

## 1 Background

The Marlborough Berth and Mooring Association Incorporated (MBMA) represents a large cross section of mooring and berth holders. It currently has approximately 430 members.

MBMA's mission statement is:

*To provide a fair, reasoned and unified voice for mooring and berth holders and users of marina-based recreational boating facilities in Marlborough.*

MBMA had a substantial involvement in the proposed Mooring Management Areas for Waikawa Bay in Plan Change 21 and also a proposed Bylaw for the licensing of moorings.

## 2 Consequential Results of Submission

While specific reference has been made to certain objectives, policies and rules below, due to the complexity of the Marlborough Environment Plan (MEP) there may be associated references to similar issues elsewhere in the Plan that may require consequential relevant amendments and which are not detailed below.

## 3 Coastal Occupancy Charges

**Volume 1, Policy 5.10.4.** *Coastal occupancy charges will be imposed on coastal permits where there is greater private than public benefit arising from occupation of the coastal marine area.*

**Policy 5.10.7** – *The manner in which the level of coastal occupancy charges has been determined is as follows: (a) the expenditure related to the Marlborough District Council's role in the sustainable management of Marlborough's coastal marine area has been established; (b) the anticipated exemptions and waivers from coastal occupancy charges has been considered; (c) the beneficiaries and allocation of costs fairly and equitably amongst beneficiaries has been decided; and (d) the appropriate charge for the differing occupations to recover costs has been determined.*

The commentary to this policy states:

*In deciding how to set charges, the Council has used as its starting point the actual expenditure considered necessary to promote the sustainable management of the coastal marine area. The budgeted expenditure for this is described year to year in the Council's Annual Plan for the Environmental Science and Monitoring Group, Environmental Policy Group and Environmental Compliance and Education Group. In determining who should meet the cost of sustainably managing the coastal marine environment, an allocation of costs needs to occur between beneficiaries. The Council has considered that a contribution towards the costs should be made by ratepayers (25%) as well as those benefitting from the occupation of public space (75%). The Council has also given consideration to anticipated waivers that may be granted and the number and size of the various occupations. From this assessment, a schedule of charges has been derived and is set out in the Council's Annual Plan.*

### Submission

MBMA notes that the imposition of coastal occupancy charges is already signalled in the existing Marlborough Sounds Resource Management Plan. While it is yet another compliance cost on mooring owners, MBMA accepts that some form of coastal occupancy charge is inevitable.

The quantum of the charge is the main concern of MBMA members. MBMA is concerned that the rationale for charging as set out in the commentary to Policy 5.10.7 is not fair and reasonable.

The commentary notes that the starting point for setting charges is to consider the expenditure required to promote the sustainable management of the coastal marine area. The sustainability of the coastal marine area is however affected by many factors. The effects of those occupying the coastal environment are just a subset of that sustainability.

To note just a few, the interisland ferries and other large ships and also scallop dredging have well documented effects on the coastal environment. Land based activities such as forest harvesting and

domestic effluent disposal are also known adverse effects. A recent report initiated by Council raised concern regarding the reduction in benthic habitat and ecology from siltation resulting from run-off from land based activities such as commercial forest harvesting and earthworks.

MBMA's submission is that the starting point for setting coastal occupancy charges should be the actual expenditure considered necessary to promote sustainable management of the coastal marine environment in as much as it may be affected by coastal occupiers. Coastal occupiers should not have to foot most of the bill for this costs given that they are responsible for only some of the effects.

#### The Decision that MBMA seeks from Council

Amend the commentary to Policy 5.10.7 to as follows or similar (additions are underlined, deletions are crossed out):

*In deciding how to set charges, the Council has used as its starting point the actual expenditure considered necessary to promote the sustainable management of the coastal marine area in as much as it may be affected by the identified effects of coastal occupiers. The budgeted expenditure for this is described year to year in the Council's Annual Plan for the Environmental Science and Monitoring Group, Environmental Policy Group and Environmental Compliance and Education Group. In determining who should meet the cost of sustainably managing the coastal marine environment, an allocation of costs needs to occur between beneficiaries. The Council has considered that a contribution towards the costs should be made by ratepayers (25%), as well as those benefitting from the occupation of public space (75%). The balance of funding required to promote the sustainable management of the coastal marine area in the wider sense will be sourced from elsewhere. The Council has also given consideration to anticipated waivers that may be granted and the number and size of the various occupations. From this assessment, a schedule of charges has been derived and is set out in the Council's Annual Plan.*

**Volume 1, Policy 5.10.8** – *Any coastal occupancy charges collected will be used on the following to promote the sustainable management of the coastal marine area:*

- (a) implementation of a Coastal Monitoring Strategy;*
- (b) State of the Environment monitoring;*
- (c) research in relation to the state and workings of the natural, physical and social aspects of the coastal marine area; (*
- d) education and awareness;*
- (e) habitat and natural character restoration and enhancement;*
- (f) managing marine biosecurity threats;*
- (g) maintaining and enhancing public access; and Volume One 5. Allocation of Public Resources 5 – 35*
- (h) formal planning in the Resource Management Act 1991 planning context and strategic planning and overview in relation to the coastal environment.*

#### Submission

The fact that coastal occupiers are only one of the sectors involved with sustainably managing the coastal environment, should be reflected in this policy also.

#### The Decision that MBMA seeks from Council

Amend this policy as follows or similar (additions are underlined):

*Any coastal occupancy charges collected will ~~be used on~~ contribute towards the following to promote the sustainable management of the coastal marine area:*

## **Rights over Coastal Structures**

#### Submission

Policy 5.10.1 - *Recognition that there are no inherent rights to be able to use, develop or occupy the coastal marine area.*

The commentary notes that: *it is important to recognise that the rights to be able to use coastal marine area are not guaranteed in terms of Section 12 of the RMA; rather, use must be enabled by way of a rule in a plan or by resource consent.*

This is acknowledged by MBMA, however the rights over the use of coastal structures is not clear. Given that jetties and moorings are located in public coastal space, there is a presumption by some that any

member of the public can use those structures. This has created some confusion in the past. The MEP currently provides no direction on this issue in respect of moorings.

The instigation of coastal occupancy charges highlights the issue. Currently the rights of the public over a coastal structure is not clear, particularly given that the occupying party does not pay for the privilege of the use of the coastal marine area. The imposition of coastal occupancy charges however should justifiably confer some rights to the occupier as effectively they will be paying for the privilege to occupy that space.

Historically Council has imposed conditions on coastal permits allowing the public to temporarily use a privately owned jetty to set down and pick up passengers and goods in order to gain access to public land such as foreshore reserve. It is noted that there is a policy to this effect in the Plan.

However with moorings, access to the public space (the surrounding sea) can be gained by free anchoring. There is not necessarily a functional need to use a mooring to gain access to the sea.

Holders of coastal permits for moorings have to pay for preparation of resource consent applications and the assessment of those applications by Council. They are required by their coastal permit conditions to assess the structural integrity of the mooring every two years, undertake any necessary repairs and to forward that information to Council. Coastal Permit holders pay all of those costs. They own the block, tackle and floats.

It is not fair and reasonable that any member of the general public should use a private mooring as they do not contribute in any way to the formalisation and upkeep of that mooring and now would also not be contributing to the right to occupy that coastal space through coastal occupancy charges.

MBMA considers that there needs to be clear direction in the MEP in regards to the use of moorings.

#### The Decision that MBMA seeks from Council

A new policy be included in this section of the MEP that states the following or similar. Ideally such a policy would be located below the existing Policy 5.10.1:

*Recognition that there are inherent rights of a coastal permit holder over the use of the coastal structure(s) that occupy coastal space.*

## 4 Use of Coastal Environment

**Volume 1, Objective 13.6** – *A range of options is available to accommodate mooring/ berthage.*

**Volume 1, Policy 13.6.1** – *Provide for the mooring or berthage of boats by:*

- (a) enabling anchoring of boats;*
- (b) establishing Moorings Management Areas where there is high demand for space in the coastal marine area;*
- (c) ensuring moorings outside of Moorings Management Areas are sited in appropriate locations; and*
- (d) zoning specific areas for activities related to the operation of marinas, ports and port landing areas in Picton, Havelock, Waikawa, Elaine Bay and Oyster Bay.*

**Objective 13.7.1** – *Enable use of the coastal marine area for temporary anchoring by boats.*

**Policy 13.8.1** – *Where there is competing demand in the coastal marine area to accommodate swing moorings, Moorings Management Areas may be established to manage the placement and use of swing moorings.*

**Policy 13.8.2** – *To determine the appropriateness of an area of coastal space to become a Moorings Management Area in the Marlborough Environment Plan, the following matters will be considered:*

- (a) current and anticipated demand for swing moorings in the area;*
- (b) the cumulative effect (including on coastal amenity values and benthic habitats) of swing moorings and the capacity of the area to accommodate existing and additional moorings;*
- (c) whether there are issues with the layout of existing swing moorings, including overlapping of swing circles;*

- (d) *the intensity, character and scale of other activities in the area, including:*
- (i) the extent to which the use of or access to other coastal structures located in the area are or will be affected by additional swing moorings;*
  - (ii) residential development existing in the area and the potential for future development, having regard to the zoning of land;*
  - (iii) recreational activities occurring in the coastal marine area; and (e) impacts on navigation due to continuing with an uncontrolled approach to siting of swing moorings.*

**Policy 13.8.3** – *Moorings located in a Moorings Management Area (as identified on the Marlborough Environment Plan maps) will be encouraged by:*

- (a) enabling them as a permitted activity, where a Moorings Management Bylaw is in place; or*
- (b) where no Moorings Management Bylaw is in place, providing for moorings within a Moorings Management Area as a restricted discretionary activity. The matters the Marlborough District Council will restrict its discretion to in determining such an application will be:*
  - (i) location within a Moorings Management Area;*
  - (ii) the type and specification of mooring sought, including the swing arc; and*
  - (iii) the availability of space within the Moorings Management Area.*

**Objective 13.9** – *Outside of the Moorings Management Areas, other moorings are sited in appropriate locations.*

Submission

MBMA has been heavily involved with the promotion of the Mooring Management Areas in Waikawa Bay and formalisation of those through licences under a Bylaw and supports the relevant references.

MBMA also supports temporary anchoring of boats.

The Decision that MBMA seeks from Council

Retain these statements.

## 5 Coastal Water Quality

**Volume 1, Policy 15.1.18** - *Avoid the discharge of untreated human sewage to waterbodies or coastal waters.*

It is noted at the bottom of this policy that it is stated: *This policy gives effect to Policy 23 of the NZCPS*

### Submission

MBMA supports aspirational objectives of improving water quality in the Marlborough Sounds.

However, this and other related policies and rules are not practical and are not based on any assessment of effects of discharges of human sewage in deep water at a distance from the shore. MBMA accepts the current Marine Pollution Regulations (MarPol) in terms of depth of water (>5m) and distances to shore (>500m) that sewage can be discharged, however there is no rational justification for total avoidance as in this policy and no alternatives provided to achieve such a policy.

While the Plan states that this policy is giving effect to Policy 23 of the NZCPS, the NZCPS delegates determination of what the 'coastal environment' locally is to be. The MEP currently defines all of the Marlborough Sounds as the coastal environment. We understand this to be mostly on consideration of landscape and natural character values. However Council could, for example, make the coastal environment in terms of the discharge of sewage to be something less, for example the MarPol distance of 500m. This would still give effect to the NZCPS.

The policy is also not in line with subsequent policies and in particular Policy 15.1.20 regarding the discharge of sewage from ships, which does provide for the discharge of sewage to coastal waters, albeit at some distance from the coastal margin and marine farms. The inference is that Policies 15.1.18 and 15.1.19 are in relation to discharge of sewage from land to coastal waters, however this is not clear.

### The Decision that MBMA seeks from Council

In the event that this policy is intended to deal with land-based discharges of sewage to coastal water, MBMA seeks Policy 15.1.18 to be amended as follows or similar for clarification:

*Avoid the discharge of untreated human sewage from land based sources to waterbodies or coastal waters.*

In the event that this policy is intended to deal also with discharges of sewage from ships, MBMA seeks the policy to be amended as follows or similar:

*Avoid the discharge of untreated human sewage to waterbodies or coastal waters where it may render coastal water unsuitable for contact recreation, food gathering or aquaculture.*

**Policy 15.1.19:** *Progressively work toward eliminating the discharge of human sewage to coastal waters in the Marlborough Sounds, with the exception of regionally significant infrastructure.*

Submission

MBMA supports aspirational objectives of improving water quality in the Marlborough Sounds however does not consider that enough analysis has been undertaken to determine whether elimination of the discharge of human sewage is feasible. Without such analysis, the policy may be construed as a hollow promise.

It is also hypocritical for Council (as the owner and operator of regionally significant land based sewage infrastructure that discharges to the coast) to exempt themselves from such a policy.

The Decision that MBMA seeks from Council

That this Policy be deleted.

**Policy 15.1.20 -** *Except for Grade A or Grade B treated sewage, control the discharge of human sewage from ships in the Marlborough Sounds.*

Submission

The Resource Management (Marine Pollution) Regulations 1998 (MarPol) currently determines the baseline parameters for where and how sewage can be discharged to coastal waters in New Zealand.

While Council does have the ability in its Plan to include a rule (and by inference, supporting objectives and policies) that increases the seaward distance or depth of water that sewage can be discharged to, the Plan has not justified a greater seaward distance than is already provided by the MarPol regulations.

If no increase over and above the Marpol regulations can be justified, then no policy is required for further control.

The Decision that MBMA seeks from Council

That this Policy be deleted.

## 6 Coastal Marine Zone

### Volume 2, Rule 16.1 - List of Permitted activities

Submission

The Resource Management (Marine Pollution) Regulations 1998 sets out as a national baseline, the minimum distance of 500m from shore and marine farms that sewage can be discharged to coastal waters.

Rules 16.7.2 and 16.7.3 of the MEP increase that minimum distance from shore and marine farms that the discharge of untreated sewage can occur to 1000m.

While the MarPol rules do not necessarily need to be repeated in a Regional Plan it is unhelpful that they are not and in this case, where the seaward extent of the discharge distance has been increased, it is particularly confusing.

As will be seen in a submission below on Rules 16.7.2 and 16.7.3, MBMA considers that Council has not adequately justified the increase of the seaward distance to 1000m. However we still consider that a permitted activity rule should be included for the purposes of clarification.

The Decision that MBMA seeks from Council

If the 1000m rule is to be retained, include in the list of permitted activities the following or similar:

- o The discharge of untreated human sewage from a ship to the coastal marine area at 1000m or greater distance from MHWS (or as amended by any change to the Resource Management (Marine Pollution) Regulations 1998).

- o The discharge of untreated human sewage from a ship to the coastal marine area at 1000m or greater distance from a marine farm (or as amended by any change to the Resource Management (Marine Pollution) Regulations 1998).
- o The discharge of Grade A treated sewage from a ship to the coastal marine area except that the discharge is not permitted within 100m of a marine farm (or as amended by any change to the Resource Management (Marine Pollution) Regulations 1998).
- o The discharge of Grade B treated sewage from a ship to the coastal marine area except that the discharge is not permitted within 500m of a marine farm or from MHWS (or as amended by any change to the Resource Management (Marine Pollution) Regulations 1998).

If the status quo of the MarPol 500m distance is retained, include in the list of permitted activities the following or similar:

- o The discharge of untreated human sewage from a ship to the coastal marine area at 500m or greater distance from MHWS (or as amended by any change to the Resource Management (Marine Pollution) Regulations 1998).
- o The discharge of untreated human sewage from a ship to the coastal marine area at 500m or greater distance from a marine farm (or as amended by any change to the Resource Management (Marine Pollution) Regulations 1998).
- o The discharge of Grade A treated sewage from a ship to the coastal marine area except that the discharge is not permitted within 100m of a marine farm (or as amended by any change to the Resource Management (Marine Pollution) Regulations 1998).
- o The discharge of Grade B treated sewage from a ship to the coastal marine area except that the discharge is not permitted within 500m of a marine farm or from MHWS (or as amended by any change to the Resource Management (Marine Pollution) Regulations 1998).

**Rule 16.7.2 – Prohibited Activity** - *From 9 June 2022, the discharge of human sewage, except Grade A or B treated sewerage, from a ship within 1000m of MHWS.*

**Rule 16.7.2 – Prohibited Activity** - *From 9 June 2022, the discharge of human sewage, except Grade A or B treated sewerage, from a ship within 1000m of a marine farm.*

Submission

MBMA supports aspirational objectives of improving water quality in the Marlborough Sounds, however this must be based on actual effects not on figures pulled out of a hat and also must take into consideration the practicality of alternatives. The Plan does not justify the 1000m distance above and provides no alternatives if this distance is implemented as a rule.

These rules are not practical and are not based on any assessment of effects of discharges of human sewage in deep water at a distance from the shore. No analysis has been presented on depth of water in the Marlborough Sounds, mixing zones, dilution factors or any other factors that may influence sewage discharges at greater distances than 500m from the shore.

Implementation of this rule would require the provision of pump-out stations throughout the Sounds so that holding tanks can be emptied. Most lodges in the Sounds are already experiencing considerable problems in disposing of treated sewage due to insufficient or unsuitable land for disposal. Pump out stations in the Sounds are likely to be equally problematic for the same reasons.

MBMA considers that in the absence of better information, the currently operative MarPol regulations are appropriate (depth of water >5m; distances to shore and marine farms >500m).

The Decision that MBMA seeks from Council

That the rules to be amended as follows or similar:

- o The discharge of untreated human sewage from a ship to the coastal marine area at less than 500m from MHWS (or as amended by any change to the Resource Management (Marine Pollution) Regulations 1998).
- o The discharge of untreated human sewage from a ship to the coastal marine area at less than 500m from a marine farm (or as amended by any change to the Resource Management (Marine Pollution) Regulations 1998).
- o The discharge of Grade A treated sewage from a ship to the coastal marine area except that the discharge is not permitted within 100m of a marine farm (or as amended by any change to the Resource Management (Marine Pollution) Regulations 1998).
- o The discharge of Grade B treated sewage from a ship to the coastal marine area except that the discharge is not permitted within 500m of a marine farm or MHWS (or as amended by any change to the Resource Management (Marine Pollution) Regulations 1998).

**Rule 16.7.4** - *Discharge of treated or untreated human sewage into the coastal marine area, except for the discharge of treated human sewage from regionally significant infrastructure.*

Submission

This rule is not clear and as written contradicts the permissions afforded by the MarPol regulations and the MEP. The inference is that Rule 16.7.4 is in relation to discharge of sewage from land to coastal waters and not discharge from ships, however this is not clear.

The Decision that MBMA seeks from Council

MBMA seeks Rule 16.7.4 to be amended as follows or similar for clarification (addition underlined):

*Discharge of treated or untreated human sewage into the coastal marine area from land-based sources, except for the discharge of treated human sewage from regionally significant infrastructure.*

Note that similar consequential changes have been identified for Marina Zone Rules 15.7.4, 15.7.5 and 15.7.6.

**Paul Williams**

On behalf of Marlborough Berth and Mooring Association

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