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Committee Policy, Finance and Strategy and Council
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Foreshore and Seabed

1. Purpose

To seek the Council's views on the government's proposals for access to the foreshore and seabed.

2. Background

On 18 August 2003, the Government released a consultation document titled "The Foreshore and Seabed of New Zealand – Protecting Public Access and Customary Rights". The document contains the Government's proposals for addressing the consequences of the recent decision of the Court of Appeal.

The Government's approach is based on four principles, which are discussed below:

1. **Principle of access:** the foreshore and seabed should be public domain, with open access and use for all New Zealanders.

The government is proposing a new law that would make it clear that no new private titles could be created over the foreshore and seabed, whether as a result of an investigation of Maori customary interests or other processes. If a Court in the future found that this meant it was unable to give full recognition to customary interests that had continued to exist since 1840, then the Court would be able to alert the government to this consequence. The government would then discuss with affected parties what steps might be taken to address the issue.

There are some areas of foreshore and seabed that are already in private ownership. The government is raising two options for addressing these inconsistencies. It will either legislate across private titles for public access, or it will set up a process to identify any areas where private rights to exclude others exist and negotiate with owners over time to achieve public access and use. Resolution of these inconsistencies will

take longer to address and will be considered along with other land access issues.

2. Principle of regulation: the Crown is responsible for regulating the use of the foreshore and the seabed on behalf of all present and future generations of New Zealanders.

As with all of New Zealand's territory, the foreshore and seabed are subject to regulatory control by the state. The government has a responsibility to regulate the use of the foreshore and seabed, in the interests of present and future generations of New Zealanders. This responsibility is separate from any question of ownership.

3. Principle of protection: processes should exist to enable the customary interests of whanau, hapu and iwi in the foreshore and seabed to be acknowledged, and specific rights to be identified and protected.

The government has set out two options for implementing this principle. One is to build on the existing systems for recognising and protecting customary interests. The government would continue to refine and review existing systems but with more systematic and focussed attention. This might also involve resourcing and building the capacity of all those involved in the systems. This refinement could not deliver immediate results.

The government's preferred option is to establish a new and dedicated jurisdiction of the Maori Land Court to investigate whanau, hapu and iwi customary interests in the foreshore and seabed. The Court would be equipped with a new set of tools for recognising mana over and ancestral association with particular places in the foreshore and seabed, and for recognising specific use rights. The new regime would apply to all claims before the Maori Land Court in relation to the foreshore and seabed, including those already filed with the Court. As a specialist jurisdiction, it will also be the only court process for investigating customary interests in the foreshore and seabed.

4. Principle of certainty: There should be certainty for those who use and administer the foreshore and seabed about the range of rights that are relevant to their actions.

The government is proposing some rules to make it clear that rights will not retrospectively affect the responsibilities that others have. Once recognised and recorded by the Court, the rights will need to be respected by central and local government decision makers, as well as by private third parties.

The government is requesting comments on the proposals by 3 October 2003.

3. Discussion

Local Government New Zealand (LGNZ) is seeking views from regional councils on the government's proposals for access to the foreshore and seabed so that they can write a sector response. They have proposed some initial comments, and would like to know whether we agree or disagree with them. These are as follows:

- The four principles appear sound.
- The Maori Land Court should be extended to hear matters relating to customary interests.
- Further clarification is required in a number of areas, including the criteria to be applied and the scope of the decisions that may be able to be made by the Maori Land Court.
- Access across those parts of the foreshore and seabed which may be held in private title should be negotiated rather than legislated.
- Certainty is required about the implication of the proposals for current and proposed regulatory responsibilities (e.g. aquaculture) of local government.
- There should be no extension of Maori consultation/decision making responsibilities (in so far as they impact on local government) beyond those recorded in current legislation.
- Existing rights that are recognised in law should not be retrospectively affected.

Staff agree with the comments made by LGNZ. Given the importance of collective action on matters such as this, it is proposed that the Council support LGNZ's submission.

Following this consultation on the government's proposals, legislation will be drafted to give effect to them. There will be the opportunity for Greater Wellington to make formal submissions at that time

4. Communication

Council's agreement with the LGNZ comments will be communicated to LGNZ and the Department of the Prime Minister and Cabinet.

5. Recommendations

That the Committee recommends that Council:

1. *Receive the report and note its contents.*
2. *Support the position of LGNZ on the “Foreshore and Seabed of New Zealand: Protecting Public Access and Customary Rights”.*
3. *Advise LGNZ and the Department of the Prime Minister and Cabinet that the Council supports the position taken by LGNZ.*

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