

Chapter 5: Allocation of Public Resources

Draft Marlborough Regional Policy Statement Provisions

Draft

Trim: 14141646

Draft

Introduction

Much of the Council's resource management work involves managing resources that are in the public domain. Marlborough has a huge coastline, large areas of land in Crown ownership and extensive freshwater resources. The Council frequently allocates or authorises the use of natural resources for private benefit, especially resources in the coastal marine area, from rivers and riverbeds and from 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. Another significant contributor to the economy is the marine farming industry, which is reliant on being able to occupy coastal space in order to develop. Other examples include the many moorings, boatsheds and jetties dotted around the Sounds, all of which contribute to the social wellbeing of residents and holidaymakers.

Therefore the importance of people being able to continue to use and develop these natural resources, within the constraints of the RMA, cannot be underestimated as any significant reduction or change in approach to their use could have significant implications for Marlborough's economic, cultural and social wellbeing. The three main areas where allocation of public resources is considered to be an issue are rights to occupy space in the coastal marine area, rights to take and use freshwater and rights to take gravel.

Issue 5.A – 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 does not enable people to use or occupy the coastal marine area unless allowed to by resource consent or by a rule in 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 rule in a district plan says they cannot.)

Management regimes for specific uses and activities in the coastal marine area are included within Chapter 13: Use of the Coastal Environment. Provisions in this part of the RPS/Resource Management Plan however, deal with higher level concerns about how space in the coastal marine area should be allocated and the degree to which various occupations generate private versus public benefits and the circumstances in which a user should pay for this.

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 on which boats can be moored. Others believe that there are no such rights. Many of these structures have limited benefit for the wider public, yet occupy public space. On the other hand some structures, such as public launching ramps, do provide enhanced public use of and access to the coast and consequently wide 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 given that the coastal marine area is a public resource.

Objective 5.1 – 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. The Council also has the 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 the qualities associated with them remain available for the use, enjoyment and benefit of future generations but in a way that minimises adverse effects on the environment, avoids conflicts between users and ensures efficient and beneficial use.

Policy 5.1.1 – Recognition that there are no inherent rights to be able to use, develop or occupy the coastal marine area.

Both the RMA and the NZCPS 2010 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, what is important to recognise is that the rights to be able to use coastal marine area are not guaranteed in terms of section 12 of the RMA and have to be enabled by way of a rule in a plan or by resource consent.

Policy 5.1.2 – 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 Council may consider the option of introducing an alternative regime.

The default process for processing consent applications under the RMA is ‘first in, first served’. This means that the Council processes resource consent applications in the order they are received, provided they are accompanied by an adequate assessment of environmental effects. Under this approach the Council has effectively managed the demand for space in the coastal marine area. However, if competing demand for space becomes an issue then the Council may consider the introduction of other allocation methods. There may also be certain circumstances where a specific allocation mechanism is introduced to address a specific issue.

Policy 5.1.3 – 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 consent holder who has the right to occupy and therefore alienates public space from public use. However, not all activities require exclusive occupation, which means that other users can carry out activities in the same space where there is no occupation needed, e.g. recreational boating. Given the public expectation of being able to use the coastal marine area, the Council considers that exclusive occupation should only be allowed where absolutely necessary.

Policy 5.1.4 – Coastal occupancy charges will be imposed on coastal permits where there is greater private than public benefit arising from occupation of the coastal marine area.

The RMA enables the Council to apply a coastal occupancy charge to activities occupying space within the coastal marine 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 reviewed the private and public benefits associated with coastal occupations and has determined that where the private benefit was greater than public benefit, then 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.

Policy 5.1.5 – The Council will waive the need for coastal occupancy charges for the following:

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

The reason for these waivers are that the facilities owned by the Council and the Department of Conservation provide a significant level of public benefit in that they are used by and available to many people. Retaining walls do not generally occupy significant areas of the coastal marine area to the exclusion of other users while monitoring equipment is generally very small in nature and often temporary. There are also few permitted 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 within Appendix xx 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.

There are certain occupation rights granted to port companies under section 384A of the RMA. In Marlborough the consents granted under this section of the RMA relate to port related commercial undertakings being carried out in the areas of Picton (but not in Shakespeare Bay), Waikawa, Havelock, Elaine and Oyster Bays. The RMA appears to exempt these consents from attracting a coastal occupancy charge until after 30 September 2026.

Policy 5.1.6 – Where there is an application by a 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 for a temporary duration;**
- 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) requires the circumstances when the Council will consider waiving, either in whole or part, to be set out in the RPS/RMP. These circumstances set out in a) to d) 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 its purpose in terms of how this relates to the occupation for which a waiver is being sought and the wider public benefits that will accrue from this.

Policy 5.1.7 – The manner in which the level of coastal occupancy charges has been determined is as follows:

- a) **The expenditure related to the 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 set out in the Council’s Annual Plan from year to year for the Environmental Science and Monitoring Group, Environmental Policy Group and Environmental Compliance and Education Group.

In determining who should meet the cost of the sustainably managing the coastal marine environment 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 these are set out in the Council’s Annual Plan.

Policy 5.1.8 - Any coastal occupancy charges collected will be used on the following 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 RMA 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. The policy sets out 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 RPS/Resource Management Plan, given the integrated nature of the document including: Chapter 6: Natural Character; Chapter 7: Landscapes; Chapter 8: Biodiversity and Natural Areas; Chapter 9: Public Access and Open Space; Chapter 10: Heritage Resources; Chapter 13: Use of the Coastal Environment; and Chapter 15: Resource Quality (Water, Soil and Air).

Methods of Implementation

Regional Rules

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 to be made of whether an exemption or waiver of any charge should be granted.

Annual Plan

The level of charge to be applied to any activity for which an occupation consent is required is set out in the Council's Annual Plan.

Issue 2 – Water Allocation

Being developed