

# Report on Assessment of Alternatives under Section 32 of the Resource Management Act

## **Plan Change 71** **Coastal Occupation Charges**

February 2020

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# 1. Introduction and Planning Context

## 1.1 Purpose of the Report

The Resource Management Act 1991 (RMA) enables regional councils to introduce a charging regime for the occupation of space within the coastal marine area. From the 1 October 2014 all regional councils are required to amend their regional coastal plans and either introduce a charging regime or to state in their plans that no charging regime will be imposed. Until this change is made, regional councils are prevented from undertaking further changes to their regional coastal plans.

Tasman District Council (TDC) has made a significant contribution to the development of coastal occupation charging regimes alongside other regional councils at the national level. Through that work, significant barriers to the implementation of a charging regime have been identified. Regional councils have worked with the Government over the years to try to reduce the barriers to implementation, but have been largely unsuccessful to date and the barriers to implementation remain. Despite this, the requirement to address coastal charges remains and TDC has made the decision to proceed with a plan change to address the matter. This decision will enable TDC to continue with its statutory responsibilities to sustainably manage the coastal environment, including amending and reviewing the regional coastal plan (Plan).

The purpose of this plan change is solely to meet the requirements of sections 64A and 401A of the RMA which require TDC to address coastal occupation charges.

In considering whether or not to introduce a charging regime, section 64A of the RMA requires TDC to have 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.

If TDC decides to introduce a charging regime, it must include the following:

- The circumstances when a coastal occupation charge will be imposed.
- The circumstances when the regional council will consider waiving (in whole or in part) a coastal occupation charge.
- The level of charges to be paid or the manner in which the charge will be determined.
- The way the money received will be used (in terms of promoting the sustainable management of the coastal marine area).

TDC has considered the extent to which public benefit is gained and lost from coastal occupation and has decided in principle that where private gain is greater than public gain then the public should be compensated. However, due to the identified barriers to implementation, TDC has decided **not** to introduce a charging regime at present. TDC is still required to undertake a plan change to state this decision.

Whenever a plan change is undertaken, the RMA requires an evaluation report (prepared under section 32) that assesses the extent to which the purpose of the plan change is the most appropriate way to achieve the purpose of the RMA and the extent to which the proposed changes are the most appropriate to achieve the purpose of the plan change.

This report is the section 32 evaluation report and it also includes TDC's considerations under section 64A.

## 1.2 Coastal Occupation Charges

### 1.2.1 Background

Coastal occupation charges are a charge that can be made against any person who occupies public space within the coastal marine area. Charges replace a system of coastal rentals that had, in turn replaced the Harbour Act lease and licence fees that applied prior to 1991. 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.

In 1991 when the Act was first gained ascent, it contained a system of coastal rentals that were to be administered by regional councils and the revenue was to be passed on to central government. The amounts to be paid were set by the Resource Management Transitional, Fees, Rents and Royalties) Regulations 1991. Regional councils, with the exception of Southland, refused to implement the rentals and urged the Government to amend the legislation to allow the revenue to remain in the regions. In 1997, the Act was amended and coastal rentals were replaced with coastal occupation charges. The 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.

### 1.2.2 Principles Underlying Coastal Occupation Charges

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.

Public access, use and enjoyment of the coastal marine area can be restricted, prevented or enhanced by structures and activities occupying space, in particular those that involve a permanent or ongoing occupation of the coastal marine area. Coastal occupation charges are one way in 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. If somebody wished to rent/lease private property or to occupy and use public parkland for commercial use, he/she would expect to pay for that space e.g. Department of Conservation concessions for commercial operators in Abel Tasman National Park. Where an activity is occupying space in the coastal marine area and private benefit is gained, consideration is required if a charge or rent should be paid for that benefit.

It is on this basis that the coastal occupation charges are founded – namely councils must have regard to the extent to which the 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. This is discussed in more detail in Section 2: Public and Private Benefit Assessment.

## 1.3 Statutory and Legislative Framework

Before completing an evaluation under section 32 of the RMA, TDC is required to examine the extent to which the objective of this plan change, *to address the requirements of the*

section 64A, are the most appropriate way to achieve the purpose of the RMA. To do this TDC is required to look at the provisions in the RMA, other documents and strategies that arise from the RMA and other related legislation. The purpose of this is to ensure decision-making across relevant statutory and planning frameworks is integrated.

The statutory and policy considerations for any coastal occupation-charging regime is outlined below.

## **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 TDC 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 TDC 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.

## **Part II of the RMA**

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 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).

## **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.

## **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 TRMP; however, the TRPS does not include any specific provisions relevant to coastal occupation charges.

## **Tasman Resource Management Plan (which includes the Regional Coastal Plan)**

The purpose of the Tasman Resource Management Plan (TRMP), in part, is to assist TDC, 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.

## **Marine and Coastal Area (Takutai Moana) Act 2011**

The Marine and Coastal Area (Takutai Moana) Act 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. The Act 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.

## **Summary of Statutory and Policy Framework**

Sections 401A and 64A of the RMA require TDC to either implement a coastal charging regime or include a statement in the plan to the effect that TDC 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 TDC 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 Tasman Regional Policy Statement or the Tasman Resource Management Plan.

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.

## 2. Public and Private Benefits Assessment (Section 64A)

Section 64A of the RMA requires councils to have regard to both public benefits (lost and gained) and private benefits (gained) in determining whether or not to introduce a charging regime.

It is considered that private benefit occurs where occupations/use by one excludes the use of that space by another. A public benefit occurs where no one is excluded from use or enjoyment and the benefits are available to everyone in the community for that space. The majority of occupations fall between these two extremes with few occupations having total private or public benefit. For example, a private marina might exclude the general public, however in most cases they provide public facilities in the form of boat ramps, refuelling and ablution/toilet facilities. At the other end of the spectrum, a public boat ramp may prevent other uses; however, the occupation is fully for the benefit of the public.

The following authorised coastal occupations occur in Tasman District

**Table 1: Number and Type of Coastal Occupations<sup>1</sup>**

| Type of Structure                  | Authorisation     | Number                   |
|------------------------------------|-------------------|--------------------------|
| Wharves and Breakwaters            | Permitted by TRMP | 12                       |
| Boat Ramps                         | Permitted by TRMP | 22                       |
| Swing Moorings                     | Permitted by TRMP | 23                       |
|                                    | Coastal Permit    | 45                       |
| Jetties and berths                 | Permitted by TRMP | 34                       |
|                                    | Coastal Permit    | 161?                     |
| Bridges in CMA                     | Coastal Permit    | 6+                       |
| Utilities (pipes and power cables) | Coastal permit    | 19                       |
| Swim platform                      | Coastal Permit    | 2                        |
| Marine farm                        | Coastal Permit    | 40<br>(Total= 2156.71ha) |
| Marine farm<br>(Spat catching)     | Coastal Permit    | 15<br>(Total =7370 ha)   |

The allocation of benefits and costs to the differing types of occupation is a subjective exercise which varies according to the judgement of the person(s) carrying out the exercise and particular circumstances of each occupation.

The following benefits and costs are considered to arise from coastal occupation in Tasman District.

<sup>1</sup> Compiled from coastal permit data for occupancy taken from MagiQ on the 9/10/2019

**Table 2: Benefits and Costs of Occupation in the CMA**

| Occupation Type                                |         | Private Benefit Gained  | Public Benefit   |  |
|--|---------|---|--|--|
|  |         |   | Gained   | Lost   |
| Mooring (swing, pile)                          |         | Boat security<br>Accessibility<br>Convenience   | Safety (low risk to other boats or property)   | Opportunity to occupy the same space for other uses and activities.<br><br>May impede access along the foreshore.  |
| Marina   |         | Security/ Safety<br>Accessibility (to land, associated facilities e.g. disposal points).<br>Storage<br>Profit                 | Safety (low risk to other boats or property)<br><br>Additional public facilities often provided e.g. boat ramps and ablution blocks  | Opportunity to occupy/ access the same space<br><br>May impede access along the adjoining foreshore.   |
| Jetty/Wharf/ boat ramp                         | Public  | Access and use<br>Berthing/ storage<br><br>Passive use and recreation (e.g. fishing, walking)<br>Accessibility<br>Convenience | Access and use<br>Berthing/ storage<br><br>Passive use and recreation (e.g. fishing, walking)<br>Accessibility<br>Convenience  | Opportunity to occupy the same space, although other use of space may be possible depending on structure size, height above water surface etc.<br><br>May impede access along adjoining foreshore                      |
|  | Private | Access and use<br>Berthing/ storage<br><br>Passive use and recreation (e.g. fishing, walking)<br>Accessibility<br>Convenience | Potentially(subject to conditions of consent)–Access and use<br><br>Berthing/storage<br>Passive use and recreation (e.g. fishing, walking)<br>Accessibility<br>Convenience | Opportunity to occupy the same space, although other use of space may be possible depending on structure size, height above water surface etc.<br><br>May impede access along adjoining foreshore                      |
| Boat shed/ Factories (other private buildings) |         | Security/safety<br>Weather protection<br>Accessibility<br>Convenience<br><br>No cost of storage on land                       | Safety/ lighting   | Opportunity to occupy the same space, although other use of space may be possible depending on structure size, height above water surface, exclusivity of use etc.<br><br>May impede access along adjoining foreshore. |

| Occupation Type                                  | Private Benefit Gained  | Public Benefit   |   |
|--|---|--|---|
|  |   | Gained   | Lost  |
| Marine Farm                                      | Access<br>Use<br>Productivity<br>Profit   | Navigational aid/<br>safety<br><br>Possible fish<br>attraction<br><br>Wider socio-<br>economic benefits<br>(e.g. enhanced<br>(local) employment<br>opportunities and<br>export earnings) | Opportunity to occupy<br>the same space (note:<br>may not occupy entire<br>permit area or for the<br>whole year)<br><br>Limited public<br>accessibility (e.g. large<br>vessels, crossing over<br>lines)<br><br>Loss of opportunity to<br>navigation, recreational<br>fishers etc particularly<br>where large areas are<br>involved. |
| Utility Service (public<br>utilities e.g. power) | Health/ safety of<br>individuals<br><br>Provision of<br>services<br><br>Profit (private<br>companies) | Health/safety of<br>wider<br>public/community<br><br>Provision of services   | Opportunity to occupy<br>the same space,<br>although generally<br>unobtrusive as below<br>surface.<br><br>No opportunity for other<br>use of occupied space,<br>may be less restrictive if<br>below surface of on<br>seafloor.<br><br>May be other necessary<br>exclusions (e.g.<br>anchoring, mooring or<br>dredging).             |
| Domestic pipelines<br>(private)                  | Convenience<br><br>Access<br><br>Use<br><br>Provision of<br>services                                  | Health/safety  | Opportunity to occupy<br>the same space,<br>although generally<br>unobtrusive as below<br>surface.<br><br>No opportunity for other<br>use of occupied space,<br>may be less restrictive if<br>below surface of on<br>seafloor.<br><br>May be other necessary<br>exclusions (e.g.<br>anchoring, mooring or<br>dredging).             |
| Bridges (public)                                 | Safety<br><br>Convenience<br><br>Access   | Safety<br><br>Convenience<br><br>Access<br><br>Wider socio-<br>economic benefits   | Opportunity to occupy<br>the same space,<br>although other use of<br>space may be possible<br>depending on structure<br>size, height above water  |

| Occupation Type                   | Private Benefit Gained                 | Public Benefit                                   |  |
|-----------------------------------|--|--|--|
|                                   |  | Gained   | Lost   |
|                                   |  | (e.g. enhanced (local) employment opportunities. | surface etc  |
| Swim Platform (public) - seasonal | Convenience<br>Access<br>Health/safety | Convenience<br>Access<br>Health/safety           | Opportunity to occupy the same space, although the structures are short term and the space can be used when the space is not in use. |

The Marlborough District Council undertook an exercise in 1999<sup>2</sup> to quantitatively assess the relative benefits associated with different types of occupation. This assessment is well documented, based on a sound rationale, and is considered to be a fair representation of the benefits. The findings from this analysis are detailed in the following table.

**Table 3: Net Private Benefit<sup>2</sup>**

| Occupation (type)                  | Private Benefit (a) | Public Benefit Gained (b) | Public Benefit Lost (c) | Net Private Benefit a+(c-b) |
|------------------------------------|---------------------|---------------------------|-------------------------|-----------------------------|
| Mooring                            | 5                   | 2                         | 3                       | 6                           |
| Marina                             | 5                   | 4                         | 4                       | 5                           |
| Jetty/wharf (private)              | 4                   | 4                         | 3                       | 3                           |
| Jetty /Wharf (public)              | 1                   | 5                         | 2                       | -2                          |
| Boat Ramp(private)                 | 5                   | 1                         | 3                       | 7                           |
| Boat Ramp(public)                  | 1                   | 5                         | 2                       | -2                          |
| Mussel Farm [traditional mussel]   | 4                   | 3                         | 4                       | 5                           |
| Utility (e.g. power)               | 1                   | 1                         | 2                       | 2                           |
| Domestic Services e.g. storm water | 5                   | 1                         | 2                       | 6                           |

TDC in accordance with the underlying principles of coastal occupation charges considers, in principle, that where private benefit is greater than public benefit, the public should be compensated. Based on the above analysis, all coastal occupations (except public jetty/wharfs and public boat ramps) could be considered to have greater private benefit than net public benefit and consent holders should compensate the public for loss of use.

<sup>2</sup> Boffa Miskell Limited. (1999) Coastal Occupancy Charges

[http://www.marlborough.govt.nz/sitecore/shell/Controls/Rich%20Text%20Editor/~/\\_media/Files/MDC/Home/Your%20Council/RM A/RPS/Review/CoastalOccupancyChargespreparedbyBoffaMiskellLimited.pdf](http://www.marlborough.govt.nz/sitecore/shell/Controls/Rich%20Text%20Editor/~/_media/Files/MDC/Home/Your%20Council/RM A/RPS/Review/CoastalOccupancyChargespreparedbyBoffaMiskellLimited.pdf)

### 3. Evaluation of Coastal Occupation Charges Options

In addition to the assessment of the appropriateness of this plan change under the statutory and planning frameworks (section 1.3) and the assessment of net public benefits and losses (section 2), TDC is required to assess the appropriateness of the proposed changes in achieving the purpose of the plan change. This requires an examination of the options, assessing the efficiency and effectiveness (including costs and benefits and risks of acting and not acting) and a summary of the reasons why TDC has made its decision.

#### 3.1 What are the options?

The RMA provides TDC with two options for meeting the requirements of sections 64A and 401A:

1. Amend the Plan to include a statement which gives effect to a decision **not** to establish a coastal occupation charging regime (section 64A(2)); or.
2. Amend the Plan to introduce a coastal occupation charging regime (section 64A(3)). The charging regime is required to cover the following:

(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.

#### 3.2 Effectiveness and Efficiency

The RMA requires TDC to assess how efficient and effective the two options will be in achieving the objectives of the plan change or how successful the options will be in solving the problem.

In undertaking this assessment, TDC is required to identify and assess the effects that are anticipated from the proposal and assess the risk of undertaking the change, or not, where uncertainty or insufficient information.

##### 3.2.1 How Effective and Efficient are the options?

Both options 1 and 2 fulfil the requirements of section 64A and 401A and are effective in addressing the issue of coastal occupation charges as required by the RMA. However, TDC (along with other regional councils and government agencies) have been working for a number of years to develop a methodology for a coastal occupation-charging regime. Through this collaborative work, considerable uncertainty regarding coastal occupation charges has been identified. Regional councils have been working with Government to achieve greater certainty, but have been unsuccessful to date. The following barriers to implantation have been identified.

## **Definition**

The lack of guidance in the RMA has created a significant barrier to understanding what an occupation charging regime is, how to develop one and how it should be implemented. Coastal occupation charges are commonly described as akin to a rental, however others, believe it more like a fee, rate or a contribution.

## **Methods for Calculating Charges**

The lack of clarity about what the charge actually is has made it difficult to determine what the level of charge should be or a methodology for calculating one. A variety of methods for calculating similar types of charges and rentals are used worldwide, including using neighbouring terrestrial land values, charging percentages of income of commercial operations and commercial market rates. However, in the absence of an established system, councils have to start from scratch in setting up a charging regime to meet the purpose of the RMA and have little historic precedence to rely on. There has been a large amount of academic debate regarding the various charging regimes that have been proposed so far, and all have been challenged regarding methodology.

More recently Marlborough District Council have developed and notified a coastal charging regime in their regional coastal plan and it is understood that the Government is currently considering introducing a charging regime through further RMA reforms. In the next few years the issue of the level of charge and how to calculate the charges may be resolved, but at the moment the issues remain unresolved.

## **No Presumption that Charges should apply**

There is no presumption in legislation in favour of charging and any decision must be subject to the plan change process. While significant and well-reasoned work has been undertaken by regional councils to define the principles and form of coastal occupation charges, it is anticipated that without statutory guidance any charging regime is likely to be debated in the courts with no predictable outcome.

## **Issues of Equity and Consistency**

For councils to charge for coastal occupancy, the occupation must be authorised (either through the Plan or by a coastal permit) and the council needs to know who the occupier is. Currently there are a significant number of structures in Tasman District that are unauthorised and/or the owner is unknown. TDC has a statutory obligation to identify the owners of coastal structures and where the owner is not found then the Minister of Conservation may, at her discretion, order the removal of the structure. Until all structures are authorised with known owners, or removed, then the imposition of charges would only affect those people with authorised structures, which may perversely encourage the establishment of more illegal structures.

## **Financial Return**

It is unclear whether the administrative costs from the charging regime can be recovered from the charges. If the costs cannot be recovered then the administrative costs would need to be met through general rates. If the costs can be recovered then after the exemptions have been applied, there may only be a modest financial return.

Until the above matters of uncertainty are addressed, TDC considers it would be costly, litigious and difficult to introduce a coastal occupation charging regime under Option 2. Option 1 is considered to be a relatively simple matter as this option represents the status quo. The costs and benefits and risks from each other are further assessed below.

### 3.2.2 How do the Costs and Benefits of the Options Compare?

A decision whether or not to establish a charging regime has limited impact on environmental or social costs and benefits. The effects of the occupation – loss of public access and natural character are addressed through other provisions in the Plan. The introduction of a charging regime does however have a direct economic implication both for the community and for TDC. Unfortunately, the actual economic benefits and costs arising from a charging regime cannot be quantified until a regime is developed and the charges set. Some use has been made of the Environment Southland and Marlborough District Council’s work regarding coastal occupation charges and figures from their table of charges have been included in this evaluation to give some indication of costs, but should not be taken as a reflection of any proposal by this Council.

The following is a general assessment of the benefits and costs for the two options.

| Option  | Benefit   | Costs  |
|---|---|--|
| <b>Option 2:<br/>Plan change that includes Coastal Occupation Charges</b> | <ul style="list-style-type: none"> <li>• Provides a target-funding source for sustainable management of the CMA.<sup>3</sup></li> <li>• May be used to reduce the cost of coastal management on the general ratepayer.</li> <li>• Community receives compensation for private occupation of the CMA.</li> <li>• Possible disincentive for the occupation of public space in the CMA for private benefit.</li> <li>• Council complies with legislative requirements in s64A and s401A of the Act.</li> </ul> | <ul style="list-style-type: none"> <li>• Financial cost incurred in development of a plan change, particularly where there are uncertainties.</li> <li>• Plan change will be time consuming, potentially litigious, with no certain outcome.</li> <li>• No financial return until appeals resolved.</li> <li>• Administrative costs of a charging regime. Administrative costs passed onto the community if unable to claim from the charging regime.</li> <li>• Economic impact on commercial operators e.g. Marine farming in accordance with the ES and MDC charges would return \$40-80,000 per annum)<sup>4, 5</sup></li> <li>• Socio-economic impact/costs on coastal permit holders (without</li> </ul> |

<sup>3</sup> Approximately \$100,000 in accordance with the Marlborough District Council's coastal occupancy charges consultation fees schedule (Coastal Occupancy Charges Report prepared by Executive Finesse Limited, January 2013). Note: this figure does not include administrative costs or waivers.

<sup>4</sup> Approximately \$40,000 calculated using Environment Southland’s Coastal Occupancy Charges fees schedule for (30 September 2017) Note: Seasonal and rotational marine farming sites have been charged at the universal marine farming rates.

<sup>5</sup> Approximately \$80,000 calculated using Marlborough District Council’s Coastal Occupancy Charges consultation fees schedule (Coastal Occupancy Charges Report prepared by Executive Finesse Limited, January 2013). Note: Seasonal and rotational marine farming sites have been charged at the universal marine farming rate.

| Option   | Benefit   | Costs  |
|--|---|--|
| <p><b>Option 1:<br/>Plan change<br/>stating that no<br/>Coastal<br/>Occupation<br/>Charges will be<br/>applied</b></p> | <ul style="list-style-type: none"> <li>• No financial and other costs imposed on occupiers of public space in CMA.</li> <li>• Unlikely to be contested in the Courts as the status quo is maintained.</li> <li>• Council complies with legislative requirements in s64A and s401A of the Act.</li> <li>• Enables the Council to progress other plan changes.</li> <li>• Does not prevent the Council from establishing a coastal occupancy regime in the future.</li> </ul> | <p>developing a charging regime these costs cannot be quantified). Swing moorings under ES and MDC charges \$2500 – \$6500 per annum<sup>6</sup>.</p> <ul style="list-style-type: none"> <li>• An increase in the establishment of unauthorised structures by individuals unwilling or unable to meet the cost of the charges.</li> <li>• Charging regime would be inequitable until all coastal occupations are authorised and owners identified.</li> <li>• Future legislation changes that remove the current uncertainty may require redevelopment of any existing charging system.</li> <li>• Financial costs incurred in development of a plan change.</li> <li>• Will not provide a disincentive for the occupation of space in the CMA for private gain.</li> <li>• No extra funding for sustainable management of the coast (potentially <i>Gross</i> \$100,000<sup>7</sup> per annum <b>less</b> admin costs and waivers)</li> </ul> |

<sup>6</sup> Estimated using the Marlborough District Council’s Coastal Occupation Charges consultation fees schedule and the Environment Southland’s Coastal Occupation Charges fees schedule for (30 September 2017). ES (moorings = approx \$6400) MDC (moorings= \$2500).

<sup>7</sup> Estimated using the Marlborough District Council’s Coastal Occupation Charges consultation fees schedule.

### 3.2.3 Risks of Acting or not Acting

A decision on whether or not to establish a coastal occupation-charging regime is a mandatory requirement under the RMA. TDC cannot make any further changes to the Plan until the matter has been addressed. Ignoring the requirement creates a risk for TDC in that it can no longer sustainably manage the coastal marine area where that management requires a change to the Plan.

A decision to implement a coastal occupation-charging regime is considered to have the following risks associated with it.

- Potentially subject to extended and expensive litigation with an uncertain outcome.
- Appeals in opposition may be upheld given lack of clarity or direction in legislation.
- Charges are likely to be inequitable in the short term and may encourage further establishment of unauthorised structures.
- Regime potentially inconsistent with regimes developed by other councils, leading to limited guidance from court cases.
- May create a perception that occupation charges entail private ownership.
- The return from the charging regime after administration costs and waivers have been applied may not be cost effective.
- Potential legislation changes by the Government regarding coastal occupation charges may require further review of the provisions.

A decision not to introduce a coastal occupation-charging regime is considered to have low risks associated with it as it maintains the status quo. The decision is reversible and if conditions and constraints change, TDC has the ability to introduce a charging regime at a later date.

### 3.2.4 Advice from Iwi Authorities and Response

A copy of the draft plan change was sent to Ngati Tama, Ngati Koata, Ngati Rarua, Te Atiawa, Ngati Kuia, Ngati Apa, Rangitane and Ngati Toa Rangatira (individually or through their representative Boards) in Feb 2015. A joint response was received from Wakatu Incorporation, Wakatu Resources and Ngati Rarua Atiawa Iwi Trust regarding the need to seek input from Maori or Maori landowners and consider the effect on the principles of the Treaty of Waitangi and the Treaty Settlements and Statutory Overlays and Acknowledgements. Discussions were held and a Hui was arranged with Tiakina te Taiao. Unfortunately that Hui did not proceed.

Further copies of the draft plan change were sent to iwi in the middle of 2017 in acknowledgment of the time passed since the initial consultation. The Iwi Working Group hui (Te Atiawa, Ngati Kuia/Ngati Apa, MKM – Te Atiawa, Te Atiawa) discussed the draft plan change in February 2017 and there was some support for holding off on charging at that point in time, noting that Marine and Coastal Area Act 2011 applications for customary title would have an impact once the applications were settled. The draft plan change was discussed at a Ngati Koata Hui in May 2017. Concerns were raised regarding the impact that coastal occupation charges might have on aquaculture settlement space. It was requested that the draft plan change make it clear that iwi aquaculture space was not to be affected.

In response to the matters raised, the plan changed as drafted will have no impact on Maori held land, Treaty Settlement lands or aquaculture interests. There is no change to the status quo, beyond the inclusion in the TRMP of a statement that Council supports coastal occupancy charges and may introduce them at a later date. If Council were to impose coastal occupation charges in the future, a further plan change will be required in which iwi would have significant opportunity for involvement.

## **4. Conclusion and Recommendations**

Based on the assessment under section 64A of the RMA of the private benefits and public benefits gained and lost from coastal occupation, TDC considers it appropriate to charge for the private occupation of the coastal marine area where the private benefit outweighs the public net benefit.

However, the section 32 evaluation has determined that the risk of implementing a coastal occupation-charging regime, at this point in time, is too high due to lack of clarity in the legislation and a number of barriers to implementation. Issues regarding the equitable implementation of a charging regime in the District have also been identified.

The requirements outlined in section 401A of the RMA mean that there is a risk in not undertaking a plan change, as this would effectively “freeze” the Plan and prevent TDC undertaking the statutory requirements with regard to sustainable management of the coastal environment and review of the regional coastal plan. It is considered that the most appropriate course of action is to introduce a statement into the Plan resolving not to introduce coastal occupation charges regime at the present and to continue working towards developing a fair and equitable regime. The proposed wording is provided in Appendix 1 of this report.

TASMAN DISTRICT COUNCIL  
Tasman Resource Management Plan

**PROPOSED PLAN CHANGE No. 71**  
**Coastal Occupation Charges**

**Schedule of Amendments**

The Tasman Resource Management Plan is amended in accordance with the following schedule:

NOTE:

*Italics* denotes TRMP text whether existing or proposed.

Underlining denotes proposed new text inserted or text amended (unless otherwise indicated).

~~Strikethrough~~ denotes text deleted (unless otherwise indicated).

**1. Part III: Coastal Marine Area**

**Add a new section at the end of Part III Introduction.**

**“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 co-operate 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.”