



STAFF REPORT

TO: Environment & Planning Subcommittee

FROM: Graham Caradus, Harbourmaster

REFERENCE: RO 5001

SUBJECT: **STATEMENT OF PROPOSAL: DRAFT AMENDMENT TO TASMAN DISTRICT COUNCIL CONSOLIDATED BYLAW: CHAPTER 5: NAVIGATION SAFETY JANUARY 2005: INCLUDING CHANGES TO MANAGEMENT OF KAITERITERI BAY, LAKE ROTOITI AND PORT CHARGES - REPORT EP06/05/20 - Report Prepared for 30 May 2006 Meeting**

This statement of proposal is made for the purposes of Sections 83 and 86 of the Local Government Act 2002. It is divided into three parts as follows:

Part 1: *This part contains a "Summary of Information".*

Part 2: *This part contains details of the statutory processes that Council is obliged to give consideration to as well as the details and discussion of the substantial changes intended from the existing Navigation Safety Bylaw. This section also includes the recommendation to Councils E & P Committee to proceed with the next step in adopting the draft bylaw.*

Part 3: *This part contains the draft amended Tasman District Council Consolidated Bylaw, Chapter 5: Navigation Safety.*

Part 1: Summary of Information

This summary is made to fulfil the purposes of Sections 83(1)(a)(ii) and 89 of the Local Government Act 2002. The summary contains details of the Statement of Proposal to amend the existing Tasman District Council Consolidated Bylaw Chapter 5 Navigation Safety January 2005 (the bylaw).

- A. The majority of the existing bylaw remains unchanged. The amendments proposed to the Tasman District Council Consolidated Bylaw, Chapter 5: Navigation Safety are as follows:
- (i) A series of minor amendments are made to provide clarity or to correct editorial errors.
 - (ii) The management of activities on the water in Kaiteriteri Bay are amended with three possible options suggested. The recommended option is to move the water skiing area and change its status to a water ski access lane.
 - (iii) A reserved area for swimmers is established at Kerr Bay Lake Rotoiti.
 - (ii) Alteration of charges and fees relating to Port Tarakohe and Port Mapua are made.

- B. The full Statement of Proposal including the draft amended bylaw may be inspected during ordinary office hours at the following places:

Tasman District Council 189 Queen Street Richmond 7031	Tasman District Council 7 Hickmott Place Motueka
Tasman District Council 92 Fairfax Street Murchison	Tasman District Council 78 Commercial Street Takaka
District Library Queen Street Richmond	Motueka Library Pah Street Motueka
Takaka Memorial Library Commercial Street, Takaka	

- C. A copy of the full Statement of Proposal may be viewed or copied from the Tasman District Council web site at: www.tdc.govt.nz
- D. All submissions on the proposal are to be in writing and posted or delivered to The Administration Advisor, Tasman District Council, Private Bag 4, 189 Queen Street, Richmond 7031, or they may be emailed to info@tdc.govt.nz or faxed to 03 543 9524
- E. Submissions will be received at any time from 1 June 2006 up to 4.30 pm on 6 July 2006.

PART 2: Statutory Processes and Details of Draft Amendments.

A. Statutory Processes

The following are the various statutory processes that have received consideration:

- (a) Section 684B of the Local Government Act 1974 as amended by the Local Government Amendment Act (No 2) 1999.
- (b) The bylaw is not considered to be inconsistent with the New Zealand Bill of Rights Act 1990.

B. Details of Changes from the existing Bylaw:

1. PREAMBLE

The Tasman District Council Consolidated Bylaw Chapter 5 "Navigation Safety" (the Bylaw) came into force in January 2005. The bylaw has generally been effective and allowed for the administration of navigable waters within the district. Amendment is now sought to achieve a number of objectives, namely:

- 1.1 To make a number of editorial and administrative changes, the majority of which have been raised by the Parliamentary Counsel Office and referred to me by the Department of Internal Affairs (DIA). These issues need to be resolved to allow DIA to produce regulations in support of the infringement provisions contained in the Bylaw.

- 1.2 To re-examine options for the management of reserved areas on the water within Kaiteriteri Bay as there is currently significant conflict between users and heightened potential for accidents to occur. The recommended option moves and changes the status of the current water ski area.
- 1.3 To include a reserved area for swimmers at Kerr Bay, Lake Rotoiti.
- 1.4 Changes to charges and fees associated with Tarakohe Harbour

2. EDITORIAL AND ADMINISTRATIVE AMENDMENTS TO THE BYLAW

2.1 Amend Schedule 3 by deleting Clause number 2.3 and replacing it with 2.3.1. This has the effect of limiting the infringement offence provisions to those matters contained in clause 2.3.1 of the bylaw, removing the doubt that existed about who may be liable for offences committed under clause 2.3.2.

2.2 Amend Clause 2.4.4 by dividing the two sentences contained in that clause as follows:

2.4.4 No person may operate any vessel in circumstances where persons on board have been advised by the Harbourmaster or an Enforcement Officer or a member of the Police that the vessel is unseaworthy, except to comply with the directions of that official to proceed to a safe area.

2.4.5 The person in charge of the vessel described in clause 2.4.4. above, must, on request by the Harbourmaster or Enforcement Officer or member of the Police, navigate the vessel immediately by the shortest and safest route, to a safe area nominated by that official.

This has the effect of removing doubt in the associated offence provisions in schedule 3.

2.3 Amend Clause 2.7.4 by adding the words “to the owner.” After the word “notice”.

This has the effect of clarifying who is liable for the infringement notice.

2.4 Amend clause 2.9.2 by deleting the words “A report” and replacing them with the words “Full written details required”.

This removes doubt about which report must contain the specified detail.

2.5 Amend clause 2.9.3. by replacing “2.10.1” with “2.9.1”

This corrects an editorial error.

2.6 Amendments are made to provisions relating to speed upliftings on rivers. Clause 3.2.6.(b) (iii) is amended by replacing the words “inland waters” with the words “any river”.

Schedule 2 clause 6 is amended by appending “(b) (3)” to the number 3.2.6.

Schedule 2 clause 6 is further amended by removing the words “within 200 metres of shore” in each of sub clauses (a) to (f) inclusive.

These changes correct an editorial error, and also remove an inconsistency. It is now clear that the speed uplifting on rivers applies both within 200 metres of shore and within 50 metres of another vessel.

2.6 A new clause is added in the appropriate position after 3.9.4 as follows:

3.9.5 Activities in reserved areas within Kaiteriteri Bay.

- a) Within Kaiteriteri Bay areas are reserved for a variety of purposes and other areas are defined within which particular activities are prohibited. These various areas, activities and prohibited activities shall be as defined in the second schedule clause 5 (c).
- b) No person shall undertake any activity defined as prohibited by Second Schedule Clause 5 (c) in those areas in which they are prohibited by Clause 5 (c).

2.7 4.1.3 is deleted and replaced as follows:

4.1.3 *The owner of any marine structure used for mooring or berthing vessels shall have that marine structure inspected by a competent person to report on its condition and advise of any work necessary to ensure that it is structurally sound and fit for purpose. The frequency that such inspections shall be undertaken is specified in the first schedule of these bylaws*

4.1.4 *The owner of any marine structure for which any report required by 4.1.3 is completed shall provide the Harbourmaster with a written copy of such inspection report within 3 months of the date of the inspection.*

4.1.5 *Where any report required by 4.1.3 identifies that repair or other work is necessary to render the marine structure safe or suitable for its intended purpose, the owner shall provide the Harbourmaster with evidence that the necessary work has been completed within 6 months from the date of the inspection.*

The existing clauses 4.1.4 to 4.1.8 shall be renumbered 4.1.6 to 4.1.10 respectively. The Third Schedule is amended by removing the reference to 4.1.3 and replacing it with the numbers 4.1.4. In the Third Schedule, an additional offence provision is added under the “Description of Bylaw Provision” heading “Mooring and Structures” adding 4.1.3 in the appropriate position of the column “Bylaw Clause number” and the words “failure to have a structure inspected at the required frequency” inserted in the adjacent “Offence Description” column, and the notation “\$100” in the “Fine” column adjacent to that. The effect of these changes is to break up and clarify a clause that was considered to be ambiguous.

2.8 In “5.7 Cargo, wharves, stores and appliances” the first clause should be numbered 5.7.1.

This corrects an editorial error.

2.9 Clause 5.7.12 is amended by splitting paragraph “(a)” at the end of the first sentence and starting another paragraph numbered “(b)” with the second sentence

The effect of this change is to separate two different but related issues for clarity.

An associated offence provision is added under the heading “Conduct in reserved areas” as follows: **Bylaw Clause number:** 3.9.5 (b); **Offence Description:** activity undertaken within an area in which it is prohibited; **Fine:** \$100.
The effect of these amendments is to remove ambiguity from the existing provisions.

2.10 Schedule 3 is further amended by deleting the reference to “3.9 & the schedule 2 clause 5 (c) (iv)” and associated columns.

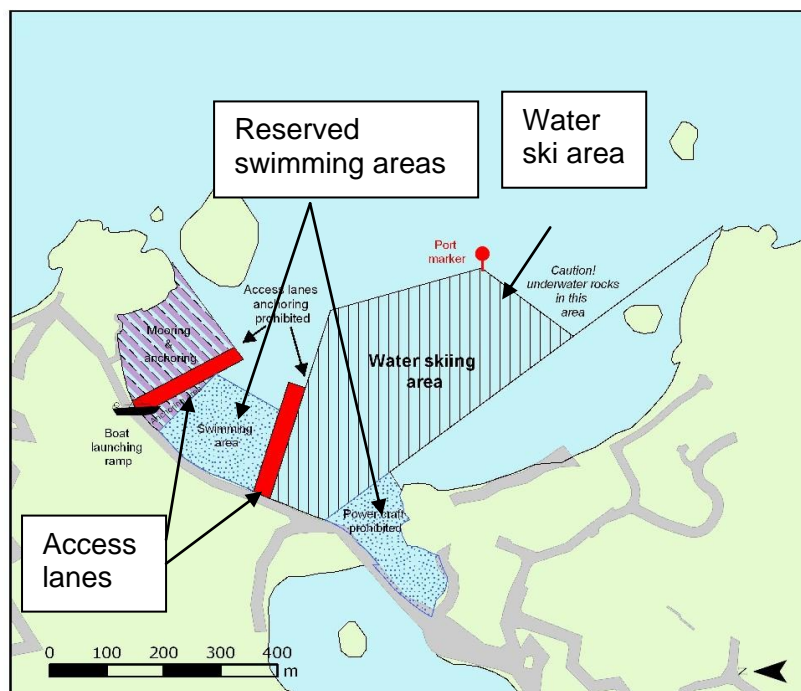
2.11 Schedule 3 is amended by replacing the number 5.6.2.(a) with 5.7.2 (a); 5.6.6 (a) with 5.7.6 (a); and 5.6.12 with 5.7.12. This corrects three editorial errors.

2.12 Schedule 3 is amended by altering the order of the bylaw clause numbers and there associated “Description of Bylaw Provision”, “Offence description”, and “Fine”, so that the bylaw clause numbers are in numerical order. This corrects editorial errors.

3. ALTERATION OF KAITERITERI BAY MARITIME MANAGEMENT

3.1 Background

The management of activities on the water in Kaiteriteri Bay has undergone change within the last four years. The initial and most significant change was made in 2002 and was driven by the need to have water skiers travelling in an anti-clockwise direction to comply with nationally established rules. Council effectively had no choice in making that change, but other minor changes flowed on in an effort to make best use and fairly share the very limited amount of beach that exists. The current layout of the Bay is as per the diagram above, which has been copied out of the Bylaw.



Map 7 - Kaiteriteri

Tom Rowling, long time resident of Kaiteriteri and Master Mariner has been involved with the management of Kaiteriteri Bay, both off and on the water, for decades. His input in the form of reports of observations and problems, and suggestions for improvement has formed a significant part of this section of this report. That input is gratefully acknowledged.

3.2 Problems with the Current Layout

The reality is that there has simply been insufficient room for all activities to be adequately accommodated. Increased pressure from commercial interests has put pressure on the available space on the beach, but changes in the type of water based activities have also had a significant effect on navigation safety. Issues have included (roughly in order of importance):

- This lagoon channel has become more popular with swimmers in the last decade. The reasons are suggested to be the nearby logging activities that have accelerated accretion and filling in of the estuary behind, reducing tidal flows, and the bacteriological quality of the water which has substantially improved as a result of the reticulation of the sewerage scheme. It is now an attractive location to swim, whereas in the past it was considered unsafe.
- The swimming area in the lagoon channel is immediately adjacent to the water ski area having no buffer zone at the interface. Problems are reported with swimmers, particularly small children drifting inadvertently or being swept on the outgoing tidal flow into the water ski area and being exposed to danger from fast moving boats and towed objects.
- The swimming area in the lagoon channel effectively dries out completely at low water. Swimmers move down the beach following the waters edge and migrate into the water ski area creating conflict and the obvious potential risk.
- Changing trends in water sports now see a significantly increased use of biscuits and other similar inflatable toys that are towed behind power boats (usually at considerable speed) in preference to water skiers. Towing biscuits and similar inflatable toys and water skiing are similar in some respects, but an important difference exists. Water skiers can control the direction of their movement and if necessary, stop very quickly by letting go of the tow rope. Towed biscuits and similar inflatable toys provide no such control, being tied directly to the towing vessel. They are totally within the control of the towing vessel. The direction they move in is somewhat random, sometimes following the path of the tow boat, and sometimes being flung out wildly by centrifugal force. While this action is determined by the towing boat's speed and direction, there is little doubt that a significant proportion of users of these inflatable toys have not mastered the necessary skills to control them adequately. A number of incidents have been reported over the last few years where swimmers and kayakers have been in accidents or experienced near miss incidents with uncontrolled towed water biscuits and similar inflatable toys. Nearly all such incidents have occurred close to the beach, where manoeuvring options are limited and the greatest crowding occurs.
- The water skiing area extends over the only area of steeply sloping beach at low water and creates conflict between water skiers and commercial vessels obliged by draft constraints to use the area.
- The narrow access lane between the swimming area and the water skiing area is so restrictive that some of the larger vessels experience difficulty in safely manoeuvring.

- In certain conditions when water skiing is impractical, such as very low tides or rough sea conditions, the swimming areas become very over crowded, and the waterskiing area remains empty and unable to be utilised.

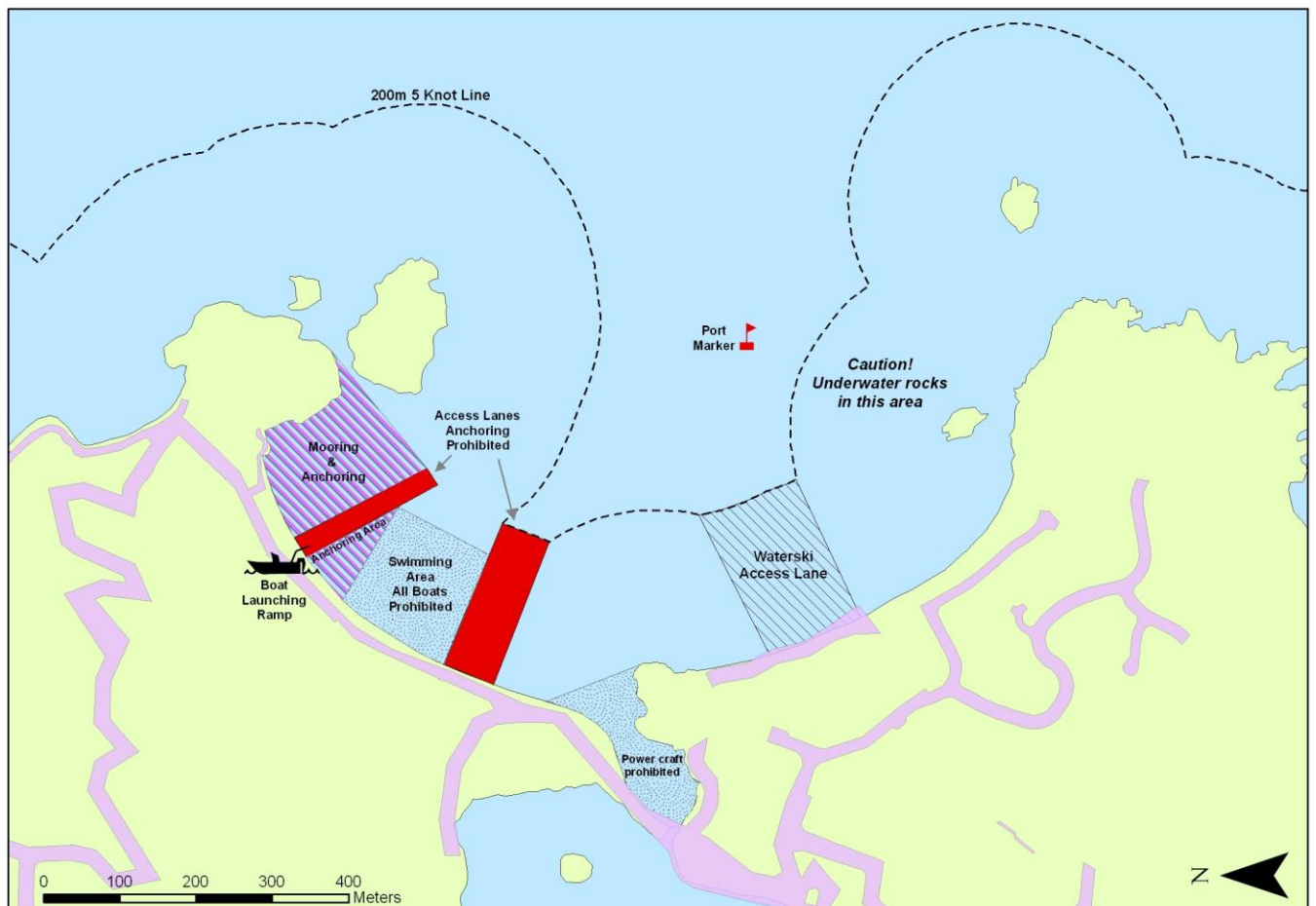
3.3 Options Available to Council

3.3.1 Make No Change to the Current Layout

Observations and reports of minor accidents that have occurred have established that considerable risk exists with the current layout of activities within the Bay. This may in part be due to the increasing use of towed inflatable toys, and to the dramatically increased popularity of the lagoon entrance as a swimming area. If no action is taken, it is inevitable that sooner or later a serious accident will occur. The “do nothing” option is therefore not considered to be viable as liability issues may exist for Council.

3.3.2 Alter the layout by moving the water ski area (Recommended option)

The suggested layout is as follows:



The most significant change in this suggested layout is the take off and landing point for the water ski area is moved off Kaiteriteri Beach to Little Kaiteriteri and changed to a water ski access lane. The water ski access lane overlaps with some of that area previously occupied by the water ski area so there should be little justification for objection. The effect of changing the designation to a water ski access lane will have a more dramatic effect on water skiers.

The basic difference between a water ski area and a water ski access lane is explained as follows.

Within a water ski area, boats and associated skiers may take off and land at the beach, undertake deep water starts and engage in circuits within the water ski area. Within a water ski access lane, only take offs and landings from shore, and deep water starts are permitted. Circuits cannot be undertaken within the access lane. Vessels and associated skiers are obliged to exit from the access lane over the 200 metre from shore line at the first opportunity and undertake water skiing activities in that undesignated area beyond 200 metres from shore. The access lane may then be re-entered with a water skier in tow only for the purpose of allowing the water skier to land on the beach. The tow boat must then exit the access lane at first opportunity.

In the existing water ski area, a boat and associated skier may take off from the beach, and either complete circuits within the water ski area, or exit out of the seaward side of the area. A significant amount of the water skiing activity undertaken currently occurs within the confines of the water ski area, and this limits the number of boats and water skiers that can simultaneously use the area. A practical limit for the current area appears to be 5 or 6 boats towing water skiers.

Advantages and disadvantages of the suggested change are as follows:

Advantages

- All activities with fast boats are moved well away from those areas reserved for more passive activities.
- With the exception of the two access lanes, swimmers can utilize the whole of Kaiteriteri Beach and choose to swim in an area where there are no vessels permitted or swim in an area in which vessels are limited to low speed.
- Room is provided for the access lane to be widened to overcome problems for larger vessels.
- The steeper sloping beach at the south end of Kaiteriteri is available for general use, and therefore may be used by commercial vessels when low tides make other areas of the beach too shallow for normal operations.
- The limits imposed on vessels occupying the water ski access lane will allow significantly more vessels to operate safely off the beach in water skiing activities.
- The point at which the water ski access lane meets the shore is in front of Tasman District Council reserve, and in part it would occupy some of the area already designated as a water ski area.

Disadvantages

- The take off and landing point established by the suggested water ski access lane is more exposed to wave action under sea breeze conditions and will reduce the occasions when water skiing can be undertaken. The same limitations may not be as much an issue for vessels towing inflatable toys such as biscuits.

- The direction towing vessels and water skiers will be forced to head when using the water skiing access lane will have them heading straight into the summertime prevailing sea breeze and associated wind generated waves on take off. This will reduce the area to morning and late evening use for normal summer weather conditions.
- Water skiing activities will be pushed further out to sea, effectively well out of any protection offered by Kaiteriteri Bay. This will further reduce the occasions that water skiing can be undertaken from this site, but again, inflatable toys may not be as affected.
- The spectator or entertainment value of being able to watch water skiers at close quarters is lost for holiday makers sitting on the beach.
- At high tide, for campers, some considerable effort may be involved in transporting families and associated paraphernalia involved in water skiing to the beach at Little Kaiteriteri compared to the present situation where it is only necessary to cross the road from the camping ground.
- Some congestion may occur near the port beacon on the rock near the middle of the Bay. However vessels should be keeping to the starboard (right hand) side of the channel and as no special status exists for vessels involved in water skiing at that point, the normal rules of the road at sea should prevail.
- The base of water skiing activity moves from Kaiteriteri Beach to Little Kaiteriteri and residents in that area may feel disadvantaged, although that is likely to be from an amenity perspective, rather than a navigation safety issue.
- The area remains sufficiently congested for the ban on PWC's (jet skis and similar) to be maintained in the water ski access lane. This would be something likely to be welcomed by most local residents, but opposed by PWC users.

3.3.3 Remove Water Skiing as an Activity In Kaiteriteri Bay

The suggested plan for Kaiteriteri above can be further modified by simply removing the water ski access lane. This would effectively prevent water skiing from occurring in Kaiteriteri and would be a significant departure from the historic use of the Bay. Water skiing, or more often nowadays, towing inflatable water toys remains a popular activity, and in the opinion of the writer, some provision for this activity needs to remain somewhere in the vicinity of Kaiteriteri.

The reality is that Kaiteriteri is not an ideal location for a water skiing because it is exposed to wave action from the predominant daytime sea breeze during the summer. However, it is very close to the camping ground and that is where a significant number of the users of the current water ski area are based over the summer holidays. Generally in settled summertime weather, opportunity exists in the early morning and latter part of the evening for water skiing to be enjoyed on reasonably flat water almost anywhere on the coastline from Riwaka to Separation Point, but only a very limited number of access lanes or water ski areas exist to allow the activity to take place off a beach. In general, water ski access lanes and areas are in short supply, in the view of many recreational boaters.

Consultation over the last few years has also demonstrated that placing new water ski access lanes or areas anywhere creates concern amongst nearby (and sometimes very distant) residents. Other possible locations have been canvassed prior to the first version of the Navigation Safety Bylaw and few options were considered to exist close to Kaiteriteri. The prospect of moving this water ski access lane to another suitable location somewhere near Kaiteriteri is not an obvious solution.

3.3.4 Recommended Option for Kaiteriteri

The option detailed in 3.3.2 is recommended. Justification is that the historically supported activity of water skiing is allowed to continue in Kaiteriteri Bay, but the risk associated from the current conflict with adjacent activities will be adequately managed. This option does not deviate significantly from the existing situation in that the proposed water ski access lane in part overlaps an area in which the current water ski area exists.

3.3.5 Further Changes necessary to the Bylaw

It will be necessary for changes to some sections of the Bylaw's to facilitate any change. If the recommended option is pursued, the following changes will be necessary:

3.3.5.1 Schedule 2 of the Bylaw is amended by deleting clause 5.(c) (i). and it replacing with:

- (i) **The speed limit is uplifted for the purpose of water skiing within the marked water ski access lane. This water ski access lane is reserved for year-round use and is marked with transit posts that may be supplemented with orange and black buoys during the summertime period of daylight saving.**

3.3.5.2 Schedule 2 of the Bylaw is further amended by deleting the word "area" in clause 5.(c) (iv). and replacing it with the words "access lane".

These changes allow for the difference between a water ski area and the recommended water ski access lane. If the option of removing the water ski area and not replacing it with any facility for water skiing is preferred, both clause 5 (c) (i) and clause 5 (c) (iv) would simply be removed.

4. PROVISION OF A RESERVED AREA FOR SWIMMING: LAKE ROTOITI

A resident from St Arnaud and staff from the Department of Conservation St Arnaud office have recommended that a reserved area be established for swimming from The beginning of December through to the end of Easter each year. The suggested area is



as shown in red and white lines on the aerial photograph below, and basically includes a 30 metre deep by 80 metre wide strip, close to shore and surrounding the existing swimming platform.

The reserved area would be identified on a sign post and marked for the duration of its existence each summer with three “reserved area” buoys.

4.1 Amendments required to the Bylaw to achieve the suggested changes are:

4.1.1 Schedule 2, clause 5 is amended by inserting after Subclause (i) the following:

“(j) Lake Rotoiti, located as per the attached diagram labelled “Map 16 – Lake Rotoiti, all vessels are prohibited in the area shown as swimming only. This reservation applies from the beginning of December through to the end of Easter Monday each year. The area may be marked with buoys.”

4.1.2 Map 16 – Lake Rotoiti is added in the appropriate position in Schedule 2. (Note, the map included above and in the draft Bylaw will be replaced by a simple diagram)

5. PORT TARAKOHE AND PORT MAPUA- PORT USER CHARGES

A letter from the Port Tarakohe Administration Manager is attached as “Appendix 1”. As well as the changes suggested in that letter, the same changes are recommended for Port Mapua to achieve consistency. All reference has been removed of wharves at Motueka, Collingwood, Waitapu, Westhaven and Milnethorpe as Council does not control these wharves now. All of the changes suggested in the above letter have been included in this draft, but the format of tables and layout have been rationalised.

5.1 Specifically, the changes to Schedule 1 are as follows:

5.1.1 In the table for “Berthage of a vessel at a Council Owned Wharf:” under the heading “Commercial Vessels” the words “marine fishing vessels” are deleted and replaced with the words “marine farming vessels”. This corrects an editorial error.

5.1.2 The tables headed “Berthage of a vessel at a Council Owned Wharf” are amended by deleting from both the tables for “Commercial Vessels” and “Private recreational craft” the rows for “Annual” and “Temporary”. The tables are amalgamated and the “casual (daily)” fee is increased to \$2.00 per metre.

5.1.3 The table headed “berthage of a vessel at a Council owned facility other than a wharf:” is amended by deleting the notation “12 metres” under the column “Minimum length charged” and replacing it with “16 metres”. This corrects an editorial error.

5.1.4 In the table headed “berthage of a vessel at a Council owned facility other than a wharf:” the two rows dealing with “Recreational visitor on mooring....” Are amended by having the words “or marina berth” inserted in both cases after the word “mooring”.

5.1.5 Clause “5 Fuel facilities” is amended by deleting the words “or Motueka”. This removes a reference about Motueka Wharf which Council no longer owns.

5.1.6 The table and “Notes” contained in “6.” are revoked and replaced with the following:

“6. Wharfage for Ports of Tarakohe and Mapua

Fish and Shellfish	Includes all marine animals	\$6.00 per tonne
*Mussel and Spat	Alternative Backbone levy	Subject to negotiation with Aquaculture farmers
*Ring Road	Alternate to Wharfage	
Other, including General Cargo	Rates for large bulk by negotiation	\$3.70 per tonne
Fuel (other than use of fixed facility)	Fuel Transfer only	1.0 cents per litre

* Note:

Backbone line and Ring Road levies are an alternative annual levy to payment of wharfage and will be subject to annual negotiation to ensure levies are comparable to relevant wharfage charges”

5.1.7 A new table is inserted as follows:

“7. Demurrage/ Storage* at Port Tarohe

Type of storage	Period for application of charges	Rate
Open Storage	Daily	\$1/m2
Fenced Storage	Daily	\$1.50/m2
Standard Rubbish Skip	Annual	\$500
	Monthly	\$25
20’ TEU Container	Annual	\$2000
	Monthly	\$200
40’ FEU Container	Annual	\$4000
	Monthly	\$400

***Notes**

No storage permitted on wharf structures unless specifically authorised. Demurrage/storage rates apply after 36 hrs of cargo/material arriving (allowance to be made for extenuating circumstances such as bad weather). Storage to be in assigned areas only. Bulk cargo in transit may have extended demurrage with approval of the Tarohe Harbour Manager.”

5.1.8 The remaining items in Schedule 1 are appropriately renumbered.

5.1.9 Clause 5.7.15 (a) is amended by inserting the words “and or demurrage/storage” after the word “wharfage”.

6. FURTHER EDITORIAL CHANGES

- 6.1 The necessary amendments are made to the index and to the layout of the Bylaw to accommodate all of the preceding changes.

7. RECOMMENDATION

THAT the Tasman District Council, proceeds with amendment of the current 'Tasman District Council Consolidated Bylaw Chapter 5 Navigation Safety January 2005', and that the draft amended bylaw contained in part 3 of this statement of proposal be adopted and be notified to commence the consultative procedure as set out in the Local Government Act 2002.

Graham Caradus
Harbourmaster

See part 3 (Draft Amended Tasman District Council Consolidated Bylaw Chapter 5 Navigation Safety January 2005) annexed.

Appendix 1: Letter from Port Tarkohe Administration Manager.