

MEMORANDUM

Date: 2 September 2026

To: Southland Navigation Safety Bylaw Hearing Panel

From: Michelle Mehlhopt, Wynn Williams

Response to Hearing Panel Minute 2

1. The Hearing Panel for the Environment Southland Navigation Safety Bylaw issued Minute 2 on 24 August 2026 requesting further legal advice on the following matters:

- (a) Wynn Williams previously advised that:

The Council can only include a speed uplift in the navigation bylaw for the purposes of ensuring maritime safety. If there is no maritime safety reason for the inclusion of the speed uplift area, there is not a basis for the Council to include the speed uplift in the draft Bylaw.

Can Wynn Williams expand on whether ensuring maritime safety needs to be the sole purpose of the speed uplift?

- (b) Does the speed uplift itself need to ensure maritime safety? Or does the speed uplift need to be considered together with the rest of the provisions of the Bylaw?
 - (c) Section 33M(2)(d)(ii) of the Maritime Transport Act 1994 states that a navigation bylaw may not be inconsistent with the Resource Management Act 1991. What is the relationship with this requirement and provisions in district plans and water conservations orders?
2. We address each of these matters in turn below.

Can Wynn Williams expand on whether ensuring maritime safety needs to be the sole purpose of the speed uplift?

3. Section 33M of the Maritime Transport Act 1994 (**MTA**) empowers a regional council to make bylaws for its region “for the purposes of ensuring maritime safety”.¹ The phrase “for the purposes of” is purposive: it requires that ensuring maritime safety be a genuine purpose of the bylaw, and any provision contained within it. It does not, however, require that maritime safety be the sole purpose of the bylaw or of any particular provision.
4. A speed uplift may lawfully be included in the Bylaw where its inclusion serves other purposes, provided that ensuring maritime safety is a genuine purpose for its inclusion. A speed uplift cannot be included if there is no genuine maritime safety rationale for its inclusion.
5. In addition to the purpose requirements of section 33M, the Bylaw must also respond to a perceived issue identified by the Council.
6. Section 155 of the Local Government Act requires a local authority to, before commencing the process for making a bylaw, determine whether a bylaw is the most appropriate way of addressing the perceived problem.
7. The perceived problem identified by the Council in the Statement of Proposal for the Bylaw and for further consultation on the draft Bylaw is that:

The Council is responsible for ensuring maritime and navigation safety across Murihiku Southland. The region’s many navigable lakes, rivers, and extensive coastline support a variety of activities and attract a wide range of recreational and commercial users. A problem may exist if there are no clear regulations or statements around activities that affect maritime

¹ Section 33M lists a range of matters that may be regulated to achieve that purpose.

and navigation safety, and incompatible uses of the same areas may cause danger to water users.

8. The Council has determined that a bylaw is the most appropriate way of addressing the perceived problem.
9. Having done this, the Council must, before making the bylaw, determine whether the proposed bylaw:²
 - (a) Is the most appropriate form of bylaw; and
 - (b) Gives rise to any implications under the New Zealand Bill of Rights Act 1990 (**NZBORA**).
10. No bylaw may be made which is inconsistent with (relevantly):
 - (a) the NZBORA;³
 - (b) regulations or rules made under the MTA;⁴ and
 - (c) the Resource Management Act (**RMA**).⁵

Does the speed uplift itself need to ensure maritime safety? Or does the speed uplift need to be considered together with the rest of the provisions of the Bylaw?

11. Any provision of the Bylaw should be considered together with the other provisions in the draft Bylaw (and the Maritime Rules), not in isolation.
12. Section 155 of the LGA requires the Council to determine, before commencing the bylaw-making process, whether a bylaw is the most appropriate way of addressing the perceived problem and, before making the bylaw, whether the proposed bylaw is the most appropriate form of bylaw. These assessments are directed at the Bylaw as a whole, not at individual provisions.
13. Similarly, section 33M(1) of the MTA empowers the Council to make bylaws “for the purposes of ensuring maritime safety”. The enabling power is conferred on the bylaw-making power function as a whole. Provided the Bylaw is made for the purposes of ensuring maritime safety, individual provisions within it (including any speed uplift) do not each need to independently ensure maritime safety in isolation.
14. As set out above, there must be a genuine maritime safety reason to include a speed uplift, but the speed uplift in isolation does not need to ensure maritime safety. Any speed uplift should be assessed in the context of the overall scheme of the Bylaw, and any relevant Maritime Rules, as there are other requirements and obligations that apply to vessel operators when operating above 5 knots within a speed uplifted area.
15. It would also be appropriate to consider any other conflicting uses/activities, safe access, or combinations of activities in the relevant areas. If any other factors mean that a speed uplift would increase maritime safety risks (for example in respect of other users), even when considered in combination with other provisions in the draft Bylaw and Maritime Rules, it may be open to the Council to consider that the speed uplift would not have a genuine maritime safety purpose.

Section 33M(2)(d)(ii) of the MTA states that a navigation bylaw may not be inconsistent with the RMA. What is the relationship with this requirement and provisions in district plans and water conservations orders?

16. Section 33M(2)(d)(ii) of the MTA provides that a navigation bylaw may not be inconsistent with the RMA. This means that a navigation bylaw cannot cut across or override the statutory framework established by the RMA. For example, a navigation bylaw cannot require a person

² LGA, s 155(2).

³ LGA, s 155(3).

⁴ MTA, s 33M(2)(d)(i).

⁵ MTA, s 33M(2)(d)(ii).

to act when that action is not permitted under the RMA. Likewise, a navigation bylaw cannot authorise a person to undertake an activity that is prohibited under the RMA or requires a resource consent which the person has not obtained. A person must still comply with all the requirements of the RMA and relevant planning documents and other instruments made under the RMA.

Water Conservation Orders

17. There are two Water Conservation Orders in Southland region:
 - (a) The Water Conservation (Mataura River) Order 1997 (**Mataura WCO**).
 - (b) Water Conservation (Oreti River) Order 2008 (**Oreti WCO**)
18. The Water Conservation (Mataura River) Order 1997 declares that the protected waters of the Mataura River and the Waikaia River and various other rivers, streams, and tributaries include outstanding fisheries and angling amenity features.⁶ The order includes various provisions to preserve and protect these features:
 - (a) The rates of flow in the Mataura and Waikaia Rivers must not be reduced, by the grant or exercise of water permits, below the minimum rate of flow specified.⁷
 - (b) A water permit or a discharge permit must not be granted under Part 6 of the RMA and a regional plan must not be made under Part 5 of the RMA in respect of any part of the protected waters if such a permit or plan would contravene the provisions of the order (subject to certain exceptions).⁸
 - (c) Prohibitions on granting permits to dam the protected waters.⁹
19. The Water Conservation (Oreti River) Order 2008 declares that the waters specified in Schedules 1 and 2 include or contribute to, to the extent identified in Schedule 2, the following outstanding characteristics, features, and values:¹⁰
 - (a) Habitat for brown trout
 - (b) Angling amenity
 - (c) Habitat for black-billed gulls
 - (d) Significance in accordance with tikanga Māori.
20. Because of these outstanding characteristics, features, and values, the waters specified in Schedule 1 are to be protected in accordance with the relevant conditions in clauses 7 to 9 as specified in Schedule 1.¹¹ Clauses 7 to 9 relate to the restriction on damming of waters, the requirement to maintain fish passage and the restriction on the alteration of water quality. Because of their contribution to outstanding characteristics and features identified, the waters specified in Schedule 2 are to be protected in accordance with clause 8 to the extent specified in those clauses and in Schedule 2.¹² Clause 8 provides that no water permit may be granted or rule included in a regional plan relating to the waters specified in Schedule 1 and item 1 of Schedule 2 authorising an activity that will adversely affect the passage of fish.
21. These restrictions in these WCOs apply to the grant of water permits, discharge permits or the inclusion of provisions in a regional plan. They do not impose restrictions on councils making a navigation bylaw.

⁶ Water Conservation (Mataura River) Order 1997, cl 3.

⁷ Water Conservation (Mataura River) Order 1997, cl 4.

⁸ Water Conservation (Mataura River) Order 1997, cl 5.

⁹ Water Conservation (Mataura River) Order 1997, cl 6.

¹⁰ Water Conservation (Oreti River) Order 2008, cl 4.

¹¹ Water Conservation (Oreti River) Order 2008, cl 5.

¹² Water Conservation (Oreti River) Order 2008, cl 6.

22. Section 217 of the RMA provides that where a water conservation order is operative, the relevant consent authority:
- (a) Shall not grant a water permit, coastal permit, or discharge permit if the grant of that permit would be contrary to any restriction or prohibition or any other provision of the order:
 - (b) Shall not grant a water permit, a coastal permit, or a discharge permit to discharge water or contaminants into water, unless the grant of any such permit or the combined effect of the grant of any such permit and of existing water permits and discharge permits and existing lawful discharges into the water or taking, use, damming, or diversion of the water is such that the provisions of the water conservation order can remain without change or variation:
 - (c) Shall, in granting any water permit, coastal permit, or discharge permit to discharge water or contaminants into water, impose such conditions as are necessary to ensure that the provisions of the water conservation order are maintained.
23. The requirements in section 217 apply to consent authorities when considering water permits, coastal permits or discharge permits. They do not apply to councils making bylaws.
24. Water conservation orders are relevant to the development of regional and district plans. Regional and district plans must not be inconsistent with water conservation orders.¹³

District plans

25. District plans are prepared by territorial authorities under the RMA and may contain provisions to control any actual or potential effects of activities in relation to the surface of water in rivers and lakes.¹⁴
26. The Southland District Plan and Gore District Plan contain rules regulating activities on the surface of water in rivers and lakes.
27. In the Southland District Plan, ASW-SW-R1(3) permits any non-commercial recreational activity or organised event that does not require the uplifting of speed restrictions.
28. ASW-SW-R1(4) provides that any non-commercial recreational activity or organised event, requiring speed restrictions to be uplifted is a permitted activity provided the following conditions are met:
- a. Is publicly notified no earlier than 14 days and no later than seven days prior to the activity or event taking place.
 - b. The notice advertising the event clearly identifies the date, time, duration and relevant sections of the waterbody affected.
 - c. There is a safety plan to ensure the safety of other users of that section of the waterbody.
 - d. No more than six organised jet boat racing events (days) per club on lakes and rivers in any one calendar year provided that:
 - i. it meets a noise limit of 95dB LAF, max measured at any point within the notional boundary of a property containing a dwelling;
 - ii. is not undertaken between 10.00pm and 07.00am;
 - iii. notice is given to Council at least five working days prior to the race being held.
29. Any surface water activities not provided for by ASW-SW-R1 or ASW-SW-R3 are restricted discretionary activities.
30. The note to ASW-SW-R1 states that:
- The Activities set out in ASW-SW-R1 must also comply with the Operative Southland Regional Council Navigation Safety Bylaws and the relevant Regional Plans in particular for structures in the beds of Lakes and Rivers. Land managed by the Department of Conservation must be

¹³ RMA, s 67(4)(a); 75(4)(a).

¹⁴ RMA, s 31(1)(e). Regional Councils have this function in respect of the coastal marine area.

consistent with the relevant conservation management strategy or plan and may require the appropriate authorisation.

31. Any person undertaking a non-commercial recreational activity or organised event that requires uplifting of speed restrictions must comply with both the requirements of the District Plan and the Bylaw.
32. In the Gore District Plan, ASW-R7 permits activities involving the use of any motorised or non-motorised watercraft on the Mataura River. Organised events by Jet Boat New Zealand incorporated, its member clubs or branches exceeding four motorised watercraft are limited to one event during the period 1 August to 30 September and one event each month in April and May.
33. It is noted that “the activity permitted by Rule ASW-R7.2 may also require approval under the Southland Regional Council”. This appears to be a typographical error and we consider that it was intended to refer to the Southland Regional Council Navigation Safety Bylaws consistent with the Overview to the Chapter which states that “the Southland Regional Council Navigation Safety Bylaws 2009 applies to the Gore District and is also administered by Environment Southland”.
34. Any activities on other water bodies is a discretionary activity, unless otherwise permitted or prohibited by the Plan. (ASW-R8).
35. Where these district plans (or others) require a person undertaking activities on the surface of water to comply with conditions, the draft Bylaw does not need to replicate or duplicate those conditions to ensure that it is not inconsistent with the District Plan. Rather, we recommend that a note be included in the Bylaw to advise users of the Bylaw that any relevant provisions of any RMA document, including district and regional plans in the Southland region, must also be complied with.
36. This ensures that users of the bylaw are made aware of their obligations under both statutory frameworks but recognises that a navigation bylaw and RMA have different purposes. A navigation bylaw has a maritime safety purpose under the MTA while the purpose of district and regional plans is to assist the councils to carry out their functions to achieve the promotion of the sustainable management of natural and physical resources.¹⁵ A person may be required to comply with both the navigation bylaw and a district plan, but compliance with one does not necessarily mean compliance with the other.
37. We note for completeness that the RMA is soon to be replaced by the Planning Bill and Natural Environment Bill. The Bills have been reported back from the Whole of the Committee Stage and are awaiting their Third Reading.
38. Schedule 11 of the Planning Bill replaces the reference to RMA in section 33M(2)(d)(ii) of the MTA with:
 - (ii) the Natural Environment Act 2025; or
 - (iia) the Planning Act 2025.
39. This amendment is to commence on the day that the Natural Environment Act and Planning Act receive royal assent. If the Acts receive royal assent before the Council makes its decision on the Bylaw, the Council will need to consider whether the Bylaw is inconsistent with the Natural Environment and Planning Acts. We have not considered the consistency of the draft Bylaw with the new legislation except to the extent that there would still be a requirement on persons to comply with the relevant district plans during the transition period under the new legislation. Any note included in the draft Bylaw could refer to RMA, Natural Environment Act or Planning Act documents.

¹⁵

RMA, s 63 and 72.

Conclusion

40. We trust that this advice assists. Please let us know if you have any questions.

Wynn Williams