



STAFF REPORT

TO: Environment & Planning Committee

FROM: Neil Jackson, Policy Planner

REFERENCE: C421

SUBJECT: **VESSEL ISSUES: DRAFT REPORT AUGUST 2008 - REPORT EP08/09/08** - Report prepared for meeting of 16 September

1. REASON FOR THIS REPORT

The recent appearance of a vessel used as a houseboat in Otuwhero Inlet raises questions about the kind of activities that can occur in the coastal waters of the District.



This report reviews some vessel activities, current plan provisions, and how other councils deal with some of these issues.

2. REPORT CONTENT

- Background
- Vessel activities and coastal values
- Current issues
- Relevant plan provisions
- Other councils
- Options for Tasman
- Related matter: coastal occupation charges

3. BACKGROUND

The policy basis for the coastal section of the Proposed Tasman Resource Management Plan was developed in the early days of the Resource Management Act. While land use planning was well established prior to the RMA, extending that kind of planning into the coastal marine area (seaward of mean high water springs) was new for most of the country. There was public concern that boating activities might be subject to a range of restrictive rules.

Chapter 20 of PTRMP acknowledges that safe navigation, and effects on natural values and amenity values, are potential issues associated with boating activities. Navigation safety issues are covered by the navigation bylaw, but otherwise Rule 25.4.2 makes navigation a permitted activity. The only constraints are in relation to any effects on species or habitats in the estuarine and intertidal areas listed in Schedule 25.1F. A coastal permit is required for a mooring, but not for a vessel at anchor.

No control measures directed specifically at commercial use of vessels were included in PTRMP. At the time the plan provisions were drafted, the RMA ethos of enabling activities, and restricting them only where they caused adverse effects, was strong. Council did not find grounds to distinguish between effects from commercial use of vessels, and those from private use of vessels.

4. VESSEL ACTIVITIES

Accommodation Vessels

In addition to the houseboat, there have previously been questions asked about the appropriateness of the commercial accommodation available on the vessels Cat-a-Rac and Parore at The Anchorage.



We have considered that provided these vessels were at anchor, and not on moorings, they were not occupying space to the exclusion of others and so did not require consent.

The photo below is of a salmon farm service facility, for a farm in the Marlborough Sounds. TRMP does not currently control a vessel of this kind being anchored and used for accommodation



(‘At anchor’ is used here to mean the anchor is lifted and taken with the vessel when the vessel sails. A mooring is a fixed anchor that is left behind when a vessel sails, usually marked with a buoy so the vessel can return to it.)

Storage Vessels

Another recent activity on the Abel Tasman coastline is the use of a barge for kayak storage.

Moorings

The status of moorings in the District is a long-standing matter. There are moorings that have been authorised by coastal permits; moorings that may have had some former authorisation under the Harbours Act, but which have no current permit; and moorings for which we have no record of authorisation. To date we have not made a systematic approach to require consent applications for all moorings.

Vessels on Foreshore

There are also a few vessels ‘parked’ on the foreshore, in various states of seaworthiness.



Commercial Vessels

The dominant commercial vessel activities in the District are:

- Water taxis
- Kayak hire – guided trips and freedom rentals
- Charter vessels – skippered or bareboat.

The accommodation vessels at The Anchorage are also commercial operations.

5. CURRENT ISSUES

The examples of accommodation vessels, storage vessel, and vessels on the foreshore, are currently not major problems. However, they have occurred in the absence of control measures. More, or larger, accommodation vessels along the Abel Tasman coast, or more houseboats in estuaries, could become a significant problem.

The main issues from these examples are about occupation of coastal space, and amenity effects.

Occupation of coastal space is also the main issue with moorings.

For commercial operations, their effects remain much the same as for private vessel use while the vessels are underway in the coastal marine area. Navigation safety is managed under the navigation bylaw, and discharges are managed under PTRMP Part VI rules. The main issues are congestion and amenity effects at the departure points of Marahau and Kaiteriteri, and “quality of experience” effects in the Abel Tasman National Park area where most clients are delivered.

Coastal activities do not have the same formal existing use rights that land activities have. If new rules were introduced to manage those activities, consent would need to be applied for after those rules are made operative.

Occupation

Section 12 of the RMA requires consent for occupation of coastal space. It is arguable whether consent is needed where a vessel is present at anchor more often than not in the same location.

The argument against classing this as occupation is that when the vessel is absent from that location, another vessel could anchor at the vacated spot and on return the first vessel has no ‘right’ to evict the second vessel. This is the argument Council has previously adopted, when the vessel Cat-a-Rac was named Etosha.

The argument for classing this kind of use as occupation is that the vessel is present in the locality (eg The Anchorage) at more or less the same spot, sufficiently often and for sufficient cumulative duration to be regarded as permanent.

The Otuwhero houseboat is less capable of making any excursion, although it has been reported at Adele Island on one occasion. It appears intended to be used as permanent accommodation, as an alternative to an onshore house. Provided the vessel is anchored, it would not trigger the consent requirement for a mooring. Being tied to trees on the shoreline would not necessarily trigger a consent requirement either. It is not uncommon for the bow of a vessel to be anchored and the stern secured to something onshore.

The owner could circumvent the RMA definition of occupying space in the coastal marine area by shifting the vessel a short distance every few weeks.

The occupation issue is important in relation to the limited areas of coastline that offer sheltered water for anchoring or mooring. The space available at The Anchorage for vessels to anchor temporarily could be significantly reduced by a small number of semi-permanent accommodation vessels.

Amenity Values

The examples shown in the photos raise questions about what kind of activities the community regards as acceptable along the coastline of the District. What values are held about the coastline, how do these activities affect those values, and do these activities need to be controlled in order to maintain those values?

Currently we have not sought to use PTRMP rules to intervene in the 'normal' use of vessels.

Despite the length of shoreline in the District, near-shore boating activity is concentrated along the coastline between Tarakohe and Kaiteriteri. This is a nationally iconic stretch of coastline that includes the beaches, bays, headlands, islands, and estuaries of the Abel Tasman National Park and the adjoining coastal settlements from Ligar Bay to Kaiteriteri.

Natural character, landscape, and amenity values are high. "Normal" boating activities along this coastline range from day-tripping, cruising, short-term charter, to an annual holiday of say two-three weeks. Overnight accommodation on vessels is inherently part of those activities.

The continual presence of vessels, and people on them, in various anchorages along the coastline is an accepted consequence of these activities. We should also retain provision for people (such as cruising yachties) to live aboard when berthed at wharf or jetty facilities in port areas. A limit on duration may need to be considered.

Part of the issue is whether we can make a valid distinction between these 'normal' boating activities, and activities where the vessel is essentially static, its ability to move is largely incidental, and the activity for which it is used would normally occur on land. Alternatively, we could consider whether there are locations where living aboard vessels would be acceptable.

We would also need to distinguish between the mooring or berthing of unoccupied vessels, recognised as a legitimate fact of vessel ownership and use, and authorised by consents in particular locations.

Apart from the question of use for accommodation, the houseboat at Otuwhero and the possibility of a salmon-farm-type vessel being used for accommodation, present a challenge to amenity values in visual terms. Elsewhere in PTRMP, design and appearance of buildings is a matter to be considered for some classes of consent. Control has usually been limited to colour and glare – rarely (if ever) has Council required significant change to the design or materials of a building.

Design and appearance criteria for vessels will be difficult to apply:

- Does it look like a boat?;
- Does it look capable of going anywhere?
- Is it acceptable to the community in this location?

are crude and may not survive challenge, but may be a starting point.

Commercial Operations

Commercial operations that utilise the Abel Tasman Foreshore Scenic Reserve now require a concession under the Reserves Act. The concession regime uses a quota regime to address ‘quality of experience’ issues. The regime does not apply to commercial activities that do not use the Abel Tasman Foreshore Scenic Reserve, and does not apply to freedom hire kayak operations – whose clients may or may not use the Foreshore.

This report does not address these commercial operations further.

6. RELEVANT PLAN PROVISIONS

Prohibited Activity Rule

PTRMP Rule 25.1.8 prohibits occupation of the coastal marine area by any boatshed or other structure used for accommodation. We have not previously considered that this rule might apply to either a houseboat or the accommodation vessels. There is a convoluted path through the definitions of structure and building that might allow this rule to apply. The linkage is tenuous, and legal advice should be sought before this rule is used in any action against these vessels.

The wider perspective is that we should review the prohibited activity rule after deciding policy about vessels used for accommodation, business, or storage.

Policy 21.2.1

The policy requires an assessment of unauthorised structures and works in the coastal marine area against a range of environmental factors, then requiring either that authorisation is sought for them or that they are removed. The policy simply reflects section 12 of the Act which requires structures or occupation of the coastal marine area to be authorised either by plan rules or by resource consent.

7. OTHER COUNCILS

Northland Regional Council has a complementary pair of permitted / prohibited activity rules about anchoring, which apply in several marine zones. The rules limit anchoring to not more than 14 consecutive days in the same embayment, inlet or estuary, except for bad weather, accident or emergency.

The Northland rules also make houseboats a non-complying activity in two marine zones. The plan defines a houseboat as:

“a structure or vessel which is designed to be the floating equivalent of a residential dwelling or office or motel and which is primarily used as such”.

The Northland plan includes a comprehensive set of assessment criteria for determining consent applications:

- Operational requirement
- Cumulative effects
- Public access
- Natural character
- Effects on neighbourhood and the wider community
- Landscape values
- Ecological impacts
- Need for facilities such as car parking or refuse disposal
- First or only one of its type or scale in a locality
- Likelihood of leading to additional proposals
- Appropriateness of the use in that locality
- Any mitigation measures
- Discharges
- Associated with a property accessible only by water
- Suitability for permanent mooring in terms of wind and waves

Southland Regional Council distinguishes between accommodation that is incidental to the primary operation of a vessel, and where accommodation is the primary activity. The plan lists effects of exclusion, amenity, natural character, discharges, and public access. It also refers to a functional need to be in the coastal marine area. Southland has a policy to discourage ships being used as a base or as accommodation, but gives discretionary activity status to that role.

8. OPTIONS FOR TASMAN

8.1 Existing PTRMP policies refer to:

- adverse effects on amenity values and natural values, including wildlife, natural quiet, and quality of experience;
- adverse effects on natural character and outstanding natural features, landscapes and seascapes;
- structures for which a coastal location is necessary;

- public access;
- visual amenity.

Most of those policies refer to structures, but could be amended to apply to vessels as well.

8.2 These existing policies generally include remedy or mitigate options. Rules designed to avoid certain effects would not be consistent with policies that include remedy or mitigate options.

8.3 New policies to emphasise what we want to achieve or avoid in relation to the use of vessels would be more appropriate. For example:

- to distinguish between activities that primarily utilise the navigation capabilities of vessels, and activities that use vessels for a primarily static purpose; or
- to prevent (oppose, discourage) the use of craft or the occupation of the coastal marine area for purposes which have no functional need to be in the coastal marine area;
- to limit the extent that public space (especially the limited locations of sheltered space) is taken up by permanent or semi-permanent occupation;
- to adopt a precautionary approach to potential and cumulative effects of uses of the coastal marine area;
- to allocate a specific location for accommodation vessels.

8.4 The policies could be supported by an explanation such as:

“The use of craft for navigation purposes, including recreational boating activities, is accepted as a normal activity in the coastal marine area. The use of limited locations for mooring unoccupied craft is also a normal activity, but a requirement for consent is appropriate for this private use of public space.

The use of craft for purposes which have no functional need to be in the coastal marine area, such as residential accommodation, commercial accommodation, storage of gear or equipment for some other activity, restaurant, café, bar, office, or other place of business, is regarded as inappropriate along the general coastline of the District. Such activities might be authorised in limited circumstances in port areas. Elsewhere, a mix of natural character, landscape, ecology, public access, amenity and quality of the environment factors warrant priority.”

8.5 Rule Options

The current accommodation vessels and houseboat have been able to exist and operate because there is no plan rule saying otherwise, or requiring consent to be sought. The usual range of RMA consent classes is available:

Permitted activity – allows the activity, but may make it subject to specified conditions;

Controlled activity – Council must grant consent, but may apply conditions on specified matters.

Use of either of these classes would be minimal improvement over the current situation.

Discretionary activity – Council has discretion to grant or refuse consent, plus discretion to apply conditions. Courts have taken a view that a discretionary activity can be regarded as generally appropriate in the relevant zone. The policy under which the rule sits, or any matters listed for determining an application, would have to give strong direction to create grounds for refusing consent.

Non-complying – this class has significant hurdles to consent being granted, provided plan objectives and policies give sufficiently clear direction:

- Whether adverse effects on the environment will be minor; or
- The activity is not contrary to plan objectives and policies.

Prohibited – the activity cannot be applied for, and consent cannot be granted.

We will need to consider whether a single rule, applying to all such activities throughout the District, is appropriate. Alternatively it may be appropriate to distinguish between parts of the District that have different character or values: for example, ATNP coastline, port areas, estuaries. We would also need to consider whether there are grounds for different levels of control for different kinds of activity. For example, can a distinction be made between the Cat-a-Rac operation and the houseboat in Otuwhero Inlet?

Possible draft rule:

“The occupation of the coastal marine area by any craft (whether anchored, moored, berthed, beached, or otherwise secured) that is used for an activity that has no functional need to be in the coastal marine area is a non-complying activity.”

In addition to the assessment criteria used by Northland, the following may also be relevant:

- Limited sheltered space available for all-tide mooring;
- Duration;
- Size, type, design, appearance, of vessel;
- Advertising on the vessel;
- Amenity of the locality.
- Likelihood of noise;
- Seaworthiness.

‘Occupation’ and ‘functional need’ are the key factors in the draft rule suggested above. ‘Occupation’ is defined in the Act, but PTRMP would need to include a definition of ‘functional need’.

The Northland rule is based on duration of stay in any one embayment. For Northland, it has the advantage of applying to people using a vessel in “extended cruise mode” that might involve anchoring for weeks at a time away from port areas where they might incur berthage fees. Disadvantages are the compliance/enforcement costs of keeping track of vessels, including a succession of vessels moving from bay to bay as their ‘parking’ times expire.

It is likely to be difficult to draft definitions that distinguish between:

- a hostel or hotel type of accommodation operation, and a charter vessel; or
- a houseboat, and a launch or yacht that is built for more than day-trips.

We will need to be clear about what we want to achieve or avoid.

9. RELATED MATTER - COASTAL OCCUPATION CHARGES

PTRMP at present contains no policy about coastal occupation charges. RMA section 401A requires that when the next amendment to the regional coastal plan component of PTRMP is notified, the notification must include either a statement or a regime about coastal occupation charges.

Council has a long-standing resolution to apply coastal occupation charges. However, those charges can only be set through the RMA First Schedule process of public notification and submissions. Like most other regional councils, Council has chosen not to embark on that process.

Over several years, regional councils sought to collaborate on establishing a common rationale and methodology for setting coastal occupation charges. At the same time they were also lobbying central government to remove coastal occupation charges from the public processes of the First Schedule, leaving them to be set either as RMA section 36 charges, or as under the Local Government Act. Marlborough District Council also proposed that marine farms in particular could be rated.

None of these efforts was successful. The Proposed New Zealand Coastal Policy Statement 2008 now states at policy 34:

“To promote the sustainable management of the coastal marine area and have particular regard to the Crown’s interest in obtaining public benefits from any occupation of public land, regional councils should, where appropriate, establish a coastal charging regime. When considering a charging regime, regional councils shall take account of the criteria in Schedule II.

Regional councils shall amend regional coastal plans and proposed regional coastal plans, as necessary, to give effect to this policy no later than 12 months after the gazettal of this New Zealand Coastal Policy Statement, using the process set out in Schedule 1 to the Resource Management Act 1991.”

(A copy of Schedule II is attached to this report.)

Section 64A of the RMA, under which coastal occupation charges are set, allows a council to determine that it will not include coastal occupation charges. If that decision is made, a statement to that effect must be included in the regional coastal plan. As for occupation charges, such a decision can also be the subject of submissions and appeals.

To develop a coastal occupation charge regime, we would need to:

- review the range of activities that have coastal permits for occupation;
- decide which categories of occupation warrant an occupation charge;
- decide an appropriate charge (or formula for setting a charge) for each category;
- decide on circumstances where a reduction or waiver of charge might apply.

The prospect of applying coastal occupation charges where occupation is authorised by a coastal permit emphasises the disparity where similar activities exist without current authorisation. Moorings are an example where:

- some had pre-RMA authorisation which has since expired and has not been replaced;
- some have been established informally.

These are in addition to those that have been authorised by coastal permit, and those that are authorised by PTRMP Rule 25.1.2.

Fairness suggests that implementation of coastal occupation charges would require Council to commit to ensuring that any structure occupying space in the coastal marine area is either authorised or removed, prior to the application of charges to that particular category of use.

All aquaculture activities in the District are authorised; and there would be no disparity between marine farmers if charges were applied to aquaculture. Moorings are not all authorised, and the application of charges to those that are authorised would exacerbate the disparity with those that are not authorised. Marine farmers may say there is unfairness if their activity is subject to charges, while other forms of occupation are either not charged at all, or charges are deferred until all in a particular group (e.g. moorings) have the necessary coastal permit.

Council would need to resolve these issues in developing a regime for coastal occupation charges.

The reason for including this material on coastal occupation charges in this report is to ensure that Council is aware that a decision to amend the coastal plan for any reason, such as in relation to the use of vessels, or amending aquaculture provisions, will trigger additional work in preparing a statement or regime on coastal occupation charges.

10. DIRECTION SOUGHT

Direction from Council is sought on policy for:

- accommodation vessels
- houseboats
- vessels used for storage or other businesses.

Direction is sought on what action is to be taken in relation to vessels that are moored or at anchor for effectively permanent duration, which have no current authorisation.

Direction is also sought on Coastal Occupation Charges.

Neil Jackson
Policy Planner

Schedule II

1. In any region where:
 - (a) as a result of occupations, the general public are excluded from areas that would otherwise be of value for public access, or other substantial public benefits are lost; and
 - (b) the private benefit gained from occupations is such that a fair and administratively efficient charging regime would deliver net revenue for projects that promote better management of the coastal marine area, the regional council should include a coastal occupation charging regime in its regional coastal plan.
2. After having regard to the public benefits lost or gained and the private benefits gained, regional councils should also, when setting the level of charges to be paid under any coastal occupation charging regime:
 - (a) provide that private occupation of public land should deliver a fair return that will be available for investment in the sustainable management of the coastal marine area; and
 - (b) provide that no charges apply to occupation of land in the coastal marine area to which the High Court has found that a group would, but for the vesting of ownership under section 13(1) of the Foreshore and Seabed Act 1994, have held territorial customary rights at common law; and
 - (c) consider the proposed activity, and the activities enabled by the coastal permit, together with the occupation, rather than considering the occupation itself in isolation; and
 - (d) have regard to the role coastal occupation charges can play as an economic instrument that can contribute to sustainable management of the coastal environment; and
 - (e) avoid creating a perverse economic incentive for activities to locate in the coastal marine area, rather than on land; and
 - (f) have regard to the benefits of setting the level of charges at the same level as a market rental, including the benefits of:
 - (i) providing an incentive for developers to develop new and innovative approaches to delivering services that will minimise the demand for exclusive occupation of the coastal marine area, and
 - (ii) delivering fair competition for those developers who have already undertaken innovative developments on private land; and
 - (g) have regard to the uncertainty over fair charging levels where there is little market information, and should initially set charges at a conservatively low level with a view to amending charges as more information on fair market rental levels becomes available; and
 - (h) consider using a range of charging methodologies to achieve a fair return for different activities and different circumstances; and
 - (i) consider the administrative advantages of setting standard charges for smaller occupations; and

- (j) consider the advantages of a charging methodology that is responsive to varying market values for coastal space, especially offshore space; and
 - (k) consider a transitional period to phase in new charges.
3. When considering the circumstances warranting a reduction or waiver of charges under any coastal occupation charges regime, regional councils should:
- (a) as part of having regard to the public benefits lost or gained and the private benefits gained, consider whether the consent holder would be:
 - (i) contributing to the management of the coastal marine area or providing services in the coastal marine area that the regional council would otherwise provide; or
 - (ii) enhancing general public access to and along the coastal marine area; or
 - (iii) enhancing the use and enjoyment of the coastal environment by the general public; or
 - (iv) enhancing protection of habitats, animals and plants that would otherwise be sensitive to damage by public access and activities; and
 - (b) consider whether:
 - (i) the costs of setting and collecting the charges would exceed the value of the charges collected; or
 - (ii) any other circumstances of the occupation warrant a reduction or waiver.