6 July 2004

Fisheries and Other Sea-related Legislation Committee
Bowen House
Parliament Buildings
WELLINGTON

Foreshore and Seabed Bill: Submission

Introduction

1. The Greater Wellington Regional Council (Greater Wellington) thanks the Select Committee for the opportunity to make a submission on the Foreshore and Seabed Bill.

2. Greater Wellington represents the interests of over 445,000 people within the Region on matters of regional interest and concern. Greater Wellington believes that it is necessary for the future economic, social, environmental and cultural wellbeing of New Zealand that there is both clarity and certainty for all on foreshore and seabed issues and that there is a lasting solution to this issue.

3. This submission is focused on issues of direct concern to Greater Wellington in carrying out our functions and duties under the Local Government Act 2002, Resource Management Act 1991 and other relevant legislation. Greater Wellington considers that the determination and recognition of Māori customary rights, and the related issue of rights under the Treaty of Waitangi, are primarily issues for resolution between the Crown and Māori. However, we expect the Crown to take into account the interests of the community and consult widely when deciding on major issues.

4. Greater Wellington supports the submission made by Local Government New Zealand on the Bill. However, we would like to highlight and elaborate on some key points that are particularly relevant for this Council.

Key Points

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.

Vesting in the Crown

5. Because land owned by local authorities is excluded from the definition of "specified freehold interest" in clause 4 of the Bill, freehold land in the foreshore and seabed that is currently owned by Greater Wellington comes within the definition of "public foreshore and seabed". This land will be vested in the Crown upon the commencement of the Act by clause 11.

6. Greater Wellington does not consider it necessary or appropriate for the Crown to take title to this land as proposed in the Bill, particularly when there is no right of compensation.

Decision sought

7. Amend the definition of "specified freehold interest" in clause 4 of the Bill by deleting the words "or a local authority".

Rights of access and navigation

8. Greater Wellington supports clause 6 in the Bill that confirms access rights for the public over the public foreshore and seabed to enable its continued use and enjoyment by all New Zealanders. Greater Wellington also supports the general right of navigation within the foreshore and seabed provided in clause 7 of the Bill.

9. Greater Wellington notes that clause 21(1) provides that relevant Ministers, by way of notice in the Gazette, can prohibit or restrict access to any area of the public foreshore and seabed. Clause 21(7) requires every regional council to take any action (including without limitation, the erection of signs and fences) required to implement the restriction or prohibition.

10. Greater Wellington accepts the need from time to time to restrict public access to the foreshore and seabed. However, clause 21, as currently drafted, does not contain any criteria for decision making to restrict public access. The basis upon which that access can be restricted or prohibited should be limited and the limits of the power should be made clear in law.

11. The requirement that regional councils take any action to implement a restriction or prohibition is open ended. This may involve significant costs that will not have been included in planning and budgeting processes. There is also the issue of ongoing monitoring and enforcement of the restriction or prohibition. If regional councils are charged with taking action, such as erecting fences, then councils will inevitably be seen as being responsible for ongoing enforcement and monitoring.

12. Greater Wellington considers that if a decision to restrict public access to the foreshore and seabed is made at a central government Ministerial level, then the responsibility to fund, implement, monitor and enforce that restriction should be retained at that level.

Decision sought

13. Retain clauses 6 and 7.

14. Delete clause 21(7); or

15. Provide funding or mechanisms for cost recovery when regional councils are required to take action to prohibit or restrict access to any area of the public foreshore and seabed.

16. Require the Minister of Conservation to consult with regional councils before introducing any prohibitions or restrictions under clause 21 of the Bill.

Provisions relating to the Māori Land Court and the High Court

17. Part 3 of the Bill contains provisions relating to the Māori Land Court and the powers and procedures of that Court to make ancestral connection orders and customary rights orders.

18. Greater Wellington supports a separate and expert jurisdiction to address and decide on questions of ancestral connection and customary rights. However, Greater Wellington is concerned that ancestral connection and customary rights can be undertaken, with no regard given to the provisions of the RMA. This will compromise effective and efficient resource management.

19. The statutory tests in the Bill could lead to applications for ancestral connection or customary rights orders for large areas of foreshore and seabed. When the orders take effect under the RMA, it is likely that the costs of implementation will increase for resource consent applicants, councils and communities. Councils could be required to enforce orders that are vague or difficult to apply on the ground.

20. Greater Wellington is also concerned about the impact on activities that are currently provided for in operative plans, prepared and approved under the RMA, or on activities that are in the wider regional or national interest. Such activities should not be subject to further tests.

21. Regional councils need to be informed at the time of the application for ancestral connection and customary rights orders. This will allow councils to assess the implications of the order and the possible resources required to undertake the proposed duties of environmental assessment, plan reviews, activity monitoring and enforcement under the Bill. The early notice would allow a proactive approach instead of the reactive approach anticipated in the Bill.

Decision sought

22. Ensure that customary rights do not significantly restrict the exercise of other activities that are in the wider regional or national interest, or activities provided for in an operative plan prepared under the RMA.

23. Ensure that notice of the applications to the High Court and Māori Land Court for territorial, ancestral and customary activity orders be provided to regional councils.

24. Provide greater clarity in the Bill about the scope and effect of ancestral connection orders and customary rights orders.

Amendments to the Resource Management Act 1991

25. Greater Wellington is concerned that recognised customary activities carried out under a customary rights order may be undertaken in a way that contravenes the sustainable management purpose and principles of the RMA.

26. Clause 75 of the Bill is clear that recognised customary activities can be carried out despite the restrictions on activities set out in sections 9 to 17 of the RMA, and regardless of any rule in a regional or district plan or proposed plan. In addition, controls imposed by the Minister of Conservation to deal with any adverse environmental effects of the customary activity cannot prevent the activity and must not be "unduly restrictive".

27. Greater Wellington considers that it is not appropriate to effectively exempt activities, some of which may have adverse effects on the environment, from complying with the sustainable management purpose and principles of the RMA.

28. The proposed changes to the RMA will also impose significant costs on consent holders, applicants and Greater Wellington. Regional plans cannot include rules allowing activities that have a significant adverse effect on a recognised customary activity, and resource consents cannot be granted for such activities. Greater Wellington will have to make changes to the Regional Coastal Plan if any of the rules allow activities that prevent, or have a significant adverse effect on recognised customary activities.

29. There will be additional costs for regional councils if they are required to carry out adverse effects assessments and reports on the effects on the environment of customary rights activities (new section 17B and Schedule 12). These costs are also likely to be ongoing as new customary rights can be declared at any time. There is not a mechanism available for stopping the statutory timeframe (40 working days) for the assessment of environmental effects, or to collect or request further information.

30. The cost implications for regional councils, resource users and the community from these amendments are not clear. They have the potential to be significant.

31. The notification and response time of five working days for a preliminary assessment and decision as to whether a customary activity has adverse effects requiring investigation is short. This timeframe will be difficult to meet, particularly in the early days enactment, because the procedures are new and not well defined between the regional councils and Minister of Conservation.

Decisions sought

32. Remove provisions in the Bill that would allow recognised customary activities to be carried out in a way that is not sustainable and ensure that recognised customary activities are made subject to the purpose and principles of the RMA.

33. Ensure that the Bill does not impose additional costs on councils and resource consent applicants, or include a mechanism that will enable costs to be recovered.

34. Give responsibility for the environmental assessment and decision making to one organisation, either the Minister of Conservation or regional councils.

35. Expand time frames for notification of adverse effects assessment to ten working days each side of the actual assessment timeframe (40 working days).

36. Include a mechanism to stop the statutory timeframe and allow further information to be collected, commissioned, provided or requested, similar to the section 92 provisions of the RMA.

Vesting of reclaimed land

37. Greater Wellington has reservations regarding the proposal in clause 100 of the Bill to limit the powers of the Minister of Conservation to vest interests in reclaimed land to a leasehold interest only and for the leasehold interest to not exceed 50 years.

38. Greater Wellington considers that such a restriction could constrain important developments, for example, port developments, and other infrastructure such as roads or tourism or recreational facilities. Fifty years is too short a period to secure an adequate return on investment for major developments of this sort.

39. A total prohibition on the vesting of freehold title to reclaimed land throughout New Zealand may not be appropriate. Greater Wellington considers that it would be wise to allow the Minister greater flexibility when considering applications for the vesting of rights, titles or interests in reclaimed land given the range of different circumstances that can arise.

Decisions sought

40. Increase the maximum period for the vesting of a leasehold interest in reclaimed land. Greater Wellington understands that when approval was given for the America's Cup development, a vesting of a 99-year leasehold interest was considered acceptable; or

41. Where a lease over reclaimed land is given, ensure that the existing leasee has a preferential right of renewal when the lease expires.

42. Consider including in the Bill, provisions allowing the vesting of an estate in fee simple in reclaimed land.

Conclusion

43. Greater Wellington thanks the Committee for the opportunity to make a submission on the Foreshore and Seabed Bill.

44. Greater Wellington is concerned that concepts in the Bill are not defined with enough clarity to enable them to be implemented effectively, and that there are potentially significant cost implications for councils and resource users within the operation of the proposed management process.

45. Greater Wellington considers that an implementation strategy will be required on enactment of the Bill to guide and support any affected parties.

46. Greater Wellington wishes to be heard in support of its submission.

Margaret Shields
Chairperson