



Meeting of the Hawke's Bay Regional Council

Date: Thursday 18 November 2010
Time: 9.00am
Venue: Ahuriri Room
159 Dalton Street
Napier

Agenda

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HAWKE'S BAY REGIONAL COUNCIL

Thursday 18 November 2010

Item 3

SUBJECT: RECOMMENDATION FROM THE ENVIRONMENTAL MANAGEMENT COMMITTEE

REASON FOR REPORT

1. The following matter was considered by the Environmental Management Committee on Wednesday 10 November 2010 (Item 4 of that agenda) and is now presented to Council for consideration and approval.
2. The Environmental Management Committee recommended several amendments be made to the draft submission on the Marine and Coastal Area (Takutai Moana) Bill. Those amendments have been incorporated (and highlighted where applicable) into the revised draft submission set out in Attachment 1. The amendments also incorporate a request for Council to submit an addendum to its original submission following consultation with the inaugural Maori Committee meeting on 23 November (i.e. after the submission deadline of 19 November).

DECISION MAKING PROCESS

3. This item has been specifically considered at the Committee level.

RECOMMENDATIONS

Proposed Marine and Coastal Area (Takutai Moana) Bill

That Council:

1. Agrees that the decisions to be made are not significant under the criteria contained in Council's adopted policy on significance and that Council can exercise its discretion under Sections 79(1)(a) and 82(3) of the Local Government Act 2002 and make decisions on this issue without conferring directly with the community and persons likely to be affected by or to have an interest in the decision due to the nature and significance of the issue to be considered and decided.
2. Agrees to lodge the attached submission on the Marine and Coastal Area (Takutai Moana) Bill, which includes amendments suggested by the Environmental Management Committee and incorporates a request to the Maori Affairs Select Committee allowing an addendum to the submission (if required) to be lodged following consultation with the Maori Committee at their inaugural meeting on 23 November 2010.



Gavin Ide
TEAM LEADER POLICY



Liz Lambert
GROUP MANAGER
EXTERNAL RELATIONS

ATTACHMENT: DRAFT SUBMISSION ON THE MARINE AND COASTAL AREA (TAKUTAI MOANA) BILL

19 November 2010

Our Ref :4/42/1

Clerk of the Committee
Maori Affairs Select Committee
Parliament Buildings
WELLINGTON

via online submission at www.parliament.govt.nz

MARINE AND COASTAL AREA (TAKUTAI MOANA) BILL

SUBMITTER: HAWKE'S BAY REGIONAL COUNCIL

1. INTRODUCTION

- 1.1. The following submission by the Hawke's Bay Regional Council has been prepared in response to the Marine and Coastal Area (Takutai Moana) Bill. Councillors formally considered the submission at an extraordinary Council meeting held on 18 November 2010 and agreed to seek further input from its advisory Maori Committee. We respectfully request permission to submit an addendum to this submission following the inaugural meeting of the Maori Committee (on 23 November) and subsequent Council meeting on 24 November.
- 1.2. The Hawke's Bay Regional Council is a member of Local Government New Zealand and supports the submission lodged by Local Government New Zealand. We acknowledge LGNZ's submission is thorough and addresses many details in virtually a clause by clause analysis. Our submission does not intend repeating that detail.
- 1.3. This submission should be read as an endorsement and extension of LGNZ's detailed submission. The Council's submission sets out more general comments providing a local 'flavour' to the Bill's implications for Hawke's Bay.

2. GENERAL STATEMENT

- 2.1. The Council supports the intent of the Bill in seeking to ensure public access to the coastal marine area and the preservation of navigation rights for all. We also support the Bill's proposal providing clarity and certainty around preservation of existing reclamations, permits, consents etc, and the associated ownership of structures and infrastructure.
- 2.2. The Council also offers qualified support to the provisions of the Bill which seek to provide recognition for customary rights of Maori in the use of coastal resources.
- 2.3. However, we do not support the establishment of those rights for Maori to undertake activities outside of the environmental management frameworks established under the RMA.

3. COUNCIL AND IWI/HAPU RELATIONSHIPS

- 3.1. The Council works collaboratively with a wide range of interest groups, stakeholder and kaitiaki for the maintenance and enhancement of coastal resources. The Council actively engages with iwi/hapu in undertaking its extensive range of activities and projects.
- 3.2. There are nine Treaty Claimant Groups with interests in Hawke's Bay. The Council is currently in discussions with each of those groups about the form and function of a 'joint plan committee.' This committee would oversee the review and development of the regional policy statement and regional plans for Hawke's Bay including any plans for the coastal marine area.
- 3.3. The co-governance of natural resources as proposed in Hawke's Bay has the potential to circumvent the need for the recognition and provision for a plethora of planning documents that could apply along the Hawke's Bay coastline.

4. PROTECTED CUSTOMARY RIGHTS

- 4.1. The Council does not support the Bill's proposal for 'protected customary rights.' The Council supports acknowledgement of long-standing customary use of resources along parts of the region's coast, but we do not support the proposal for such rights to be virtually immune from the current RMA framework.
- 4.2. The Council has prepared a second generation regional coastal plan (combined with regional plan provisions for the wider coastal environment). That 'Regional Coastal Environment Plan' (RCEP) has been through an open consultative process with the Maori Committee, coastal hapu representatives, and the wider Hawke's Bay community to determine an appropriate regime for the management of the region's natural and physical coastal resources. The RCEP manages the effects of activities in accordance with the principles of the RMA and in doing so, gives effect to the 1994 NZ Coastal Policy Statement.¹ The Council does not support the Bill's proposal for protected customary rights to be allowed irrespective of degree of their environmental impact.
- 4.3. While the Bill does provide for monitoring and intervention by the Minister in protected customary rights if there are significant adverse effects, the Council considers those provisions to be inappropriately reactive rather than proactive sound resource management practice. The environment could suffer irreversible damage prior to necessary conditions being put in place under the Bill's proposals.
- 4.4. The Council also opposes the Bill's proposal for 'protected customary rights' in relation to abilities for protected customary rights:
 - a) to potentially be undertaken in a contemporary setting (ie: not restricted to historic and traditional methods, but potentially undertaken using 21st century techniques and technologies); and
 - b) to be undertaken for commercial purposes; and
 - c) to be transferred to third parties.
- 4.5. Full exercise of the above rights could have perverse and undesirable outcomes for the location, scale and type of activities undertaken in Hawke's Bay's coastal area. For the avoidance of doubt, the Council is not opposed to Maori undertaking customary activities for commercial purposes, but transferral of rights to third parties is alarming.

¹ We note that the RCEP will need to be assessed and reviewed as necessary to give effect to the 2010 NZCPS to come into effect on 3 December 2010.

- 4.6. The Council considers that the same resource management regime should apply to all activities regardless of what proprietary rights exist to establish the activity.
- 4.7. In Hawke's Bay, the Council is not aware of any evidence to suggest any customary activities have faced undue problems or interference arising from the RMA and regional coastal plans since 1991.

5. PLANNING DOCUMENTS

- 5.1. The Council does not support the Bill's proposal for incorporation of 'planning documents,' prepared by customary marine title holders, into regional planning documents. By virtue of the requirement to "recognise and provide for" such planning documents, the Bill elevates these planning documents to the same status as matters of national importance (under s6, RMA). This may occur without the open consultative engagement expected of councils when preparing regional policy statements, regional plans or district plans. Planning documents can cover a wide array of matters, but of most concern to us is the manner in which they can be prepared (ie: without any public or council input) followed by the consequential inclusion of the document into the RPS and/or regional plans.
- 5.2. It is the Council's opinion that the Bill's proposals regarding preparation of planning documents and their subsequent incorporation into regional planning documents shows little consideration for integrated resource management and existing statutory processes under the RMA. This results in the Bill elevating planning documents to an unjust and untenable status all without consultation or reference to existing statutory frameworks.
- 5.3. We suggest that planning documents prepared by customary marine title holders should be accommodated within the existing RMA framework and not elevated to a matter of national importance without a fuller open consultative process for their preparation.

6. INFRASTRUCTURE

- 6.1. The Bill will have implications for the Council's asset management role and infrastructure, particularly flood control works in river mouths and estuarine locations of the coastal marine area. While the Bill provides for existing 'nationally or regionally significant' infrastructure (ie: within the meaning of 'accommodated activity' in Clause 8(2)), we consider the Bill misses an opportunity to properly provide for new nationally or regionally significant infrastructure.
- 6.2. By way of example, Council sometimes erects hard defences along margins of river channels to prevent damage to stop banks. A type of reinforced concrete armouring has been constructed at Haumoana on Tukituki River to protect stop banks and prevent major flood risk to the community. Tukituki River design capacity at 4800cumecs. Severe and extensive flooding would occur if the stop banks failed. This armouring sits within bed of river and is within the Marine and Coastal Area. Regardless of ownership, RMA permissions could restrict or prohibit further flood protection works, despite their significance to the regional and national productivity.
- 6.3. We recommend that the meaning of 'accommodated activities' be amended to include all 'nationally or regionally significant' infrastructure – regardless of whether it is existing, upgraded or new.
- 6.4. The Council is now a 100% shareholder in Port of Napier Limited – the port company for Port of Napier. It is imperative long-term investment decisions made by the Port company reflect infrastructural nature of assets being developed. Port of Napier is totally dependent on reclaimed land for current and future land requirements. We accept that the Bill attempts to consolidate existing property rights approval procedures for reclamations (as distinct from resource consenting processes). Economic development of Hawke's Bay and other regions like it could be severely curtailed if ports cannot secure title and tenure for future reclamations and wharf developments.

6.5. Compared to the Foreshore and Seabed Act's provisions for reclamations, we support the Bill's proposals for developers of reclaimed land to have 'first option' on applying for property rights. Without this improved certainty of occupancy and ownership, ports may not reclaim foreshore and seabed.

7. MINISTERIAL DISCRETION AND REGIONAL COUNCIL FUNCTIONS UNDER RMA

7.1. The Council is concerned with the extent of proposed Ministerial RMA discretions under the Bill. These discretions are not required to draw on any policy contained within any regional planning documents prepared under the RMA. This is not acceptable given the complex processes and commitment of resources to develop plans in the first place. The discretions must take into account policy and regulatory frameworks already developed under the RMA (eg: NZCPS, RPS, RCP, etc). These planning documents have all involved extensive public consultation often in combination with detailed scientific research and information.

7.2. We reiterate that many of the Ministerial discretionary RMA powers are reactive to environmental impact rather than proactive sound resource management practice.

7.3. Council notes that the Bill (in Schedule 3) proposes replacing s30(1)(d)(ii) of the RMA. The effect of the substitution as proposed would be significant on the respective roles and responsibility of regional councils and the Minister of Conservation. However, government officials have recently indicated that the replacement clause contains a drafting error (the word "not" unintentionally appears). We assume officials will bring this error to the Select Committee's attention for it to be remedied.

7.4. We would support the error being corrected. In effect, the correction would revert roles and responsibility for controlling occupation of the common marine and coastal area to regional councils. Similarly, the correction would maintain the status quo with regional councils having responsibility for control of extraction of sand, gravel, shell, etc in the common marine and coastal area.

8. HEARING OF SUBMISSION

8.1. Council wishes to appear at the Select Committee meeting on this Bill to be heard on this submission.

Yours faithfully

Fenton Wilson
CHAIRMAN

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