

MEMORANDUM

Date: 4 March 2026

To: Steve Rushbrook (Otago Regional Council)

From: Michelle Mehlhopt | Tegan Wadworth (Wynn Williams)

Draft Navigation Safety Bylaw 2026 – legal question on clause 29

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 29 as proposed by the Bylaw which relates to written approvals.
3. Our detailed advice follows.

Clause 29 of the Bylaw – Written approvals

4. Clause 29 of the Bylaw states:
 - (1) Any person may make application to the Harbourmaster for written approval as allowed under this Bylaw. Applications must be:
 - (a) in a form and manner prescribed by the Harbourmaster; and
 - (b) be accompanied by any required fee.
 - (2) Written approval may be granted or refused and if granted subject to conditions.
 - (3) Any written approval required by this Bylaw shall be displayed as required by its terms and conditions and must be produced forthwith on request by the Harbourmaster, an Enforcement Officer or a Constable.
 - (4) No written approval required by this Bylaw shall have effect until any fee required for it has been paid.
5. A comment made on clause 29 of the Bylaw states:
 - (a) The way this provision is written appears to allow an approval to be granted subject to any conditions;
 - (b) That this is clarified, and that conditions can only be applied as allowed under the bylaw; and
 - (c) Leaving this clause written broadly may allow conditions to be included which are outside authority of the granter or inconsistent with Maritime Rules and the MTA.
6. We consider that the concerns raised in the comment on clause 29 could be resolved through changes to the drafting of clause 29. We have suggested two alternative drafting options to clause 29 below, with additions show in underlined text. Our preferred option is the first option as this requires the least change to other clauses in the bylaw.
7. The first option addresses the concerns raised in the comment on clause 29 as the additional wording requires that any conditions imposed on a written approval are to be related to the activity for which the written approval is granted, for the purposes of ensuring maritime safety and not inconsistent with the maritime rules or MTA. However, it does not go so far as to restrict conditions imposed on the written approval to considerations specified in the bylaw when the Harbourmaster is deciding to grant or refuse the written approval.
8. The second option would limit conditions imposed to the considerations relevant to the Harbourmaster's decision to grant or refuse the written approval. The issue with the second option is that it would require further changes to the Bylaw, specifically clauses 13 and 15.

9. Clause 13 relating to navigational aids and clause 15 relating to reserved areas and access lanes, do not list the relevant considerations for the Harbourmaster in deciding whether to grant or refuse a written approval. Therefore, if the Council amended clause 29 with the second option drafting, clauses 13 and 15 would need amending to list relevant considerations for the Harbourmaster when deciding to grant or refuse a written approval.
10. Clause 7 of the Bylaw, relating to the minimum age for operating a power-driven vessel, does list the relevant considerations when determining whether to grant or refuse a written approval. Therefore, the current drafting of clause 7 would not require amending if clause 29 was amended as per the second option.
11. While we do not consider it is necessary to make changes to clause 29(2) to address the concerns raised by Maritime New Zealand, as it would be unlawful for the Harbourmaster to impose conditions that are not relevant to the activity, or that are inconsistent with the Maritime Rules or MTA, the changes proposed are to make it abundantly clear this is the case. The Harbourmaster's functions are specified in the MTA, and they could not impose any condition that is outside the scope of the MTA.

Alternative drafting options for clause 29

12. First option:

(1) Any person may make application to the Harbourmaster for written approval as allowed under this Bylaw. Applications must be:

- (a) in a form and manner prescribed by the Harbourmaster; and
- (b) be accompanied by any required fee.

(2) Written approval may be granted or refused and if granted subject to conditions that are:

- (a) relevant to the activity for which written approval is sought;
- (b) for the purposes of ensuring maritime safety; and
- (c) not inconsistent with Maritime Rules or the Act.

(3) Any written approval required by this Bylaw shall be displayed as required by its terms and conditions and must be produced forthwith on request by the Harbourmaster, an Enforcement Officer or a Constable.

(4) No written approval required by this Bylaw shall have effect until any fee required for it has been paid.

13. Second option:

(1) Any person may make application to the Harbourmaster for written approval as allowed under this Bylaw. Applications must be:

- (a) in a form and manner prescribed by the Harbourmaster; and
- (b) be accompanied by any required fee.

(2) Written approval may be granted or refused and if granted subject to conditions that are relevant to the consideration(s) of whether to grant the written approval as specified in the relevant part of the Bylaw.

(3) Any written approval required by this Bylaw shall be displayed as required by its terms and conditions and must be produced forthwith on request by the Harbourmaster, an Enforcement Officer or a Constable.

(4) No written approval required by this Bylaw shall have effect until any fee required for it has been paid.

Conclusion

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

Wynn Williams