Proposed Marlborough Environment Plan

Section 42A Hearings Report for Hearing Commencing

10 December 2018

Report dated 2 November 2018

Report on submissions and further submissions Topic 11: Allocation of Public Space in the Coastal Marine Area

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1. Introduction

1. This report has been co-authored by Ken Gimblett and Debbie Donaldson. Mr Gimblett has addressed the submission points that relate to the proposed coastal occupancy charging regime, and Ms Donaldson has addressed the submission points that relate more generally to the allocation of space within the coastal marine area. A statement of Ms Donaldson's qualifications and experience is set out in the section 42A report prepared by Ms Donaldson for Topic 11 – The Use of the Coastal Environment dated 12 March 2018.

2. My name is Ken Gimblett. I am Partner / Senior Planner at Boffa Miskell Ltd, based in Christchurch. I hold a Bachelor of Regional Planning (Hons). I am also a full member of the New Zealand Planning Institute (**NZPI**), and a member of the Resource Management Law Association (**RMLA**). I have 29 years' experience in planning and resource management, gained both in New Zealand and the United Kingdom.

3. As a consultant I have provided advice on a broad range developments and resource management issues to a range of clients, a number involving presenting evidence before both regional and district councils and the Environment Court. I also have extensive experience of assisting with, and advising on, Plan preparation under the Resource Management Act (**RMA**).

4. In Marlborough I have previously advised the Council on various issues in relation to the development of the region's Resource Management Plans and acted for private parties seeking resource consent and other development rights, within the Marlborough Sounds area. The Christchurch Office of Boffa Miskell Limited (**BML**) has had a long and extensive involvement in assisting the Council with the many aquaculture applications within its jurisdiction. I have provided expert planning evidence, acted in numerous other resource consent application processes and have also determined such applications as an accredited independent hearings commissioner.

5. I was engaged by Council in 1999 to provide resource management planning advice in relation to the issues associated with coastal occupancy charging, and with introducing coastal occupancy charges in the Marlborough Sounds Resource Management Plan (Sounds Plan). Since that time I have maintained a close professional interest in the issues of coastal occupancy charging and I have a detailed understanding of the issues. I am a principal author of the Coastal Occupancy Charges report prepared and presented to the Council in November 1999. I was also invited to participate in a regional forum addressing coastal occupancy charging in 2004, to which all regional councils were invited. I am familiar with subsequent work by some reginal councils to develop and introduce coastal occupancy charging regimes, and I have contributed to the development of draft guidance and possible charging methodologies in that regard.

6. I prepared evidence on behalf of the Council in relation to an appeal to the Environment Court against the council's decision on Variation 2 to the Sounds Plan. Variation 2 recorded the Council's decision that it was supportive of a coastal occupancy charging regime in principle, but that it did not yet (at that time) have sufficient information and analysis to effect a regime consistent with section 64A of the RMA.

1.1 Code of Conduct

7. We confirm that we have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that we agree to comply with it.

8. We confirm that we have considered all the material facts that we are aware of that might alter or detract from the opinions that we express, and that this evidence is within our area of expertise, except where we state that we are relying on the evidence of another person.

9. We are authorised to give this evidence on the Council's behalf.

2. Scope of Hearings Report

10. This report is prepared in accordance with section 42A of the RMA.

11. In this report we assess and provide recommendations to the Hearing Panel on submissions made on Topic 11 – Allocation of Public Space in the Coastal Marine Area. The provisions that are addressed under this Topic are Issue 5J, Objective 5.10, Policies 5.10.1 – 8, and Methods 5.M.10 and 5.M.11. Collectively these provisions address themes relating to the allocation of public space in the coastal marine area (**CMA**), and a proposed coastal occupancy charging regime.

12. This report has been jointly prepared by Mr Gimblett and Ms Donaldson. Mr Gimblett has addressed the submissions that specifically relate to the proposed coastal occupancy charging regime, and Ms Donaldson has addressed the submissions that relate to the allocation of space in the CMA.

13. As submitters who indicate that they wish to be heard are entitled to speak to their submissions and present evidence at the hearing, the recommendations contained within this report are preliminary, relating only to the written submissions.

14. For the avoidance of doubt, it is emphasised that any conclusions reached or recommendations made in this report are not binding on the Hearing Panel. It should not be assumed that the Hearing Panel will reach the same conclusions or decisions having considered all the evidence that is brought before them by submitters.

15. This report also relies on, and is intended to be read in conjunction with the following:

    1. *Coastal Occupancy Charges* Executive Finesse Limited, January 2013

    2. Advice prepared by Russell McVeagh McKenzie Bartleet & Co. for the Lyttleton Port Company dated 15 May 1998 (Appendix 3)

    3. Decision of the Court of Appeal on *A Hume and L Hume v Auckland Regional Council* CA 262/01 (Appendix 4)

    4. Supplementary Paper prepared by Executive Finesse (Appendix 5)

3. Overview of Provisions

16. The provisions in the notified Marlborough Environment Plan (**MEP**) that relate to the proposed coastal occupancy charges regime are included in Volume 1 Chapter 5 of the MEP (Allocation of Public Resources). The specific policies that relate to the proposed charging regime are Policies 5.10.4 – 8 and method statements 5.M.10 and 11. These provisions are grouped under Issue 5J and Objective 5.10, along with Policies 5.10.1 – 3.

17. The latter referenced provisions are more tailored towards the management of the occupation of the CMA generally, as opposed to specifically relating to the proposed charging regime. The summary of submissions for this topic included a range of submission points that related to Issue 5J, Objective 5.10, and Policies 5.10.1 – 3, but which did not specifically relate to the proposed charging regime. Those submission points have been addressed by Ms Donaldson in Sections 0 to 5.9 of this report.

18. However, while Issue 5J, Objective 5.10 and Policies 5.10.1 – 3 do not specifically relate to the proposed charging regime, certain submission points have been coded to those provisions, but in fact relate to the proposed charging regime. Those submission points are addressed in this report, and the recommended decisions for those points are set out in Appendix 1.

19. Issue 5J identifies that people want to be able to use and develop the CMA for private benefit. Through Issue 5J, the Council identifies that this is a resource management issue for the Marlborough region and that there needs to be a framework within the Plan to manage this issue.

20. Objective 5.10 outlines the outcome that the Council seek to achieve through the resolution of Issue 5J, being 'equitable and sustainable allocation of public space within Marlborough's coastal marine area'. The commentary within the objective identifies that the control of the occupation of the CMA is a specific function of the Council and that the Council can allocate or allow the right to use public resources for private benefit.

21. Policy 5.10.1 alerts plans users to recognise that there are no inherent rights to be able to use, develop or occupy the coastal marine area. The commentary outlines that rights to be able to use the CMA are not guaranteed in terms of s12 of the RMA, and that use must be enabled by way of a rule in a plan or by resource consent.

22. Policy 5.10.2 outlines that the Councils default mechanism for the allocation of resources within the CMA is the 'first in first served' method. The Council currently processes resource consent applications in the order that they are received, and this approach has been effective in managing demand for space within the CMA. The Council however are aware that there may come a time within the life of the Plan that competing demand for space becomes apparent, and at this time the Council may need to consider an alternative allocation regime. This is an option for the Council under the RMA, and as such is reflected within Policy 5.10.2.

23. Policy 5.10.3 identifies that where a right to occupy space within the CMA is sought, the area of exclusive occupation should be minimised to that which is necessary and reasonable to undertake that activity, having regard to the public interest. As indicated within the commentary

to the Policy, the reason for this Policy is to provide a balance with the publics expectations of being able to use the CMA.

24. Policy 5.10.4 states that coastal occupancy charges will be imposed on coastal permits where there is greater private than public benefit arising from the occupation of the coastal marine area. The accompanying explanatory text sets out that the RMA enables the Council to apply a coastal occupancy charge to activities that occupy space in the coastal marine area, having had regard to the extent to which the private benefits outweigh the net public benefit associated with that occupation. It is stated that the Council has determined that where the private benefit is greater than the public benefit, charging for occupation of coastal space is justified. Finally, the explanatory text notes that the assessment of public and private benefits is based on the structure, not the associated activity that may be facilitated by the presence of the structure.

25. Policy 5.10.5 builds on the statement in Policy 5.10.4 by setting out the types of occupations for which the Council has determined it will 'waive' the need for coastal occupancy charges. These include public wharves, jetties, boat ramps and facilities owned either by the council or the Department of Conservation (**DOC**); monitoring equipment; permitted activities (except moorings in a Mooring Management Area); retaining walls; and port and marina activities where resource consents were issued under section 384A of the RMA, until such time as those consents expire. The explanatory text accompanying this provision sets out the rationale for these exemptions.

26. Policy 5.10.6 describes the circumstances that the Council will consider when assessing an application for a waiver from the proposed charging regime. These include:

- the extent to which the occupation is non-exclusive;
- whether the opportunity to derive public benefit from the occupation is at least the same as or greater than if the occupation did not exist;
- whether the occupation is temporary and of a non-recurring nature;
- whether the applicant is a charitable organisation, trust or community or residents' association, and if so:
    - the nature of the activities of that organisation; and
    - the responsibilities of that organisation.

27. While the notified provisions stipulate that the level of charges will be set out on an annual basis in the Annual Plan, Policy 5.10.7 broadly describes the manner in which the level of coastal occupancy charges will be determined:

- First by establishing the expenditure related to the Council's role in the sustainable management of Marlborough's coastal marine area;
- Determining the anticipated exemptions and waivers from the proposed charging regime;
- Deciding the beneficiaries of the scheme, and allocating the costs fairly and equitably amongst those beneficiaries; and

- Determining the appropriate charge for the different types of occupations to recover these costs.

28. The explanatory text states that the Council has determined that the overall costs of providing for the sustainable management of the CMA should be split between ratepayers (25%) and 'those benefitting from the occupation of public space' (75%).

29. Policy 5.10.8 describes the way in which the money collected from the proposed charging regime will be spent in order to promote the sustainable management of the coastal marine area.

30. There are two method statements that relate to the proposed charging regime. Method 5.M.10 states that provisions relating to the requirement for coastal occupation charges will be included in the MEP, and that rules will require consent for a discretionary activity for a waiver of any charge. Method 5.M.11 states that the level of charge to be applied to any activity for which a coastal permit is granted to occupy the coastal marine area will be set out in the Annual Plan. It is noted that the MEP as notified did not include provisions to the effect signalled in Method 5.M.10.

4. Statutory Documents

31. The following statutory documents are relevant to the provisions and/or submissions within the scope of this report.

4.1 Resource Management Act 1991

Part 2 matters

32. The following is an assessment of the relevant Part 2 matters that relate to the proposed coastal occupancy charging regime. An assessment of the Part 2 matters that relate to the use of the coastal environment is set out in paragraphs 24 – 30 of the Section 42A report prepared by Ms Donaldson for Topic 11 – The Use of the Coastal Environment dated 12 March 2018.

33. The purpose of the RMA is to promote the sustainable management of natural and physical resources.[1] All persons exercising functions and powers under the RMA shall recognise and provide for the matters of national importance set out in section 6. These include, of particular relevance to the proposed coastal occupancy charging regime:

[1] RMA s 5(1)

- The preservation of the natural character of the coastal environment and protection from inappropriate subdivision, use and development;[2]
- The maintenance and enhancement of public access to and along the CMA;[3]
- The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga;[4]
- The protection of protected customary rights;[5] and
- The management of the significant risks of natural hazards.[6]

34. As is set out later in this report, the imposition of a coastal occupancy charging regime is concerned only with an assessment of the public benefits derived from the common marine and coastal area (**CMCA**), the extent to which those public benefits are changed as a result of private occupations of the CMCA, and the extent of private benefit that accrues to the occupier as a result of the occupation. The proposed regime is not related to the effects on the environment of that occupation, nor the allocation of rights to occupy the CMCA. However, the preservation of the natural character of the coastal environment and its protection from inappropriate subdivision, use and development is considered relevant as it will be a factor that informs the way in which the sustainable management of the CMA, which is the purpose to which funds raised from a coastal occupancy charging regime must be spent.[7]

35. The national importance of the maintenance and enhancement of public access to and along the CMA underpins the key principle of coastal occupancy charging regimes, and may also inform the manner in which the sustainable management of the CMA is promoted using funds raised from the imposition of a coastal charging regime. Section 64A(4A) seeks to recognise the relationship of Māori and their culture and traditions with their ancestral lands, water, sites waahi tapu and other taonga and the protection of protected customary rights by specifically precluding the imposition of coastal occupancy charges on protected customary rights groups or customary marine title groups exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011. As set out later in this report, it is recommended that amendments to Policy 5.10.5 are made to specify this exemption. Section 6(h) is of relevance as retaining walls, which may assist in managing the risks of coastal hazards in the CMA, are exempt from the proposed charging regime.

36. Section 7 of the RMA sets out other matters that persons exercising functions and powers under the RMA must have particular regard to. Recognising katiakitanga, the ethic of stewardship, the maintenance and enhancement of amenity values, the intrinsic values of

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[2] RMA s 6(a)

[3] RMA s 6(d)

[4] RMA s 6(e)

[5] RMA s 6(g)

[6] RMA s6(h)

[7] RMA s 64A(5)

ecosystems, the maintenance and enhancement of the quality of the environment and the effects of climate change are all of relevance in the context of promoting the sustainable management of the CMA.

Coastal occupancy charging regime

37. Section 64A of the RMA requires regional councils to consider whether or not a coastal occupation charging regime applying to persons who occupy any part of the common marine and coastal area should be included in its regional coastal plan. The 'common marine and coastal area' is defined in section 2 of the RMA by cross reference to section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011 as:

The marine and coastal area other than –

(a) Specified freehold land located in that area; and

(b) Any area that is owned by the Crown and has the status of any of the following kinds:

(i) a conservation area within the meaning of section 2(1) of the Conservation Act 1987;

(ii) a national park within the meaning of section 2 of the National Parks Act 1980;

(iii) a reserve within the meaning of section 2(1) of the Reserves Act 1977; and

(c) The bed of Te Whaanga Lagoon in the Chatham Islands

38. In making its decision on this whether to impose a coastal occupancy charge, a regional council must have regard to the extent to which public benefits from the coastal marine area are lost or gained; and the extent to which private benefit is obtained from the occupation of the coastal marine area.[8]

39. The section 32 report prepared to accompany the notified MEP states that 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.[9]

[8] RMA section 64A(1)

[9] Section 32 Report – Chapter 5: Allocation of Public Resources – Coastal, at page 3

40. Where a regional council considers that a coastal occupation charging regime should be included in its regional coastal plan, the regional council must specify the following in its regional coastal plan:[10]

- The circumstances when a coastal occupation charge will be imposed; and
- The circumstances when the regional council will consider waiving (in whole or in part) a coastal occupation charge; and
- The level of charges to be paid or the manner in which the charge will be determined; and
- The way the money received will be used, noting that it must only be used for the purpose of promoting the sustainable management of the coastal marine area.[11]

41. Coastal occupation charges cannot be imposed unless the charge is provided for in the regional coastal plan,[12] and coastal occupation charges must not be imposed on a protected customary rights group or customary marine title group exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011.[13] The notified provisions relating to the proposed charging regime do not specifically exempt protected customary groups or customary marine title groups from imposition of charges under the proposed charging regime. As set out later in this report, it is recommended that amendments are made to the provisions to make this clear.

42. Overall, and in light of the proposed amendments to the provisions set out in Appendix 2 to this report, it is considered that the recommended provisions appropriately align with section 64A of the RMA.

Other relevant sections of the RMA to coastal occupancy charges

43. Section 108 enables a consent authority to impose conditions on resource consents, including, in respect of any coastal permit to occupy any part of the common marine and coastal area, a condition detailing the extent of the exclusion of other persons, and specifying any coastal occupation charge.[14]

44. Sections 401A and 401B address transitional coastal occupation charges. There is implied a condition that persons occupying the coastal marine area must, until such time as a statement is made in the regional coastal plan as to whether or not a coastal occupancy charging regime will be introduced, pay to the relevant regional council, if requested by that council, any sum required to be paid for the occupation of the coastal marine area by any regulations made under section 360(1)(c).[15] Money received by the regional council under this section of the

[10] RMA section 64A(3)

[11] RMA section 64A(5)

[12] RMA section 64A(4)

[13] RMA section 64A(4A)

[14] RMA s 108(2)(h)

[15] RMA s 401A(1)

RMA may only be used for the purpose of promoting the sustainable management of the coastal marine area.[16] It is understood that the Council has not operated a transitional charging regime of this nature.

45. As addressed in further detail later in this report, sections 384 and 384A of the RMA provide for certain existing permissions or authorisations to occupy the coastal marine area that existed prior to the commencement of the RMA to become coastal permits. These include:

    a) Permissions granted under the Town and Country Planning Act 1977;[17]

    b) Licences or permits granted under certain sections of the Harbours Act 1950;[18]

    c) Licences, permits or authorities granted under any Act that was, at the time of its enactment, a special Act within the meaning of the Harbours Act 1950;[19] and

    d) Port related commercial undertakings that had a right to occupy the coastal marine area on 30 September 1991.[20]

46. These sections are of particular relevance as the various types of occupation referred to in these sections may have included payments for that occupation, and may therefore preclude those specific occupations (as they existed at the commencement of the RMA) from being subject to a charging regime.

4.2 New Zealand Coastal Policy Statement

47. The New Zealand Coastal Policy Statement (NZCPS) is a national policy statement under the RMA. The NZCPS outlines the national direction required to achieve the purpose of the RMA regarding New Zealand's coastal areas. New Zealand's coastlines are dynamic environments and the NZCPS describes the key issues they are facing, including declining habitats due to both urban activities such as subdivision and sedimentation in estuaries and coastal erosion; as well as declining water quality and the effects of climate change. Regional policy statements and regional plans must give effect to the NZCPS.[21] Sustainable management of the coastal environment and coastal marine area is a key principle throughout the NZCPS and underpins all the objectives and policies.

48. Though the NZCPS does not specifically refer to coastal occupancy charges, several objectives of the NZCPS are relevant for the consideration of coastal occupancy charges insofar as they refer to the sustainable management of the coastal marine area. Safe guarding the integrity, form, function, and resilience of the coastal environment is outlined in Objective 1 of the NZCPS. The ecosystems within the coastal environment are to be sustained by

[16] RMA s 401A(2)

[17] RMA s 384(1)(a)

[18] RMA s 384(1)(b)

[19] RMA s 384(1)(c)

[20] RMA s 384A(1)

[21] RMA s 62(3), RMA s 67(3)b)

maintaining or enhancing the natural environment, protecting representative or significant ecosystems and areas of importance, the diversity of indigenous flora and fauna, and maintaining and enhancing coastal water quality. Preserving the natural character of the coastal environment, particularly by identifying natural features and landscapes and outlining areas which need to be protected from subdivision, use and development, and encouraging the restoration of the coastal environment.

49. The principles of the Treaty of Waitangi, recognition for the role of tangata whenua as kaitiaki (guardians of the land) and their management of the coastal environment is outlined in Objective 3. Objective 4 outlines the importance of maintaining and enhancing the public open space qualities and recreation opportunities of the coastal environment. The importance of recognising that the coastal marine area is an extensive public area for everyone to use and enjoy is identified. The remaining objectives 5 to 7 relate to climate change, ensuring the people and communities can provide for their social, economic, cultural wellbeing, health and safety, through development that is located in appropriate areas, and ensuring that New Zealand can manage the coastal environment and marine area in a way which meets its international obligations.

50. Regarding the occupation of coastal marine areas, policy 6 (e) states that the efficient use of occupied space should be promoted. The policy outlines how this might be achieved; by requiring structures to be available for public or multiple uses where “reasonable and practicable”; that where a structure has no heritage, amenity or reuse value and it has been abandoned or is redundant that the structure is removed; and where a coastal permit is to be issued, the authority should consider applying consent conditions to ensure the occupied space is used effectively for that purpose and within a reasonable timeframe.

51. The significant existing and potential future contribution of aquaculture to social, economic, and cultural wellbeing of people and communities is outlined in Policy 8. The policy directs that aquaculture should be provided for in appropriate places in the regional policy statement and coastal plans. In particular aquaculture needs high water quality and space for land-based activities that are associated with the marine farming activities; and these needs should be provided for in the statements and plans. Further the social and economic benefits of aquaculture should be taken into account, and it should be ensured that development does not detrimentally affect water quality, thereby making it unfit for marine farming in areas approved for that purpose.

52. Policies 18, 19, and 20 recognise the need for public open spaces to be available for public use and appreciation, and in conjunction with this the need to provide walking and vehicle access to the coast.

4.3 National Policy Statement

53. In addition to the NZCPS there are no other National Policy Statements that are considered relevant in relation to coastal occupancy charges.

54. An assessment of the relevant NPS for the use of the coastal environment is set out in paragraphs 44-45 of the Section 42A report prepared by Ms Donaldson for Topic 11 dated 12 March 2018.

4.4 National Environmental Standards

Proposed National Environmental Standard for Marine Farming

55. The Ministry for the Environment, in conjunction with the Department of Conservation, and the Ministry for Primary Industries, has proposed a National Environmental Standard regarding marine aquaculture. The objective with this standard is to provide standards that all local authorities must adhere to when reconsenting marine farms. The goal is to make reconsenting an easier and more cost-effective process for marine farm owners to go through. Submissions closed on 8th August 2017 and public meetings were held as a part of the consultation.

56. The feedback received during the consultation stage would inform the final proposals. As of August 2017, it is anticipated that the standards would come into effect in 2018. Regarding matters that individual councils can consider when processing applications to replace consents for marine farms; coastal marine occupancy charges are an administrative matter that councils could consider. There are no other relevant provisions in this standard that are relevant to coastal occupancy charges, and at this time this NES remains a draft document.

Coastal environment

57. An assessment of the relevant NES for the use of the coastal environment is set out in paragraphs 46-48 of the Section 42A report prepared by Ms Donaldson for Topic 11 dated 12 March 2018.

5. Analysis of submissions

Coastal occupancy charging regime

58. By way of overview, submitters generally support, oppose, or seek amendments to the notified provisions that relate to the proposed coastal occupancy charging regime. Those that seek amendments either specify particular amendments to certain provisions or seek that additional 'components' of the regime are instigated. These matters are addressed in further detail in the following sections of this report.

59. Where possible, similar submission points have been grouped into themes and addressed collectively. It is noted that the summary of submissions prepared 'codes' submission points to a particular provision. Where appropriate, those submission points have been addressed in respect of the provision to which they relate. However in some instances, the submission point may in fact be more general in nature, or may not relate to the particular provision that it has been coded to. The general submission points have been addressed collectively under Section 5.4 below. Submission points that relate to a different provision from that which they have been coded to are addressed along with the other submission points that relate to the relevant provision.

Allocation of space within the CMA

60. There were a number of submissions received on the provisions within Chapter 5 that did not specifically relate to the proposed coastal occupancy charging regime. They related more generally to the allocation of space within the CMA. These submissions have been grouped into themes, or are addressed under specific provisions of the Plan.

5.1 Key issues

Coastal occupancy charging regime

61. There are a number of key principles that underpin the proposed charging regime. These are outlined below in order to assist in responding to a number of recurring themes that have been raised in submissions.

The basis for an occupancy charge

62. The CMCA is inherently *public* space. Private occupations of this space will result in a change to the benefit that the general public derives from the CMCA. The main principle that underpins the proposed charging regime is the extent to which public benefits are lost or gained as a result of a private occupation of the CMCA; the private benefits derived from that occupation; and whether those private benefits exceed the net public benefit derived from the occupation.

63. By way of example, a bay that is unoccupied by any structures in the CMCA enables the public unfettered opportunities to utilise that space, e.g. swim in the bay, walk along the beach, and fish from the beach or a boat in the bay. If a private structure such as a jetty is constructed in that bay, the structure will impede, to a certain extent, the ability that the public once had to undertake those activities. However, the public may gain some benefit from the construction of the jetty, for example by having the ability to readily access the bay or foreshore via boat. There is both a loss and a gain of public benefit. The person who constructs the jetty in the bay will gain private benefit from the occupation, such as the ability to access private property via boat. Determining whether, and how much, to charge the occupier for that jetty will depend on the extent to which the private benefit outweighs the public benefit lost and gained by the occupation (the net public benefit).

64. The charging regime is not concerned with taking into account the effects of the occupation on the environment as that is a consideration in determining whether or not the activity (structure) should be allowed through the coastal permit process. The charging regime is also unrelated to the issues that revolve around allocating rights to occupy the CMCA.

Flexibility vs certainty

65. In the context of Marlborough, there are many variables that affect the overall nature of occupations in the CMCA. For example, the type of structure; characteristics of that structure (area, length, height); its level of exclusivity; its location; whether the structure is owned by a commercial enterprise, private individual, community organisation, or public authority; the extent to which it is available to be freely used and accessed by the public; and the extent to which it is used in this way by the public all contribute to the assessment of the private and public benefits lost or gained by the occupying structure.

66. This complexity and variability lends challenges in terms of how much certainty should be provided in the MEP about the charging regime (e.g. the types of structures that should be provided with exemptions from the proposed charging regime), and how much flexibility should be retained outside the MEP (e.g. in setting the annual charges) in order to strike the appropriate balance and implement a fair and equitable regime.

67. A key theme that has emerged in submissions on this topic is the extent to which the provisions in the MEP should provide greater specificity about the charging regime, particularly in relation to the following matters:

- Exempt certain types of structures in certain circumstances from the proposed charging regime;
- Provide more information about the manner in which the charges will be calculated; and
- State the charges that will be imposed in respect of various structures.

68. Consistent with section 64A(3)(c) of the RMA, the Council proposes a regime that sets out the broad framework to determining the manner in which the level of coastal occupancy charges have been determined in the coastal plan provisions but relies on the Annual Plan process to set the actual charges. This approach favours comparative responsiveness and flexibility to adjust those charges over the predictability and certainty that might otherwise be achieved if the charges were set out in the coastal plan.

Allocation of space within the CMA

69. The submissions received that relate more generally to the allocation of space within the CMA are addressed under the following key issues headings:

- General submissions – allocation of space in the CMA;
- Objective 5.10;
- Policy 5.10.1;
- Policy 5.10.2; and
- Policy 5.10.3.

5.2 Pre-hearing meetings

70. There have been no pre-hearing meetings for this topic. We are not aware whether submitters may have had preliminary collaborative meetings on this topic.

5.3 Clause 16 amendments – Coastal Occupancy Charges

71. This section of the report sets out a series of amendments to the provisions that were not sought in submissions, but are considered to fall within the scope of Clause 16 of Schedule 1 of the RMA. Clause 16 of Schedule 1 of the RMA enables a local authority to make amendments to proposed policy statements and plans without using the process in Schedule 1 where such amendments are *of minor effect, or are to correct minor errors.* They largely relate to achieving better alignment between the provisions and section 64A of the RMA, as set out below.

'Coastal marine area', 'marine coastal area' and 'common marine and coastal area'

72. The provisions in Chapter 5 that relate to the proposed charging regime variously refer to the 'coastal marine area', 'coastal space', and 'coastal marine environment'. Section 64A generally also refers to the 'coastal marine area', except that it enables the establishment of a coastal occupation charging regime to apply to persons who occupy any part of the *common marine and coastal area*.[22] However the assessment of the public and private benefits is focussed on the occupation of the coastal marine area, and it is stipulated that any money received from a coastal occupation charge must be used for the purpose of promoting the sustainable management of the *coastal marine area*.

73. *Common marine and coastal area* is defined in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act as:

The marine and coastal area other than-

(a) Specified freehold land located in that area; and

(b) Any area that is owned by the Crown and has the status of any of the following kinds:

(i) A conservation area within the meaning of section 2(1) of the Conservation Act 1987:

(ii) A national park within the meaning of section 2 of the National Parks Act 1980:

(iii) A reserve within the meaning of section 2(1) of the Reserves Act 1977; and

(c) The bed of Te Whaanga Lagoon in the Chatham Islands

74. *Marine and coastal area* is defined in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act:

(a) means the area that is bounded,—

(i) on the landward side, by the line of mean high-water springs; and

[22] RMA s 64A(1)

(ii) on the seaward side, by the outer limits of the territorial sea; and

(b) includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and

(c) includes the airspace above, and the water space (but not the water) above, the areas described in paragraphs (a) and (b); and

(d) includes the subsoil, bedrock, and other matter under the areas described in paragraphs (a) and (b)

75. *Coastal marine area* is defined in section 2 of the RMA as:

means the foreshore, seabed, and coastal water, and the air space above the water—

(a) of which the seaward boundary is the outer limits of the territorial sea:

(b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—

(i) 1 kilometre upstream from the mouth of the river; or

(ii) the point upstream that is calculated by multiplying the width of the river mouth by 5

76. Having regard to the definitions of the above terms it is apparent that the definition of the *coastal marine area* includes coastal water, whereas the definition of *marine and coastal area* specifically excludes water (but includes the water space). In all other respects, the definitions of *marine and coastal area* and *coastal marine area* are similar in terms of the geographic area they describe.

77. The common marine and coastal area is essentially the area captured by the marine and coastal area excluding:

a) Specified freehold land located in that area; and

b) Any area that is owned by the Crown and has the status of any of the following kinds:

(i) A conservation area within the meaning of section 2(1) of the Conservation Act 1987:

(ii) A national park within the meaning of section 2 of the National Parks Act 1980:

(iii) A reserve within the meaning of section 2(1) of the Reserves Act 1977

78. In the context of Marlborough, there are parts of the Port of Picton and the Havelock Marina that have been issued with titles. These areas will be exempt from a charging regime by virtue of the definition above.[23]

79. To ensure accuracy and consistency with the RMA in accordance with Clause 16 of the First Schedule, some amendments are necessary to the provisions in Chapter 5 that explicitly relate to the proposed coastal occupancy charging regime such that they refer to the regime applying to persons occupying the *common marine and coastal area*, rather than any other term. These amendments are set out in Appendix 2 and in the summary below. Given that Section 64A also refers to the *coastal marine area* in respect of certain elements of a charging regime, references to that term in the provisions have been retained as appropriate.

Charge imposed on persons or structures

80. Section 64A of the RMA states that a coastal occupation charge, if deemed to be appropriate by the regional council, shall be applied to *persons* who occupy any part of the *common marine and coastal area* (emphasis added).[24]

81. The notified wording of policy 5.10.4 states that 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 (emphasis added).

82. In order to ensure greater consistency of wording between section 64A of the RMA and the provisions of the MEP and in accordance with Clause 16 of the First Schedule it is recommended that policy 5.10.4 is amended to refer to charges being imposed on *the consent holders of coastal permits.*

Exemption or waiver?

83. While this is not a matter that has specifically been raised in submissions, it is considered that Policy 5.10.5 should be amended in accordance with Clause 16 of the First Schedule to make it explicit that the various structures and activities listed in the policy are *exempt* from the proposed charging regime, as opposed to being 'waived' from the need to pay coastal occupancy charges. This is because the use of the word 'waiver' implies that a person will need to make an application for the waiver (and is addressed by Policy 5.10.6), whereas exemptions from the regime at the outset fall into a different category.

Summary

84. In order to ensure consistency between section 64A of the RMA and the provisions in the MEP that relate to the proposed charging regime, it is proposed that the following provisions are

[23] Picton Harbour Queen Charlotte Sound/Totaranui – Pt Lot 1 DP 4964, 15.8396ha; and Havelock Marina – Pt Blk A Blk XII Wakamarina SD, 57.2982ha

[24] RMA s 64A(1)

amended as follows in accordance with Clause 16 of the First Schedule (and reflected in Appendix 2 to this report):

a) Amend the explanatory text for Issue 5J at paragraph 2 to replace 'space' with 'common marine and coastal area';

> ***Issue 5J – People want to be able to use and develop the coastal marine area for private benefit.***
>
> …
>
> *Management regimes for specific uses and activities in the coastal marine area are included within Chapter 13 - Use of the Coastal Environment. However, provisions in this part of the Marlborough Environment Plan (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~~ common marine and coastal area.*
>
> …

b) Amend Policy 5.10.4 and its explanatory text to replace certain occurrences of 'coastal marine area' with 'common marine and coastal area' in order to align with section 64A; and to refer to the charges being imposed on the consent holders of coastal permits, as opposed to coastal permits:

> ***Policy 5.10.4 – Coastal occupancy charges will be imposed on the consent holders of coastal permits where there is greater private than public benefit arising from occupation of the ~~coastal marine area~~ common marine and coastal area.***
>
> *The RMA enables the Council to apply a coastal occupancy charge to ~~activities occupying~~ persons who occupy space within the ~~coastal marine area~~ common marine and coastal area, after having regard to the extent to which public benefits from the coastal marine area are lost or gained and the extent to which private benefit is obtained from the occupation of the coastal marine area. 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 assessment of benefits (private/public) is directed to those arising or lost as a consequence of the structure occupying coastal space, not the associated activity that may be facilitated by the structure being present.*

c) Amend Policy 5.10.5 and its explanatory text to make it explicit that the various structure and activities listed in the policy are exempt from the proposed regime, and to replace

references in the explanatory text to 'coastal marine area' with 'common marine and coastal area':[25]

> ***Policy 5.10.5 – The Marlborough District Council will ~~waive the need for coastal occupancy charges for~~ exempt the following from any requirement to pay coastal occupancy charges:***
>
> *…*
>
> *These ~~waivers~~ exemptions exist because the facilities owned by the Council, ... Retaining walls generally do not occupy significant areas of the ~~coastal marine area~~ common marine and coastal area to the exclusion of other users, while monitoring equipment is generally very small and often temporary. ...*
>
> *…*

d) Amend the explanatory text to Policy 5.10.7 to replace 'coastal marine area' with 'common marine and coastal area', and to replace 'coastal marine environment' with 'coastal marine area' in order to align with section 64A(5):

> ***Policy 5.10.7 – The manner in which the level of coastal occupancy charges has been determined is as follows:***
>
> ***…***
>
> *In deciding how to set charges, the Council has used as its starting point the actual expenditure considered necessary to promote the sustainable management of the coastal marine area. The budgeted expenditure for this is described year to year in the Council's Annual Plan for the Environmental Science and Monitoring Group, Environmental Policy Group and Environmental Compliance and Education Group.*
>
> *In determining who should meet the cost of sustainably managing the ~~coastal marine environment~~ coastal marine area, an allocation of costs needs to occur between beneficiaries. The Council has considered that a contribution towards the costs should be made by ratepayers (25%) as well as those benefitting from the occupation of public space (75%). The Council has also given consideration to anticipated waivers that may be granted and the number and size of the various occupations. From this assessment, a schedule of charges has been derived and is set out in the Council's Annual Plan.*

e) Amend method 5.M.11 to replace 'coastal marine area' with 'common marine and coastal area':

[25] It is noted that other amendments to Policy 5.10.5 are recommended in response to matters raised in submissions. These are set out in the remainder of this report, and in full in Appendix 2.

5.M.11 Annual Plan

The level of charge to be applied to any activity for which a coastal permit is granted to occupy the ~~coastal marine area~~ common marine and coastal area is set out in the Council's Annual Plan.

5.4 General Submissions – coastal occupancy charges

General support for a coastal occupancy charging regime

85. A number of submitters have submitted in support of the introduction of a coastal occupancy charging regime.[26] The Fishing Industry submitters consider that the proposed regime is a pragmatic response to the statutory confusion as to the purpose of the charges.[27] Friends of Nelson Haven and Tasman Bay Incorporated considers that there is a need for coastal occupation charges to better fund the sustainable management of Marlborough's coastal marine area.[28]

86. Aquaculture New Zealand and the Marine Farming Association Incorporated have expressed provisional support for the proposed charging regime on the basis that:[29]

    1. The imposition of charges is fair, efficient and equitable;

    2. Appropriate provision is made for aquaculture in the MEP policy and mapping provisions (given that the aquaculture rules are not part of the MEP);

    3. The formula for determining charges is written into the MEP, rather than the Council's Annual Plan; and

    4. The level of charges should reflect earlier work in the Coastal Occupancy Charges report prepared by Executive Finesse Ltd (January 2013).[30]

87. In response, for the reasons set out in this report it is considered that the proposed method by which the charges will be determined is fair, efficient and equitable; and it is proposed that the methodology reflects that set out in the Executive Finesse Report referred to by the submitters.

88. As set out in Section 5.1 of this report, one of the key issues that relates to this topic is the extent to which the provisions of the MEP set out all of the elements of the proposed charging regime, including the formula for determining the charges, as sought by Aquaculture New Zealand and the Marine Farming Association. Policy 5.10.7 describes the manner in which the

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[26] EBCS (100.8); Eric Jorgensen (404.4, 5, 6, 7); The Bay of Many Coves Residents and Ratepayers Association Incorporated (1190.27, 28, 29, 30, 32); Michael and Kirsten Gerard (424.6, 7, 8, 9, 10, 11, 12, 13); Friends of Nelson Haven and Tasman Bay Incorporated (716.47, 49, 50, 51, 52)

[27] The Fishing Industry Submitters (710.9, 10, 11, 12, 13)

[28] Friends of Nelson Haven and Tasman Bay Incorporated (716.47)

[29] Aquaculture New Zealand (401.38, 39, 40, 41, 42); Marine Farming Association Incorporated (426.38, 39, 40, 41, 42)

[30] Aquaculture New Zealand (401.38, 39, 40, 41, 42); Marine Farming Association Incorporated (426.38, 39, 40, 41, 42)

charges will be determined, but it is acknowledged that the MEP does not specify the particular formula or calculations that will be used to determine the charges.

89. The advantage of setting out the formula in the MEP would be that there is a high level of certainty as to how these charges will be set, particularly given that any change to the formula would need to be made via a plan change process in accordance with Schedule 1 of the RMA. However the disadvantage of including the formula in the MEP is that there would be a lack of flexibility available to amend and adapt the formula to respond to factors or issues that may emerge once the regime is implemented. The setting of the charges via the Annual Plan is an appropriate method in this context given that it is a process that is open to public consultation and input, but is also undertaken on a regular basis, and thus can be more flexible and adaptable to ensure that the charging regime is responding to the unique circumstances in Marlborough. The RMA specifically enables this approach and for these reasons it is not considered appropriate to include the formula for setting the charges in the MEP and the relief sought by the submitters is not supported.

90. The mapping of, and provisions relating to aquaculture are beyond the scope of this report.

91. The AJ King Family Trust and SA Family Trust also support the implementation of a proposed charging regime if it:[31]

    1. recognises existing contributions to the sustainable management of the CMA

    2. is fair and reasonable and applies to all users gaining private benefit from occupation of the CMA

    3. is based on actual costs incurred in the sustainable management of the CMA

    4. is open to engagement on its value and nature and provides a framework for collaborative and strategic decision making between those users who are contributing; and

    5. is proposed in the context of more certainty.

92. As set out in the Executive Finesse report, and elsewhere in this report, the proposed charging regime will not apply to *all* users gaining private benefit from occupation of the CMA because:

    1. the occupation is specifically exempt from the proposed charging regime by virtue of section 64A (e.g. customary marine title groups or protected customary rights groups) or the definition of ‘common marine and coastal area’ (e.g. freehold land); or

    2. the occupation does not occupy significant areas of the CMCA to the exclusion of other users (e.g. retaining walls); or

    3. the occupation is by small and temporary (e.g. monitoring equipment); or

[31] AJ King Family Trust and SA King Family Trust (514.26)

4. the occupation is a permitted activity in the coastal plan (with the exception of moorings in Mooring Management Areas) – as those types of activities that are permitted activities tend to have a more significant element of public benefit (e.g. navigation aids or public information signs); or

5. the occupation is authorised by a deemed coastal permit for a 'commercial port undertaking' issued under section 384A of the RMA. This issue is addressed in more detail later in this report.

93. As set out in Policy 5.10.7, the methodology that will be used to determine the charges is informed by the actual expenditure considered necessary to promote the sustainable management of the coastal marine area (and set out in the Annual Plan). From an engagement perspective, it is understood that the prospect of a proposed charging regime has been the subject of public consultation over a period of time preceding the notification of the MEP; the provisions in the MEP have been publicly notified and the subject of submissions; and the proposal to include the charges in the Annual Plan enables public engagement via that process. The submitter does not appear to have elaborated upon the particular aspects of the charging regime that could benefit from greater certainty, and may wish to address this point at the hearing or in evidence.

Application of the proposed charging regime to marine farms

94. The Kenepuru and Central Sounds Residents Association Incorporated (**KCSRA**) opposes the imposition of the proposed charging regime in respect of moorings, jetties and boat sheds, but supports the proposed charging regime applying to marine farms, as it considers that the primary driver behind the proposed charging regime is to *"rectify years of neglect in terms of carrying out environmental research and monitoring on the adverse effects of marine farming. … Our members could not see the logic or need for a contribution to come from anybody but the marine farming industry*[32]*."* The KCSRA also opposes the proposal to include the charge in the Annual Plan.

95. M and K Gerard consider that marine farms must start paying a fair portion of the coastal occupancy charges to invest something back into the environment upon which they depend.[33] Similarly, J & J Hellstrom consider that the proposed charging regime should apply to marine farms.[34] The Tu Jaes Trust supports the concept of proposed charging regime, but seeks that the consideration and introduction of the regime is delayed until after notification of the Marine Farming provisions.[35]

96. In respect of the above submission points it is reiterated that it is intended that the proposed charging regime will apply to marine farms. It is not considered necessary for the imposition of the regime to be delayed until after the notification of the marine farming provisions, as a

[32] Kenepuru and Central Sounds Residents Association Incorporated (869.43)

[33] Michael and Kirsten Gerard (424.6, 7, 8, 9, 10, 11, 12, 13)

[34] Judy and John Hellstrom (688.35, 36)

[35] Tu Jaes Trust (1202.1)

proposed charging regime is related simply to the extent of an occupation of space in the common marine and coastal area, and the extent to which that occupation accrues private benefit to the occupier that is greater than any net public benefit. The appropriateness or otherwise of the occupation itself, which is expected to be addressed in the marine farming provisions referred to by the submitter, is not a matter that has any bearing on the imposition of a proposed charging regime.

Rates and their relationship to a COCR

97. V & E Burton support increased funding to enable the sustainable management of the coastal marine area, but note that residents already pay rates. V and E Burton seek clarification as to how rates are being spent, and why further funding is required for the management of the coastal marine zone [sic].[36]

98. It is acknowledged that residents and property owners within the district pay rates. Funds raised go towards paying for the services and facilities delivered by the Council across the entire district. Details of the way that the council allocates its spending is set out on a three-yearly basis in its Long Term Plan, and on an annual basis in its Annual Plan. Both of these documents are publicly available and are open to the public to review and provide submissions on prior to being finalised. As set out in section 64A, any funds raised from a proposed charging regime *must* be spent on promoting the sustainable management of the coastal marine area. The imposition of charges under a proposed charging regime will therefore either enable more money to be spent on this aspect of the Council's functions, or 'free up' rate revenue that was otherwise required to deliver this function to be put towards other functions of the Council.

Abandoned boats

99. J & J Hellstrom observe that there is a growing issue relating to abandoned boats on the foreshore. The submitters are of the view that boats, other than tenders used for regular access to moorings, should not be stored on the foreshore reserve, and hope that the proposed charging regime can address this issue.[37]

100. The proposed charging regime can only apply to the occupation of the common marine and coastal area by structures, not vessels. It is however conceivable that addressing this type of issue could be beneficial by 'promoting the sustainable management of the CMA' and thus may be addressed using some of the funds obtained by the council from the proposed charging regime. However, even abandoned vessels are not 'occupations' and are not eligible to be charged under this type of regime. It is understood that the Harbourmaster occasionally uses his/her powers to remove an abandoned boat (usually on a mooring) from the coastal marine area for reasons of navigational safety.

[36] Vera and Eleanor Burton (687.2)

[37] Judy and John Hellstrom (688.134)

Information about charging methodology

101. Some submitters have raised concern that the information available about the proposed methodology that will be used to set the charges, and the level of those charges, has been insufficient;[38] and that the community should be provided with an opportunity for consultation on the methodology for setting the fees and the actual proposed fees before these are finalised.[39]

102. Details about the proposed methodology and indicative charges are set out in the Executive Finesse report, which was referred to in the Section 32 report for Chapter 5 – Allocation of Public Resources – Coastal. It is understood that in advance of the review of the Marlborough Regional Policy Statement, a series of discussion papers were prepared by the council and released for public feedback in 2007. One of the issues addressed in Discussion Paper 4 was that relating to coastal occupancy charges. An overview of the comments received on this matter is set out in the Section 32 Report that accompanied the MEP.[40] In addition, targeted consultation on the proposed charging regime was undertaken in 2014.

103. It is proposed that the charges will be set on an annual basis in accordance with the methodology set out in Policy 5.10.7 of the MEP during the Council's preparation of its Annual Plan. This is a public process and the community can provide input on the proposed fees.

Opposition to the coastal charging regime

104. Some submitters, including the Marlborough Forest Industry Association, oppose the imposition of a coastal charging regime.[41] Some of these submitters seek that the proposed charging regime is removed from the MEP.[42] The reasons for the opposition to the proposed regime are outlined and addressed below, and for the reasons outlined below, removing the proposed charging regime from the MEP as sought by some submitters is not supported.

105. Some submitters contend that the charges are a revenue gathering exercise;[43] and that there is no justified reason for imposing the charges.[44] The charging regime will result in additional revenue being gathered by the council, but this is anticipated and provided for in section 64A of the RMA. This section of the RMA also sets out the framework within which a regional council must determine whether or not to impose a charging regime. As has been set out elsewhere

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[38] Michael Joseph and Catherine May Sweeney (932.1-7)

[39] EBCS (100.8); Eleanor and Vera Burton (687.1)

[40] Section 32 Report – Chapter 5: Allocation of Public Resources – Coastal, at pages 5 - 6

[41] Thomas Norton Te Awaiti Ltd (203.1); Douglas and Coleen Robbins (640.3); Glenda Vera Robb (738.6); Melva Joy Robb (935.3); D C Hemphill (648.11); Rick Osborne (1074.2); Robin Pasley (1075.1); Raelyne Joyce Perkins (1076.1); Barry William Blackley (7.1); Cameron Lawes (270.1); Mt Zion Charitable Trust (515.8); David Archdall Robinson (638.1); Michael Joseph and Catherine May Sweeney (932.1-7); Michael William Rosson (950.1); Marlborough Forest Industry Association Incorporated (962.197); Rowland and Malcolm Woods (1083.1-3); Sheryll Stapleton (1135.1); Taurewa Lodge Trust (1185.1)

[42] Thomas Norton Te Awaiti Ltd (203.1), Cameron Lawes (270.1), George Rose (311.1)

[43] Thomas Norton Te Awaiti Ltd (203.1)

[44] Thomas Norton Te Awaiti Ltd (203.1)

in this report, the Council has determined that it is appropriate to impose a charging regime on those occupations where the private benefit accrued is greater than the net public benefit associated with that occupation.

Costs associated with moorings

106. A group of submitters note that there are existing costs associated with securing consent for, and the maintenance of, moorings.[45] It is acknowledged that there are such costs, and that costs are also incurred for those seeking to construct and maintain other structures in the common marine and coastal area such as marine farms and jetties. The costs associated with the maintenance of a structure occupying the CMCA (such as a mooring) may be a relevant factor when assessing the public and private benefits associated with a particular structure. For example if a structure is heavily used by the public and that influences the ongoing cost of maintenance, this could be a factor to take into account in determining where the benefits fall (to the public or the private occupier) and could be a relevant matter under Policy 5.10.6(a) if a waiver was sought on the basis of the occupation being less 'non-exclusive' and therefore providing less private benefit as a consequence (i.e. higher maintenance costs due to a high level of public use).

Jetties

107. A number of submitters who oppose the introduction of a proposed charging regime contend that wharves, jetties and sheds are necessary for access to properties with no road access.[46] Another submitter states that the capital cost of structures is borne by private owners, yet they have to be available for public use.[47] C Lawes is of the view that the public benefit that arises from the requirement to make jetties available for public use would not accrue without the private investment to establish the jetty, and that if the charging regime is imposed on jetties it would no longer be possible to justify the resource consent condition requiring jetties to be made available for public use.[48]

108. The Court of Appeal has considered the extent to which members of the public may use a jetty constructed within the [then] coastal marine area for the purpose of obtaining access to a private property.[49] The decision was issued in 2002 and has its origins in a declaration sought by Auckland Regional Council on this issue. A copy of this decision is included as Appendix 4 to this report.

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[45] Thomas Norton Te Awaiti Ltd (203.1); Douglas and Coleen Robbins (640.3); Glenda Vera Robb (738.6); Melva Joy Robb (935.3); Robin Pasley (1075.1); Barry William Blackley (7.1); Sheryll Stapleton (1135.1)

[46] Douglas and Coleen Robbins (640.3); D C Hemphill (648.11); Glenda Vera Robb (738.6); Melva Joy Robb (935.3); Rick Osborne (1074.2); Robin Pasley (1075.1); Raelyne Joyce Perkins (1076.1); Barry William Blackley (7.1); CP and LE Womersley (337.1); Michael William Rosson (950.1); Marlborough Forest Industry Association Incorporated (962.197)

[47] Rick Osborne (1074.2); Cameron Lawes (270.1); Marlborough Forest Industry Association Incorporated (962.197)

[48] Cameron Lawes (270.1)

[49] *A Hume and Lynette Hume v Auckland Regional Council* CA262/01

109. The decision considers the 'default position' in the RMA with regard to the rights of public access to structures in the CMA. The Court considered that *"Parliament seems to have gone out of its way to state that the default position (i.e. the position in the absence of an express provision or necessary implication) is that public use and access is permitted. The default position is demonstrably not that the public are excluded in the absence of express or implied permission."*[50]

110. The Court stated that there are two ways in which a coastal permit may give rights of exclusion of others from use and occupancy of a structure:

- when the permit expressly provides for such rights of exclusion; or

- when the exclusion of others (or a degree of exclusion) is reasonably necessary to achieve the purpose of the permit.

111. Notwithstanding the above legal principles determined by the Court of Appeal, it is understood that the council generally stipulates that private jetties are made available for public use via the following conditions on coastal permits authorising these structures:

1. *The consent holder must allow any person to pass across and lawfully use the jetty and deck without charge.*

2. *The foreshore structures authorised by this resource consent must not be used at any time by any person (including the consent holder) in a manner which prevents or unduly hinders any other person from passing across the structures or accessing the structures with a vessel for the loading/unloading of goods and people.*

3. *No person may at any time use any external part of the structures for the storage of any item, material or equipment of any sort.*

112. It is noted that the calculation of the net private benefit accruing to private jetties as set out in the Executive Finesse report states that the private benefit gained (4) is equal to the public benefit gained (4) (most likely in relation to the fact that both the jetty owner and members of the public can use the jetty in the same manner). However the public benefit lost is 3, which represents the lost opportunity to occupy the same space and the potential impedance of access along the adjoining foreshore.

113. It is acknowledged that in some locations where a private jetty is located in a part of the CMCA which is regularly visited by members of the public who may use that jetty to gain access to the foreshore, the public benefit accrued to that jetty may outweigh the private benefit, and a waiver (in part or in full) of the proposed charges may be justified. However, this is contrasted to a situation where a private jetty is located in a particularly remote part of the Sounds where it is seldom used by any members of the public, and thus there is a greater private benefit accruing to the jetty. Given that there are a range of circumstances, scenarios, and locations within which private jetties are established, it is not considered appropriate to provide a

[50] *A Hume and Lynette Hume v Auckland Regional Council* CA262/01 at [25]

'blanket' exemption from the charging regime for private jetties. Consent holders may instead seek a waiver from the charge in accordance with the circumstances outlined in Policy 5.10.6.

114. Additionally, C Lawes states that the construction and location of jetties is already properly managed through the resource consent framework.[51] It is reiterated that the purpose of the proposed charging regime is not to manage the effects of the occupation of structures in the common marine and coastal area, nor the standard to which they are constructed. The proposed charging regime relates only to the occupation of the space and the extent to which that occupation results in a greater private than public benefit.

Effect on marine farmers

115. Some submitters oppose the charging regime and consider that marine farmers already have enough costs imposed on them.[52] It is accepted that the proposed charging regime will result in additional costs being imposed on marine farmers. It is noted that Aquaculture NZ, Sanford Ltd, and The Marine Farming Association Inc provisionally support the proposed regime,[53] as do the Fishing Industry Submitters.[54]

116. The Coromandel Marine Farmers' Association has expressed some concerns about the regime in respect of whether using funds collected from the regime on council planning costs constitutes 'sustainable management of the CMA'; that it is not appropriate to set out the charges in the Annual Plan as proposed; and that the MEP should specify both the manner in which the charges will be determined, and the charges themselves.[55] Totaranui Ltd seeks a range of amendments to the proposed regime specifically in relation to iwi interests, but does not appear to oppose the charging regime outright.[56]

117. While the marine farming entities cited above have some concerns with some of the details of the proposed regime, they do not appear to fundamentally oppose the proposal, but may address this in more detail at the hearing or in evidence.

Retrospective or prospective application of the proposed charging regime

118. C Lawes observes that it is not stated whether the regime will apply in a retrospective or prospective manner and considers that it should not be applied retrospectively.[57] It is acknowledged that the provisions in the MEP as notified do not stipulate how the charging regime will be applied to existing structures, nor whether charges will apply in a retrospective or prospective manner, but it is assumed that it is council's intent to apply the charges only in a prospective manner.

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[51] Cameron Lawes (270.1)

[52] Douglas and Coleen Robbins (640.3); Glenda Vera Robb (738.6); Melva Joy Robb (935.3)

[53] Marine Farming Association Incorporated (426), Aquaculture NZ (401), Sanford Ltd (1140)

[54] The Fishing Industry Submitters (710)

[55] Coromandel Marine Farmers' Association (633)

[56] Totaranui Ltd (233)

[57] Cameron Lawes (270.1)

Rates

119. Some submitters have stated that residents already pay rates for which minimal services are received in return, with the inference that this is an unnecessary additional cost on top of paying rates.[58] As set out earlier in this report, the proposed charging regime is a different type of charge to rates. It is specifically targeted to structures that occupy the publicly owned spaces in the common marine and coastal area and is intended to impose a charge on those structures which are gaining private benefit from occupying public space.

120. In that sense it is not a charge for a direct service as such, but rather a compensatory payment where the relative benefit of the occupation favours private interest over public, and the revenue gathered is required to be invested in sustainably managing the CMA.

Community contributions on coastal permits

121. Sanford Ltd highlights that coastal permits already contain extensive community contributions, and these should be able to be offset against proposed charges.[59] Sanford also seeks that farms incurring occupancy charges should have a controlled activity status. [60]

122. It is acknowledged that some coastal permits have requirements for community contributions to be made by consent holders. However these contributions relate to addressing effects on the environment of the occupying structure itself, not the impact of the loss of opportunity to otherwise utilise that space resulting from that occupation. As has been set out earlier in this report, the proposed charging regime is concerned only with imposing a charge on those structures which are gaining a private benefit from the occupation of public coastal space that outweighs any net public benefit that may be associated with that structure. The manner in which the level of charges has been determined also includes consideration of who benefits, and the fair and equitable allocation of costs amongst those beneficiaries.

123. The imposition of the charge does not have any relationship to the effects of the occupation on the environment. It is therefore inappropriate to link the extent to which an activity incurs a coastal occupation charge to its activity status in the MEP as that is more appropriately related to the anticipated effects of an activity on the environment, and the process to determine whether an activity is appropriate in that environment or not.

Prior consultation

124. Te Atiwai Ltd considers that the proposal has not taken into account feedback in October 2014 on the proposal to introduce coastal occupancy charges, but does not provide any more specific details in the submission.[61]

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[58] Rowland and Malcolm Woods (1083.1-3); Sheryll Stapleton (1135.1)

[59] Sanford Limited (1140.5, 6, 7, 8, 9)

[60] Sanford Limited (1140.5, 6, 7, 8, 9)

[61] Thomas Norton Te Awaiti Ltd (203.1)

125. It is understood that the council prepared a summary of submissions received and published this summary on its website. The Regional Planning and Development Committee (as it was then) considered the feedback in the process of confirming the provisions to be included in the MEP.

Section 64A(3) RMA

126. The Coromandel Marine Farmers' Association (**CMFA**) consider that Policies 5.10.4 – 5.10.8 generally relate well to the matters in section 64A(3)(a) – (c) but is of the view that it would be useful for the MEP to specify *both* matters in section 64A(3)(c): both how the charges are calculated, and how the amounts are allocated to various payees.[62] The CMFA seeks that the COCR is withdrawn unless this point is addressed.

127. Section 64A(3)(c) states that the council must specify "*the level of charges to be paid* ***or*** *the manner in which the charge will be determined…"* (emphasis added). This sub-section of the RMA offers councils discretion as to which part of section 64A(3)(c) they include in their regional coastal plans. As set out in Sections 5.1 and 5.4 of this report, the Council has determined that it is most appropriate to set the broad framework and principles of the proposed charging regime in the MEP but to retain the ability to assess applications for waivers and set the charges via processes that sit outside the MEP. The additional certainty that would be achieved by including the details of the charging methodology in the MEP would be outweighed by the relative inflexibility of being able to adjust that methodology without going through a Schedule 1 plan change process. Setting the charges via the Annual Plan process still enables public consultation and input, as well as enabling a flexible and adaptable approach to ensure that the charging regime is responding to the unique circumstances in Marlborough. For these reasons the relief sought by the CMFA is not supported.

128. Under the proposed regime there are several key variables that influence the way the charges have been determined. At the outset a generic analysis has looked at the various types of typical structures that exist in the region's coastal space and evaluated at that generic level the relative extent of public and private benefits that might derive from each type of structure occupying coastal space (as set out in the Boffa Miskell Report). That analysis also enabled a comparative analysis of the extent of benefit between different types of structures. A key consideration in that analysis was the degree to which an occupation is exclusive of the public or not. This analysis formed the basis of the council's determination that a proposed coastal occupancy charging regime was justified (where the private benefit exceeded the net public benefit).

129. That analysis has then informed the work undertaken by Executive Finesse along with other considerations relating to sustainably managing the CMA, to arrive at an appropriate charge for differing occupations where the private benefit outweighs the net public benefit. The basis of that methodology is reflected in Policy 5.10.7. In short, it identifies the annual spend the council is expecting to make in exercising its role in sustainable management of the CMA; accounts for those occupations that are known to be exempt from charges and those that might

[62] Coromandel Marine Farmers' Association (633.1, 2, 3, 4, 5, 6)

be anticipated to receive a partial or full waiver; apportions the council's annual cost of sustainable management across the various types of occupation based on a fair and equitable judgement of the extent to which they will likely benefit from that management investment (including a wider public benefit for ratepayers who may not be occupiers); and applies a charging approach reflective of the nature and characteristics of the type of occupation, so as to recover those annual management costs.

130. Because the total annual cost of sustainable management may well vary from year to year, the number and nature of occupations in the region may also change, as could who may benefit from the investment in sustainable management of the CMA depending on investment priorities, there is some advantage in having these matters sit outside of the coastal plan informing the annual plan process in setting charges, and being more easily, regularly and flexibly adjusted to changing circumstances, if warranted. As has already been noted in this report, embedding that methodology and the charges themselves within the coastal plan, while more certain, is far less responsive to change and more difficult to adjust because of the statutory process required to make changes to the coastal plan under the RMA.

131. Recognising the generic benefits analysis that was originally undertaken, and acknowledging the circumstances of each occupation may be unique or distinguishable from what might be considered typical for a particular type of occupation, the waiver process under Policy 5.10.6 is intended to enable case by case consideration, again though through a process sitting outside of the coastal plan provisions.

Site specific exemption

132. CP and LE Womersley seek that a specific exemption from the proposed charging regime is made in respect of legal access to Lot 1 DP 184888, Lot 1 DP 311.518 and Lot 1 DP 18196.[63] It appears that the only legal access to this property is by way of boat access.

133. The issue of the extent to which the proposed regime should apply to residents whose only property access is via boat has been addressed variously in this report, where it is concluded that the absence of road access has no bearing on the degree of public benefit (lost or gained) as a consequence of an occupation that provides alternative sea-based access to a property. As has been noted variously throughout this report, it is the relative benefit (public vs private) that will be the determinative factor in whether or not a charge for the occupation of space should be imposed. For this reason I do not support a pre-determined waiver or exemption for permanent residents of a property simply on the basis of there being no road access to that property, nor site specific exemptions for particular properties in the Plan as sought by the submitters. Accordingly the relief sought by CP and LE Womersley is not supported.

[63] CP and LE Womersley (337.1)

5.5 General submissions – allocation of space within the CMA

(This section is authored by Ms Donaldson)

Relocation of provisions to Chapter 13 – The Use of the Coastal Environment

134. Submissions were received from Federated Farmers and Forest and Bird[64] that support the provisions under Issue 5J as notified, but seek that the issue, objective and subsequent polices and methods are moved to Chapter 13 -The Use of the Coastal Environment. The relocation of provisions was supported in further submissions from and further submissions from Aquaculture New Zealand and Marine Farming Association Incorporated. [65]

135. The purpose of Chapter 5 – Allocation of Public Resources is to provide a framework for the allocation of public resources, namely freshwater and space within the coastal marine area. Chapter 13 – The Use of the Coastal Environment provides a management framework for activities undertaken in the coastal environment.

136. As outlined within the explanation to Issue 5J, the provisions in Chapter 5 deal with higher level concerns about how space within the CMA should be allocated, the degree to which various occupations generate public versus private benefits, and the circumstances where a user should pay to use the space.

137. I consider that Chapter 5 is the most appropriate location for these provisions, given the chapter deals with higher level concerns on the allocation of space in the CMA, as opposed to managing specific activities, which is the role of Chapter 13. It will ensure that provisions regarding the allocation of public resources (both freshwater and coastal space) are contained within one section of the Plan.

138. It is therefore recommended that the submissions of Federated Farmers and Forest and Bird are not supported.

5.6 Objective 5.10

(This section is authored by Ms Donaldson)

139. Objective 5.10 seeks the *'Equitable and sustainable allocation of public space within Marlborough's coastal marine area'*.

[64] Federated Farmers of New Zealand (425.79) and Forest and Bird (715.100, 715.101, 715.102 715.103, 715.104, 7.15.105, 715.106, 715.107, 715.108, 715.109 715.110)

[65] Marine Framing Association Incorporated and Aquaculture New Zealand (FS597)

Summary of submissions

140. Queen Charlotte Sound Residents Association and Judy and John Hellstrom[66] support Objective 5.10 as notified.

141. Aquaculture New Zealand and Marine Farming Association Incorporated[67] seek that the word 'equitable' is removed as they consider the word is vague in its context. They state that it could mean equality of opportunity to apply for use within the CMA, or alternatively it could mean that space should be equally apportioned between different uses. The submitters seek that 'equitable' is replaced with 'efficient' to reflect two aims: lower transaction costs and lowest/highest net benefit to society as a whole. The submitters also seek that the commentary in objective 5.10 should note that this 'manages conflict between users' rather than 'avoids conflicts'. These submissions were opposed in further submissions by Clova Bay Residents Association and Kenepuru Central Sounds Residents Association Incorporated, [68] on the basis that the proposed change does not support sustainable management of the environment. Forest and Bird also made a further submission opposing the submission Marine Farming Association Incorporated on the basis that 'equitable' has a very different meaning to 'efficient'.

142. Sanford Limited[69] submitted that it is unclear what 'equitable' means in relation to the sustainable allocation of public space within the CMA.

143. The Fishing Industry Submitters[70] oppose in part the explanation of Objective 5.10 because it fails to recognise the inherent rights to utilise fisheries resource under the Fisheries Act 1996. The submitter seeks that the explanation of the objective is amended to include 'The Council is not responsible for allocating fisheries resources or access to fisheries resources, however, as this is the role of the Ministry of Primary Industries under the Fisheries Act 1996'. Forest and Bird[71] in further submissions oppose the submission of the Fishing Industry Submitters on the basis that 'there should be no assumption of 'ownership'.

144. Te Ātiawa o Te Waka-a-Māui[72] opposes Objective 10.5 on the basis that it does not take into account cultural values.

145. Friends of Nelson Haven and Tasman Bay Incorporated[73] submit that Objective 5.10 is supported with the acknowledgement of cumulative effects in a finite resource. They submit that there is a need for coastal occupation charges to better fund the sustainable management of Marlborough's coastal marine area. They submit that objective 5.10 is amended to read:

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[66] Queen Charlotte Sound Resident Association (504.12) and Judy and John Hellstrom (688.29)

[67] Aquaculture New Zealand (401.34) and Marine Farming Association (426.34)

[68] Clova Bay Residents Association (FS74) and Kenepuru Central Sounds Residents Association Incorporated (FS316)

[69] Sanford Limited (1140.4)

[70] The Fishing Industry Submitters (710.7)

[71] Forest and Bird (FS1139)

[72] Te Ātiawa o Te Waka-a-Māui (1186.46)

[73] Friends of Nelson Haven and Tasman Bay Incorporated (716.048)

Equitable and sustainable allocation of public space within Marlborough's coastal marine area <u>while recognizing cumulative effects in a finite resource.</u>

146. The submission of Friends of Nelson Haven and Tasman Bay Incorporated is opposed in further submissions by Aquaculture New Zealand and Marine Farming Association Incorporated[74] on the basis that the proposed words do not add anything over and above the word 'sustainable' in the objective.

Analysis and recommendation

147. In response to the submissions by Aquaculture New Zealand, Marine Farming Association Incorporated and Sanford Limited, I refer to definitions of the words 'equitable' meaning 'fair and impartial'[75] and 'efficient' meaning 'achieving maximum productivity with minimum wasted effort or expense'[76].

148. An objective is a statement of what is to be achieved through the resolution of a particular issue. In this case, the issue (Issue 5J) is that '*People want to be able to use and develop the coastal marine area for private benefit'*. The Council seeks to achieve objective 5.10. The polices (5.10.1-5.10.8) describe the course of action to take to achieve the objective.

149. I consider it is appropriate and reasonable that the outcome the Council wants to achieve is that the allocation of space within the CMA is 'fair and impartial' (i.e. equitable) and sustainable, given that the CMA is a public resource to the benefit of all.

150. In this case it is essential to look at the polices that seek to implement this objective. Policy 5.10.1 recognises that there are no inherent rights to anyone to be able to use, develop or occupy the CMA and that these rights must by granted by way of a rule in a plan or a resource consent, at which time there will be a determination of if an activity is appropriate within the CMA.

151. Policy 5.10.2 provides for a first in first served allocation method as default, but recognises that the Council may, where competing demand for coastal space becomes apparent, consider the option of an alternative regime. The 'first in first served' method of allocation, is engrained within the RMA provisions, and is in my opinion generally considered to be an equitable method of allocation. It also does not mean, as questioned by the submitter, that 'equal' space is apportioned between users. It means that those who are 'first in' and can obtain resource consent for the activity will be 'fairly and impartially' allocated the space, by way of the procedure set out in the RMA.

152. Any resource consent application would have to demonstrate that the activity is consistent with the other policies of the Plan, a number of which require a consideration of 'efficiency' of an activity, namely Policy 13.2.2(b) 13.2.3(c), and 13.10.3.

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[74] Marine Framing Association Incorporated and Aquaculture New Zealand (FS597)

[75] Oxford Dictionary https://en.oxforddictionaries.com/definition/equitable

[76] https://en.oxforddictionaries.com/definition/efficient

153. If an alternative allocation method is proposed by the Council for allocation of space within the CMA (under s165G of the RMA), then the Council would need to satisfy the requirements of s165H of the RMA. S165H requires the Council to demonstrate that the rule in relation to allocation of space is necessary and desirable in the circumstances of the region, and that the proposed method is the most appropriate for allocation of space in the circumstances of the region, having regard to its efficiency and effectiveness compared to other methods or allocating space.[77]

154. It is therefore considered that the Council's objective to achieve equitable and sustainable allocation of space within the CMA is justified. The efficiency of activities within the CMA will be duly considered through the resource consent process.

155. I do agree with the submission of Aquaculture New Zealand, Marine Farming Association Incorporated that the use of the term 'avoid' within the commentary of objective 5.10 is most likely to be optimistic. I consider that replacing 'avoid' with 'manage conflicts between users' is more realistic. It acknowledges that there could be some conflicts between users of the CMA, however the allocation of space and the framework within the Plan to control activities will assist in managing these conflicts.

156. For these reasons it is recommended that the submission of Aquaculture New Zealand and Marine Farming Association Incorporated are accepted in part, and the submission of Sanford Limited is not supported.

157. Turning to the submission of the Fishing Industry Submitters, I do not consider there is a need to refer to the role of the Fisheries Act and MPI in fisheries management within the commentary to objective 5.10. The objective clearly identifies that it is the allocation of public space within the CMA that the objective is concerned with. The Plan is the way by which the Council will achieve the purpose of the RMA. The management of fisheries falls outside the scope of the RMA. It is not necessary to refer to other Acts that control activities outside of the RMA. For these reasons it is recommended that the submission of Fishing Industry Submitters is not supported.

158. Te Ātiawa o Te Waka-a-Māui opposes Objective 10.5 on the basis that it does not take into account cultural values. An activity that requires the occupation of the CMA is subject to the resource consent application process for the activity. During a resource consent assessment the activity will be assessed against the objectives and policies of the Plan, which include the provisions within Chapter 3 – Marlborough's Tangata Whenua Iwi and Chapter 13 – the Use of the Coastal Environment. In particular, Chapter 13, Policy 13.1.2 of the MEP states that appropriate use and development activities within Marlborough's Coastal Environment (which includes the CMA) are those that recognise and provide for, and otherwise avoid, remedy or mitigate, adverse effects on values of the coastal environment including '*the relationship of Maori and their traditions with their ancestral lands, waters, sites, waahi tapu and other taonga*[78].

[77] RMA s165H(1)(b)

[78] MEP Policy 13.2.1(b)

159. For these reasons it is not necessary to include a reference to cultural values within Objective 5.10 as they will be considered as part of a resource consent application for the activity. As such it is recommend that the submission of Te Ātiawa o Te Waka-a-Māui is not supported.

160. In response to the submission by Friends of Nelson Haven and Tasman Bay Incorporated, I agree with the further submission by Aquaculture New Zealand and Marine Farming Association Incorporated that the inclusion of the word 'sustainable' within the objective will provide consider consideration of the cumulative effects on the public resource in allocation. In addition any activity within the CMA that requires occupation will require resource consent. Through this process effects of any activity (both individually and cumulative) on the CMA will be considered, and an assessment will be made as to whether the proposed activity is appropriate against the objective and policies of the Plan. For this reason recommend that the submission by Friends of Nelson Haven and Tasman Bay Incorporated is not supported.

Recommendation

161. For the reasons outlined above I recommend Objective 5.10 is retained as notified, and the commentary for Objective 5.10 is amended to read;

> *The control of the occupation 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 intended to ensure 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~~ manages conflicts between users and ensures efficient and beneficial use.*

5.7 Policy 5.10.1

(This section is authored by Ms Donaldson)

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

Summary of submissions

163. Queen Charlotte Sound Residents Association and Judy and John Hellstrom[79] support Policy 5.10.1 as notified.

164. Aquaculture New Zealand and Marine Farming Association Incorporated[80] consider that the commentary to Policy 15.1.10 should note Sections 124A, 124B and 124C of the RMA as well as Section 165ZH, 165ZI and 165ZJ, as all of these provisions recognise that the current consent holder cannot be gazumped by somebody else.

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[79] Queen Charlotte Sound Resident Association (504.14) and Judy and John Hellstrom (688.31)

[80] Aquaculture New Zealand (401.35) and Marine Farming Association (426.35)

165. The Fishing Industry Submitters[81] oppose in part Policy 5.10.1 because it fails to recognise the inherent rights to utilise fisheries resource under the Fisheries Act 1996. The submitter considers that Policy 5.10.1 provides an opportunity to clarify the rights to utilise fisheries resources under the Fisheries Act. They seek that Policy 5.101 is amended to read; *Recognition that there are no inherent rights under the RMA to be able to use, develop of occupy the coastal marine area*.

166. New Zealand Forest Products Holdings Limited considers that Policy 5.10.1 is not a Policy, and does not give effect to the objective. They consider it creates confusion by suggesting that there is a threshold which applications need to pass in order to justify being granted, yet use and development of the CMA is identified as a matter of importance elsewhere in the Plan. They seek the removal of Policy 5.10.1.

Analysis

167. In response to the submission by Aquaculture New Zealand and Marine Farming Association Incorporated, the commentary under Policy 5.10.1 recognises that Section 12 of the RMA does not guarantee rights to be able to use the CMA, but that use of the CMA must be enabled by a rule in a plan or by resource consent.

168. S124-124C of the Plan provides for the circumstances where an existing consent holder may continue to operate under the existing consent until a new consent is granted or declined and all appeals are determined. S124A–124B outlines how priority to use natural resources is applied in the case of existing expiring consents and applications for new consents.

169. S165ZH applies to processing applications of existing permit holders of coastal permits to occupy space for aquaculture activities. S165ZI sets out the process to be followed for applications for space already used for aquaculture activities, and 165ZJ provides for additional criteria to be considered for permits for space already used for aquaculture activities.

170. The sections of the RMA (outlined above) that the submitters seek are referred to within the commentary of the Policy 5.10.1, are sections that outline the process processed to be followed where there are existing consents and applications for new consents for the use of the same natural resource. The provisions in 165ZH-ZJ specifically apply in the case of aquaculture activities.

171. The intention of Policy 5.10.1 is to draw the attention of Plan users to the fact that there are no inherent rights to use, develop, or occupy the CMA, and that rights must be enabled by way of a rule in the Plan or by resource consent.

172. The provisions of the RMA sought to be included by the submitter are one way in which these rights can be obtained through the resource consent process. There are numerous other ways provided for by the Plan, like permitted activities and resource consents that allow activities to occur within the CMA. It is unnecessary to list all sections of the RMA within Policy 5.10.1 that facilitate the ability to use, develop or occupy the CMA. For this reason it is recommended that

[81] The Fishing Industry Submitters (710.7)

the submissions of Aquaculture New Zealand and Marine Farming Association Incorporated are not supported.

173. In response to the submission by the Fishing Industry Submitters, I do not consider that it is necessary to include specific reference to 'under the RMA' within Policy 15.10.1. The functions of a Regional Council are outlined within s30 of the RMA. S30(2) specifically states that the Regional Council and Minister of Conservation must not perform functions in the coastal marine area to control the taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fishing resources controlled under the Fisheries Act 1996. Whether or not there are inherent rights to utilise fishing resources provided for under the Fisheries Act, there are no inherent rights under the RMA, which is expressed through Policy 15.10.1. For these reasons it is recommended that the submission from the Fishing Industry Submitters is not supported.

174. Turning to the submission of New Zealand Forest Products Holdings, policy 5.10.1 identifies that activities within the CMA must be enabled by way of the rule in a plan or by a resource consent. Policy 5.10.2 then outlines how allocation of space in the CMA is undertaken. At present, allocation is done on a 'first in first served basis' by processing resource consents (that enable the activity in the CMA) in order of receipt. I agree that the use and development of the CMA is provided for within the plan, subject to the activity taking place in appropriate locations and forms and within appropriate limits (Objective 13.2). I do not consider that Policy 5.10.1 creates a threshold that applications need to pass. It merely identifies that in order to occupy the CMA, it must be either permitted by a rule in the Plan or by a resource consent. For these reasons it is recommended that the submission of New Zealand Forest Products Holdings Limited is not supported.

Recommendation

175. Policy 5.10.1 is retained as notified.

5.8 Policy 5.10.2

(This section is authored by Ms Donaldson)

176. Policy 5.10.2 states that the 'first in first served' method for allocation of resources within the CMA is the default mechanism, but where competing demand for coastal space becomes apparent, the Council can consider the option of introducing an alternative regime.

Summary of submissions

177. Judy and John Hellstrom[82] support Policy 5.10.2 as notified.

178. Queen Charlotte Sound Residents Association support the policy in part, but seek amendments to include an additional sentence at the end of the Policy to read '*If alternative*

[82] Queen Charlotte Sound Resident Association (504.13) and Judy and John Hellstrom (688.30)

methods of allocation are considered such will be publicly notified and also discussed within the Sounds Advisory group.'

179. Aquaculture New Zealand and Marine Farming Association Incorporated[83] support the first sentence of Policy 5.10.2, but seek that the second sentence is removed on the basis that an alternative regime could be referred to within the commentary.

180. Te Runanga O Ngati Kuia[84] request that Policy 5.10.2 is amended to read:

> *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. Should mooring areas be established, iwi will have a portion of space set aside for iwi use.*

181. Michael Phillip Rothwell[85] opposes Policy 5.10.2 in respect to allocation of resources in the coastal marine area for mooring resource consent opportunities. He considers that that Jonny-come-lately cannot expect the allocation of resources in the CMA to wait for their arrival, and that needs must at the time often applies.

182. The Queen Charlotte Sound Residents Association submission seeks the public notification of any alternative regime. Section 165G of the RMA states; *A regional coastal plan… may provide for a rule in relation to a method for allocating common space in the CMA for the purposes of an activity, including a rule in relation to the public tender of authorisations or any other method of allocating authorisations.*

Analysis

183. Any alternative method of allocation that may be considered by the Council within the life of the Plan would result in changes to the Plan - to insert (at a minimum) rules into the Plan to implement the alternative regime. This would require a Plan change process, undertaken in line with the first schedule of the RMA, which would include public notification of the proposed plan change.

184. In light of the submission of Queen Charlotte Sound Residents Association, the commentary under Policy 5.10.2 could be amended to provide more guidance to plan users about the RMA processes that would need to occur if an alternative regime was proposed by the Council. For these reasons it is recommend that the submission of Queen Charlotte Sound Residents Association is accepted in part.

185. Turning to the submissions of Aquaculture New Zealand and Marine Farming Association Incorporated, given that an alternative regime for allocation is provided for within the RMA it is appropriate that reference to this is included within the Policy. The Council may, within the life

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[83] Aquaculture New Zealand (401.36) and Marine Farming Association (426.36)

[84] Te Runanga O Ngati Kuia (501.20)

[85] Michael Phillip Rothwell (1253.2)

of the Plan, adopt an alternative regime, at which time it would do so in order to achieve Objective 5.10. I consider that the policy as notified provides appropriate direction as to how the objective will be achieved, and reflects that this may change within the life of the plan if considered necessary by the Council. For these reasons it is recommended that the submissions of Aquaculture New Zealand and Marine Farming Association Incorporated are not supported.

186. In response to the submission by Te Runanga O Ngati Kuia, provisions within Chapter 13, Objective 13.8 and Polices 13.8.1 – 13.8.3 apply in the consideration and establishment of Moorings Management Areas (MMA's). The provisions guiding MMA's provide for MMA's to be established where there is competing demand within the CMA to accommodate swing moorings. Policy 13.8.3 provides for the provision of moorings within MMA's as either a permitted activity (where a Bylaw exists) or as a restricted discretionary activity (subject to matters of discretion, including location within the MMA, the type of mooring sought and the availability of space within the MMA). The MMA is not a method of allocation within the CMA, but provides a management framework without allocation for a particular area of the CMA.

187. The provisions within the Plan to do not manage the allocation of moorings within MMA's. This is still subject to the 'first in fist served' default allocation, managed by the resource consent process or a Bylaw for MMA if there is one in place. The only way that I can see that Council could provide for an allocation of moorings to iwi within an MMA is if the Council were to purchase existing moorings, or apply and gain consent for new mooring within MMA, and then allocate them to iwi.

188. For these reasons I consider that Policy 5.10.2 should not be amended in the manner sought by Te Runanga O Ngati Kuia, and that the submission of Te Runanga O Ngati Kuia should not be supported.

189. Turning to the submission of Michael Phillip Rothwell, moorings outside MMA's are considered through a discretionary resource consent process against the provisions of Chapter 13, and in particular Objective 13.9 and Polices 13.9.1- 13.9.8. At this time moorings within the CMA are subject to the 'first in fist served' default allocation that is managed by the resource consent process. If an alternative regime was proposed by the Council for the allocation of moorings, it would be subject to the provisions of the RMA. The Council would need to demonstrate that the rule in relation to allocation of space is necessary and desirable in the circumstances of the region, and that the proposed method is the most appropriate for allocation of space in the circumstances of the region, having regard to its efficiency and effectiveness compared to other methods or allocating space[86], (which would include the existing 'first in first served' method). As outlined above, any alternative method of allocation that may be considered by the Council will require a Plan change, and the first schedule process of the RMA, including public notification of the proposed plan change, will need to occur. It is therefore recommend that the submission of Michael Phillip Rothwell is not supported.

[86] RMA s165H(1)(b)

Recommendation

190. For the reasons outlined above I recommend Policy 5.10.2 is retained as notified, however the commentary to Policy 5.10.2 is amended to read:

> *…..There may also be certain circumstances under which a special allocation mechanism is introduced to address a specific issue. <u>If an alternative allocation method is introduced this would result in changes to the plan that would be subject to the plan change process under the RMA.</u>*

5.9 Policy 5.10.3

(This section is authored by Ms Donaldson)

191. Policy 5.10.3 states that 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.

Summary of Submissions

192. Judy and John Hellstrom[87] support Policy 5.10.3 and seek the Policy is retained as notified.

193. Aquaculture New Zealand and Marine Farming Association Incorporated[88] seek that the words '*necessary and'* are deleted from the Policy so that it reads" '*to that reasonable to undertake'*. The submitters consider that if these words are not deleted absurd results are possible, with significantly higher costs with no real public benefit. They consider the Policy valid, however that it should not be couched in the extreme.

194. Te Ātiawa o Te Waka-a-Māui[89], are concerned that the Policy 5.10.3 has a caveat (in terms of the right to occupy) only with respect to the public interest, and that Te Atiawa as kaitaikai of Queen Charlotte Sounds, Tory Channel and Port Gore, being excluded from this policy is contrary to the purpose and principles of the RMA and the Treaty of Waitangi. Te Ātiawa o Te Waka-a-Māui request that the Policy is amended to include at the end the words '*cultural and environmental values*'.

195. The commentary to Policy 5.10.3 outlines that exclusive occupation of the CMA restricts public use, where as other activities that use the CMA may not require exclusive occupation. For that reason exclusive occupation should only be allowed where absolutely necessary.

196. Policy 13.1.2 of the MEP states that appropriate use and development activities within Marlborough's Coastal Environment (which includes the CMA) are those that recognise and provide for, and otherwise avoid, remedy or mitigate adverse effects on values of the coastal

[87] Judy and John Hellstrom (688.32)

[88] Aquaculture New Zealand (401.37) and Marine Farming Association (426.37)

[89] Te Ātiawa o Te Waka-a-Māui (1186.47)

environment which include '*the extensive area of open space within the CMA available for the public to use and enjoy, including for recreational activities*'[90].

197. This position is supported in Policy 13.10.3 in relation to coastal structures (that require exclusive occupation of the CMA). The policy states '*efficient use of the coastal marine area can be achieved by using the minimum area necessary for structures'*. I note that Aquaculture New Zealand and Marine Farming Association Incorporated made similar submissions[91] in respect to Policy 13.10.3 to remove the word 'necessary' and replace with 'reasonable'.

198. In response to the submission by Aquaculture New Zealand and Marine Farming Association Incorporated[92] regarding Policy 5.10.3, I consider that the word **'**necessary' should not be removed. The term 'necessary' dictates that an area of occupation would only be appropriate if the area it takes up is 'essential[93]' for the activity that requires. The inclusion of the term 'reasonable' within the Policy does, I believe, provide for a broader and case-specific assessment. This may result in the provision of an area of occupation that is more than the area strictly necessary for occupation, but is reasonable depending on the nature of the activity proposed. Given that the Policy wording as notified will involve an assessment of what is both 'necessary' and 'reasonable' for occupation, I do not think the Policy is couched in the extreme. It is therefore recommended that submissions of Aquaculture New Zealand and Marine Farming Association Incorporated are not supported.

199. Turning to the submission by Te Ātiawa o Te Waka-a-Māui, an activity that requires the occupation of the CMA to which a coastal occupancy charge may apply, will be first be subject to the resource consent application process. During a resource consent assessment the activity will be assessed against the objectives and policies of the Plan, which include the provisions of Chapter 3 – Marlborough's Tangata Whenua Iwi, and Chapter 13 – the Use of the Coastal Environment. In particular, Chapter 13, Policy 13.1.2 of the MEP states that appropriate use and development activities within Marlborough's Coastal Environment (which includes the CMA) are those that recognise and provide for, and otherwise avoid, remedy or mitigate adverse effects on values of the coastal environment which include ' *the relationship of Maori and their traditions with their ancestral lands, waters, sites, waahi tapu and other taonga*[94].

200. For these reasons it is not considered that there is a need to include a reference to cultural and environmental values within Policy 5.10.3 as they will be considered as part of a resource consent application for the activity. As such it is recommend that the submission of Te Ātiawa o Te Waka-a-Māui is not supported

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[90] MEP Policy 13.2.1(c)

[91] Aquaculture New Zealand (401.141) and Marine Farming Association (426.146)

[92] Aquaculture New Zealand (401.37) and Marine Farming Association (426.37)

[93] https://en.oxforddictionaries.com/definition/necessary

[94] MEP Policy 13.2.1(b)

Recommendation

201. Policy 5.10.3 is retained as notified.

5.10 Policy 5.10.4

202. Policy 5.10.4 states that 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.

203. Submissions variously support the policy,[95] or seek that it is deleted.[96] Remaining issues in relation to this policy are set out and addressed below.

204. I Bond considers that there is a lack of clarity in the policy as to what the council's intentions are; it is impractical to make an assessment on the basis of benefit arising to the owner/occupier or loss to the public; having a boat on a mooring creates no material loss to the public; and the issue of lost benefit to the public is adequately catered for by the restrictions on the number of moorings in a bay.[97]

205. Policy 5.10.4 needs to be read in conjunction with Policies 5.10.5, 6, 7 and 8; and the methods in 5.M.10 as collectively these provisions provide the overall regime that is intended to apply to the proposed charging regime. As set out earlier in this report, collectively these provisions state that:

- 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 (Policy 5.10.4);
- The circumstances in which the Council will waive the requirement for a charge to be paid (Policy 5.10.5);
- The matters that will be considered in determining whether to approve applications to seek a waiver from the charging regime (Policy 5.10.6);
- The way in which the level of coastal occupancy charges will be calculated (Policy 5.10.7);
- The way in which money collected will be used in order to promote the sustainable management of the CMA (Policy 5.10.8); and

[95] Brent Yardley (258.1); Michael and Kirsten Gerard (424.9); Pinder Family Trust (578.2); Judy and John Hellstrom (688.33); The Fishing Industry Submitters (710.9); Friends of Nelson Haven and Tasman Bay Incorporated (716.52); Guardians of the Sounds (752.2); Wainui Green 2015 Limited (926.26); Sea Shepherd New Zealand (1146.2); and The Marlborough Environment Centre Incorporated (1193.38)

[96] Ian Bond (469.1); D C Hemphill (648.11)

[97] Ian Bond (469.1)

- That the level of charges will be set out in the Annual Plan (Method 5.M.11) and provisions relating to the imposition of charges and the waiver application process will be set out in regional rules in the Plan (Method 5.M.10).

206. Submissions have addressed all of the above provisions, and those submissions are addressed elsewhere in this report. However it is considered that collectively, and subject to the proposed amendments set out in this report and in Appendix 2, they set out the Council's intent in relation to the proposed charging regime to the extent that is appropriate in the context of the regional coastal plan.

207. Mr Bond considers that having a boat on a mooring crates no material loss to the public. While the main benefits of moorings accrue to the occupier, other users of the coastal environment have some assurance that craft are securely moored. Moorings preclude the ability to have another mooring in the same, or in an overlapping, position, and thus occupy the CMA in an exclusive manner although there is still the opportunity for others to move through the area of the swing path not occupied by moored vessels. At times when the mooring is unoccupied, there will be very limited restriction on others moving through the space. It is also understood that moorings may be used by others in times of emergency only.

208. Chapter 16 in Volume 2 of the MEP contains provisions that manage moorings. Swing moorings established within a Moorings Management Area, and swing moorings for waka in Waka Mooring Management Areas are provided for as permitted activities where a licensing system for the allocation and management of swing moorings in Moorings Management Areas has been established in a bylaw, and a licence for the mooring has been issued by the Moorings Manager prior to the establishment and occupation of the mooring.[98]

209. If a bylaw is not in place to manage and allocate swing moorings within Moorings Management Areas and Waka Mooring Management Areas, consent for a restricted discretionary activity is required, and applications will be publicly notified.[99] Moorings outside mooring management areas require consent as a discretionary activity.[100]

210. It is understood that Mooring Management Areas are located in areas where there is high demand for space in the coastal marine area.[101] Chapter 13 in Volume 1 of the MEP contains objectives and policies that relate to the use of the Coastal Environment. Issue 13E and its associated objectives and policies relate specifically to mooring and berthage facilities.

211. Collectively, the policies and matters of discretion that relate to the establishment of moorings, whether in Moorings Management Areas or not, will inform the extent to which these processes already address the issue of lost public benefit as contended by Mr Bond. An assessment of these provisions is set out below. These provisions were the subject of Topic 13, and it is understood that a series of amendments to certain of the relevant policies were proposed by

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[98] MEP Clauses 16.1.4 and 16.3.3 (as notified)

[99] MEP Clause 16.5.1 (as notified)

[100] MEP Clause 16.6.2 (as notified)

[101] MEP Policy 13.6.1(b) (as notified)

the council, both via the section 42A report and the council's right of reply. These amendments are shown as blue and red underlined and struckthrough text respectively in the paragraphs below. It is understood that no amendments were recommended to the related rules.

212. Policy 13.8.2 (as recommended to be amended by the council via Topic 13) sets out the matters that will be considered to determine the appropriateness of an area of coastal space to become a Moorings Management Area:

(a) current and anticipated demand for swing moorings in the area;

(b) the cumulative effect (including on coastal amenity values and benthic habitats) of swing moorings and the capacity of the area to accommodate existing and additional moorings;

(c) whether there are issues with the layout of existing swing moorings, including overlapping of swing circles;

(d) the intensity, character and scale of other activities in the area, including:

(i) the extent to which the use of or access to other coastal structures located in the area are or will be affected by additional swing moorings;

(ii) residential development existing in the area and the potential for future development, having regard to the zoning of land;

(iii) recreational and commercial activities occurring in the coastal marine area; and

(e) impacts on navigation due to continuing with an uncontrolled approach to siting of swing moorings.

213. The matters of discretion that will be considered for applications to establish moorings in Mooring Management Areas for which a licensing system has not yet been established are set out in Clause 16.5.1 of the MEP (as notified):

- Location within a Moorings Management Area or Waka Mooring Management Area.
- The type and specification of mooring including the swing arc.
- The availability of space within the Moorings Management Area or Waka Mooring Management Area.
- Where the Moorings Management Area is in Waikawa Bay, the reservation of space for the relocation of moorings in that part of the Marina Zone in Waikawa Bay that is identified in Appendix 10.

214. Policy 13.9.1 in the MEP (as recommended to be amended by the council via Topic 13) sets out the matters that are to be assessed in determining the appropriateness of the location for a mooring:

(a) *whether a Moorings Management Area with available space exists in the vicinity of the proposed mooring site;*

(b) *what the proposed mooring is to be used for;*

(c) *the potential for the mooring and any moored boat to adversely affect:*

(i) *the navigation and safety of other boats, including any other moored boat;*

(ii) *existing submarine cables, other utilities or infrastructure;*

(iii) *recreational use of the coastal marine area, including the short-term anchorage of other recreational boats;*

(iv) *amenity values of adjoining residents or land with high recreational value;*

(v) *the open space character of the coastal marine area;*

(vi) *the natural character, landscape or ecological values of the site, including on adjoining land and offshore islands;*

(vii) *the cultural and customary values of the site, including access for customary purposes, and Māori land ~~held in multiple ownership~~; and*

(viii) *the operation of any existing activity or any activity that has been granted resource consent;*

(ix) safe boat anchorages

(d) *what practicable land-based storage options and/or alternative access points are available for the boat; and*

(e) *whether there will be a cumulative impact on the values of the coastal environment from a mooring in the proposed location.*

215. The policies and matters of discretion set out above collectively address the following matters:

- Level of demand for swing moorings
- Effects on the environment, including on amenity values, benthic habitats, character, intensity and scale effects,
- Capacity of the area to accommodate existing and additional moorings
- Potential spatial conflicts between overlapping moorings, or with other occupations or activities that have been granted resource consent
- Relationship to existing and proposed residential development capacity
- Impacts on navigation, existing submarine cables, other utilities and infrastructure

- The intended use of the mooring
- Impacts on cultural and customary values, including access for customary purposes

216. None of these themes specifically relate to the public and private benefits that are lost or gained in association with moorings.

217. Some submitters consider that jetties provide a positive benefit to the public by the fact that their use is available to all, not just the jetty licence holder. [102] This issue has been addressed in section 5.4 of this report (above), where it is acknowledged that the general legal principles in relation to jetties occupying the CMCA is that they are available to the public for use, principles which are reflected in the conditions that council imposes on consents for such structures. However the level of public benefit lost and gained in relation to jetties will vary across the Marlborough District as outlined in Section 5.1. For that reason it is not considered that a blanket 'exemption' can be made from the proposed charging regime in respect of private jetties.

218. While supporting the proposed charging regime generally, EBCS opposes the approach as it excludes the associated activity (to the occupying structure) from consideration in assessing fees.[103] Section 64A states that the imposition (or otherwise) of a coastal occupancy charge must be based on a consideration of the extent to which a private benefit is obtained *from the occupation of the coastal marine area*, and the extent to which public benefits from the coastal marine area are lost or gained (emphasis added).[104] It is considered that section 64A constrains the assessment of the private benefit only to that which accrues from the occupation, as opposed to the wider benefits that may accrue from any activity that occupation may enable or support. Any relationship to land-based activity will be relevantly considered in the assessment of the application for a coastal permit and the associated assessment of effects on the environment.

219. Some submitters seek that the policy is amended to exclude coastal permits for occupation of areas less than 500m^2. These submitters consider that this will make administering the proposed charging regime much more efficient with around 700 coastal permits to administer (instead of 4700), while excluding less than 1% of the total occupied area.[105] While these submission points been coded to Policy 5.10.4, they are addressed along with the other submission points that seek exemptions from the COCR in respect of Policy 5.10.4 later in this report.

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[102] Ian Bond (469.1); David Archdall Robinson (638.1)

[103] EBCS (100.8)

[104] RMA section 64A(1)

[105] Elie Bay Residents (697.1); Kroon, Hanneke and Jansen Joop (808.1)

5.11 Policy 5.10.5

220. Policy 5.10.5 sets out the types of structures and activities for which 'the need for coastal occupancy charges will be 'waived':

- Public wharves, jetties, boat ramps and facilities owned by the Marlborough District Council and the Department of Conservation;
- Monitoring equipment;
- Activities listed as permitted, except for moorings in a Mooring Management Area;
- Retaining walls; and
- Port and marina activities where resource consents authorised under Section 384A of the RMA are in place until such time as those resource consents expire.

221. Certain submitters support the policy,[106] whereas others seek that additional types of structures and activities are provided with an exemption from the coastal charging regime. These are addressed in turn below.

222. As addressed earlier in this report, it is recommended that this policy is amended in accordance with Clause 16 of the First Schedule to be clear that the types of occupations listed in the policy are *exempt* from the proposed charging regime.

Exemptions for Māori interests

223. Totaranui Ltd seeks that Policy 5.10.5 should be amended so that marine farms and aquaculture held by Māori interests should be exempt from the proposed charging regime, including in circumstances of financial distress that may result in sites being abandoned. [107]

224. Totaranui Ltd is a subsidiary of Te Ātiawa o Te Waka-a-Māui Trust. It is understood that Totaranui Ltd manages the fishing and aquaculture assets of Te Ātiawa o Te Waka-a-Māui within Totaranui (Queen Charlotte Sound) and the wider Marlborough Sounds area.

225. Totaranui Ltd refers to Te Tiriti o Waitangi / the Treaty of Waitangi settlement process as providing for both the traditional food gathering; and economic trade-based use of the fish and wider marine environment has been recognised and provided for. The settlement for Te Atiawa o Te Waka-a-Māui (and other iwi) is set out in the Ngāti Kōata, Ngāti Rārua, Ngāti Tamaki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014.

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[106] Michael and Kirsten Gerard (424.10); Port Marlborough New Zealand Limited (433.14); Department of Conservation (479.50); Pinder Family Trust (578.3); Judy and John Hellstrom (688.34); The Fishing Industry Submitters (710.10); Guardians of the Sounds (752.3); Sea Shepherd New Zealand (1146.3); The Bay of Many Coves Residents and Ratepayers Association Incorporated (1190.28); The Marlborough Environment Centre Incorporated (1193.39)

[107] Totaranui Limited (233.12)

226. In addition, Totaranui Ltd notes that the interests of Te Ātiawa o Te Waka-a-Māui Trust are further defined in the Māori Commercial Aquaculture Claims Settlement Act 2004. It is understood that one of the outcomes of this enactment is a negotiated strategy of a Regional Aquaculture Agreement between iwi of Te Tahu Ihu and the Crown, which included provisions for ongoing space and cash settlements. Totaranui Ltd.'s submission refers to the 'New Space Plan' as identifying 15 aquaculture settlement areas comprising a total area of 214 hectares, with 81 hectares in the Marlborough region.

227. Totaranui Ltd requests that consideration should be given to whether iwi should be subject to coastal occupation charges due to their status being distinguished from the balance of the community by the provisions of the RMA and the recognition under Te Tiriti o Waitangi / the Treaty of Waitangi of the rights of Māori to access and use natural resources. Totaranui Ltd seeks a range of amendments to the provisions in accordance with this position.

228. Section 64A(4A) states that a coastal occupation charge must not be imposed on a protected customary rights group or customary marine title group exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011.

229. The Ministry of Justice's website states that customary marine title recognises the relationship of an iwi, hapū or whānau with a part of the common marine and coastal area. Notably, free public access, fishing and other recreational activities are allowed to continue in customary marine title areas. They cannot be sold. Holding a recognised customary marine title enables the group holding the title a range of rights, including the ability to *"say yes or no to activities that need resource consents or permits in the area"*.[108]

230. Protected customary rights can be granted for customary activities such as launching waka in the common marine and coastal area. If a protected customary right is granted, resource consents are not required to carry out that activity, and local authorities can't grant resource consents for other activities that would have an adverse effect on the protected customary right.

231. Iwi, hapū or whānau seeking recognition of customary marine title or customary rights were required to lodge applications by 3 April 2017 (noting this deadline fell after the MEP was notified). Information on the Ministry of Justice website indicates that Te Ātiawa o Te Waka-a-Māui has lodged 5 applications for customary marine title, 4 of which are within the jurisdiction of the council. It appears that 9 other applications for customary marine title or protected customary rights within the jurisdiction of the council have been lodged by other iwi, hapū or whānau. The Ministry of Justice's website indicates that these applications are all still being processed.

232. In light of the above, and in accordance with Clause 16 of the First Schedule, it is proposed that Policy 5.10.5 is amended as follows to include a specific exemption from the proposed charging regime for customary marine title or customary rights groups in accordance with

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108 https://www.justice.govt.nz/maori-land-treaty/marine-and-coastal-area/customary-interests-under-the-marine-and-coastal-area-act/ (accessed 26 October 2018)

section 64A(4A) (noting that the amendments shown include amendments recommended earlier in this report):

> *Policy 5.10.5 – The Marlborough District Council will ~~waive the need for coastal occupancy charges for~~ exempt the following from any requirement to pay coastal occupancy charges:*
>
> *(a) …*
>
> *(x) protected customary rights groups or customary marine title groups exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011*

233. There do not appear to be any provisions in the Settlement Act or the Māori Commercial Aquaculture Claims Settlement Act 2004 which provide a specific exemption from a coastal occupancy charging regime.

234. At this stage, and based on the information available, it is not evident that there is an explicit exemption of coastal occupations for Māori interests from a coastal occupation charging regime, so the relief sought by Totaranui Ltd is rejected. Submitters are invited to address this matter further in their evidence or at the hearing.

Private jetties and moorings

235. Some submitters consider that private jetties and moorings should be exempt from the charging regime, [109] particularly in cases where there is no road access. [110] Submitters contend that jetties are able to be used by the public and therefore have a high 'percentage' of public benefit; [111] that most jetties remain unoccupied most of the time;[112] and that access to many properties is limited to boat access only (so jetties form an essential component of access to these properties). [113] In relation to moorings, submitters contend that moorings are a similar necessity to jetties, particularly as it is unsafe to tie boats to jetties during rough weather. [114]

236. The extent to which the availability of jetties for use by members of the public has been addressed earlier in this report in section 5.4 (above) where it is concluded that a 'blanket' exemption of private jetties from the charging regime is not appropriate. Turning to the issue of whether or not there is alternative road access to properties, this factor does not affect the extent to which private benefits are accrued from jetties or moorings in terms of their occupation of space, nor whether any public benefits accrue.

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[109] Mt Zion Charitable Trust (515.8); David Archdall Robinson (638.1)

[110] George Rose (311.1); Michael William Rosson (950.2)

[111] George Rose (311.1); D C Hemphill (648.11)

[112] George Rose (311.1)

[113] George Rose (311.1); D C Hemphill (648.11)

[114] George Rose (311.1)

237. As set out in Section 5.1 of this report, the key issue is the extent to which the structure occupying the CMCA results in a loss and/or gain of public benefit, and how that net public benefit compares to private benefit. The activity that the occupying structure enables to occur (or that drives the reasoned necessity for the structure) is not a determining factor on the appropriateness of imposing a charge. Accordingly the suggestion that private jetties and moorings that are associated with providing access to properties with no road access should be exempt from the proposed charging regime is not supported.

238. The extent to which the occupation is exclusive of the public, and whether the same or greater public benefit would be derived compared with the situation where the occupation did not exist are however relevant matters in the consideration of a request for a possible waiver.

Exemption for boating clubs

239. The Waikawa and Pelorus Bay Boating Clubs consider that moorings provided by boating clubs should be exempt from the charges.[115] The Boating Clubs are of the view that the boating club moorings provide a significant level of public benefit as they are used by many people. Waikawa Boating Club considers that the provision of this network of moorings provides a greater public than private benefit. The boating clubs seek an amendment to Policy 5.10.6 to include 'moorings provided by boating clubs' as being exempt from the charging regime.

240. While the moorings provided by the boating clubs may be available to a large number of people, those people (as acknowledged by the submitters) need to be members of the boating clubs in order to access the network of moorings. The moorings are therefore not freely available to members of the public for their use, but are only available on the basis of paying a membership fee.

241. The submitters note that 27 of their moorings are made available to the Outward Bound Trust (in exchange for the Clubs' use of nine of their moorings); provides use of moorings free to the National Outdoor Leadership School on the 10 day trips the group makes into the Sounds; and notes that the moorings are acknowledged by the Police and the Coastguard as being an important safety network in times of emergencies or foul weather. It is acknowledged that these examples may contribute towards some level of public benefit being accrued to the boating clubs' moorings, but not, in my view, to the extent that a blanket pre-determined exemption should be made for them in Policy 5.10.5. Consequentially the amendments to the policy sought by the boating clubs are not supported.

242. I would note that in the submitters' case, and possibly for other subscription-based boating clubs as well, Policy 5.10.6 relating to waivers specifically includes consideration of matters such as non-exclusivity, and public benefit relative to the occupation not existing.

Exemptions for coastal protection structures and stormwater outfalls

243. The New Zealand Transport Agency (**NZTA**) considers that coastal protection structures and stormwater outfalls should be exempt as these types of structures also provide significant level

[115] Waikawa Boating Club (1233.1), Pelorus Boating Club Incorporated (1246.1)

of public benefit as they enable the provision and continued operation of the road network near the coast.[116] NZTA seeks the following amendments to Policy 5.10.5 and its explanation:

(d) retaining walls, coastal protection structures, and stormwater outfalls;

These waivers exist because the facilities owned by the Council, ~~and~~ the Department of Conservation and other government agencies provide a significant level of public benefit…

244. Given that the types of structures referred to by the NZTA do provide an entirely public benefit (where they are associated with the provision and continued operation of the road network near the coast), it is considered appropriate for Policy 5.10.5 to be amended to give effect to the relief sought by the NZTA. The amendment to sub-policy (d) proposed by NZTA could result in coastal protection structures and stormwater outfalls that are not associated with the provision of public infrastructure being exempt from the charging regime, which is not considered appropriate. The following new sub-policy is recommended instead:

(x) coastal protection structures and stormwater outfalls for the purpose of enabling the provision and operation of public infrastructure;

245. This has been set out in the summary of the recommendations to Policy 5.10.5 below.

Exemptions for other structures

246. Te Ātiawa o Te Waka-a-Māui considers that retaining structures that are sympathetic to environmental processes and seascapes should be exempt from the charging regime, as should structures that facilitate restoration of marine habitat, marine processes, and marine species.[117] The submitter is also of the view that retaining walls should not be granted a pre-determined exemption from the charging regime (see below). This relief seeks to bring in the issue of environmental effects into determining what structures should be exempt from the proposed charging regime, which is not within the ambit of section 64A, and accordingly the relief is not supported. For the same reason the proposed exemption for structures that support the restoration of marine habitat, marine processes, and marine species is not supported.

Size of structures

247. Some submitters seek that Policy 5.10.5 is amended to exclude coastal permits for occupation of areas less than 500m^2. These submitters consider that this will make administering the proposed charging regime much more efficient with around 700 coastal permits to administer (instead of 4700), while excluding less than 1% of the total occupied area.[118]

248. It is acknowledged that there is some appeal from an administrative perspective to exempting smaller structures from the proposed charging regime as proposed by the submitters. However 500m^2 is not an insignificant area and given the particular variability and complexity of

[116] NZTA (1002.21)

[117] Te Ātiawa o Te Waka-a-Māui (1186.48)

[118] Elie Bay Residents (697.1); Kroon, Hanneke and Jansen Joop (808.1)

scenarios that relate to structures occupying the CMCA in Marlborough, adopting such an approach would not be appropriate. Accordingly, the relief sought by these submitters is not supported.

Retaining walls

249. Te Ātiawa o Te Waka-a-Māui considers that retaining walls should not be exempt from the charging regime.[119] The Queen Charlotte Sound Residents Association supports this view, stating that retaining walls have no real public benefits.[120] Retaining walls have been exempted from the charging regime as they do not generally occupy significant areas of the common marine and coastal area to the exclusion of other users, and may also be publicly owned structures giving rise to public benefits (e.g. coastal protection). Accordingly, it is considered appropriate that they are exempted from the charging regime on this basis.

Public structures

250. The Taurewa Lodge Trust considers that there should be no exemption for structures that are owned by the Marlborough District Council, DOC, and port companies as while they do have some public benefit, they are also having the most effect on the environment.[121] DOC supports Policy 5.10.5, noting that its structures are providing a public service whether they are freely accessible to the public or not, and that charging for the occupation of marine space by such structures would not be in the public interest.[122]

251. As has been set out elsewhere in this report, the proposed charging regime does not relate to the level of environmental effects that an occupation may have on the environment. Those matters are addressed via other provisions in the MEP. The primary issue in relation to determining whether or not to impose a coastal occupancy charge is the extent to which the occupation results in private benefit that outweighs any net public benefit. In the case of occupations that are owned by the council or DOC, these structures are provided entirely for public benefit (i.e. there is typically no private interest) and therefore it is appropriate that they are exempt from incurring charges as there is no private benefit associated with those structures.

252. The extent to which it is appropriate to exempt port owned structures from the charging regime is addressed below.

Ports and marinas

253. As set out above, Policy 5.10.5 states that the Marlborough District Council will ‘waive’ the need for coastal occupancy charges for port and marina activities where resource consents

[119] Te Ātiawa o Te Waka-a-Māui (1186.48)

[120] Queen Charlotte Sound Residents Association (504.15)

[121] Taurewa Lodge Trust (1185.2)

[122] Department of Conservation (479.50)

authorised under Section 384A of the RMA are in place until such time as those consents expire. Explanatory text to this policy states that:

Certain occupation rights are granted to port companies under Section 384A of the RMA. In Marlborough the resource consents granted under this section of the RMA relate to port related commercial undertakings being carried out in the areas of Picton (excluding the area of port in Shakespeare Bay), Waikawa, Havelock, Elaine and Oyster Bays. The RMA appears to exempt these resource consents from attracting coastal occupancy charges until after 30 September 2026.

254. Port Marlborough considers it appropriate to exempt its infrastructure *"which is used by the public."* Other submitters have sought that marinas in particular should not be exempt from the proposed charging regime [123] because:

- Marinas are a private and exclusive occupation of public space in the CMA;
- Referring to the statement in the explanatory text, B Yardley queries whether, if it is not certain that the RMA exempts marina consents, it is appropriate to waive approximately 1300 privately occupied marina berths from paying charges; and
- Queen Charlotte Sounds Residents Association queries the basis upon which ports can be exempt from the charging regime until after 2026.

255. B Yardley considers that Policy 5.10.5(e) should be amended so that marinas are not waived from paying coastal occupation charges.[124]

256. Taurewa Lodge Trust considers that structures owned by port companies should not be exempt from the proposed charging regime due to the effect they have on the environment.[125]

257. As set out below, there are two scenarios in which occupations of the coastal marine area that were in place when the RMA came into force (1 October 1991) were authorised under previous legislation, and which may have involved monetary transactions for the occupation of that space:

- Occupations by port companies for port related commercial undertakings (which may include marinas) established under the Port Companies Act 1988 and have obtained resource consents under s384A; and
- Occupations established under leases and licenses which were entered into before the RMA and which are deemed to be resource consents under the RMA transitional provisions (s384).

258. These are addressed in turn to address the matters raised by submitters outlined above.

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[123] Brent Yardley (258.2), Queen Charlotte Sound Residents Association (504.15)

[124] Brent Yardley (258.2)

[125] Taurewa Lodge Trust (1185.2)

259. Section 384A sets out the procedure by which *port companies* that considered they had a right to occupy the coastal marine area adjacent to any *port related commercial undertaking* as at 30 September 1991 could go about securing a coastal permit for that right to occupy. Section 384A states that 'port company' and 'port related commercial undertaking' shall have the following meanings:[126]

port company *means a company formed and registered under the Companies Act 1955 as a port company in accordance with section 4 (as in force before the commencement of the Company Law Reform (Transitional Provisions) Act 1994)*

port related commercial undertaking*, in relation to any Harbour Board, —*

(a) means the property and rights of the Harbour Board that—

(i) relate to the activities of commercial ships and other commercial vessels, and commercial hovercraft and commercial aircraft, or to the operation of facilities on a commercial basis for ships, vessels, hovercraft, and aircraft of any kind; or

(ii) facilitate the shipping or unshipping of goods or passengers; and

(b) without limiting the generality of paragraph (a), includes—

(i) the provision by a Harbour Board of any building or facility wherever situated for use in connection with the handling, packing, or unpacking of goods for shipping or unshipping through any port; and

(ii) items such as breakwaters and dredges and other items that, although they may not themselves be revenue producing and may have a number of purposes or uses, are nevertheless related to the operation of the port on a commercial basis; but

(c) does not include any undertaking that is a statutory function or duty of the Harbour Board relating to safety or good navigation

260. It is understood that port companies that were incorporated following the enactment of the Port Companies Act 1988 purchased the assets comprised in the port-related commercial undertakings of the former Harbour Boards. The monies involved in the purchase of these assets were received by public bodies (Harbour Boards or regional, district or city councils). The value of the payment depended on the ability to manage and use the port-related commercial undertakings involved.

261. Upon enactment of the RMA it became apparent that Parliament had not provided for the occupation rights in place and purchased by the port companies. Section 384A came about as a result of the port companies making an approach to Parliament on this matter and was inserted into the RMA in July 1993. Section 384A enabled the port companies, in consultation with the appropriate regional council, to prepare a draft coastal permit to authorise that

[126] Port Companies Act 1988 s 2(1)

occupation. The draft coastal permits were required to be provided to the Minister of Transport before 30 November 1993.[127]

262. The Minister of Transport was required to consider the extent to which a coastal permit authorising occupation was required to enable the port company to manage and operate the port related commercial undertakings acquired under the Port Companies Act 1988.[128] In making his or her determination, the Minister of Transport was required to consult with the Minister of Conservation, the relevant regional council, any territorial authority having jurisdiction in the area adjacent to the coastal marine area involved, and the port company.[129]

263. The Minister of Transport was required to issue his or her decision by 31 March 1994,[130] and the expiry dates of these permits was to be no later than 30 September 2026.[131] The expiry date of the permits was 35 years from 30 September 1991 (the day before the RMA came into force), with the 35 year timeframe being the maximum duration of any coastal permit.

264. Section 384A of the RMA has been amended a number of times, but these amendments have all occurred after the date by which the coastal permits enabled by this section were required to be issued (so are not expected to have had any material impact on the occupation rights transferred by this section of the RMA).

265. In light of the above it is recommended that Policy 5.10.5 is amended to make it clear that the exemption contemplated by virtue of the coastal permits issued under section 384A of the RMA should only apply to 'port-related commercial undertakings' that were the subject of the section 384A authorisation. By way of clarification, marinas that were not authorised under section 384A of the RMA will not be exempt from the proposed charging regime, nor will any port-related commercial undertaking that goes beyond the area captured in any s384A authorisation.

Recommendation

266. In light of the above, it is proposed that the following amendments are made to Policy 5.10.5 and its explanatory text:

a) insert a new sub-clause to the policy to include reference to coastal protection structures and stormwater outfalls for the purpose of enabling the provision and operation of public infrastructure as being exempt from the proposed charging regime, and associated amendments to the explanatory text:

Policy 5.10.5 – The Marlborough District Council will … <u>exempt</u> the following <u>from any requirement to pay coastal occupancy charges</u>:

---

[127] RMA s384A(1) and (4)

[128] RMA s384(5)

[129] RMA s384A(6)

[130] RMA s384A(8)

[131] RMA s384A(2)

…

(x) coastal protection structures and stormwater outfalls for the purpose of enabling the provision and operation of public infrastructure;

…

These … exemptions exist because the facilities owned by the Council, ~~and~~ the Department of Conservation and other government agencies provide a significant level of public benefit as they are used by and available to many people. …

b) Amend sub-clause (e) of the policy so that it is clear that 'port-related commercial undertakings' authorised via section 384A are exempt from the proposed charging regime until such time as those resource consents expire, and amend the explanatory text accordingly:

Policy 5.10.5 – The Marlborough District Council will … exempt the following from any requirement to pay coastal occupancy charges:

…

(e) ~~port and marina activities~~ commercial port undertakings ~~where~~ authorised via resource consents ~~authorised~~ under Section 384A of the Resource Management Act 1991 ~~are in place~~ until such time as those resource consents expire~~.~~; and

…

Certain occupation rights are granted to port companies under Section 384A of the RMA. These occupation rights originate from the purchase of the assets comprised in the port-related commercial undertakings by the Port Companies from the former Harbour Boards. In Marlborough the resource consents granted under this section of the RMA relate to port related commercial undertakings being carried out in the areas of Picton (excluding the area of port in Shakespeare Bay), Waikawa, Havelock, Elaine and Oyster Bays. ~~The~~ Due to the purchase of these assets by the Port Companies, the port-related commercial undertakings that have been granted coastal permits under Section 384A of the RMA ~~appears to exempt these resource consents~~ are exempted from attracting coastal occupancy charges until after 30 September 2026 (being the expiry date of those coastal permits).

c) Include explicit reference that the proposed charging regime shall not apply to protected customary rights groups or customary marine title groups in accordance with section 64A(4A):

(x) protected customary rights groups or customary marine title groups exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011

5.12 Policy 5.10.6

267. Policy 5.10.6 sets out the circumstances that will be considered in respect of applications by resource consent holders to request a waiver of a coastal occupation charge.

268. Some submitters support the policy,[132] whereas others seek amendments to the policy to include consideration as to whether the applicant is a marine farm not achieving profitability;[133] include consideration as to whether the applicant is an iwi trust;[134] and provide a waiver for permanent residents without road access.[135]

269. The extent to which an activity associated with a structure occupying the common marine and coastal area is profitable or not should not affect the level of the charge imposed under the proposed regime, particularly as some occupations in the common marine and coastal area do not relate to any commercial enterprise (but still accrue private benefit to the owner of the structure). The relief sought by the submitter is not supported.

270. Policy 5.10.6(d) enables consideration of whether the applicant seeking a waiver from the proposed charging regime is a trust, which would include an iwi trust. Accordingly is not considered necessary to amend the policy further in this regard.

271. The extent to which exemptions or waivers should be made for residents without road access who rely on structures in the common marine and coastal area for access to their property has been addressed earlier in Section 5.11 of this report. The situation of a jetty providing the only access to a property in the absence of a road has significance in terms of the necessity for there to be a jetty and the landowners' private interests derived from the jetty occupying coastal space. That however has no bearing on the degree of public benefit (lost or gained) as a consequence of the occupation itself. As has been noted variously throughout this report, it is the relative benefit (public vs private) that will be the determinative factor in whether or not a charge for the occupation of space should be imposed. For this reason I do not support a pre-determined waiver or exemption for permanent residents of a property simply on the basis of there being no road access to that property.

272. New Zealand Forest Products Holdings Limited considers that Policy 5.10.6 is overly prescriptive and should be amended to provide for any other relevant matter to be considered as well, but does not set out any further details on either the nature of amendments sought, or the additional matters that the submitter considers should be included in the policy.[136] Section 64A(3)(b) requires regional councils to specify *"the circumstances when the regional council will consider waiving (in whole or in part) a coastal occupation charge."* It is therefore appropriate that Policy 5.10.6 is specific as to what those circumstances are, and I do not recommend any amendments to the policy. However, the submitter may wish to address this matter further at the hearing or in evidence.

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[132] Michael and Kirsten Gerard (424.11); Pinder Family Trust (578.4); The Fishing Industry Submitters (710.11); Guardians of the Sounds (752.4); Sea Shepherd New Zealand (1146.4); The Marlborough Environment Centre Incorporated (1193.40)

[133] Totaranui Limited (233.11)

[134] Te Runanga o Ngati Kuia (501.21)

[135] Taurewa Lodge Trust (1185.3)

[136] New Zealand Forest Products Holdings Ltd (995.11)

Recommendations

273. Having had regard to the matters raised in submissions on Policy 5.10.6 it is considered that no amendments are necessary to this policy.

5.13 Policy 5.10.7

274. Policy 5.10.7 sets out the manner in which the level of coastal occupancy charges has been determined:

> *(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.*

Submissions

275. Certain submitters support the policy,[137] and Taurewa Lodge Trust considers that the charging regime is full of flaws and is not fair and equitable.[138] Other submissions have addressed the issue of determining the level of charges, each of which are assessed in turn below.

Method of determining charges

276. Some submitters have queried the appropriateness of basing the charges on a m^2 rate vs a ha rate;[139] including noting that private jetties are proposed to be charged $1 or so per m^2 per annum, while mussel farms are to be charged approximately 1 cent per m2.[140] In a similar vein, J & J Hellstrom consider that it is unfair that the charges for coastal occupation (for jetties, moorings and boatsheds) should be linked to the management of Marlborough's coastal marine area unless the charges are equitable (and based on area, size of structures – particularly in relation to marine farms).[141]

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[137] Michael and Kirsten Gerard (424.12); Pinder Family Trust (578.5); The Fishing Industry Submitters (710.12); Guardians of the Sounds (752.5); Sea Shepherd New Zealand (1146.5); The Marlborough Environment Centre Incorporated (1193.41)

[138] Taurewa Lodge Trust (1185.4)

[139] Thomas Norton Te Awaiti Ltd (203.1)

[140] Brent Yardley (258.3)

[141] Judy and John Hellstrom (688.35)

277. EBCS considers that the charging regime should be based on a fixed administrative cost per structure, plus a per square metre charge, divided by a factor reflecting the utility provided to the general public;[142] and the Mt Zion Charitable Trust considers that the marine farming should be charged on a per tonne harvested basis.[143]

278. The Executive Finesse report sets out potential charges for a range of structures. It illustrates the way in which charges could be developed using the methodology described in Policy 5.10.7. Executive Finesse has provided a supplementary explanatory paper addressing some of the points raised in submissions outlined above. A copy of this supplementary paper is included as Appendix 5.

279. As explained in the supplementary paper, the method by which the charges are calculated involves the following steps:

    1. Determine the expenditure for the sustainable management of the CMA that is to be recovered through the proposed charges;

    2. Determine the allocation of required expenditure identified in Step 1 above between the beneficiaries of the expenditure (ratepayers and coastal occupiers)

    3. Determine the actual charges for each occupation within the groupings of occupations, taking into account the size and nature of the occupations within each group

280. It is acknowledged in the supplementary paper from Executive Finesse that the allocation of the required expenditure outlined in Step 2 is a subjective exercise. The allocation between ratepayers and coastal occupiers is set out in the following table (also included in the supplementary paper):

Component of expenditure required to promote sustainable management of the CMA	Ratepayers	Moorings	Jetties and Wharves	Marine Farms	Boatsheds	Other
Science and Monitoring	25%	11%	4%	50%	8%	2%
Policy	25%	11%	5%	49%	8%	2%
Compliance and Monitoring	25%	20%	10%	35%	8%	2%
Total Assessed Benefit Allocation	25%	12%	5%	48%	8%	2%
For Every $100 of Expenditure	$25	$12	$5	$48	$8	$2

[142] EBCS (100.8)

[143] Mt Zion Charitable Trust (515.8)

281. Figure 1 below illustrates the proportion of the expenditure required to promote the sustainable management of the CMA that will be obtained from each of the groups in the table above.

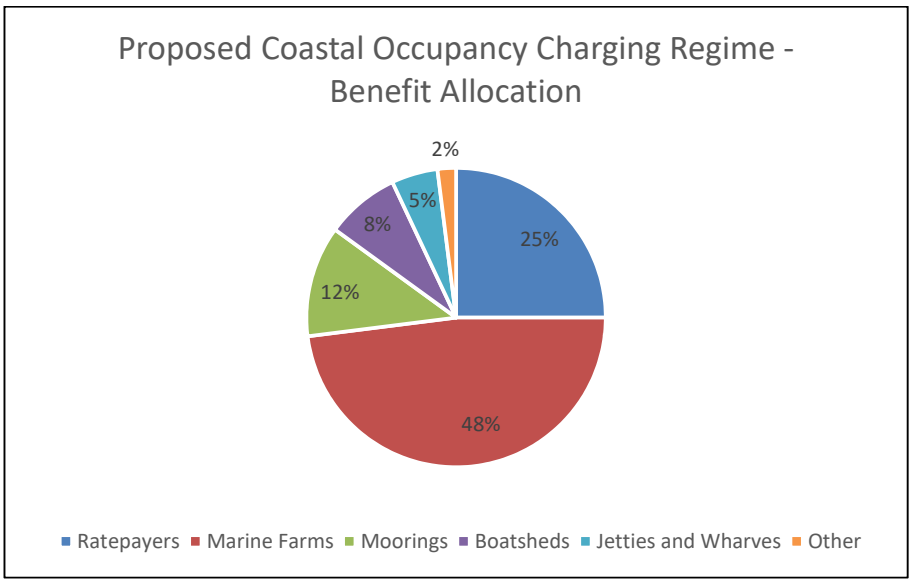

Figure 1: Proposed Coastal Occupancy Charging Regime – Proposed Benefit Allocation

282. The table and figure above illustrate that ratepayers will contribute 25% towards the costs of promoting the sustainable management of the CMA, marine farms will contribute 48%, and the remaining groups of occupiers will contribute the remaining 27%.

283. The actual charges, including whether they are on a per m^2 or per ha basis, take into account the size and nature of the occupations within each group of occupations. The basis of the charge has no bearing on the quantum of funds collected from each group, as this is determined by the benefit allocation outlined in the table above. While it may appear that marine farms will be charged significantly less on a per m^2 basis than other types of coastal occupations, the total charges that will be levied on marine farms will be significantly higher than those that will be levied on other occupations, as illustrated above.

284. The proposal of linking charges for marine farms to the tonnage of product harvested from the farm is not supported as it does not correlate to the area of the occupation, which informs the basis upon which the imposition of a coastal charging regime is made.

Area of occupation vs number of consents

285. T and J Sharp are concerned that the formula used to calculate the charges does not give sufficient weight to the area occupied versus the number of consents – thus the allocation of costs is not fair or equitable. By way of example, T and J Sharp refer to a bach owner with five consents occupying about $200m^2$ being required to pay more (on a per square metre basis) than a mussel [farm] occupying up to four hectares. T and J Sharp consider that Policy 5.10.7 should be amended so that greater weight is given to the area occupied than the number of

consents granted and attached to a particular property.[144] Additional information about the way the charges will be determined has been set out above, including the extent to which the level of charges relates to the overall area of different types of occupations in the CMA. As set out above, the total value of the charges that will fall to each group that occupies the CMA is based on the benefit allocation set out in the table above, with the greatest majority of the charges falling to marine farms. Accordingly the relief sought by the submitter is not supported.

Determining funds required to promote sustainable management of the CMA

286. The Marlborough Berth and Mooring Association (**MBMA**) considers that the starting point for setting coastal occupancy charges should be the actual expenditure considered necessary to promote sustainable management of the CMA *in as much as it may be affected by coastal occupiers*. Coastal occupiers should not have to 'foot most of the bill' for the costs given that they are responsible for only some of the effects.[145] MBMA seeks the following amendments to the explanatory text to Policy 5.10.7:

> *In deciding how to set charges, the Council has used as its starting point the actual expenditure considered necessary to promote the sustainable management of the coastal marine area in as much as it may be affected by the identified effects of coastal occupiers. …*
>
> *… The balance of funding required to promote the sustainable management of the coastal marine area in the wider sense will be sourced from elsewhere. The Council has also given consideration to …*

287. The MBMA appears to be seeking recognition that there should be a 'split' between the amount of money that is required to be contributed by coastal occupiers towards the sustainable management of the CMA, and the amount that should be sourced 'elsewhere'; and that this 'split' should be informed by the extent to which occupiers affect the CMA.

288. The way in which the expenditure that is required to promote the sustainable management of the CMA is determined, and then allocated between occupiers and 'non-occupiers' of the CMA is acknowledged as being subject to a range of variables. It can also be determined in a range of different ways. The key variables in this determination can be summarised as:

- The total amount of money that is determined as being required to promote the sustainable management of the CMA;
- The split of this expenditure between occupiers of the CMA and ratepayers; and
- The basis upon which the proportion that falls to occupiers of the CMA is allocated to the various groups of occupiers who are not otherwise exempt from the charging regime.

[144] Thomas and Janet Sharp (73.1)

[145] Marlborough Berth and Mooring Association Incorporated (960.2)

289. Policy 5.10.7(a) and (c) states that an allocation of the expenditure related to the council's role in promoting the sustainable management of the CMA will be allocated fairly and equitably between the identified beneficiaries of the sustainable management of the CMA. The explanatory text to Policy 5.10.7 states that the expenditure required to promote the sustainable management of the CMA will be split between ratepayers and coastal occupiers eligible to be subject to the proposed charging regime at a share of 25% and 75% respectively. Ratepayers and occupiers of the CMA are beneficiaries of the ongoing sustainable management of the CMA, albeit to different levels as reflected in the proportion of the split.

290. As explained earlier in this report, the allocation of the 75% share between the groups of coastal occupiers is informed in part by the extent to which those occupiers benefit from the sustainable management of the CMA generally, and specifically from the different ways in which this is undertaken by the council. By way of example, marine farms are allocated a significant proportion of the 75% share of the costs as it is likely that they will likely benefit most from work that the council does in relation to science and monitoring; are a significant issue that is addressed in council's policies and plans; and likely requires the greatest share of compliance and monitoring 'attention' due to the often complex and extensive nature of consent conditions that are associated with coastal permits for marine farms.

291. The basis of the charges that fall to the various groups of occupiers of the CMA is not derived from the expenditure that is required based on the effects that those occupiers generate, but is based on the extent to which those occupiers will *benefit* from the ongoing sustainable management of the CMA. It is acknowledged that allocating the charges could be based on the level to which the different groups of occupiers generate effects on the CMA, but such an approach assumes that sustainable management is only concerned with addressing environmental effects. In my view, sustainable management encapsulates much more than that, and it is therefore more appropriate that the basis of the allocation of charges between occupiers is tailored to the benefits that those occupiers gain. Accordingly the relief sought by the submitters is not supported.

Improving coastal amenities

292. R Cuthbert considers that the basis of the charge is to compensate for the loss of amenity due to the occupation, and that monies raised from the proposed charging regime should be used to improve other coastal amenities such as providing additional boat ramps. R Cuthbert seeks that Policy 5.10.8 is amended such that any money collected from coastal occupancy charges is spent on improving the coastal amenity, and that the quantum of any money collected be related to the area occupied.[146]

293. Policy 5.10.8(g) refers to maintaining and enhancing public access as one of the ways that the money received from the proposed charging regime may be spent. If the construction of boat ramps is considered to be a way by which enhancing public access can be achieved, it is conceivable that this could be one of the uses to which some of the money is spent. However given the enabling stance of the policy in relation to maintaining and enhancing all forms of

[146] Robert John Cuthbert (332.1)

public access, it is not considered necessary to explicitly specify this in the policy. Equally, there may be situations where a boat ramp is not appropriate in the broader context of the sustainable management of a particular location in the CMA. Accordingly the relief sought by R Cuthbert is not supported.

Period for which charges should be set

294. Some submitters have addressed the period that the coastal occupancy charges should be set for and consider that they should be set for either a minimum of 4 years ahead;[147] or 10-year period.[148]

295. It is proposed that the charges will be set on an annual basis via the Annual Plan process. This will enable the charges to be set commensurate to the funding required to promote the sustainable management of the CMA for that financial year and will be flexible and adaptable enough to respond to the complexity of scenarios that may arise due to the various factors in the context of the Marlborough District outlined in Section 5.1 of this report.

Shared use infrastructure

296. EBCS considers that the proportion of public/private benefit is reflected in the coastal occupancy charges for shared use infrastructure by way of discount or other MDC contribution to private maintenance costs.[149]

297. The issue raised by EBCS is similar to the point addressed earlier in this report in relation to the costs associated with the maintenance of coastal structures, and the extent to which that should be a factor in determining the proposed charges (see Section 5.4 above). In that instance it is concluded that if a structure has a high level of public use, and/or requires higher levels of maintenance as a result of that level of public use, this could be a relevant matter under Policy 5.10.6(a) if a waiver from the proposed charging regime is sought on the basis of the occupation being less 'exclusive' and therefore providing less private benefit as a consequence.

Commercial vs residential uses

298. EBCS considers that the public/private assessment methodology should reflect the difference between use of public space for commercial ventures and for residential necessity.[150] Other submitters are of the view that the charges should be reasonable and balanced between private and commercial interests.[151] The extent to which an private occupation of the CMCA enables residential or commercial purposes is not a factor that informs the relativity of public and private benefits lost or gained by an occupation of the common marine and coastal area. It is the relative benefit (public vs private) that is the determinative factor in whether or not a

[147] EBCS (100.8)

[148] George Rose (311.1)

[149] EBCS (100.8)

[150] EBCS (100.8)

[151] Barbara Stewart (569.1), Gregory Michael Schmetzer (736.1)

charge for the occupation of space should be imposed, not the use that the occupation enables, nor whether that use is for residential or commercial purposes.

Enabling public consultation

299. G Schmetzer considers that the charges should be made public so that they can be submitted on.[152] As set out earlier in this report, it is proposed that the charges are set each year via the Annual Plan process, which is made available for public input and feedback.

Annual plan, MEP, or Long-Term Plan

300. The Coromandel Marine Farming Association considers that the charges should be set out in the MEP, rather than the Annual Plan, in order to meet the requirements of section 64A(3)(c).[153] A number of other submitters also seek that the charges are set out in the MEP; [154] that the formula for determining the charges should be set out in the MEP,[155] or that the charges should be set out in the Long-Term Plan.[156]

301. The extent to which the proposed charges should be included in the MEP has been addressed variously in this report where it is acknowledged that including the charges in the MEP would result in additional certainty on one hand, but reduced flexibility to amend those charges if required due to the requirement for any such amendment to follow the Schedule 1 plan change process. Setting the charges via the Annual Plan process still enables public consultation and input, as well as enabling a flexible and adaptable approach to ensure that the charging regime is responding to the unique and potentially changing circumstances in Marlborough.

Offsets from other contributions

302. Sanford Ltd considers that coastal occupancy charges should be able to be offset by other contributions such as provision of water quality information to council; surveying information; and community contributions towards infrastructure.[157] This point has been addressed earlier in this report where it is concluded that these contributions relate to addressing effects on the environment of the occupying structure itself, not the impact of the loss of opportunity to otherwise utilise that space resulting from that occupation. As has been set out earlier in this report, the proposed charging regime is concerned only with imposing a charge on those structures which are gaining a private benefit from the occupation of public coastal space that outweighs any net public benefit that may be associated with that structure. Therefore I do not agree that the coastal occupancy charges should be able to be offset by other contributions.

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[152] Gregory Michael Schmetzer (736.1)

[153] Coromandel Marine Farming Association (633.2)

[154] Michael Joseph and Catherine May Sweeney (932.1-7); Elie Bay Residents (697.2); Joop Jansen and Hanneke Kroon (808.2)

[155] Sanford Limited (1140.5, 6, 7, 8, 9)

[156] Gregory Michael Schmetzer (736.1, 2); Queen Charlotte Sound Residents Association (504.16)

[157] Sanford Limited (1140.5, 6, 7, 8, 9)

The 25% / 75% split of funding sustainable management of the CMA

303. Explanatory text accompanying Policy 5.10.7 states that in determining who should meet the costs of sustainably managing the coastal marine environment, an allocation of costs needs to occur between beneficiaries, and that the Council has determined that a contribution towards the costs should be made by ratepayers (25%) as well as those benefitting from the occupation of public space (75%). The KCSRA observes that there is no narrative to support the 25% share of funding to come from ratepayers.[158]

304. Other submitters oppose the 25%/75% split, and consider that this should instead be 51% from rates and 49% from the proposed charging regime. The basis for this appears to be that due to this split, all the environmental reporting and monitoring results would be made available in the public domain (without marine farmers having the ability to claim confidentiality for any of those reports as they 'paid for most of the cost').[159]

305. Similarly, T & J Sharp consider that it is unjust that 75% of the costs will be recovered solely from the occupiers of the coastal marine area, and seek that provision is made in Policy 5.10.7 for other users of the Marlborough Sounds, including polluters (such as forestry runoff at harvest and septic tank discharge to the sea) to meet a significant proportion of these charges.[160]

306. This proportionate split is clearly an arguable point. On the one hand occupiers of the CMCA could be seen to be principal beneficiaries of direct spending on the sustainable management of this part of the region and should therefore pay proportionately more than anyone else. Equally though the whole community has something to gain from that management, although it may be much less directly so for those that do not use or rely on the coastal marine area to the same degree. It is also acknowledged that the reference to the 25%/75% apportioning of these costs is referenced in the policy explanation, which will effectively bind the council to this share of the costs moving forward.

Recognising public and private benefit in the policy

307. The EBCS seeks that Policy 5.10.7(c) is amended and replaced with a requirement to consider the public benefits lost or gained; and the private benefit gained.[161] It is considered that this weighting exercise is inherent in sub-policy (b), which facilitates consideration of the anticipated exemptions and waivers from the proposed regime. It is not considered appropriate to delete sub-clause (c) as it is an important step in the charging methodology. The relief sought by the submitter is not supported.

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[158] Kenepuru and Central Sounds Residents Association Incorporated (869.43)

[159] Elie Bay Residents (697.4), Kroon, Hanneke and Jansen Joop (808.4)

[160] Thomas and Janet Sharp (73.1)

[161] EBCS (100.8)

308. B Yardley seeks that Policy 5.10.7 is amended to specify how the coastal occupation charges are to be calculated.[162]

309. In accordance with Section 64A(3)(c), Policy 5.10.7 sets out the manner in which the charges will be determined, but it does not include specific details as to the particular calculations that will be used to set the charges. As set out earlier in Section 6.1 of this report, the Council proposes a regime that sets out the broad framework to determining the manner in which the level of coastal occupancy charges will be set in the MEP, but relies on the Annual Plan process to set the actual charges. This approach favours comparative responsiveness and flexibility to adjust those charges over the predictability and certainty that might otherwise be achieved if the charges were set out in the coastal plan. Accordingly the relief sought by the submitter is not supported.

Recommendation

310. Having had regard to the matters raised in submissions on Policy 5.10.7 no amendments to the policy are recommended.

5.14 Policy 5.10.8

311. Policy 5.10.8 sets out the way in which any coastal occupancy charges will be used in order to promote the sustainable management of the coastal marine area:

(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.

[162] Brent Yardley (258.3)

Submissions

312. A number of submitters support Policy 5.10.8.[163] Some submitters support Policy 5.10.8, but consider that it should be amended such that all monitoring results and reports are made public.[164] J & J Hellstrom consider that marine farms are more responsible for loss of marine habitat and natural character and for biosecurity risks than are jetties, boatsheds, or moorings (and take up much more space).[165] As set out earlier in this report, J & J Hellstrom appear to be of the view that marine farms should be subject to a higher proportion of the proposed charging regime, and this issue has been addressed earlier in this report.

313. The MBMA considers that coastal occupiers are only one of the sectors involved with sustainably managing the coastal environment, and considers that Policy 5.10.8 should be amended to reflect this, as follows:[166]

314. Any coastal occupancy charges collected will ~~be used on~~ <u>contribute towards</u> the following to promote the sustainable management of the coastal marine area:…

315. The relief sought by the submitter is not supported. As outlined variously in this report, section 64A(5) stipulates that any money received by the regional council from a coastal occupancy charging regime must be used *only* for the purpose of promoting the sustainable management of the CMA. Therefore it is appropriate that the policy wording is retained as notified. It is acknowledged that, as set out earlier in this report, ratepayers will also contribute towards the overall expenditure required to promote the sustainable management of the CMA, and will contribute 25% of that expenditure.

316. A number of submissions have addressed the issue of the way that the money collected via coastal occupancy charges will be used. These matters are outlined and addressed in turn below.

Long term management plan, oversight committee

317. Some submitters are of the view that the MDC should develop a long term, co-ordinated management plan as the basis for setting priorities and determining the necessary expenditure to achieve sustainable management of the coastal marine area.[167] Aquaculture New Zealand and the Marine Farming Association Inc consider that a representative body should be established to oversee the work funded by coastal occupancy charges, with the extent of representation on that body to be commensurate with the percentage of total charges levied on the aquaculture industry.[168] Similarly, B Yardley is of the view that policy should be amended

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[163] The Fishing Industry Submitters (710.13); Guardians of the Sounds (752.6); Sea Shepherd New Zealand (1146.6); The Marlborough Environment Centre Incorporated (1193.42); Tu Jaes Trust (1202.2)

[164] Elie Bay Residents (697.3); Kroon, Hanneke and Jansen Joop (808.3)

[165] Judy and John Hellstrom (688.36)

[166] Marlborough Berth and Mooring Association (960.3)

[167] EBCS (100.8); Eric Jorgensen (404.4, 5, 6, 7)

[168] Aquaculture New Zealand (401.42), Marine Farming Association Incorporated (426.42)

to include stakeholder group representation in the formal management of funds raised by coastal occupancy charges for promoting sustainable management of the CMA.[169]

318. The ability of the Council to develop a long-term management plan as the basis for setting priorities is not precluded from occurring outside the MEP and could be developed to inform the Annual Plan process which determines the level of the charges. Similarly, the potential to establish a representative management group is also possible without it necessarily being included in the MEP, and therefore the relief sought by B Yardley is not accepted.

319. A group of submitters consider that the funds collected should be used to fund programmes such as the Marlborough Marine Futures collaborative process to develop integrated management of the Marlborough Sounds.[170] This is also an option that is available to the council.

Location of reinvestment of funds

320. Sanford Ltd considers that money raised from the charging regime should be reinvested into sustainable management of the near-coastal environment to where the occupation takes place, and a provision in the MEP that gives transparency as to how this will be achieved.[171] Reinvesting the funds in the manner suggested by the submitter would be difficult to administer, and may not align with the priorities identified for the sustainable management of the coastal marine area as a whole. Accordingly the relief sought by the submitter is not supported.

Contribution to boat club moorings

321. The Waikawa and Pelorus Boating Clubs request that the council should commit to making a contribution to the maintenance of boating club moorings as one of the ways to maintain and enhance public access to the CMA (and seeks an amendment to Policy 5.10.8 to this effect).[172] Similar to the relief sought by another submitter in relation to contributing to boat ramps as a means of enhancing public access to the CMA, this is an action that the council could undertake if it considers that it will support public access to the CMA. However it is not considered that the policy needs to be specifically amended to state this.

Sources of funding

322. The MBMA considers that coastal occupiers are only one of the sectors involved with sustainably managing the coastal environment, and seek that Policy 5.10.8 is amended to reflect this, as follows:[173]

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[169] Brent Yardley (258.4)

[170] Pinder Family Trust (578.6), Guardians of the Sounds (752.6); Sea Shepherd New Zealand (1146.6); The Marlborough Environment Centre Incorporated (1193.42)

[171] Sanford Limited (1140.5, 6, 7, 8, 9)

[172] Waikawa Boating Club (1233.2) and Pelorus Boating Club Incorporated (1246.2)

[173] Marlborough Berth and Mooring Association Incorporated (960.3)

Any coastal occupancy charges collected will ~~be used on~~ contribute towards the following to promote the sustainable management of the coastal marine area

323. It is acknowledged that there may be other groups and sectors that contribute to the sustainable management of the coastal marine area as highlighted by the submitter. However in the context of section 64A(5) of the RMA, there is a clear requirement on councils that implement a charging regime to stipulate in its regional coastal plan the manner in which the money collected from a regime will be spent in order to promote the sustainable management of the coastal marine area. It is acknowledged that revenue from the proposed coastal charging regime is not the sole source of funding towards fulfilling council's role in the sustainable management of the CMA, and that other agencies may also spend money on the sustainable management of the CMA. Rather than amending the policy to this effect, it is recommended that the explanatory text is amended as follows:

> ***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:***
>
> *…*
>
> *The RMA requires that in implementing a coastal occupancy charging regime, any money collected must be used to promote the sustainable management of the coastal marine area. Revenue from the coastal occupancy charging regime is not the only source of funding that is available to promote the sustainable management of the coastal marine area, and may also come from general rates. Other agencies may also spend money on the sustainable management of the coastal marine area. The policy describes those matters on which the revenue collected from imposing charges is to be used, as required by the RMA. Greater detail on these matters can be found in a number of the subsequent chapters of the MEP, including Chapter 6 - Natural Character, Chapter 7 - Landscape, Chapter 8 - Indigenous Biodiversity, Chapter 9 - Public Access and Open Space, Chapter 10 - Heritage Resources, Chapter 13 - Use of the Coastal Environment and Chapter 15 - Resource Quality (Water, Air, Soil).*

Contributions from other organisations

324. Taurewa Lodge Trust considers that organisations such as the Port Company, the forestry industry, fishing industry, and the tourist industry should contribute towards the sustainable management of the CMA. This submitter is also concerned that those paying the charges won't get a say in how the money raised is spent.[174] As set out above, it is proposed that 25% of the total budget required to promote the sustainable management of the CMA will be met by ratepayers, which may include organisations such as those cited by the submitter. They are likely to contribute in some way towards the costs of promoting sustainable management of the CMA. Additionally, if any of these organisations are the consent holders of structures that occupy the CMCA, they may also be subject to the proposed charging regime, and may contribute funds via that mechanism.

[174] Taurewa Lodge Trust (1185.5)

Cultural and spiritual uses

325. Te Ātiawa o Te Waka-a-Māui considers that the list of ways in which the revenue from proposed charging regime will be spent should include cultural and spiritual projects, research, and works. In addition, Te Ātiawa seeks representation on a Board/Committee established to decide on the use of the funds.[175] As has been set out earlier in this report, there is nothing to prevent the Council from establishing a Board/Committee to determine how the funds should be spent, which could include projects such as those cited by the submitter if they promote the sustainable management of the CMA. However, given the broad enabling stance of Policy 5.10.8 towards a range of initiatives, it is not considered necessary to amend the provisions to explicitly refer to these matters.

Recommendations

326. Having had regard to the matters raised in submissions on Policy 5.10.8 one amendment is recommended, as set out in paragraph 323 above.

5.15 Methods 5.M.10 and 5.M.11

327. The MEP contains two methods that describe the way in which the proposed charging regime will be implemented. 5.M.10 signals that regional rules relating to the requirement for coastal occupation charges will be included in the plan, including rules that will require a discretionary consent for exemptions or waivers of any charge. Method 5.M.10 reads as follows:

> *Include provisions relating to the requirement for coastal occupation charges for port facilities where appropriate, moorings, marinas where appropriate, marine farms, jetties, wharves, boat ramps and slipways, boatsheds and other structures and utilities. Rules will also require discretionary activity applications to be made to enable an assessment of whether an exemption or waiver of any charge should be granted.*

328. Method 5.M.11 states that the level of charge to be applied to any activity for which a coastal permit is granted to occupy the coastal marine area will be set out in the Council's Annual Plan.

Method 5.M.10

329. Te Runanga o Toa Rangatira seeks that 5.M.10 is amended to include a rule to consult with iwi in and around coastal statutory areas.[176] Te Tau Ihu Coastal Marine Area is a statutory acknowledgement area within the coastal marine area in Marlborough. Statutory acknowledgements are a type of cultural redress often included in Treaty settlements, and are usually provided over Crown-owned portions of land or geographic features, including the coastal marine area. They recognise the particular cultural, spiritual, historical and traditional associations of an iwi with the particular area, and enhance the ability of iwi to participate in specified RMA processes.

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[175] Te Ātiawa o Te Waka-a-Māui (1186.49)

[176] Te Runanga o Toa Rangatira (166.17, 65)

330. Statutory acknowledgements relate principally to the processes under the RMA that are associated with the notification of resource consent applications.[177] They do not have any particular statutory bearing on the imposition or otherwise of a coastal charging regime. Accordingly, the relief sought by Te Runanga o Toa Rangatira is not supported.

331. Aquaculture New Zealand and the Marine Farming Association have noted that Method 5.M.10 does not appear to have been implemented in Volume 2 of the MEP. The submitters seek that consequential amendments are made to the methods of implementation where needed as a result of the other points that the submitters have raised on the related policies. [178]

332. The submitters have correctly identified that there are no specific rules that have been included in the MEP to set out either the circumstances in which a coastal occupancy charge will be imposed, or the process by which an application to seek a waiver from any required charge can be made.

333. It is understood that this was an intentional decision by the council, with the intent that specific provisions setting out these matters would be incorporated via a future plan change following the plan review process. It is acknowledged that this approach may result in a prolonged process for providing certainty and clarity about the proposed charging regime.

334. The extent to which including rules in the MEP to address the circumstances in which a coastal occupancy charge will be imposed, or setting out the process by which an application for a waiver can be made has been set out below.

335. Section 64A(3) states that where a regional council considers that a coastal occupation charging regime should be included in its coastal plan, the council:

> *"must specify in the regional coastal plan –*
>
> *(a) The circumstances when a coastal occupation charge will be imposed; and*
>
> *(b) The circumstances when the regional council will consider waiving (in whole or in part) a coastal occupation charge; and*
>
> *(c) The level of charges to be paid or the manner in which the charge will be determined; and*
>
> *(d) In accordance with subsection (5), the way the money received will be used.*

336. Section 64A(4) goes on to state that *"no coastal occupation charge may be imposed on any person occupying the coastal marine area unless the charge is provided for in the regional coastal plan."* (emphasis added).

337. Notably, while section 64A states that the components of a coastal occupancy charging regime must be 'specified' in the regional coastal plan, and that the charge must be 'provided for' in

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[177] RMA s95B(3), 95E(2)(c)

[178] Aquaculture New Zealand (401.43), Marine Farming Association Incorporated (426.43)

the regional coastal plan, it does not stipulate whether that must be via rules. As has been set out earlier in this report, the notified provisions (and the proposed amendments to those provisions) set out

a) the circumstances when a coastal occupation charge will (and will not) be imposed (policies 5.10.4 and 5.10.5);

b) the circumstances when the regional council will consider waiving a coastal occupation charge (policy 5.10.6);

c) the manner in which the charges will be determined (policy 5.10.7); and

d) the way that the money received will be used (policy 5.10.8)

338. The remaining aspects of an overall regime that are not specifically required to be included in the regional coastal plan under section 64A(3) but that nevertheless form part of the overall regime are:

a) details of the specific charge amounts that will apply to the various types of occupations in the common marine and coastal area;

b) by what method, how regularly, when, and for how long those charges will be applied;

c) details of the process by which persons upon whom the charges are imposed may make an application to seek a waiver (in whole or in part) of that charge; and

d) whether there are any appeal rights against decisions made by the regional council in respect of waiver applications (both for an applicant for a waiver, and any third parties).

339. Given the wording of section 64A, the council appears to have discretion as to whether it sets out the above matters in *rules* in the regional coastal plan or uses methods outside the regional coastal plan to address these. The issue of whether it is most appropriate to include the charges themselves in the Annual Plan, Long Term Plan, or MEP has been addressed earlier in this report, where it is concluded that setting the charges via the Annual Plan process still enables public consultation and input, but also the flexibility and adaptability to ensure the charging regime is responding to the unique circumstances in Marlborough.

340. The council has the express ability under section 108(2)(h) to impose conditions on resource consents specifying any coastal occupation charge. Section 108AA states that a consent authority must not include a condition in a resource consent for an activity unless:

a. The applicant for the resource consent agrees to the condition; or

b. The condition is directly connected to 1 or both of the following:

i. An adverse effect of the activity on the environment;

ii. An applicable district or regional rule, or a national environmental standard; or

c. The condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

341. If applicants agree to the imposition of a condition requiring a coastal occupancy charge, then the condition could be imposed in accordance with section 108AA(1)(a) of the RMA. However, this is a relatively unreliable manner in which to impose the charge. The imposition of a coastal occupancy charge is not related to managing adverse effects on the environment and so would likely not meet the requirement of section 108AA(1)(b)(i). It is potentially arguable whether a coastal occupancy charge is an administrative matter that is essential for the efficient implementation of a coastal permit. Therefore it is likely that the condition requiring the coastal occupancy charge would have to relate to an applicable regional rule.

342. A rule is 'applicable' if the application of the rule to the activity is the reason, or one of the reasons, that a resource consent is required for the activity.[179] This leads to the potential need for a rule to be included in the coastal plan that relates to the reason that a resource consent is required for an activity in order to enable the imposition of a condition on that consent requiring the imposition of a coastal occupancy charge. This analysis illustrates the potential legal issues associated with developing any rule framework in the MEP to implement the proposed charging regime which would need to be considered by the council.

343. Turning to the manner in which the council can impose coastal occupancy charges on occupations which have already been granted coastal permits, section 128 of the RMA enables consent authorities to serve notice on a consent holder of its intention to review the conditions of a resource consent. This approach could potentially be a mechanism by which the council could impose a condition imposing the charge on *existing* consent holders. However, the circumstances set out in section 128 do not appear to contemplate this action being available to impose a coastal occupancy charge.

344. Section 150 of the Local Government Act 2002 (**LGA**) enables local authorities to prescribe fees or charges for 'certificates, authorities, approvals, permits, or consents from or inspections by the local authority' in respect of a matter provided for in a bylaw made under the LGA, or a matter provided for under any other enactment if that provision does not authorise the local authority to charge a fee or stipulate that it should be made free of charge. This section may enable the council to impose the coastal occupancy charges on existing and new consent holders of coastal permits, but the Panel may wish to take legal advice as to whether the coastal occupancy charge is captured by being a 'certificate, authority, approval, permit, or consent from, or inspection by the local authority'.

345. Policy 5.10.6 contemplates that consent holders may seek waivers from the proposed charging regime, and provides the circumstances against which an application for a waiver will be considered. Method 5.M.10 as notified signalled that this process would occur by way of an application for a discretionary activity. It is acknowledged that the council needs to have discretion to grant or approve requests for waivers from the proposed charging regime, but I do not think that this means that applicants should be required to make a resource consent application for that waiver, particularly as resource consent applications must address effects on the environment, which are not matters that relate to the basis of coastal occupancy charges (instead being the balance between public and private benefit associated with an occupation

[179] RMA s 108AA(4)

of the CMCA). An alternative process that sits outside the MEP can be more flexible from an administrative process, and is likely to be more cost effective both for applicants and the council.

346. Having considered the points outlined above, there are a range of complexities associated with the potential options available to impose the charges, particularly in the case of regional coastal plan rules. This uncertainty is best addressed by undertaking an assessment of the efficiency and effectiveness of the options. Accordingly, it is recommended that Method 5.M.10 is amended as follows:

> **5.M.10 ~~Regional Rules~~ Imposing coastal occupation charges**
>
> ~~Include provisions relating to the requirement for coastal occupation charges for port facilities where appropriate, moorings, marinas where appropriate, marine farms, jetties, wharves, boat ramps and slipways, boatsheds and other structures and utilities. Rules will also require discretionary activity applications to be made to enable an assessment of whether an exemption or waiver of any charge should be granted.~~
>
> The council will investigate the most appropriate method by which to impose coastal occupancy charges, and to assess applications for waivers from those charges. If rules are determined to be the most appropriate method, they will be introduced by way of a future plan change.

Method 5.M.11

347. As set out earlier in this report, a number of submitters consider that the level of charges should be set out in the MEP, rather than the Annual Plan. Other submitters consider that the charges should be set out in the Long-Term Plan. This matter has been addressed variously throughout the report and the Annual Plan process is, in my view, the most appropriate way in which to set the charges. No amendments are therefore proposed to this method.

5.16 Proposed new policies

348. A number of submitters have sought that additional policies are included in Chapter 5 in relation to coastal occupancy charges:

    1. That coastal occupancy charges will not be introduced until all marine farms and other activities that may be subject to them have been assessed and any such charges are implemented for all farms at the same time, subject to any variances that may result from consideration of specific circumstances. The policy should also provide for consideration of variances that may exist on a farm by farm basis.[180]

[180] Totaranui Limited (233.9)

2. That the establishment, amounts, procedures for setting and charging coastal occupancy charges will be considered through a public process;[181]

3. That coastal occupancy charges will not be charged as a source of revenue for a profit; that records of their expenditure, reasons for expenditure, and environmental outcomes are reported on an annual basis; and that specific projects and the budgeted costs of these will be publicly accessible and reviewed on an annual basis through a public process involving consultation and involving submissions;[182]

4. To recognise that there are inherent rights of a coastal permit holder over the use of coastal structures that occupy coastal space;[183]

349. In relation to the first point listed above, it is anticipated that the proposed charging regime will only be able to be introduced once the provisions that relate to them in the MEP have been made operative, that the charges have been set via the Annual Plan process; and the necessary administrative systems have been established. The charging regime is therefore likely to be implemented for all structures (including marine farms) at the same time. Variations relating to the area of the marine farm and the type of farm (mussel/other or fin fish) are recommended to be factored into the charging regime in the Executive Finesse report. Accordingly the policy sought by Totaranui Limited is not considered necessary.

350. In relation to the second point above, the proposed charges will be established through the Annual Plan and as such will be subject to public notification and submission processes. This is already implicit by the reference to the Annual Plan in Method 5.M.11, and an additional policy to make this point is not necessary.

351. Revenue obtained from the imposition of a coastal charging regime are precluded from being a source of profit by virtue of section 64A(5). Policy 5.10. This principle is also reflected in Policy 5.10.8, and its explanatory text. The specific projects upon which the money will be spent, including the budgeted costs of these could be made publicly available during the annual plan process. Annual reporting of the environmental outcomes is an option that is available to the council, but including this, and the other matters set out by the submitter, in a policy in the MEP could fetter the ability of this reporting to be undertaken in a flexible manner. Accordingly, a policy to reflect these matters in the MEP is not supported.

352. The extent to which a coastal permit holder has rights over the use of coastal structures is a matter that is appropriately addressed in the resource consent process for the coastal permit, and associated conditions will likely address the extent of exclusivity that is associated with the structure (as has been addressed earlier in this report). From the perspective of the proposed charging regime, the extent of public and private use of various types of coastal structures has informed the allocation of public and private benefit associated with different

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[181] Totaranui Limited (233.10)

[182] Totaranui Limited (233.18)

[183] Waikawa Boating Club (1233.3); Marlborough Berth and Mooring Association Incorporated (960.4); Pelorus Boating Club Incorporated (1246.3)

structures, which in turn informs the way in which the charges are set. Accordingly, it is not considered necessary to include a policy to this effect.

6. Conclusion

353. In conclusion, and for the reasons outlined in this report, it is recommended that the provisions in Volume 1 Chapter 5 of the MEP under Issue 5J that relate to the introduction of a proposed coastal occupancy charging regime and the use of the coastal environment are retained, but amended as set out variously throughout this report, and in Appendix 2. Matters raised in submissions on these provisions have been addressed in this report, and the recommended decisions on each submission point is set out in Appendix 1.

Appendix 1: Recommended decisions on decisions requested

Submission Number	Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
100	8	East Bay Conservation Society	1	5	Issue 5J	Accept in part
203	1	Thomas Norton Te Awaiti Ltd	1	5	Issue 5J	Reject
311	1	George Rose	1	5	Issue 5J	Reject
425	79	Federated Farmers of New Zealand	1	5	Issue 5J	Reject
716	47	Friends of Nelson Haven and Tasman Bay Incorporated	1	5	Issue 5J	Accept
869	43	Kenepuru and Central Sounds Residents Association Incorporated	1	5	Issue 5J	Reject
233	9	Totaranui Limited	1	5	Objective 5.10	Reject
233	10	Totaranui Limited	1	5	Objective 5.10	Reject
233	18	Totaranui Limited	1	5	Objective 5.10	Reject
401	34	Aquaculture New Zealand	1	5	Objective 5.10	Accept in part
426	34	Marine Farming Association Incorporated	1	5	Objective 5.10	Accept in part
504	12	Queen Charlotte Sound Residents Association	1	5	Objective 5.10	Accept
688	29	Judy and John Hellstrom	1	5	Objective 5.10	Accept
710	7	The Fishing Industry Submitters	1	5	Objective 5.10	Reject
715	101	Royal Forest and Bird Protection Society NZ (Forest and Bird)	1	5	Objective 5.10	Reject
716	48	Friends of Nelson Haven and Tasman Bay Incorporated	1	5	Objective 5.10	Reject
1140	4	Sanford Limited	1	5	Objective 5.10	Reject
1186	46	Te Atiawa o Te Waka-a-Maui	1	5	Objective 5.10	Reject
1233	3	Waikawa Boating Club	1	5	Objective 5.10	Reject
401	35	Aquaculture New Zealand	1	5	Policy 5.10.1	Reject
424	6	Michael and Kristen Gerard	1	5	Policy 5.10.1	Accept
426	35	Marine Farming Association Incorporated	1	5	Policy 5.10.1	Reject
504	13	Queen Charlotte Sound Residents Association	1	5	Policy 5.10.1	Accept
688	30	Judy and John Hellstrom	1	5	Policy 5.10.1	Accept
710	8	The Fishing Industry Submitters	1	5	Policy 5.10.1	Reject
715	102	Royal Forest and Bird Protection Society NZ (Forest and Bird)	1	5	Policy 5.10.1	Reject
716	49	Friends of Nelson Haven and Tasman Bay Incorporated	1	5	Policy 5.10.1	Accept
960	4	Marlborough Berth and Mooring Association Incorporated	1	5	Policy 5.10.1	Reject
995	10	New Zealand Forest Products Holdings Limited	1	5	Policy 5.10.1	Reject
1246	3	Pelorus Boating Club Incorporated	1	5	Policy 5.10.1	Reject

Submission Number	Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
401	36	Aquaculture New Zealand	1	5	Policy 5.10.2	Reject
424	7	Michael and Kristen Gerard	1	5	Policy 5.10.2	Accept
426	36	Marine Farming Association Incorporated	1	5	Policy 5.10.2	Reject
501	20	Te Runanga O Ngati Kuia	1	5	Policy 5.10.2	Reject
504	14	Queen Charlotte Sound Residents Association	1	5	Policy 5.10.2	Accept in part
688	31	Judy and John Hellstrom	1	5	Policy 5.10.2	Accept
715	103	Royal Forest and Bird Protection Society NZ (Forest and Bird)	1	5	Policy 5.10.2	Reject
716	50	Friends of Nelson Haven and Tasman Bay Incorporated	1	5	Policy 5.10.2	Accept in part
1253	2	Michael Philip Rothwell	1	5	Policy 5.10.2	Reject
401	37	Aquaculture New Zealand	1	5	Policy 5.10.3	Reject
424	8	Michael and Kristen Gerard	1	5	Policy 5.10.3	Accept
426	37	Marine Farming Association Incorporated	1	5	Policy 5.10.3	Reject
688	32	Judy and John Hellstrom	1	5	Policy 5.10.3	Accept
715	104	Royal Forest and Bird Protection Society NZ (Forest and Bird)	1	5	Policy 5.10.3	Reject
716	51	Friends of Nelson Haven and Tasman Bay Incorporated	1	5	Policy 5.10.3	Accept
1186	47	Te Atiawa o Te Waka-a-Maui	1	5	Policy 5.10.3	Reject
7	1	Barry William Blackley	1	5	Policy 5.10.4	Reject
258	1	Brent Yardley	1	5	Policy 5.10.4	Accept in part
270	1	Cameron Lawes	1	5	Policy 5.10.4	Reject
337	1	CP and LE Womersley	1	5	Policy 5.10.4	Reject
401	38	Aquaculture New Zealand	1	5	Policy 5.10.4	Accept in part
404	4	Eric Jorgensen	1	5	Policy 5.10.4	Reject
424	9	Michael and Kristen Gerard	1	5	Policy 5.10.4	Accept
426	38	Marine Farming Association Incorporated	1	5	Policy 5.10.4	Accept in part
469	1	Ian Bond	1	5	Policy 5.10.4	Reject
515	8	Mt Zion Charitable Trust	1	5	Policy 5.10.4	Reject
569	1	Barbara Stewart	1	5	Policy 5.10.4	Accept in part
578	2	Pinder Family Trust	1	5	Policy 5.10.4	Accept
633	4	Coromandel Marine Farmers' Association	1	5	Policy 5.10.4	Reject
638	1	David Archdall Robinson	1	5	Policy 5.10.4	Reject
640	3	Douglas and Colleen Robbins	1	5	Policy 5.10.4	Reject
648	11	D C Hemphill	1	5	Policy 5.10.4	Reject
687	1	Eleanor and Vera Burton	1	5	Policy 5.10.4	Reject
688	33	Judy and John Hellstrom	1	5	Policy 5.10.4	Accept

Submission Number	Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
697	1	Elie Bay Residents	1	5	Policy 5.10.4	Reject
710	9	The Fishing Industry Submitters	1	5	Policy 5.10.4	Accept
715	105	Royal Forest and Bird Protection Society NZ (Forest and Bird)	1	5	Policy 5.10.4	Reject
716	52	Friends of Nelson Haven and Tasman Bay Incorporated	1	5	Policy 5.10.4	Accept
738	6	Glenda Vera Robb	1	5	Policy 5.10.4	Reject
752	2	Guardians of the Sounds	1	5	Policy 5.10.4	Accept
808	1	Kroon, Hanneke and Jansen, Joop	1	5	Policy 5.10.4	Reject
926	26	Wainui Green 2015 Limited	1	5	Policy 5.10.4	Accept in part
932	1	Michael Joseph and Catherine May Sweeney	1	5	Policy 5.10.4	Reject
935	3	Melva Joy Robb	1	5	Policy 5.10.4	Reject
950	1	Michael William Rosson	1	5	Policy 5.10.4	Reject
960	1	Marlborough Berth and Mooring Association Incorporated	1	5	Policy 5.10.4	Accept in part
962	197	Marlborough Forest Industry Association Incorporated	1	5	Policy 5.10.4	Reject
1074	2	Rick Osborne	1	5	Policy 5.10.4	Reject
1075	1	Robin Pasley	1	5	Policy 5.10.4	Reject
1076	1	Raelyne Joyce Perkins	1	5	Policy 5.10.4	Reject
1083	3	Rowland and Malcolm Woods	1	5	Policy 5.10.4	Reject
1135	1	Sheryll Stapleton	1	5	Policy 5.10.4	Reject
1140	5	Sanford Limited	1	5	Policy 5.10.4	Reject
1146	2	Sea Shepherd New Zealand	1	5	Policy 5.10.4	Accept
1185	1	Taurewa Lodge Trust	1	5	Policy 5.10.4	Reject
1190	27	The Bay of Many Coves Residents and Ratepayers Association Incorporated	1	5	Policy 5.10.4	Accept
1193	38	The Marlborough Environment Centre Incorporated	1	5	Policy 5.10.4	Accept
1202	1	Tu Jaes Trust	1	5	Policy 5.10.4	Reject
233	12	Totaranui Limited	1	5	Policy 5.10.5	Reject
258	2	Brent Yardley	1	5	Policy 5.10.5	Accept in part
401	39	Aquaculture New Zealand	1	5	Policy 5.10.5	Accept in part
404	5	Eric Jorgensen	1	5	Policy 5.10.5	Reject
424	10	Michael and Kristen Gerard	1	5	Policy 5.10.5	Accept
426	39	Marine Farming Association Incorporated	1	5	Policy 5.10.5	Accept in part
433	14	Port Marlborough New Zealand Limited	1	5	Policy 5.10.5	Accept in part
479	50	Department of Conservation	1	5	Policy 5.10.5	Accept in part

Submission Number	Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
504	15	Queen Charlotte Sound Residents Association	1	5	Policy 5.10.5	Reject
578	3	Pinder Family Trust	1	5	Policy 5.10.5	Accept in part
633	5	Coromandel Marine Farmers' Association	1	5	Policy 5.10.5	Reject
688	34	Judy and John Hellstrom	1	5	Policy 5.10.5	Accept in part
710	10	The Fishing Industry Submitters	1	5	Policy 5.10.5	Accept in part
715	106	Royal Forest and Bird Protection Society NZ (Forest and Bird)	1	5	Policy 5.10.5	Reject
752	3	Guardians of the Sounds	1	5	Policy 5.10.5	Accept in part
932	2	Michael Joseph and Catherine May Sweeney	1	5	Policy 5.10.5	Reject
1002	21	New Zealand Transport Agency	1	5	Policy 5.10.5	Accept in part
1083	2	Rowland and Malcolm Woods	1	5	Policy 5.10.5	Reject
1140	6	Sanford Limited	1	5	Policy 5.10.5	Reject
1146	3	Sea Shepherd New Zealand	1	5	Policy 5.10.5	Accept in part
1185	2	Taurewa Lodge Trust	1	5	Policy 5.10.5	Accept in part
1186	48	Te Atiawa o Te Waka-a-Maui	1	5	Policy 5.10.5	Reject
1190	28	The Bay of Many Coves Residents and Ratepayers Association Incorporated	1	5	Policy 5.10.5	Accept
1193	39	The Marlborough Environment Centre Incorporated	1	5	Policy 5.10.5	Accept in part
1233	1	Waikawa Boating Club	1	5	Policy 5.10.5	Reject
1246	1	Pelorus Boating Club Incorporated	1	5	Policy 5.10.5	Reject
233	11	Totaranui Limited	1	5	Policy 5.10.6	Reject
401	40	Aquaculture New Zealand	1	5	Policy 5.10.6	Accept in part
424	11	Michael and Kristen Gerard	1	5	Policy 5.10.6	Accept
426	40	Marine Farming Association Incorporated	1	5	Policy 5.10.6	Accept in part
501	21	Te Runanga O Ngati Kuia	1	5	Policy 5.10.6	Reject
578	4	Pinder Family Trust	1	5	Policy 5.10.6	Accept
633	6	Coromandel Marine Farmers' Association	1	5	Policy 5.10.6	Reject
710	11	The Fishing Industry Submitters	1	5	Policy 5.10.6	Accept
715	107	Royal Forest and Bird Protection Society NZ (Forest and Bird)	1	5	Policy 5.10.6	Reject
752	4	Guardians of the Sounds	1	5	Policy 5.10.6	Accept
932	3	Michael Joseph and Catherine May Sweeney	1	5	Policy 5.10.6	Reject
950	2	Michael William Rosson	1	5	Policy 5.10.6	Reject
995	11	New Zealand Forest Products Holdings Limited	1	5	Policy 5.10.6	Reject

Submission Number	Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
1140	7	Sanford Limited	1	5	Policy 5.10.6	Reject
1146	4	Sea Shepherd New Zealand	1	5	Policy 5.10.6	Accept
1185	3	Taurewa Lodge Trust	1	5	Policy 5.10.6	Reject
1190	29	The Bay of Many Coves Residents and Ratepayers Association Incorporated	1	5	Policy 5.10.6	Accept
1193	40	The Marlborough Environment Centre Incorporated	1	5	Policy 5.10.6	Accept
404	6	Eric Jorgensen	1	5	Policy 5.10.6	Reject
73	1	Thomas & Janet Sharp	1	5	Policy 5.10.7	Reject
258	3	Brent Yardley	1	5	Policy 5.10.7	Reject
332	1	Robert John Culbert	1	5	Policy 5.10.7	Reject
401	41	Aquaculture New Zealand	1	5	Policy 5.10.7	Accept in part
404	7	Eric Jorgensen	1	5	Policy 5.10.7	Reject
424	12	Michael and Kristen Gerard	1	5	Policy 5.10.7	Accept
426	41	Marine Farming Association Incorporated	1	5	Policy 5.10.7	Accept in part
504	16	Queen Charlotte Sound Residents Association	1	5	Policy 5.10.7	Reject
578	5	Pinder Family Trust	1	5	Policy 5.10.7	Accept
633	2	Coromandel Marine Farmers' Association	1	5	Policy 5.10.7	Reject
688	35	Judy and John Hellstrom	1	5	Policy 5.10.7	Reject
697	4	Elie Bay Residents	1	5	Policy 5.10.7	Reject
710	12	The Fishing Industry Submitters	1	5	Policy 5.10.7	Accept
715	108	Royal Forest and Bird Protection Society NZ (Forest and Bird)	1	5	Policy 5.10.7	Reject
736	1	Gregory Michael Schmetzer	1	5	Policy 5.10.7	Reject
752	5	Guardians of the Sounds	1	5	Policy 5.10.7	Accept
808	4	Kroon, Hanneke and Jansen, Joop	1	5	Policy 5.10.7	Reject
932	4	Michael Joseph and Catherine May Sweeney	1	5	Policy 5.10.7	Reject
960	2	Marlborough Berth and Mooring Association Incorporated	1	5	Policy 5.10.7	Reject
1140	8	Sanford Limited	1	5	Policy 5.10.7	Reject
1146	5	Sea Shepherd New Zealand	1	5	Policy 5.10.7	Accept
1185	4	Taurewa Lodge Trust	1	5	Policy 5.10.7	Reject
1190	30	The Bay of Many Coves Residents and Ratepayers Association Incorporated	1	5	Policy 5.10.7	Accept
1193	41	The Marlborough Environment Centre Incorporated	1	5	Policy 5.10.7	Accept
258	4	Brent Yardley	1	5	Policy 5.10.8	Reject

Submission Number	Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
401	42	Aquaculture New Zealand	1	5	Policy 5.10.8	Accept in part
424	13	Michael and Kristen Gerard	1	5	Policy 5.10.8	Accept
426	42	Marine Farming Association Incorporated	1	5	Policy 5.10.8	Accept in part
578	6	Pinder Family Trust	1	5	Policy 5.10.8	Accept in part
633	1	Coromandel Marine Farmers' Association	1	5	Policy 5.10.8	Reject
687	2	Eleanor and Vera Burton	1	5	Policy 5.10.8	Reject
688	36	Judy and John Hellstrom	1	5	Policy 5.10.8	Reject
688	134	Judy and John Hellstrom	1	5	Policy 5.10.8	Reject
697	3	Elie Bay Residents	1	5	Policy 5.10.8	Reject
710	13	The Fishing Industry Submitters	1	5	Policy 5.10.8	Accept
715	109	Royal Forest and Bird Protection Society NZ (Forest and Bird)	1	5	Policy 5.10.8	Reject
752	6	Guardians of the Sounds	1	5	Policy 5.10.8	Reject
808	3	Kroon, Hanneke and Jansen, Joop	1	5	Policy 5.10.8	Reject
932	5	Michael Joseph and Catherine May Sweeney	1	5	Policy 5.10.8	Reject
960	3	Marlborough Berth and Mooring Association Incorporated	1	5	Policy 5.10.8	Accept in part
1083	1	Rowland and Malcolm Woods	1	5	Policy 5.10.8	Reject
1140	9	Sanford Limited	1	5	Policy 5.10.8	Reject
1146	6	Sea Shepherd New Zealand	1	5	Policy 5.10.8	Reject
1185	5	Taurewa Lodge Trust	1	5	Policy 5.10.8	Reject
1186	49	Te Atiawa o Te Waka-a-Maui	1	5	Policy 5.10.8	Reject
1190	32	The Bay of Many Coves Residents and Ratepayers Association Incorporated	1	5	Policy 5.10.8	Accept
1193	42	The Marlborough Environment Centre Incorporated	1	5	Policy 5.10.8	Reject
1202	2	Tu Jaes Trust	1	5	Policy 5.10.8	Accept
1233	2	Waikawa Boating Club	1	5	Policy 5.10.8	Reject
1246	2	Pelorus Boating Club Incorporated	1	5	Policy 5.10.8	Reject
401	43	Aquaculture New Zealand	1	5	5.M.10	Accept in part
426	43	Marine Farming Association Incorporated	1	5	5.M.10	Accept in part
514	26	A J King Family Trust and S A King Family Trust	1	5	5.M.10	Accept in part
932	6	Michael Joseph and Catherine May Sweeney	1	5	5.M.10	Reject
633	3	Coromandel Marine Farmers' Association	1	5	5.M.11	Reject
697	2	Elie Bay Residents	1	5	5.M.11	Reject

Submission Number	Submission Point	Submitter	Volume	Chapter	Provision	Recommendation
715	110	Royal Forest and Bird Protection Society NZ (Forest and Bird)	1	5	5.M.11	Reject
736	2	Gregory Michael Schmetzer	1	5	5.M.11	Reject
808	2	Kroon, Hanneke and Jansen, Joop	1	5	5.M.11	Reject
932	7	Michael Joseph and Catherine May Sweeney	1	5	5.M.11	Reject
166	17	Te Runanga o Toa Rangatira	1	3 Marlborough's tangata	3.	Reject
166	44	Te Runanga o Toa Rangatira	1	3 Marlborough's tangata	3.	Reject
166	65	Te Runanga o Toa Rangatira	1	3 Marlborough's tangata	3.	Reject

Appendix 2: Proposed amendments to provisions

Reporting Officer's proposed amendments for Topic 11 – Allocation of Public Space in the Coastal Marine Area

Proposed additions via section 42A report are shown as black underlined text

Proposed deletions via section 42A report are shown as black ~~struck-through~~ text

Scope for amendments is indicated by way of the comment boxes attached to the amendment.

5. Allocation of Public Resources

Introduction

Much of the Council's resource management work involves managing resources that are in the public domain. Marlborough has a considerable coastline, large areas of land in Crown ownership and extensive freshwater resources. The Council frequently allocates or authorises the use of these natural resources for private benefit, especially resources in the coastal marine area, rivers, riverbeds and aquifers.

Allocating rights to use public resources has become a fundamental part of the overall fabric of Marlborough's social and economic wellbeing. For example, our viticulture industry, which contributes significantly to Marlborough's economy, relies on access to freshwater resources from rivers and aquifers. Other examples include the many moorings, boatsheds and jetties throughout the Sounds, all of which contribute to the social wellbeing of residents and holidaymakers.

The importance of the community and visitors being able to continue to use and develop these natural resources within the constraints of the Resource Management Act 1991 (RMA) cannot be underestimated. Any significant reduction or change in approach to resource use could have significant implications for Marlborough's economic, cultural and social wellbeing. The two main areas where allocation of public resources is considered to be an issue are rights to occupy space in the coastal marine area, and rights to take and use freshwater.

NOTE: Intervening provisions removed for the purposes of section 42A reporting on Coastal Occupancy Charges.

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 to 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. However, provisions in this part of the Marlborough Environment Plan (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~~ common marine and coastal area.

Commented [DR1]: SCOPE – Schedule 1, Clause 16

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 and multiple moorings for boats. Others believe that there are no such rights. Many such structures have limited benefit for the wider public, yet occupy public space. Conversely, some structures, such as public jetties and launching ramps, do provide enhanced public use of and access to the coast and consequently are of general public benefit.

The occupation of coastal marine area may effectively prevent other activities from occurring. The extent to which the public are excluded from parts of the coastal marine area varies according to the nature of an authorised activity, whether by resource consent or by a rule in a regional coastal plan. 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.

[RPS, C]

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

The control of the occupation 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 intended to ensure 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~~ manages conflicts between users and ensures efficient and beneficial use.

Commented [DR2]: SCOPE: Marine Farming Association Incorporated (426.34 and Aquaculture New Zealand (401.34)

[RPS, C]

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

Both the RMA and the New Zealand Coastal Policy Statement 2010 (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 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.

[RPS, C]

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.

The default process for processing resource consent applications under the RMA is 'first in, first served.' 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 to date effectively managed the demand for space in the coastal marine area. However, 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. If an alternative allocation

Commented [DR3]: SCOPE: Queen Charlotte Sound Residents Association (504.13)

method is introduced this would result in changes to the plan that would be subject to the plan change process under the RMA.

[RPS, C]

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.

Exclusive occupation restricts access to the resource consent holder, who has the right to occupy and therefore alienate public space from public use. 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 Council considers that exclusive occupation should only be allowed where absolutely necessary.

[C]

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

The RMA enables the Council to apply a coastal occupancy charge to ~~activities occupying~~ persons who occupy space within the ~~coastal marine area~~ common marine and coastal area, after having regard to the extent to which public benefits from the coastal marine area are lost or gained and the extent to which private benefit is obtained from the occupation of the coastal marine area. 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 assessment of benefits (private/public) is directed to those arising or lost as a consequence of the structure occupying coastal space, not the associated activity that may be facilitated by the structure being present.

[C]

Policy 5.10.5 – The Marlborough District Council will ~~waive the need for coastal occupancy charges for~~ exempt the following from any requirement to pay coastal occupancy charges:

- **(a) public wharves, jetties, boat ramps and facilities owned by the Marlborough District Council and the Department of Conservation;**
- **(b) monitoring equipment;**
- **(c) activities listed as permitted, except for moorings in a Mooring Management Area;**
- **(d) retaining walls; ~~and~~**
- **(x) coastal protection structures and stormwater outfalls for the purpose of enabling the provision and operation of public infrastructure;**
- **(e) ~~port and marina activities~~ commercial port undertakings ~~where~~ authorised via resource consents ~~authorised~~ under Section 384A of the Resource Management Act 1991 ~~are in place~~ until such time as those resource consents expire~~.~~; and**
- **(x) protected customary rights groups or customary marine title groups exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011**

These ~~waivers~~ exemptions exist because the facilities owned by the Council~~ and~~ the Department of Conservation and other government agencies provide a significant level of public benefit as they are used by and available to many people. Retaining walls generally do not occupy significant areas of the ~~coastal marine area~~ common marine and coastal area to the exclusion of other users, while monitoring equipment is generally very small and often temporary. There are few permitted

Commented [DR4]: SCOPE – Schedule 1, Clause 16

Commented [DR5]: SCOPE – Schedule 1, Clause 16

Commented [DR6]: SCOPE – Schedule 1, Clause 16

Commented [DR7]: SCOPE – Schedule 1, Clause 16

Commented [DR8]: SCOPE – Schedule 1, Clause 16

Commented [DR9]: SCOPE: NZTA (1002.21)

Commented [DR10]: SCOPE (all amendments to this sub-policy): Taurewa Lodge Trust (1185.2), Brent Yardley (258.2), Queen Charlotte Sound Residents Association (504.15), Port Marlborough (433.15)

Commented [DR11]: SCOPE – Schedule 1, Clause 16

Commented [DR12]: SCOPE: NZTA (1002.21)

Commented [DR13]: SCOPE: NZTA (1002.21)

Commented [DR14]: SCOPE – Schedule 1, Clause 16

activities that involve occupation and those that are permitted tend to have a more significant element of public benefit, e.g. navigation aids or public and safety information signs. Although moorings in a Mooring Management Area identified through rules are provided for as a permitted activity in the Coastal Marine Zone (where a relevant bylaw is in place), these moorings are for private benefit and therefore will attract a coastal occupation charge.

Certain occupation rights are granted to port companies under Section 384A of the RMA. These occupation rights originate from the purchase of the assets comprised in the port-related commercial undertakings by the Port Companies from the former Harbour Boards. In Marlborough the resource consents granted under this section of the RMA relate to port related commercial undertakings being carried out in the areas of Picton (excluding the area of port in Shakespeare Bay), Waikawa, Havelock, Elaine and Oyster Bays. ~~The~~ Due to the purchase of these assets by the Port Companies, the port-related commercial undertakings that have been granted coastal permits under Section 384A of the RMA ~~appears to exempt these resource consents~~ are exempted from attracting coastal occupancy charges until after 30 September 2026 (being the expiry date of those coastal permits).

Commented [DR15]: SCOPE (all amendments to this paragarph): Taurewa Lodge Trust (1185.2), Brent Yardley (258.2), Queen Charlotte Sound Residents Association (504.15), Port Marlborough (433.15)

[C]

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:

- **(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:**
  - **(i) the nature of the activities of that organisation; and**
  - **(ii) the responsibilities of that organisation.**

Section 64A(3)(b) of the RMA requires the circumstances when the Council will consider waiving, either in whole or part, coastal occupation charges to be set out in the MEP. These circumstances, set out in a) to d) above, effectively require consideration of the difference between private benefit from an occupation and the public benefit that can accrue from an occupation. For a), where there is exclusive occupation this carries a high degree of private benefit, whereas where the occupation is only temporary there may only be a short-term private benefit. Where trusts, clubs, associations, etc are involved, it is important to understand the nature of the activities and responsibilities of that organisation, including how its purpose relates to the occupation for which a waiver is being sought and the wider public benefits that will accrue from this.

[C]

Policy 5.10.7 – The manner in which the level of coastal occupancy charges has been determined is as follows:

- **(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.**

In deciding how to set charges, the Council has used as its starting point the actual expenditure considered necessary to promote the sustainable management of the coastal marine area. The budgeted expenditure for this is described year to year in the Council's Annual Plan for the Environmental Science and Monitoring Group, Environmental Policy Group and Environmental Compliance and Education Group.

In determining who should meet the cost of sustainably managing the ~~coastal marine environment~~ coastal marine area, an allocation of costs needs to occur between beneficiaries. The Council has considered that a contribution towards the costs should be made by ratepayers (25%) as well as those benefitting from the occupation of public space (75%). The Council has also given consideration to anticipated waivers that may be granted and the number and size of the various occupations. From this assessment, a schedule of charges has been derived and is set out in the Council's Annual Plan.

Commented [DR16]: SCOPE – Schedule 1, Clause 16

[C]

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:

- **(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.**

The RMA requires that in implementing a coastal occupancy charging regime, any money collected must be used to promote the sustainable management of the coastal marine area. Revenue from the coastal occupancy charging regime is not the only source of funding that is available to promote the sustainable management of the coastal marine area, and may also come from general rates. Other agencies may also spend money on the sustainable management of the coastal marine area. The policy describes those matters on which the revenue collected from imposing charges is to be used, as required by the RMA. Greater detail on these matters can be found in a number of the subsequent chapters of the MEP, including Chapter 6 - Natural Character, Chapter 7 - Landscape, Chapter 8 - Indigenous Biodiversity, Chapter 9 - Public Access and Open Space, Chapter 10 - Heritage Resources, Chapter 13 - Use of the Coastal Environment and Chapter 15 - Resource Quality (Water, Air, Soil).

Commented [DR17]: SCOPE: Marlborough Berth and Mooring Association (960.3)

Methods of implementation

The methods listed below are to be implemented by the Council unless otherwise specified.

[C]

5.M.10 ~~Regional Rules~~ Imposing coastal occupation charges

Commented [DR18]: SCOPE: Aquaculture New Zealand (401.43) and Marine Farming Association Incorporated (426.43)

~~Include provisions relating to the requirement for coastal occupation charges for port facilities where appropriate, moorings, marinas where appropriate, marine farms, jetties, wharves, boat ramps and slipways, boatsheds and other structures and utilities. Rules will also require discretionary activity applications to be made to enable an assessment of whether an exemption or waiver of any charge should be granted.~~

The council will investigate the most appropriate method by which to impose coastal occupancy charges, and to assess applications for waivers from those charges. If rules are determined to be the most appropriate method, they will be introduced by way of a future plan change.

[C]

5.M.11 Annual Plan

The level of charge to be applied to any activity for which a coastal permit is granted to occupy the ~~coastal marine area~~ common marine and coastal area is set out in the Council's Annual Plan.

Commented [DR19]: SCOPE – Schedule 1, Clause 16

Anticipated environmental result	Monitoring effectiveness
5.AER.1 Sufficient flow in rivers and adequate groundwater level to sustain natural and human use values supported by these water bodies.	Attainment of environmental flows and levels, as recorded at representative monitoring sites. The record of compliance with environmental flows and levels, as recorded by water meter and published via E-planning.
5.AER.2 Maintenance of spring flows on the Wairau Plain.	Attainment of environmental flows for Spring Creek, Taylor River and Doctors Creek, as measured at representative monitoring sites.
5.AER.3 Maintenance of the significant values of outstanding water bodies.	Reassessment of waterbody values at the time of the next review of the MEP.
5.AER.4 More efficient allocation of water resources.	The number of water permits granted for the use of water on the basis of the reasonable use test.
5.AER.5 Increased utilisation of allocated water.	Increased use of water, within allocation limits, as recorded by water meter and published via E-planning. Water users transfer water permits from site to site, as recorded by E-planning.
5.AER.6 Reduced conflict between water users.	A reduction in the number of complaints regarding the taking, use, damming and diversion of water.
5.AER.7 Over-allocation of water resources is phased out.	The total amount of water allocated to water users in over-allocated resources does not exceed the allocation limit by 2025.

Anticipated environmental result	Monitoring effectiveness
5.AER.8 Land use change does not reduce water yield in fully allocated FMUs to the extent that it adversely affects the reliability of existing water permits.	No significant increase in the incidence of flow restrictions experienced by water permit holders in fully allocated FMUs.
5.AER.9 Storage of water is increasingly utilised to improve the resilience of water uses.	The record of the number of Class C water permits granted.

Appendix 3: Legal opinion

RUSSELL McVEAGH McKENZIE BARTLEET & CO

BARRISTERS, SOLICITORS & NOTARIES PUBLIC

THE TODD BUILDING, CNR BRANDON STREET & LAMBTON QUAY,
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http://www.rzumb.co.nz

15 May 1998

Mr David Viles
Lyttelton Port Company Limited
Private Bag
LYTTELTON

Dear Mr Viles

RESOURCE MANAGEMENT AMENDMENT ACT 1997: COASTAL OCCUPATION CHARGES

1. INTRODUCTION

1.1 As you know the Resource Management Amendment Act 1997 ("**Amendment Act**") came into force on 17 December 1997. Section 12 of the Amendment Act inserts a new section (64A) into the RMA as follows:

> **12. Imposition of coastal occupation charges** - The principal Act is amended by inserting, after section 64, the following section:
>
> "64A. (1) Unless a regional coastal plan or proposed regional coastal plan already addresses coastal occupation charges, in preparing or changing a regional coastal plan or proposed regional coastal plan, a regional council must consider, after having regard to-
>
> "(a) The extent to which public benefits from the coastal marine area are lost or gained; and
>
> "(b) The extent to which private benefit is obtained from the occupation of the coastal marine area, -
>
> whether or not a coastal occupation charging regime applying to persons who occupy any part of the coastal marine area (relating to land of the Crown in the coastal marine area of land in the coastal marine area vested in the regional council) should be included.
>
> "(2) Where the regional council considers that a coastal occupation charging regime should not be included, a statement to that effect must be included in the regional coastal plan.
>
> "(3) Where the regional council considers that a coastal occupation charging regime should be included, the council must, after having regard to the matters set out in paragraphs (a) and (b) of subsection (1), specify in the regional coastal plan-
>
> "(a) The circumstances when a coastal occupation charge will be imposed; and

"(b) The circumstances when the regional council will consider waiving (in whole or in part) a coastal occupation charge; and

"(c) The level of charges to be paid or the manner in which the charge will be determined; and

"(d) In accordance with subsection (5), the way the money received will be used.

"(4) No coastal occupation charge may be imposed on any person occupying the coastal marine area unless the charge is provided for in the regional coastal plan.

"(5) Any money received by the regional council from a coastal occupation charge must be used only for the purpose of promoting the sustainable management of the coastal marine area."

1.2 Certain transitional provisions relating to charges have also been inserted in the RMA by the Amendment Act, namely new ss 401A and 401B. Copies of these sections are attached.

1.3 Following the enactment of these provisions we understand that the Canterbury Regional Council ("CRC") may be giving some initial consideration to the question of whether or not it ought to prepare a charging regime for inclusion in its regional coastal plan and, if so, what form it might take.

1.4 Given:

(a) the important and broad ranging criteria in the new s64A which raise serious and complex issues;

(b) the duties imposed on the CRC under s32 which include the identification of costs and benefits and consideration of alternatives;

(c) the financial and practical implications for a large number and variety of coastal resource users potentially affected (eg port companies, yachting and boating clubs, individual marina berth and mooring holders, fishing companies, shipping companies, pipeline owners, owners of bridges and pylons in the coastal marine area, etc) which will all need to be properly investigated and considered; and

(d) the whole thrust of the RMA and of accepted good practice that there be proper consultation;

it will obviously be necessary and desirable for the CRC to move carefully and in a considered fashion and to consult widely with all likely affected parties. It will also want to get to the bottom of the real social and economic implications of what may be involved.

1.5 At this time your company has only had an initial contact from the CRC over the proposals. Because it is at such an early stage, the advice you seek from our firm is on the basic legal question of what types of occupation consents can or should be the subject of any new coastal charging regime. This is of course a general issue, not specific to Canterbury.

1.6 In that regard, our firm has been advising all 13 port companies in New Zealand on occupation issues for a considerable period because the issues are of general application. As you know, we represented Port Lyttelton and the other port companies before the Select Committee on the Amendment Act which introduced s64A and have been closely involved on occupation matters for port companies on earlier amendments to the RMA. Initiatives we took on behalf of Ports of Auckland Limited also led to the enactment of the port company occupation rights in s384A. We have brought that background and experience to the issues arising under the new s64A, as that history is important to the present situation.

1.7 By way of summary, we consider the correct legal position to be as follows:

(a) Persons occupying the coastal marine area under leases and licences (such as licences under s156 of the Harbours Act 1950 or under special Acts) which were entered into before the RMA and which are deemed to be resource consents under the RMA transitional provisions (s384), should continue to comply with the contractual arrangements for rentals in those leases and licences. A new regime possible in s64A cannot retrospectively and unilaterally "open up" these contracts entered into by the parties concerned and impose any new charges in lieu of, or on top of, the up-front capitalised rentals (common for marina berths) or weekly, monthly or annual rentals or ship visit charges (common for moorings or wharf space) fixed and agreed in those contracts.

(b) Port company occupation rights under s384A are similarly not the subject of any new coastal charging regime. They are special rights which were in place before the enactment of the RMA. The purpose of s384A was to recognise that those rights already existed as at 30 September 1991 and were required for the operation and management of the port related commercial undertakings, and had been paid for.

(c) New resource consents for new occupation rights applied for and commencing after 1 October 1991 and granted under s12 of the RMA, and new occupation rights which are provided as permitted activities in an operative regional coastal plan, are both potentially liable to pay coastal charges. These rights of occupation have already been, and for a period remain, subject to charges under the Resource Management (Transitional Fees, Rents and Royalties)

Regulations 1991 (or any replacement regulations). This liability will extend until 30 June 1999, or until any new coastal charging regime is introduced and become operative (whichever is the earliest). When a new regime is in place, those rights of occupation, and any new rights granted subsequently, will be charged in accordance with the new operative provisions of the plans.

1.8 It is only this third category, ie those that fall within (c) above, that will potentially be caught by the operative provisions of any new coastal charging regime.

1.9 This all makes sense, as it is this group of applicants for new occupation commencing after 1 October 1991 who were or are looking forward, and were able to make, or can make, investment decisions about whether or not to proceed with a new development, in the light of likely charges under the RMA for occupation. The RMA is not about looking back and retrospectively seeking to interfere with rights existing pre-RMA or trying to re-open investment decisions already made and committed. This is a very important principle.

1.10 We will now look at these three categories in a little more detail.

2. OCCUPATION CONSENTS GRANTED BEFORE 1 OCTOBER 1991

2.1 Prior to the RMA, rights of occupation were not obtained under the Town and Country Planning Act 1977 or other environmental legislation. Rather, they were usually granted under lease and licence powers under s156 or other provisions of the Harbours Act 1950 or other general Acts, or particularly in the case of marina developments or more substantial projects, under special powers granted in legislation enacted specifically for the purpose. For example, most of the marinas in the country required special Acts or special powers inserted into local legislation, not just to authorise reclamations greater than four hectares in area but also to empower the granting of long term licences, because of the restrictive terms available under s156 of the Harbours Act 1950.

2.2 Leases and licences granted in this manner apply to a great many different uses in the coastal marine area and for a wide variety of terms. Most marina licences range between 50 years and 100 years and generally capitalised all the rental payments into one lump sum, paid up front, although with an ongoing annual maintenance obligation. People acquiring marina licences therefore had the certainty that in return for what was usually a significant capital outlay, they had a guaranteed berth for the full length of the licence with no other payments required other than the ongoing maintenance obligations.

2.3 Licences for swing or pile moorings have tended to be for much shorter terms and rentals have usually been charged on an annual basis, unless

the facilities are being made available on a more casual basis in which case the rentals may be payable weekly or monthly.

2.4 Licences for wharf space have varied greatly. Some wharf spaces have been given over to individual fishing companies or shipping companies for their sole use, with rentals on various commercial bases. Other areas might be devoted to a variety of port users on a casual basis with daily or weekly or per ship visit rentals or charges fixed. However, just as with the marina owners, all those parties entering into such licence agreements or charges have done so in the knowledge of the potential liability for charges for the duration of the occupation being offered (and the basis of any reviews) and contracts and costs have been agreed accordingly.

2.5 The key feature of all of these leases and licences is that the contracts were entered into before the RMA and the parties to those contracts remain bound by their terms as to capital or rental payments, any rent reviews and the procedures contained therein for such reviews, and the like. When the terms of the licences expire, and if those parties wish to remain in occupation, then they will be required to make an application for a fresh occupation consent under the RMA. At that point they will be able to make a quite separate investment decision as to whether or not they wish to remain in occupation, based on the charges they could be liable for under any new coastal charging regime introduced under the RMA. Over time all of these old occupation rights will expire and any renewed occupation rights will be potentially subject to the new charges.

2.6 Under section 384 of the RMA, all of these existing leases or licences have been "kept alive" as deemed resource consents, on the same conditions.

2.7 It is settled law (and for that reason we have not bothered citing all the authorities on the point) that in relation to the retrospective application of any statutory provisions, no statute shall be retrospective unless that statute expressly states that it is to be retrospective or it is genuinely retrospective in its operation.

2.8 Section 401B deals with occupation consents in place before any new charging regimes in regional coastal plans become operative. It only seeks to imply a condition into earlier consents requiring payment of any such charges in coastal plans where the occupation consents were granted in the period since 1 October 1991. It does not require any payment of charges under any new charging regime introduced by a regional council where the occupation was authorised prior to 1 October 1991.

2.9 As a result, it is quite clear that the new charging regimes that may be introduced in regional coastal plans in the future, cannot be applied retrospectively to these pre-RMA leases or licences.

2.10 It should also be noted that under the Resource Management (Transitional Fees, Rents and Royalties) Regulations 1991, no rentals have applied to these pre-RMA leases and licences either. To the contrary, the Regulations confirm that rental provisions in those contracts will continue to apply.

3. PORT OCCUPATION CONSENTS UNDER SECTION 384A

3.1 The special occupation rights which port companies have under s384A of the RMA is another category where the new coastal charging regime will not apply.

3.2 The port companies were incorporated following the enactment of the Port Companies Act 1988 and they subsequently purchased the assets comprised in the port-related commercial undertakings of the former Harbour Boards. Those assets were identified in port company plans prepared pursuant to s21 of the Port Companies Act 1988. The plans had to be approved by the Minister of Transport and payments were then made in return for the transfer of the assets.

3.3 In all cases the port companies paid significant capital sums for those assets. Those sums were received by public bodies (Harbour Boards or regional, district or city councils). The payments were made, and the value depended on, the ability to actually manage and use the port-related commercial undertakings involved. A critical element in that ability to use those assets then and in the future was of course the right of occupation in and around the wharf areas and reclamations.

3.4 The port companies, having paid over these large capital sums to the public, then began functioning, occupying their areas and using and managing their port-related commercial undertakings. They were well established operations and occupying the coastal marine area by the time of the enactment of the RMA several years later.

3.5 Only upon the enactment of the RMA was it discovered that Parliament had not adequately recognised the occupation rights already in place and purchased by the port companies in 1988. This led to an approach by the port companies to Parliament and, ultimately, to the enactment of s384A. That section specifically refers to situations where port companies considered that, on the 30th day of September 1991 (ie prior to the enactment of the RMA), they already had a right to occupy the coastal marine area adjacent to any port-related commercial undertakings and that occupation was required for the purposes associated with the operation and management of those undertakings. The port companies could apply to the Minister of Transport for what was a deemed occupation consent to recognise those existing, pre-RMA rights.

3.6 Applications for these deemed consents under this section were made by all of the port companies in New Zealand. They were granted by the Minister of Transport in or about July 1994. In each case, the Minister determined or delineated what occupation rights he considered were in existence on 30 September 1991 that were required for the port-related commercial undertakings. The consents he granted were deemed to have commenced as at that date. The maximum duration of any coastal permit was then (and remains) 35 years. In clear recognition that the grants had actually commenced on 30 September 1991, rather than in July 1994, the 35 year period for the coastal period was deemed to run not from 1994 but from 30 September 1991. Therefore as specified in s384A(2), the coastal permits will all expire no later than 30 September 2026.

3.7 The Minister imposed certain conditions on the coastal permits, but no term requiring the payment of any rentals. The simple reason for that is because the rights of occupation involved under s384A had been perceived as fully paid for, as part of the significant capital sums paid to the public in 1988 by the newly established port companies. In other words, full payment had already been made to the regional, district or city councils (as successors to the Harbour Boards). Indeed, from the port companies perspective, the outstanding issue is that whereas the port companies received permanent title for all their assets, to date the s384A occupation consents still only run until 2026. There is a remaining and justifiable concern that what was actually paid for in 1988 was a permanent right of occupation which is still to be given full legal effect to.

3.8 In our opinion these rights of occupation, in place, acquired and paid for in 1988 when the port companies were established and then formalised as at 30 September 1991 by the statutory consents from the Minister of Transport, cannot now be reopened and port companies charged a second time for the same rights of occupation under any operative coastal plan charging provisions.

3.9 Thus while s401B implies a condition requiring payment for holders of occupation consents within the meaning of s12(4) after 1 October 1991, it is our clear opinion that this does not apply to the s384A consents which were deemed to be consents having legal effect from 30 September 1991.

3.10 For the reasons given above this is also the only sensible result. No regional council in the country could expect to start requiring port companies to pay rentals for occupation of their own port water space, when the councils, as the successors to the Harbour Boards, have already effectively received payment for that occupation as part of the total capital outlay the port companies had to make for their assets. The port companies would be effectively being asked to pay twice for something that they acquired in 1988. That is also recognised in the Resource Management (Transitional Fees, Rents and Royalties)

Regulations 1991 as no rentals are currently being charged for s384A areas (see reg 8).

4. NEW OCCUPATION COMMENCING AFTER 1 OCTOBER 1991

4.1 Since the RMA was enacted on 1 October 1991 there have been various resource consents granted under s12 to allow new activities to occupy space in the coastal marine area for the first time. Some of these consents have been granted to port companies where they were undertaking projects outside their s384A areas.

4.2 The original intention was to charge resource rentals for these new, post-RMA activities by way of regulation. It is now intended that the regulation method be only an interim step and ultimately any rentals be established in regional coastal plans, by way of the new charging provisions in s64A (if the regional councils concerned wish to so charge).

4.3 The current transitional regulations are fraught with difficulty and are simplistic. For example, marina berths may be much more efficient users of space in the coastal marine area than swing moorings, yet swing moorings are charged small amounts by way of resource rentals compared to marina berths. There are also no guidelines for the waiver of rentals.

4.4 The provisions of the Amendment Act deal with new forms of occupation commencing after 1 October 1991.

4.5 Under the new s401A and s401B, new occupation consents granted under s12 for new occupation after 1 October 1991 will be liable to pay rentals to the regional councils (rather than to the Crown) pursuant to the transitional regulations in place, up until the time any new coastal charging regime becomes operative.

4.6 After the new coastal charging regimes become operative, then those same occupation consents will switch from paying any rentals under the transitional regulations to paying any rentals under the new charging regimes.

4.7 Any new grants of occupation consent that may be made in the future after the new charging regimes are operative, will simply make all their payments under those new regional coastal plan provisions.

4.8 The upshot is that it is these new occupation consents for new occupation commencing post-RMA, which are the only ones that would be the subject of any new coastal charging regimes (along with any new occupation authorised as permitted activities under regional coastal plans). The new regimes will potentially therefore pick up new moorings, new marina facilities, occupation around new wharves, new pipelines, new pylons and new bridges across the coastal marine area, and so on,

where that occupation is not authorised by pre-RMA leases and licences or by the s384A consents. Renewals of expired, old leases and licences will also potentially fall into the new regimes.

5. CONCLUSION

5.1 To conclude, any new coastal charging regime that may be contemplated by regional councils is effectively restricted to occupation taking place for the first time after 1 October 1991. Occupation authorised by s384 and s384A will not be subject to the new regimes.

5.2 Because of the complexity of the issues under both s64A and s32 and to fully understand all the financial and practical implications, we would expect any regional council to have to undertake considerable consultation with all potentially affected parties.

5.3 There is a real need to identify the range and type of likely occupation consents that would be needed, the circumstances where charges will be levied, how applications might be made for the waiver of charges or for lower charges to be levied in any particular case, and what are the real cost and benefits of imposing any charges in the first place. Some regional councils may conclude that it is not worth introducing a charging regime.

5.4 It has taken nearly seven years for the Crown to get into a position to enact s64A because of all of these complexities. We would expect that regional councils will have to take a reasonable period to fully think through all of the issues and come up with workable and fair proposals.

5.5 If you require any further information please do not hesitate to contact either of the writers.

Yours sincerely

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62. New sections inserted—The principal Act is amended by inserting, after section 401, the following sections:

"401A. **Transitional coastal occupation charges**—(1) Where a person is occupying the coastal marine area, either as a holder of a resource consent or as a result of permitted activity in a plan, there is implied a condition that that person must, from the commencement of this section until a regional coastal plan or plan change is operative which contains either a charging regime or a statement to the effect that no regime may be introduced or 30 June 1999 (whichever is earlier), pay to the relevant regional council, if requested by that regional council, any sum required to be paid for the occupation of the coastal marine area by any regulations made under section 360 (1) (c).

"(2) Any money received by the regional council under subsection (1) may be used only for the purpose of promoting the sustainable management of the coastal marine area.

"(3) Where a regional council prepares or changes a regional coastal plan or proposed regional coastal plan in the period from the commencement of this section until 1 July 1999, the plan is not required to comply with section 64A.

"(4) Where no provision for coastal occupation charges has been made in a regional coastal plan or proposed regional coastal plan by 1 July 1999, the regional council must, in the first proposed regional coastal plan or change to a regional coastal plan notified after 30 June 1999, include a statement or regime on coastal occupation charges in accordance with section 64A.

"401B. **Obligation to pay coastal occupation charge deemed condition of consent**—In every coastal permit that—

"(a) Authorises the holder to occupy, within the meaning of section 12 (4), any land of the Crown in the coastal marine area; and

"(b) Was granted in the period commencing on 1 October 1991 and ending on the date a regional coastal plan containing provisions in accordance with section 64A is operative in relation to the part of the coastal marine area that the permit relates to,—

there is implied a condition that the holder must at all times throughout the period of the permit pay to the relevant regional council any sum of money required to be paid (if any) by that regional coastal plan."

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Appendix 4: *A Hume and J Hume v Auckland Regional Council* CA 262/01

IN THE COURT OF APPEAL OF NEW ZEALAND CA262/01

	BETWEEN	ALAN JAMES HUME and LYNETTE LAURA HUME
		Appellants
	AND	AUCKLAND REGIONAL COUNCIL
		Respondent

Hearing:	20 June 2002
Coram:	Tipping J McGrath J Glazebrook J
Appearances:	R B Brabant and K R M Littlejohn for Appellants R J Asher QC and J A Burns for Respondent J Verry and J Winchester for Rodney District Council B H Arthur for Director-General of Conservation H Coleman in person
Judgment:	17 July 2002

JUDGMENT OF THE COURT DELIVERED BY TIPPING J

Introduction

[1] The narrower issue which arises on this appeal is whether members of the public may use the jetty which the appellants, Mr and Mrs Hume, have built to give access to their property at Vivian Bay on Kawau Island. The wider issue, which Mr Brabant on their behalf rightly indicated must necessarily arise, concerns the consequences of the answer to the narrower issue for all structures in the coastal marine area.

[2] When disagreements arose between the Humes and others about public use of their jetty, the respondent, the Auckland Regional Council, applied to the

Environment Court under s310 of the Resource Management Act (the Act) for a declaration in the following terms:

> that, except to the extent that it expressly provides otherwise, a coastal permit that authorises the consent holder to occupy part of the coastal marine area with a jetty does not authorise the consent holder to exclude members of the public from using the jetty for the purposes of providing access to, from, and along the foreshore of the coastal marine area.

[3] In his final decision dated 19 February 2002, Judge Treadwell, sitting alone pursuant to s309, made a declaration that:

> Except to the extent that it expressly provides otherwise, a coastal permit that authorises the consent holder to occupy part of the coastal marine area with a structure, namely a jetty, gives to the consent holder an exclusive right to occupy the space being part of the coastal marine area occupied by the physical structure (i.e. piles, decking etc) but does not authorise the consent holder to exclude members of the public with or without transport from using the unoccupied space under, beside or above the jetty **including the surface of the jetty and other parts of the structure that is within the coastal marine area** for the purpose of providing public access to, from, and along the foreshore of the coastal marine area.

[4] The highlighted words formed the basis of an appeal by the Humes to the High Court. They contended that in the absence of an express condition to the contrary in the coastal permit, they could exclude the public from use of the jetty. Potter J held that the Environment Court's declaration was correct in law and dismissed the appeal. She gave leave to the Humes to appeal to this Court on two related questions of law framed as follows:

> [a] Did the High Court err in holding that the public may use a jetty structure because they have the right to use the coastal marine area in which the jetty is constructed?
>
> [b] Did the High Court err in holding that unless a coastal permit granting the right to occupy the coastal marine area with a structure expressly limits the class of persons who may access that portion of the coastal marine area to which the permit relates and such exclusion is necessary to give effect to the permit, the permit holder may not exclude the public or any class of persons?

[5] Before turning to the issues which arise and the contentions of the parties, we will set out the factual and legal background to the extent necessary to put them in context.

Factual and legal background to the coastal permit

[6] In 1994 the Humes obtained from the Rodney District Council a coastal permit to construct a jetty to give access to their property. Condition 3, to which the permit was subject, stated that the rights, powers and privileges conferred by it extended and applied only "to the placement of the approved structure on and over the foreshore and/or seabed pursuant to ss12(1)(b)(c)" of the Act. Condition 6 required the Humes at all times to keep the jetty in good order and repair. Condition 9 provided that use or occupation of any part of the said land "for the purpose of erecting" the jetty was to be sufficient evidence of acceptance of the terms and conditions of the permit. Special Condition 1 provided that the jetty and surrounding area was to be "reassessed" at five yearly intervals to determine structural integrity and changes to the surrounding physical and ecological environment.

[7] A coastal permit is a species of resource consent. It is a consent to do something in a coastal marine area that would otherwise contravene any of ss12, 14, 15, 15A and 15B: see s87(c) of the Act. It is s12 which is the relevant provision in this case, and we will come to it in a moment. It is first helpful to note that there is a material difference between the approach of the Act to use of land on the one hand, and use of the coastal marine area on the other. Land may be used in any manner unless such use contravenes a rule in a plan, in which case a resource consent is necessary unless existing use rights apply. Section 9(1) states this basic proposition.

[8] When the coastal marine area is involved the position is the reverse. Broadly speaking, nothing may be done in the coastal marine area unless expressly allowed by a rule in a plan or by a resource consent. This is the effect of s12(1) which provides:

12 Restrictions on use of coastal marine area

(1) No person may, in the coastal marine area,—

(a) Reclaim or drain any foreshore or seabed; or

(b) Erect, reconstruct, place, alter, extend, remove, or demolish any structure or any part of a structure that is fixed in, on, under, or over any foreshore or seabed; or

(c) Disturb any foreshore or seabed (including by excavating, drilling, or tunnelling) in a manner that has or is likely to have an adverse effect on the foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal); or

(d) Deposit in, on, or under any foreshore or seabed any substance in a manner that has or is likely to have an adverse effect on the foreshore or seabed; or

(e) Destroy, damage, or disturb any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on plants or animals or their habitat; or

(f) Introduce or plant any exotic or introduced plant in, on, or under the foreshore or seabed—

unless expressly allowed by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or a resource consent.

[9] The remaining subss of s12 are also relevant to this case. They state:

(2) No person may, in relation to land of the Crown in the coastal marine area, or land in the coastal marine area vested in the regional council,—

(a) Occupy any part of the coastal marine area; or

(b) Remove any sand, shingle, shell, or other natural material from the land—

unless expressly allowed by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or by a resource consent.

(3) Without limiting subsection (1), no person may carry out any activity—

(a) In, on, under, or over any coastal marine area; or

(b) In relation to any natural and physical resources contained within any coastal marine area,—

in a manner that contravenes a rule in a regional coastal plan or a proposed regional coastal plan unless the activity is expressly allowed by a resource consent or allowed by section 20 (certain existing lawful activities allowed).

(4) In this Act,—

(a) Occupy means the activity of occupying any part of the coastal marine area—

(i) Where that occupation is reasonably necessary for another activity; and

(ii) Where it is to the exclusion of all or any class of persons who are not expressly allowed to occupy that part of the coastal marine area by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or by a resource consent; and

(iii) For a period of time and in a way that, but for a rule in the regional coastal plan and in any relevant proposed regional coastal plan or the holding of a resource consent under this Act, a lease or licence to occupy that part of the coastal marine area would be necessary to give effect to the exclusion of other persons, whether in a physical or legal sense;—

and occupation has a corresponding meaning:

(b) Remove any sand, shingle, shell, or other natural material means to take any of that material in such quantities or in such circumstances that, but for the rule in the regional coastal plan or the holding of a resource consent, a licence or profit à prendre to do so would be necessary.

(5) The application of this section to overflying by aircraft shall be limited to any noise emission controls that may be prescribed by a regional council in relation to the use of airports within the coastal marine area.

(6) This section shall not apply to anything to which section 15A or 15B applies.

[10] The statutory definition of coastal marine area should also be noted:

coastal marine area means the foreshore, seabed, and coastal water, and the air space above the water—

> (a) Of which the seaward boundary is the outer limits of the territorial sea:
>
> (b) Of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—
>
> > (i) One kilometre upstream from the mouth of the river; or
> >
> > (ii) The point upstream that is calculated by multiplying the width of the river mouth by 5:

[11] A significant issue raised by the parties concerns the relationship between subss (1) and (2) of s12, and whether the Humes should have obtained a permit under s12(2) as well as a permit under s12(1). The true scope of each subsection is not immediately apparent from the statutory language. The position is not helped by the complex definition of the terms "occupy" and "occupation". Having considered counsel's helpful arguments on this point, we are of the view that the correct approach is assisted by an appreciation that the two subsections are directed at different activities. Subsection (1) is directed at the activities specifically mentioned in its lettered paragraphs. Materially here, the activities were the erection of the jetty and the associated disturbance of the foreshore and seabed: see the terms of Condition 9 referred to in paragraph [6] above. Subsection (2) is directed at the activities of occupation of part of the coastal marine area and removal of sand and so on.

[12] Subsection (1) applies to the coastal marine area generally. Subsection (2) concerns only Crown land or Regional Council land in the coastal marine area. The definition of occupy introduces the concepts of a lease or licence. Hence in our view subs (2) is concerned with questions of tenure. If the land is other than Crown land or Regional Council land, a lease or licence will ordinarily be required by the person who gets a permit under subs (1), in addition to that permit. The subs (1) permit holder acquires permission to do the work involved in creating the structure or otherwise, but an occupation right is also necessary, whether by lease or licence, or by permit if the land is Crown or Regional Council land. In effect Parliament has entrusted to Regional Councils the power to grant a permit to occupy Crown land.

[13] We therefore consider that strictly speaking the Humes needed permits under both subss (1) and (2). Mr Brabant, who did not appear below, suggested that in present circumstances a permit under subs (2) must be implied or inherent in the Humes' subs (1) permit. But even if that implication could be made, the Humes cannot logically be in a better position on that basis than if the matter were expressly addressed under subs (2). In other words, if a permit under subs (2) does arise by implication, it must be subject to the necessary incidents and requirements of an express subs (2) permit. For this reason we do not, in these proceedings, have to determine whether Mr Brabant's implication argument is correct. We are bound, however, to observe that it cuts across what we see as the discrete and different focus and purpose of the two subsections. We are therefore inclined to the view that no implication of a subs (2) permit arises from the granting of a subs (1) permit. For present purposes it is sufficient to say that the Humes cannot avoid the incidents of subs (2) by dint of the fact that in express terms the only permit they hold is under subs (1).

The statutory approach to the coastal marine area and public access

[14] There are three provisions in the Act which are relevant to Parliament's approach to public access to and along the coastal marine area: s6(d); s122(5) and s108(2). When considering whether to grant a resource consent and hence a coastal permit, the consent authority is subject to relevant aspects of Part II of the Act. Section 104(1) makes this clear. Part II is concerned with the purpose and principles which apply to the Act generally. Section 6 deals with matters of national importance. While, as Mr Brabant submitted, the reference in it to all persons exercising powers and functions under the Act is primarily directed to the position of the Minister and regional and local authorities whose functions and powers are referred to in Part IV, we consider the provisions of s6 are indicative of a general statutory policy which should not be regarded as confined to Part IV matters.

[15] We consider it appropriate when construing the Act and endeavouring to harmonise any provisions which do not have an immediately obvious consistency, to be guided, where appropriate, by matters which Parliament has said are matters of national importance for resource management purposes, ie. for the purpose of

promoting the sustainable management of natural and physical resources. In that light s6(d) serves as a reminder of the fact that the maintenance and enhancement of public access to and along the coastal marine area is a matter of national importance. The Humes' contention that they may exclude the public from their jetty does not fit comfortably with s6(d); albeit that is by no means the end of the matter.

[16] It is appropriate to turn next to s122(5) which says:

> (5) Except to the extent—
>
> > (a) That the coastal permit expressly provides otherwise; and
> >
> > (b) That is reasonably necessary to achieve the purpose of the coastal permit,—
> >
> > no coastal permit shall be regarded as—
> >
> > (c) An authority for the holder to occupy a coastal marine area which is land of the Crown or land vested in a regional council to the exclusion of all or any class of persons; or
> >
> > (d) Conferring on the holder the same rights in relation to the use and occupation of the area against those persons as if he or she were a tenant or licensee of the land.

Here Parliament seems to be saying quite clearly that prima facie a coastal permit gives its holder a species of occupancy right or tenure which does not permit the holder to exclude the public from lawful use and occupation of the coastal marine area. The reference to "no coastal permit" applies equally to s12(1) and s12(2) permits. Each is equally inapt to give rights of exclusion.

[17] The relationship between paragraphs (a) and (b) of s122(5) is not straightforward. The issue is whether the word "and" which links the two paragraphs is conjunctive or disjunctive. That the word "and" may in context mean "or" is an uncontroversial proposition: see *Stroud's Judicial Dictionary* (6th ed, 2000) at 121-123. Obviously conjunction is the normal connotation of the word but to read it in that way here would mean that paragraph (b) constituted a restriction on the circumstances in which a coastal permit may expressly provide otherwise under paragraph (a). If "and" is read disjunctively, paragraph (b) would provide an

independent exception to the general rule provided for in paragraphs (c) and (d). The order in which paragraphs (a) and (b) appear in the subsection suggests a disjunctive meaning. If paragraph (b) was intended to qualify paragraph (a) the qualification which it provides should in the present context naturally precede the subject matter which is being qualified.

[18] If Parliament had intended expressly to limit the ability of the consent authority to provide for exclusions to circumstances in which they were reasonably necessary to achieve the purpose of the coastal permit, the drafting would more logically have said that except where it is reasonably necessary to achieve the purpose of the coastal permit, and the coastal permit therefore expressly provides otherwise, no coastal permit shall and so on.

[19] The language of paragraph (b) also supports a disjunctive interpretation. The words are "except to the extent that is reasonably necessary". They are not "except to the extent the consent authority considers reasonably necessary". The latter formulation is what might have been expected if paragraph (b) was intended to provide a qualification on the consent authority's ability expressly to provide otherwise. Furthermore, to construe paragraph (b) as such a qualification would really be to state the obvious in that the power expressly to provide otherwise must in any event be one which is designed to be exercised with the general legislative approach to the coastal marine area in mind. Thus, express exclusion to whatever extent is already limited to circumstances reasonably necessary to make the permit workable. Permit holders are protected against inappropriately conflicting use or occupancy of the relevant part of the coastal marine area by their ability to obtain an enforcement order under s314 of the Act.

[20] For these reasons we consider that paragraphs (a) and (b) are intended to create independent exceptions to the provisions which follow, rather than one exception created by paragraph (a) of which paragraph (b) is simply a qualifier. If that had been the intention, it is unlikely that the paragraphs would have been drafted separately. The more logical drafting would have been to incorporate paragraph (b) in paragraph (a) but in the form of a qualifier. If there is an express provision otherwise in the coastal permit, such provision presupposes that it serves a legitimate

purpose which is consistent with resource management principles. The construction which we favour gives appropriate flexibility as well as conforming best with the structure and language of the first part of s122(5).

[21] The explanation for the use of "and" instead of "or" is that those who drafted s122(5) have, for the sake of economy of language, chosen not to repeat the words "except to the extent" before paragraph (b). Those words have been left to be understood by the reader. The sense of s122(5) can be rendered in this way. No coastal permit shall be regarded as achieving what is set out in paragraphs (c) and (d) except to the extent that it expressly provides otherwise *and* except to the extent that is reasonably necessary to achieve its purpose. Expressed in that way – and this must have been what was intended – it becomes tolerably plain that "and" in its context should be read disjunctively. There are two independent exceptions, not a single composite one.

[22] There are thus two ways in which any form of coastal permit may give rights of exclusion of others from use and occupancy. The first is when the permit expressly provides for such rights of exclusion; they will then take effect according to their tenor. The second is when exclusion of others or a degree of exclusion is reasonably necessary to achieve the purpose of the permit. This is akin to saying that rights of exclusion may be implied to an appropriate extent when the purpose of the permit makes such implication reasonably necessary. The ability to make an implication of this kind is logically necessary to allow the coastal permit system to operate effectively. Parliament cannot have intended such operation to depend solely on express conditions of a permit. If there were no such conditions and no power of implication, some permits might then be unable to operate according to their purpose.

[23] The capacity for implication which paragraph (b) recognises removes to a large extent the difficulties which Mr Brabant suggested would arise with general public access to other types of structure within the coastal marine area, such as marine farms, moorings or restaurants built out over coastal waters. If the matter is not expressly governed by a condition of the permit, the inter-relation between public and private use of authorised structures within the coastal marine area can

fairly and reasonably be governed by a sensible process of implication under s122(5)(b). In the ordinary case of moorings, for example, reasonable necessity must imply exclusivity of use by the permit holder.

[24] As Mr Brabant pointed out**,** the statutory definition of "structure" is a wide one and Parliament no doubt saw the reasonable necessity test provided by s122(5)(b) as a suitably flexible way of accommodating the multiplicity of circumstances which were likely to arise in cases where no express provision has been made for rights of exclusion in the permit itself.

[25] Section 122(5) can therefore be viewed as stating the principle that**,** unless expressly or implicitly provided otherwise in the permit, the public is not excluded from that part of the coastal marine area in or upon which a permitted structure is to be found; nor is public use of the structure excluded, unless and to the extent expressly stated or unless such exclusion arises by necessary and reasonable implication. We do not consider that Mr Brabant's submission that the position is the reverse can stand against s122(5). Parliament seems to us to have gone out of its way to state that the default position (ie. the position in the absence of express provision or necessary implication) is that public use and access is permitted. The default position is demonstrably not that the public are excluded in the absence of express or implied permission.

[26] That this is the governing principle is reinforced by s108(2) which relates to the machinery of controlling resource consents by conditions. Paragraph (h) which specifies one of the conditions which may be imposed on a coastal permit to occupy Crown or Regional Council land in a coastal marine area, refers to a condition "detailing the extent of exclusion of other parties". By expressing itself in that way, Parliament has clearly signalled that the starting point is no exclusion. Mr Brabant pointed out that the concept of occupation and the reference to Crown and Regional Council land in the introductory words of paragraph (h) appeared to relate to a s12(2) permit rather than to one granted under s12(1). That is so but the point serves to underline the difference between the two types of activities with which the two subsections are concerned.

[27] The activity of construction of a jetty must by necessary implication exclude others to the necessary extent. The activity of occupying and using the jetty does not do so, except to a very limited spatial and temporal extent. It is the occupation dimension which is relevant in this case and in any event, as noted earlier, the Humes cannot gain the advantage of avoiding the clear implication of s108(2)(h) by not having a s12(2) permit and relying on the dubious argument, based on implication, that they have one by dint of their s12(1) permit. We therefore accept Mr Asher's submission that as the permit does not expressly provide otherwise and as there is no reasonable implication to the contrary, the Courts below rightly held that the public were entitled to use the Humes' jetty for access purposes. We note, however, that public use must not be such that it unreasonably impedes the Humes' use of the jetty to gain access to their property.

General observations

[28] A number of other collateral issues were raised during the course of argument. We have not found it necessary to address them in order to determine the questions of law upon which leave to appeal was given. We agree with the conclusion to which Judge Treadwell and Potter J came. We should not, however, be viewed as expressing any view of their reasoning which is not necessarily comprehended in our reasoning. We say that in a neutral way. We have simply not addressed issues beyond those dealt with in this judgment. The course of our judgment has been somewhat different from those below. This is a reflection of the focus of the arguments in this Court.

Conclusion

[29] For the reasons given we answer each of the two questions by saying that in neither respect did the High Court err in law. Put in simple terms, the public may use the Humes' jetty in a reasonable manner for the purpose of gaining access to, from and along those parts of the coastal marine area which are adjacent to the jetty. In doing so they may not unreasonably impede the Humes' access to and use of the jetty. The legislation is designed on the basis that public and private access will reasonably and peacefully co-exist. The price which the Humes are required by the

Act to pay for the right to construct and use their jetty is that it be available for public use on the basis described.

[30] The appeal is dismissed. Mr and Mrs Hume are ordered to pay costs to the Auckland Regional Council in the sum of $3500.00, to the Rodney District Council in the sum of $2500.00, and to the Department of Conservation in the sum of $2500.00. As Mr Coleman represented himself, the law does not permit an award of costs in his favour. He is, however, entitled to all reasonable disbursements and so are the other respondents. Disbursements are to include reasonable travel and accommodation expenses but in the case of the two Councils, for one counsel only.

Solicitors
Martelli McKegg Wells & Cormack, Auckland, for Appellant
John A Burns, Auckland, for Respondent
John F Verry, Auckland, for Rodney District Council
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Appendix 5: Executive Finesse Report and Supplementary Paper

Coastal Occupancy Charges

Report prepared by Executive Finesse Limited

January 2013

Coastal Occupancy Charges

1. Marlborough District Council is reviewing its Resource Management Plans and as part of this review it is required to consider the imposition of coastal occupation charges per section 64 A of the Resource Management Amendment Act 1997.

2. The Act places a responsibility on councils to place a statement in their Regional Coastal Plans which addresses whether Council will introduce coastal occupancy charges or not. Accordingly in the review of its Regional Plans Council is required to address the matter of coastal occupancy charges.

3. The Act requires Council to:

    - Consider whether a coastal occupation charging regime should apply having had regard to public and private benefits.

4. In the event Council considers that a coastal occupation charging regime should be included in the Plan Council must

    - Establish a charging regime which has regard to the public and private benefits.

    - Specify the way the money received will be used for the purpose of promoting the sustainable management of the coastal marine area.

Executive Summary

5. Marlborough District Council is reviewing its Resource Management Plans and as part of this review is required to consider the imposition of coastal occupation charges per section 64 A of the Resource Management Amendment Act 1997.

6. From Council information database the estimated number of coastal occupation sites are estimated at 4,436 sites of occupation encompassing moorings (2,831), marine farms (591) and structures (1,014).

7. Of the estimated 1,000 sites of occupation for structures the common occupancies at these sites are jetties, boat sheds and buildings, boat ramps, slipways, pipelines and outfalls, marinas, barge sites, decks and retaining walls.

8. The existing Marlborough Sounds Resource Management Plan outlines that having reviewed the private and public benefits associated with coastal occupations that it was justified in principle in charging for occupation of coastal space in circumstances where net private benefit is greater than net public benefit. Council expresses in its Plan that it was committed to introducing a coastal occupancy charging regime.

9. Boffa Miskell Limited undertook a review of coastal occupancy in November 1999 which led Council to conclude that coastal occupancy charges were justified and to incorporate the statement of intent to charge for coastal occupation.

10. Boffa Miskell Limited's assessment of private and public benefits and associated discussions have been reviewed and are still valid today and accordingly the benefits concluded have been accepted in the preparation of this report.

11. The analysis was previously considered by Council and was the basis for their determination that, having considered the benefit assessments, Coastal Occupation Charges are justified where the private benefit exceeded the net public benefit. I.e. for all occupations with the exception of public jetty's and public boat ramps.

12. It has been the conclusion of this report that coastal occupancy charges are a resource levy rather than a resource rental. Accordingly coastal occupancy charge methodology in this report follows a similar approach to the setting of local authority rates.

13. The methodology adopted in this report for determining appropriate coastal occupancy charges is as follows:

    - To determine the expenditure related to the sustainable management of the coastal marine area.

    - Consider any exemptions and waivers from coastal occupancy charges.

    - To determine the beneficiaries and to allocate costs fairly and equitably amongst beneficiaries.

    - To determine the appropriate charge for the differing occupations to recover costs.

14. Expenditure related to the sustainable management of the coastal marine area is assessed at $1,040,000. Expenditure covers the following activities planning, research, education and awareness, infrastructure, monitoring, habitat restoration and enhancement.

15. Exemptions and waivers from coastal occupancy charges apply to Port Marlborough NZ Limited (exemption by legislation) and where the net benefits warrant exemption such as public jetties, ramps and wharves. In addition retaining walls have been assessed as being exempt for efficiency and benefit reasons.

16. Application for exemption and waiver (in part or full) should be included in the Plan which would be determined at Council's sole discretion having given consideration private and public benefits associated with the occupation and any other factors Council may consider pertinent.

17. An allocation of expenditure to beneficiaries assesses that $780,000 should be collected from coastal occupancies and $260,000 should be collected from the District at large.

18. Coastal occupancy expenditure to be recovered has been allocated to occupancies assessed as appropriate to be charged resulting in coastal occupancy charges proposed in section 5.4.

19. Estimated Income from coastal occupancy charges is summarised as follows:

Moorings	$125,000
Jetties	$57,000
Boatsheds and buildings	$86,000
Marine farms	$494,000
Other	$17,000
Total occupancy income	$779,000 (est.)

20. That Council's Annual Plan include the coastal occupancy charges allowing for annual review in consultation with the community. Council's Resource Management Plan outline the methodology and application of coastal occupancy charges and reference to Council's Annual Plan for the applicable charge.

21. That occupancy charges be charged annually on a common anniversary date and applied to occupancy consents granted whether given effect to or not.

22. Recommended that Council:

    - Concur with the waivers and exemptions proposed from coastal occupancy charges.
    - Review and approve the allocation of expenditure to beneficiaries.
    - Review and approve the proposed coastal occupancy charges and incorporate into the Council planning documents as appropriate.

Content Pages

1. Methodology for Review

1. This report follows the following process in reaching its conclusions in relation to the implementation of s64A (Imposition of coastal occupancy charges) of the Resource Management Act:

    a) Define the coastal marine occupations within the Coastal Marine Area (CMA)

    b) Consider the overall public benefits lost and gained in the (CMA) from coastal occupation.

    c) Assess the private benefits gained from coastal occupations.

    d) Determine whether there is, in principle, a case for imposing Coastal Occupancy Charges (COC's) having considered the public and private benefits.

    e) If there is a case for implementing COC's determine an appropriate methodology for charging which has regard to the public and private benefits.

    f) Model methodology to determine appropriate charges taking into consideration:

        i. The expenditure related to the sustainable management of the CMA.

        ii. Principles of transparency, efficiency and equity (fairness) in determining proposed COC's.

        iii. Revenue to be collected from coastal occupations.

2. Coastal Marine Area and Types of Occupation

2. The coastal marine area is that area surrounding the coastline from mean high water springs to the outer limits of the territorial sea (12 nautical mile limit). This includes the foreshore, the seabed, the coastal water and the airspace above the water. By virtue of this definition, a vast proportion of the Marlborough Sounds planning area is coastal marine area. The Marlborough Sounds covers some 4,000 km^2 of sounds, islands and peninsulas and makes up $1/5^{th}$ of New Zealand's coast line.

3. Any "fixture" in the CMA which prevents others from using that space constitutes an "occupation". The majority of occupations in the Marlborough CMA are:

    - Moorings (swing and pile)
    - Marinas
    - Jetties and wharves – private and public
    - Sheds or other buildings
    - Boat Ramps and slipways, private and public
    - Marine farms – finfish, mussels and others, surface and sub-surface structures
    - Utilities (e.g. buried or submarine power cables, Council stormwater or sewerage outfalls)
    - Pipelines solely for domestic purposes (e.g. private outfalls)

    The above list represents the occupations which are most common in the District, there are also a number of other occupations which arise from time to time (e.g. retaining walls, rafts for experimental work and dive platforms).

4. From Council information database the estimated number of coastal occupation sites can be summarised as follows:

Moorings	2,831
Marine Farms	591
Structures	1,014
Sites of Occupation	**4,436**

5. The sites of occupation for structures are often occupied by a number of structures, commonly jetties, boatsheds and boat ramps are often built on the same site of occupation. Where there are boat ramps, slipways, link spans and landings built in association with boatsheds and / or jetties they have not been counted as separate occupations. Charges for occupation sites which contain multiple types of occupations are charged on the basis of the predominant occupation activity which has been determined to be either a jetty or a

boatshed or both. This has provided for greater efficiency in developing the coastal occupancy charges contained in this report and provides a clearer picture of the areas of occupation.

6. Therefore occupation areas in the CMA can be summarised as follows:

Type of Structure	**Number**	**Estimated Area of Occupation**
Moorings	2,831	79,268 metres *(based on an average 28 metre swing radius)*
Marine farms	591	4,295 hectares *(average 5.26 hectares, having excluded the two largest and two smallest sites)*
Jetties, decks, pontoons and link spans	705	36,.070 m^2 *(Average 51 m^2)*
Boat sheds / other buildings	343	12,454 m^2 *(average 36m^2)*
Other sites of occupation: Utilities and outfalls Barge sites Private Boat ramps Slipways Marinas Port facilities - Picton, Havelock and Shakespeare Bay.	 26 7 24 22 7 3	
Public Jetties / Wharfs	29	
Public Boat Ramps	8	

7. These sites and categories of occupation have been used to determine the proposed coastal occupancy charges contained in this report.

3. Previous Analysis and Conclusions

8. MDC previously carried out an exercise to assess the relative benefits associated with different types of occupation. Boffa Miskell Limited were engaged to conduct the review (refer Costal Occupancy Charges, Boffa Miskell Limited, November 1999).

9. The Marlborough Sounds Resource Management Plan outlines that as a result of this review Council considered that it was justified in principle in charging for occupation of coastal space in circumstances where net private benefit is greater than net public benefit. Council expressed in its Plan that it was committed to introducing a coastal occupancy charging regime.

10. Council, however, highlighted that further work was required to determine the circumstances in which charges would be imposed (and possibly waived), the level of charges and use of monies received, as well as preparing plan provisions to implement such a regime. Accordingly Council highlighted its intent to introduce provisions into the Marlborough Regional Policy Statement upon its review. At the time this was scheduled for December 2009.

11. This report draws on previous work that Council has undertaken in regard to Coastal Occupancy Charges. The analysis undertaken by Boffa Miskell Limited remains relevant in the assessment of whether coastal occupancy charges are justified and accordingly their report remains a relevant reference document.

3.1 Public Benefits from Coastal Occupation

12. The Act requires Council to consider whether a coastal occupation charging regime should apply having had regard to public and private benefits.

13. As outlined earlier Council has reached the conclusion that it was justified in principle in charging for occupation of coastal space in circumstances where net private benefit is greater than net public benefit. Council has expressed in its Plan that it was committed to introducing a coastal occupancy charging regime having had regard to the public and private benefits of differing types of occupation.

14. Council reached this decision having considered the Boffa Miskell Limited report Coastal Occupancy Charges November 1999. The relevant conclusions from section 3 of their report titled Public / Private Benefits are as follows:

    - *"The premise underlying coastal occupation charges is that exclusive occupation of the coastal marine area is a privilege not a right. If the public are excluded they should be compensated for that exclusion and loss of opportunity.*

    - *The Council must have regard to both public and private benefits as a result of coastal occupation, in considering whether or not to impose charges.*

- *Most occupations will result in elements of both public and private benefit, and the extent to which they are exclusive will vary. The benefits to consider should be those relating to the occupying structure and the loss or gain of opportunity that may represent, not less direct benefits related to associated activity facilitated by that structure being present.*

- *An assessment of the relative benefits associated with different types of occupation allows a comparative assessment in terms of where the principle benefit lies. If charges are to offset the loss of public opportunity as a consequence of exclusive occupation, they should apply in principle wherever there is a net private benefit to the occupier.*

15. Boffa Miskell Limited provided a detailed discussion of the types of occupation, the private benefits, public benefits (gained and lost) and the legal (exclusive) rights associated with occupation. Their analysis culminated in the following table (refer table 3.3 Net private Benefit by Occupation Type):

Occupation (type)	Private Benefit (a)	Public Benefit Gained (b)	Public Benefit Lost (c)	Net Private Benefit =a +(c-b)
Mooring	5	2	3	6
Marina	5	4	4	5
Jetty / wharf (private)	4	4	3	3
Jetty / wharf (public)	1	5	2	-2
Boat Shed	5	1	5	9
Boat Ramp (private)	5	1	3	7
Boat Ramp (public)	1	5	2	-2
Marine Farm (Mussel and other)	4	3	4	5
Marine Farm (Fin	5	2	5	8

Fish)				
Utility	1	1	2	2
Domestic services	5	1	2	6

16. The allocation of benefits to the differing types of occupation is a subjective exercise which will vary according to the judgement of the individuals carrying out the exercise. The analysis carried out by Boffa Miskell Limited is well documented and based on sound rationale. While there are areas where my opinion in relation to benefits gained and lost could vary from the table I am by in large happy to accept the analysis undertaken as a fair representation of the benefits.

17. This analysis was previously considered by Council and was the basis for their determination that, having considered the benefit assessments, Coastal Occupation Charges are justified where the private benefit (a) exceeded the net public benefit (b-c)). i.e. for all occupations with the exception of public jetty's and public boat ramps as assessed in the table above.

4. Approach to Charging

18. Having concluded that Coastal Occupancy Charges are justified and making a commitment to introducing a coastal occupancy charging regime, Council needs to determine the methodology for charging and calculate the necessary charges.

19. The Acts requirements are, where the regional council considers that a coastal occupancy charging regime should be included, the council must, after having regard to the public and private benefits specify in the regional coastal plan:

    - The circumstances when a coastal occupation charge will be imposed, and
    - The circumstances when the regional council will consider waiving (in whole or in part) a coastal occupation charge, and
    - The level of charges to be paid or the manner in which the charge will be determined: and
    - The way the money received will be used for the sustainable management of the coastal marine area.

20. A degree of ambiguity exists in relation to whether Coastal Occupancy Charges are:

    - A rental for the use of public space.
    - A rental to reflect the private benefits gained.
    - A tax to assist offset the costs associated with sustainable management of the coastal marine area.

21. The legislation is silent in regard to the manner in which charges must be calculated which would give guidance to the type of charge if it is to be imposed. As yet there is no guidance to be gained from the Court's in regard to coastal occupancy charges. A number of authorities have decided not to pursue the implementation of coastal occupancy charges owing to the uncertainty in regard to how charges should be determined and the difficulties in regard to the varying approaches.

22. To highlight the varying methodologies and the manner in which the methodology impacts on the manner in which charges are determined the following approaches have been explored:

    - Auckland Regional Council undertook a valuation of occupation approach to determining occupation charges. This authority progressed a considerable way down the process of implementing coastal occupancy charges before finally deciding not to proceed.

- Boffa Miskell considered that charges should be set by determining the relative value of the resulting lost opportunity from occupation. This would imply a value being assigned to either the public benefits lost or the net benefits lost.

- Brian Easton (and others) have expressed that coastal occupancy charges were a resource levy rather than a resource rental and more akin to local authority rates. The purpose being to charge the resource user (land owner or user of marine resource) for services from the local authority which cannot be directly charged on a user charge basis.

23. In considering the different methodologies for how to determine appropriate coastal occupancy charges consideration must be given to the Acts requirements. Given the difficulties experienced and the lack of implementation of coastal occupancy charges by Regional Council's there is little clear guidance.

24. The following can be concluded from the legislation:

    - The income from coastal occupancy charges should not exceed Local Authority expenditure associated with the sustainable management of the coastal marine area.

    - Have regard to the extent of public benefit gained or lost and the extent to which private benefit is obtained.

    - Specify either the levy to be charged or the manner in which the charge will be determined.

25. There seems to be a general consensus that whatever methodology is applied a practical, fair and transparent methodology and charge should be derived. Valuation methodologies can be expensive to administer and in the case of assigning value to public or net benefits problematic.

26. Having considered the relevant sections of the Act and reviewed various approaches promoted by differing parties I have reached the conclusion that concurs with the approach that coastal occupancy charges are a resource levy rather than a resource rental. This appears, from the literature read, to be the predominant belief. I have therefore concluded thus coastal occupancy charge methodology would more appropriately following a similar approach to the setting of local authority rates than methodologies associated with resource rentals.

27. The reasons for this proposed methodology is:

    - that income from coastal occupancy charges can only be applied to the sustainable management of the coastal; marine area. This would imply a cap to the level of income to be collected which is contrary to approaches for determining resource rentals based on the value of the occupancy space either based on private benefits,

public benefits or net benefits. This does not necessarily mean that the value of space is not an appropriate means of recovering costs.

- that the manner in which the legislation is drafted would imply that Regional Authorities can apply discretion in regard to how coastal occupancy charges are determined and applied. Hence it is up to local authorities to determine the best means of charging for coastal occupancy hence a resource levy or a resource rental could be seen as appropriate by a local authority and both could well be in accordance with the legislation.

- the rationale for the removal of national scheme of coastal rentals which were a means of collecting rent for the use of Crown space. Presumably if coastal occupancy charges were to be rentals the legislation would have maintained this terminology.

28. In summary:

- Public loss / private gain is the basis for determining whether a coastal occupancy charge should apply.

- Coastal Occupancy Charges are resource levies and accordingly are similar to local authority rates.

- Revenue collected is to be used to contribute to the sustainable management of the coastal marine area.

- Coastal occupancy charges methodology should meet the following criteria:

    i. Efficiency

    ii. Equity (fairness) – taking account of benefits and ability to pay.

    iii. Transparency

    iv. Certainty

5. Proposed Coastal Occupancy Charges

29. The methodology adopted in this report for determining appropriate coastal occupancy charges is as follows:

    - To determine the expenditure related to the sustainable management of the coastal marine area.
    - Consider any exemptions and waivers from coastal occupancy charges.
    - To determine the beneficiaries and to allocate costs fairly and equitably amongst beneficiaries.
    - To determine the appropriate charge for the differing occupations to recover costs.

5.1 Expenditure related to Sustainable Management of Coastal Marine Area

30. An assessment of the current and proposed expenditure for promoting the sustainable management of the coastal marine area has been undertaken in conjunction with Council staff.

31. Sustainable management is defined in the Resource Management Act (part II, section 5(2)). In practice it means expenditure in relation to the following activity areas:

    - Planning – both formal planning in the RMA planning context and strategic planning and overview.
    - Research – in relation to the state and workings of the natural, physical and social aspects of the CMA. Information is a requirement for sound management decisions. Council has identified that Coastal Monitoring needs to be increased (refer Coastal Monitoring Strategy, MDC, July 2012).
    - Education and awareness.
    - Infrastructure – issues could be assisted through infrastructure such as toilets and public jetties. This type of expenditure has not been included in the assessment of coastal occupancy charges but could be something implemented in subsequent reviews.
    - Monitoring – broader monitoring to assess cumulative affects.
    - Habitat restoration and enhancement – projects which repair damage to the CMA through historical activities, such as damage to foreshore structures and waahi tapu sites.

32. The following table provides an analysis of the existing expenditure associated with the coastal marine area compared to the expenditure associated with sustainable management of the Marlborough Region (refer Council's Long Term Plan 2012).

Category	**Council Expenditure**	**Coastal Marine Area**	**% Share**
Environmental Science and Monitoring	$3,124,817	$245,508	8%
Environmental Policy	$1,428,690	$142,869	10%
Environmental Compliance and education	$1,076,307	$53,815	5%
Total Existing Expenditure	$5,629,814	$442,192	8%

33. The following table provides the assessment of additional expenditure which subject to available funding would be appropriate for promoting the sustainable management of the coastal marine area:

Category	**Existing CMA expenditure**	**Additional CMA Expenditure**	**Total proposed Expenditure for CMA**
Environmental Science and Monitoring	$245,508	$473,728	$719,236
Environmental Policy	$142,869	$71,435	$214,304
Environmental Compliance and education	$53,815	$51,943	$105,758
Total Expenditure	**$442,192**	**$597,106**	**$1,039,298**

34. The existing expenditure has been (and continues to be) constrained by the revenue available to Council by way of Council rates. Council has developed a Coastal Monitoring Strategy (July 2012) which has identified the need to undertake a higher level of coastal monitoring to meet the following objectives:

- To assess the state and trends of the coastal environment in order to comply with the requirements of the RMA, New Zealand Coastal Policy Statement (NZCPS) and Regional Plans.

- To provide water quality data for the Marlborough Sounds to (i) build and develop hydrodynamic and ecological models (ii) to assess the impacts of land use and aquaculture on water quality in the Sounds (iii) to provide baseline data from which future trends in water quality can be assessed.

- To assess and monitor the state of ecologically significant marine sites identified by Davidson *et al*. (2011) with the help of a co-ordinated multi-agency approach.

- Identify and describe new significant sites through field surveys where additional or anecdotal reports indicate significant habitats may be present.

- Develop a web-based database for the collation of knowledge on marine biodiversity.

- To ensure the ecological integrity, recreational and cultural values of the marine environment are not compromised through mismanagement and/or intensification of the marine environment.

- Explore opportunities to involve Iwi in the implementation of the strategy.

- To investigate and collect information to help inform the community on the pressures and issues related to the coastal environment.

35. The cost of implementing this strategy has been assessed by Council to be approximately $374, 000 per annum which is represented as additional expenditure under environmental science and monitoring. In addition resources have been provided for the information management and presentation using geospatial technology to enable interpretation and education of the monitoring programme.

36. In addition to the implementation of the coastal monitoring strategy additional resources are required to store and interpret information, to review and develop objectives, policies and rules as a result of findings from monitoring information. Additional resources have been allocated for the development of policy and implementation under compliance and education.

37. The implementation of coastal occupancy charges would enable Council to implement the coastal monitoring strategy in a comprehensive and timely manner. Its implementation would be beneficial to the planning and management of the coastal marine area.

5.2 Exemptions and Waivers

38. Council has determined that exemptions from coastal occupancy charges for the following would be applicable:

    - Public wharves, jetties, boat ramps and facilities owned by Council, Department of Conservation and Community associations. Where it is assessed by Council that the net public benefit of occupation is greater than the private benefit.
    - Retaining walls.
    - Port Marlborough NZ Limited (exemption by legislation)

39. The reason for these exemptions are:

    - Associated with the positive net public benefits provided by the occupations provided by these organisations.
    - Exemptions under the Act under the provisions of Section 384. Section 384A in Marlborough relate to port related commercial undertakings being carried out in the areas of Picton, Waikawa, Havelock, Elaine and Oyster bays.

40. In addition Council would consider exemptions and waivers (in part or full) on an application basis:

    - where the applicant would outline the basis for waiver and / or exemption.

41. It should be highlighted that Council where there are multiple occupancies on the one site have treated separate resource consents for decks, boat ramps, slipways, landings to all form part of charges levied for jetties and boatsheds. This was undertaken to ensure efficiency of charges.

42. In addition where there is temporary occupation Council can determine an appropriate part charge if it deems warranted.

43. In order to provide clarity to which community organisations Council has currently determined to be exempt from coastal occupancy charges the following list is provided:

    - Edwin Fox Restoration Society
    - Elaine Bay Residents Association
    - Little Ngakuta Residents Association
    - Lochmara Bay Jetty Association
    - Mistletoe Bay Trust
    - Ngakuta Boating Club
    - Nydia Bay Community Association Incorporated

- Okiwi Bay Ratepayers' Association
- Outward Bound Trust Of New Zealand Inc
- Penzance/Tuna Bay Property Owners Assn
- Tara Bay Community Jetty
- Tennyson Inlet Boating Club
- Whatanihi Community Association

5.3 Benefit Allocation

44. In order to ascertain who should meet the cost of the sustainable management of the coastal marine environment an allocation of costs needs to occur between beneficiaries.

45. At present Marlborough rate payers are meeting all the cost of the coastal marine environment. It seems appropriate that some contribution towards the cost of the sustainable management of the coastal marine environment be made from rates and charges from the district at large.

46. Accordingly Council has assessed that a benefit allocation of 25% from the district at large and 75% from coastal occupancy is an appropriate division. In reaching this decision Council gave consideration to the exempt Port company occupations as well as the public benefits (gained and lost) from coastal occupancies as assessed by Boffa Miskell Limited.

47. This would require coastal occupancy charges to provide revenue to Council of $780,000 per annum.

48. The following benefit allocation has been undertaken as an assessment of the income to be derived from coastal occupations. The benefit allocation has been assessed giving consideration to:

    - The private and public benefits assessed by Boffa Miskell Limited.
    - Taking account the number of separate occupations within each category and the size of the occupations.
    - The resulting occupancy charges derived.

Occupation (type)	Total Annual Expenditure	25% Rate payer contribution	Mooring	Jetty / wharf (private)	Marine Farms	Boatshed	Other
Number			2831	705	591	343	56
Unit Measure			swing radius m^2	m^2	ha's	m^2	
Area of occupation			79,268	36,070	4,295	12,454	
average			28	51	5.26	36	
Net benefit Allocation			6	3	5 (mussel) to 8 (fin fish)	9	
Benefit Allocation	100%	25.00%	12.00%	5.00%	48.00%	8.00%	2.00%
Expenditure Allocation	$1,040,000	$260,000	$124,800	$52,000	$499,200	$83,200	$20,800
Made up from the following benefit allocations:							
Environmental Science and Monitoring	$719,000	25%	11%	4%	50%	8%	2%
Environmental Policy	$214,000	25%	11%	5%	49%	8%	2%
Environmental Compliance and education	$107,000	25%	20%	10%	35%	8%	2%

5.4 Proposed Coastal Occupancy Charges

49. A revenue and pricing model was developed to determine appropriate annual coastal occupancy charges and the following are recommended:

Proposed Charges	**GST Excl. Per Annum**
Moorings	$55
Jetties Stepped Charge (plus other occupancies if required)	
Up to 56 m^2	$55
56 - 84	$100
>84	$200
Boatshed and Buildings	
Up to 84m2	$250
> 84m2	$400

Marine Farms

	Mussel (& other)	Fin Fish (x1.6)
up to 4ha	$600	$960
4.1ha to 8 ha	$900	$1,440
8.1ha to 16ha	$1,200	$1,920
16.1ha to 29ha	$1,200 plus $100 per ha above 16ha	$1,920 plus $160 per ha above 16ha
> 29.1 ha (note at present fin fish farming does not exceed 16ha.)	$2,500	$4,000

Other (individual sites of occupation)		Maximum
Utility / Domestic services	$60	$500
Barge Site	$400	$900
Boat Ramp (private)	$100	
Slipway	$100	
Marina (private) up to 10 berths	$400	
Marina (private) in excess of 10 berths	$650	

In the case of:

- utilities / domestic services a unit rate of $18 per metre is applied with a maximum charge applicable.
- Barge sites a unit rate of $10 m^2 is applicable to a maximum of $900 per site.

50. Income from Coastal Occupancy Charges proposed is in line with expenditure allocation and can be summarised as follows:

Estimated Income from Coastal Occupancies	
Moorings Charges	$124,564
Jetties	$56,905
Boatshed and Buildings	$85,600
Marine Farm Charging	$494,253
Other	$17,300
	$778,622

51. There will undoubtedly be occupations which have not been captured by the above proposed charges accordingly it is proposed that in the event that circumstances warrant a coastal occupancy charge to be applied that the charge associated with jetties (and other structures) be applied on the area of occupation until such time as the next review is able to be conducted.

52. Stepped charges have been used for all occupancies except moorings after taking account the number of occupancies within each grouping and the relative size of occupancies in order to establish a simple and efficient charging basis which takes account the cost of administration as well as having regard to issues of equity and fairness.

5.5 Other Matters and Considerations Associated with Charging

Annual Plan

53. The Act requires Council to either stipulate the level of charges to be paid or the manner in which the charge will be determined. It is recommended that Council outline the methodology of how the coastal occupancy charges will be determined in its Coastal Plan (or Resource Management Plan) and link this to Council's Annual Plan where the charges would be stipulated. This would enable for the annual review of charges in consultation with the community and ensure that the charge maintained a relationship with Council expenditure. In the event the charge was stipulated in Council's Resource Management Plan then it should include an adjustment for inflation.

Timing of when Occupancy Charge Applied

54. Council has two choices in regard to when an occupancy charge is applied either at the time consent Is granted or upon actual occupancy (giving effect to consent) by consent holder.

55. Once consent is granted by Council preferential rights to coastal space are awarded to the consent holder. It is considered that at this time private benefits are accorded to the consent holder and is appropriate timing for coastal occupancy charges to be applied. Council could consider the application of a part charge granting of consent and a full charge on giving effect to the consent.

56. It is the consent holder who determines when consent is given effect to and accordingly it is proposed that Council should apply the full proposed coastal occupancy charge on granting of consent. In reaching this recommendation consideration was given to the additional cost of administration associated with maintaining processes to charge on giving effect to a coastal occupancy charge.

57. In order to provide for an ease of administration it is proposed that coastal occupancy charges be invoiced collectively annually. Accordingly the date at which an occupancy charge would be applied is on the annual date following the granting of the consent. On average this would provide the consent holder six months to give effect to a coastal occupancy before a charge was applied.

58. In order to assist with the administration of the invoicing and collection of coastal occupancy charges it is suggested that thought be given to differing anniversary dates for the categories of occupancy. E.g. moorings having a different anniversary date than marine farms. This would assist in responding to enquiries as they would be reduced in number and would be consistent in nature based on the occupancy charge levied at the time.

Criteria

59. The questions of efficiency, equity (fairness), transparency and certainty were considered in the determination of the proposed charges.

60. Consideration of efficiency of proposed charges measured against the cost of administration and collection has lead to a charging regime which is likely to be easy to implement. These

considerations have lead to the grouping of multiple occupancies under one or two types of charges and the introduction of stepped average charges.

61. It is recognised that the cost of collection of charges for moorings will likely lead to a higher cost of administration due to the number of moorings and the administration of maintaining databases for the changes in ownership. However it is expected that the implementation of a charge will contribute to Council's records being improved as owners engage with Council to ensure changes in ownership are recorded correctly. Overtime the administration of the charging regime is likely to become less burdensome.

62. Equity considerations in relation to allocation of costs and proposed charges derived were assessed to ensure that consideration of the proposed charge was weighed up against the value of the occupancy. It is not considered that any of the charges proposed are onerous when considered against the value of the occupancy or the associated activities.

63. In addition questions of charges to recover the allocation of expenditure based on other methods such as value (either value of net benefits or market value) where considered in deriving the proposed charges.

64. In particular consideration was given to charging based on the value of the occupation within its category and its geographic location.

65. Council had previously sought to apply local authority rates to marine farms and accordingly had a history of marine farm valuation data. The cost of maintaining this data is not felt warranted as a basis for allocation expenditure within marine farms.

66. The resulting charges based on size are deemed to be a representative indication of the value and geographic location of marine farms and accordingly due to its cost effective nature is consider the most efficient means for applying coastal occupancy charges. The values assigned by Quotable value for marine farm occupancy ranged from approximately $70,000 to $140,000 per hectare.

67. Valuation methodology for other forms of occupation would be even more difficult, subjective and costly to implement. This approach was not considered efficient, transparent or provide the necessary certainty desired for coastal occupancy charges.

Proposed Coastal Occupancy Charges – Marlborough Environment Plan: Supplementary Paper

1. The following questions have been raised in regard to the allocation basis and the resulting charges as follows:

    a. Use of a per m^2 rate for one group and a per hectare rate for others.

    b. A suggestion that Marine Farms be charged on the basis of per tonne harvested.

2. This paper seeks to outline in simple terms the basis for allocating expenditure to occupancy categories and the resulting charges.

    Step One Determine Expenditure to be recovered by charges

    The 2013 Executive Finesse report circulated outlined the expenditure which related to the sustainable management of the coastal marine area and can be summarised as follows:

Environmental Science and Monitoring	$719,000
Environmental Policy	$214,000
Environmental Compliance and Education	$107,000
Total	$1,040,000

    Step Two Determine the allocation of expenditure between beneficiaries of expenditure being ratepayers and coastal occupations.

    The allocation of expenditure is a subjective exercise taking account of:

    - Private and public benefits assessed by Boffa Miskell Limited.
    - Number and size of occupations within group.
    - Cause of expenditure and benefits derived.

    The actual allocation is an informed assessment by the writer of the report reflecting the input from Council management and staff.

    As follows:

	Ratepayers	**Moorings**	**Jetties and Wharves**	**Marine Farms**	**Boatsheds**	**Other**
Science and Monitoring	25%	11%	4%	50%	8%	2%
Policy	25%	11%	5%	49%	8%	2%

Compliance and Monitoring	25%	20%	10%	35%	8%	2%
Total Assessed Benefit Allocation	25%	12%	5%	48%	8%	2%
For Every $100 of Expenditure	$25	$12	$5	$48	$8	$2

Step Three Determine Actual Charges for each occupation within Group

Having determined the amount of expenditure for each group of occupation to recover by way of coastal occupancy charges determine the charging method and the actual charges applicable.

The actual charges take into account size and nature of occupations within each group to determine an appropriate charge for each occupation. Accordingly the basis of the charge is different for each group of occupations; for jetties a M^2 charge as opposed to Marine Farms a per hectare charge.

It should be noted that the basis of the charge has no bearing on the quantum of funds collected from each group, this is determined by the benefit allocation.

Conclusion

3. Within each group of beneficiaries the basis of the charge is determined by the characteristics of the group and have no bearing on the amount of expenditure recovered by the group of beneficiaries. Given the size and nature of marine farms versus other occupation it seems more logical to use a hectare charge for marine farms and m^2 charge for other structures.

4. The use of a per tonne harvested approach rather than a charge on area for marine farms. It may well be possible to charge on this basis but it is not an approach I would endorse as the charging method proposed is more akin to production rather than occupation. While some costs being charged for can be linked to production others are purely associated with occupation. Further a charge based on tonnage would require greater administration and cost which does not seem to be justified given the quantum of charges proposed.