



Report 10.617
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Committee Council
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Submission – Marine and Coastal Area (Takutai Moana) Bill

1. Purpose

To seek approval of the Greater Wellington submission on the Marine and Coastal Area (Takutai Moana) Bill set out at **Attachment 1**.

2. Significance of the decision

The matters for decision in this report do not trigger the significance policy of the Council or otherwise trigger section 76(3)(b) of the Local Government Act 2002.

3. Background

The Government recently released the Marine and Coastal Area Bill (the Bill) for comment.

The Bill repeals the Foreshore and Seabed Act 2004 (the 2004 Act) and restores the customary interests extinguished by that Act. It recognises, through the protection of public rights of access, navigation, and fishing, the importance of the common marine and coastal area for its intrinsic worth for the benefit, use and enjoyment of all New Zealanders.

The Bill aims to recognise the relationship of iwi and hapū, as tangata whenua, over the foreshore and seabed of New Zealand. It does so by giving legal recognition, protection, and expression to the customary interests of Māori in the area.

The Bill is currently before the Māori Affairs Select Committee. Public submissions close on the Bill close on Friday 19 November 2010.

The submission has been prepared with input from all relevant business areas of Greater Wellington, including Māori Relations, Environmental Policy and Regulation, Flood Protection and Property. The preparation of the submission has also been informed by discussions with CentrePort Ltd, Local Government

New Zealand and other local authorities (including regional councils, unitary authorities and Wellington City Council).

4. Key aspects of the Bill

4.1 Common marine and coastal area

The common marine and coastal area (CMCA) is the area from high water mark at mean high-water spring tides extending for 12 nautical miles (the territorial sea). This includes the subsoil and the waterspace and airspace above this area, but not the air or water itself.

The model proposed in the Bill accords a new status to this area, whereby either the Crown or any other persons can own the CMCA. There are several exceptions to this new status. For example, roads in the CMCA continue to be owned by the owner of the road and structures fixed to, or under or over any part of the CMCA continue to be personal property. The new status does not limit or affect any resource consent or proprietary interests, such as a lease or licence granted prior to the Bill's commencement.

The Bill protects rights of public access and recreation on the CMCA and navigational rights. These rights are subject to restrictions, such as those relating to the protection of waahi tapu. As manager of the CMCA, the Minister of Conservation is given various powers, such as the power to direct any person in the CMCA to stop an activity if, for example, that activity prejudices the preservation of the natural features.

The Bill provides that new reclaimed land is to vest in the Crown but also provides a process whereby the reclaimer of the land can apply to the Crown to obtain a fee simple title or other interest in the land. There is a presumption that airports and port companies and customary marine title groups will get the land back from the Crown upon an application being made.

4.2 Customary interests

The Bill restores recognition of the customary interests which were removed under the 2004 Act. These interests are **protected customary rights** and **customary marine title**. The process for obtaining these rights is that a group can seek a the right or title to a part of the CMCA be recognised by either an agreement with the Crown or an order of the High Court within six years of the Bill commencing.

4.2.1 Protected customary rights

A protected customary right (such as launching waka and gathering hangi stones) can be exercised in a protected customary rights area without a resource consent despite any restriction or imposition that would apply otherwise under the Resource Management Act 1991 (RMA). However, the test is quite high (an activity exercised in 1840 and that continues to be exercised today in accordance with tikanga) and the Minister can impose controls at any time if the Minister determines that the exercise of the right has, or is likely to have, a significant adverse effect on the environment.

Resource consents cannot be granted for an activity that is to be carried out in a protected customary area if that activity will, or is likely to, have more than minor adverse effects on the exercise of the protected customary right, unless one of the exceptions apply, for example the group gives its written approval.

4.2.2 Customary marine title

The Bill provides for the right to seek customary marine title to a specific part of the CMCA if the applied for area has been used and occupied by a group according to tikanga and to the exclusion of others without substantial interruption since 1840. It does not include a right to sell the land.

A customary marine title obtains a number of rights, including a permission right under the RMA that enables the group to permit or withhold permission for an activity in the area on any grounds. An activity cannot commence until permission is received from the relevant group.

Importantly, these permission rights do not override **accommodated activities**. Accommodated activities include permitted and already consented activities under the RMA, existing structures and infrastructure that is nationally or regionally significant (and their associated operations), conservation activities and emergency activities.

The Bill confers a right upon the customary marine title group to prepare a planning document, setting out the objectives and policies in respect of its customary marine title area. Once lodged and registered, local authorities must take the planning document into account when exercising decision making functions and regional councils are to ensure that all regional documents, including plans and policy statements, provide for the matters set out in the planning document.

5. Focus of Greater Wellington's submission

5.1 Background

Greater Wellington's submission is focused on the implications of the Bill for the sustainable management of the marine and coastal areas in the Wellington region.

The submission is written with a view that the determination and recognition of Māori customary rights are primarily questions for resolution between the Crown and Māori. With this in mind, the submission does not address that substantive policy issue but considers issues of direct concern to Greater Wellington in carrying out our functions and duties under the Local Government Act 2002 and the RMA.

The submission provides general comments about the Bill, followed by a table containing more detailed comments and suggested amendments to specific clauses.

5.2 Workability and interface with the RMA

Given the integrated nature of issues being considered, it is critical that the legal framework provided by the Bill provides is workable and ensures agreements and processes are enduring for local government, iwi, central government, and communities.

The Bill in its current form is very complex and there are several areas that require clarification or rewording to ensure the Bill delivers on the Crown position and intent. The interface with the RMA is particularly important in this regard as there is significant cross-over with the Bill in relation to plan making, consenting, monitoring and enforcement.

Overall, the parts of the Bill relating to protected customary rights and marine title have the greatest potential to impact on existing regional council functions.

5.2.1 Protected customary rights

The provisions relating to protected customary rights could, subject to certain conditions, override provisions in regional planning documents and consent applications. However it should be noted that meeting the test that the activity has been exercised since 1840 and has continued to this time in accordance with tikanga, will be difficult to meet.

The key area of concern, in terms of sustainable management, is whether these activities could evolve over-time to the extent that they resulted in significant adverse effects on the environment. The submission requests a tightening of scope to ensure such activities cannot expand and evolve to such a level.

5.2.2 Marine title and planning documents

The provisions relating to planning documents is a key area that requires clarification to ensure a workable interface with the RMA.

The Bill enables a customary marine title group to develop a “planning document” to set out the objectives and policies of the group for the area, or for a wider part of the marine and coastal area where the group exercises “customary authority”. As “customary authority” is not defined, or discussed in any other part of the Bill, this introduces significant uncertainty for local authority plan making functions.

Clarification is also required to provide certainty about the extent to which local authorities are required to recognise and provide for matters in iwi planning documents. Under the current Bill, there appears to be little discretion for councils to ensure changes to regional planning documents relate to the promotion of sustainable management under the RMA.

The submission suggests that it would be beneficial for regional councils to be involved in some way during the development of planning documents. This will ensure planning documents are effective, meaningful and include matters that would assist regional councils give effect to such documents.

5.3 Reclamations

The provisions relating to reclamations have had significant input from port companies, including CentrePort Ltd. The Bill includes a presumption that ports and airports will be granted a freehold interest in reclaimed land (as opposed to long term lease under the current Foreshore and Seabed Act 2004). The Bill also passes responsibility for the issuing of title for reclamations from the Minister of Conservation to the Minister of Lands. The submission supports these changes as they are considered to improve the process for reclamations as well as provide greater certainty for CentrePort to carry out its core business.

6. Communication

No communications are necessary at this time.

7. Recommendations

That the Council:

1. ***Receives the report.***
2. ***Approves the attached submission.***

Report prepared by:

Report approved by:

Report approved by:

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Nicola Shorten
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Attachment 1: Submission from Greater Wellington on the Marine and Coastal Area (Takutai Moana) Bill