



Auckland
Regional Council
TE RAUHĪTANGA TAIAO

Auckland Regional Plan: Coastal

Proposed Plan Change 2

SECTION 32 REPORT: Coastal Occupation Charges

4 July 2007

TABLE OF CONTENTS

1	INTRODUCTION	3
2	WHY THE ARC HAS DECIDED NOT TO IMPOSE A COASTAL OCCUPATION CHARGING REGIME (PURSUANT TO SECTION 64A OF THE RMA) AT THIS TIME	3
3	PRINCIPLES UNDERLYING COASTAL OCCUPATION CHARGES	4
4	THE PROCESS THE ARC HAS TAKEN TO DEFINE A COASTAL OCCUPATION CHARGING REGIME	5
4.1	Summary of the ARC Process	5
5	BARRIERS TO THE DEVELOPMENT AND IMPLEMENTATION OF A COASTAL OCCUPATION CHARGING REGIME	6
5.1	Barriers To Implementing Coastal Occupational Charges	7
5.1.1	What Are Coastal Occupation Charges?	7
5.1.2	No Presumption that Charges Should Apply	7
5.1.3	Methodologies for Calculating Charges	7
5.1.4	Issues of Equity and Consistency	8
5.1.5	Little or No Central Government Guideline	8
6	CONCLUSIONS	8

Abbreviations used in this report:

ARC – Auckland Regional Council
CMA – Coastal Marine Area
NZCPS – New Zealand Coastal Policy Statement 1994
RMA – Resource Management Act 1991
RPC – Auckland Regional Plan: Coastal 2004
RPS – Auckland Regional Policy Statement 1999

1 INTRODUCTION

The Resource Management Act was amended in 1997 to give regional councils the ability to introduce a charging regime for the occupation of space within the coastal marine area. The amendment requires the Auckland Regional Council (ARC) to either introduce a charging regime to the Regional Plan: Coastal or to state in that plan that no charging regime would be pursued.

In considering whether or not to introduce a charging regime, section 64A of the Resource Management Act requires the Council 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 the ARC decided to include an occupation-charging regime in the Regional Plan: Coastal it must, according to the Act, specify having had regard to (a) and (b) above the following:

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

However, if the ARC decides not to have an occupation charging regime it must, according to the Act, change the Regional Plan: Coastal to state this. The ARC, for the reasons set out below, has decided not to introduce a charging regime at this time.

2 WHY THE ARC HAS DECIDED NOT TO IMPOSE A COASTAL OCCUPATION CHARGING REGIME (PURSUANT TO SECTION 64A OF THE RMA) AT THIS TIME

The ARC, along with other regional councils, has been considering whether or not to introduce a coastal occupation charging regime. The details of this are set out below. However section 401A (4) states:

“Where no provision for coastal occupation charges has been made in a regional coastal plan or proposed regional coastal plan by 1 July 2007, the regional council must, in the first proposed regional coastal plan or change to a regional coastal plan notified after 30 June 2007, include a statement or regime on coastal occupation charges in accordance with section 64A.”

Due to legal and policy uncertainties relating to section 64A (set out below) the ARC has not been able to develop a sustainable coastal occupation charging regime, and have that publicly notified prior to the limitations imposed by section 401A. In particular it has not been able to answer the ‘questions’ posed by section 64A (a) and (b) set out above).

Furthermore, the ARC wishes to notify other plan changes to the Regional Plan: Coastal, including provisions relating to the redevelopment of the waterfront, mangrove management and aquaculture. It would not be able to notify these proposed plan changes after the 30 June 2007 without addressing the issue of coastal occupation charges. Accordingly the ARC has resolved to not introduce a coastal occupation charging regime at this time.

The ARC's resolution determining this position was made at the March 2007 meeting of the Regional Strategy and Planning Committee, where it resolved:

- a) *That the report be received.*
- b) *That the ARC reconfirms its support for development of a coastal occupation charging regime, but accepts that due to current legal and policy difficulties a sound regime can not be progressed at this time.*
- c) ***That the ARC promotes a change to the Auckland Regional Plan: Coastal stating it will not, at this time, introduce a coastal occupation-charging regime.***
- d) *That the proposed plan change and supporting documentation be reported to the June 2007 Regional Strategy and Planning Committee for its approval.*
- e) *That once the current legal and policy issues over developing and implementing a coastal occupation charging regime have been resolved, officers report back within six months to this Committee, with options for developing a regime for Auckland's coastal marine area."*

Emphasis added.

3 PRINCIPLES UNDERLYING COASTAL OCCUPATION CHARGES

The majority of the coastal marine area (CMA) is publicly owned, held by the Crown on behalf of the people of New Zealand. There is a long held expectation that the public have free use and enjoyment of, and access to and along, most of the CMA. This is confirmed in the Foreshore and Seabed Act 2004, which states "every natural person has access rights in, on, over, or across the public foreshore and seabed".

The RMA and the New Zealand Coastal Policy Statement (NZCPS) also reinforce matters relating to the use of and access to and along the CMA. Section 6(d) of the Act states that public access to and along the coastal marine area is a matter of national importance, and principle 5 of the NZCPS states: "people and communities expect that lands of the Crown in the coastal marine area shall generally be available for free public use and enjoyment".

Two key principles can be identified: firstly that private occupation of public space is a privilege not a right; and secondly that any person who obtains a private benefit from a public resource should be required to pay some form of 'compensation' to recompense the public for that private use and loss of public space.

Public access, use and enjoyment of the CMA can be restricted, prevented or enhanced by structures and/or activities occupying space, particularly those that involve a permanent or ongoing occupation of public space in the CMA. Coastal occupation charges are one way the public can be 'compensated' for the loss of opportunities to use and enjoy the CMA. It is on this basis that coastal occupation charges (section 64A) are founded – namely councils must have regard to:

- (a) The extent to which the 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.

4 THE PROCESS THE ARC HAS TAKEN TO DEVELOP A COASTAL OCCUPATION CHARGING REGIME

The ARC to date has undertaken a significant amount of work to address the issues of coastal occupation charges. A summary of this process is set out below, and includes a number of reports and council resolutions, the development of two guidelines (developed with other regional councils to attempt to establish a nationally consistent approach to coastal occupation charges), an extensive consultation process, and a process established to resolve the legal and policy issues relating to section 64A of the RMA. This material is available to be viewed on request, and includes:

- All related council agenda reports and resolutions.
- The Guideline documents.
- Other Council reports on coastal occupation charges.
- The consultation process.

4.1 Summary of the ARC Process

The ARC, in 2002, held a briefing and workshop on coastal occupation charges. At its 8 October 2002 meeting, the Environmental Management Committee resolved among other matters:

- a) That the report be received and the Committee indicates its support for the introduction of coastal occupation charges.*
- b) That in line with the above, officers proceed with urgency to develop a draft Coastal Occupation Charging Policy and a variation to the Regional Coastal Plan: Coastal..."*

Due to a number of factors, including the uncertainties with respect to aquaculture and foreshore and seabed legislation issues, it was agreed not to proceed immediately with any changes to introduce a coastal occupation charging regime. However, staff were instructed to continue to develop background information for such a regime.

This development work involved workshops with other regional councils, government departments and other groups. The outcome of this process was the production of two guideline documents on developing a nationally consistent approach to resolving two key questions. Namely, (i) what are coastal occupation charges, and (ii) what is an appropriate charging methodology?

Workshops were held with Councillors to further develop this approach. The Environmental Management Committee then considered the issue again at its meeting on 29 November 2004. It resolved that:

- a) That the report be received.*
- b) That the Committee confirm the previous Council's decision that an occupational coastal charging regime be introduced.*
- c) That a workshop be arranged in February 2005 to brief the Environmental Management Committee on the work undertaken so far with respect to developing a coastal occupation charging regime.*
- d) That the consultation phase proceeds."*

Extensive consultation began in May 2005 and included discussions, meetings and workshops with a variety of interest groups including:

- Iwi groups.
- Boating/Marine/Recreational user groups.
- Marina Owners Association.
- Commercial groups, including the seafood industry.
- Residents and ratepayer groups.
- Territorial authorities.
- Utility providers (e.g. network utility operators, telecommunication companies and electricity providers).
- Central Government agencies.

Some key issues arose from this consultation that highlighted potential legal and policy uncertainties with the Act. Other regional councils have experienced the same issues and it is now acknowledged by all regional councils and central government that clarification of Section 64A is needed prior to councils sensibly pursuing a charging regime. These issues are outlined later in this report.

In June 2006 the Committee again considered a report on coastal occupation charges, with a recommendation that due to legal uncertainties the Council not further progress a charging regime. The relevant resolution was:

- “b) That officers report back to this committee on:*
- i. The legal implications of not notifying a coastal occupation charging change to the Regional Plan: Coastal prior to 30 June 2007.*
 - ii. The governments view on amending the RMA provisions in relation to coastal occupation charging....*
- c) That the ARC does not progress coastal occupation charging policy development further until the committee has considered and resolved the issues raised in (b) above.*

The next report and set of resolutions is that reported to the March 2007 Regional Strategy and Planning Committee (i.e. reported earlier in this report).

5 BARRIERS TO THE DEVELOPMENT AND IMPLEMENTATION OF A COASTAL OCCUPATION CHARGING REGIME

The ARC, and other regional councils, in considering coastal occupation charges have encountered significant barriers to the effective development and implementation of coastal occupation charges. This has been in terms of the ARC's own analysis, collaborative efforts with other regional councils and central government agencies, and through consultation with stakeholders and those who would be required to pay should any charging regime be imposed.

The policy and legal issues that have been identified as a barrier to the effective development and implementation of coastal occupation have been acknowledged by Central Government. A process is underway between regional and central government agencies to address these. However due to the provisions of section 401A of the RMA, the ARC has decided not to pursue a coastal occupation charging regime, at this time, as it wishes to promote other plan changes to the Regional Plan: Coastal post June 2007. These include provisions relating to aquaculture and mangrove management, as well as the waterfront redevelopment.

In terms of the council's resolution (set out above), once the legal and policy issues relating to section 64A are addressed, the ARC will, at that time, consider whether it will introduce a charging regime. If it does, a change to the Regional Plan: Coastal will be required.

5.1 Barriers To Implementing Coastal Occupational Charges

Significant barriers to the implementation of coastal occupation charges exist. These include

5.1.1 What Are Coastal Occupation Charges?

It is not clear from the provisions of the RMA exactly what coastal occupation charges are.

This lack of understanding of what the charge actually is has made it difficult to formulate a charging regime – particularly in terms of:

- What has, or to what extent has, the public lost in terms of being excluded from certain areas
- What is the basis for determining the level of, or the manner in which, the charges can be determined.

This is a fundamental issue as the ARC, and other regional councils, as must 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, -

Given that there is not a clear understanding of what coastal occupation charges actually are, i.e. recompense to the public for the loss of public space or a rental, it has not been possible to be able to 'answer' the above question – i.e. – what has the public lost or gained by an occupation, and what private gain has an occupier obtained. Is it the exclusive use of the space, or the ability to make a commercial gain from that space? Due to there being little guidance in the RMA on this matter, it has created a significant barrier to understanding what an occupation charging regime is, how to develop one, and how to implement such a regime.

5.1.2 No Presumption that Charges Should Apply

There is no presumption in the RMA that charges should apply. As a result regional councils must determine whether they will charge or not as a 'first principle' and then the public, through the RMA First Schedule process can 'decide' whether or not there should be a charging regime at all. Notwithstanding this some councils consider that the option to charge or not to charge was based upon whether it was 'worthwhile' charging when the cost of developing and administering a charging regime would be greater than the revenue generated. However the Act is not clear on why there is an option and why if no charging regime is to be introduced why a council must publicly notify this fact.

5.1.3 Methodology 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. The lack of a clear, consistent and agreed methodology for determining how occupation charges may be determined has been a major 'stumbling block' for considering coastal occupation charges. It is agreed amongst regional councils and central government that there needs to be an agreed methodology. While a 'national' guideline paper has been written on this there is no consensus on an appropriate methodology(ies).

A variety of methods for calculating similar types of charges and rentals are used worldwide. They include using neighbouring terrestrial land values, charging percentages of income of commercial operations and commercial market rates. In the absence of an established system, councils are essentially having to 'start from scratch' in setting up a charging regime to meet the purpose of the Act and having little historical precedence to rely on.

Consultation with stakeholders has encountered strong opposition to the potential use of terrestrial land values (better known as hinterland values). This is despite that valuation technique being the one regularly used and accepted by arbitration and court processes when valuing 'land' within the CMA. The opposition is largely based on the position held by many that land based valuations have no relevance to the value of coastal space.

5.1.4 Issues of Equity and Consistency

Currently it is unclear whether those areas subject to Section 384A consent (commercial ports) would be subject to a coastal occupation charge. This raises equity issues in that some occupiers may be required to pay and others not. Central Government acknowledge that this needs to be clarified.

5.1.5 Little or No Central Government Guideline

To date there has been little national guidance on the provisions of section 64A, the government's expectation in terms of coastal occupation charges, and the development of an appropriate regime. Councils are now engaging in the review of the New Zealand Coastal Policy Statement (NZCPS), seeking greater guidance in terms of the Crown's interest in the CMA and the provision of a coastal occupation charging regime.

Submissions to the NZCPS discussion document have been lodged by regional councils (including the ARC). These submissions address the issues relating to clarifying the nature of coastal occupation charges, the presumption to pay for occupation, and an agreed charging methodology, and how this may be able to be reflected in the policy framework of the NZCPS. It is understood that a draft NZCPS will not be publicly available until late 2007, clearly beyond the 30 June 2007 date set out in Section 401A.

6 CONCLUSIONS

There is a strong consensus among regional councils that the provisions of the RMA are too uncertain to provide a sound basis on which to introduce coastal occupation charging. The deadline stated in Section 401A of the Act means that the ARC needs to address the issue, irrespective of these concerns. This is because it needs to be able to promote other changes to the Regional Plan: Coastal after 30 June 2007, including the provisions relating to: the redevelopment of the waterfront, mangrove management and aquaculture.

Once the legal and policy matters are clarified/resolved the ARC can then proceed with development of a coastal occupation charging regime and implementation of this through a future plan change.