

MEMORANDUM

Date: 4 March 2026
To: Tanith Robb (Otago Regional Council)
From: Michelle Mehlhopt | Tegan Wadworth (Wynn Williams)

Draft Navigation Safety Bylaw 2026 – legal question on clause 12

1. The Otago Regional Council (**Council**) has received comments on the draft Navigation Safety Bylaw 2026 (**Bylaw**) which raise legal issues.
2. You have asked for our advice in respect of Clause 12 as proposed by the Bylaw which relates to the requirement for vessels to be identified.
3. Our detailed advice follows.

Comment on clause 12 of the Bylaw – Vessels to be identified

4. Maritime New Zealand has made a comment on clause 12 of the Bylaw which requires vessels to be identified by a name or number and sets out certain requirements for the identification. The requirements in clause 12 of the Bylaw as proposed relate to vessels which, in short, are defined as every description of ship, boat or craft used in navigation.¹
5. The comment states that section 33M(1)(j) of the Maritime Transport Act 1994 (**MTA**) only allows bylaws that “require the marking and identification of personal water craft” rather than “vessels”. The comment states that legal advice should be sought regarding whether clause 12 is within scope of bylaw making powers in section 33M of the MTA and that the marking requirements do not conflict with other legislation.

Executive summary

6. Clause 12 as proposed is within the scope of the Council’s bylaw making powers, provided there is reasoning that it is for the purpose of ensuring maritime safety. While section 33M(1)(j) of the MTA specifically enables the marking of personal water craft, the Council has other broader powers under sections 33M(1)(a) and (c) to regulate and control the use and management of vessels, and prevent the nuisances arising from the use of vessels, which clause 12 requirements would fall within.
7. Another requirement in relation to the Council’s power bylaw making powers is that navigation bylaws may not be inconsistent with regulations or rules made under the MTA. We have identified that there are a number of maritime and marine protection rules (**Rules**) that also prescribe requirements for specified marking of certain types of vessels.
8. While there are such rules, we do not consider that clause 12 as proposed is inconsistent with the rules. Clause 12(3) lists the various options of how to identify a name or number on a vessel. Specially one of the options under clause 12(3)(a) provides that the identifying name or number required by clause 12(1) shall be a registration or identification approved by and conforming to the requirements of Maritime New Zealand (MNZ) or an equivalent foreign authority (e.g. a MNZ number or vessel’s registered name). We consider this means that any name or number identification required by the bylaw must still be consistent with the marking requirements in the rules.
9. We have not identified any other legislation that results in a conflict with clause 12 of the Bylaw.
10. Our detailed advice follows.

¹ There are some exceptions to this set out in subclause (5).

Analysis of scope of section 33M

11. While section 33M(1)(j) of the MTA specifically provides that a bylaw may “require the marking and identification of personal water craft”, section 33M provides other broader matters that the Council may make bylaws for, including to:
 - (a) regulate and control the use or management of ships² (section 33M(1)(a)); and
 - (b) prevent nuisances arising from the use of ships and seaplanes (section 33M(1)(c)).
12. On the face of sections 33M(1)(a) and (c), the Council could include in a bylaw a requirement for vessels to be identified as a form of regulation of control of the use or management of ships, and/or in order to prevent nuisances arising from the use of vessels. This is also subject to the requirement that the proposed provisions are for the purpose of ensuring maritime safety.
13. On balance, we do not consider that section 33M(1)(j) requires the powers available in sections 33M(1)(a) and (c) to be read down such that the Council cannot require in a bylaw the identification or marking of vessels other than personal water craft.
14. Legislation is to be interpreted considering the text and in the light of its purpose and context.³ The MTA provides that the Council can make bylaws for the purpose of ensuring maritime safety. Section 33M then goes on to list the ways in which regional councils may do this by way of a bylaw. A purposive interpretation of section 33M supports the approach that sections 33M(1)(a) and (c) are not required to be read down, or limited, due to the specificity of section 33M(1)(j).
15. We have considered the alternative interpretation that because section 33M(1)(j) specifically provides for marking and identification of personal water craft, it could be inferred that Parliament’s intention was that such a requirement could only be imposed on personal water craft. If Parliament intended bylaws to be able to require marking and identification of all vessels, it would have specified this in section 33M.
16. However, in our view, provided there are reasons that the requirements in clause 12 are for the purpose of ensuring maritime safety, we consider identification of vessels is a form of regulating the use or management of ships under section 33M(1)(a). The Council may also include it to prevent nuisances arising from the use of ships (section 33M(1)(c)) if the Council was satisfied that the identification of vessels would assist with preventing nuisances. On the basis the Council has reasoning to satisfy these requirements, we consider clause 12 as proposed is within the scope of the Council’s bylaw making powers in section 33M.

Other MTA bylaw making requirements

17. Section 33M(2) of the MTA provides that navigation bylaws made under subsection (1) of section 33M may not be inconsistent with:
 - (a) regulations or rules made under the MTA (**Rules**);
 - (b) the Resource Management Act 1991 (**RMA**);
 - (c) the Lakes District Waterways Authority (Shotover River) Empowering Act 1985; or
 - (d) the Northland Regional Council and Far North District Council Vesting and Empowering Act 1992.

² Ship is defined in the MTA as “every description of boat or craft used in navigation, whether or not it has any means of propulsion; and includes—

- (a) a barge, lighter, or other like vessel;
- (b) a 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) a submarine or other submersible.”

³ Legislation Act 2019, section 10(1).

18. We have identified a number of Rules that set out requirements for the marking of various types of vessels with letters or numbers.⁴ We have not identified any rules that state vessels should not be marked, nor have we identified any regulations that include requirements for name or number identification of vessels.
19. While there are Rules that set out requirements for the marking of various types of vessels with letters or numbers, we do not consider that clause 12 as proposed is inconsistent with the rules. Clause 12(3) lists the various options of how to comply with the requirement to identify a name or number on a vessel. Specially one of the options under clause 12(3)(a) provides that the identifying name or number required by clause 12(1) shall be a registration or identification approved by and conforming to the requirements of Maritime New Zealand (MNZ) or an equivalent foreign authority (e.g. a MNZ number or vessel's registered name). We consider this means that any name or number identification required by the bylaw must still be consistent with the marking requirements in the rules.
20. We have also not identified any provisions in the the RMA or the other listed relevant legislation in section 33M(2) that relate to the identification of vessels.

Other relevant legislative considerations

21. In addition, section 151 of the Local Government Act 2002 (**LGA**), which applies to a bylaw made under the MTA, provides that:
 - (1) A bylaw may require anything to be done in any manner, or within any time, that is required by the local authority or by a person referred to in the bylaw.
22. We do not consider that proposed clause 12 conflicts with the LGA bylaw making provisions, and that the LGA enables a provision to be included in the Bylaw that requires identification of vessels.

Conclusion

23. We trust that our advice assists. Please do let us know if you have any further questions.

Wynn Williams

⁴ Maritime and marine protection rules, Rules 40A.4, 40B.34, 40C.4, 40E.69, 40F.4, and 40G.9.