

Tasman Resource Management Plan

Plan Change 71: Coastal Occupation Charges

Decision Report

**Pursuant to Clause 10 of the
First Schedule of the Resource Management Act 1991**

6 November 2021

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1.0 Introduction

This report provides the decision of Tasman District Council (Council) for Plan Change 71 – Coastal Occupation Charges (Plan Change). The decisions on the Plan Change and reason for those decisions can be found in Section 6 of this report. The specific changes to the Tasman Resource Management Plan (TRMP) arising from this Plan Change can be found in Appendix 1: Schedule of Amendments.

2.0 General-Timeline

- 2.1 The Hearing Panel consisted of Cr Maling (chair) and Crs Dowler and MacKenzie and Ms Tracey Kingi. Apologies were received from Cr Hill.
- 2.2 The hearing was held at the Tasman District Council Chambers on 25 May 2021, 9:30 am. The hearing was undertaken as part of a joint hearing for Plan Change 72 (Mooring and Coastal Structures) and the Mooring Area Bylaw.
- 2.3 Submitters present: D Thomas (Torrent Bay Township Committee) and N Clifton (Motueka Yacht & Cruising Club).
- 2.4 Council officers present: T Bray, B Johnson, P Meadows, A Humphries, D Cairney, J MacKay. D Bush-King also attended for part of the hearing.
- 2.5 The deliberations were held on 25 May 2021, following the hearing.
- 2.6 The recommendations of the Hearing Panel were finalised on 25 May 2021 and approved by the Strategy and Policy Committee on the 19 August 2021.

3.0 Decision Overview

Having had regard to the issues raised by the submitters, evidence presented at the hearing and statutory requirements, the decision of Council regarding the Plan Change is to **Accept without Modification**. The specific amendments to the TRMP arising from this Plan Change can be found in Appendix 1: Schedule of Amendments.

The Plan Change is technical in nature and was undertaken primarily to meet obligations under Section 401A of the Resource Management Act 1991 (RMA) which requires Council to include a statement in the TRMP addressing coastal occupation charges. All but one submission supported the Plan Change and the Section 42A report and evidence presented at the hearing raised no significant concerns. The one submission which opposed the Plan Change sought the deletion of the Plan Change, which was declined primarily as the decision requested was contrary to the requirements of Section 64A, 401A and 32(1) of the RMA

After considering the recommendations of the Hearing Panel, the Strategy and Policy Committee made the decision to accept the Plan Change without modification on the 19 August 2021.

4.0 Background

4.1 The Plan Change

Coastal occupation charges are a charge under the RMA that can be made against any person who occupies public space within the coastal marine area. Charges can apply to, but are not limited to,

wharves, jetties, moorings, marinas, boat ramps, cables, pipes and marine farms; and those activities that are long-term occupations of the coastal marine area. Temporary and transient uses of the coastal marine area like fishing, swimming and anchoring vessels are not considered to be coastal occupations. The RMA (Sections 64A, 401A) requires Council to address coastal occupation charges in the regional coastal plan.

In 1991 when the RMA first gained ascent, it included provisions for “coastal rentals” which applied to most coastal structures. The coastal rentals were to be administered by regional councils and the revenue was to be passed on to central government. The amount to be paid was set by the Resource Management (Transitional, Fees, Rents and Royalties) Regulations 1991. Regional councils, with the exception of Southland, refused to implement the coastal rentals and urged the Government to amend the legislation to allow the revenue collected from the coastal rentals to be retained by regional councils. In 1997, the RMA was amended and coastal rentals were replaced with coastal occupation charges. This change enabled councils to charge for coastal occupation, with the proviso that any charges collected had to be spent on the sustainable management of the coastal environment within the region. Further changes to the RMA in 2010 precluded coastal occupation charges being imposed on 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 (MACA Act 2011).

The principles underlying coastal occupation charging are that:

- Public access to and within the coastal marine area is protected and private occupation of the coastal marine area is a privilege and not a right; and
- Where private occupation has an adverse effect on public access to and use of the coastal marine area, then some form of compensation for the loss is appropriate.

Coastal occupations charges are a method by which the public can be ‘recompensed’ for the loss of the ability to use and access public space. There are clear analogies with land-based activities. For example, if somebody wished to use a local or national park for commercial purposes, e.g., coffee carts or concession stand, they would expect to pay for use of that space. The only difference with coastal occupation charges is that there are restrictions on what the money paid can be spent on.

Section 401A of the RMA (Transitional Coastal Occupation Charges) requires Council to include a statement or charging regime for coastal occupation charges in the TRMP. A statement or charging regime could be included at any time, however, after 2014 a statement or regime is required to be undertaken at the same time as the first change to the regional coastal plan. Proposed Plan Change 72 (Moorings and Coastal Structures) is the first change to the regional coastal plan. The purpose of this Plan Change is solely to meet the requirement of Section 401A of the RMA and enable Proposed Plan Change 72 to be notified.

Before making a decision of whether or not to include a regime for coastal occupation charges, Council was required under Section 64A(1) of the RMA to have regard to both public benefits (lost and gained) and private benefits (gained) in determining whether or not to introduce a charging regime. After undertaking that assessment (see Section 2 of the Section 32A report) Council decided it was appropriate to charge for the private occupation of the coastal marine area where the private benefit outweighed the public net benefit.

However, following further evaluation of the options under Section 32 of the RMA (see Section 3 of the Section 32A report), Council determined that the risk of implementing a coastal occupation-charging regime, at that point in time, was too high due to lack of clarity in the legislation and a number of barriers to implementation. Council decided that the most appropriate course of action was to introduce a statement into the TRMP supporting coastal occupation charges in principle, but not to introduce coastal occupation charges regime at that time, and to continue working towards developing a fair and equitable regime.

On 27 February 2020 the Strategy and Policy Committee recommended that the Plan Change be notified. On 20 June 2020, Proposed Plan Change 71 was publicly notified with submissions closing on the 27 July 2020. Eleven submissions were received.

The *Summary of Decisions Requested* was publicly notified on 7 November 2020 with the further submission period closing on 23 November 2020. No further submissions were received.

Nine submissions supported the Plan Change, one submission opposed the Plan Change and one submission requested changes to the text.

The hearing was held at the Tasman District Council Chambers on 25 May 2021, 9:30 am. The deliberations were also held on 25 May 2021, following the hearing. The hearing was a combined hearing with submissions on this Plan Change heard at the same time as the submissions on Proposed Plan Change 72 and the Mooring Area Bylaw.

5.0 Statutory Context

5.1 Introduction

The Resource Management Act 1991 (RMA) provides the statutory framework for decision-making on Plan Changes and Part 1 of the Schedule 1 applies. After considering a plan change, Clause 10 of the Schedule 1 requires Council to give a decision on the provisions and matters raised in the submissions. The decision must include the reasons for accepting or rejecting submissions and must include a further evaluation of the plan change in accordance with section 32AA (if changes are made); and may include consequential alterations and any other matter relevant to the plan change arising from submissions. Council is not required to address each submission individually in the decision.

Council has delegated the authority to make decisions on plan changes to the Strategy and Policy Committee and by resolution on 19 August 2021 the Strategy and Policy Committee accepted the recommendations from the Hearing Panel and approved notification of this decision.

The following documents have been considered in making this decision and due consideration and weight has been given to the various provisions. The key provisions are detailed below.

5.1.1 Resource Management Act 1991

Section 401A: Transitional Coastal Occupation Charges

...

- (4) *Where no provision for coastal occupation charges has been made in a regional coastal plan or proposed regional coastal plan by the expiry date [1 October 2014], the regional council must, in the first proposed regional coastal plan or change to a regional coastal plan notified on or after the expiry date, include a statement or regime on coastal occupation charges in accordance with section 64A.*
- (5) *In this section, expiry date means the date that is 3 years after the commencement of section 59 of the Resource Management Amendment Act (No 2) 2011.*

This section requires Council to include a statement or charging regime in the regional coastal plan, when it next notifies a change to the regional coastal plan.

Section 64A: Imposition of Coastal Occupation Charges

(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 common marine and coastal area 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.

(4A) 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.

(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.

This section defines what Council must consider before making a decision to impose a coastal occupation charging regime and what must be included in a charging regime. This section also requires the inclusion of a statement in the regional coastal plan should the decision be to not impose a charging regime. No further assessment under Section 64A has been made for this Decision, but it should be noted that this decision meets the requirements of Section 64A(2).

Part II

The Supreme Court found in 2014 that councils need not consider Part II of the RMA when making decisions on plan changes where the matter is fully addressed in the New Zealand Coastal Policy Statement (NZCPS). This Plan Change is unusual in that the NZCPS does not cover coastal occupancy charges and, for this reason, an assessment under Part II is required.

Part II of the RMA, section 5 states that the purpose of the Act is to promote sustainable management of natural and physical resources. Section 6(d) states that it is a matter of national importance to maintain and enhance public access to and along the coastal marine areas and section 7(b) refers to the efficient use of resources.

Coastal occupation charges are not mentioned in Part II. The environmental, economic and social effects of using and occupying the coast are assessed through a separate resource consent or the plan making process. Coastal occupation charges are a charge applied after that assessment and they do not directly affect the environment. However, as money received from coastal occupation charges is required to be spent on the sustainable management of the coastal environment, the charges are considered to support Section 5 of the RMA. A charging regime may also promote more efficient use of resources (Section 7(b)) by acting as a disincentive to the occupation of areas larger than required.

Coastal occupation charges are not thought to affect the relationship of Maori and their culture and traditions with the coast (Section 6(e)) and Section 64A (4A) prevents coastal occupancy charges being imposed on protected customary rights or customary marine title groups (6(g)). Coastal occupation charges could financially support Maori in their role as kaitiakitanga (Section 7a).

This Plan Change supports (in principle) the implementation of coastal occupation charges and the continued investigation into methods by which they could be implemented in the TRMP.

Section 32 and Section 32AA

A detailed Section 32 report accompanied the Plan Change and the matters raised in the Section 32 report were further considered in the Section 42A report and in the deliberations. Section 32AA requires a further evaluation of any changes that have been made to the Plan Change after the Section 32 report was completed. The Committee has decided to accept the Plan Change without modification and for the reason that no changes have been made, no further evaluation has been undertaken under Section 32AA.

5.1.2 New Zealand Coastal Policy Statement 2010

The purpose of the New Zealand Coastal Policy Statement 2010 (NZCPS) is to state policies in order to achieve the purpose of the RMA in relation to the coastal environment. There are provisions in the NZCPS regarding the allocation and use of public space but no specific provisions regarding coastal occupation charges. To the extent that money received from a charging regime is to be spent on the sustainable management of the coastal environment is considered consistent with the policies of the NZCPS.

5.1.3 Tasman Regional Policy Statement

The Tasman Regional Policy Statement (TRPS) provides an overview of the resource management issues for Tasman and includes policies and methods to achieve integrated management of the natural and physical resources for the region.

Coastal occupation charges would support the general sustainable management objectives of the TRPS; however, the TRPS does not include any specific provisions relevant to coastal occupation charges.

5.1.4 Tasman Resource Management Plan (which includes the Regional Coastal Plan)

The purpose of the TRMP, in part, is to assist Council, in conjunction with the Minister of Conservation, to achieve the purpose of the RMA in relation to the coastal marine area in Tasman.

There are specific objectives and policies regarding the occupation of space in the coastal marine area, however, these policies seek to address environmental effects arising from the occupation, which is different to the purpose of coastal occupation charges. The TRMP does not include any specific objectives, policies or methods relating to coastal occupation charges.

5.1.5 Marine and Coastal Area (Takutai Moana) Act 2011

The Marine and Coastal Area (Takutai Moana) Act (MACAA) divests the common marine and coastal area from ownership and sets out a number of core rights for public use regarding access, fishing and navigation. MACAA specifically provides for the public to pass, re-pass, enter, stay in or on, and leave the common marine and coastal area without charge (Section 26), subject to provisions under other Acts and customary interests.

Coastal occupation charges only apply to longer-term and permanent occupations of the common marine and coastal area and do not affect transient and temporary uses like fishing, swimming and anchoring which are protected by this Act. Coastal occupation charges are not directly affected by this Act.

Summary of Statutory and Policy Framework

Sections 401A and 64A of the RMA require Council to either implement a coastal charging regime, or include a statement in the plan to the effect that Council has made the decision not to implement a charging regime, at the next change to the regional coastal plan. Section 64A sets out what must be considered before Council makes a decision and Section 64A(3) states what must be addressed in the charging regime. Beyond these sections, the RMA neither provides support nor opposes the introduction of coastal occupation charges, or provides details of what form a charging regime should take.

Coastal occupation charges are not discussed in either the TRPS or the TRMP.

To the extent that the RMA (including policy documents and plans) seeks sustainable management of the coastal environment, then it is considered that the imposition of a coastal occupation charging regime is the most appropriate way to achieve the purpose of the Act. The Plan Change supports the imposition of a charging regime, but does not implement one at that point in time for technical reasons. The Plan Change is considered to meet the requirements of the RMA and other legislation.

6.0 Decision and Reasons for the Decision

This section contains a summary of submissions, summary of evidence, the decision and the reasons for the decision. Section 6.1 addresses the Plan Change as a whole and the following Section 6.2 provides the decision and reasons for the proposed changes. A copy of the changes to the TRMP arising from this Plan Change decision can be found in Appendix 1: Schedule of Amendments.

6.1 Plan Change 71 – as a whole

6.1.1 Introduction

This decision considers Proposed Plan Change 71 as a whole.

Summary of Submissions

The following submissions were received in support of the proposed plan change.

- Chris Rutledge (4168.1)
- Sanford Limited (4169.1)
- Torrent Bay Township Committee (2971.1)
- Marine Farming Association (4179.1)
- Thomas, Daryl (4170.1)
- Trevor Riley (2852.1)
- Nelson Pine Industries Limited (3495.1)
- Golden Bay & Tasman Bay Ring Road Farming Limited et al (4166.1 & 2)
- Golden Bay Marine Farmers Consortium Limited (327.1)

One submission (4167.1) was received which opposed the Plan Change in its entirety and sought the deletion of the Plan Change. Submission (4167.1) is summarised as follows:

“It appears that Council has already decided to not charge, uncertain of the purpose of this consultation. Charging is a principle means of managing any limited resource, it is extraordinary that Council should decide not to use it. It appears that people holding mooring licences are being subsidised by the rest of the community of ratepayers. A mooring occupies approx. 1200 m². The submitter pays over \$4000 p.a. for 809m² section as a contribution for TDC functions. Why should a mooring not similarly pay a contribution? The consequence of not charging for moorings is already apparent at Trewavas St, there are several unused, derelict, unsightly boats moored there and there is no incentive for the owners to dispose of them properly when they are not charged for the privilege of mooring.

The wording of para 3 is unacceptably vague. Given that the section itself recognizes the importance of a charging regime, I would expect that Council would commit itself to a time line for developing and introducing a charging regime.”

With the exception of the above submission, all other submissions were either in support or support in part for the Plan Change (see Section 6.2).

Summary of the Section 42A Report

It was recommended that the Hearing Panel accept in part the decision sought by the submitters supporting the plan change (subject to any modifications required under Topic 2) and decline the decision sought in submission (4167.1) for the reason that the request would not meet the requirements in Sections 64A, 401A or 32(1) of the RMA.

Summary of Evidence Presented at the Hearing

The Torrent Bay Township Committee attended the hearing and spoke in support of the Plan Change and coastal occupation charges.

6.1.2 Decision

That the Strategy and Policy Committee **accepts** Plan Change 71 **without modification**, as detailed in Appendix 1: Schedule of Amendments.

6.1.3 Reasons

The purpose of Proposed Plan Change 71 is to meet the requirements of Section 401A of the RMA which requires Council to either include a statement to the effect that charges will not be imposed (the option taken in this plan change) or impose a charging regime in the regional coastal plan. Council undertook an assessment under Section 64A of the RMA to determine the public benefits (lost or gained) and private benefits (gained) in determining whether or not to introduce a charging regime. Council reached the decision that, in principle, where private benefit is greater than public benefit, the public should be compensated through coastal occupation charges. However, when the imposition of coastal occupation charges was evaluated under Section 32 of the RMA, it was determined that the risk of implementing a coastal occupation charging regime, at that point in time, was too high due to lack of clarity in the legislation and a number of other barriers to implementation. The decision was made to include a statement in the TRMP supporting coastal occupation charges, but to defer the implementation until the legal and policy uncertainties around such a charging regime were resolved. Council would also continue to co-operate with and support other parties in the development of a legally defensible charging regime.

All submissions supported Council's decision (in principle) to impose coastal occupation charges, with one submission however opposing the plan change in its entirety and seeking the deletion of the plan change. The submitter expected the Council to commit itself to a timeline for developing and introducing a charging regime. The submitter did not attend the hearing or provide additional evidence for consideration.

Under the First Schedule of the RMA, Council can decide to withdraw or decline Proposed Plan Change 71 as requested by the submitter; however, such a decision would not meet the requirements of Sections 64A and 401A of the RMA or achieve the purpose of the Plan Change under Section 32A of the RMA.

If Council decided to withdraw or decline Proposed Plan Change 71, the status of Proposed Plan Change 72 – Moorings and Coastal Structures could also be challenged, because notification of Proposed Plan Change 72 relies on Section 401A of the RMA being given effect to.

After considering the matters raised in the Section 32 and 42A reports, evidence presented at the hearing the decision has been made to accept Proposed Plan Change 71 as notified without modification (see Appendix 1: Schedule of Amendments). This decision is considered to meet the purpose of the Act and the objectives of the Plan Change.

6.2 Amendments sought to the text

6.2.1 Introduction

Two submissions were received from the Friends of Nelson Haven & Tasman Bay Inc. requesting text amendments (1050.1 & 1050.2).

Summary of Submissions

The first request is summarised as follows:

(1050.1) Amend the first paragraph as follows:

~~In accordance with section 64A of the Act, Council is required 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 the Regional Coastal Plan".~~ Under the Resource Management Act 1991 (Act) regional councils are able to charge for the occupation of the coastal marine area (CMA). Coastal occupation charges cannot be imposed unless the charge is provided for in the regional coastal plan and ensure that private occupation of this public land is recognised, with the loss of public benefit adequately accounted for. The funds raised by such charges can be used not only to mitigate, remedy or otherwise manage the actual or accumulative effects in the area but also in the wider environment (a public benefit). There is no inherent right to occupy public space in the CMA; however, 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."

Reason: Emphasis needs to be added to ensure that the "cost" of occupation of public space for private benefit is recognised. Southland Regional Council continues to charge coastal occupation charges; most other councils have failed to accept this cost to the public but have bowed to commercial and private pressure.

The second request is summarised as follows

(1050.2) In accordance with section 64A of the Act, Council is required to consider whether or not a coastal occupation charging regime applying to persons who occupy any part of the ~~common marine and coastal area~~ coastal marine area should be included in the Regional Coastal Plan..."

Reason: Due to the uncertainties associated with the MACA Act where land title extends into the CMA, for future clarity it is best to ensure the Coastal Marine Area which is specified in the Resource Management Act and New Zealand Coastal Policy Statement is used. As coastal occupation charges must not be imposed on protected customary rights groups or customary marine title groups exercising a right under the MACA Act, the use of the phrase here is confusing.

Summary of the Section 42A Report

(1050.1) The report found that the wording submitted added further information regarding the form and nature of coastal occupation charges. The proposed wording did not change the effect of the plan change and whether or not the wording was included was largely a matter of drafting. There was no recommendation.

(1050.2) The report found that the notified wording fulfils the requirements of Section 64A of the RMA regarding the need to have a statement in the TRMP and the notified wording was correct. If the suggested wording was adopted it would simplify the wording, but the wording could be challenged for being incorrect. The recommendation was that no change be made.

Summary of Evidence Presented at the Hearing

No material was presented at the hearing regarding these submissions

6.2.2 Decision

That the Strategy and Policy Committee **accepts** Plan Change 71 **without modification**, as detailed in Appendix 1: Schedule of Amendments.

6.2.3 Reasons

(1050.1) The wording proposed by the submitter adds further information regarding the form and nature of coastal occupation charges and was considered to be beneficial for that reason. However, the proposed wording did not have a material effect on the implementation of the coastal occupation charges and for reasons of brevity, the decision was made not to include the additional information.

(1050.2) The RMA 1991 requires Council to prepare a regional coastal plan for the coastal marine area which includes the foreshore, seabed and coastal water and covers the area from the mean high water mark seaward to the outer limits of the territorial sea. Under the MACA Act 2011 the coast is defined as the “*marine and coastal area*” and the area within the *marine and coastal area* which has no privately owned land, etc., is defined in the Act as the *common marine and coastal area*”. The *common marine and coastal area*, in essence, is the coastal marine area which is not privately owned.

As part of the enactment of the MACA Act in 2011, a number of consequential amendments were made to the RMA 1991. Section 12(2)(a) of the RMA was amended and permission “*to occupy any part of the coastal marine area*” was changed to permission to occupy any part of the “*common marine and coastal area*”. Similar consequential changes were made to Section 64A, which requires Council to include a statement regarding a coastal occupation charging regime for persons occupying the “*common marine and coastal area*” (*see below*).

Section 12(2) of the RMA: “No person may, unless expressly allowed by ...a rule in a regional coastal plan... or a resource consent, - (a) occupy any part of the common marine and coastal area; ...”

Section 64A(1) of the RMA: Imposition of coastal occupation charges requires the Council 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”.

Section 401B of the RMA -Obligation to pay coastal occupation charge deemed condition of consent “In every coastal permit that – (a) authorises the holder to occupy any part of the common marine and coastal area: and”

The wording in MACA Act 2011 and the interplay with the RMA 1991 is complicated and it is acknowledged that it would be less confusing if the wording was changed to refer to the simpler and more commonly used *coastal marine area*, as requested by the submitter. However, to change the wording from *common marine and coastal area* to *coastal marine area* would be technically incorrect under Section 64A of the RMA 1991. For that reason, the decision has been made to not make the text amendments requested.

After considering the matters raised in the Section 32 and 42A reports, the decision has been made to accept Proposed Plan Change 71 as notified without modification. This decision is considered to meet the purpose of the Act and the objectives of the Plan Change.

Appendix 1: Schedule of Amendments

Part III: Coastal Marine Area - Add a new section at the end of Part III Introduction as follows:

“Coastal Occupation Charges

In accordance with section 64A of the Act, Council is required 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 the Regional Coastal Plan.

Council agrees with the principle of coastal occupation charges and considers that an appropriate regime would assist in the sustainable management of the common marine and coastal area. However, given the legal and policy uncertainties around such a charging regime, Council has decided not to impose a charging regime at present.

Until such a time that a charging regime is included in the Plan, the Council will continue to cooperate with and support other regional authorities and central government agencies in the development of a legally defensible charging regime. Council will also continue to advocate the necessary changes to the legislation and policy at a national level.”