greater WELLINGTON
THE REGIONAL COUNCIL

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Committee	**Policy, Finance and Strategy Committee**
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Foreshore and Seabed Bill - submission

1. Purpose

To seek the Committee's endorsement of the Greater Wellington Regional Council submission on the Foreshore and Seabed Bill.

2. Background

The Foreshore and Seabed Bill (the Bill) was introduced into the House in April of this year. The content has changed considerably since the Councillors' briefing on the Government's consultation document *The Foreshore and Seabed of New Zealand – Protecting Public Access and Customary Rights*.

The Bill has some implications for Greater Wellington, particularly because changes will be made to the Resource Management Act 1991. The main elements of the Bill are summarised below.

2.1 Vesting in the Crown

Ownership of the public foreshore and seabed will be vested in the Crown. The vesting will apply across all foreshore and seabed areas except those covered by private titles that have been, or are in the process of being, registered under the Land Transfer Act 1952.

Public foreshore and seabed is to be held in perpetuity, and is not able to be sold or disposed of, other than by an Act of Parliament.

2.2 Public access and navigation

The Bill creates rights for the public within (on, over, and across) the public foreshore and seabed, to enable its continued use and enjoyment by all New Zealanders. The Bill also codifies the general right of navigation within the foreshore and seabed.

2.3 Recognition of ancestral connection

The Bill creates new jurisdiction for the Māori Land Court to enable it to recognise the ancestral connection of Māori groups with particular areas of the public foreshore and seabed. Where there are overlapping ancestral connections, the Court will be able to recognise them all.

The ancestral connection of Māori groups with the public foreshore and seabed will also be able to be recognised by agreement between Māori and the Crown. This could be the result of:

- A negotiated settlement of historical Treaty of Waitangi claims;
- A group holding customary or Māori freehold land abutting the foreshore;
- Another agreement in which the Crown acknowledges ancestral connection.

The purpose of these processes is to acknowledge kaitiakitanga and to provide opportunities for more effective participation in decision-making processes by Māori groups who have traditionally cared for the coastline.

2.4 Recognition of customary rights by the Māori Land Court

A further new jurisdiction for the Māori Land Court enables it to identify and recognise customary rights in the public foreshore and seabed through a customary rights order. The order recognises an activity, use, or practice, but does not grant an estate or interest in land.

The jurisdiction of the Court will not extend to areas of foreshore or seabed in private title, nor to matters covered by the Wildlife Act 1953, the Marine Mammals Protection Act 1978, or the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

In determining applications for this order, the Court will apply a statutory test derived from common law and based on tikanga Māori. The Court must be satisfied that:

- The Māori group claiming the right is an established and identifiable group whose members are whanaunga;
- The activity or practice that is the subject of the claimed customary right has been integral to tikanga Māori;
- The activity or practice has been exercised substantially uninterrupted since 1840, in accordance with tikanga Māori and continues to be so exercised;
- The claimed right is not prohibited by law and has not already been extinguished by law.

2.5 Recognition of customary rights by the High Court

The Bill creates a new jurisdiction for the High Court to identify and recognise the customary rights of any group of New Zealanders in the public foreshore and seabed. The jurisdiction will be subjected to the same limits as that of the Māori Land Court, and the High Court will apply a very similar statutory test.

2.6 Effect of customary rights orders

Activities, uses, or practices recognised by the Māori Land Court or the High Court through customary rights orders will also be recognised in decision-making processes on the public foreshore and seabed. The Bill includes amendments to the Resource Management Act 1991 (the Act) to protect these rights, including the following:

- All decision-making under the Act must recognise and provide for, as a matter of national importance, the protection of recognised customary activities;
- The Act and relevant plans made under it cannot prevent the exercise of a customary right;
- If another party seeks a resource consent for an activity that would have a significant adverse effect on the exercise of the customary right, the Act will require the resource consent to be declined (unless the customary right holder gives consent);
- Customary rights holders will be able to continue the recognised customary activity without obtaining a resource consent under the Act.

There may be occasional situations where the exercise of a recognised customary activity may have significant adverse effects on the environment. The Bill establishes a new process that allows a local authority to assess the effects of the exercise of a recognised customary activity on a case-by-case basis. The onus will be on regional authorities to demonstrate that there are significant adverse effects on the environment. Any decision to impose controls on a recognised customary activity would be taken by the Minister of Conservation in consultation with the Minister of Māori Affairs.

2.7 The High Court and the common law

The Bill provides a limited jurisdiction for the High Court to find territorial customary rights at common law in the public foreshore and seabed. A group may seek a finding of the Court that they would have been entitled to hold territorial customary rights to an area of the foreshore and seabed, had the full legal and beneficial ownership not been vested in the Crown.

2.8 Other

The earlier proposal for working groups, comprising central government, regional councils and Māori, to develop legally-binding agreements on Māori involvement in the management of the coastal marine area, has not been included in the Bill. Instead, the government says it will "give priority to building on and developing established relationships and protocols, both in the fishing context and more generally".

It is intended that the Foreshore and Seabed Bill be divided into two separate Bills at the committee of the Whole House stage: a Foreshore and Seabed Bill and a Resource Management Amendment Bill.

3. Greater Wellington submission

The submission period for the Bill closes on 12 July 2004. A copy of the Greater Wellington submission is attached as Appendix One to this report.

Greater Wellington supports the submission made by Local Government New Zealand (LGNZ) on the Bill. A copy of the final LGNZ submission will be available at the meeting.

In summary, Greater Wellington:

- opposes the requirement for land in the foreshore and seabed that is owned by local authorities to be vested in the Crown;
- supports the affirmation of access rights for the public over the public foreshore and seabed;
- supports a separate and expert jurisdiction to decide on questions of ancestral connection and customary rights;
- is concerned about the scope and meaning of 'ancestral connection' and 'customary rights orders' that may be made by the Courts;
- is concerned about the practical implementation of the Bill, particularly the greater consultation burden that it will place on the community, and the cost of possible plan changes; and
- is concerned about the proposed departure from Resource Management Act 1991 (RMA) framework of environmental assessment and decision making.

4. Communication

No further public communication is necessary for this report.

5. Recommendations

It is recommended that the Committee:

1. ***receive** the report;*
2. ***note** the contents; and*
3. ***endorse** the Greater Wellington submission on the Foreshore and Seabed Bill.*

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Attachment 1: Appendix One - Foreshore and Seabed Bill: submission