Coastal Occupation Charges – What's all the Fuss?

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If you own a jetty, wharf, mooring, or any other structure that occupies space in the coastal marine area (including marine farms), you may already be required to pay fees, levies or charges. But a number of Councils are looking at a shift to 'coastal occupation charges', which could dramatically change the way the way charges are calculated. This new regime could throw up a number of issues, not the least of which are: how much you have to pay, and what they can use the money for.

The History

When the Resource Management Act (the RMA) came into force in 1991, it authorised the Crown to charge rentals for the occupation of coastal space. This was never put into effect because of the objections to the idea of paying 'rent', and issues over ownership of coastal space. As a result, the RMA was amended in 1997 to allow for a shift from rentals to 'coastal occupation charges'.

Although the legislation has been on the books for several years, the coastal occupation charges concept has not yet been implemented. This was mainly due to doubts over ownership of coastal space resolved by last year's Foreshore and Seabed Act 2004. In the meantime, some Council's have continued charging 'pre-RMA' fees and levies by virtue of some transitional regulations.

With the ownership issues now resolved some Councils have now begun looking at how to implement the coastal occupation charges regime, and Auckland Regional Council appears to be taking the lead.

Coastal Occupation Charges

A coastal charging regime has the potential to be fairer across all occupiers of the coastal marine area; however, this will depend largely on how it is implemented. A fairer system will be heavily dependent on the Regional Council's realising that coastal occupation charges are clearly intended to be something different from rentals: speeches made in Parliament at the time highlight that fact. The problem is that, if coastal occupation charges clearly aren't rentals, there is some confusion as to what they are. And the question of what they are is pretty fundamental to deciding the practical question of how much should be charged.

Various technical work is being undertaken on approaches to setting coastal occupation charges, but some authorities seem to be placing a heavy emphasis on valuing the occupied space in the coastal marine area as if it were being rented. In Auckland's case, what is being considered as a basis for value is a calculation of the land value of adjacent coastal real estate. Using the adjacent land value as the starting point in valuing space occupied in the coastal marine area could result in alarming charges as high as $600 per square metre in areas like the inner Waitemata Harbour in Auckland.

But there are several pointers in the section of the RMA authorising these charges which suggest a rush to value adjacent land and gather revenue is the wrong approach. Perhaps most significantly, there is a requirement that the revenue collected by a Regional Council from such charges may be "…used only for the purpose of promoting the sustainable management of the coastal marine area". At the moment, Councils seem to be treating this as an after-thought – once they have worked out how much it is possible to charge – then they will consider how to spend it.

There is an argument that this approach should be turned on its head: first the Council should look at what the 'sustainable management' issues for its coastal marine area are; then it should look at what is required in order to 'promote' sustainable management and what, if any, expenditure that might require; then they should consider what, if any, coastal occupation charges are appropriate. Clearly, before setting any such charges, the Council may also have to take into account its other funding sources, such as rates.

The suggested approach is not only philosophically different, it could also result in dramatically different levels of charges being set – if any are set at all. The application of any revenue back into sustainable management of the coastal marine area could also have positive benefits for all coastal users.

Next Steps

It should be stressed that no coastal occupation charges can be levied on anyone until a charging regime is laid out in the rules of the Regional Coastal Plan for their region. This means that before anyone gets a bill in the mail, their Regional Council must submit such proposed rules through a full, formal process to change their Coastal Plan, with discussion documents, public submissions and hearings. Even Auckland Regional Council is only at the informal discussion stage.

There is a risk of inconsistent approaches being taken around the country, or perhaps a worse risk, of smaller Councils taking the lead from larger Councils who take the wrong approach. In addition, some stakeholders of the coastal occupation charges policy are arguing that the guidelines set out in the RMA are so vague and unclear that central government should provide some direction. Marine farmers have made requests to this effect to the Ministers of Fisheries and the Environment and are in the process of formulating an industry-wide policy position on the issue. Other user groups may consider a similar approach, or even consider the value of presenting a united front across all occupiers of the coastal marine area.

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If you would like more information about coastal occupation charges and how they might affect you, please contact Justine Inns (justine.inns@oceanlaw.co.nz) or Kimberly McMurray-Cathcart (kimberly@oceanlaw.co.nz) by email or on 0800 OCEANLAW.