



# **Draft Maritime Facilities Bylaw**

## **Statement of Proposal - October 2015**

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## Introduction

The Thames-Coromandel District Council (the Council) is proposing a new Maritime Facilities Bylaw and is seeking your views.

This Statement of Proposal has been prepared in accordance with the Act.

This statement includes:

- the reasons for the proposal
- an overview of the proposed bylaw
- a copy of the draft bylaw

### Reason for the Proposal

Following feedback from the community and staff, Council considers that a new maritime facilities bylaw should be adopted in time for the 2015/2016 summer period.

The proposed Bylaw aligns with the Community Governance model developed by Council since 2012 and further enhanced through the 2015-2025 Long Term Plan.

### Purpose of the bylaw

The purpose of this bylaw is to provide for the orderly management and control of maritime facilities that are owned or under the control of the Thames-Coromandel District Council for the benefit and enjoyment of all users of those facilities.

### Scope

This bylaw applies to all maritime facilities owned or controlled by the Thames-Coromandel District Council.

## Background

The Council is not required by legislation to have a maritime facilities bylaw, but is able to make one in accordance with the Local Government Act 2002 (the Act) which states that the Council has general bylaw making powers to;

- protect the public from nuisance,
- protect, promote and maintain public health and safety, and
- minimise the potential for offensive behaviour in public places.

Other sections of the Act relate to this proposed bylaw, in particular section 146 which covers provisions to manage, and regulate to protect from, damage, misuse or loss, and section 150 which provides the ability to prescribe fees and charges in bylaws.

In developing the proposed maritime facilities bylaw the Council has considered the alignment of the operational management and governance arrangements developed through the community governance and empowerment approach that has been promoted by Council since 2012. The most recent changes were made through the development of the 2015-2015 Long Term Plan while trying to retain as much consistency across the district to reduce confusing messages to the public and users.

## Overview of the Maritime Facilities Bylaw

The Maritime Facilities Bylaw will provide a set of rules for use of Council owned or operated wharves and other coastal structures in the Thames-Coromandel district. These are proposed to cover:

- Cleaning of maritime facilities
- Animals on maritime facilities
- Hazardous substances
- Objectionable odours
- Loading and unloading of goods
- Tying up alongside maritime facilities
- Vehicles on maritime facilities
- Powers of the Maritime Facilities Manager
- Closure of maritime facilities
- Obstruction of maritime facilities and berth operations
- Commercial zones
- Charging of fees
- Removal of goods
- Enforcement, offences, penalties under the bylaw, and
- Dispensation to act outside the bylaw

The intention of the bylaw relating to each of these rules is to protect public health and safety through managing interaction between a variety of users on our maritime facilities, to provide for the appropriate maintenance of these facilities, and to recover reasonable costs either for use of the facilities or damage to them.

## How to provide your feedback

Submission forms are available through Council's online consultation portal (<http://haveyoursay-tcdc.objective.com>) and at Council offices in Coromandel, Thames, Whitianga, and Whangamata.

The submission period opens on 9 October 2015 and closes at 4pm on 9 November 2015.

When completing a submission form, please tell us:

- what decision you would like made
- the reasons for your submission, and
- whether you wish to be heard by Council

If you complete a paper submission form, you can:

- post it to Thames-Coromandel District Council, Private Bag, Thames
- email it to [customer.services@tcdc.govt.nz](mailto:customer.services@tcdc.govt.nz)
- fax it to (07) 868 0234
- deliver it to one of the Council offices in Thames, Coromandel, Whitianga or Whangamata

If you have any queries regarding this proposal or about how to make a submission please contact Customer Services on 07 868 0200 or email [customer.services@tcdc.govt.nz](mailto:customer.services@tcdc.govt.nz)

Please note that only those who make a submission on the proposed amendments to the bylaw and request the opportunity to be heard by Council, will have the opportunity to present a summary of their submission to a panel of elected representatives. If you wish to be heard, please make sure that you state this in your submission and include a daytime phone number and email address to ensure that council can reach you easily.

## **Timeframes**

**Submissions must be received by 4:00pm on 9 November 2015.**

We will then invite submitters wishing to be heard to present their submissions at a Hearing being held in Thames on 19 November 2015.

Submitters wishing to be heard will be contacted to confirm the approximate time of the hearing of their submission.

The Council will then consider all the submissions made, make some decisions on the proposed amendments to the proposed Maritime Facilities Bylaw, and then consider the Maritime Facilities Bylaw for adoption on 9 December 2015.

## **New Zealand Bill of Rights Act 1990 and reasonableness**

Council considers that the proposed bylaw is not inconsistent with the New Zealand Bill of Rights Act 1990, and does not unlawfully interfere with the rights of people to move around the Thames-Coromandel District. The restrictions on maritime facilities are reasonable and in the interests of protecting public places and visitors.

|   |                           |  |
|---|---------------------------|--|
|  | <b>Title</b>              | <b>Draft Maritime Facilities Bylaw</b> |
|   | <b>Date Made</b>          | <b>Operative Date</b>                  |
|   | [To be determined]        | [To be determined]                     |
|   | <b>Last Reviewed Date</b> | <b>Next Review Date</b>                |
|   | N/A                       | Within 5 years of date made            |

## 1. TITLE

- 1.1. This bylaw is the Thames-Coromandel District Council Maritime Facilities Bylaw.

## 2. SCOPE AND PURPOSE

- 2.1. The Local Government Act 2002 provides for the making of bylaws to protect the public from nuisance, and to protect, promote and maintain public health and safety.
- 2.2. Council provides for the orderly management and control of maritime facilities that are owned or under the control of the Thames-Coromandel District Council for the benefit and enjoyment of all users of those facilities. Council provides for the recovery of reasonable costs associated with maritime facilities in support of this purpose.
- 2.3. This bylaw applies to all maritime facilities owned or controlled by the Thames-Coromandel District Council.

## 3. COMMENCEMENT

- 3.1. This bylaw comes into force on [to be determined].

## 4. REVIEW

- 4.1. Review of this bylaw will be undertaken in accordance with section 158 of the Local Government Act 2002.

## 5. DEFINITIONS

- 5.1. In this bylaw, unless the context requires otherwise:

**AUTHORISED OFFICER** means any person appointed by the Council to act on its behalf and with its authority in respect of any of the matters referred to in this bylaw.

**BERTH** means the place at a maritime facility where a vessel is tethered anchored or moored.

**COUNCIL** means the Thames-Coromandel District Council and includes any officer of the Council to whom Council has lawfully delegated any of its powers and functions.

**GOODS** include wares and merchandise of every description, chattels, livestock and all other articles.

**HAZARDOUS SUBSTANCE** means any substance:

(a) with one or more of the following intrinsic properties:

(i) explosiveness

(ii) flammability

(iii) a capacity to oxidise

(iv) corrosiveness

(v) toxicity (including chronic toxicity)

(vi) ecotoxicity, with or without bioaccumulation

or

(b) which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of the properties specified in paragraph (a) of this definition.

**MARITIME FACILITIES MANAGER** means the person having charge of any maritime facility and includes any authorised officer appointed by Council to act on its behalf with its authority in respect of any matters referred to in this bylaw.

**MARITIME FACILITY** means any building, equipment, device whether man made permanent or temporary fixed to or forming part of land and includes slipways, jetties, wharves, boat ramps, maintenance grids, quays, piers, pontoons, jetties and reclamations providing loading/unloading facilities in, on, or from which passengers or goods may be taken on board of or loaded from vessels whether or not these are above or below Mean Low Water Springs.

**MASTER** means any person having command or charge of a vessel, but does not include a pilot who is piloting the vessel.

**OWNER** includes, -

(a) in relation to a vessel, the agent of the owner and also a charterer, and

(b) in relation to any dock, wharf, quay, or slipway, includes a lessee of the dock, wharf, quay or slipway.

**VESSEL** has the same meaning as ship in the Maritime Transport Act 1994.

## **6. MARITIME FACILITY**

- 6.1. No maritime facility may be permanently or temporarily erected on any Council land that adjoins the foreshore, seabed, or the bed of any lake or river without the written authorisation of Council.

## **7. VESSELS COMING ALONGSIDE MARITIME FACILITIES**

- 7.1. The master of any vessel coming alongside any maritime facility shall be responsible for the proper and safe berthing of that vessel and the master and owner of the vessel shall be responsible for any damage done to any maritime facility in connection with that vessel.
- 7.2. The Council may repair any such damage and charge the cost of doing so against the master or owner of the vessel doing the damage, and the Council may recover that cost from the master or owner by action in the appropriate court.

## **8. CLEANING MARITIME FACILITIES**

- 8.1. Before any vessel is removed from any maritime facility, the Master must thoroughly clean all dirt and rubbish from the area of the maritime facility occupied by that vessel. The dirt and rubbish shall be disposed of in the manner directed by any authorised officer. In the event of the Master of any vessel failing to comply with such direction, the Council may clean the maritime facility and recover the costs from the Master or owner of the vessel or both of them.

## **9. ANIMALS ON MARITIME FACILITIES**

- 9.1. No person shall permit animals to remain on any maritime facility for a time longer than necessary for loading or unloading the same from a vessel.

## **10. HAZARDOUS SUBSTANCES ON MARITIME FACILITIES**

- 10.1. No person shall bring any hazardous substances on any maritime facility without the prior approval of the Maritime Facilities Manager.
- 10.2. Every person who proposes to bring any hazardous substances on any maritime facility shall, if required by the Maritime Facilities Manager, complete an application in the prescribed form for the approval of the Maritime Facilities Manager before doing so.
- 10.3. The provisions of clause 24.1 shall apply to any hazardous substances brought onto any maritime facility in contravention of this clause.

- 10.4. The owner or consignee, (or their agents) of any hazardous substances landed on any maritime facility shall be responsible for removing such substances from the maritime facility immediately on being landed. The owner, consignee and their agents shall be jointly responsible for any damage or loss that may be caused as the result of any accident involving hazardous substances. Such liability shall be in addition to any other penalty which may be prescribed for such accident.

## **11. OBJECTIONABLE ODOURS**

- 11.1. No activity shall be undertaken on any maritime facility or vessel alongside any maritime facility which results in an objectionable odour. In determining whether or not an odour has an objectionable effect Council will assess the situation taking into account the:
- a. frequency
  - b. intensity
  - c. duration
  - d. nature
  - e. location
- of the odour.
- 11.2. If as a result of the assessment Council determines that an odour has an objectionable effect it may give written notice to the owner and/or Master of any vessel or to any person undertaking the activity creating the odour requiring the cessation or modification of that activity. The failure to comply with the terms of any such notice shall be an offence under this bylaw.

## **12. GOODS LANDED ON MARITIME FACILITIES**

- 12.1. The security of all goods landed or placed on any maritime facility is the responsibility of the consignor or consignee. Council has no liability or responsibility in respect of any such goods.

## **13. TYING UP AND LYING ALONGSIDE**

- 13.1. The Maritime Facilities Manager may regulate the duration of stay of any vessel at any maritime facility. The master of any vessel requiring to berth at any maritime facility shall obey the instructions of the Council or any authorised person, as to where that vessel is to be berthed and for what period of time it may remain berthed.

- 13.2. No vessel shall remain berthed at any maritime facility longer than is necessary to load or discharge passengers or goods.
- 13.3. Notwithstanding clauses 13.1 and 13.2, no vessel shall remain berthed at any maritime facility for more than 30 minutes unless the prior permission of the Council or any authorised person has been obtained and the prescribed fee has been paid.
- 13.4. Any master required by the Council or any authorised person to move any vessel from any maritime facility must do so immediately.

#### **14. VEHICLES ON MARITIME FACILITIES**

- 14.1. No person shall drive, park or store any vehicle on a maritime facility except with the permission of the Maritime Facilities Manager. Any vehicle that is driven, parked or stored on a maritime facility without the permission of the Maritime Facilities Manager may be removed. The owner of the vehicle shall be liable for the costs of removal.
- 14.2. No person shall move any vehicle on any maritime facility at a speed exceeding 5km per hour.
- 14.3. No person shall in any way obstruct or impede traffic on any maritime facility
- 14.4. No person shall park a vehicle on any maritime facility other than in accordance with instructions of the Council or any authorised person.

#### **15. POWERS OF MARITIME FACILITIES MANAGER**

- 15.1. Every person when on a maritime facility whether employed on said maritime facility or not, shall comply with the orders and directions of the Maritime Facilities Manager as to the use and occupation of the maritime facility, and if required by the Maritime Facilities Manager so to do shall immediately leave said maritime facility.
- 15.2. No person is to jump or dive off any maritime facility.

#### **16. CLOSURE OF MARITIME FACILITIES AND REMOVAL OF VESSELS**

- 16.1. To regulate the efficient operation of maritime facilities and if necessary to provide for the loading or unloading of any cargo which may be hazardous or dangerous or not compatible with any other cargo to be loaded or unloaded on or adjacent to the maritime facility, the Maritime Facilities Manager may:
  - (a) Close any maritime facility or any part of any maritime facility to any vessel or type of vessel or to any cargo or type of cargo for such time as may reasonably be required.
  - (b) Order any vessel to be removed from any berth alongside any maritime facility to any other maritime facility, whenever such removal in the opinion of the Maritime

Facilities Manager is reasonably necessary for the general accommodation of shipping.

- (c) Order the removal from a maritime facility of any vessel having on board cargo or other matter which in the reasonable opinion of the Maritime Facilities Manager is or may be injurious to health or offensive or dangerous or hazardous in any respect.

## **17. OBSTRUCTION OF MARITIME FACILITIES AND BERTH OPERATIONS**

- 17.1. No person shall fish from a maritime facility in the path of a vessel approaching or leaving a berth on the maritime facility.

## **18. COMMERCIAL ZONES**

- 18.1. The Council may from time to time by resolution set aside any area of a maritime facility as a commercial zone and such a zone shall be marked by signposts. No person shall enter any commercial zone without the permission of the Maritime Facilities Manager.

## **19. FEES**

- 19.1. The Council may from time to time prescribe fees by resolution to be publicly notified payable for the use of a maritime facility.

## **20. BERTHAGE AND MOORING FEES**

- 20.1. The Master, owner or their agent of every vessel berthing at any maritime facility either directly to the maritime facility or outside any vessel or vessels berthed against the maritime facility shall be jointly responsible for and shall pay to the Council such fees as determined by the Council from time to time by resolution.

## **21. HIRE VESSEL FEES**

- 21.1. The Master or owner or their agent of any vessel plying for hire or reward or carrying passengers for hire or reward and using a maritime facility shall make application to Council on the prescribed form prior to commencing service.
- 21.2. The Council may grant a licence or permit to operate on conditions considered appropriate by Council which may include a requirement to pay to the Council such fees as are determined by the Council from time to time by resolution. Such fees may be calculated on a per passenger basis or a per vessel basis or on such other basis as is determined by the Council.

- 21.3. For the purpose of ascertaining whether clause 21.2 has been or is being complied with by any Master or owner or their agent of any vessel which carried passengers, any authorised officer may require that person to produce for inspection any books or records in that person's possession or over which that person has control and the authorised officer may take extracts from or make copies of any books or records so produced.
- 21.4. All passenger fees shall be paid in accordance with Council requirements.

## **22. FREIGHT FEES**

- 22.1. Every person who uses any maritime facility for landing or shipping any goods shall pay to the Council such freight fees as are determined by the Council from time to time by resolution.
- 22.2. The Master, owner or their agent of every vessel carrying freight in respect of which any fees are payable to Council shall not later than the 7th day of every month furnish to the Council a certified copy of the freight lists of the cargo carried by that vessel on each trip with proper accounts of weights and measurements of all goods landed on and shipped from any maritime facility during the previous month and at such time shall pay to the Council maritime facility fees as are determined by the Council in respect of all goods carried.

## **23. STORAGE FEES**

- 23.1. Every person whose goods remain stored in or on any maritime facility shall pay to the Council such fees as are determined by the Council from time to time by resolution.

## **24. REMOVAL OF GOODS**

- 24.1. Where any cargo or goods remain on any maritime facility without the consent of the Maritime Facilities Manager or where any cargo or goods hinder the loading or unloading of any vessel or are impediments to the approaches to the maritime facility, the Council may remove the cargo or goods at the expense of the owner and the cost of removal shall be payable to the Council by the owner before taking receipt of the cargo or goods.

## **25. ENFORCEMENT, OFFENCES, PENALTIES**

- 25.1. Every person commits an offence against this bylaw who:
- (a) Fails to comply with any order or direction by a Maritime Facilities Manager or authorised officer.

- (b) If acting in breach of this bylaw and being required by a Maritime Facilities Manager or authorised officer to give his or her name and address fails to do so.
- (c) Commits any act or omits to do anything in contravention of this bylaw.

25.2. The Council may use its powers under the Local Government Act 2002 to enforce this bylaw.

25.3. Every person who commits an offence under this bylaw is liable to the penalties stipulated in the Local Government Act 2002.

## **26. DISPENSATION**

26.1. Where in the reasonable opinion of Council full compliance with any provision of this bylaw would unnecessarily injuriously affect any person or unnecessarily be attended with loss or inconvenience to any person without any corresponding benefits to the community, the Council may on the application of such person dispense with full compliance with the provisions of this bylaw.

26.2. Where there is a signed management agreement with Council for any maritime facility the clauses contained in the management agreement shall apply. Should there be any conflict in the clauses contained in this part of the bylaw and the clauses contained within the agreement then the clauses in the agreement will take precedence.

**Signed on Behalf of Thames-Coromandel District Council by;**

\_\_\_\_\_

District Mayor

\_\_\_\_\_

Date

\_\_\_\_\_

Chief Executive

\_\_\_\_\_

Date

## ***Table of Amendments***

*This table does not form part of the bylaw.*

| <b><i>Action</i></b> | <b><i>Description</i></b> | <b><i>Date of Council Resolution</i></b> | <b><i>Effective Date</i></b> |
|----------------------|---------------------------|--|------------------------------|
|                      |                           |  |                              |
|                      |                           |  |                              |