5. FORESHORE AND SEABED ISSUE

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The purpose of this report is to update the Council on the foreshore and seabed issue.

INTRODUCTION

At its meeting on 25 September 2003 the Council considered a report regarding the Government's consultation paper "The Foreshore and Seabed of New Zealand: Providing Public Access and Customary Rights".

The Government's position in the consultation paper was that it considered there was a need to legislate following the Court of Appeal's decision in the Ngati Apa Case to provide clarity and ensure that some basic principles are put beyond doubt. The principles that the Government had set out in its consultation paper were:

(a) **the principle of access:** that the foreshore and seabed should be "public domain" with open access and use for all New Zealanders;

(b) **the principle of regulation:** the Crown is responsible for regulating the use of the foreshore and seabed on behalf of all present and future generations of New Zealanders;

(c) **the 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;

(d) **the 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 had sought comments on that Consultation Paper and at the September Council meeting the Council resolved to forward a submission to the Government on the Consultation Paper.

DECEMBER 2003 REPORT

In late December 2003 the Government released a report analysing the submissions it received to that consultation paper.

The Government also made an announcement regarding its policy on the foreshore and seabed issue which it proposes to incorporate into a Bill to be introduced into Parliament in March 2004.

Key features of the Government's policy are:

(a) A new legal framework that integrates all rights and interests in the foreshore and seabed, within existing systems for regulating activity in those areas;

(b) Current provisions which vest the foreshore and seabed in the Crown will be repealed or replaced with a public domain title vesting the full legal and beneficial ownership of the land in the people of New Zealand, except land in "private" Land Transfer Act titles. It is unclear at this stage whether the reference to "private" Land Transfer Act titles includes titles held by local authorities;

(c) The foreshore and seabed boundary would be mean high water springs, that is, the high tide mark. The Government will work with whanau, hapu and iwi to develop effective working relationships and these relationships will be built on agreed mechanisms and processes for ensuring whanau, hapu and iwi participation in relevant central and local government decision-making processes and will be tailored to the needs and capacity of each area.

At this stage it is unclear how this proposal will affect decision-making processes of this Council involving the foreshore and seabed;

(d) The Māori Land Court will be able to award a customary title that would sit alongside the public domain title. This customary title would have two components:

(i) it would recognise the mana and ancestral connection of the relevant whanau, hapu or iwi grouping over particular areas of the foreshore and seabed; and

(ii) identify and recognise specific customary rights at the whanau, hapu and/or iwi level.

This customary title would not alter reasonable and appropriate public access.

(e) An independent statutory commission would be established to expedite the identification of those that hold mana and ancestral connection over particular foreshore and seabed areas. This commission would make enquiries on a regional basis and then make recommendations to the Māori Land Court on where and to whom customary titles should be issued;

(f) A customary title would make it clear to all those involved in managing or using the foreshore and seabed, who hold mana and ancestral connection over the area and it is intended to enhance the ability of holders of a customary title to participate in relevant local and central government decision-making processes.

(g) The Government will develop practical and specific agreements to set out how particular whanau, hapu or iwi will be involved in decision-making processes. In addition, regional working groups will be established comprising local and central government, and whanau, hapu and iwi representatives based around regional council boundaries.

The purpose of these working groups will be to reach agreement in each region on the ways in which whanau, hapu and iwi will participate in the management of the customary area and it is expected that ways of building capacity for whanau, hapu and iwi, and to local and central government will be part of those discussions. Once those regional agreements have been concluded, then they will be formally recognised by the Crown so that the commitments in them become legally enforceable.

(h) The Te Ture Whenua Māori Act will be amended to provide a new statutory system for the Māori Land Court to identify and recognise customary rights in the foreshore and seabed. Once recognised, these rights will be annotated on the relevant customary title and these rights could include a commercial element depending on how the right is recognised. It would also be possible for a customary title holder to seek to develop a commercial activity arising from an annotated customary right, subject to resource management and other regulatory controls.

(i) The Māori Land Court customary rights declaration will provide “general authority” for a right holder to undertake an activity and Resource Management Act processes will only be able to restrict the customary activity for the purposes of ensuring sustainability of the environment. Clearly there will be issues for this Council in working through the relationship of these customary rights declarations with its administration of the Resource Management Act and it would appear that amendments to the Resource Management Act will be necessary to give effect to this part of the proposal;

(j) Where other applications for coastal permits are received, a regional council or other decision-maker will be required to consider whether the proposed activity would have a significant impact on a customary right and, if so, the application cannot be approved unless the holder of the customary right consents to it.

(k) There is reference to a number of legislative provisions, including those in the Resource Management Act, the Fisheries Act and the Local Government Act, that currently seek to protect the customary rights of whanau, hapu and iwi. The Government believes there are a number of impediments to their effective operation including capacity, skills and information, and the regional working groups referred to above will be established to improve participation and decision-making process for the management of the coastal marine area.

(l) The Government is continuing work as to how private titles over the foreshore and seabed (which may or may not include local authority titles) will be brought into the public domain over time.

The Government expects to introduce a Bill into the House in March 2004 to give effect to these proposals. Clearly, this Bill will raise a number of significant issues for the Council, particularly in relation to the ocean outfall pipeline, and it is expected the Council will need to make submissions on the Bill when it is introduced into the House.

Staff Recommendation:

1. That the information be received.

2. That the Council continue to monitor developments in relation to the foreshore and seabed issue and that the Legislation Subcommittee, augmented by the Chairperson of the Parks and Waterways Committee, recommend submissions on the Bill to the Council once the Bill is introduced into the House, if time permits.

Chair's Recommendation: That the above recommendation be adopted.