

City stays course on ports

Brushes aside challenges: by-law will be implemented if the council adopts it

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THE City of Cape Town received 15 public responses on its bid to pass a draft harbour by-law that would place the administration of the five small harbours which fall within the city's jurisdiction in its hands.

Because it considered the harbours at Gordon's Bay, Granger Bay, Hout Bay, Kalk Bay and Murray's Bay at Robben Island to be mismanaged by the Department of Public Works (DPW) and the Department of Agriculture, Forestry and Fisheries (DAFF), deputy mayor Ian Neilson said this had prompted the city to forge ahead with the draft by-law.

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Neilson said yesterday that DAFF had submitted "their comments as part of the public participation process" while DPW representatives met city officials "to provide their input on the draft by-law and discuss how best to work together on implementing it".

The city's public participation unit was compiling a record of the comments, which would be submitted to the city's legal advisers for evaluation.

"Once all internal processes are com-

pleted, the draft by-law will be submitted to council for adoption. If council adopts the by-law, it will be implemented and all relevant parties will be required to adhere to the law. The city assumes that all parties will uphold the law," said Neilson.

DAFF spokesperson Bomikazi Molapo said the department was "mandated by the Marine Living Resources Act (MLRA) and they would stand by this.

"Please note that in the case of conflicts with any other legislation, the MLRA prevails when it comes to management of marine resources and proclaimed fishing harbours.

"In this case the City of Cape Town's proposed by-laws for fishing harbours cannot supersede the MLRA," said Molapo. With

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this in mind, Neilson said the city had taken legal advice on the constitutionality of DAFF's assertion and the conclusion was that "the assertion of authority, and the regulations that purportedly authorise this, did not survive the repeal of the Sea Fisheries Act".

"Alternatively, even if they did, this would be unconstitutional as it encroaches on the constitutional mandate of municipalities to manage harbours, other than national ports, within their jurisdiction," said Neilson.

Late last night, the DPW had not yet responded to a request for comment.

A spokesperson had earlier yesterday indicated that the comment would be ready today.