



**Local Government
New Zealand**
te pūtahi matakōkiri

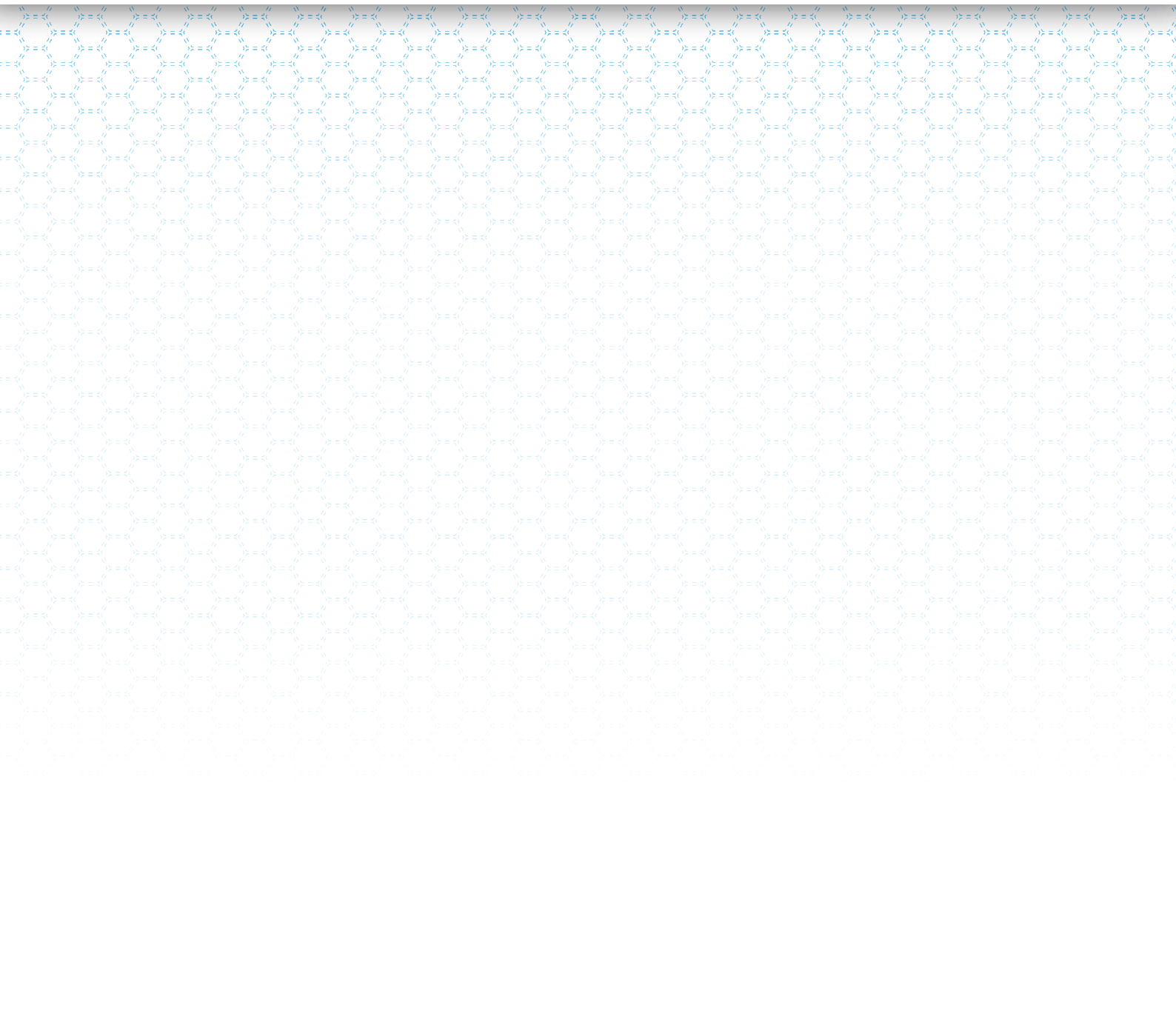


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Introduction

1. *Local Government New Zealand* (LGNZ) thanks the Office of Treaty Settlements for the opportunity to make this submission in relation to the Proposed Policy for Regulations under the Marine and Coastal Area (Tukutai Moana) Act 2011 (MaCA Act) Consultation Paper.
2. *Local Government New Zealand* makes this submission on behalf of the National Council, representing the interests of all local authorities of New Zealand.

It is the only organisation that can speak on behalf of local government in New Zealand. This submission was prepared following consultation with local authorities. Where possible their various comments and views have been synthesised into this submission.

In addition, some councils will also choose to make individual submissions. The LGNZ submission in no way derogates from these individual submissions.

3. *Local Government New Zealand* prepared this submission following:
 - an analysis of the consultation paper
 - analysis of all feedback from councils.
4. This final submission was endorsed under delegated authority by:
 - Lawrence Yule, President, LGNZ
 - Fran Wilde, Chair Regional Sector Group, LGNZ.
5. *Local Government New Zealand* would be pleased to meet with the Office of Treaty Settlements for further discussion on any points raised in this submission.

Recommendations

6. *Local Government New Zealand* makes the following recommendations:
 - that the principles underlying the policy in respect of abandoned structures are examined before any detailed process is finalised
 - that the local government sector is fully engaged on the detail of this policy and any subsequent regulation before it is finalised

EITHER

- that (under the proposed approach) any inquiry is conducted by regional councils on the basis of any costs being recovered from the Department of Conservation (DOC)

OR

- that the control over any inquiry process should be based on regional councils determining value for money (cost versus ratepayer benefit) – see alternate wording at Appendix 1, basing the regulation on significance; and

- that if any inquiry is requested by any other party then provision for cost recovery is made.

Local Government New Zealand policy principles

7. In developing a view on the provisions in this discussion document we have drawn on the following high level principles that have been endorsed by the National Council of *Local Government New Zealand*: We would like the Office of Treaty Settlements to take these into account when reading this submission.
- **Local autonomy and decision-making:** communities should be free to make the decisions directly affecting them, and councils should have autonomy to respond to community needs.
 - **Accountability to local communities:** councils should be accountable to communities, and not to Government, for the decisions they make on the behalf of communities.
 - **Local difference = local solutions:** avoid one-size-fits-all solutions, which are over-engineered to meet all circumstances and create unnecessary costs for many councils. Local diversity reflects differing local needs and priorities.
 - **Equity:** regulatory requirements should be applied fairly and equitably across communities and regions. All councils face common costs and have their costs increased by Government, and government funding should apply, to some extent, to all councils. Systemic, not targeted funding solutions.
 - **Reduced compliance costs:** legislation and regulation should be designed to minimize cost and compliance effort for councils, consistent with local autonomy and accountability. More recognition needs to be given by Government to the cumulative impacts of regulation on the role, functions and funding of local government.
 - **Cost-sharing for national benefit:** where local activities produce benefits at the national level, these benefits should be recognised through contributions of national revenues.

Comments

8. *Local Government New Zealand* can see merit in a process to deal with abandoned structures but we are very concerned with the potential to burden regional councils with unreasonable costs associated with the inquiry with no provisions to set priorities.
9. We question the assumption that costs for the inquiry **should** fall with regional councils. We understand that ownership of abandoned structures in the past has rested with the Crown (not with regional councils) and the MaCA Act has now confirmed the question of ownership, ie that it rests with the Crown (through DOC). Therefore, we do not accept that regional councils should be burdened with a detailed inquiry process with no prospect of cost recovery. Because the inquiry is both mandatory and has to be done to the satisfaction of the Director General of DOC, responsibility for the cost of the

inquiry should also rest with DOC. We note that the only step in the process outlined in the paper which a council has any greater control over than that of a DOC official is (7)(b) the investigation of council records.

10. Given the recent criticism levelled at local government in relation to rising costs, we must question why ratepayers would agree to potentially significant sums being spent on investigations which are likely to have little benefit to them. If the inquiry process is to remain with regional councils then they should be provided with the flexibility to judge the costs of undertaking inquiries against the benefits that may come to ratepayers from the process. The underpinning assumption here is that if there is a problematic structure it may be useful for a regional council to conduct an inquiry so that the Crown will accept ownership responsibility. There is a secondary question – that is unresolved at this point – as to whether the transfer of ownership will affect any resolution of the problem. That is, will the Crown address the abandoned structure through removal or restoration? Where a structure is unauthorised and is likely to create a problem, once regional councils know that the Crown is liable, it will be interesting to see how section 4 of the RMA applies.
11. Therefore, any regulation which accords responsibility for an inquiry to regional councils needs to contain a mechanism to prioritise an inquiry on an issue/problem basis. We suggest some criteria for this, please see Appendix 1 below.
12. An inquiry is mandatory where a structure does not have a Resource Consent and has uncertain ownership. It is unclear what the trigger is for the inquiry to be initiated. The policy presupposes that regional councils have a record of all structures in the Common Marine And Coastal Area (CMCA) with information about consent status and ownership. Without this information, there is no clear trigger. Is it expected that each regional council will produce such a database?
13. The policy does not prescribe a process if an owner is found and correspondingly, there is no obligation on the Crown to legitimise its ownership (if it chooses to) of an abandoned coastal structure by requiring a resource consent process to be initiated.
14. The context of the Resource Management Act is important. Since 1991, a resource consent is needed to occupy coastal space (along with any other consents) and a maximum consent period of 35 years is available. However, pre 1991 there will have been circumstances where no permission was necessary to erect a coastal structure and there will be no record of owners.
15. We also note that many early consents for occupation did not have conditions to remove a structure on expiry of the consent. It is worth noting that removal of such structures is usually considerably difficult and expensive.

DETAILED COMMENTS RE PROCESS

16. Preamble (1). This paragraph presupposes that each council will already have a database of all structures in the CMCA within its region and a record of (1) whether it has a resource consent and (2) ownership. The trigger to initiate the mandatory inquiry is no resource consent and uncertain ownership. For councils which do not already have a database with this information, it is implicit that it is required (and funded by the ratepayer).

17. In some instances ownership will be unknown but the structure is permitted by the plan, eg genuine public mooring. It is assumed the regulation will not apply to these instances but this needs to be clarified.

TIMING

(2) provides for an inquiry to be optional where a structure has a resource consent but the owner's whereabouts are unknown. We suggest there should be other circumstances where an inquiry is optional – and criteria are suggested to enable a regional council to prioritise its resources to undertake an inquiry, see Appendix 1.

(4) provides for priority where more than one inquiry is needed. There is no impediment to a multiple inquiry (eg several moorings in one location) but what starts as a multiple inquiry is likely to quickly become a bundle of individual inquiries proceeding at different rates.

Most regional councils have conducted surveys of abandoned or unconsented structures in an effort to either assign ownership or remove the structures. The critical issue is those that are significant in terms of effect and cost. The ability to prioritise is supported. The phrasing "where more than one such inquiry is needed in a region" is unlikely to be necessary – regions are unlikely to ever have one abandoned structure. This paragraph could be shortened to: *"A regional council may determine the priority order in which inquiries will be undertaken having regard to the resources available to the regional council, and the risks posed and adverse effects of each structure."*

(6) gives criteria for establishing priority but not for whether to conduct an inquiry or not. It is also recommended that a criterion be added that recognises the potential impact of cultural values: *"significantly impact on cultural values; or..."*

It is assumed that regional councils will retain the ability to remove abandoned structures as in cases this will be cheaper than conducting an inquiry. How is the removal of structures by regional councils viewed if an inquiry is required? Can this be undertaken instead of an inquiry? Also, as a result of an inquiry a structure that is abandoned may be claimed by a third party on the basis of obtaining a resource consent and taking on ownership responsibility. This may be a good community outcome as has been experienced in the Bay of Plenty. How then would this situation be addressed? On this basis it is recommended that an "out" clause is added such as:

NEW clause. During an inquiry process, if an alternative arrangement to Crown ownership is determined the inquiry may be discontinued.

It may be appropriate that a public notice is required before committing to remove a structure – stating that a structure will be removed unless ownership is claimed/established by [date].

Where a structure is adopted by a third party – the proposed "out" clause addresses only ownership, it also needs to address the lack of a resource consent:

During an inquiry process, if an alternative arrangement to Crown ownership is determined and a resource consent is applied for and obtained, the inquiry may be discontinued.

PROCESS

(7) sets out the process of enquiry. A council is required to take "such of the following steps as are relevant in the particular case" to seek the identity of any owner, and the whereabouts of the owner.

Seventeen steps are listed. Phone directory, electoral roll, Companies Office, may be relevant to establishing "whereabouts", but only where identity has been established. Those will also be "closed" inquiries, resulting in a yes/no answer. Others are "open" – seeking information from neighbours, past neighbours; other consent-holders, past consent-holders; known family members or associates. A limit needs to be set on what is a reasonable extent for such inquiries as this all will carry a non-recoverable cost, unless this is addressed. In addition, a reasonable cut-off date if no response is received from persons contacted would seem appropriate.

- (i) Needs not be limited to organisations with a consent or approval role. It could include DOC staff.
- (j) Seeking information from New Zealand Historic Places Trust (NZHPT) should only apply to structures known/thought to have been constructed prior to a particular date. If this is a default then it needs to be clear and an explanation given.

(8)(9)(10) all need a similar "reasonable" limit where the Official Assignee or a liquidator has disposed of ownership, or to trace beneficiaries from an estate.

(12) states that the process needs to be carried out to the satisfaction of the Director General, DOC. It would be clearer if DOC managed its own inquiry (with the appropriate means to allocate resources etc) or alternatively, DOC should provide the means to a regional council to recover costs for the inquiry and (15) exposes regional council to more cost than it may consider appropriate if inquiries are subject to the Director General's satisfaction.

PRIORITIES

- 18. With no discussion of cost recovery, if regional councils are to fund an inquiry from their rates pool then they need to be able to prioritise an inquiry. We suggest a two tier approach which accords significance, as outlined in Appendix 1:

Conclusion

- 19. *Local Government New Zealand* does not support the proposed policy for regulations under the Marine and Coastal Area (Takutai Moana) Act 2011 as it stands because it will impose unreasonable costs onto regional councils.
- 20. *Local Government New Zealand* recommends that the draft regulation is re-drafted to recognise how responsibilities and costs are allocated.

21. *Local Government New Zealand* wishes to be involved as this policy and any subsequent regulations are developed.

Appendix 1: Alternative text for two-tiered approach

PREAMBLE

1. Where a regional council identifies, in the CMCA within its region, a structure that does not have a current resource consent, has uncertain ownership and is identified as being of high priority for removal, it **must** conduct an inquiry under section 19 of the Act.
2. An inquiry under the Act is **optional** in all other cases.

The steps a regional council must or may take when undertaking an inquiry into abandoned structures under section 19.

DECISIONS ON CONDUCTING AN INQUIRY AND DETERMINING THE TIMING

3. Any inquiry required under section 1 must be undertaken within a reasonable period.
4. A regional council may determine the order in which inquiries will be undertaken having regard to the resources available to the regional council, and the risks posed and adverse effects of each structure.
5. Any decision on priority or the order of inquiries must be determined in consultation with the Department of Conservation.
6. When determining priority, high priority should be accorded to those structures which:
 - a. currently pose risks to health and safety or to the environment; or
 - b. significantly impact on cultural values; or
 - c. pose potential risks that have a high chance of resulting in injury, damage or other adverse effects; or
 - d. pose potential risks that have a low chance of resulting in injury, damage or other adverse effects but if such effects did result, they would be significant.
7. During an inquiry process if an alternative arrangement to Crown ownership is determined the inquiry may be discontinued.



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