
MARLBOROUGH ENVIRONMENT PLAN

Section 32 Report

Chapter 5: Allocation of Public Resources – Coastal

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Overview

Background

Section 32 of the Resource Management Act 1991 (RMA) requires that in the process of reviewing its regional policy statement and resource management plans, the Marlborough District Council (the Council) must prepare and publish an evaluation report. The three documents being reviewed are the Marlborough Regional Policy Statement (MRPS), the Marlborough Sounds Resource Management Plan (MSRMP) and the Wairau/Awatere Resource Management Plan (WARMP). Each resource management plan is a combined regional, coastal and district plan.

Section 32¹ of the RMA requires that:

- reviewed regional policy statements and plans must be examined for their appropriateness in achieving the purpose of the RMA;
- the benefits, costs and risks of new policies and rules on the community, the economy and the environment be clearly identified and assessed; and
- the written evaluation must be made available for public inspection.

The Section 32 process is intended to ensure that the objectives, policies and methods the Council decides to include in the new resource management framework have been well-tested against the sustainable management purpose of the RMA. The Section 32 evaluation report for the proposed Marlborough Environment Plan² (MEP) has been prepared on a topic basis, centred on the policy chapters of Volume 1 of the MEP. Individual reports have been prepared on the following:

Topic	Volume 1 Chapter of the MEP
Introduction to Section 32 evaluation reports	
Marlborough's tangata whenua iwi	3
Use of natural and physical resources	4
Allocation of public resources – freshwater allocation	5
Allocation of public resources – coastal allocation	5
Natural character	6
Landscape	7
Indigenous biodiversity	8
Public access and open space	9
Heritage resources	10
Natural hazards	11
Urban environments	12
Use of the coastal environment – subdivision, use and development activities in the coastal environment, recreational activities, fishing, residential activity, shipping activity and Lake Grassmere Salt Works	13
Use of the coastal environment – ports and marinas	13
Use of the coastal environment – coastal structures, reclamation and seabed disturbance	13
Use of the rural environment	14
Resource quality – water	15

¹ See Appendix A.

² The Marlborough Environment Plan is a combined regional policy statement, regional plan, regional coastal plan and district plan.

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Topic	Volume 1 Chapter of the MEP
Resource quality – air	15
Resource quality – soil	15
Waste	16
Transportation	17
Energy	18
Climate change	19

Chapters 1 and 2 of the MEP are not included within the Section 32 evaluation as they provide an introduction and background to the proposed document. These chapters do not include provisions to be evaluated in accordance with Section 32.

The Introduction report covers the scope of the review that the Council has undertaken, including consultation and the nature of information gathered, investigations and research undertaken and analysis that has occurred. An overview of the Council's statutory obligations, the relationship of the MEP with other plans and strategies and working with Marlborough's tangata whenua iwi is described. A set of guiding principles the Council has used in the development of the objectives, policies and methods for the MEP is provided. The Council acknowledges that the principles have no statutory basis and do not in themselves have specific objectives, policies or methods. However, they have been included as the philosophy and values underlying the content of the MEP and consequently help to inform the Section 32 evaluation.

This Section 32 evaluation report has been prepared on the provisions relating to the allocation of public resources in the coastal marine area. The policy provisions are included within Chapter 5 - Allocation of Public Resources (Volume 1 of the MEP), while the rules are included within the Coastal Marine, Port, Port Landing Area and Marina Zones set out in Volume 2 of the MEP. This evaluation report is set out as follows:

- Description of issue – this provides an overview of the resource management issue for the allocation of resources in the coastal marine area.
- Statutory obligations – the extent to which there are direct links with Section 6 or 7 matters and whether the provisions are directed or influenced by national policy statements or national environmental standards.
- Information and analysis – whether specific projects, investigations or other information have influenced the inclusion of provisions or other responses to dealing with resource management issues.
- Consultation – an overview of the extent and nature of specific consultation undertaken on the proposed provisions.
- Evaluation – an assessment of the provisions under the identified issue. Where appropriate, reference is made to supporting material that has helped to inform why a particular option has been chosen. In some cases the evaluation is undertaken on an individual provision, while in others groups of policies or methods have been assessed together.

In some parts of this evaluation report there are references to provisions within other chapters of the MEP. This is due to those provisions assisting in implementing the management framework for the subject matter of this report or vice versa. A reader should consider the evaluation for these other provisions where they are referred to in this report.

Key changes

The key change in the MEP for the allocation of public resources in the coastal marine area from the approach in the MRPS, WARMP and MSRMP is the introduction of a framework for imposing coastal occupancy charges. Currently both resource management plans include statements about the Council's intention to impose charges, but a number of factors meant a charging regime was not included within the plan rules. These factors are no longer present and so the Council has moved to include a charging regime in the MEP.

Summary of reasons for the proposed provisions

Section 32(1)(b)(iii) requires a summary of the reasons for deciding on the provisions included in the MEP. A summary of reasons for the provisions in relation to an issue concerning the allocation of public resources in the coastal marine area is set out below. The more detailed evaluation is set out in the remainder of this report.

- Policy has been included to recognise that the rights to be able to use the coastal marine area are not guaranteed in terms of Section 12 of the RMA; rather, use must be enabled by way of a rule in a plan or by resource consent.
- The default process for determining resource consent applications under the RMA is 'first in, first served'. Using this approach the Council has to date effectively managed the demand for space in the coastal marine area and it is intended to continue in this manner. There may also be certain circumstances under which a specific allocation mechanism is introduced to address a specific issue.
- Given the public's expectation of being able to use the coastal marine area, the Council considers that exclusive occupation should only be allowed where absolutely necessary.
- The Council has considered the private and public benefits associated with coastal occupations and has determined that where the private benefit is greater than the public benefit, charging for occupation of coastal space is justified.
- The RMA requires that the circumstances of when waivers for coastal occupation charges will be considered, either in whole or part, are to be set out in the MEP. The Council has identified a range of circumstances through policy that assist in determining the difference between the private benefits and the public benefits of occupying the coastal marine area.
- The method for determining charges must also be included in the MEP. The Council's approach has been to use the actual expenditure considered necessary to promote the sustainable management of the coastal marine area. Following on from this, the RMA requires that any money collected must be used to promote the sustainable management of the coastal marine area. The Council has identified through policy the range of matters on which the charges collected would be spent.

Description of issue

Chapter 5 of the MEP deals with the Council's role in managing resources that are in the public domain, including allocating or authorising the use of natural resources for private benefit, especially resources in the coastal marine area, from rivers and riverbeds and from aquifers. The allocation of resources in the coastal marine area is the subject of this evaluation report.

Allocation of resources in the coastal marine area has become a fundamental part of the overall fabric of Marlborough's social and economic wellbeing, with the operation of ports, marinas and the marine farming industry contributing significantly to the economy and all being reliant upon being able to occupy coastal space in order to develop. Other occupations include moorings, boatsheds, slipways and jetties, all of which contribute to the social wellbeing of residents and holidaymakers.

The provisions concerning the allocation of public resources in the coastal marine area are based on one resource management issue:

Issue 5J – People want to be able to use and develop the coastal marine area for private benefit.

- The Council's role in managing the resources of the coastal marine area follows from the way in which people's use of the coastal marine area is restricted under the RMA. The RMA prohibits the use or occupation of the coastal marine area unless allowed by resource consent or rules within a regional coastal plan. (The same situation does not apply to land uses above the mean high water springs mark, where people are allowed to use land unless a district plan rule states they cannot.)

- Management regimes for specific uses and activities in the coastal marine area are included within Chapter 13 - Use of the Coastal Environment (Volume 1 of the MEP). However, provisions in this part of the MEP deal with higher level concerns about how space in the coastal marine area should be allocated, the degree to which various occupations generate private versus public benefits and the circumstances in which a user should pay to use the space.
- The community has different expectations about the extent of rights able to be enjoyed in using public resources.
- The occupation of coastal marine area may effectively prevent other activities from occurring. At times there can also be conflict and competition for water space, where uses and activities are not necessarily compatible in the same area.
- Regardless of the type of activity or use proposed in the coastal marine area, in addition to consideration of other effects it is important that the impact on the public interest is considered, as the coastal marine area is a public resource.

Statutory obligations

The Council's role³ in the coastal marine area follows from the way in which people's use of the coastal marine area is restricted under the RMA. The Council allocates or allows the right to use public resources for private benefit. The Council also has the role of promoting the sustainable management of the natural and physical resources of the coastal marine area. This carries the onus of ensuring that these resources and the qualities associated with them remain available for the use, enjoyment and benefit of future generations.

Section 12 of the RMA places restrictions on the use of the coastal marine area. Generally this means that no person can use the coastal marine area in any way, unless it is allowed for by a rule in a regional coastal plan, by a resource consent or national environmental standard. The three main elements of Section 12 are:

- 12(1), which provides the ability to reclaim, drain, erect or build structures and to disturb, deposit, damage or destroy the foreshore and seabed and introduce plants;
- 12(2), which provides the ability for occupation of the common marine and coastal area; and
- 12(3), which provides the ability for people to carry out activities or use the coastal marine area.

Often uses or activities can involve one of these, such as recreational swimming where no physical structures or change to the foreshore, seabed or coastal water occurs and there is no occupation of an area. With some surface water activities, such as shipping, the use of resources is temporary or non-exclusive but there may be seabed and foreshore disturbance. In other cases, the use of resources requires a degree of use that results in the exclusion of other persons or activities, for example ports, marinas, marine farms and structures (jetties, swing moorings, boatsheds and sub-aqueous cables).

In allocating coastal space for various activities and uses, the Council must consider the purpose and principles of the RMA as set out in Sections 5-8. The Council must also consider the provisions of the New Zealand Coastal Policy Statement 2010 (NZCPS). Section 30(1)(d) of the RMA also sets out a range of statutory functions for the Council, which enable it to establish management frameworks in response to the identified issue.

³ Both the Council and the Minister of Conservation are responsible for managing Marlborough's coastal marine area. The Minister is responsible for approving regional coastal plans and administers the New Zealand Coastal Policy Statement 2010, which has an important influence on how Marlborough's coastal areas are managed.

The RMA enables regional councils to apply charges to activities occupying space within their coastal marine areas. These are referred to as coastal occupation charges. 'Occupation' means the use of space in the coastal marine area to the exclusion of other activities and people. The occupation does not exist on its own; it must be reasonably necessary for an associated activity.

Under Section 64A of the RMA a regional council must decide whether or not to introduce a coastal occupation charging regime in their area. If they do so, any charges collected must be used to promote the sustainable management of the coastal marine area. Even if councils decide not to have a charging regime, they must have a statement in their regional coastal plan that states this. The provisions of Section 64A also require that where a council decides to include a charging regime, the following matters must be included in a regional coastal plan:

- the circumstances when a coastal occupation charge will be imposed;
- the circumstances when the regional council will consider waiving (in whole or in part) a coastal occupation charge;
- the level of charges to be paid or the manner in which the charge will be determined; and
- the way in which the money received will be used.

Information and analysis

No specific investigation or monitoring activities were undertaken to inform the provisions for allocating space within the coastal marine area. A report was prepared for the Council on a draft proposal to introduce a coastal occupation charging regime in the MEP. This report and the subsequent feedback on the draft proposal are discussed in the consultation section of this report.

Consultation

Early consultation

In 2006, the first round of consultation was initially undertaken solely for the review of the MRPS and saw the distribution of a community flyer to all ratepayers advising of the review. The aim of this exercise was to find out the community's views on the most important resource management issues the Marlborough District (District) would face over the next ten years. Approximately 380 responses were received, including a range of comments on the use of the coastal marine area in the Marlborough Sounds. However, no specific comments were received on coastal occupation charges.

Following this initial consultation, a series of discussion papers were prepared by the Council and released for public feedback in late 2007. One of these is relevant to this Section 32 evaluation: *Discussion Paper 4: The Future of the Marlborough Sounds*. In total, 72 responses were received from individuals, iwi, industry and environmental groups on *Discussion Paper 4*. There were five issues in this discussion paper in which concerns with the occupation of the coastal marine area were highlighted. These included the need for boat access to residential properties creating a demand for coastal structures, determining whether it is a right or a privilege to occupy or use the coastal marine area, making sure the public can move around coastal areas, enabling appropriate use and occupation of the coastal marine area and determining whether there should be charges for occupations of the coastal marine area.

Comments received through the feedback noted the following:

- Responses on the need for coastal structures for boat access tended to be somewhat polarised at two ends of a spectrum. At one end were those concerned about the proliferation of coastal structures, while at the other were those who wanted the regional policy statement to recognise the value of jetties and moorings for access purposes.
- Several people reasoned that there will always be a demand for boat access to properties in the Marlborough Sounds and that the regional policy statement should set out what is reasonable and what is not reasonable in terms of coastal structures.

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- Reflecting the concern over the proliferation of coastal structures, a common request was for the regional policy statement to contain policy identifying a strong preference for shared facilities and/or encouraging co-operation to share coastal structures. Some respondents went further and suggested the Council should decline coastal permit applications where the structures do not serve a good greater than that of the individual property owner when other structures could be used.
- Concerns about the number of moorings led many people to suggest a policy of allowing only one mooring per property, with that mooring being located adjacent to the property. Another suggestion was that the mooring should only be able to be “sold” with the sale of the property. Most accepted that there was a need for exceptions to such a policy, especially for boating club moorings.
- One respondent suggested that there were already too many moorings in some bays and in order to avoid this from occurring elsewhere, there should be a maximum number of moorings allowed in bays. However, there were also contrary views.
- There was a split in the responses on whether it is a right or privilege to use and/or occupy the coastal marine area. Marine farming interests pointed out that resource consents to allow marine farming come with both rights and responsibilities. Those not connected with the marine farming industry felt that use and occupation of the coastal marine area was a privilege.
- Most responses recognised both the importance of public access to and along coastal areas and the role that jetties and moorings play in facilitating this access in the Marlborough Sounds. One respondent expressed strong views against the requirement to allow the public to use private jetties, believing it to be counterproductive. They identified that the alternative to a jetty is a swing mooring, which they considered to be a less efficient use of coastal space.
- Several respondents commented that they could not see the need for coastal structures to have exclusive occupation of coastal space, although there was also recognition that there could be exceptional circumstances. There was a divergence in views expressed as to whether jetties and moorings were an appropriate use of the coastal marine area when properties have road access.
- The Department of Conservation suggested prohibiting or constraining coastal structures in areas or bays that do not currently have them. The Department also recommended handling coastal structures as part of an integrated approach of managing residential development in the Marlborough Sounds. From the Department’s point of view, the starting point for considering coastal structures should be that the coastal marine area is publicly owned and that any private benefits accruing from this occupation should not compromise the public’s rights to use and enjoy publicly owned resources.
- Regarding whether there should be coastal occupation charges, many responses agreed that some form of charge was appropriate. Marine farming interests stated that coastal occupancy charges should be set at a reasonable level, be used for a purpose specified in the RMA (as opposed to a rate or a tax) and that all users of the coastal marine area should contribute in a proportionate and fair way.
- Resistance to a charging regime was evident in some of the responses. Some contended that coastal space is an abundant resource and therefore it is hard to argue lost opportunity costs that result from occupation. One respondent suggested that there is no need for coastal occupancy charges, as funds are already recovered through rates, with the value of rates reflecting the increase in capital value caused by coastal structures.
- The greatest level of opposition to a charging regime came from those who felt it was unfair to place a charge on private occupations such as jetties compared with commercial occupations. The argument was that it was not fair or considerate to charge for structures that are the primary means of transportation, especially when the public have the right to use jetties. Reflecting these comments, several respondents suggested that there should be a distinction in the level of charge between commercial uses and private/community uses.

Later consultation

In determining whether a charging regime should be included in the MEP, the Council considered the following:

- An historical report prepared in 1999 by Boffa Miskell, who undertook the original assessments to determine whether a charging regime should be included in the MSRMP and WARMP. This report determined that in a Marlborough context, charging for occupation of coastal space was in principle justified, in circumstances where the private benefit was greater than the public benefit. As a consequence of this, the Council included in its resource management plans a statement that it was committed to having a charging regime. However, the actual charges were not included in the plans at the time because:
 - not all coastal structures in Marlborough were or would be subject to the charges, as at that time many marine farms came under the jurisdiction of the Marine Farming Act 1971 and were not subject to the provisions of the RMA. In these circumstances the Council considered the introduction of charges would be inequitable;
 - the Council's records were inadequate to charge for coastal occupancy – particularly the records for moorings; and
- A second, more recent report was prepared by Executive Finesse that reviewed the original Boffa Miskell report. This report acknowledged that there is a subjective element to determining the benefits lost and gained but that there is still a high level of private benefit that accrues from many of the occupations within Marlborough's coastal marine area. A draft charging regime was included within this report as well as a description of the methodology used to determine the level of charges. The circumstances when waivers from charges may be appropriate and the matters on which the charges would be spent were also described.

The Council considered it was not unexpected that a charging regime be introduced in the MEP, given the direction within the current resource management plans. However, it did want to provide an opportunity for the community to set out their views about the appropriateness of introducing a charging regime in light of the more recent report. The feedback from this process is summarised below under headings used in a brochure prepared by the Council for consultation purposes.

The basis for coastal occupation charges

- A view was expressed that charges should relate to the area affected by an occupancy, not just the site occupied by the structures associated with the activity. An example given was that of a marine farm that affected a whole bay that was previously used as an anchorage. The presence of the farm now meant the anchorage was seldom, if ever, used.
- Some concern was expressed that although the stated intent of the proposed charging regime was to compensate the public from being excluded from the use of the coastal marine area, in the case of not-for-profit educational organisations in the Sounds the effect of the charges was almost directly opposite to the 'public good' intent.
- A number of responses took issue with the costs associated with obtaining a coastal permit for their structure (mooring or/and jetty) and the ongoing costs of maintaining these structures. Some considered that there already exists a high charging regime for licences to occupy the seabed, including through obtaining the coastal permit.
- Several of those responding noted that any consideration of effects on public use of an area where there was a coastal structure should have been resolved through the resource consent process and that therefore imposing a charge now was unfair.
- Some of the feedback from people who lived and worked in the Marlborough Sounds noted that structures enable people to reside in remote locations and that working farms in outer Sounds locations need and rely on coastal structures to conduct their business. It was stated that additional charges would make undertaking business in these areas more difficult.

Why a charging regime is appropriate in Marlborough

- Some respondents considered coastal occupation charges were long overdue and supported their inclusion in the new resource management plan. Some noted that coastal space is a public asset and marine farmers, boat and mooring users and wharf and marina owners need to compensate the general public to varying degrees. However, not everyone supporting the introduction of charges agreed with the levels proposed or the way in which the charges were proposed to be determined.
- A wide range of views were expressed on the public versus private benefit of the different types of occupations. Much of the feedback focussed on the benefits arising from the public's ability to use structures such as jetties and moorings, particularly as coastal permits have a condition that requires a jetty to be available for public use (i.e. permits are not granted for exclusive use). In this situation, the feedback stated there is a high degree of public benefit arising from jetties and that the Council had only partially recognised the importance of this to the boating public in the Sounds.
- Other respondents stated they did not disagree with the principle of charges being compensation for lost opportunity, but that many coastal structures do not prevent public use of the coastal marine area but facilitate it. It was stated that where structures enable marine activities they should be exempt from the charges. Furthermore, it was stated that if the Council does proceed with implementing charges for jetties, it should remove the requirement for such structures to be available for public use.
- Many respondents had the same view of the public use of moorings when these were not occupied by the resource consent holder. This feedback highlighted the way in which permissions granted through coastal permits for moorings is expressed. Resource consent holders considered they had exclusive use of a mooring, although for the most part coastal permits for moorings do not specifically express this. It was also stated that moorings accommodating a boat on a more permanent basis, such as in Waikawa Bay, should be treated differently as they are the 'normal parking space' of boats. Use of these moorings by the general public was not acceptable as boats returning to these moorings would have nowhere else to 'park' if occupied by a member of the public. There was considered an even greater case for exclusivity of use in these situations.

How the money collected would be spent

- One respondent opposing the charges noted that the projects proposed for funding from the charges may well be worthy causes, but that they benefit the public at large, not just those occupying marine space, and should therefore be funded from rates. Suggestions of other ways to use the charges included additional launching ramps and moorings for public use. Beyond this, there was general agreement with how the Council would spend the charges.
- Several respondents commented on the administration costs of collecting the charges and that it was important the revenue collected should only be expended on defined projects, not diverted into general Council administrative and planning costs. It was also suggested the administrative costs could be reduced by paying a triennial fee.

How the charges have been determined

- A number of respondents considered coastal occupation charges were simply a revenue-gathering tax. Many considered that they personally receive no benefits from rates they pay to the Council, especially where there is no road access or access to other services such as rubbish collection or weed control.
- Several respondents stated that although they did not want to pay charges, there was support for the Council's approach to a fair coastal occupancy charging regime across all users. Marine farming interests stated that as long as charges were introduced for all coastal occupations and adequate controls were placed on 'creeping costs,' then having charges was not opposed. However, other responses from marine farming interests considered there would be financial implications for marine farmers if charges were imposed.
- Another view expressed was that the charges will be used as a basis for approving further marine farming. This response considered that the charges are not intended to compensate the public for the recreational, visual, navigational, ecological and other

amenity costs and losses to the public of marine farming, but are intended only to achieve an appropriate commercial return for the private benefit of exclusive occupation.

- In commenting on the impacts from marine farming activity, respondents stated that since the introduction of marine farming in the Sounds, sustainable management of the coastal marine area had become a significant challenge, requiring considerable effort and resources. It was therefore considered that existing users should not have to pay for managing the effects of marine farming.
- While there was support for the need for the Council to initiate projects to better understand the impacts of marine farming in the Sounds, it was considered the bulk (70%) of this work should be funded by the marine farm industry itself, with the balance met by ratepayers. The need for such monitoring was said to far outweigh the detrimental effects that a private mooring would have and therefore the owners of marine farms should make a much greater contribution to the costs of monitoring the effects of their activities.
- A number of respondents considered that the split should be more even, reflecting the overall importance of the Marlborough Sounds. A view was expressed that the Marlborough Sounds is the “jewel” in Marlborough’s crown and that as all ratepayers benefit by keeping this “jewel” in good health, the proposed 25%/75% contribution of ratepayers towards coastal monitoring costs was not acceptable. A 50/50 split was said to be fairer.
- There was support for the waiver process proposed by the Council. A number of organisations requested the Council waive charges to appropriate organisations on a case-by-case basis where they could demonstrate that they act to increase public access to the coastal area.
- One respondent considered that there was little if any practical difference in use or access between public and private jetties and ramps and that there should be no distinction in how these structures are treated or charged. Another respondent stated that while a charge for a mooring could be accepted (as this is very much in public space), it was not acceptable for charges to apply to boatsheds as they do not stop anyone using the beach area or excluding the general public. However, other feedback said that a boatshed suggests ‘private occupation’. Support was also indicated for charging for slipways/ramps and external decking surrounding boatsheds.

Level of proposed charges

- Several of the responses raised concerns with the charges being set through the Annual Plan. It was suggested setting the charges over a longer period (such as the Long Term Plan) would deliver more certainty for those paying charges and for a reasonable review as to the outcome of how these monies are being expended.
- It was also suggested any increases in charges should be linked to the CPI within plan rules. Some thought that the charges were fair and warranted but were concerned that they will not always remain so, that future committees will see these charges as a form of revenue-gathering and increase them.
- Some respondents considered that the Council should revisit the public/private benefit weightings, which were said to be highly subjective, especially given they were originally prepared 15 years ago. The feedback agreed that a transparent charging regime should be used, but that basing the charges on these subjective weightings was not transparent.
- Much of the feedback commented on the difference in charges proposed for structures such as jetties, moorings and boatsheds compared with charges proposed for marine farming. Respondents considered that the distribution between private and commercial occupations is inequitable, especially as marine farms occupy considerably more coastal space than the jetties, moorings and other occupations combined. Many suggested that the bulk of the Council expenditure on monitoring the state of the environment and resource consents should be paid by the marine farming industry.

In addition to receiving this feedback, the Council also consulted with representatives of the marine farming industry, boating clubs, mooring groups, residents associations and individuals. Consultation was also undertaken with the Sounds Advisory Group.

Evaluation for Issue 5J

Issue 5J – People want to be able to use and develop the coastal marine area for private benefit.

Appropriateness of Objective 5.10

Objective 5.10 – Equitable and sustainable allocation of public space within Marlborough’s coastal marine area.

Relevance

The control of the allocation of space in the coastal marine area is a specific function of the Council. The Council allocates or allows the right to use public resources for private benefit. This is within the Council's role of promoting the sustainable management of the natural and physical resources of the coastal marine area. The objective is therefore relevant in ensuring that these resources and their associated qualities remain available for the use, enjoyment and benefit of future generations in a way that minimises adverse effects on the environment, avoids conflicts between users and ensures efficient and beneficial use.

Objective 5.10 is relevant in addressing the issue as it attempts to satisfy the need of various sectors within the community who want to be able to develop and use the coastal marine area. The objective is also relevant in giving effect to the NZCPS.

Feasibility

The objective is considered feasible and is within the Council’s powers, skills and resources. The Council has had responsibility for allocating public resources of Marlborough’s coastal marine area since the introduction of the RMA in 1991. In addition, one of the Council's former authorities, the Marlborough Sounds Maritime Planning Authority, had responsibility for allocating coastal space under the Town and Country Planning Act 1977. The Council therefore has considerable experience in allocating public resources.

Acceptability

Objective 5.10 is considered acceptable, although the Council acknowledges there are a range of views about the nature of and extent to which the benefits of the various occupations in Marlborough’s coastal marine are sustainable or equitable. Through the consultation undertaken for the review, some in the community have sought greater controls on the extent and location of occupation for both commercial and non-commercial uses. Others looked to the economic benefits for activities and suggested that this factor should be significant in deciding whether to allocate coastal space.

The Council considers that within the framework of the purpose, principles, functions and responsibilities of the RMA it is necessary to ensure there is equitable and sustainable allocation of coastal space.

Assessment of provisions to achieve Objective 5.10

Policy 5.10.1

Policy 5.10.1 – Recognition that there are no inherent rights to be able to use, develop or occupy the coastal marine area.

Benefits

Both the RMA and the NZCPS anticipate that appropriate use can be made of the coastal marine area and that this may involve occupation of coastal space for private benefit. Additionally, the Marine and Coastal Area (Takutai Moana) Act 2011 enables public access and recreation in, on, over and across the public foreshore and seabed, as well as enabling general rights of navigation. However, it is important to recognise that the rights to be able to use coastal marine area are not guaranteed in terms of Section 12 of the RMA; rather, use must be enabled by way of a rule in a plan or by resource consent. The benefit of this policy is that it makes this situation clear.

Costs

There are no specific costs associated with implementing this policy. It effectively sets out the duties and restrictions of Section 12 of the RMA.

Efficiency

Given there are no costs associated with the policy, it can be regarded as efficient as it makes the legal situation very clear about what people's rights are to be able to use the coastal marine area.

Effectiveness

Policy 5.10.1 will be effective in helping to achieve Objective 5.10 and in addressing Issue 5J. As indicated in the issue, the community has different expectations about the extent of rights able to be enjoyed in using public resources. For some, there is a belief that there is a right to be able to have a jetty and a boatshed fronting a family property in the Marlborough Sounds, as well as multiple moorings for boats; others believe that there are no such rights. Having a clearly-expressed statement that there are no rights is therefore important.

Policy 5.10.2

Policy 5.10.2 – The 'first in, first served' method is the default mechanism to be used in the allocation of resources in the coastal marine area. Where competing demand for coastal space becomes apparent, the Marlborough District Council may consider the option of introducing an alternative regime.

Benefits

The default process for processing resource consent applications under the RMA is 'first in, first served.' Currently the Council processes resource consent applications in the order they are received, provided they are accompanied by an adequate assessment of environmental effects. Using this approach the Council has effectively managed the demand for space in the coastal marine area and at present does not see a need to change. Policy 5.10.2 indicates that this approach will be continued within the MEP.

If competing demand for space becomes an issue, the Council may consider the introduction of other allocation methods. There may also be certain circumstances under which a specific allocation mechanism is introduced to address a specific issue.

Costs

There are no specific costs associated with implementing this policy as it is the default process for processing resource consent applications under the RMA.

Efficiency and Effectiveness

Given there are no costs associated with the policy it can be regarded as efficient and effective, making very clear the legal situation regarding the way in which the Council will allocate resources in the coastal marine area.

Policy 5.10.3

Policy 5.10.3 – Where a right to occupy the coastal marine area is sought, the area of exclusive occupation should be minimised to that necessary and reasonable to undertake the activity, having regard to the public interest.

Benefits

Exclusive occupation of the coastal marine area restricts access to the resource consent holder only (who has the right to occupy). This means that no other person can effectively use that space. However, not all activities require exclusive occupation, meaning that other users may carry out activities in the same space where there is no occupation needed, e.g. recreational boating. Given the public's expectation of being able to use the coastal marine area, the benefit of this policy is that it clearly signals to resources users that exclusive occupation will only be allowed where absolutely necessary.

Costs

There are no specific costs in implementing the policy, as it applies to a resource consent situation in which costs are already being incurred. No additional costs will result from this policy.

Efficiency

The main outcome of the policy is that in restricting exclusive occupation to a minimum, the public will continue to have rights to access and use the coastal marine area without being unnecessarily constrained. This results in a whole-of-community benefit that outweighs any costs to the individual.

Effectiveness

This approach will be effective in achieving Objective 5.10. Restricting the area of exclusive occupation, aside from in exceptional circumstances, was supported through the feedback received during consultation for the review. However, in considering the feedback on coastal occupation charges, some of the respondents stated that as many coastal permits are not granted for exclusive use, there is a high degree of public benefit and therefore charges should not apply. While this is discussed more fully later in this report, the Council considers that despite this particular feedback the policy is an effective means of achieving the equitable and sustainable allocation of the coastal marine area, which is a public resource.

Policy 5.10.4

Policy 5.10.4 – Coastal occupancy charges will be imposed on coastal permits where there is greater private than public benefit arising from occupation of the coastal marine area.

Benefits

The basis for having a coastal occupation charge is set out in Section 64A of the RMA. This requires the Council to have considered the extent to which public benefits from the coastal marine area are lost or gained through an occupation and private benefit is obtained from the occupation of the coastal marine area. The Council previously undertook this exercise for the inclusion of a statement in the MSRMP and WARMP of its intent to introduce a charging regime for Marlborough's coastal waters. However, the introduction of a charging regime has not occurred in these resource management plans.

The Council has more recently reviewed the public/private benefits of various structures and occupations as part of the review. While there is a subjective element to determining the benefits lost and gained, there is still a high level of private benefit that accrues from many of the occupations within Marlborough's coastal marine area. For this reason the Council has included a charging regime in the MEP. The benefits of the policy are that there is recognition of compensation for lost opportunity where there is greater private than public benefit arising from occupation and that the charges collected can only be spent on the sustainable management of the coastal marine area.

The policy provides a clear statement about the Council implementing the charging regime. Such a statement is required by Section 64A of the RMA (even if no charging regime were to be included).

Costs

The costs of the policy will fall to those with occupations in the coastal marine area where there is greater private than public benefit. This is for both commercial and non-commercial uses, having regard to the waivers in Policies 5.10.5 and 5.10.6. The actual dollar amounts for the various occupations are not included in the MEP; rather, these will be included in the Annual Plan. There will be costs associated with implementing a coastal occupation charging regime, but this cost should not be significant given the Council already has existing and extensive financial, information and administration systems in place.

Efficiency

While there is a cost to all of the individuals, groups and industries with occupations of the coastal marine area, it is considered that a charging regime will have significant community benefits. There is acknowledgement that where there is greater private than public benefit (and in most circumstances there is) then there should be compensation for this, especially as the resources involved belong to the whole community. The whole community also benefits from the collected charges being reinvested into promoting the sustainable management of the coastal marine area as required by Section 64A(5).

Effectiveness

The Council considers that introducing coastal occupation charges will be effective in achieving Objective 5.10 and in addressing Issue 5J. The issue clearly signals that people want to use and develop the coastal marine area for private benefit. The premise for introducing coastal occupation

charges is about assessing public and private benefit. Objective 5.10 also clearly identifies that it is public space being considered when the Council allocates rights to occupy the coastal marine area.

Policies 5.10.5 to 5.10.8

<p>Policy 5.10.5 – The Marlborough District Council will waive the need for coastal occupancy charges for the following:</p> <ul style="list-style-type: none"> (a) public wharves, jetties, boat ramps and facilities owned by the Council and the Department of Conservation; (b) monitoring equipment; (c) activities listed as permitted, except for moorings in a Moorings Management Area; (d) retaining walls; and (e) port and marina activities where resource consents authorised under Section 384A of the Resource Management Act 1991 are in place until such time as those resource consents expire.
<p>Policy 5.10.6 – Where there is an application by a resource consent holder to request a waiver (in whole or in part) of a coastal occupation charge, the following circumstances will be considered:</p> <ul style="list-style-type: none"> (a) the extent to which the occupation is non-exclusive; (b) whether the opportunity to derive public benefit from the occupation is at least the same or greater than if the occupation did not exist; (c) whether the occupation is temporary and of a non-recurring nature; (d) whether the applicant is a charitable organisation, trust or community or residents association, and if so: <ul style="list-style-type: none"> (i) the nature of the activities of that organisation; and (ii) the responsibilities of that organisation.
<p>Policy 5.10.7 – The manner in which the level of coastal occupancy charges has been determined is as follows:</p> <ul style="list-style-type: none"> (a) the expenditure related to the Marlborough District Council’s role in the sustainable management of Marlborough’s coastal marine area has been established; (b) the anticipated exemptions and waivers from coastal occupancy charges has been considered; (c) the beneficiaries and allocation of costs fairly and equitably amongst beneficiaries has been decided; and (d) the appropriate charge for the differing occupations to recover costs has been determined.
<p>Policy 5.10.8 – Any coastal occupancy charges collected will be used on the following to promote the sustainable management of the coastal marine area:</p> <ul style="list-style-type: none"> (a) implementation of a Coastal Monitoring Strategy; (b) State of the Environment monitoring; (c) research in relation to the state and workings of the natural, physical and social aspects of the coastal marine area; (d) education and awareness; (e) habitat and natural character restoration and enhancement; (f) managing marine biosecurity threats; (g) maintaining and enhancing public access; and (h) formal planning in the Resource Management Act 1991 planning context and strategic planning and overview in relation to the coastal environment.

Benefits

These policies are requirements of the RMA in terms of Section 64A(3) and must be included in a regional coastal plan where a coastal occupation charging regime is put in place. The complete waivers that apply to occupations in Policy 5.10.5 exist because there is a significant level of public benefit, e.g. if they are used by and available to many people, if they are small and temporary and if there are few occupations at a permitted activity level. An exception to this is for moorings in a

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Mooring Management Area identified as a permitted activity where a relevant bylaw is in place. These moorings are for private benefit and therefore will attract a coastal occupation charge. There are also certain occupation rights that have been previously granted to port companies under Section 384A of the RMA, which are exempt from charges until the occupation permits expire in 2026.

Criteria have been included within Policy 5.10.6 to guide decision makers in assessing applications for a full or partial waiver of coastal occupation charges.

The Council has chosen to describe in the MEP the manner in which charges will be determined, rather than the level of charges to be paid. Section 64A(3) of the RMA provides this option. The Council has opted to include the amount to be paid within the Annual Plan. The benefit of this is that it will enable an annual review of charges in consultation with the community through the Annual Plan process of the Local Government Act 2002. This will ensure that the charges maintain a relationship with the Council's planned expenditure for the coastal marine area, which is set out in the Annual Plan.

Policy 5.10.8 sets out the matters on which the charges will be spent in promoting the sustainable management of the coastal marine area. The matters identified in the policy are high level, with more detail found in a number of chapters within the MEP; for example, guidance for enhancing public access can be found in Chapter 9 - Public Access and Open Space (Volume 1 of the MEP).

Costs

The costs of Policies 5.10.5 and 5.10.6 will effectively result in no coastal occupation charges being applied either in full or in part. This means less money will be available to spend on promoting the sustainable management of the coastal marine area.

As the Council has opted to describe the manner in which the charges will be determined rather than having their level set out in the MEP, the cost of Policy 5.10.7 is considered to be less than it might have otherwise been. If the level of charges were included in the MEP then any subsequent review of the charges would need to be undertaken through the First Schedule process of the RMA, which can be costly and time consuming. Instead, the Council will set out the level of charges within the Annual Plan, enabling the community to comment on the level of charges through the annual submission process.

It is difficult to identify specific costs for implementing Policy 5.10.8. These matters are already identified in other chapters of the MEP as being necessary, which is why the detail is not included within the policy. There are costs associated with undertaking this work, but not as a consequence of implementing coastal occupation charges. Rather, the charges will assist in reducing the overall ratepayer cost for managing the coastal marine area.

Efficiency and Effectiveness

Setting out the manner in which charges will be determined in the MEP is considered more efficient and effective rather than prescribing the actual levels of charges in the MEP. Having the levels in the Council's Annual Plan means there is a direct relationship with the costs of sustainably managing the coastal marine area. This also means there can be a more immediate response to modifying the level of charges in the Annual Plan if there is a demonstrated need to amend the expenditure for the coastal marine area. In comparison, if the level of charges were listed within the MEP it would be more costly and time consuming to change the level of charges as these would have to go through the First Schedule process of the RMA.

In describing the method for determining charges in the MEP, the Council is also acknowledging that it is not only those with occupations who should contribute to the costs of sustainably managing Marlborough's coastal marine area. There is a whole-of community benefit as well and this is recognised through a split in apportioning costs, with ratepayers contributing 25% and those benefiting from occupying public space contributing 75% of the costs.

The other three policies are required to be included in the MEP by Section 64A of the RMA and are considered efficient and effective as they clearly identify the circumstances where waivers are appropriate and the matters on which charges will be spent.

Methods of implementation

The most significant change in the methods of implementation from the current resource management plans is the introduction of a charging regime for coastal occupations, which has been assessed in the preceding evaluation.

Other options considered to achieve Objective 5.10

Only one other option was considered by the Council to achieve Objective 5.10. This was:

Status quo in terms of the existing provisions of the MRPS, MSRMP and WARMP

The MRPS, MSRMP and WARMP all have similar elements to the approach for the allocation of public resources in Policies 5.10.1 to 5.10.3 of the MEP. However, for a range of reasons the simpler framework proposed through these three policies of the MEP is preferred. These reasons include the following:

- There is discussion within both resource management plans about there being no inherent development rights in the coastal marine area. For example, this point is made in the explanation to a group of policies under Objective 9.2.1 of the MSRMP, which seeks the “*accommodation of appropriate activities in the coastal marine area whilst avoiding, remedying or mitigating the adverse effects of those activities.*” Other sections of Chapter 9 of the MSRMP describe the Council’s role in allocating public resources for private benefit (Introduction 9.1) and state that being able to develop public resources in the coastal marine area is a privilege (Issue 9.2). Similar statements exist within the WARMP. However, there is no policy that clearly expresses these sentiments.
- In the MRPS, under a heading of the allocation of coastal space (7.2.10) there are policies that provide direction on public access and recreational use: where access can be restricted, and when developments in the coastal marine area may be allowed where they provide public use/benefit. Within the explanations to these policies there are references to exclusive use and the public and private benefits of using public resources.
- For the first in, first served method of allocation set out Policy 5.10.2 of the MEP, there is no equivalent method of allocation covering all occupations in the MRPS, MSRMP or WARMP. There is policy, discussion and rules for allocation methods of coastal space for marine farming, which came about as a consequence of reforms for aquaculture in 2004. These reforms saw the introduction of aquaculture management areas in which marine farming was to take place. However, other than the marine farms existing at the time (which were deemed aquaculture management areas), no new aquaculture management areas were created in Marlborough under these reforms. Since that time, further reforms in 2011 resulted in the removal of the requirements for marine farming to be within aquaculture management areas. This meant that applications for marine farms returned to being processed under the resource consent process, effectively the first in, first served approach. However, the provisions of both the MSRMP and WARMP still include the old provisions for aquaculture management areas.
- There is almost identical policy within both resource management plans which states that exclusive occupation of the coastal marine area or occupation which effectively excludes the public will only be allowed to the extent reasonably necessary to carry out the activity (Policy 9.2.1.1.3 of the MSRMP and Policy 9.15.1.2 of the WARMP). The approach for the MEP is very similar, although there is an additional requirement to consider the public interest in allowing exclusive occupation.

Overall, the existing provisions have not been preferred as they do not clearly set out the Council’s role in the allocation of public resources in the coastal marine area at a policy level.

Specifically in relation to coastal occupation charges, the current MSRMP⁴ and WARMP⁵ state that the Council considers itself in principle justified in charging for occupation of coastal space in

⁴ 9.1.1

⁵ 9.1.1

circumstances where net private benefit is greater than net public benefit. In these circumstances the Council is committed to introducing a coastal occupancy charging regime. However, at the time the first assessment of private versus public benefit was undertaken, the Council did not include charges in either resource management plan because:

- not all coastal structures in Marlborough were or would be subject to the charges (at that time many marine farms came under the management of the Marine Farming Act 1971 and were therefore not subject to the provisions of the RMA); and
- the Council's records were inadequate to charge for coastal occupancy, particularly the records for moorings.

All marine farms are now under the management of the Council under the RMA and the Council's records are up to date in recording occupations within the coastal marine area. Given this and the clear indication in the plans that the Council would move to introducing a charging regime, the status quo option in respect of coastal occupation charges is not considered practicable.

Risk of acting or not acting

In terms of Section 32(2)(c) of the RMA, which requires an assessment of the "*risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions*", the Council considers that it has certain and sufficient information on which to base the proposed policies and methods for the allocation of public resources in the coastal marine area.

Appendix A – Section 32 of the RMA

32 Requirements for preparing and publishing evaluation reports

- (1) An evaluation report required under this Act must—
 - (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—
 - (i) identifying other reasonably practicable options for achieving the objectives; and
 - (ii) assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
 - (iii) summarising the reasons for deciding on the provisions; and
 - (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

- (2) An assessment under subsection (1)(b)(ii) must—
 - (a) identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—
 - (i) economic growth that are anticipated to be provided or reduced; and
 - (ii) employment that are anticipated to be provided or reduced; and
 - (b) if practicable, quantify the benefits and costs referred to in paragraph (a); and
 - (c) assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

- (3) If the proposal (an **amending proposal**) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an **existing proposal**), the examination under subsection (1)(b) must relate to—
 - (a) the provisions and objectives of the amending proposal; and
 - (b) the objectives of the existing proposal to the extent that those objectives—
 - (i) are relevant to the objectives of the amending proposal; and
 - (ii) would remain if the amending proposal were to take effect.

- (4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

- (5) The person who must have particular regard to the evaluation report must make the report available for public inspection—
 - (a) as soon as practicable after the proposal is made (in the case of a standard or regulation); or
 - (b) at the same time as the proposal is publicly notified.

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(6) In this section,—

objectives means,—

- (a) for a proposal that contains or states objectives, those objectives:
- (b) for all other proposals, the purpose of the proposal

proposal means a proposed standard, statement, regulation, plan, or change for which an evaluation report must be prepared under this Act

provisions means,—

- (a) for a proposed plan or change, the policies, rules, or other methods that implement, or give effect to, the objectives of the proposed plan or change:
- (b) for all other proposals, the policies or provisions of the proposal that implement, or give effect to, the objectives of the proposal.

Appendix B – Bibliography

Boffa Miskell (November, 1999). *Coastal Occupancy Charges*. Report prepared for Marlborough District Council.

Executive Finesse Limited (January, 2013). *Coastal Occupancy Charges*. Report prepared for Marlborough District Council.

Marlborough District Council (November, 2006). *Community Views on Significant Issues for Marlborough – Summary of responses received on the review brochure*.

Marlborough District Council (2007). *Discussion Paper 4: The Future of the Marlborough Sounds*.

Marlborough District Council (2007). *An Overview of the Future of the Marlborough Sounds*.

Marlborough District Council (2008). *Summary of responses to Discussion Paper 4/The Future of the Marlborough Sounds*.

Marlborough District Council (July, 2014). *Report for Public Consultation on Proposed Framework to Introduce Coastal Occupation Charges*.

Marlborough District Council (October, 2014). *Summary of feedback on draft proposal to introduce coastal occupation charges*.