auckland's navigable waters provides commercial opportunities for businesses that provide vessels to the public for hire.
- The Bylaw currently requires the licensing of commercial vessels for hire or reward to ensure safety.
- No licenses have been issued since 2017. A total of 29 commercial vessel licenses were issued between 2013 and 2017.
- Most commercial vessel licenses were issued to small privately-operated businesses with most vessel types for hire being canoes, windsurfers and stand-up paddle boards.
- The Harbourmaster notes that most of these commercial vessel services operate under council trading requirements and other regulations as opposed to conditions of license issued by the Harbourmaster under the Bylaw.
- A bylaw is therefore not the most effective, efficient or appropriate way to address these issues.

### 5.11.2 Explanation

The recreational use of Auckland's navigable waters provides commercial opportunities for businesses that provide vessels to the public for hire. This section requires the licensing by the harbourmaster of commercial vessels for hire or reward to ensure safety. The Bylaw prescribes the licence application process, the grounds of approval and the conditions that may be applied.

### 5.11.3 Issues related to licenses, permits and administrative matters

The issues are safety risks and nuisance on Auckland's navigable waters related to commercial vessels for hire or reward.

### 5.11.4 Bylaw approach

The Bylaw regulates the licensing of commercial vessels for hire or reward not otherwise regulated under other maritime legislation (Table 5.11.4.1).

**Table 5.11.4.1. Summary of bylaw provisions related to licensing for commercial vessels for hire and reward**

| Requirement                                                                                                                                                                      | Clause       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| <b>Operators of commercial vessels for hire or reward</b>                                                                                                                        |              |
| • must obtain license from the harbourmaster for commercial vessel not subject to other relevant maritime rules                                                                  | 73(1)        |
| • must comply with the conditions of the license                                                                                                                                 | 73(2)        |
| • license must be made in a prescribed form relating to the specific activity                                                                                                    | 73(3)        |
| • apply for a license renewal from the Harbourmaster                                                                                                                             | 73(4)        |
| • license may be granted or refused at the Harbourmaster's discretion                                                                                                            | 73(5)        |
| • licenses granted are not transferable and is personal to the licensed operator                                                                                                 | 73(6)        |
| • licenses are subject to an inspection at any time                                                                                                                              | 73(7)        |
| <b>Consideration of application for license</b>                                                                                                                                  |              |
| • the Harbourmaster will consider the suitability of an applicant's license based on criteria including experience, public safety, duration, location and vessel specifications. | 74(1)(a)-(e) |
| <b>Conditions of license</b>                                                                                                                                                     |              |
| • Harbourmaster may grant a license based on the terms and conditions                                                                                                            | 75(1)(1)-(e) |

## Enforcement powers

The Harbourmaster has a wide range of enforcement powers to enforce the Bylaw (Refer to global 4.4 of this report).

### 5.11.5 Bylaw implementation

No warnings/infringements or licenses have been issued with regard to breaches of the Bylaw about commercial vessel licensing for hire and reward since 2017.

### 5.11.6 Are issues relating to licenses, permits and administrative matters still an issue?

A total of 29 licenses were issued for commercial vessels for hire and reward between 2013 and 2017. Most commercial vessel licenses were issued to small privately-operated businesses with most vessel types for hire being canoes, windsurfers and stand-up paddle boards. The Harbourmaster notes that most of these commercial vessel services operate under council trading requirements and other regulations as opposed to conditions of license issued by the Harbourmaster under the Bylaw.

### 5.11.7 Other approaches

A comparative assessment (Table 5.11.7.1) indicates that there is no national rule in the Act or Maritime Rules that could replace the Bylaw.

### Health and Safety at Work (Adventure Activities) Regulations 2016

Health and Safety at Work (Adventure Activities) Regulations 2016 contains similar rules to the Bylaw about licensing applications for commercial activities in public places.<sup>115</sup> A comparative assessment of these regulations should be considered in a report that assesses options in response to this finding report.

### Trading in a public place

The Trading and Events in Public Places Bylaw 2015 contains similar rules to the Bylaw about activities provided to a participant in return for payment that is water-based. A comparative assessment of these rules should be considered in a report that assesses options in response to this findings report.

**Table 5.11.7.1<sup>116</sup>: Infringement Comparison between Maritime Transport Act 1994, Maritime Rules and Bylaw**

| TOPIC                                    | Bylaw Rule | Fine  | MTA / Maritime Rule | Fine | Comparative assessment                                                                                              |
|------------------------------------------|------------|-------|---------------------|------|---------------------------------------------------------------------------------------------------------------------|
| Commercial vessels to be licensed        | ✓          | \$300 | ✗                   | ✗    | Better infringement powers under the bylaw. No national rule in the Act. No infringement fine under Maritime Rules. |
| Consideration of application for licence | ✓          | ✗     | ✗                   | ✗    | Rule addressed only under the bylaw. No national rule in the Act. No infringement fine under Maritime Rules.        |
| License conditions                       | ✓          | ✗     | ✗                   | ✗    | Rule addressed only under the bylaw. No national rule in the Act. No infringement fine under Maritime Rules.        |

### 5.11.8 Is the Bylaw effective and efficient?

No. There is limited data on the effectiveness or public awareness of the Bylaw.

The Harbourmaster reports that they no longer issue licenses for commercial vessels for hire or reward. The Harbourmaster recommends removing this section in the Bylaw because the Health and Safety at Work (Adventure Activities) Regulations 2016 can now address the issues with vessels for hire or reward.

<sup>115</sup> Health and Safety at Work (Adventure Activities) Regulations 2016, regulation 4(1)(a)

<sup>116</sup> (\*) imprisonment not exceeding 12 months or a fine on summary conviction

**5.11.9 Is the Bylaw the most appropriate form of Bylaw?**

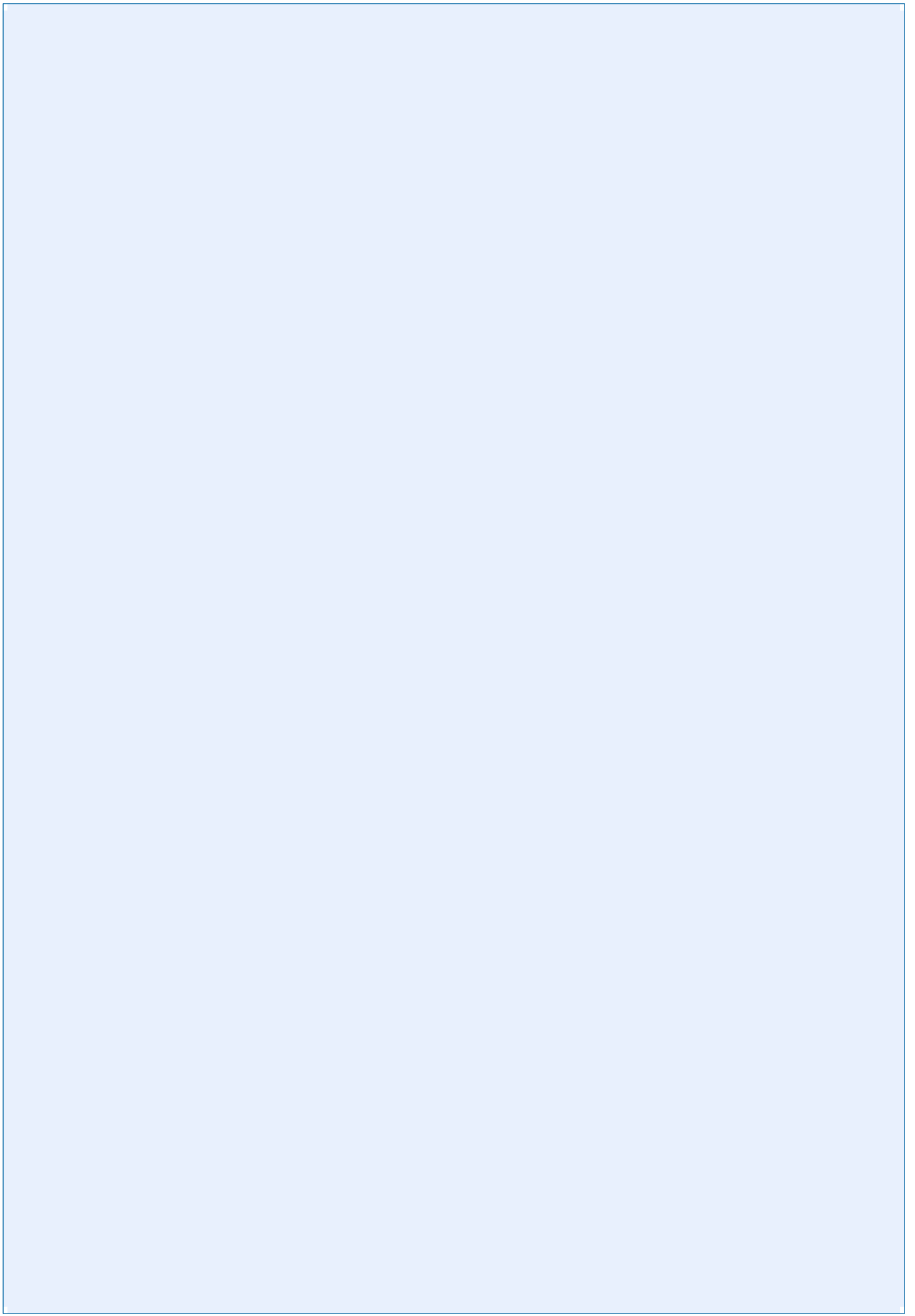
No, because issues can be addressed under the Health and Safety at Work (Adventure Activities) Regulations 2016.

**5.11.10 Does the Bylaw have any implications under the New Zealand Bill of Rights Act 1990?**

No. Refer to section 4.7 (Global Findings) of this report for further discussion.

**5.11.11 Is the Bylaw inconsistent with the Maritime Transport Act 1994, Maritime Rules, Resource Management Act 1991 or the Auckland Unitary Plan?**

No. Refer to section 4.8 (Global Findings) of this report for further discussion.



Find out more: **phone 09**  
or visit **[aucklandcouncil.govt.nz/](http://aucklandcouncil.govt.nz/)**

## Appendix A: Stakeholder Engagement List

| <b>Stakeholders and Māori organisations</b>                           |
|-----------------------------------------------------------------------|
| Coastguard Auckland                                                   |
| Surf Lifesaving Northern Region, Operations Manager                   |
| Coastguard Boating Education                                          |
| Maritime Police                                                       |
| Ports of Auckland                                                     |
| Maritime NZ                                                           |
| ACC                                                                   |
| Ministry of Transport                                                 |
| Transport Safety Accident Investigation                               |
| WorkSafe NZ                                                           |
| Department of Internal Affairs                                        |
| Ministry of Pacific Peoples                                           |
| MLAANZ                                                                |
| New Zealand Safer Boating Forum                                       |
| Water Safety NZ                                                       |
| Drowning Prevention Auckland                                          |
| Coast Guard Boating Education                                         |
| Education Outdoors New Zealand                                        |
| Auckland Regional Public Health Service                               |
| Kiwi Association of Sea Kayakers (KASK)                               |
| Jet Boating New Zealand, President                                    |
| NZ Marine Industry Association, President                             |
| NZ Outdoor Instructors' Association (NZOIA), Chair                    |
| New Zealand Rivers Association for Professional Guides, Administrator |
| New Zealand Recreation Association                                    |
| NZ Recreation Fishing Council, Executive Officer                      |
| New Zealand Trailer Boat Federation, President                        |
| New Zealand Underwater Association, President                         |
| Motutapu Outdoor Education Camp Trust, Facility Manager               |
| New Zealand Water Polo Association, CEO                               |
| Nga Kaihoe o Aotearoa (Waka Ama NZ) Inc, CEO                          |
| Auckland Region Outrigger Canoe Association, Board Chairperson        |
| Red beach Surf Life Saving Club                                       |
| Omaha Surf Life Saving Club                                           |
| Muriwai Community and Surf Life Saving Club, President                |
| Bethells Beach Surf Life Saving Club, President                       |
| Karekare Surf Club, President                                         |
| Mairangi Bay Surf Lifesaving Club                                     |
| Orewa Surf Club                                                       |
| Piha Surf Lifesaving Club                                             |
| Auckland Regional Migrant Services                                    |
| Migrant Action Trust                                                  |
| Te Toki Voyaging Trust                                                |
| Maritime Pollution Response Services                                  |
| Tourism Auckland                                                      |
| Auckland Yacht and Boating Association Affiliated                     |
| Maritime Union of New Zealand                                         |
| Rail and Maritime Union of New Zealand                                |
| Fonua Ola                                                             |
| Auckland University Pacific Island Students Association               |
| Pasifika Futures                                                      |
| Pacific Lawyers Association, Chair                                    |
| Tongan Advisory Council                                               |
| <b>Mana Whenua</b>                                                    |

## Appendix A: Stakeholder Engagement List

|                                                          |
|----------------------------------------------------------|
| Maanu Kia Ora                                            |
| Te Rūnanga o Ngāti Whātua                                |
| Ngāti Whātua o Kaipara                                   |
| Ngāti Whātua o Orakei                                    |
| Te Uri o Hau                                             |
| Ngāti Wai Trust Board                                    |
| Ngāti Rehua                                              |
| Ngāti Manuhiri                                           |
| Waikato-Tainui                                           |
| Huakina Development Trust                                |
| Te Kawerau a Maki Trust                                  |
| Pukaki ki Te Akitai Trust                                |
| NgātiTamaoho                                             |
| Ngāi Tai ki Tamaki/Ngāi Tai Umupuia Te Waka Totara Trust |
| Ngāti Maru                                               |
| Ngāti Whanaunga                                          |
| Ngāti Paoa                                               |
| Ngāti Whatua Nga Rima o Kaipara                          |
| Te Patukirikiri                                          |
| NgātiTamatara                                            |
| Te Ahiwaru                                               |
| <b>Marae/Trusts</b>                                      |
| Auckland Mataatua Society Inc (aka Mataatua Maraē)       |
| Awataha Maraē                                            |
| Hauraki Māori Trust Board                                |
| Hoani Waititi Maraē                                      |
| Hokai Nuku                                               |
| Manuhiri Kaitiaki Charitable Trust                       |
| Manukau Māori Urban Authority                            |
| Manurewa Maraē                                           |
| <b>Ngāpuhi ki Waitematā</b>                              |
| Papakura Maraē Society Inc                               |
| Piritahi Maraē                                           |
| Te Mahurehure Maraē                                      |
| Te Ora o Manukau                                         |
| Te Tahawai Maraē Inc                                     |
| Matatau Māori Business Centre Trust                      |
| Pukaki Maraē                                             |
| Papatuanuku Kokiri Maraē                                 |
| Strive Community Trust                                   |
| Te Roopu Waiora                                          |
| Whānau Tu Tonu o Oruamo                                  |
| Whānau o Tumanako                                        |
| Te Whānau o Waipareira Trust (West Auckland)             |
| Manukau Urban Māori Authority (South Auckland)           |
| Te Hana Community Development Trust                      |
| <b>Commercial and Shipping Operators</b>                 |
| Pacifica Shipping (The China Navig Company)              |
| Sanford Ltd                                              |
| Simunovich Fisheries Ltd                                 |
| Viaduct Harbour Holdings Limited                         |
| Orams Marine                                             |
| Holcim Shipping - Shipping Office                        |
| Coastal Carrier – Transport Manager                      |
| Armocup Maritime Services                                |

## Appendix A: Stakeholder Engagement List

|                                                   |
|---------------------------------------------------|
| ANL Limited                                       |
| Mediterranean Shipping Co. Pty Ltd                |
| Mitsui O.S.K. Lines NZ Ltd                        |
| NYK Line NZ Ltd                                   |
| Sea Tow                                           |
| Hamburg Sud NZ Ltd                                |
| Neptune Pacific Line                              |
| MaKay Shipping Limited                            |
| Kiwi Car Carriers                                 |
| Cosco                                             |
| Pacific Forum Line                                |
| NZ Maritime School                                |
| Mahurangi Technical Institute                     |
| Waiheke Freight                                   |
| Inchcape Shipping                                 |
| Axis Intermodal                                   |
| Barwil Agencies (NZ) Ltd                          |
| Clarkson NZ Limited                               |
| Conway Shipping                                   |
| Geo H Scales Ltd                                  |
| Gilfoyle Shipping Services                        |
| Hoegh Autoliners (NZ) Ltd                         |
| MOL New Zealand                                   |
| Toyofuji Shipping New Zealand Limited             |
| NYK Shipping NZ Ltd                               |
| Pacific Direct Line                               |
| Pacific Forum Line                                |
| Pacific Link Ltd                                  |
| Quadrant Pacific                                  |
| Oceanbridge Shipping Co                           |
| Oceanic Navigation Ltd                            |
| Reef Shipping                                     |
| New Zealand Powerboat Federation Inc              |
| Marine Services Auckland                          |
| Sofrana Unilines Ltd                              |
| Golden Bay Cement                                 |
| Antons Seafoods Ltd                               |
| Fullers, Health and Safety Manager                |
| Sealink, Assistant to Executive                   |
| Thompson Tugs                                     |
| Marine Salvage Auckland                           |
| McCullum Brothers                                 |
| <b>Clubs</b>                                      |
| NZ Sport Fishing                                  |
| Bays Fishing Club                                 |
| Big Fish Fishing Club                             |
| Clevedon Game Fishing Club                        |
| Demon Anglers Catching Club                       |
| Hauraki Gulf Sportfishing Club                    |
| Mangere Boating Club                              |
| Manukau Sport Fishing Club                        |
| Maraetai Beach Boating Club Fish and Dive Section |
| Muriwai Sports Fishing Club                       |
| NZ Sport Fishing Council                          |
| The Piha Deep Sea Fishing Club                    |

## Appendix A: Stakeholder Engagement List

|                                                     |
|-----------------------------------------------------|
| Warkworth Gamefish Club                             |
| World Sports Fishing Federation (NZ Charter)        |
| North Shore Yakity Yak Kayak Club                   |
| Takapuna Boating Club                               |
| Auckland Canoe and Kayak                            |
| Outdoor Boating Club                                |
| Aratika Water Sports Club                           |
| Royal New Zealand Yacht Squadron                    |
| Buckland Beach Yacht Club                           |
| French Bay Yacht Club                               |
| Gulf Harbour Yacht Club                             |
| Manly Sailing Club                                  |
| Maraetai Sailing Club                               |
| Northcoate Birkenhead Yacht Club                    |
| Pine Harbour Cruising Club                          |
| Ponsonby Cruising Club                              |
| Torbay Sailing Club                                 |
| Waiuku Yacht Club                                   |
| Weiting Boating Club                                |
| Clarks Beach Yacht Club                             |
| Glendowie Boating Club                              |
| Hobsonville Yacht Club                              |
| Milford Cruising Club                               |
| Murrays Bay Sailing Club                            |
| Panmure Yacht and Boating Club                      |
| Pt Chevalier Sailing Club                           |
| Tamaki Yacht Club                                   |
| Devonport Yacht Club                                |
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| Royal New Zealand Navy Sailing Club                 |
| Te Atatu Boating Club Inc.                          |
| Outboard Boating Club of Auckland                   |
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| Auckland Chamber of Commerce                        |
| New Lynn Business Association                       |
| Glen Innes Business Association                     |
| Te Atatu Business Association                       |
| Ponsonby Business Association                       |
| Newmarket Business Association                      |
| Mt Eden Village Mainstreet and Business Association |
| Howick Village Business Association                 |
| Remuera Business Association                        |
| Manukau Central Business Association Inc.           |
| North Harbour Business Association                  |
| Panmure Business Association                        |
| Penrose Business Association                        |
| Devonport Business Association                      |
| Dominion Road Mainstreet and Business Association   |
| Avondale Business Association                       |
| Otara Business Association                          |
| South Harbour Business Association                  |

## Appendix A: Stakeholder Engagement List

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| Warkworth Business Association                       |
| Silverdale Business Association                      |
| NorthWest District Business Association              |
| Committee for Auckland                               |
| Parnell Business Association                         |
| Auckland City Centre Residents Group                 |
| Takapuna Beach Business Association                  |
| Albany Village Business Association                  |
| Albany Village Energy Group Incorporated             |
| Beach Haven Business Association                     |
| Clevedon Business Association                        |
| Glenfield Business Association Incorporated          |
| Glenfield Community Centre                           |
| Greenwoods Corner Business Association               |
| Grey Lynn Business Association                       |
| Henderson Lincoln Metro Business Association         |
| Kumeu Wine Country                                   |
| Leigh Business Association                           |
| Manly Business Association                           |
| Massey Community Liaison                             |
| Massey Means Business                                |
| Mission Bay Business Association                     |
| Mt Albert Business & Community Association           |
| Mt Roskill Business and Community Groups Association |
| Muriwai Progressive Assoc Inc                        |
| Penrose Business Association                         |
| Point Chevalier Business Association Inc             |
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| Puhoi Business Group                                 |
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| Westhaven Marina                                     |
| Hobsonville Marina                                   |
| Half Moon Bay Marina                                 |
| Hobson West Marina                                   |
| Orams Marine                                         |
| Bayswater Marina                                     |
| Viaduct Harbour Marina                               |
| Pine Harbour Marina                                  |
| Pier 21 Limited                                      |
| Gulf Harbour Marina                                  |
| Bucklands Beach Yacht Club Marina                    |
| Orakei Marina                                        |
| <b>Retail and Recreational</b>                       |
| Decked Out Yachting LTD                              |
| Zefiro Boat Hire Auckland                            |
| Charter Boats NZ                                     |
| Charterlink                                          |
| Snapper Fishing Charters                             |
| Savoy Charters                                       |
| Ocean Eagle                                          |

## Appendix A: Stakeholder Engagement List

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| Cruisetime              |
| 2XS Charters            |
| Wave Dancer             |
| Sea Genies              |
| Ultimate Charters       |
| Jet Ski Hire Auckland   |
| Hibiscus Jetski Hire    |
| Mission Bay Watersports |
| Family Boats            |
| Boats for Hire          |
| Auckland Jet Boat Tours |
| NZ Board Store          |
| Sea Kayaks              |
| Viking Kayaks           |
| SUP Centre              |
| Fergs                   |
| The Waterman            |
| Auckland Windsurfing    |
| SUP Shed                |
| Canoe and Kayak         |
| Bayswater Windsports    |
| Coastlines              |
| Watersports             |
| The Boardshop           |
| Madloop Windsurfing     |
| Sailone                 |
| Auckland Marine         |
| Smart Marine            |
| Holton Marine           |
| Gloss Boats             |
| General Marine          |
| Marine Works            |
| Marine Electrics        |
| Olov Marine             |
| Wilco Marine Services   |
| Beacon Marine           |
| AB Marine Services      |
| Boat Right              |
| RMarine                 |
| Power Equipment LTD     |
| Whiting                 |
| DM Marine Electronics   |
| Woodbine Marines        |
| Marine Detailing        |
| JWMarine                |
| Orakei Marine           |
| Glassbottom Tours       |
| Marine Logix            |
| Marine Insurance        |
| Pier 21                 |
| Busfield Marine Brokers |
| Salt Marine Risks       |
| Marine Haulage          |
| Tamaki Marine           |

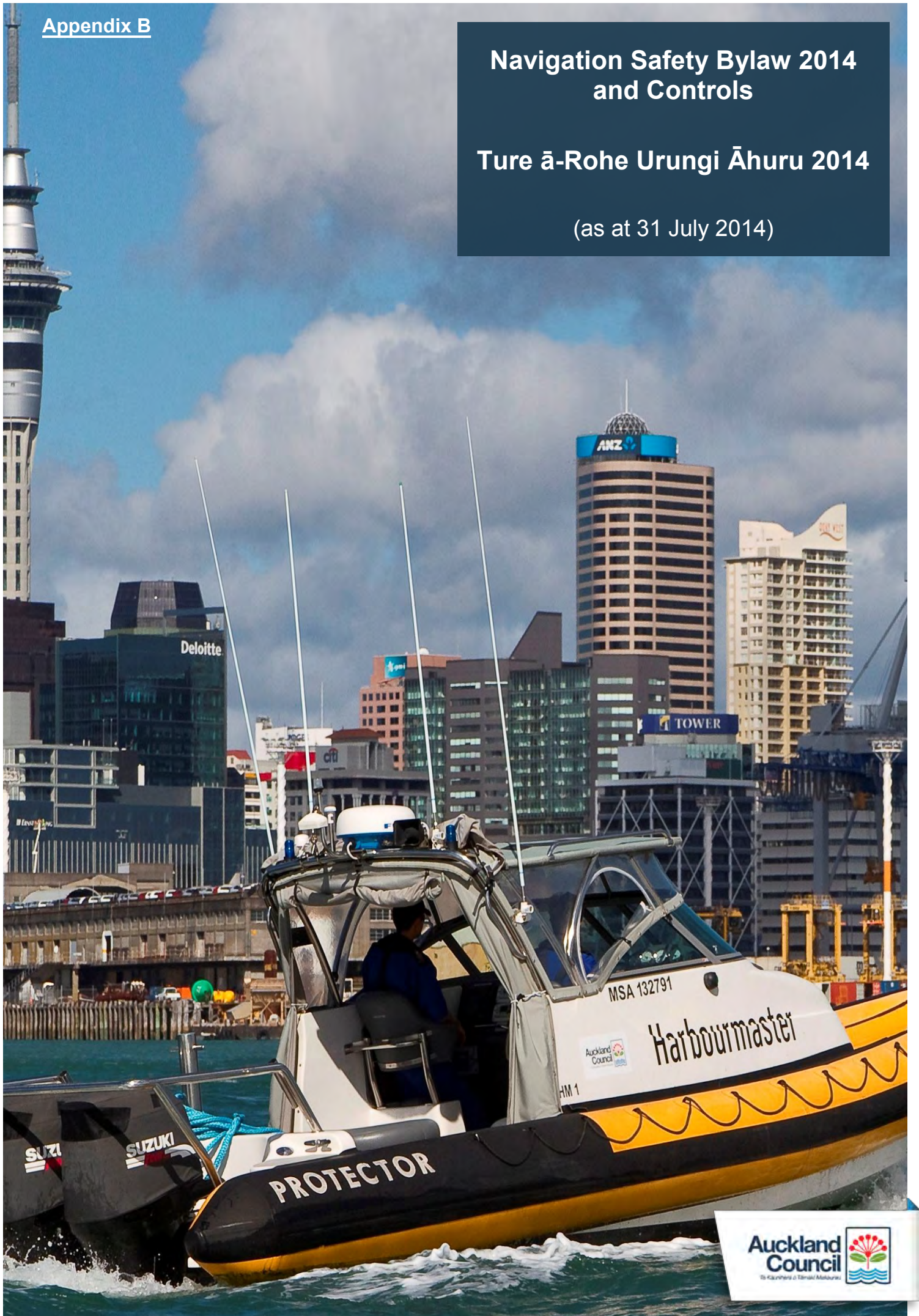
## Appendix A: Stakeholder Engagement List

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| Whale and Dolphin Tours   |
| Abalone Cruises           |
| Cruise NZ                 |
| Auckland Sea Planes       |
| Auckland Sea Shuttles     |
| Global Dive               |
| Dive HQ Westhaven         |
| NZ Underwater Association |
| Performance Diver         |
| Auckland Scuba Dive       |
| Epic Scuba                |
| Pacific 7                 |
| Heron Construction        |
| Sea Races                 |
| Auckland Harbour Swims    |

# Navigation Safety Bylaw 2014 and Controls

Ture ā-Rohe Urungi Āhuru 2014

(as at 31 July 2014)



Pursuant to the Maritime Transport Act 1994, the Local Government Act 2002 and the Local Government (Auckland Council) Act 2009, the Governing Body of Auckland Council revokes and replaces the Auckland Regional Council bylaw about navigation safety with the following bylaw.

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# 1 Title

- (1) This bylaw is the Navigation Safety Bylaw 2014 / Ture ā-Rohe Urungi Āhuru 2014.

# 2 Commencement

- (1) This bylaw comes into force on 25 October 2014.

# 3 Application

- (1) This bylaw applies to Auckland's navigable waters.

## Part 1 Preliminary provisions

# 4 Purpose

- (1) The purpose of this bylaw is to:
- (a) regulate and control the use or management of vessels;
  - (b) regulate the placing and maintenance of moorings and maritime facilities;
  - (c) prevent nuisances arising from the use of vessels;
  - (d) prevent nuisances arising from the actions of persons and things on or in the water;
  - (e) reserve the use of any waters for specified persons or vessels;
  - (f) in relation to any sporting event, training activity, ceremonial or other authorised customary event,—
    - (i) prohibit or regulate the use of vessels;
    - (ii) regulate, or authorise the organisers of an event to regulate, the admission of persons to specified areas;
  - (g) regulate and control the use of anchorages;
  - (h) prescribe vessel traffic separation and management schemes;
  - (i) specify requirements for the carriage and use of personal flotation devices and buoyancy aids on recreational vessels;
  - (j) require the marking and identification of personal water craft.

# 5 Interpretation

- (1) In this bylaw, unless the context otherwise requires:

**Access lane** means an area of water specified by the Harbourmaster under this bylaw that is marked by orange posts with horizontal black bands for landing or departing vessels or persons or objects towed by vessels.

**Accident** has the same meaning as in section 2 of the Act.

**Act** means the Maritime Transport Act 1994.

**Aircraft** has the same meaning as in the Civil Aviation Act 1990.

**Anchor/anchoring/anchored** means the temporary securing of a vessel to the bed of the waterway by means of an anchor, cable or other device that is removed with the vessel when it leaves the site or anchorage.

**Anchorage** in relation to vessels, means a place (enclosed or otherwise) normally used for the anchoring of vessels to the bed of the waterway, whether the place is reserved for such purposes by the Harbourmaster or not.

**Automatic Identification Systems (AIS)** means an operational transceiver of class A or class B that complies with the requirements of the International Maritime Organisation.

**Beach** means the foreshore (including the inter-tidal zone above the mean low water spring) and any adjacent area that can reasonably be considered part of the beach environment including areas of sand, pebbles, shingle, dunes or coastal vegetation and includes the adjacent coastal marine area.

**Board sports** means any board sport, including windsurfing, sailboarding, kiteboarding, stand up paddle boarding, knee boarding, body boarding and surfing where the means of propulsion is by wind, waves or other natural forces, or where no mechanical means of propulsion is used.

**Buoy** means a float secured to the seabed serving as an aid to navigation or locational mark, or to indicate a mooring, reef or other hazard.

**Bunkering operation** means any transfer of liquid hydrocarbons, other than cargo, from or to a vessel and includes the transfer of lubricating oil, oily waste water and sludge.

**Commercial vessel** has the same meaning as commercial ship in the Act.

**Council** means the governing body of the Auckland Council or any person delegated or authorised to act on its behalf.

**Crew** has the same meaning as in section 2 of the Act.

**Dangerous goods** has the same meaning as in Maritime Rule Part 24A.

**Director** has the same meaning as in section 2 of the Act.

**Emergency response vessel** means any vessel approved by the Harbourmaster for use in emergency response and may include police, customs, Harbourmaster, naval, port company, coastguard and surf lifesaving vessels, and club patrol or rescue vessels (when supervising club activities).

**Enforcement officer** means a person appointed as an enforcement officer under section 33G of the Act.

**Explosive substances** has the same meaning as in Regulation 6 of the Hazardous Substances (Classification) Regulations 2001. For the purposes of this bylaw, explosive substances do not include a vessel's lifesaving pyrotechnics.

**Fast vessel** means a power driven vessel capable of exceeding a proper speed of 25 knots.

**Flag A** means the flag A of the International Code of Signals, being a swallow-tailed flag, or a rigid equivalent, coloured in white and blue, with white to the mast ("the diver flag").

**Flag B** means flag B of the International Code of Signals, being a swallow-tailed flag, or a rigid equivalent, coloured in red, of not less than 600mm by 600mm.

**Flagged area** means that area of beach that may be marked from time to time, by red and yellow flags and extending to 200 metres from the actual water's edge, for the purposes of swimming.

**Foreshore** means any land covered and uncovered by the ebb and flow of the tide at mean spring tides and, in relation to any such land that forms part of the bed of a river, does not include any area that is not part of the coastal marine area.

**Gross tonnage** has the same meaning as in section 2 of the Act.

**Harbourmaster** has the same meaning as in section 2 of the Act.

**Honorary enforcement officer** has the same meaning as in section 2 of the Act.

**Hot work operations** includes activities such as welding, grinding, soldering, or other work involving flames or generating sparks.

**Impede the passage** means to cause a vessel, whether by action or inaction on the part of another vessel, to alter course, alter speed or stop, or to prepare to do something that would not otherwise be done.

**Incident** has the same meaning as in section 2 of the Act.

**Large vessel** means any vessel of 500 gross tonnage or greater, and any vessel of 40 metres length overall or greater. A tug and tow is considered a composite unit.

**Length overall** has the same meaning as in Maritime Rule 40A.

**Manoeuvring equipment** means any equipment used in the manoeuvring of a vessel. It includes, but is not limited to, propellers, rudders or thrusters and other steering equipment and any equipment to which a tug may be made fast.

**Maritime rule** means a rule made pursuant to Part 4 of the Act.

**Master** has the same meaning as in section 2 of the Act.

**Moored/moored** means:

- (a) the securing of any vessel alongside a wharf, jetty or pontoon by means of suitable mooring ropes, or
- (b) the securing of any vessel to a mooring or anchor, but excludes the temporary anchoring of a vessel.

**Mooring** means any weight or article placed in or on the foreshore, seabed or the bed of a waterway for the purpose of securing a vessel and includes any chain, wire, rope, buoy, or other device attached or connected to the weight but excludes an anchor that is removed with the vessel when it leaves the site or anchorage.

**Mooring site** means the area designated by the Harbourmaster within a mooring zone for use by a mooring licence holder, and includes the swing area around the mooring.

**Mooring zone** means an area defined by the council as a mooring zone under the Auckland Unitary Plan where vessel moorings are placed but does not include an anchorage.

**Navigable waters** mean any waters in Auckland whether coastal or inland which are able to be navigated.

**Navigate** means the act or process of managing or directing the course of a vessel on, through, over, or under the water.

**Navigation aid** includes:

- (a) any lightship and any floating or other light exhibited for the guidance of vessels;
- (b) any description of fog signal not carried on board any vessel;
- (c) all marks and signs in aid of marine navigation;
- (d) any electronic, radio or other aid of marine navigation not carried on board any vessels.

**Navigation equipment** means any equipment used in the navigation of a vessel. It includes, but is not limited to any one or combination of the following: navigational charts, radar, global positioning system receiver, electronic charting equipment, VHF radios.

**Noxious liquid substance** has the same meaning as in the Maritime Protection Rules Part 140 – Discharge of Noxious Liquid substances in Bulk.

**Obstruction** means an object, equipment, structure, vessel or person, positioned, whether in the water or not, so as to restrict or prevent navigation of a vessel or cause a hazard to people.

**Oil** has the same meaning as in section 33B of the Act.

**Owner** has the same meaning as in section 2 of the Act.

**Paddle craft** means a vessel powered only by use of a single or double bladed paddle as a means of propulsion without the aid of a fulcrum provided by rowlocks, thole pins, crutches or like arrangements. A paddle craft includes a kayak, canoe, stand up paddle board, waka, dragon boat and other such craft.

**Passenger ferry** means a ferry operating a scheduled service registered with Auckland Transport.

**Person in charge of a vessel** means-

- (a) the master, skipper or kaihāutu of the vessel;
- (b) in the absence of an identified master or skipper, the owner of the vessel that is on board or the person steering the vessel.

**Personal flotation device** means any buoyancy aid that is designed to be worn on the body that meets:

- (a) a standard in *NZS 5823:2005 Specification for buoyancy aids and marine safety harnesses and lines* applicable to such buoyancy aids;
- (b) a national or international standard that the director is satisfied substantially complies with a standard in *NZS 5823:2005 Specification for buoyancy aids and marine safety harnesses and lines* applicable to such buoyancy aids.

**Personal water craft** has the same meaning as in section 33B of the Act.

**Pilot** has the same meaning as in section 2 of the Act.

**Pilotage area** means the pilotage areas described in maritime rule Part 90.

**Pilotage Exemption Certificate** has the same meaning as in Maritime Rule Part 90.

**Power driven vessel** means any vessel propelled by machinery.

**Proper speed** means speed through the water.

**Raft** means an inflatable vessel manoeuvred by oars or paddles (or a combination thereof) but does not include inflatable kayaks, white water sledges, tubes, or equipment used for river surfing.

**Recreational vessel** has the same meaning as pleasure craft as defined in the Act and recreational craft as defined in Maritime Rules Part 91: Navigation Safety Rules.

*Explanatory note: Section 2 of the Act states: pleasure craft—*

- (a) means a ship that is not offered or used for hire or reward, and is used exclusively for—*
  - (i) the owner's pleasure or as the owner's residence; or*
  - (ii) recreational purposes by—*
    - (A) the members of a club that owns the ship;*
    - (B) the beneficiaries of a trust that owns the ship;*
    - (C) the members of an incorporated society that owns the ship; but*
- (b) excludes a ship that is—*
  - (i) provided for transport, sport, or recreation by, or on behalf of, an institution, hotel, motel, place of entertainment, or other establishment or business;*
  - (ii) used on a voyage for pleasure if the ship is normally used, or intended to be normally used, as a fishing ship or for the carriage of passengers or cargo for hire or reward;*
  - (iii) operated or provided by—*
    - (A) a club, incorporated society, or trust for non-recreational purposes; or*
    - (B) a business.*

*Maritime Rules Part 91 states: recreational craft means a vessel that is—*

- (a) a pleasure craft; or*
- (b) solely powered manually; or*
- (c) solely powered by sail:*

**Reserved area** means any area reserved for a specific purpose under this bylaw.

**Reward** has the same meaning as in section 2 of the Act.

**Sailboard** means any type of board including a windsurfer or kiteboard that is propelled by a sail and operated by a person standing upright on a board.

**Seaplane** has the same meaning as in section 2 of the Act.

**Seaworthiness** in relation to any vessel means being, in the opinion of the Harbourmaster in a fit condition of readiness to safely undertake a voyage within its designed capabilities.

**Sheltered waters** are waters within 200 metres of the shore which are protected from any wind, currents or waves that could cause the vessel to be blown or swept out into open waters or into danger, or being swamped.

**Shore** when referring to distance from shore, means the water's edge.

**Speed uplifting** means an authorisation by the Harbourmaster to increase/change or otherwise alter the speed provision under this bylaw.

**Small vessel** means a vessel of six metres length overall or less.

**Structure** means:

- (a) any building, equipment, device, or other facility, fixed to land or bed of a waterbody; and
- (b) includes slipways, jetties, pile moorings, swing moorings, pontoons, wharves, marine farms, and other objects whether or not these are above or below the waterline of the foreshore; but
- (c) does not include navigation aids.

**Sunrise/sunset** has the same meaning as stated in the New Zealand Nautical Almanac, NZ204.

**Support vessel** means any vessel used for coaching, marshalling and rescue attendance for a sporting event, training activity, ceremonial or other authorised customary event.

**Surfboard** means any type of board that is used for surf riding.

**Tanker** means any vessel which:

- (a) is specially constructed, or has a compartment or compartments specially constructed for bulk carriage of oil products of any class and includes any tanker designed for carriage of noxious liquid substances in bulk; and
- (b) either:
  - (i) has on board, or is about to take on board, any cargo in whole or part of which consists of class 3 oil products or noxious liquid substances in bulk; or
  - (ii) has discharged any cargo consisting of any such oil products or noxious liquid substances in bulk, but the holds, tanks, and compartment of which have not been rendered or certified gas-free.

**Towing** for the purpose of this bylaw means the towing of a person or object behind a vessel but does not include the towing of a vessel by another vessel.

**Underway** means that a vessel is not at anchor, or made fast to the shore, or aground.

**Vessel** means every description of a ship, boat or a craft used in navigation on the water, whether or not it has any means of propulsion; and includes a:

- (a) barge, lighter, or other like vessel;
- (b) hovercraft or other thing deriving full or partial support in the atmosphere from the reaction of air against the surface of the water over which it operates;
- (c) submarine or other submersible;
- (d) seaplane while on the surface of the water;
- (e) personal watercraft (jet ski);
- (f) raft;
- (g) paddle craft; or
- (h) any board used for board sports.

**Warship** has the same meaning as in section 2 of the Act.

- (3) To avoid doubt, compliance with this bylaw does not remove the need to comply with all other applicable Acts, regulations, bylaws, and rules of law.
- (4) Unless the context requires another meaning, a term or expression that is defined in the Act or maritime rule and used in this bylaw, but not defined, has the meaning given by the Act or maritime rule.
- (5) Any explanatory notes and maps are for information purposes, do not form part of this bylaw, and may be made, amended and revoked without formality.
- (6) The Interpretation Act 1999 applies to this bylaw.

## **Part 2 General**

### **6 Controls and demarcations specified under the bylaw**

- (1) Any control specified by the Harbourmaster under this bylaw may:
  - (a) prohibit, restrict or control any matter or thing generally, for any specific category of case, or in a particular case;
  - (b) apply to all activities or to any specified category of activity;
  - (c) apply to Auckland or to a specified part of Auckland;
  - (d) apply at all times or at any specified time or period of time.
- (2) The Harbourmaster may demarcate the use of any area of navigable water for a specified purpose pursuant to this bylaw through the placement of buoys, posts or signs at the demarcated area.
- (3) A person must not operate a vessel in navigable waters other than in accordance with any applicable control or demarcation.

*Explanatory note: The controls made under the Navigation Safety Bylaw 2014 contain maps showing the demarcated areas of navigable water for specified purposes and use.*

## **Part 3 Carriage and wearing of personal flotation devices on recreational vessels**

### **7 Carriage of personal flotation devices**

- (1) A person in charge of a recreational vessel must not use it unless there are sufficient personal flotation devices for each person on board at all times that the vessel is in use.
- (2) Personal flotation devices must be:
  - (a) in a readily accessible location on board the vessel;
  - (b) of an appropriate size for each person on board; and
  - (c) in good operative condition.

### **8 Wearing of personal flotation devices in times of heightened risk**

- (1) A person in charge of a recreational vessel must not use it in circumstances where tides, river flows, visibility, rough seas, adverse weather, when crossing a bar, in emergencies, or other situations that may cause danger or a risk to the safety of persons on board, unless every person on board is wearing a properly secured personal flotation device of an appropriate size for that person.

### **9 Wearing of personal flotation devices on small recreational vessels six metres or less**

- (1) Every person on board a small recreational vessel must wear a properly secured personal flotation device of an appropriate size for that person at all times.
- (2) Subclause (1) does not apply if the person in charge of the vessel, after assessing all circumstances and determining there would be no reduction in safety, expressly authorises any person on board to remove a personal flotation device.

## 10 Exemptions to the compulsory carriage of personal flotation devices

- (1) Clause 7 does not apply to:
  - (a) any surfboard;
  - (b) any person riding breaking waves on a stand up paddle board when the board is attached to the person by means of a leg rope.
  - (c) any sailboard activity, if a wetsuit is worn at all times;
  - (d) a diver on a small vessel that is used for recreational diving within five nautical miles of shore, when wearing a full body wetsuit;
  - (e) a person training for or participating in a sporting event, if the training or the event is supervised in accordance with the safety system of an organisation approved by the Director.

*Explanatory note: The Director may approve a sporting organisation if that organisation has in place a safety system that the Director is satisfied provides an equivalent level of safety to the carriage or wearing of personal flotation devices.*

- (f) a sporting event, training activity, ceremonial or other authorised customary event if-
  - (i) a support vessel that is capable of providing adequate assistance in the event of an emergency remains in the immediate vicinity of the vessel and the vessel or support vessel or both carry personal flotation devices or buoyancy aids of an appropriate size for each person on board the vessel; or
  - (ii) the Harbourmaster has granted prior written exemption.

*Explanatory note: The Harbourmaster may grant an exemption for a specified period if satisfied that adequate safety precautions are made for rescuing any person participating in the event or activity.*

## 11 Wearing of personal flotation devices by persons being towed

- (1) The person in charge of the vessel and any person being towed are both responsible for ensuring that the person being towed wears a properly secured personal flotation device of an appropriate size for that person.

### Part 4

#### General navigation safety requirements

## 12 Person in charge of the vessel

- (1) No vessel may leave the shore unless a person in charge of the vessel has been nominated.
- (2) The person in charge of a vessel is responsible for the safety and wellbeing of every person on board and for the safe operation of the vessel, including the carriage and wearing of personal flotation devices by persons on board the vessel.
- (3) A person must not be in charge of a vessel while under the influence of alcohol or a drug, or both, to such an extent as to be incapable of having proper control of the vessel.

## 13 Minimum age for operating powered vessels

- (1) A person below the age of 15 years must not be in charge a power driven vessel that is able to exceed a proper speed of 10 knots unless they are under the direct supervision of a person:
  - (a) who is 15 years or older; and
  - (b) who is in immediate reach of the controls; and
  - (c) who is not the lookout person required under this bylaw when another person is being towed.
- (2) The owner of a power driven vessel that is able to exceed a proper speed of 10 knots must not allow any person below the age of 15 years to be in charge of that vessel, unless they are under the direct supervision of a person:
  - (a) who is 15 years or older; and
  - (b) who is in immediate reach of the controls; and
  - (c) who is not the lookout person required under this bylaw when another person is being towed.

## 14 Speed of vessels

- (1) A person in charge of a vessel must not operate a vessel at a proper speed exceeding 5 knots within:
  - (a) 50 metres of any other vessel;
  - (b) 50 metres of any person in the water;
  - (c) 200 metres of the shore;
  - (d) 200 metres of any structure;
  - (e) 200 metres of any vessel that is exhibiting Flag A;
  - (f) 200 metres of a marine mammal;
  - (g) any zone specified by the Harbourmaster as having a 5 knot speed limit; or
  - (h) any mooring zone.
- (2) A person in charge of a power driven vessel must not operate the vessel at a speed exceeding 5 knots while another person has any portion of his or her body extending over the bow or side of that vessel.
- (3) A person must not allow himself or herself to be towed by a vessel in any circumstances specified in subclause (1).
- (4) Subclauses (1)(a) and (b) do not apply to:
  - (a) a large vessel, if the vessel cannot be safely navigated in compliance with subclause (1);
  - (b) a vessel powered by sail in relation to any other vessel powered by sail, while the vessels are participating in a yacht race or training administered by:
    - (i) a club affiliated to Yachting New Zealand;
    - (ii) a non-profit organisation involved in sail training or racing;
  - (c) a vessel (including the support vessel) training for or participating in competitive rowing or paddling;
  - (d) a tug, pilot vessel, emergency response vessel, support vessel for rowing or paddling, Harbourmaster vessel, or police vessel, only if the vessel's duties cannot be performed in compliance with subclause (1)(a) or (b); or
  - (e) a vessel operating in accordance with a speed uplifting approved by the Harbourmaster.
- (5) Subclauses (1)(c) and (d) do not apply to:
  - (a) a vessel operating in an access lane or a reserved area for the purpose for which the access lane or reserved area was declared;
  - (b) a fast passenger ferry using the Motuihe Channel fast passenger ferry lane or the Auckland Harbour Bridge precautionary area;
  - (c) any board sport carried out with due regard for the safety of other water users, and in accordance with the accepted safe practices of the individual sport.

## 15 Vessels to be seaworthy

- (1) The person in charge of a vessel anchored or moored in any navigable waters must keep the vessel in a seaworthy condition at all times, unless the Harbourmaster has given prior written approval for it to be anchored or moored in a condition which is not seaworthy.
- (2) Except in an emergency or following an accident or incident, a person must not operate a vessel that is unseaworthy, except to comply with the directions of the Harbourmaster to move that vessel to an alternative location.
- (3) In an emergency or following an accident or incident that renders the vessel unseaworthy, the person in charge of the vessel must not move the vessel except:
  - (a) to clear a main navigation channel, or to prevent further damage, or to position the vessel in a safe mooring or anchorage; or
  - (b) in accordance with directions from the Harbourmaster, enforcement officer or honorary enforcement officer.
- (4) If a vessel is not seaworthy or has the potential to cause a hazard to navigation, the Harbourmaster may give a direction to the person in charge of the vessel to move the vessel to an alternative location or remove it from navigable waters within a reasonable time.
- (5) If the person in charge of the vessel fails to comply with the direction of the Harbourmaster or if the owner or person in charge of the vessel cannot be located, the Harbourmaster may move that vessel to a position where it is no longer a hazard or remove it from the water and dispose of it.

## 16 Collision preventions

- (1) A person must not operate any vessel in breach of Maritime Rule Part 22 (Collision Prevention) made under the Maritime Transport Act 1994.

## 17 Notification of collisions or accidents

- (1) The owner and/or person in charge of a vessel that has been involved in a collision or accident must report the details of such, where:
  - (a) the collision or accident has caused damage to another vessel, or a navigation aid or any structure;
  - (b) a vessel has been sunk or grounded or become stranded in navigable waters;
  - (c) by reason of accident, fire, defect or otherwise the vessel cannot be safely operated; or
  - (d) any person has been injured.
- (2) The details of the collision or accident must be:
  - (a) given verbally as soon as possible to the Director and to the Harbourmaster; and
  - (b) reported as soon as practicable in writing and sent by mail or by email to the Director and to the Harbourmaster.
- (3) A report must include:
  - (a) a full description of any injury to persons, their names and contact details; and
  - (b) a full description of any damage to vessels or structures; and
  - (c) the name(s), contact details of person(s) in charge of the vessel(s).

## Part 5 Activities

### 18 Swimming

- (1) A person must not jump, dive or swim:
  - (a) from or within 50 metres from, a wharf, quay, jetty or pontoon -
    - (i) while it is in use for the berthing and unberthing of vessels;
    - (ii) when a vessel is approaching to berth, or manoeuvring alongside or departing;
  - (b) in an area that would interfere with the berthing or departure of any vessel;
  - (c) within any marked navigational channel or any other navigational channel leading to a jetty, wharf or quay;
  - (d) where these activities are prohibited by the Harbourmaster.
- (2) The Harbourmaster or any person operating officially under Surf Life Saving New Zealand may, set aside areas of beaches as flagged areas for the purpose of swimming and body boarding.
- (3) Within any flagged area, the only activities that may be undertaken are swimming, body boarding or the operation of a surf lifesaving vessel.

### 19 Water skiing and towing of persons

- (1) A person in charge of a vessel used for towing another person must have at least one other person on board acting as a lookout, who is 10 years of age or older and who is responsible for immediately notifying the person in charge of the vessel of every mishap that occurs to the person and/or object that is being towed.
- (2) A person in charge of a vessel must not tow any person or object between sunset and sunrise.
- (3) A person in charge of a vessel must not permit the vessel to continue onwards after any person being towed by that vessel has dropped (whether accidentally or otherwise) any water ski or similar object, in a location where it could cause danger to any other person or vessel, unless:
  - (a) the person in charge immediately takes action to recover that water ski or similar object; or
  - (b) the dropped ski or similar object is clearly visible to any other water user operating within the vicinity.
- (4) A person must not allow himself or herself to be towed by a vessel unless in compliance with this clause.

## 20 Dive operations

- (1) The person in charge of a vessel from which dive operations are in progress and the person diving from the vessel, must ensure that Flag A of a size no less than 600mm by 600mm is displayed in such a manner that it can clearly be identified by the person in charge of another vessel at a distance in excess of 200 metres.
- (2) Every person that dives unaccompanied by a vessel, must ensure that Flag A is displayed on a buoy in the water within close proximity to the diver in such a manner that it can be clearly identified by the person in charge of another vessel at a distance in excess of 200 metres.

## 21 Wake of recreational vessels

- (1) A person in charge of a recreational vessel must ensure that the vessel's wake or the wake from any person or object being towed:
  - (a) does not prevent other people from safely using the navigable water;
  - (b) does not cause danger or risk of damage to other vessels, structures, or navigation aids; and
  - (c) does not cause any risk of harm to any other person.

## 22 Use of vessel engine around wharves and ramps

- (1) A person in charge of a vessel must not operate the propulsion system of the vessel while it is lying at a wharf, quay, jetty or pontoon in such a way that it may damage any property, scour the bed of the navigable waters so affecting navigation safety, affect the navigation of any other vessel or injure any person. This clause does not preclude the use of the propulsion system for the safe berthing or unberthing of any vessel.
- (2) In addition, a person in charge of a large vessel must:
  - (a) ensure that a crew member is stationed both forward and aft on any vessel while that vessel is lying at a wharf, quay, jetty or pontoon and about to test or testing a propulsion system;
  - (b) ensure that a crew member warns all persons or vessels in the immediate vicinity of that vessel that the engines are being tested.

## 23 Access lanes

- (1) The Harbourmaster may specify an area of navigable water to be an access lane for the purpose of high speed access to and from the shore and specify controls for the use of the area.
- (2) No person may operate a vessel in an access lane other than in accordance with any applicable control or demarcation.
- (3) A vessel must proceed by the most direct route through the access lane on that side of the access lane that lies to the starboard (right) side of the vessel.
- (4) If any person is using an access lane for the purpose for which it is specified, no other person or vessel must obstruct that user or enter, remain in or use the lane or area for any other purpose.
- (5) A person in charge of a vessel within an access lane must ensure that the vessel does not obstruct or cause any danger to any other vessel or to any other person in the access lane.
- (6) Except as specified by the Harbourmaster, a person must not anchor or moor a vessel in an access lane.
- (7) An access lane is demarcated by:
  - (a) orange posts with horizontal black bands on shore; and
  - (b) if the access lane is marked at its outer edge, it shall be marked by orange buoys with black bands; and
  - (c) adequate signage in the vicinity of the access lane that declares the purpose of that lane.

*Explanatory note: The controls made under the Navigation Safety Bylaw 2014 contain maps showing areas of navigable water permanently reserved as access lanes by the Harbourmaster, for the purpose of high speed access to and from the shore, when undertaking water skiing and similar activities.*

## 24 Reserved areas

- (1) The Harbourmaster may reserve an area of navigable water permanently for a specified purpose and period, and may specify controls for the use of the reserved area.

*Explanatory note: The controls made under the Navigation Safety Bylaw 2014 contain maps showing areas of navigable water permanently reserved by the Harbourmaster for specified purposes and use.*

## 25 Special reserved areas

- (1) A person that intends to conduct a sporting event, training activity, ceremonial or customary event or any other organised water activity on navigable water must obtain approval from the Harbourmaster if the activity is likely to affect normal operation of another vessel or any other user of the water, by:
  - (a) requiring temporary suspension of the relevant speed clause(s) and any other relevant clause of this bylaw;
  - (b) require an area to be temporarily reserved for a specific area for the purpose of the event; or
  - (c) require temporary installation of course markers or similar such structures in the water.
- (2) The Harbourmaster may require an area to be temporarily reserved for an activity referred to in subclause (1).
- (3) An application to temporarily reserve an area of navigable water must be made in accordance with the requirements of the Harbourmaster, in the prescribed form and be accompanied by payment of the application and processing fees and such further supporting information as the Harbourmaster may require to enable processing of the application.
- (4) An application to temporarily reserve an area of navigable water may be granted or refused at the discretion of the Harbourmaster, upon such terms and conditions as the Harbourmaster thinks fit.
- (5) The Harbourmaster may recover any costs associated with the reservation of the area of navigable water from the applicant.

## 26 Conduct in reserved areas

- (1) No person may operate a vessel in a reserved area other than in accordance with any applicable control or demarcation.
- (2) A person must not enter into a reserved area for any other purpose than that specified by the Harbourmaster.
- (3) If any person is using a reserved area for the purpose for which it is specified, no other person or vessel must obstruct that user or enter, remain in or use the area for any other purpose unless with the approval of the Harbourmaster.
- (4) Adequate signs must be provided in the vicinity of a permanent reserved area that:
  - (a) defines the area; and
  - (b) declares the purpose for which the area has been reserved.
- (5) If the area is demarcated on shore, it is marked by black posts with white horizontal bands.
- (6) If the reserved area is marked at sea, it is marked by black buoys with white bands.

## Part 6 Operating Requirements

## 27 Obstructions

- (1) A person must not obstruct the navigation of any navigable waters or the access to any wharf, landing place, boat ramp, slipway, navigation channel or mooring, without the prior written approval of the Harbourmaster.
- (2) A person must not place any obstruction, including a vessel or fishing apparatus, in, over or near any navigable waters, if it is likely to:
  - (a) restrict navigation;

- (b) cause or have potential to cause, injury or death to any person;
  - (c) cause damage to any vessel or any property; or
  - (d) restrict access to or use of any lawfully established mooring.
- (3) A person must not leave equipment, stabilizers, booms, cranes, davits or other equipment extending over the side of a vessel so as to cause a hazard to another vessel.

## 28 Discharges

- (1) No person shall discharge, drop, cause or allow to be discharged into navigable waters any cargo or anything from any vessel, wharf or from land that may constitute a danger to navigation safety.

## 29 Navigation aids

- (1) The Harbourmaster may require a person to erect or maintain a navigation aid.
- (2) A person must not erect or alter a navigation aid without the prior written approval of the Harbourmaster and Director.
- (3) A person must not tie a vessel to any navigation aid, unless they have the prior approval of the Harbourmaster.
- (4) A person must not damage, remove, deface or otherwise interfere with any beacon, navigation mark, buoy, light or other navigation aid.
- (5) A person must not erect any light or structure that may be mistaken as a navigation aid without the prior written approval of the Harbourmaster.

## 30 Sound and light signals

- (1) A person must not fit to any vessel, or use any lights, sirens or other sound that are not prescribed in a Maritime Rule, without the approval of the Harbourmaster.
- (2) A person must not blow or sound the whistle, siren or horn of a vessel unless it is being used as a navigation safety signal or for the testing of equipment.
- (3) Subclause (2) does not apply to horns, whistles or sirens used for the purposes of a sporting event or a celebration event, provided they are used in locations where there will be no confusion to any other person about the navigation safety signal.
- (4) A person must not fit to any vessel or use any blue flashing light or siren, unless the vessel is operated by police, customs, the Harbourmaster or a vessel approved by the Harbourmaster.
- (5) A person must not fit to any vessel or use any purple flashing light unless the vessel is being used specifically for an emergency response. A purple flashing light must only be used when actively involved in responding to an accident or incident. This light implies no status for the vessel and must be used for the minimum time possible.
- (6) A fast passenger ferry must display an orange flashing light when it is not made fast to the shore or is not at anchor.

## 31 Vessels to carry navigational equipment

- (1) The person in charge of a vessel must ensure that the vessel has at all times on board appropriate means to navigate safely for the intended voyage.
- (2) This clause does not apply to:
  - (a) a person participating in a board sport;
  - (b) a vessel being used in any sporting event or training activity, if there is a support vessel in attendance that is able to provide safe navigation in accordance with this clause.

## 32 Means of communication

- (1) A person in charge of a vessel must be able to communicate with a land based person from any area where the vessel is intended to be operated for the duration of the voyage.
- (2) Any communication equipment carried on board a vessel must be in good operative condition.

- (3) Subclause (1) does not apply to a vessel being used in any sporting event or training activity, if there is a support vessel in attendance that is carrying a means of communication in accordance with this clause.

### 33 Visibility of paddle craft

- (1) A person must not operate a paddle craft of less than seven metres beyond sheltered waters unless the person in charge of the vessel has taken steps to ensure its visibility to other vessels.

### 34 Vessels to be identified

- (1) A person must not use a vessel on navigable waters unless it displays a name, consisting of letters the Roman alphabet or numbers that are not the vessel's brand, make or model, and that is distinct to that vessel.
- (2) Subject to clause (3), this clause does not apply to:
  - (a) non-mechanically powered vessels of less than six metres in length; and
  - (b) power driven vessels of less than four metres in length.
- (3) Non-mechanically powered vessels and power driven vessels referred to in subclause (2) must be marked with the current owner's name and contact details somewhere on the vessel.
- (4) The name, identification mark or number referred to in subclauses (1) must be displayed above the waterline on each side of the vessel by the person in charge of the vessel. The minimum height of the name, identifying mark or identification number is 90 millimetres and it must be legible by day from a distance of at least 50 metres.

### 35 Aircraft

- (1) A person in charge of a vessel must not impede an aircraft in the process of landing or taking off.
- (2) Except in an emergency, a person must not take off, land or attempt to take off or land an aircraft:
  - (a) on navigable waters; or
  - (b) from any vessel, wharf, quay, jetty or pontoon or structure within a coastal marine area; without the permission of the Harbourmaster.

### 36 Prohibited and restricted anchorages

- (1) Except in an emergency, a person must not:
  - (a) anchor or moor a vessel within a prohibited anchorage under this bylaw without the prior approval of the Harbourmaster;
  - (b) anchor a vessel within a restricted anchorage under this bylaw unless the vessel is kept ready to make immediate departure and an anchor watch on board the vessel is maintained at all times.

*Explanatory note: The controls made under the Navigation Safety Bylaw 2014 contain maps showing areas of navigable water permanently reserved by the Harbourmaster as prohibited and restricted anchorage areas.*

*The restrictions do not apply to commercial vessels that have been directed to use one of the named anchorages by the Harbourmaster. Vessels may apply to the Harbourmaster for approval to anchor in these areas for commercial, engineering, construction, or scientific purposes. Requests must be directed to the Harbourmaster's office.*

### 37 Limitation on anchoring

- (1) A vessel must not be anchored within the same or proximate location for longer than 14 consecutive days without the prior approval of the Harbourmaster.
- (2) A person must not leave any vessel unattended at any wharf, breakwater, ramp or pontoon without permission of the facility owner or on the beach or foreshore except in an area specified for this purpose by the Harbourmaster.

- (3) Subclause (2) does not apply to small vessels that are left on any beach or foreshore for a period of 48 hours or less.

### **38 Vessels to be adequately anchored, moored or secured**

- (1) The owner and/or person in charge of a vessel when not underway must be responsible for ensuring that:
  - (a) it is securely anchored or moored; and
  - (b) that any mooring used is of adequate specifications (size, type, displacement) to safely accommodate the vessel to be moored.
- (2) Unless otherwise authorised by the Harbourmaster, a person in charge of a vessel must not moor or anchor the vessel in a location where the vessel could:
  - (a) obstruct the passage of other vessels in a navigation channel;
  - (b) obstruct the approach to a wharf, quay, jetty or pontoon;
  - (c) create a hazard to other vessels at anchor or on a mooring; or
  - (d) create a hazard for any person.
- (3) A person must not moor a vessel to any mooring within a mooring zone unless:
  - (a) the mooring is an authorised mooring; and
  - (b) the Harbourmaster has issued a mooring licence for the vessel at that mooring site; or
  - (c) the vessel has been authorised to moor at that mooring site by the mooring site holder and the Harbourmaster.
- (4) A person must not cut, break, destroy, or otherwise tamper with:
  - (a) the anchor or mooring of any vessel; or
  - (b) the securing of any vessel at a wharf, quay, jetty or pontoon.
- (5) If required by the Harbourmaster, the owner or person in charge of the vessel berthed at a wharf, or at anchor must maintain a person on board to keep a watch.

## **Part 7**

### **Licenses, permits and administrative matters**

### **39 Registration of personal water craft (jetski)**

- (1) A person must not use a personal water craft on navigable waters unless it has a current registration with the Harbourmaster or another New Zealand regional council and displays an identification number issued by the Harbourmaster or that other regional council.
- (2) A person must submit to the Harbourmaster a change of ownership form within 30 days of disposing or selling a personal water craft.

### **40 Moorings to be licensed**

- (1) A person must not place a mooring in any navigable water without the approval of the Harbourmaster and may only be placed in accordance with a mooring licence issued by the Harbourmaster.
- (2) A mooring licence may not be issued for a mooring site that is not within a mooring zone or that has not been granted a resource consent.

### **41 Application for a mooring licence**

- (1) An application for a mooring licence must be made in the prescribed form, describe the location and features of the proposed mooring site and the specifications of the mooring for which the licence is sought and be accompanied by payment of the application and processing fees and such further supporting information as the Harbourmaster may require to enable processing of the application.
- (2) An application for a mooring licence may be granted or refused at the discretion of the Harbourmaster, upon such terms and conditions as the Harbourmaster thinks fit.
- (3) A mooring licence is personal to the holder and the vessel specified therein is not transferable without the prior approval of the Harbourmaster.

- (4) The prior approval of the Harbourmaster must be obtained by the licence holder of the mooring for occupation by another vessel and the Harbourmaster must be provided with the vessel's name, type, length, size and owner's contact details.

## **42 Consideration of application for a mooring licence**

- (1) When considering an application for a mooring licence and the conditions to be imposed under it, the Harbourmaster may take into account matters relating to the suitability of the applicant to hold a licence including but not limited to the following:
  - (a) if the mooring site is located in a mooring zone;
  - (b) if there is adequate space at the mooring site for the proposed mooring and vessel;
  - (c) if the mooring is of adequate specifications to accommodate the proposed vessel to be moored;
  - (d) if the vessel can be safely navigated to and from the mooring site;
  - (e) any public health and safety risks of the mooring site, including if the mooring may diminish the level of safety for other activities in the vicinity, or cause congestion or jostling for position or other unsafe practices.

## **43 Conditions of licence**

- (1) The terms and conditions upon which a mooring licence may be granted include, but are not limited to the following:
  - (a) the location of the mooring;
  - (b) the type, size and length of the specified vessel that may be attached to the mooring;
  - (c) the design and specifications of the mooring;
  - (d) maintenance requirements;
  - (e) the type of buoy or float with which the owner of a mooring must mark the location of the mooring when it is not being used by a vessel.
- (2) The licence is to be held by the licence holder subject to the following additional terms and conditions:
  - (a) the licence will be issued annually upon full payment of the annual mooring licence fee;
  - (b) the licence period applies from 1 July to the following 30 June each year.

## **44 Transfer of ownership and termination of mooring licences**

- (1) An application for the transfer of a mooring licence must be made in the prescribed form, and be accompanied by payment of the application and processing fees and such further supporting information as the Harbourmaster may require to enable processing of the application.
- (2) When a licence holder applies to the Harbourmaster seeking approval for the transfer of a mooring licence to another person, the Harbourmaster may approve the transfer if:
  - (a) all mooring licence fees, including the transfer fee are fully paid;
  - (b) the mooring has a current inspection certificate required under this bylaw;
  - (c) the mooring specification and design are adequate to accommodate the proposed vessel to be moored;
  - (d) the new mooring owner agrees to the terms and conditions specified in the original licence.

## **45 Maintenance and construction requirements**

- (1) The Harbourmaster may set mooring maintenance and construction guidelines for any type or class of mooring; and set controls governing the weight, size and length of mooring components.
- (2) The owner of a swing mooring or a pile mooring must maintain his or her mooring in a proper state of condition and repair and must comply with the mooring guidelines set by the Harbourmaster.
- (3) The owner of a mooring must obtain a current mooring inspection certificate for the mooring.
- (4) The Harbourmaster may issue a mooring inspection certificate after the inspection has taken place and payment of the inspection fee has been received.

- (5) A mooring owner may carry out maintenance after removing the mooring from the water, provided the inspection fee has been paid and arrangements are made by the mooring owner for inspection of the mooring by the Harbourmaster and the payment of the inspection fee prior to being reinstated
- (6) The Harbourmaster may inspect all the components of pile moorings at suitable intervals and notify the mooring owner if parts must be replaced or if maintenance must be carried out. Replacement of parts or maintenance must be carried out within the advised timeframe. Replacement of the piles will be notified and coordinated by the Harbourmaster at the recommended guideline interval.
- (7) The Harbourmaster may cancel the mooring licence for any mooring that does not hold a current mooring inspection certificate and may remove or dispose of the mooring and any vessel on the mooring.
- (8) All costs associated with the inspection, maintenance and replacement of components must be borne by the mooring owner.

#### **46 Powers of Harbourmaster with respect to moorings and vessels on moorings**

- (1) The Harbourmaster may at any time after giving due written notice, cancel a mooring licence where the licence holder fails to comply with the terms and conditions of the mooring licence or any other clause under this section of the bylaw.
- (2) If a mooring licence has been cancelled, the Harbourmaster may require the mooring owner to remove the mooring. The mooring owner must remove the mooring within the timeframe specified by the Harbourmaster. If the mooring owner fails to remove the mooring in the specified timeframe, the Harbourmaster may remove the mooring and any vessel occupying the mooring be removed and the Harbourmaster may recover the costs from the licence holder or from the sale of the mooring and/or vessel.
- (3) If any annual mooring licence fee or other charge required by the Harbourmaster under this bylaw remains unpaid for a period of two months, then the Harbourmaster may remove the mooring and detain the vessel using the mooring, until such fee or charge, including the cost of removing the mooring and storing the vessel, have been paid. If the debts have not been paid and discharged within a further two months, the Harbourmaster may dispose of the mooring and/or vessel or sell the mooring and/or vessel to recover the debt.
- (4) The Harbourmaster may remove any mooring that is unauthorised under the Unitary Plan or is unlicensed pursuant to the provisions of this bylaw. If any vessel is using the unauthorized mooring, the Harbourmaster may detain the vessel until the cost of removing the mooring and storing the vessel has been paid. If the debts have not been paid and discharged within a further two months, the Harbourmaster may dispose of the mooring and/or vessel or sell the mooring and/or vessel to recover the debt.

#### **47 Liability of the council**

- (1) The council is not liable for:
  - (a) any damage to vessels which have not been securely moored;
  - (b) any damage to a vessel(s) which results from any actions taken by the Harbourmaster to secure a vessel, in the event of a storm or other adverse event.
- (2) The council is not liable for any damage to a vessel tied to a mooring, whether the damage is caused by a third party, a natural disaster or event, natural processes or by any other cause.
- (3) The council is not liable for any damage to a vessel that the Harbourmaster secures or removes under this bylaw.

#### **48 Removal of vessels**

- (1) Where a vessel breaks free from or drags its mooring, or causes an obstruction or is endangering another vessel or causing or resulting in a navigational safety issue or is sinking or has become unseaworthy, the Harbourmaster may remove or secure that vessel at the owner's risk.

- (2) The cost associated with the removal and storage of or securing a vessel is recoverable from owner of the vessel and/or the mooring licence holder.
- (3) If the owner of the vessel or the licence holder cannot be located, or fails to pay for any storage cost, the Harbourmaster may recover cost from the sale of the vessel, its fittings, equipment and cargo.

#### **49 Ongoing use of a mooring**

- (1) A holder of a mooring licence must not leave a mooring vacant or unattended for longer than six months without the prior written approval of the Harbourmaster.

#### **50 Hot work operations**

- (1) A person conducting hot work operations on a vessel must comply with the current edition of the Code of Safe Working Practices for Merchant Seafarers (Maritime New Zealand).
- (2) The person in charge of a vessel must before any hot work operations are commenced, obtain the written approval of the owner or manager of the facility at which the operations are to be conducted.
- (3) The person in charge of a vessel must ensure that before any hot work operations are commenced, he or she take all precautions for the detection, prevention, and extinguishing of fire on board the vessel or elsewhere, as a result of hot work operations. Provision must be made for the continuance of the precautions until the operations are complete.
- (4) In any case where the Harbourmaster is not satisfied adequate precautions have been taken, the Harbourmaster may forbid any hot work operations to commence, or continue, until he or she is satisfied adequate precautions have been taken.

#### **51 Vessels carrying dangerous goods as cargo**

- (1) The person in charge of a large vessel carrying dangerous goods as cargo must notify the berth operator, and the Harbourmaster if requested, in writing at least 48 hours prior to the vessel's arrival at the pilotage area.
- (2) Notification to the berth operator and/or the Harbourmaster must include full details of all dangerous goods on board as cargo and include the hazard classification, net quantity, packing group, stowage position and whether the cargo is for discharge or transit.

#### **52 Fuel oil operations and bunkering**

- (1) The person in charge of the vessel must ensure that bunkering operations are carried out in accordance with Maritime Protection Rules and/or the vessel's approved Shipboard Oil Pollution Emergency Plan.
- (2) Twenty four hours before the commencement of any bunkering operation from a road tanker or vessel, the person in charge of a vessel must notify the Harbourmaster in writing in the prescribed form.
- (3) In any case where the Harbourmaster is not satisfied adequate precautions have been taken, the Harbourmaster may prohibit the operations to commence, or continue, until her or she is satisfied adequate precautions have been taken.

### **Part 8 Large vessels**

#### **53 Navigating with inoperative equipment**

- (1) The person in charge of a large vessel operating in Auckland's navigable waters must report to the Harbourmaster any navigational or manoeuvring equipment which is inoperative or otherwise malfunctioning
  - (a) prior to entering Auckland's navigable waters, or departing from any berth or anchorage within Auckland;

- (b) at least 24 hours in advance, (or if this is not possible as soon as practicable) when a vessel is intending to enter into, or navigate within any pilotage area.
- (2) Any large vessel with deficient or inoperative navigation or manoeuvring equipment may not enter into, or depart any wharf or anchorage within a pilotage area, without the prior approval of the Harbourmaster.
- (3) A report to the Harbourmaster made under this clause may be directed to:
  - (a) the Harbourmaster via the duty officer by telephone;
  - (b) "Auckland Harbour Control" on VHF ch 12.
- (4) Approval granted by the Harbourmaster may be relayed to the person in charge of the vessel via:
  - (a) the Harbourmaster via the duty officer; or
  - (b) Auckland Harbour Control on VHF ch 12.

#### **54 Duty of person in charge of a vessel under 500 gross tonnage**

- (1) The person in charge of a vessel under 500 gross tonnage must not allow their vessel to impede the navigation of any large vessel if the vessels are in a pilotage area.

#### **55 Moving prohibited zone**

- (1) A moving prohibited zone extending to 100 metres astern and 100 metres to each side of a large vessel, and continuing at such width to 500 metres ahead, following the line of the buoyed channel when changing course, is reserved around a large vessel, when that large vessel is underway within the pilotage areas of Auckland (excluding Tāmaki River) and Manukau.
- (2) When navigating within a marked channel, the moving prohibited zone to the side of the large vessel is reduced to the width of the marked channel and the zone ahead of the large vessel must follow the line of the marked channel.
- (3) The owner or person in charge of a vessel must not navigate the vessel within the moving prohibited zone of a large vessel, within the pilotage area of Auckland (excluding Tāmaki River) and Manukau.
- (4) For the purpose of this clause, a tug and barge is considered a composite unit.

#### **56 Areas of restricted access for large vessels**

- (1) The Harbourmaster may specify an area of navigable water as restricted to large vessels and specify controls for the use of the area.
- (2) The owner and/or person in charge of a large vessel must not allow their vessel to enter into an area of restricted access to large vessels without the prior written approval of the Harbourmaster.

*Explanatory note: The controls made under the Navigation Safety Bylaw 2014 contain maps showing areas of navigable water permanently reserved by the Harbourmaster as restricted access to large vessels.*

#### **57 Automatic identification system**

- (1) The Harbourmaster may require the owner of a commercial fast vessel to install a functioning Automatic Identification System.
- (2) A person must not operate a fast commercial vessel within the Auckland pilotage area when the Harbourmaster has declared the area affected by fog, or operating under a fog routine, unless it has on board a fitted and operational Automatic Identification System.
- (3) A person must not operate a large vessel within the pilotage areas of Auckland or Manukau, without a pilot embarked, unless it has on board a fitted and operational Automatic Identification System.

## Part 9

### Specific restrictions in lanes, zones and areas

#### 58 Operation of commercial fast vessels

- (1) The Harbourmaster may require the owner or person in charge of a commercial fast vessel to operate the vessel in accordance with a Navigation Safety Operating Plan that meets the requirements of the Harbourmaster.
- (2) If the Harbourmaster requires a Navigation Safety Operating plan, a person must not operate a commercial fast vessel unless in accordance with the approved plan.

#### 59 Motuihe Channel fast passenger ferry lane

- (1) The Harbourmaster may specify an area of navigable water within the Motuihe Channel to be a fast passenger ferry lane and specify controls for the use of the area.
- (2) The person in charge of a vessel within the Motuihe Channel fast passenger ferry lane must ensure their vessel or any person on their vessel does not:
  - (a) engage in fishing, or set or lay any fishing apparatus;
  - (b) anchor; or
  - (c) impede the passage of a fast passenger ferry.
- (3) Subclause (2)(c) does not apply to any vessel that is:
  - (a) under pilotage when the holder of a Pilotage Exemption Certificate has command of the vessel (other than a passenger ferry); or
  - (b) a warship.
- (4) The person in charge of a fast passenger ferry passing through the Motuihe Channel must:
  - (a) use the fast passenger ferry lane at all times when passing through the Motuihe Channel;
  - (b) navigate as close to the edge of the fast passenger ferry lane that lies on the vessel's starboard side as is safe and practicable (to allow safe port to port passing) and;
  - (c) proceed along the fast passenger ferry lane from Emu Point to Otahuhu point (north-easterly direction) or in the opposite direction (south-westerly direction).

*Explanatory note: The controls made under the Navigation Safety Bylaw 2014 contain maps showing areas of navigable water permanently reserved by the Harbourmaster, which includes the area reserved as the Motuihe Channel Fast Passenger Ferry Lane.*

#### 60 Waitematā Harbour restricted zone

- (1) The Harbourmaster may specify an area of navigable water within the Waitematā Harbour as a restricted zone and specify controls for the use of the area.
- (2) A power driven vessel within the Waitematā Harbour restricted zone must not:
  - (a) exceed a proper speed of 12 knots; nor
  - (b) use an automatic steering device.
- (3) Clause (2) does not apply to:
  - (a) vessels operated by the police, customs, the Harbourmaster or a vessel approved by the Harbourmaster that used during the performance of official duties in circumstances where persons on board are unable to undertake their duties without exceeding 12 knots; or
  - (b) emergency response vessels responding to an accident or incident where there is grave and imminent danger to life or property; or
  - (c) fast passenger ferries for which the Harbourmaster has granted written exemption on a scheduled passage and visibly displaying flashing orange lights.

*Explanatory note: The controls made under the Navigation Safety Bylaw 2014 contain maps showing areas of navigable water permanently reserved by the Harbourmaster, which includes the area reserved as the Waitematā Harbour Restricted Zone.*

#### 61 Harbour bridge precautionary area

- (1) The Harbourmaster may specify an area of navigable water around the Auckland Harbour Bridge as a precautionary area and specify controls for the use of the area.

- (2) The person in charge of a vessel within the Auckland Harbour Bridge precautionary area must ensure their vessel or any person on their vessel does not:
  - (a) impede the passage of a warship;
  - (b) impede the passage of a passenger ferry;
  - (c) impede the passage of a large vessel;
  - (d) moor or anchor;
  - (e) engage in fishing.

*Explanatory note: The controls made under the Navigation Safety Bylaw 2014 contain maps showing areas of navigable water permanently reserved by the Harbourmaster, which includes the area reserved as the Harbour Bridge Precautionary Area.*

## 62 Kawau Island restricted speed area

- (1) The Harbourmaster may specify a restricted speed area at Kawau Island and specify controls for the use of the area.
- (2) The person in charge of a vessel within the Kawau Island restricted speed area must ensure their vessel does not exceed a proper speed of 5 knots.

*Explanatory note: The controls made under the Navigation Safety Bylaw 2014 contain maps showing areas of navigable water permanently reserved by the Harbourmaster, which includes the area reserved as the Kawau Island restricted speed area.*

## 63 Auckland ferry terminal basin

- (1) The Harbourmaster may specify an area of navigable water around the Auckland ferry terminal basin as a restricted area and specify controls for the use of the area.
- (2) The person in charge of a vessel must not allow their vessel to enter into the Auckland ferry terminal basin.
- (3) This clause does not apply to
  - (a) passenger ferries;
  - (b) vessels authorised to use Auckland Transport and Waterfront Auckland owned facilities within the Auckland ferry terminal basin; or
  - (c) an emergency response vessel.

*Explanatory note: The controls made under the Navigation Safety Bylaw 2014 contain maps showing areas of navigable water permanently reserved by the Harbourmaster, which includes the area reserved as the Auckland ferry terminal basin.*

## 64 Manukau Harbour bar crossing

- (1) The person in charge of a large vessel must not allow that vessel to transit the Manukau Harbour bar between sunset and sunrise.

### Part 10

#### Tankers, hazardous cargoes, hazardous works, fuel oil transfers and dangerous materials

## 65 Explosives safety zone

- (1) The Harbourmaster may specify an area of navigable water as an explosives safety zone and specify controls for the use of the zone.
- (2) A person in charge of a vessel carrying or intending to load or discharge explosive substances must do so at an approved berth facility or at an explosives safety zone.
- (3) A vessel must not enter any explosives safety zone without the prior approval of the Harbourmaster.
- (4) A vessel must not enter an explosives safety zone while any vessel is anchored, or berthed in the area and is showing Flag B on its mast.

- (5) The person in charge of a vessel carrying explosive substances at an anchorage or berth must comply with the directions of the Harbourmaster or an enforcement officer with regard to placement of the vessel or movement through navigable water.

*Explanatory note: The controls made under the Navigation Safety Bylaw 2014 contain maps showing areas of navigable water permanently reserved by the Harbourmaster as the Explosives safety zones.*

## 66 Vessels carrying explosive substances as cargo

- (1) The person in charge of a vessel must not allow that vessel to approach within 200 metres of another vessel that is carrying or loading explosive substances, except:
  - (a) with the written permission of the Harbourmaster or an enforcement officer;
  - (b) for the purpose of loading or unloading that other vessel; or
  - (c) for the purpose of rendering assistance to that other vessel in an emergency.
- (2) The person in charge of a vessel carrying explosive substances must not allow that vessel to approach within 200 metres of any other vessel, except:
  - (a) with the written permission of the Harbourmaster or an enforcement officer;
  - (b) for the purpose of loading or unloading that other vessel; or
  - (c) for the purpose of rendering assistance to that other vessel in an emergency.

## 67 Signals to be displayed

- (1) The person in charge of a vessel that carries bulk oil or explosive substances as cargo or intends loading bulk oil or explosive substances as cargo must:
  - (a) hoist Flag B on a prominent place on the vessel where it can best be seen from all directions, after sunrise; and
  - (b) display a red light where it can best be seen from all directions after sunset.

## 68 Duties of person in charge of the vessel while tanker is in port

- (1) The person in charge of a tanker must comply with the current edition of the International Safety Guide for Tankers and Terminals (ISGOTT), and ICS Tanker Safety Guide Chemicals.
- (2) The person in charge of a tanker must:
  - (a) berth or moor the vessel only at Wynyard Wharf, the navy base at Devonport or other places authorised in writing by the Harbourmaster;
  - (b) keep the tanks containing products closed, except when opened for loading or discharging; and
  - (c) ensure that sufficient motive power is available at all times to enable the vessel to be moved immediately from the berth in case of fire or other emergency.

## 69 Tankers not to lie close to other vessels

- (1) Except if instructed otherwise by the Harbourmaster, the person in charge of a tanker must ensure that, except for the purpose of transshipment, the vessel does not lie within 30 metres of another vessel.

## Part 11

### Pilot and pilot exempt master operations

## 70 Log of transits in pilotage area

- (1) Every pilot and pilot exempt master must submit a log of their transits within the pilotage area to the Harbourmaster annually by the 31st of March each year. The log must contain as a minimum, date and time of transit, vessel name, gross tonnage and length.

## 71 Passage Plan

- (1) Every pilot and pilot exempt master must make use of a passage plan for every intended voyage and vessel movement.
- (2) The person in charge of a large vessel, within a pilotage area, must ensure the number of crew members on the bridge is sufficient to safely carry out the passage plan.

## 72 Bridge team composition

- (1) In determining the composition of the bridge team, due regard shall be taken of the need to steer, operate manoeuvring equipment, monitor the progress of the vessel visually, use all available aids to navigation and refer to an appropriate navigational chart.
- (2) Every vessel within the pilotage area, under pilotage or when the holder of a Pilotage Exemption Certificate has conduct of the vessel, must navigate only within marked channels.

## Part 12

### Licensing of commercial vessels for hire or reward

## 73 Vessels to be licensed

- (1) Any person who operates a commercial vessel for hire or reward that is not licensed subject to the relevant maritime rules must obtain a licence to do so from the Harbourmaster.
- (2) The holder of a licence must comply with the conditions of the licence and failure to do so is a breach of the bylaw and the Harbourmaster may withdraw the licence.
- (3) Applications for licences must be made in the prescribed form, describe the activities in respect of which the licence is sought and be accompanied by payment of the application and processing fees and such further supporting information as the Harbourmaster may require to enable processing of the application.
- (4) The holder of an existing licence may apply to the Harbourmaster for a renewal of that licence.
- (5) Licences may be granted or refused at the discretion of the Harbourmaster, upon such terms and conditions as the Harbourmaster thinks fit.
- (6) A licence is personal to the holder and to the vessel specified therein and is not transferable.
- (7) Every licence must be available for inspection at any time by the Harbourmaster, an enforcement officer or honorary enforcement officer or any prospective client of the operation.

## 74 Consideration of application for licence

- (1) When considering an application for a licence and the conditions to be imposed under it, the Harbourmaster may take into account matters relating to the suitability of the applicant to hold a licence including but not limited to the following:
  - (a) the applicant's experience, reputation and track record in the industry;
  - (b) public health and safety risks of the operation, including if the operation may diminish the level of safety for other activities in the vicinity, or cause congestion for position or other unsafe practices, at points of embarkation/ disembarkation or at any place en route;
  - (c) the terms and conditions under which the operation is licensed and the existence of or need for any statutory approvals, authorisations or consents required to be held or complied with in respect of such operation;
  - (d) the frequency and location of the operation;
  - (e) the specifications of the vessel and equipment to be used during the operation.

## 75 Conditions of licences

- (1) The terms and conditions upon which a licence may be granted include, but are not limited to the following:
  - (a) term of the licence;
  - (b) licence fee – the licence holder must pay an annual licence fee in an amount determined by the Harbourmaster from time to time and publicly notified;
  - (c) defining points of embarkation/ disembarkation;
  - (d) defining the area or route of operations;
  - (e) limiting the number of passengers or quantity of freight;
  - (f) limitations in respect of weather or operating hours;
  - (g) any requirements for rescue vessel;
  - (h) requirements for safety equipment;
  - (i) the level of instruction to be given to persons hiring a vessel;
  - (j) the qualifications required by the person in charge of the vessel.

## Part 13

### Enforcement Powers, Offences, Penalties, Exceptions Transitional Provisions and Revocation

#### 76 Compliance with the bylaw

- (1) The Harbourmaster may use its powers under the Act and maritime rules and/or the Local Government Act 2002 and regulations to enforce this bylaw.
- (2) The Harbourmaster, enforcement officer, honorary enforcement officer or police officer may direct any vessel or person to take any action they deem necessary to ensure compliance with the maritime rules and this bylaw.
- (3) Any licence, written approval, permission or exemption required by this bylaw must be kept on board the vessel or carried by the holder and must be produced forthwith on request by the Harbourmaster, an enforcement officer, honorary enforcement officer or police officer.

#### 77 Bylaw breaches

- (1) A person who fails to comply with this bylaw commits a breach of this bylaw and is liable to a penalty under the Act and maritime rules and/or the Local Government Act 2002 and regulations.
- (2) A person who fails to comply with an instruction given to that person by the Harbourmaster, an enforcement officer, honorary enforcement officer or the police under this bylaw commits a breach of this bylaw and is liable to a penalty under the Act and maritime rules and/or the Local Government Act 2002 and regulations.
- (3) Notwithstanding clause 9(2), an enforcement officer may instruct any person on board a small recreational vessel to wear a personal flotation device at any time.
- (4) The owner and person in charge of a vessel are jointly and severally responsible for compliance with this bylaw.
- (5) If no person is placed in charge of a vessel, the owner of the vessel is responsible for compliance with this bylaw.

#### 78 Intervention by the Harbourmaster

- (1) In any case where the Harbourmaster is not satisfied adequate precautions have been taken to ensure the health or safety of any person or the public or to avoid damage to any vessel, structure, wharf or the environment, the Harbourmaster may prohibit or restrict the activity until it is satisfied adequate precautions have been taken.

#### 79 Non-compliance with conditions of a licence

- (1) Where a licence holder does not comply with the terms and conditions of the licence, the Harbourmaster may take one or more of the following steps:
  - (a) Issue a written warning to the holder of the licence, which may be considered as evidence of a prior breach of a licence condition during any subsequent review of the licence;
  - (b) Review the licence, which may result in:
    - (i) amendment of the licence; or
    - (ii) suspension of the licence; or
    - (iii) withdrawal of the licence.
  - (c) Enforce any breach of this bylaw, as provided for under the Act and maritime rules and/or the Local Government Act 2002 and regulations.

#### 80 Removal of vessel, material, thing, cargo or matter

- (1) In addition to the powers conferred on it by any other enactment, the Harbourmaster may
  - (a) remove or cause to be removed from any public place or navigable water any vessel, material, thing, cargo or matter used or discharged in breach of the bylaw; and
  - (b) dispose of any vessel, material, thing, cargo or matter, if not claimed with a reasonable time.

- (2) The Harbourmaster may recover the costs incurred by the Harbourmaster in connection with the removal of the vessel, material, thing, cargo or matter, from:
  - (a) the person who committed the breach of this bylaw; or
  - (b) the owner of the cargo or any other matters discharged into navigable waters.

## **81 Removal of construction**

- (1) The council may, pursuant to section 163 of the Local Government Act 2002, remove or alter a work or thing that has been constructed in breach of this bylaw and may recover any costs of removal or alteration from the person who committed the breach.

## **82 Exceptions**

- (1) A person is not in breach of this bylaw if that person proves that the act or omission was in compliance with the directions of the Harbourmaster, an enforcement officer, honorary enforcement officer or police officer.

## **83 Exemptions**

- (1) The Harbourmaster may exempt by written approval, any person, vessel or class of vessels from any requirements of this bylaw.
- (2) In granting any written exemption to any clause of this bylaw the Harbourmaster must consider the effects of the exemption on public health and safety.
- (3) The Harbourmaster may revoke any exemption at any time the Harbourmaster has reason to believe public health or safety has, or may be, adversely affected.

## **84 Savings and transitional provisions**

- (1) Any resolution or other decision made under the Auckland Regional Council Navigation Safety Bylaw 2008 remains in force in the area to which it applied until revoked or replaced by an equivalent resolution or decision made by the Harbourmaster under this bylaw.
- (2) Any licence, consent, permit, dispensation, permission or other form of approval made under the Auckland Regional Council Navigation Safety Bylaw 2008 continues in force but:
  - (a) expires on the date specified in that approval; or
  - (b) if no expiry date is specified, expires on 31 October 2015; and
  - (c) can be renewed only by application made and determined under this bylaw.
- (3) Any application for a licence, consent, dispensation, permission or other form of approval made under Auckland Regional Council Navigation Safety Bylaw 2008 that was filed before the day on which this bylaw commences must be dealt with by the Harbourmaster as if it had been made under this bylaw.

## **85 Revocation**

- (1) This bylaw revokes the Auckland Regional Council Navigation Safety Bylaw 2008.

# Controls made under the Navigation Safety Bylaw 2014 demarcating the use of navigable waters in Auckland

Made by the Harbourmaster pursuant to delegation

31 July 2014

*Explanatory note: The Navigation Safety Bylaw 2014 provides that the Harbourmaster may establish controls containing detailed provisions. This control contains maps showing the demarcated use of areas of navigable water for specified purposes pursuant to this bylaw through the placement of buoys, posts or signs at the demarcated area and provides controls for the use of the demarcated areas.*

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**1 Title**

- (1) This control is titled *Controls made under the Navigation Safety Bylaw 2014 demarcating the use of navigable waters in Auckland*.

**2 Commencement**

- (1) This control comes into force on 25 October 2014.

**3 Application**

- (1) This control applies to Auckland.

**4 Purpose**

- (1) This control specifies areas of navigable water demarcated by the Harbourmaster for specified purposes pursuant to clause 6 of the bylaw, and provides controls for the use of these demarcated areas.

**5 Interpretation**

- (1) In this control, unless the context otherwise requires:

**Bylaw** means the Navigation Safety Bylaw 2014.

**Markers** means buoys, posts or signs used to indicate a demarcated area.

- (2) Unless the context requires another meaning, a term or expression that is defined in the Maritime Transport Act 1994 or the bylaw and is used, but not defined, in this control has the meaning given by the Act or bylaw.

**6 Use of navigable waters in Auckland**

- (1) In accordance with clause 6 of the bylaw, the Harbourmaster specifies the use of navigable waters for the purposes set out in Attachment A.
- (2) The areas specified in Attachment A may be demarcated through the placement of markers at the demarcated area. If markers have been placed:
- The maps in Attachment A are indicative only; and
  - If there is any inconsistency between the markers and the maps, the markers prevail.

## Attachment A

| Purpose of demarcated areas                                                                                                                                                                 | Location                     | Map      | Page |
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| Access lanes reserved for the purpose of allowing power driven vessels and power driven vessels towing water-skiers, wake boards or sea biscuits to navigate from a beach or launching area | <b>WAITEMATĀ HARBOUR</b>     |          |      |
|                                                                                                                                                                                             | <b>AND HAURAKI GULF</b>      |          |      |
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**Last updated  
 31 July 2014**

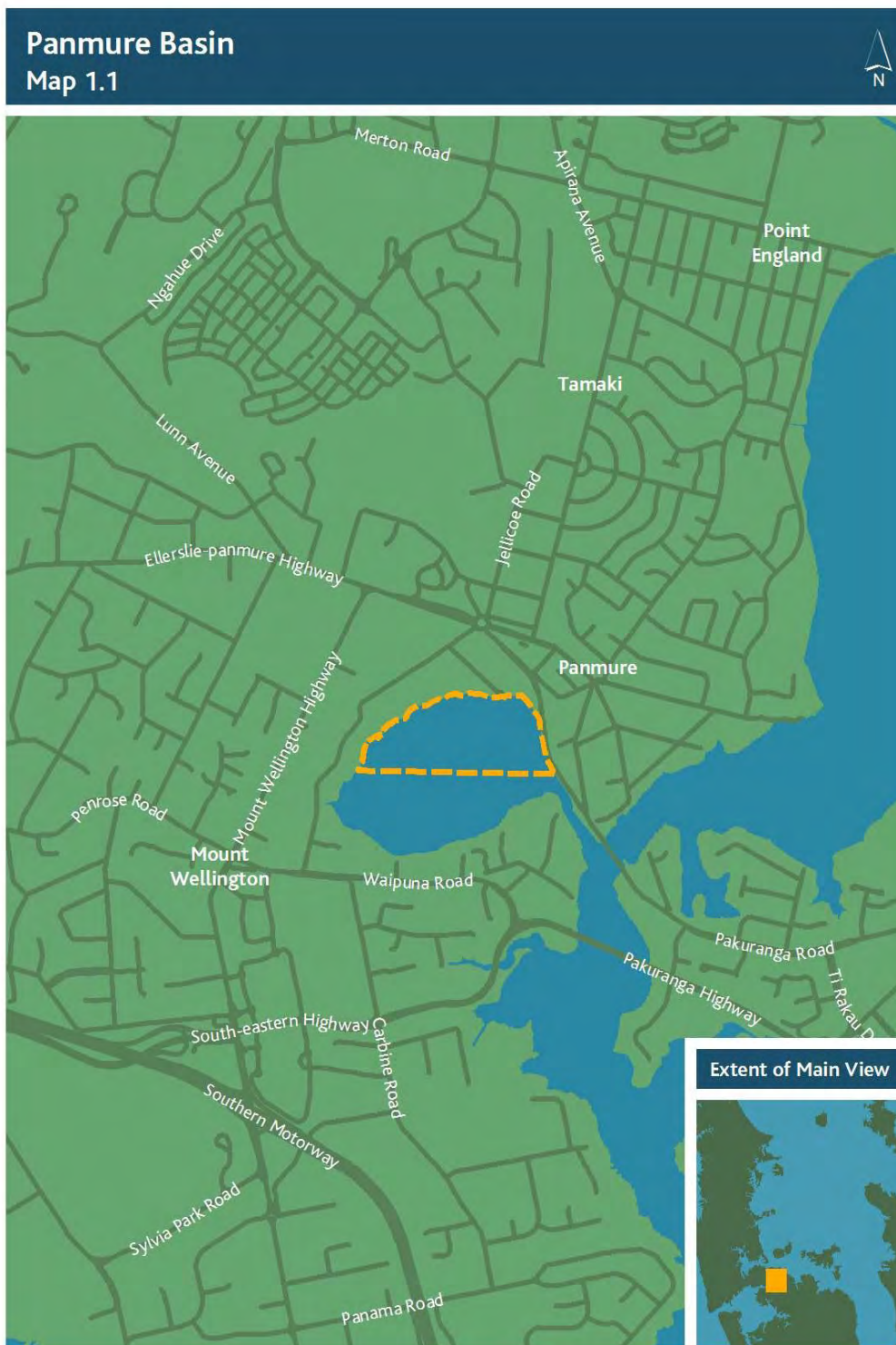
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Area reserved for non-mechanically powered vessels only.



Area reserved for non-mechanically powered vessels only.



Area reserved for swimmers and non-mechanically powered vessels only.



Area reserved for swimmers and non-mechanically powered vessels only.



This reservation does not prohibit a power driven vessel navigating at 5 knots or less passing through the area when it is in use for its designated purpose, provided that the vessel does so by the most direct route and does not remain within the area.

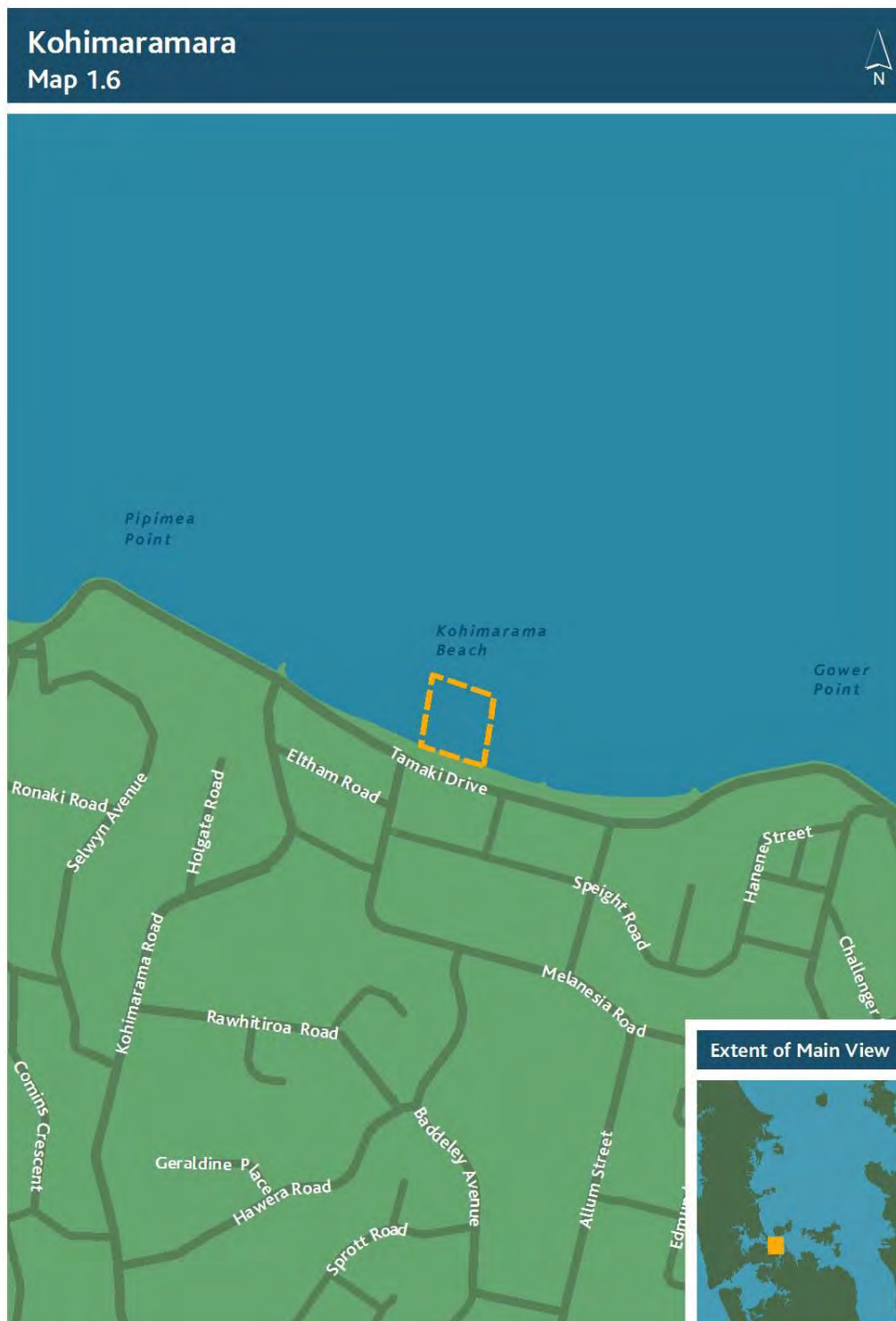
Area reserved for swimmers and non-mechanically powered vessels only.



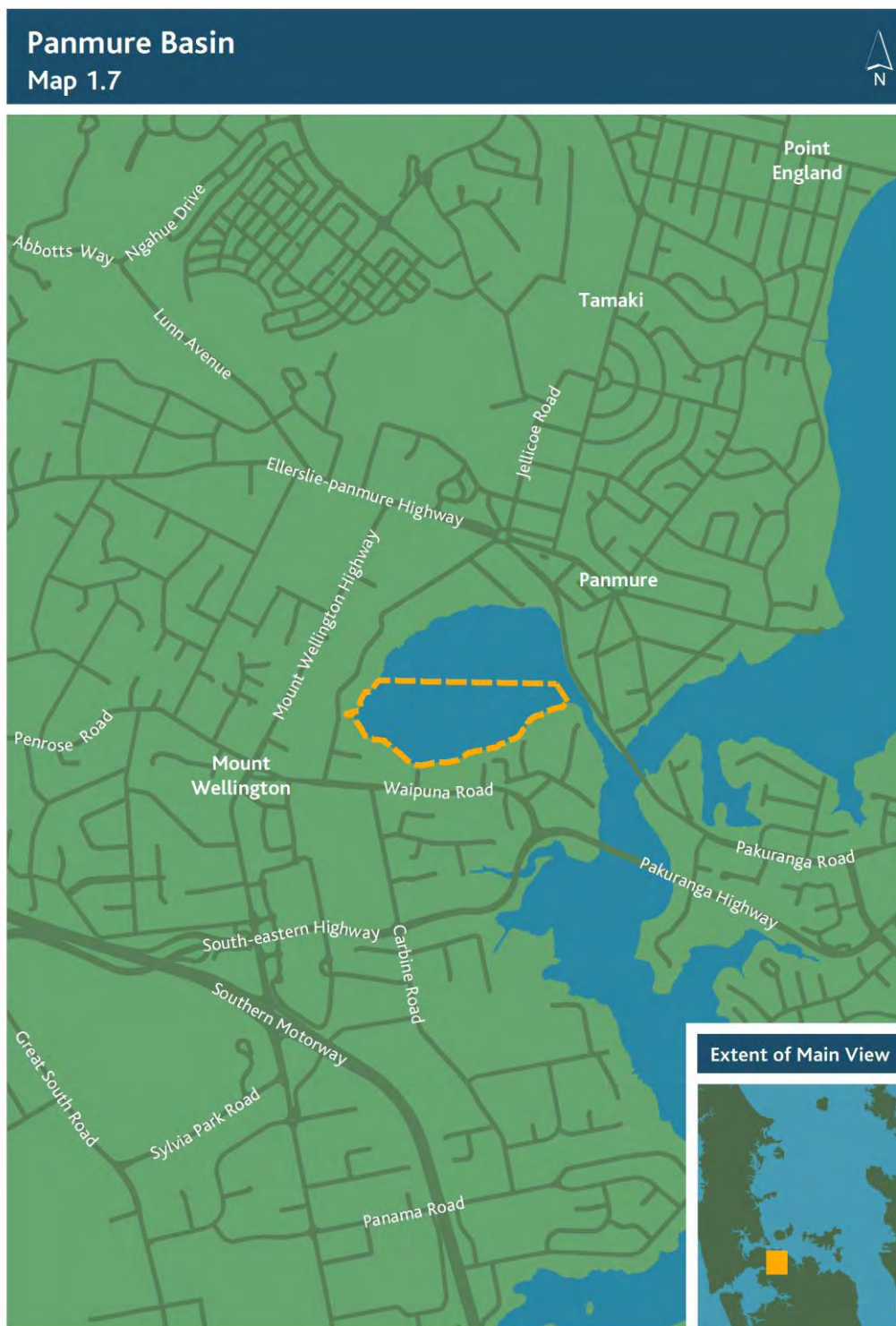
Area reserved for swimmers only.



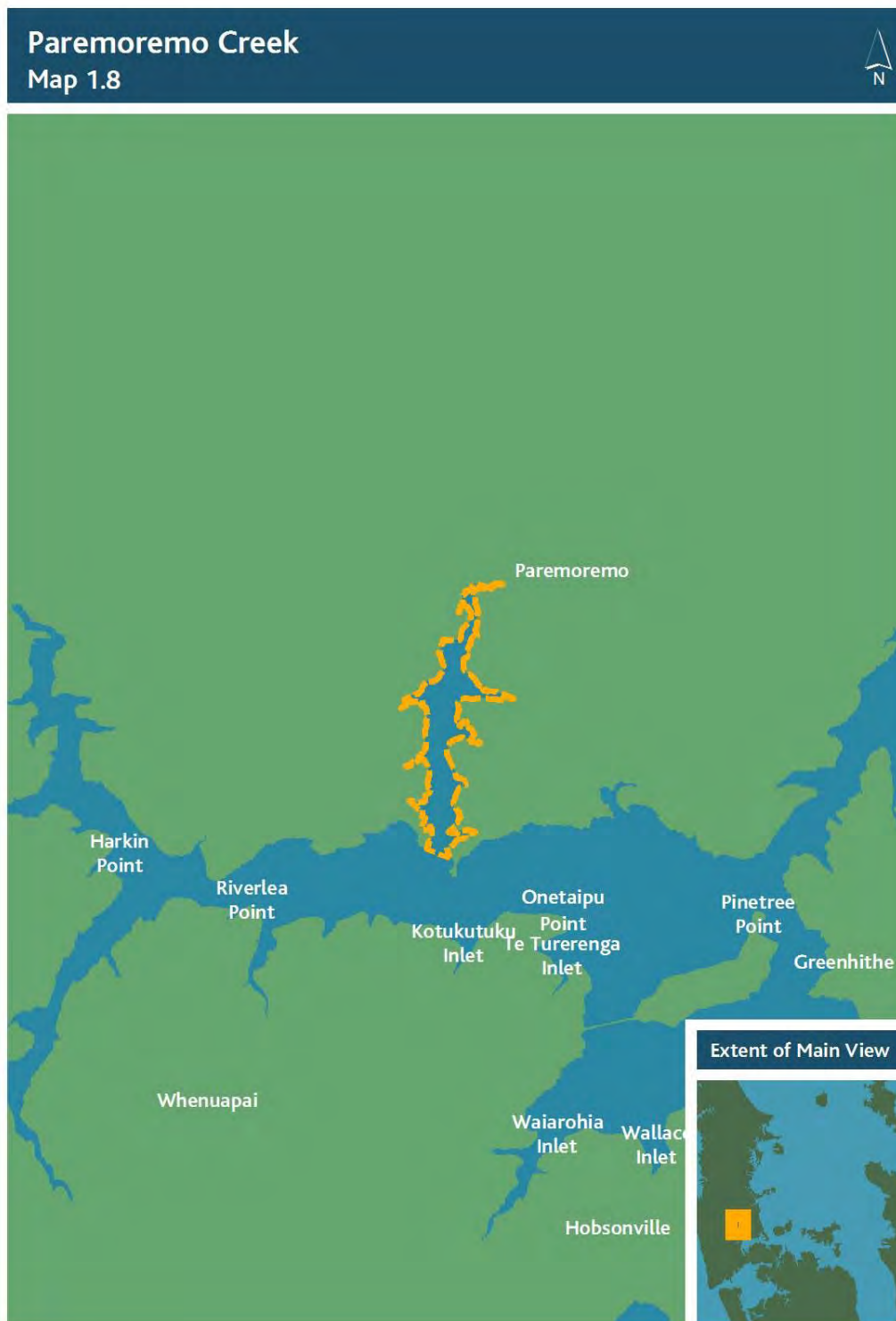
Area reserved for swimmers only.



Area reserved for vessels towing water skiers, wake boards or sea biscuits.



Area reserved for vessels towing water skiers, wake boards or sea biscuits.



Area reserved for vessels towing water skiers, wake boards or sea biscuits.



This reservation does not prohibit a vessel passing through the area when it is in use for its designated purpose, provided that the vessel does so by the most direct route and does not interfere with the users of the area.

Area reserved for vessels towing water-skiers, or other motorised water sports.



The northern part of Lake Tomarata that is not included in the reserved area is reserved for swimmers and non-mechanically powered vessels only.

Access lane reserved for the purpose of allowing power driven vessels and power driven vessels towing water-skiers, wake boards or sea biscuits to navigate from a beach or launching area.



Access lane reserved for the purpose of allowing power driven vessels and power driven vessels towing water-skiers, wake boards or sea biscuits to navigate from a beach or launching area.



Access lane reserved for the purpose of allowing power driven vessels and power driven vessels towing water-skiers, wake boards or sea biscuits to navigate from a beach or launching area.



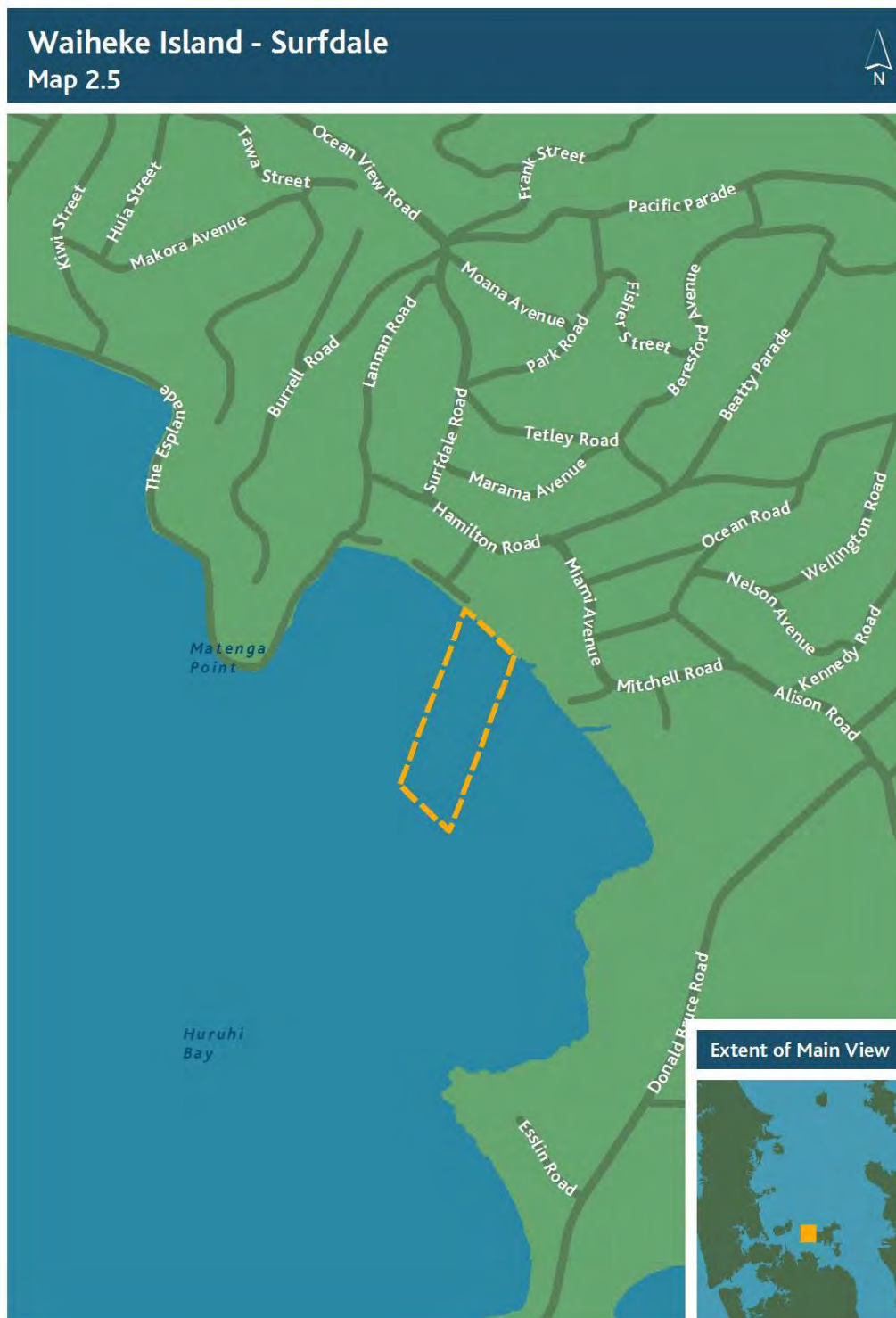
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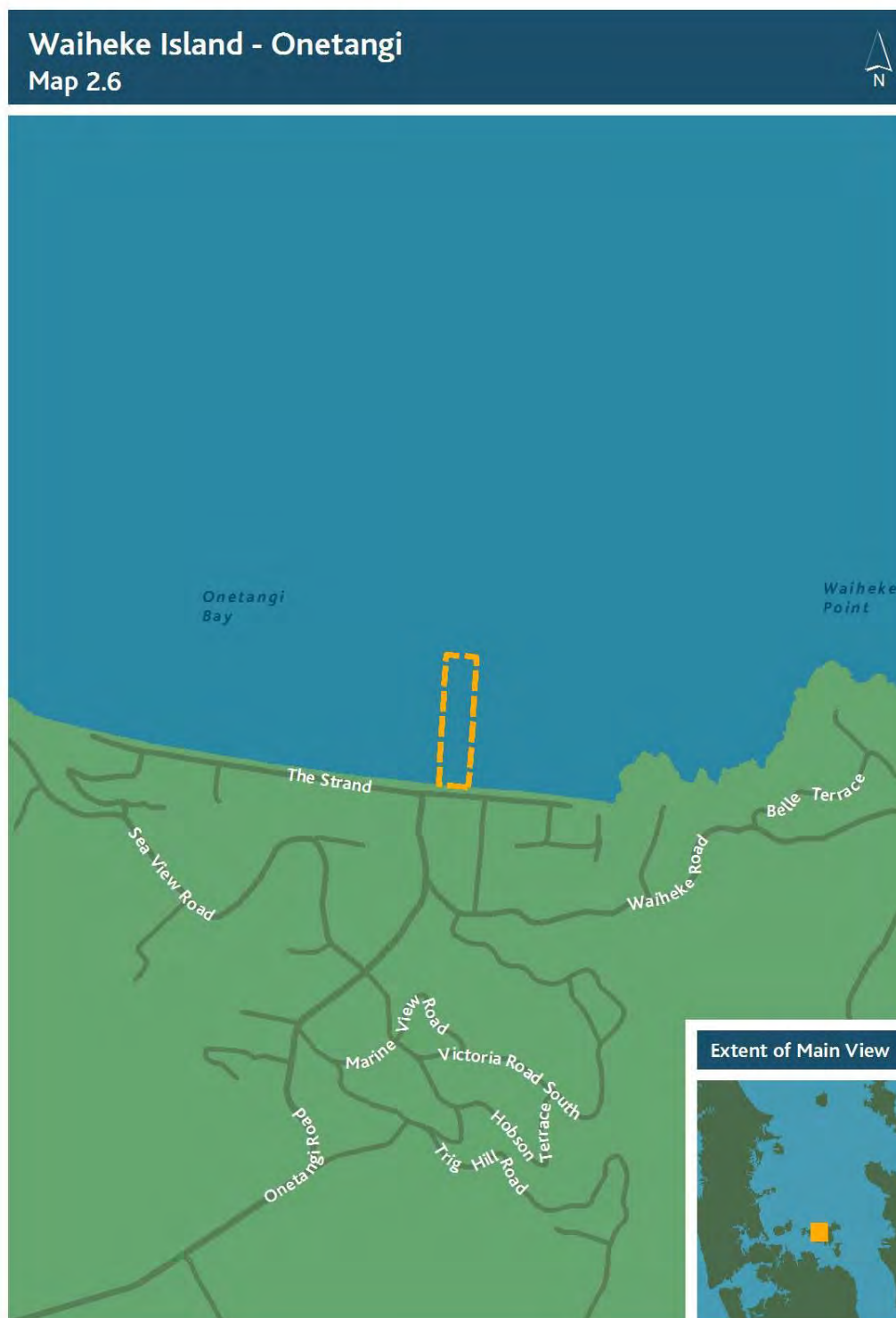
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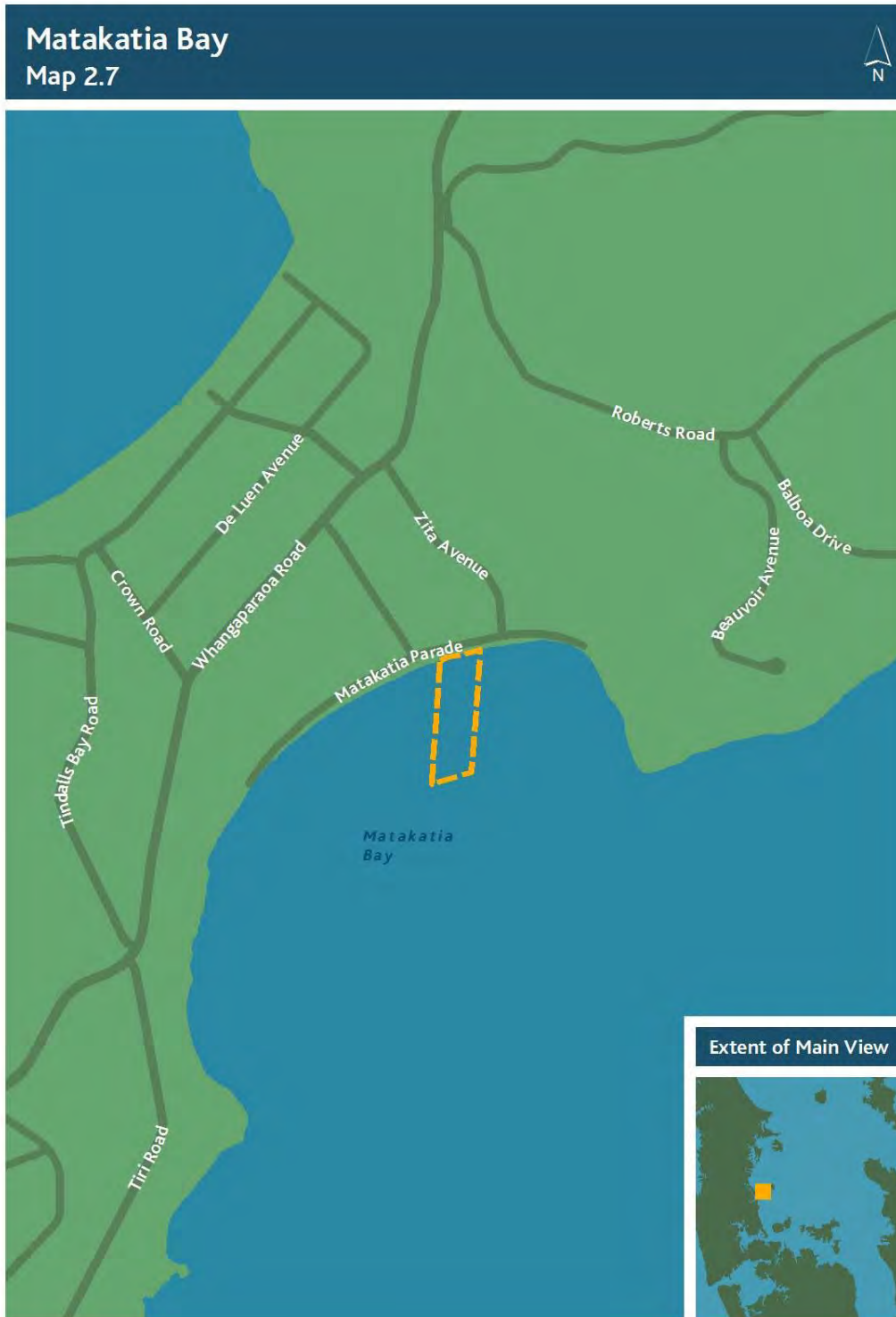
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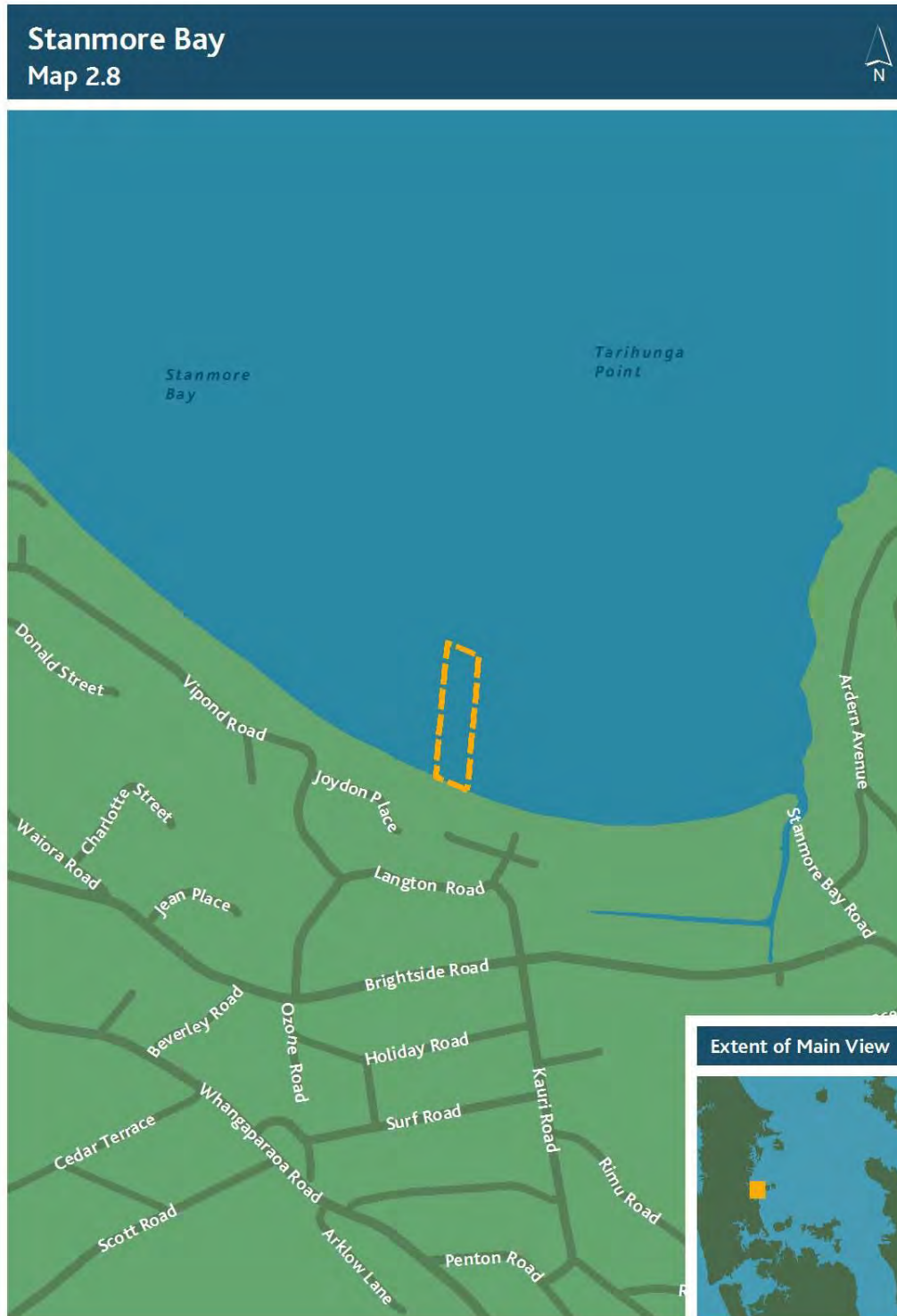
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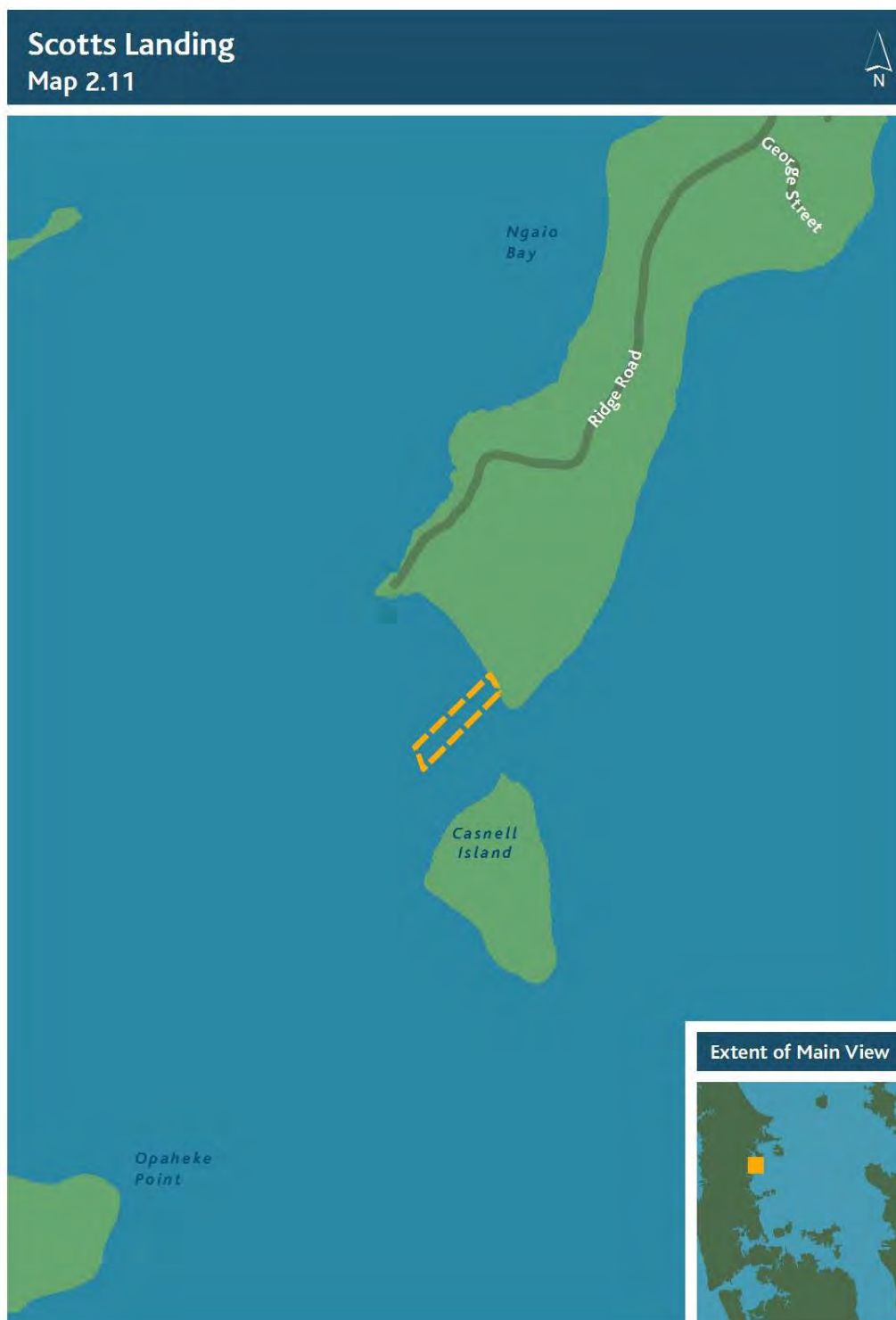
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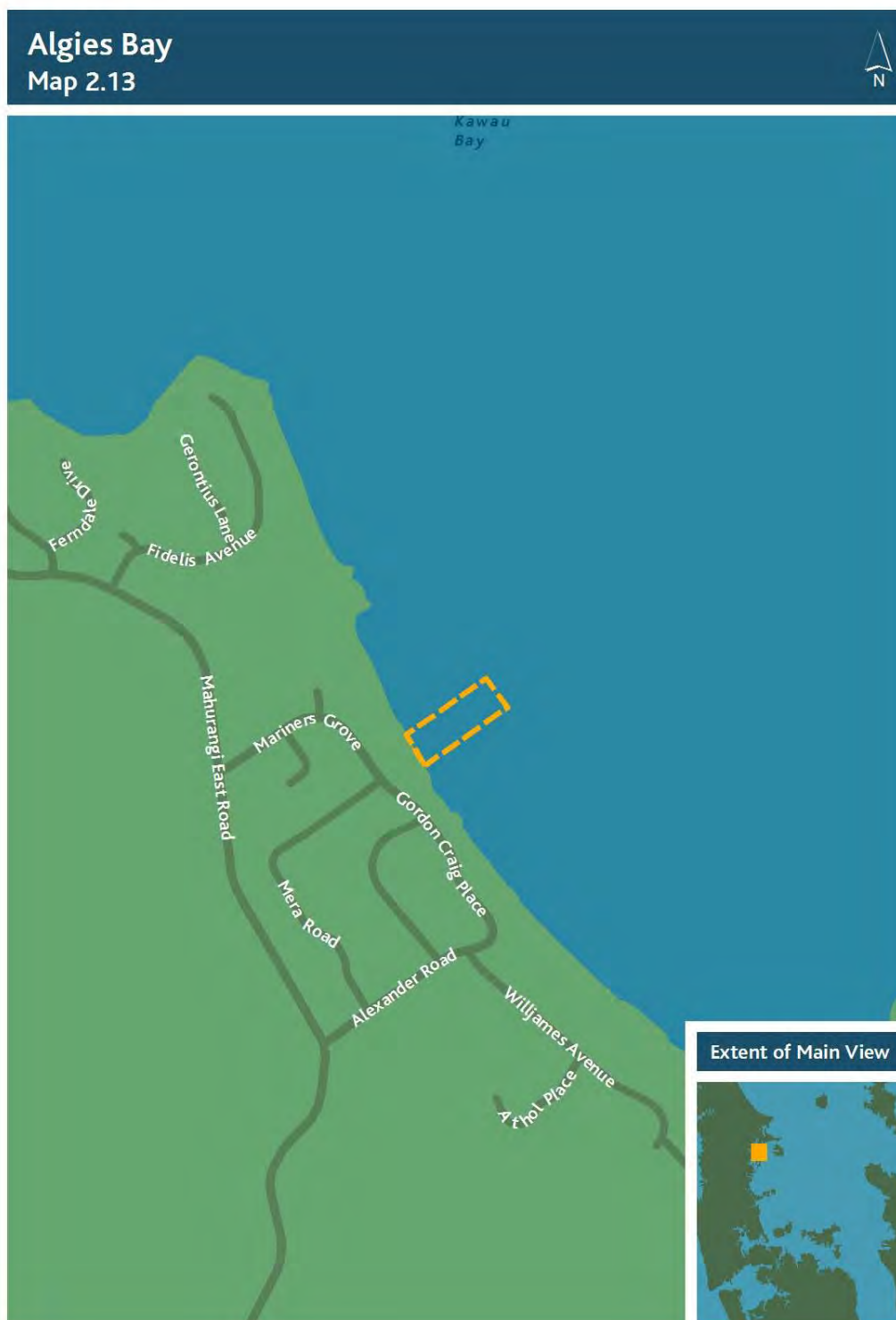
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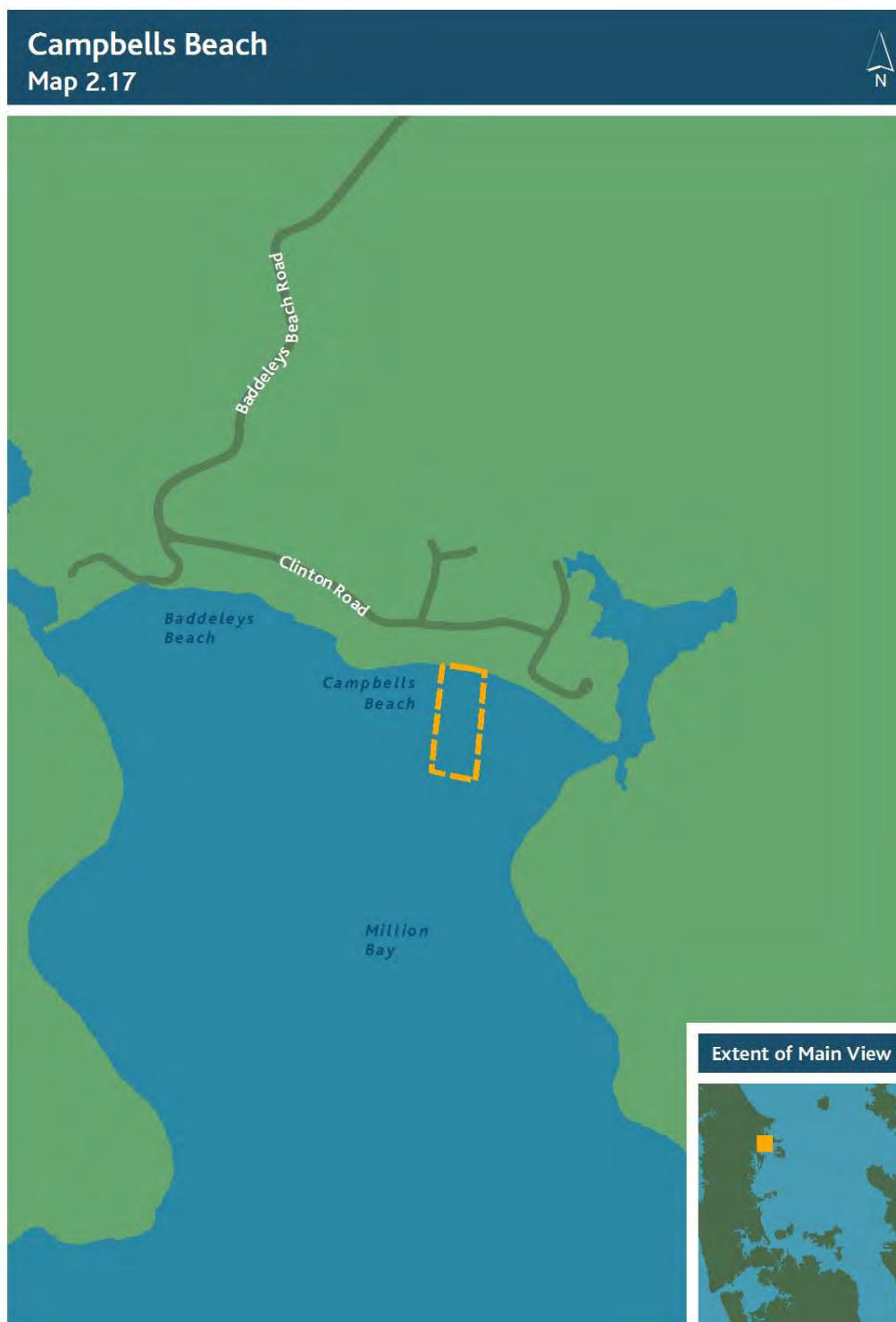
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Access lane reserved for the purpose of allowing power driven vessels and power driven vessels towing water-skiers, wake boards or sea biscuits to navigate from a beach or launching area.



Area reserved as prohibited anchorage area.



There are no markers in the sea area. The exact area is defined by the following Land Information New Zealand (LINZ) navigational charts:

- NZ 532 - Approaches to Auckland
- NZ 5322 - Auckland Harbour East
- NZ 5323 - Auckland Harbour West

Area reserved as prohibited anchorage area.



The prohibited anchorage area is that sea area in Matiatia Bay between the lines described as follows:

- (i) from the northern edge of the boat ramp located to the north of the old Matiatia Wharf to the headland (Mokemoke Point) on the northern side of the entrance to the bay;
- (ii) from the southern edge of the boat ramp located to the south of the new Matiatia Wharf to the headland (Te Whetumatarau Point), on the southern side of the entrance to the bay.

Area reserved as prohibited anchorage area.



There are no markers in the sea area. The exact area is defined by the following Land Information New Zealand (LINZ) navigational chart:  
NZ 5322 - Auckland Harbour East

Area reserved as prohibited anchorage area.



There are no markers in the sea area. The exact area is defined by the following Land Information New Zealand (LINZ) navigational chart:  
NZ 5323 - Auckland Harbour West

Area reserved as restricted anchorage area.



There are no markers in the sea area. The reserved anchorage area is that area of the Waitematā Harbour contained to the west of a line drawn from the eastern side of North Head to the point where Orākei Wharf joins from the land at Takaparawha Point and east of a line drawn along the west side of the Auckland Harbour Bridge.

Area reserved as explosives safety zone.

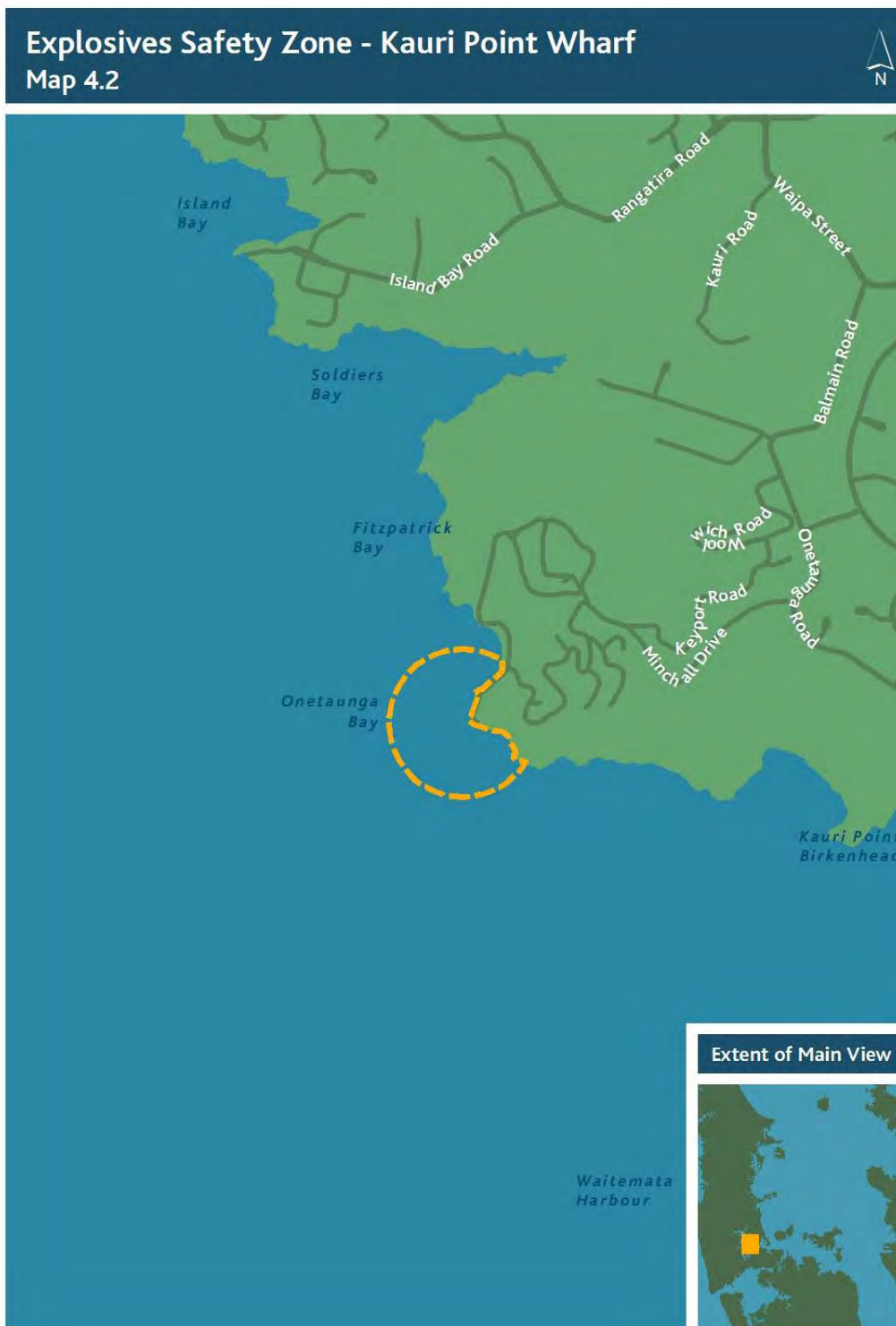


There are no markers in the sea area. The exact area is defined by the following Land Information New Zealand (LINZ) navigational chart:  
NZ 5324 - Tamaki Strait & Approaches including Waiheke Island

Area reserved as explosives safety zone.



Area reserved as explosives safety zone.

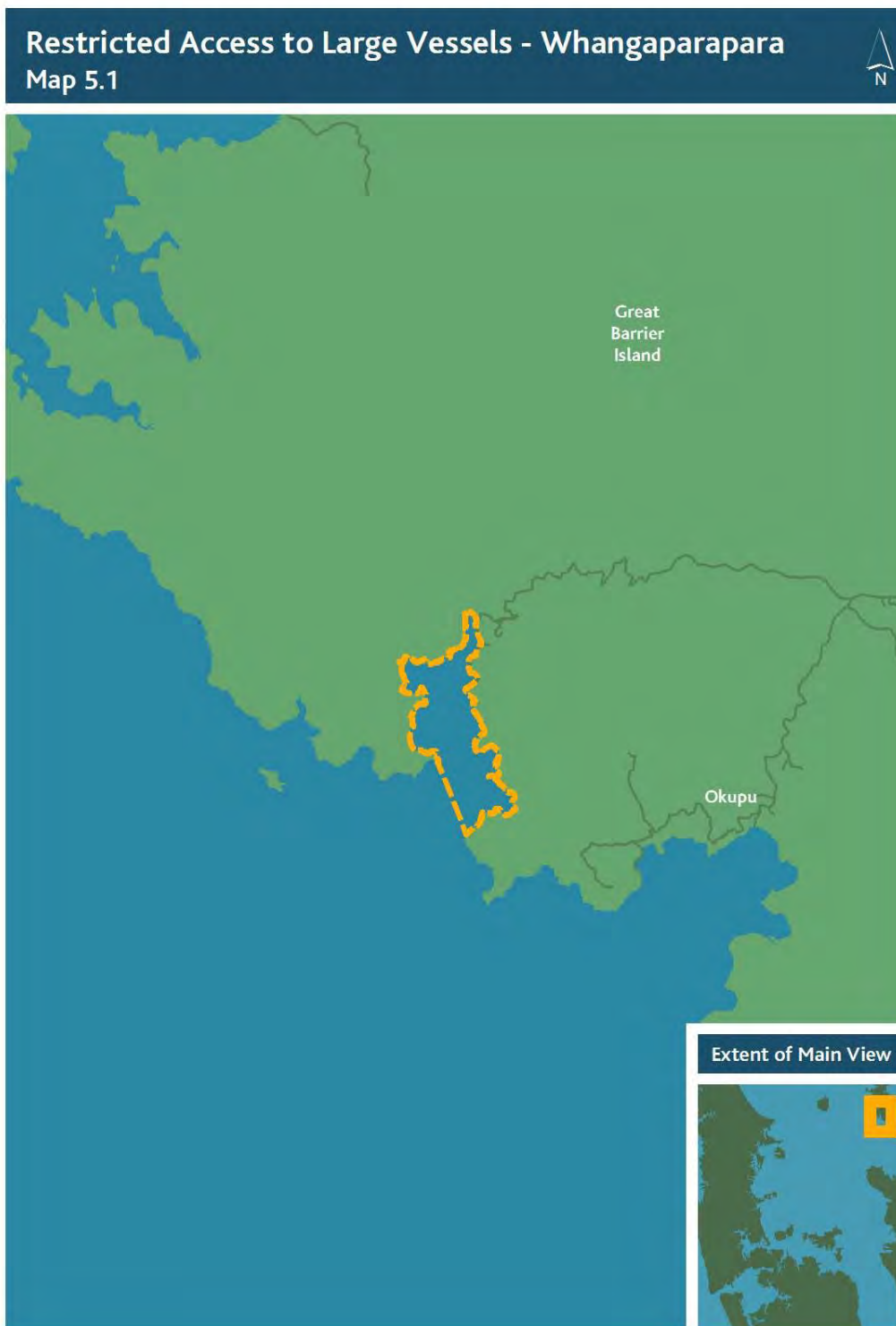


There are no markers in the sea area. The exact area is defined by the following Land Information New Zealand (LINZ) navigational chart:  
NZ 5323 - Auckland Harbour West

Area reserved as restricted access to large vessels.



Area reserved as restricted access to large vessels.



Area reserved as restricted access to large vessels.



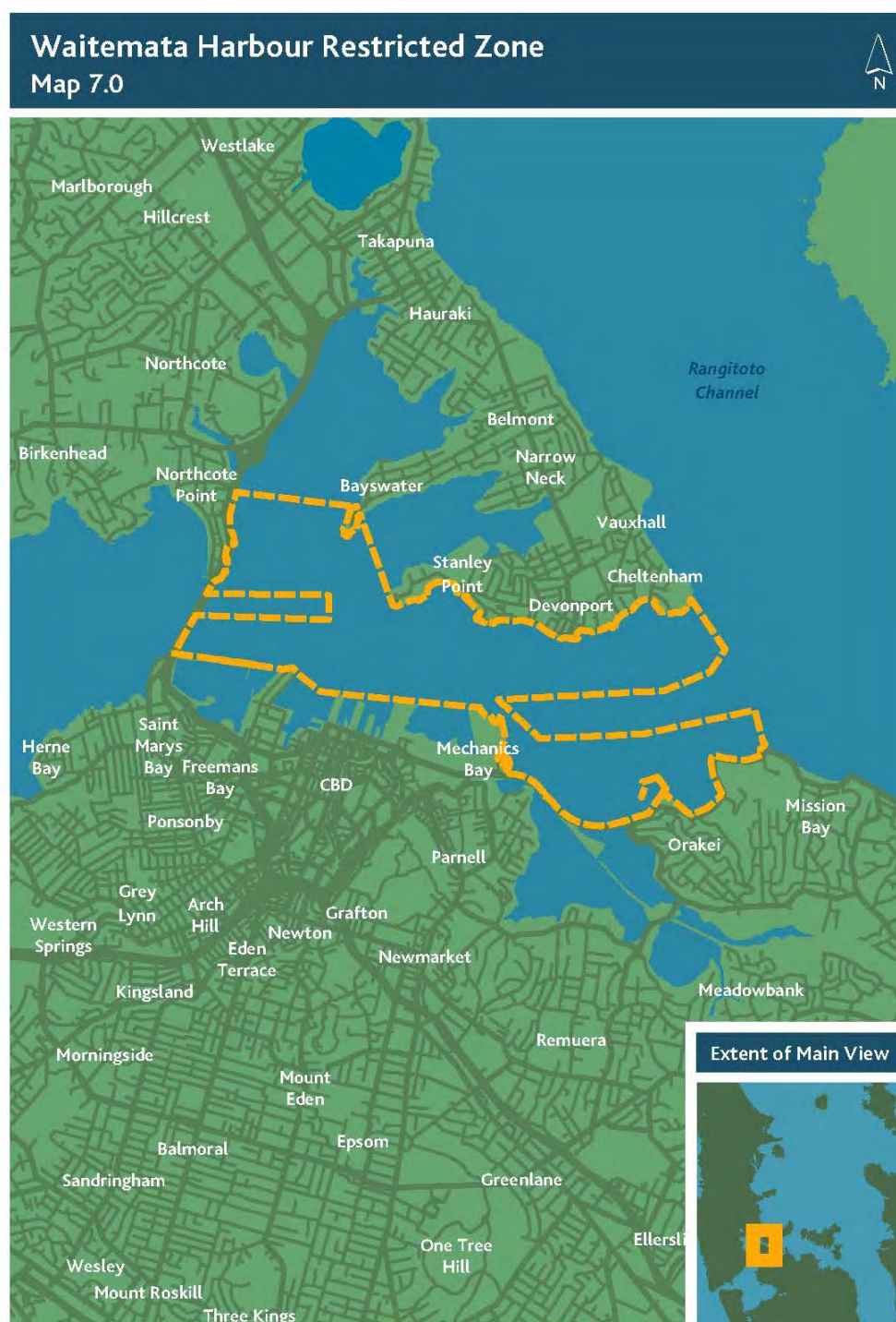
**Area reserved as restricted access to large vessels.**



Area reserved as the Kawau Island Restricted Speed Area.



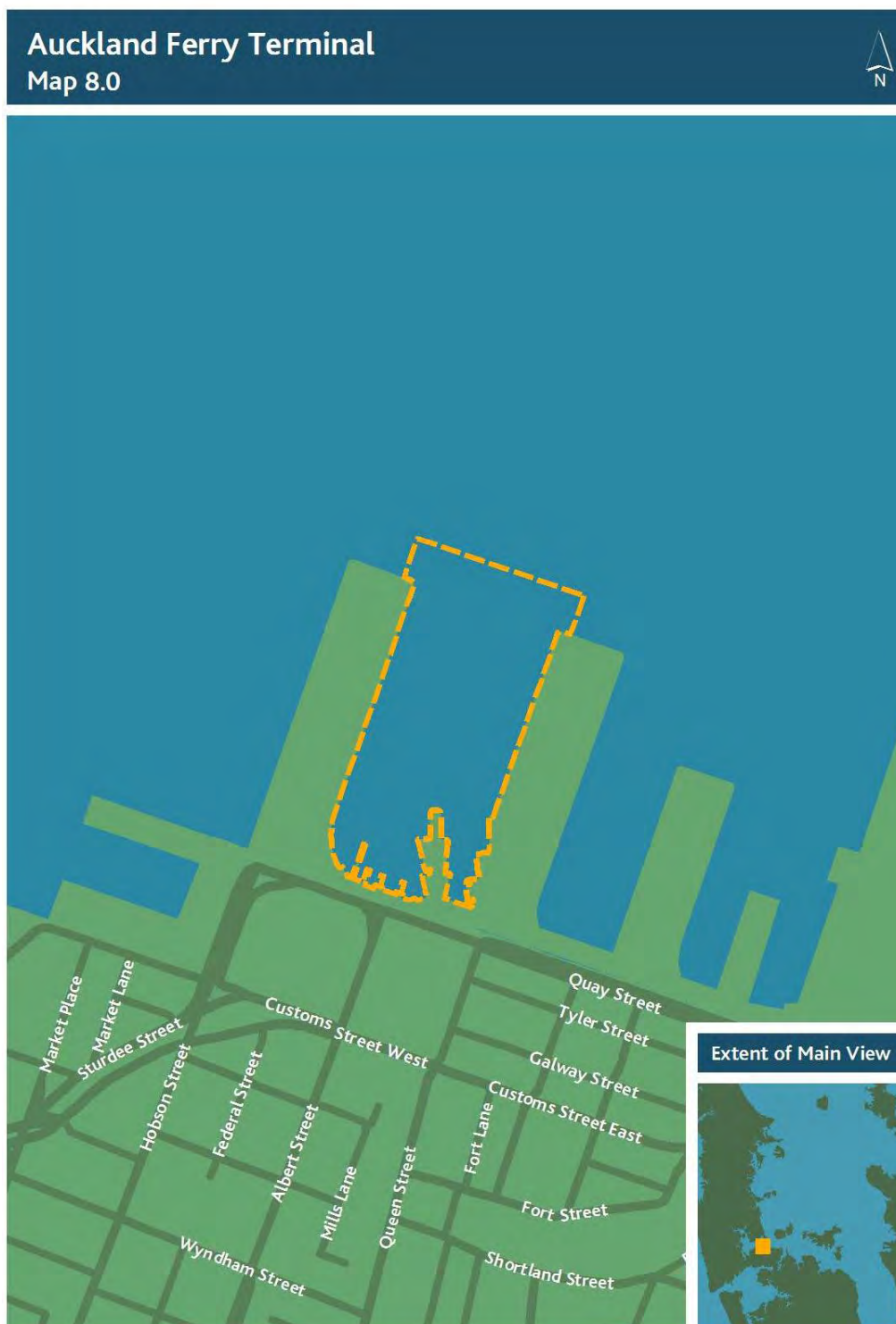
# Area reserved as the Waitematā Harbour Restricted Zone (12 knot speed zone).



There are no markers in the sea area. The exact area is defined by the following coordinates:

| Lat. South   | Long. East                                             | Lat. South   | Long. East                                                     |
|--------------|--------------------------------------------------------|--------------|----------------------------------------------------------------|
| 1) 36.49.69  | 174.48.83 (North Head) to,                             | 11) 36.50.10 | 174.44.57 (Harbour Bridge South) to;                           |
| 2) 36.49.92  | 174.49.11 (No.17 Light by) to,                         | 12) 36.49.81 | 174.44.76 (Harbour Bridge Pillar) to;                          |
| 3) 36.50.01  | 174.49.19 (Mid Channel) to,                            | 13) 36.49.92 | 174.46.00 (off Bayswater Marina) to,                           |
| 4) 36.50.16  | 174.48.99 (Anchorage B) to,                            | 14) 36.49.72 | 174.46.00 (off Bayswater Marina) to,                           |
| 5) 36.50.29  | 174.48.61 (Anchorage 7) to,                            | 15) 36.49.70 | 174.44.85 (Harbour Bridge North) then along the shoreline) to, |
| 6) 36.50.37  | 174.47.25 (off Ferguson) to,                           | 16) 36.49.63 | 174.44.90 (Harbour Bridge North) then along the shoreline to,  |
| 7) 36.50.62  | 174.47.60 (Resolution Yellow By) to,                   | 17) 36.49.03 | 174.45.06 (Cable Marker) to,                                   |
| 8) 36.50.58  | 174.48.44 (No.20 Light By) to,                         | 18) 36.49.11 | 174.46.06 (Bayswater Cable Marker) to,                         |
| 9) 36.50.41  | 174.49.36 (Bastion Yellow By) to,                      | 19) 36.49.76 | 174.46.37 (Stanley Point) then along the shoreline to,         |
| 10) 36.50.63 | 174.49.44 (Bastion Point) then along the shoreline to, | 20) 36.49.69 | 174.48.83 (North Head).                                        |

Area reserved as the Auckland Ferry Terminal.



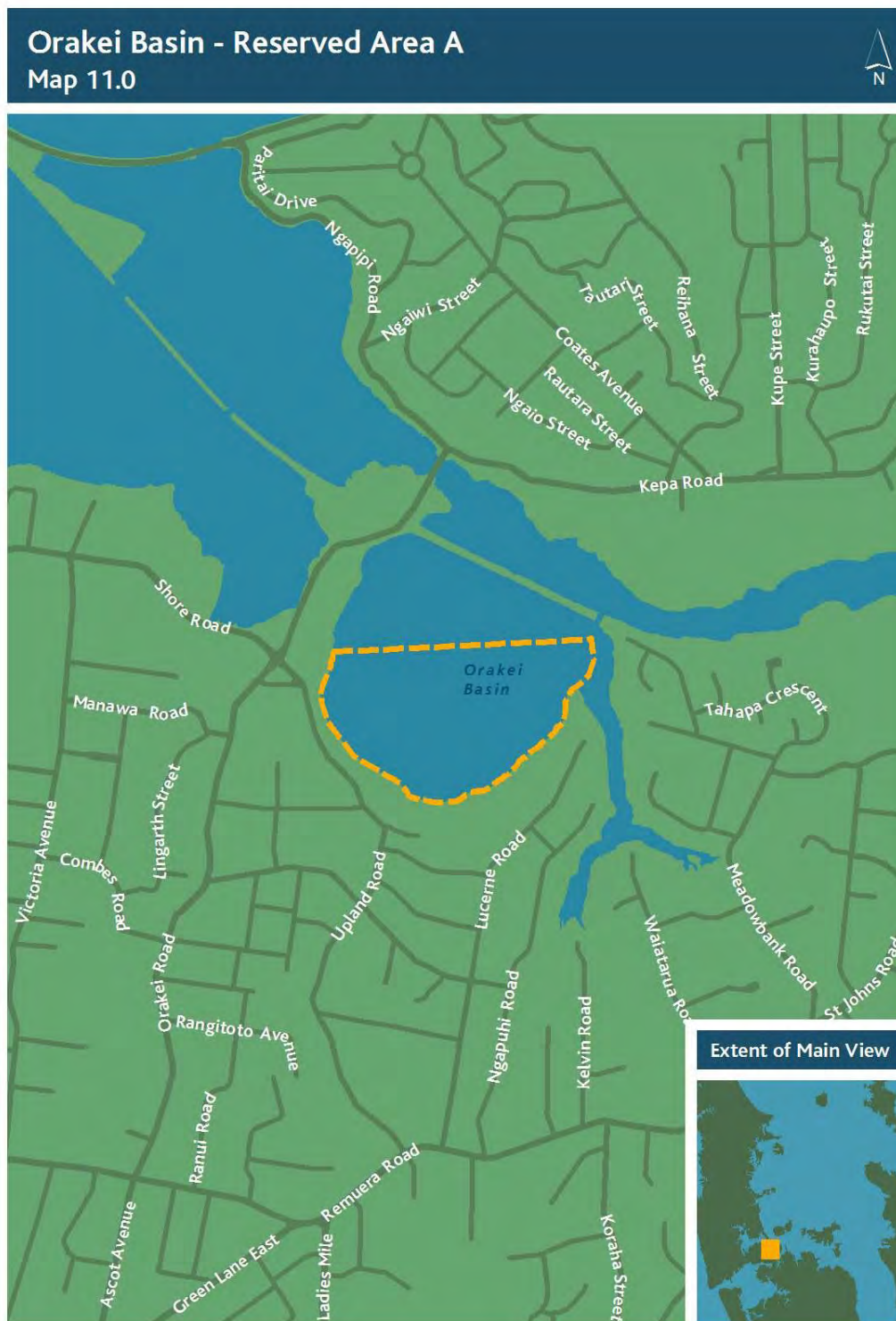
Area reserved as the Motuihe Channel Fast Passenger Ferry Lane.



Area reserved as the Harbour Bridge Precautionary Area.



### Area reserved for use of the Orākei Basin



Motorised vessels engaged in water-skiing activities have priority in Reserved Area A. Non-powered vessels may enter into Reserved Area A when it is not being used by motorised vessels towing water skiers.

Area reserved for use of the Orākei Basin.



Non-powered vessels have priority in Reserved Area B. Motorised vessels engaged in water-skiing activities may enter Reserved Area B when it is not being used by non-motorised vessels.