

# **Regional Coastal Environment Plan Proposed Changes 1 and 2.**

**Part A: Text of the Proposed Plan  
Changes.**

**Part B: Extracts from the Regional  
Coastal Environment Plan showing  
the proposed changes.**

**Part C: Section 32 Report.**

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At its meeting on 31 May 2007 the Canterbury Regional Council decided to publicly notify Proposed Plan Changes 1 and 2 to the Regional Coastal Environment Plan and adopted the associated Section 32 report on the proposed changes.

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## **PART A: TEXT OF THE PROPOSED PLAN CHANGES**

### **1. PROPOSED PLAN CHANGE 1**

#### **1. (a) Add the following new clauses (r) and (s) to Rule 8.1 Permitted Activities:**

- (r) the placement of a swing mooring in a Swing Mooring Area where the placement is to replace an existing swing mooring that has been placed as a Lawfully Established Structure.
- (s) the removal and placement of a swing mooring by, or on behalf of, the Regional Harbourmaster:
  - (i) for navigation safety purposes, or
  - (ii) to remove an abandoned swing mooring, or
  - (iii) to remove or replace a swing mooring that is incorrectly or unlawfully placed.

#### **1. (b) Add the following to Rule 8.1:**

##### **Interpretation provision for Rule 8.1 (r) and 8.1 (s)**

For the purposes of paragraphs (r) and (s) of this rule, the term “placement” is restricted to the activity of placing both a mooring block and its attached tackle on the sea bed that is subject to Section 12 (1) (b) of the Act.

#### **1. (c) Add the following note to Rule 8.1 Permitted Activities:**

- (4) The placement of a swing mooring in the Coastal Marine Area permitted by Rule 8.1 (r) is required to comply with the current Navigation Safety Bylaws governing such an activity.

#### **1(d) Add a new Rule 8.19B and Principal Reason as follows:**

##### **Rule 8.19B Non-Complying Activities**

The mooring or anchoring of vessels or other floating objects is a Non-Complying Activity unless the mooring or anchoring:

- i) occurs within the area covered by a section 384A deemed coastal permit and is reasonably necessary for a port-related commercial activity; or
- ii) is temporary and is for a purpose other than the storage of a vessel, such as loading, unloading, refuelling a vessel or other similar purpose for which it is reasonably necessary to moor or anchor a vessel or other floating object temporarily; or
- iii) is necessary to protect the health or safety of persons or the safety of the vessel from an immediate and unforeseen threat or danger; or
- iv) is necessary to secure a marker, beacon, buoy or other floating navigation aid or temporary race mark buoy; or
- v) is mooring to a swing mooring placed as a Permitted Activity, or through a resource consent to place the mooring; or

- vi) is for a period and in a manner that falls within the normal scope of navigation.

### **Principal Reason**

To ensure that vessels or other objects are not moored by way of anchors or other means so as to create a de facto swing mooring that would be contrary to Policy 8.13.

#### **1(e) Add a new (e) to Rule 8.23 Permitted Activities**

- (e) the occupation of the Coastal Marine Area by a swing mooring placed within a Swing Mooring Area and the occupation of the Coastal Marine Area by a vessel attached to such a swing mooring.

#### **1(f) Add a new note to Rule 8.23 Permitted Activities**

- (4) The use of a swing mooring permitted to occupy the Coastal Marine Area by Rule 8.23 (e) is required to be in compliance with current Navigation Safety Bylaws governing such an activity.

## **2. PROPOSED PLAN CHANGE 2**

### **2(a) Add a new (f) to Rule 8.23 Permitted Activities**

- (f) The occupation of the Coastal Marine Area by a structure that is a Lawfully Established Structure on the date that this part of the rule becomes operative, provided that:
1. the structure is in a good repair and does not constitute a safety hazard; and
  2. the structure is in use and has not been abandoned; and
  3. Environment Canterbury is provided with a plan in sufficient detail to show the location of the structure and the area of the Coastal Marine Area that it occupies, and evidence that the structure is a Lawfully Established Structure.

### **2(b) Add a new provision to Rule 8.23 Permitted Activities**

#### **Exclusive Occupancy**

The occupation of the Coastal Marine Area by a boatshed within a Boatshed Area that is permitted by this rule explicitly includes the right by the boatshed owner to exclude other persons from the interior of the boatshed.

### **2(c) Add a new definition to Appendix 1 Definition of Terms.**

#### **Lawfully Established Structure**

Means:

- (a) a structure, the erection and placement of which has been authorised:
- (i) as a Permitted Activity by a rule in this plan; or
  - (ii) by a resource consent issued in accordance with the rules in this plan; or
  - (iii) by a resource consent issued prior to 2 July 1994; or
  - (iv) by a permission, licence, permit or authority deemed to be a coastal permit by Section 384 of the Act;
- or
- (b) a swing mooring that was erected or placed, or occupied the Coastal Marine Area, through a permission, licence, permit or authority issued under Bylaws made under Part VI of the Harbours Act 1950 prior to 1 October 1991, and where the permission, licence, permit or authority remained current on 1 October 1991; or
- (c) a structure that is part of a marine farm for which a lease or licence was granted under the Marine Farming Act 1971 for the marine farm, including the structure, prior to 1 October 1991, and where the lease or licence remained current on 1 October 1991; or
- (d) a structure that has been in place prior to 1878 and the enactment of the first Harbours Act.

**2(d) Replace the present definition of Authorised Structure in Appendix 1  
Definition of Terms with:**

**Authorised Structure**

Means a Lawfully Established Structure that is expressly allowed to occupy the Coastal Marine Area by:

- (a) a rule in a regional coastal plan and any proposed regional coastal plan; or
- (b) a resource consent; or
- (c) the Act.

## **PART B Extracts from the Regional Coastal Environment Plan showing the Proposed Changes**

Deletions are shown as strike through and shaded, (e.g. ~~deleted~~). Additions are shown underlined and shaded, (e.g. additions).

### **From Chapter 8 Method 8.5 Regional Rules for the Coastal Marine Area Erection, Reconstruction, Placement, Alteration, Extension, Removal, or Demolition of Structures fixed in, on, under or over any foreshore or seabed.**

#### **Rule 8.1 Permitted Activities**

Except as provided for by Rules 8.4 or 8.6, the following activities in, on, under, or over any foreshore or seabed are Permitted Activities:

- (a) The reconstruction, alteration or extension of an Authorised Structure, or any part of an Authorised Structure, within the Operational Area of a Port, provided that:
  - (i) the structure shall be used for purposes directly related to the operation of the port; and
  - (ii) the reconstruction, alteration or extension shall add no more than 30 % to any cross-sectional area of the structure in any twelve month period, and
  - (iii) for a berth, wharf or jetty, its reconstruction, alteration or extension shall add no more than 10% to any cross-sectional area of the berth, wharf or jetty in any twelve month period.
- (b) The reconstruction or alteration of an Authorised Structure, or any part of an Authorised Structure, outside the Operational Area of a Port, provided that:
  - (i) the reconstruction or alteration shall be for the purpose of repairing or maintaining the structure with like materials; and
  - (ii) there shall be no change to the location or external dimensions of the structure as it was originally authorised.
- (c) The reconstruction, alteration, or extension of any existing Network Utility Structure, or any part of any existing Network Utility Structure, including part or all of any constructed material supporting or protecting such structures, provided that:  
in any twelve month period, the reconstruction, alteration, or extension shall add no more than five percent to the height, width, length, volume, plan area, or to any cross-sectional area, of the part of the structure that is in the Coastal Marine Area.
- (d) The reconstruction, alteration, extension or replacement of existing telecommunication lines, existing electricity lines, existing radiocommunication facilities, existing electricity facilities, and existing telecommunication facilities;  
and  
the erection of new radiocommunication facilities and new telecommunication facilities, (but not including the erection of new telecommunication lines or new electricity lines), attached to or placed or mounted on existing Authorised Structures,  
provided that:

- (i) equipment buildings associated with these facilities are less than 15 square metres in floor area and no higher than 3.5 metres; and
  - (ii) antennas do not exceed 1.8 metres in diameter or project more than 3.5 metres above their point of attachment; and
  - (iii) the combined height of any free-standing mast or pole, together with any associated antenna and the structure used to attach the antenna to or mount the antenna on the mast or pole, shall not exceed 15 metres above the existing structure on which the mast or pole is mounted.
- (e) The erection or placement of any cable, telecommunications line or pipeline except a pipeline for the conveyance of hazardous substances forming part of a Network Utility System provided that:
  - (i) the cable, telecommunications line or pipeline shall be attached to an existing Authorised Structure so that it is partly or totally obscured along all of its length, or buried so that it is subterranean, or for parts that are covered by water at all states of the tide, laid on, in or under the seabed; and
  - (ii) the network utility operator shall advise the Maritime Safety Authority, Environment Canterbury, the Tangata Whenua of the area, the Department of Conservation and the Hydrographic Office of the Royal New Zealand Navy, at least ten working days before work commences.
- (f) The removal or demolition of any structure or part of any structure, by or on behalf of the owner of the structure, provided that:
  - (i) all materials removed from the structure or part of the structure, other than materials used in the remaining part of the structure or in other structures, shall be removed from the Coastal Marine Area; and
  - (ii) for wharves, jetties, piled structures or buildings, Environment Canterbury shall be advised in writing at least twenty working days prior to work commencing, if the structure is to be completely removed from the Coastal Marine Area; and
  - (iii) the structure is not listed in Schedule 5.12 as a Protected Recreational, Cultural or Historic Structure.
- (g) Notwithstanding condition (iii) of Rule 8.1 (f), the removal or demolition of the "Screw Piles", beneath the No. 2 Wharf at the Port of Lyttelton, (Structure number 6 in Schedule 5.12) and the removal or demolition of the "Patent Slip" at the Port of Lyttelton (Structure number 11 in Schedule 5.12), provided that:
  - (i) Environment Canterbury and the Historic Places Trust shall be advised in writing at least twenty working days prior to work commencing; and,
  - (ii) A professional photographic record of the structure shall be made prior to the removal or demolition of these structures, and any other earlier photographs and plans held by the Lyttelton Port Company shall be collated and copies provided to the Historic Places Trust; and,
  - (iii) In relation to the "Screw Piles", a screw pile, or a number of screw piles, shall be provided to the Historic Places Trust, on request.
- (h) The reconstruction, replacement or alteration, by or on behalf of the owner, of a fixed pile mooring or a pontoon mooring that existed on 2 July 1994, or a fixed pile mooring or a pontoon mooring that has been authorised by a resource consent after 2 July 1994, provided that:
  - (i) the mooring is within the Pile Mooring Area of Lyttelton Inner Harbour, Magazine Bay or Diamond Harbour or within the Operational Area of a Port; and

- (ii) no additional moorings shall be created.
- (i) The placement of a mooring within the Operational Area of a Port by, or on behalf of, a Port Company having an occupation right for that purpose.
- (j) The reconstruction, alteration or extension of an existing boatshed or its associated launching ramps or rails, provided that:
  - (i) the boatshed shall be constructed only for the storage and maintenance of a vessel and ancillary equipment and not for overnight stays or residential or dwelling purposes; and
  - (ii) after the work is completed, previously available public access within or along the Coastal Marine Area shall be maintained; and
  - (iii) no signs, other than: signs provided for by paragraphs (k) or (l) of this Rule, or signs authorised by a resource consent, or signs of less than 1.5 square metres in total area consisting of the owner's name or an identification number, shall be fixed or painted on the boatshed; and
  - (iv) the reconstruction, alteration or extension shall not cause the parts of the boatshed within the Coastal Marine Area, but not including its associated launching ramps or rails, to have a length greater than eight metres, or a height greater than four metres above the line of mean high water springs; and
  - (v) the reconstruction, alteration or extension shall not increase the width of the boatshed.
- (k) The erection, reconstruction, placement, alteration or extension of any navigational aid by or on behalf of a port company, a local authority or the Maritime Safety Authority.
- (l) The erection, reconstruction, placement, alteration or extension of a sign by Public Health Authorities, Port Companies, the Department of Conservation, the Ministry of Fisheries, territorial local authorities or Environment Canterbury; to inform or warn the public not to disturb flora or fauna or historic or cultural sites, or to inform the public of safe behaviour or of threats to their health and safety; provided that the sign shall be removed when the reason for its siting no longer applies.
- (m) The placement of markers for water based sporting or recreation events, including placement of buoys to outline a course, provided that the markers shall be removed within twenty four hours of the completion of the events.
- (n) The placement of buoys containing or supporting scientific instruments for measurement or assessment of weather, water temperatures, tidal flows, wave conditions or other characteristics of the water or seabed, provided that the buoys shall not create a hazard to vessels, and shall be removed when the measurements or assessments are completed.
- (o) The erection, reconstruction, placement or alteration of a mai-mai, provided that:
  - (i) the mai-mai shall have a maximum size of 10 square metres and shall be no higher than 1.5 metres above the line of mean high water springs; and
  - (ii) the mai-mai shall be at least 90 metres from any other mai-mai; and
  - (iii) the mai-mai shall be constructed or covered with natural materials that are found at the site.
- (p) The erection, reconstruction, placement, alteration, or extension of a fence within an Area of Significant Natural Value, provided that:

- (i) the activity shall be carried out by or on behalf of a land occupier, local authority or a government agency having management responsibility for the area; and
  - (ii) the fence shall be for the purpose of protecting natural, historic, cultural or Tangata Whenua values or stock control purposes; and
  - (iii) the fence shall be removed once it is no longer required; and
  - (iv) the public shall be informed of the reasons for, and the term of the restrictions, by signs on site; and
  - (v) Environment Canterbury shall be informed of the reasons for the fence, and the period or periods for which the fence is to be in place, at least ten working days prior to the erection of the fence.
- (q) The reconstruction, alteration or extension of a fence provided that:
- (i) the fence shall continue along the line of an existing fence that is outside the Coastal Marine Area; and
  - (ii) the reconstruction or alteration shall not result in any increased obstruction to previously available public access within or along the Coastal Marine Area; and
  - (iii) a gate or a stile or a similar device shall be provided on the fence to allow walking access along the Coastal Marine Area.
- (r) the placement of a swing mooring in a Swing Mooring Area where the placement is to replace an existing swing mooring that has been placed as a Lawfully Established Structure.
- (s) the removal and placement of a swing mooring by, or on behalf of, the Regional Harbourmaster:
- (i) for navigation safety purposes, or
  - (ii) to remove an abandoned swing mooring, or
  - (iii) to remove or replace a swing mooring that is incorrectly or unlawfully placed.

#### **Interpretation provision for Rule 8.1 (r) and 8.1 (s)**

For the purposes of paragraphs (r) and (s) of this rule, the term “placement” is restricted to the activity of placing both a mooring block and its attached tackle on the sea bed that is subject to Section 12 (1) (b) of the Act.

#### **Notes:**

- (1) The discharges of any contaminants associated with these activities need to be authorised by resource consents or by a Rule in this plan. Rule 7.1 (e) authorises as a Permitted Activity, the discharge of sediment as a result of any disturbance of foreshore or seabed that is authorised as a Permitted Activity by this Rule.
  - (2) In order to be classified as a Permitted Activity under this rule, an activity need only comply with any one of the activity classes set out as 8.1 (a) to (q).
  - (3) For the purpose of this rule, “alteration” of a structure includes all alterations involved in the repair, maintenance or upgrade of the structure.
- (4) The placement of a swing mooring in the Coastal Marine Area permitted by Rule 8.1 (r) is required to comply with the current Navigation Safety Bylaws governing such an activity.

## **Principal Reason**

Activities with minor adverse environmental effects, and which take place in areas which already contain development, should be able to proceed without the need for resource consents, but need to fit in with the natural character and the environmental qualities valued by other users.

In this context, the need to maintain the integrity of infrastructure such as network utilities that extend into the Coastal Marine Area and are particularly vulnerable to coastal erosion, such as the State Highway network in Kaikoura and Banks Peninsula Districts, is recognised.

Construction activity carried out within the two port areas of Lyttelton and Timaru, and the placement of shipping aids, should also be allowed, provided that adverse environmental effects are minor, or are avoided, remedied or mitigated.

## **Rule 8.2 Discretionary Activities for which Discretion is Restricted**

**The placement of a swing mooring, in, on, under, or over any foreshore or seabed, within a Swing Mooring Area, is a Discretionary Activity for which Environment Canterbury has restricted the exercise of its discretion.**

### **Restriction of Discretion for Rule 8.2**

Environment Canterbury restricts its discretion to the following matters when considering an application for a resource consent in accordance with Rule 8.2 and in imposing conditions in accordance with Section 108 of the Act:

- (a) the capacity and efficiency of use of the Swing Mooring Area;
- (b) the separation of moored vessels;
- (c) the provision of access lanes for vessels to move to and from wharf or shore facilities and open water;
- (d) the capability and integrity of the mooring for securing a vessel;
- (e) the proper repair and maintenance of mooring blocks and associated tackle;
- (f) the identification and marking of the mooring, and the identification of the mooring owner;
- (g) the placement and replacement of mooring blocks within the Swing Mooring Area; and
- (h) the need to avoid subsurface pipelines, cables and other structures.

## **Notification**

In accordance with Section 94D(2) of the Act, an application for a resource consent for placement of a swing mooring that is sought in accordance with Rule 8.2 of this Plan need not be notified in accordance with Section 93 of the Act, and in accordance with Section 94D(3) of the Act notice of such an application does not need to be served.

## **Principal Reason**

To encourage swing moorings in areas where such moorings have already been established, recognising the limited capacity of such areas and the need to provide for safety and access for other vessels.

## **Rule 8.5 Non-Complying Activities**

**The following are Non-Complying Activities in, on, under, or over any foreshore or seabed:**

- (a) the placement of a swing mooring, in, on, under, or over any foreshore or seabed, outside a Swing Mooring Area; and**
- (b) the erection or placement of a boatshed, or the erection or placement of launching ramps or rails associated with a boatshed, outside a Boatshed Area; and**
- (c) the erection or placement of a structure within an Area of Significant Natural Value or within an area listed in Schedule 5.13. This shall not apply to:**
  - (i) a structure allowed as a Permitted Activity by Rule 8.1; or**
  - (ii) a structure controlled by Rule 8.2 or Rule 8.6; or**
  - (iii) a marine farm structure that was authorised prior to 16 May 2001; or**
  - (iv) the erection or placement of a structure or structures undertaken for the purpose of maintaining, repairing, or protecting network utility infrastructure.**

### **Principal Reason**

To discourage sporadic development of swing moorings and boatsheds that will detract from the natural character of the coastal environment. To preserve the natural character of the bays and harbours of Banks Peninsula and Areas of Significant Natural Value and their water quality, their use and enjoyment by recreational, tourist or other users, their value as a marine ecosystem and a habitat of marine life and Hector's Dolphins in particular.

## Operation of Vessels or Vehicles.

### **Rule 8.19B Non-Complying Activities**

**The mooring or anchoring of vessels or other floating objects is a Non-Complying Activity unless the mooring or anchoring:**

- i) **occurs within the area covered by a section 384A deemed coastal permit and is reasonably necessary for a port-related commercial activity; or**
- ii) **is temporary and is for a purpose other than the storage of a vessel, such as loading, unloading, refuelling a vessel or other similar purpose for which it is reasonably necessary to moor or anchor a vessel or other floating object temporarily; or**
- iii) **is necessary to protect the health or safety of persons or the safety of the vessel from an immediate and unforeseen threat or danger; or**
- iv) **is necessary to secure a marker, beacon, buoy or other floating navigation aid or temporary race mark buoy; or**
- v) **is mooring to a swing mooring placed as a Permitted Activity, or through a resource consent to place the mooring; or**
- vi) **is for a period and in a manner that falls within the normal scope of navigation.**

### **Principal Reason**

**To ensure that vessels or other objects are not moored by way of anchors or other means so as to create a de facto swing mooring that would be contrary to Policy 8.13.**

## **Occupation of the Coastal Marine Area.**

### **Rule 8.23 Permitted Activities**

The following activities are Permitted Activities:

- (a) The occupation of the Coastal Marine Area for the purpose of carrying out the erection, reconstruction, placement, alteration, extension, removal or demolition of a structure that is authorised as a Permitted Activity in accordance with Rule 8.1, or by a resource consent, while that erection, reconstruction, placement, alteration, extension, removal or demolition is occurring, provided that Environment Canterbury is informed in writing of the nature of the activity, the structure and the occupation, at least ten working days before the occupation of the Coastal Marine Area for the activity commences.
- (b) The occupation of additional parts of the Coastal Marine Area as a result of the erection, reconstruction, placement, alteration, or extension, of a structure where that activity is authorised as a Permitted Activity in accordance with Rule 8.1, provided that Environment Canterbury is informed in writing of the nature of the changes to the structure and the occupation, at least ten working days before the erection, reconstruction, placement, alteration, or extension commences.
- (c) The temporary occupation of the Coastal Marine Area, for the purpose of conducting a sporting event such as a boat race or a beach horse race, where this requires the temporary exclusion of other persons to ensure their safety, provided that:

  - (i) the occupation shall not be for more than eight consecutive hours in any twelve month period and not for more than five occasions in any twelve month period; and
  - (ii) Environment Canterbury and the relevant Territorial Local Authority shall be informed in writing of the periods of occupation at least ten working days before the occupation of the Coastal Marine Area by the activity is to commence; and
  - (iii) the occupation shall not take place within an Area of Significant Natural Value; and
  - (iv) a notice of the event shall be published in a newspaper circulating in the area between six and ten working days prior to the event and notices shall be prominently displayed on notice boards on the shore adjacent to the event or at the nearest boat ramps for at least eight working days immediately prior to the event; and
  - (v) for any event on a beach, barriers and markers shall be erected and patrolled by event marshals to protect the safety of non-participants while the event is being conducted; and
  - (vi) for any motorised boat race, the boundaries of the race course shall be patrolled by event marshals in motorised patrol vessels to warn operators of other vessels of the potential danger of collisions; and
  - (vii) all equipment used for the event, and any debris or other material left in the Coastal Marine Area by participants or spectators as a result of the event, shall be removed from the Coastal Marine Area;

## Military Training

- (d) The occupation of the Coastal Marine Area by the New Zealand Defence Force in the Weapons Range/Danger Area NZD 820, located to the north and east of Le Bons Bay, Banks Peninsula, defined in Schedule 5; for the carrying out of permanent and temporary military training activities requiring exclusive occupation including, but not limited to, surface to air and surface to surface weapon firing, and ship exercises provided that the activity is undertaken for defence purposes.
- (e) the occupation of the Coastal Marine Area by a swing mooring placed within a Swing Mooring Area and the occupation of the Coastal Marine Area by a vessel attached to such a swing mooring.
- (f) The occupation of the Coastal Marine Area by a structure that is a Lawfully Established Structure on the date that this part of the rule becomes operative, provided that:
1. the structure is in a good repair and does not constitute a safety hazard; and
  2. the structure is in use and has not been abandoned; and
  3. Environment Canterbury is provided with a plan in sufficient detail to show the location of the structure and the area of the Coastal Marine Area that it occupies, and evidence that the structure is a Lawfully Established Structure.

## Exclusive Occupancy

The occupation of the Coastal Marine Area by a boatshed within a Boatshed Area that is permitted by this rule explicitly includes the right by the boatshed owner to exclude other persons from the interior of the boatshed.

## Notes

- (1) Rule 8.23 (a) does not authorise the occupation of the Coastal Marine Area taken up by the structure itself, such occupation needs to be authorised by another rule in this part of the plan, or by a resource consent for occupation of the Coastal Marine Area.
- (2) Rule 8.23 (b) authorises, as a Permitted Activity, the occupation of new parts of the Coastal Marine Area taken up by some specific structures such as navigation aids, markers, signs, buoys, mai mais, fences, cables, telecommunications lines, pipelines, moorings, and radiocommunication and telecommunication facilities, where their erection or placement is authorised by Rule 8.1.
- (3) Rule 8.23 (b) also authorises, as a Permitted Activity, the occupation of the additional parts of the Coastal Marine Area that are taken up as a result of the reconstruction, alteration, extension or replacement of an existing structure, where this reconstruction, alteration, extension or replacement is authorised by Rule 8.1. However, the occupation of the Coastal Marine Area that is taken up by the originally existing structure needs to be separately authorised by another rule in this part of the plan, or by a resource consent for occupation of the Coastal Marine Area.
- (4) The use of a swing mooring permitted to occupy the Coastal Marine Area by Rule 8.23 (e) is required to be in compliance with current Navigation Safety Bylaws governing such an activity.

## Principal Reason

A number of activities requiring exclusive occupation of the Coastal Marine Area are limited in time and/or effect or, in the case of military training, are restricted to defined water areas, they should be able to proceed without the need for a resource consent, subject to reasonable conditions.

## Appendix 1 Definition of Terms

### Authorised Structure

**Means:**

~~a structure, the erection and placement of which has been authorised:~~

- ~~(a) as a Permitted Activity by a Rule in this plan; or~~
- ~~(b) by a resource consent issued in accordance with the rules in this plan; or~~
- ~~(c) by a resource consent issued prior to 2 July 1994; or~~
- ~~(d) by a permission, licence, permit or authority deemed to be a coastal permit by Section 384 of the Resource Management Act 1991; or~~

~~a swing mooring that was erected or placed, or occupied the Coastal Marine Area, through a permission, licence, permit or authority issued under Bylaws made under Part VI of the Harbours Act 1950 prior to 1 October 1991, and where the permission, licence, permit or authority remained current on 1 October 1991; or~~

~~a structure that is part of a marine farm for which a lease or licence was granted under the Marine Farming Act 1971 for the marine farm, including the structure, prior to 1 October 1991, and where the lease or licence remained current on 1 October 1991.~~

Means a Lawfully Established Structure that is expressly allowed to occupy the Coastal Marine Area by:

- (a) a rule in a regional coastal plan and any proposed regional coastal plan; or
- (b) a resource consent; or
- (c) the Act.

### **Lawfully Established Structure**

**Means:**

- (a) a structure, the erection and placement of which has been authorised:
  - (i) as a Permitted Activity by a rule in this plan; or
  - (ii) by a resource consent issued in accordance with the rules in this plan; or
  - (iii) by a resource consent issued prior to 2 July 1994; or
  - (iv) by a permission, licence, permit or authority deemed to be a coastal permit by Section 384 of the Act;
- or
- (b) a swing mooring that was erected or placed, or occupied the Coastal Marine Area, through a permission, licence, permit or authority issued under Bylaws made under Part VI of the Harbours Act 1950 prior to 1 October 1991, and where the permission, licence, permit or authority remained current on 1 October 1991; or
- (c) a structure that is part of a marine farm for which a lease or licence was granted under the Marine Farming Act 1971 for the marine farm, including the structure, prior to 1 October 1991, and where the lease or licence remained current on 1 October 1991; or
- (d) a structure that has been in place prior to 1878 and the enactment of the first Harbours Act.

## **PART C: SECTION 32 REPORT**

### **SECTION 32 REPORT ON PROPOSED CHANGES 1 AND 2 TO THE REGIONAL COASTAL ENVIRONMENT PLAN**

#### **1. INTRODUCTION**

Section 32 of the Resource Management Act 1991 (RMA) requires an evaluation of any proposed changes to a regional plan. As applied to the proposed plan changes considered here, the evaluation is required to examine, having regard to their efficiency and effectiveness, whether the proposed provisions are the most appropriate for achieving the objectives of the Regional Coastal Environment Plan (the Plan).

An evaluation must also examine the extent to which the objectives are the most appropriate way to achieve the purpose of the RMA. For these proposed plan changes no changes to the objectives are being considered or proposed.

The evaluation must take account of the benefits and costs of the proposed provisions and the risk of acting or not acting if there is uncertainty or insufficient information about the subject matters of the proposed provisions.

A report summarising the evaluation must be made available for consideration alongside any notification of proposed plan changes.

This report and the associated proposed plan changes are the end result of a period of consultation and considerations dating back to October 2006. At that time the Canterbury Regional Council resolved to initiate work towards a change to the Plan with a view to making some types of occupation of the Coastal Marine Area Permitted Activities.

Informal consultation in writing has been undertaken with swing mooring and boatshed owners, boating groups and commercial operators as well as consultation with those parties required to be consulted with by Schedule 1 of the RMA.

Most of the submissions received generally supported the proposals. A few opposed some specific measures and some submitters suggested amendments. A number of amendments have been made to the proposed changes as a result of the consultation process.

#### **2. PROPOSED PLAN CHANGE 1**

##### **2.1 Description of the Proposed Change**

- (a) Replace the present requirement for a resource consent for a swing mooring to occupy the Coastal Marine Area within a designated Swing Mooring Area with a Permitted Activity Rule without conditions, and provide similarly for the physical replacement of an existing swing mooring in a designated Swing Mooring Area with a Permitted Activity Rule without conditions.
- (b) Provide for the powers of the Regional Harbourmaster under the Local Government Act 1974 to be exercised without the need for a resource consent.

- (c) Include a rule to prevent a de facto swing mooring being established through the long-term anchoring of a vessel.
- (d) Include references to the Navigation Safety Bylaws requirements with respect to swing moorings.

### 3. PROPOSED PLAN CHANGE 2

#### 3.1 Description of the Proposed Change

- (a) Make the occupation of the Coastal Marine Area by any Lawfully Established Structure (including swing moorings outside the Swing Mooring Areas) a Permitted Activity subject to certain conditions.
- (b) Provide for owners of boatsheds in Boatshed Areas to have the explicit right to exclude other persons from the boatshed interior.
- (c) Define Lawfully Established Structures and Authorised Structures (i.e. Lawfully Established Structures which also have occupancy rights).

### 4. RELEVANT OBJECTIVES OF THE REGIONAL COASTAL ENVIRONMENT PLAN

The proposed changes relate to Chapter 8 of the Plan. There is only one Objective in this chapter and it is reproduced in full, including its Principal Reason, as follows:

#### **Objective 8.1**

- (1) *To enable people to use the Coastal Marine Area and its resources while avoiding, remedying or mitigating the adverse effects of that use on the environment, including avoiding, remedying or mitigating the adverse effects:*
  - (a) *of conflicts between these uses and people's well-being, health, safety and amenity; and*
  - (b) *on natural character, and other (natural, ecological, amenity, Tangata Whenua, historic and cultural) values of the coastal environment.*
- (2) *To enable the efficient and effective operation and development of the Ports of Lyttelton and Timaru and network utilities while avoiding, remedying or mitigating adverse effects on the environment consistent with the normal requirements of commercial ports and network utilities.*

#### **Principal Reason**

*To maintain a coastal environment that is available for all forms of use that do not reduce environmental quality or compromise Tangata Wheuna values, and to reduce the adverse effects of activities on the coastal environment.*

*The ports and network utilities play a significant role in the economy of the region. It is necessary to provide for the efficient and effective operation of the ports and network utilities and their associated facilities within this plan.*

*The possibility of further development of the existing port areas also needs to be recognised. The ports depend on access to deep water and unimpeded use of the Coastal Marine Area at and adjacent to the port facilities. Whilst it is important to provide for the operation of the ports and network utilities, avoiding significant adverse effects on the coastal environment is also important.*

The Objective is appropriate for achieving the purpose of the RMA to the extent that it promotes the sustainable management of the Coastal Marine Area. Sustainable management means managing the Coastal Marine Area in a way that enables people to provide for their wellbeing while looking after the needs of future generations, life supporting capacity and adverse effects on the environment. It is an enabling objective taking account of adverse effects and so appropriately mirrors the purpose of the Act.

The proposed changes relate only to the first part (1) of Objective 8.1. Therefore, only this first part of the Objective is considered in the following evaluation of whether the proposed changes are the most appropriate means of achieving the Objective.

## **5. BACKGROUND TO THE PROPOSED CHANGES**

Activities in the Coastal Marine Area are controlled by Section 12 of the RMA. Section 12 (1) (b) provides that no person may place, alter or remove any structure or part of a structure on, under or over any foreshore or seabed in the coastal marine area unless expressly allowed by a rule in a regional coastal plan or by a resource consent.

Section 12 (2) (a) similarly requires that no person shall occupy any part of the coastal marine area unless expressly allowed by a rule in a regional coastal plan or a resource consent.

Occupy is defined by the RMA as follows:

**occupy** means the activity of occupying any part of the coastal marine area-

- (a) where the occupation is reasonably necessary for another activity; and
- (b) where it is to the exclusion of all or any class of persons who are not expressly allowed to occupy that part of the coastal marine area by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or by a resource consent; and
- (c) for a period of time and in a way that, but for a rule in the regional coastal plan and in any relevant proposed regional coastal plan or the holding of a resource consent under this Act, a lease or licence to occupy that part of the coastal marine area would be necessary to give effect to the exclusion of other persons, whether in a physical or legal sense.

The present rules in the Plan require a resource consent to place a swing mooring inside a Swing Mooring Area. Discretion is restricted so that only certain matters can be taken into account when deciding whether or not to grant consent. Outside Swing Mooring Areas placement of a swing mooring is a Non-Complying Activity and a resource consent may only be granted if effects are deemed to be minor, or if placement is not contrary to the objectives and policies of the Plan.

Occupation of the Coastal Marine Area by a swing mooring, and by any vessel attached to that swing mooring is not specifically addressed in the Plan and therefore requires resource consent as a Discretionary Activity in accordance with Section 12 (2) (a) of the Act.

Occupation of the Coastal Marine Area by structures such as bridges, culverts, public wharves etc is also not specifically addressed by the Plan, as at the time the Plan was drafted, it was thought that the Section 12 (2) (a) restriction on occupation only applied where the occupation is exclusive, i.e., the owner of the structure intends to exclude other persons. However, subsequent legal interpretation has determined that exclusion occurs because of the physical presence of the structure and occupation rights are required either by a rule in a plan or by a resource consent, regardless of whether the owner of the structure intends to exclude other persons.

Nevertheless, recent case law (*Hume v Auckland Regional Council [2002] 3 NZLR 363; (2002) 8 ELRNZ 211; [2002] NZRMA 422 (CA)*) has determined that a right to occupy the Coastal Marine Area, whether by way of a resource consent or a rule in a plan does not carry a corresponding right to exclusive occupancy. If there is an intention to exclude other persons from any structure occupying the Coastal Marine Area, then this must be expressly provided for by the rule or the resource consent authorising the occupation.

Therefore, although there are common law rights to protect ones own property, the exclusivity of occupancy of the Coastal Marine Area needs to be specifically addressed. Boatsheds are the main area where exclusion of others is an issue. For boatsheds the need for the owner to have the right to exclude others from the interior of the boatsheds is readily apparent.

A problem was identified in the course of preparing the proposed plan changes and the consideration of using Navigation Safety Bylaws to control the allocation and use of swing moorings. It was realised that the powers of the Harbourmaster to remove or relocate misplaced or illegally placed moorings were also unnecessarily restricted by the Plan provisions.

## **6. ANALYSIS OF PROPOSED PLAN CHANGE 1**

### **6.1 Plan Change 1-Swing Moorings in Swing Mooring Areas**

It is proposed to retain the requirement for resource consent for the placement of new swing moorings in a Swing Mooring Area, but not for the replacement of existing swing moorings, or for the occupancy of the Coastal Marine Area by existing or new swing moorings in a Swing Mooring Area. To provide for this, changes are proposed to Rule 8.1 and 8.23 of the Plan. Under Rule 8.1, it is proposed that the placement of a swing mooring in a Swing Mooring Area, where it is to replace an existing swing mooring that has been lawfully established, be a Permitted Activity.

Under Rule 8.23, it is proposed that the occupation of the Coastal Marine Area by a swing mooring in a Swing Mooring Area (which includes the occupation of the Coastal Marine Area by the mooring block and tackle, and the associated occupation of the Coastal Marine Area taken up by a vessel attached to the mooring) will be a Permitted Activity.

It is also proposed to clarify what constitutes “placement” of a swing mooring so that it is clear that it relates to placement controlled by Section 12 (1) (b) of the Act and not to ongoing use or occupancy of the Coastal Marine Area.

The alternatives to the proposed changes or other options are:

- (a) to retain the status quo, which requires a resource consent for the occupancy of the Coastal Marine Area by a swing mooring and attached vessel in a Swing Mooring Area and a resource consent for the replacement of an existing mooring block if the mooring block dimensions are altered; or
- (b) to require a resource consent for the occupancy of the Coastal Marine Area by a swing mooring and attached vessel in a Swing Mooring Area, and for the placement of a new or replacement swing mooring in a Swing Mooring Area as another category of activity such as full Discretionary or Controlled.
- (c) To make all placements of swing moorings (including replacement of existing moorings) within designated Swing Mooring Areas Permitted Activities, leaving controls to be exercised by the Harbourmaster under Navigation Safety Bylaws.
- (d) To make occupancy of the Coastal Marine Area by a vessel attached to new swing mooring placed outside of a designated Swing Mooring Areas a Permitted Activity.

The occupation of the Coastal Marine Area by the mooring block and tackle that comprises a swing mooring, and by a vessel attached to the swing mooring, is a direct and reasonable consequence of the placement of a swing mooring. Where this occupation occurs within a designated Swing Mooring Area, it is considered that the adverse environmental effects will be minor. This is because designated Swing Mooring Areas are already occupied by significant numbers of moorings, and these areas have been specifically designated in order to avoid the effects of moorings elsewhere. It is recognised that the natural character of these areas has already been compromised and it is considered desirable to ensure that moorings occur in such areas rather than spasmodically throughout the coast.

Given this, it is considered that the adverse environmental effects of the occupation of the Coastal Marine Area by swing moorings and attached vessels within designated Swing Mooring Areas have already been considered in the designation of these areas. To require resource consent for the occupation of the Coastal Marine Area by the swing mooring and any attached vessel would therefore be an unnecessary duplication of an assessment process that has already occurred. Similarly, requiring a resource consent for the placement of a swing mooring that is simply replacing an existing swing mooring that was lawfully placed would create duplication of an assessment and approval process that has already occurred.

By restricting swing moorings to designated Swing Mooring Areas, the Regional Coastal Environment Plan most efficiently and effectively achieves Objective 8.1 of the plan. Given that they remove existing duplication associated with the provisions relating to Swing Mooring Areas, it is considered that the proposed changes to Rule 8.1 and 8.23 are an efficient and effective means of achieving Objective 8.1 (1) of the Plan.

The proposed change relating to the replacement of existing swing moorings also avoids some of the duplication of controls that already exist through Navigation Safety Bylaws that regulate the use of Swing Moorings. In addition to requiring resource consent under the Plan, the placement of new and replacement swing moorings is subject to approval under Environment Canterbury's Navigation Safety Bylaws which further address potential adverse effects. Placement and use of swing moorings are also subject to more general powers of Harbourmasters to remove navigation hazards under the Local Government Act 1974.

Option (b), which would make placement of a new or replacement swing mooring in a Swing Mooring Area fully discretionary would provide for consideration of a greater range of issues and potential effects than is presently the case. However, for the placement of new swing moorings, the matters provided for in the existing restricted discretionary rule are considered adequate, given the presence of the non-RMA provisions referred to above, and given that the impacts of swing moorings and their use in Swing Mooring Areas have already been assessed in the designation of these areas. For the placement of swing moorings that are replacing existing swing moorings, any requirement for a resource consent (whether as a Discretionary or Controlled Activity) is considered to be an unnecessary duplication of the assessment and approval process for the placement of the original swing mooring, and sufficient control is retained through the application of the Navigation Safety Bylaws and other general powers of the Harbourmaster.

Should some level of control or discretion on replacement and/or occupancy rights be retained for existing swing moorings in Swing Mooring Areas, some 400 swing mooring resource consents would have to be applied for and processed. It is considered that the costs of such an undertaking outweigh the benefits of retaining this additional level of control, given that it is essentially a duplication of assessment processes that have already occurred, and given that a considerable level of control remains by way of the Navigation Safety Bylaws and the general powers of the Harbourmaster. Whilst the option of considering many of the resource consents for occupancy of the Coastal Marine Area jointly would reduce some of the costs, the burden on both mooring owners and Environment Canterbury would still be high.

The option of having a Controlled Activity for the placement of swing moorings within Swing Mooring Areas could potentially lessen the burden for applicants of applying for resource consents, but would not necessarily be more efficient than the status quo (restricted discretion). In addition, although the process of delineating specific Swing Mooring Areas has taken account of the potential effects that this will have in terms of the presence of swing moorings and attached vessels, it is considered important that a more detailed case by case assessment of new swing moorings in these areas is able to be undertaken, as there are still matters over which discretion should be exercised for new swing moorings. Although this carries with it the costs of applying for and processing resource consents, the benefits of providing for a specific RMA assessment of effects of new moorings are considered to balance these. Furthermore, the fact that resource consents are required for swing moorings outside of the designated Swing Mooring Areas means that the same staff and procedures (albeit simplified procedures) would be employed to deal with applications for new swing moorings within the designated Swing Mooring Areas, which will minimise administrative costs. In addition, given the relatively full nature of the Swing Mooring Areas, it is unlikely that there will be many new additional placements of swing moorings allowed within most the existing designated Swing Mooring Areas.

Option (d) would allow the consequential occupation by a moored vessel of the Coastal Marine Area as a result of a resource consent to place a mooring a Permitted Activity. However, the need to place restrictions on such occupancy cannot be ruled out. For example only temporary or seasonal occupation by a vessel or other floating object may be appropriate. These matters can be considered at the time of application. Occupation of the Coastal Marine Area by the mooring itself would be a Permitted Activity by virtue of the proposed new (f) of Rule 8.23.

The proposed changes to Rules 8.1 and 8.23 are the most appropriate for achieving Objective 8.1 of the Regional Coastal Environment Plan, because they enable ongoing use of the Coastal Marine Area by existing swing mooring owners in designated Swing Mooring Areas, while retaining the ability to assess the effects of new swing moorings within those areas.

## **6.2 Plan Change 1-Powers of the Regional Harbourmaster**

It is proposed to provide for the powers of the Regional Harbourmaster under the Local Government Act 1974 to remove or relocate swing moorings be exercised without the need for a resource consent. At present, the Harbourmaster requires a resource consent to exercise his or her powers to remove or relocate moorings that are illegally or incorrectly placed, as well as for those swing moorings creating a navigation safety hazard. The proposed plan change aims to remove this unnecessary restriction.

The alternative would be to retain the status quo which would mean the Regional Harbourmaster would need to obtain resource consents to remove or reposition moorings even though he or she has specific powers to do so under the Local Government Act 1974 as well as through Navigation Safety Bylaws. This creates an unnecessary restriction on the exercise of the Harbourmaster's existing legislative powers.

The proposed change meets the purpose of the RMA and the objective of the Plan by more efficiently allowing moorings that have adverse effects to be dealt with expeditiously and cheaply. Other proposed changes to the Plan that have merit are also enabled by the more effective and efficient use of the Navigation Safety Bylaw provisions.

### **6.3 Plan Change 1-Control over de facto moorings**

It is proposed to include a new rule that will make a de facto swing mooring that is established through the long-term anchoring of a vessel a Non Complying Activity.

The alternatives are:

- (a) To retain the status quo, which applies no control over the long term anchoring of vessels or other floating objects; or
- (b) To be more explicit about what form of temporary anchoring or mooring is allowed and what is controlled.

The status quo requires resource consent for the placement of swing moorings (whether or not they are located within a designated Swing Mooring Area) but no controls are placed on the long term anchoring of vessels or other floating objects. This leaves it open to argument whether a vessel is simply anchored for a long time, or is moored, in which case resource consent is required. The proposed rule is an attempt to clarify matters. There is no intention to impede or control normal navigation by the rule. At the same time, there is a need to make it clear that de facto mooring is not allowed without a resource consent. The proposed change prevents a possible loophole in the Plan by dealing with long-term anchoring that creates a de facto mooring.

The possibility of defining what is meant by “temporary” by setting a time limit for permissible anchoring in a bay or harbour was considered, for example with maximum periods of between 2 or 7 days. However, this level of specificity restricts the extent to which the case by case effects of an anchored vessel can be taken into account. The proposed rule refers to a requirement for the anchoring or mooring to be for a purpose “other than the storage of a vessel”. This makes it explicit that the purpose of the rule is not to prevent reasonable or necessary temporary anchorage, but is to prevent long term anchorage that is in effect mooring, and therefore requires a resource consent. Some comfort may be given by the fact that vessels may be moved by the Harbourmaster under the Local Government Act 1974 if there are adverse navigation safety effects, and other existing rules in the Plan address the issue of people living for long periods aboard vessels.

An option of also including a rule that lists Permitted Activities involving mooring and anchoring was also considered. However, the fact that such activities are not controlled under Section 12 of the Act makes such rules unnecessary.

The proposed change is a move to achieve the purpose of the RMA and achieve the objective of the Plan by dealing with adverse effects of de facto moorings (other than effects on navigation safety which are dealt with under the Harbourmaster’s powers) and ensuring a consistent approach within the Plan to the on-water storage of vessels, whether anchored or moored.

#### **6.4 Plan Change 1-References to Navigation Bylaw Requirements**

It is proposed to include references to the Navigation Safety Bylaws requirements with respect to swing moorings.

This is a change that provides information to the Plan reader, and makes it explicit that compliance with Navigation Safety Bylaws is required, regardless of whether the Plan makes an activity Permitted, or requires resource consent. . It improves the efficiency and effectiveness of the proposed plan changes by providing relevant additional helpful information.

### **7. ANALYSIS OF PROPOSED PLAN CHANGE 2**

#### **7.1 Plan Change 2-Permitted Activity Rules for Lawfully Established Structures**

It is proposed to include provisions that make the occupation of the Coastal Marine Area by any lawfully established structure (including swing moorings outside the designated Swing Mooring Areas) a Permitted Activity subject to certain conditions.

The alternatives are:

- a) The status quo, which requires resource consent for occupation of the Coastal Marine Area by many existing structures; or
- b) To implement the proposed change but without conditions or with different conditions.

There are a wide range of structures in place in the Coastal Marine Area, many of which have been in place for many years, including some that have been in place prior to any legislation authorising them, (e.g. the main wharf in Akaroa, boatsheds, part of State Highway 1 at Saltwater Creek). All of these structures, or those parts of the structures that lie within the Coastal Marine Area, currently require a resource consent to occupy.

This requirement applies regardless of whether the structure itself has been placed or constructed in accordance with the applicable laws at the time. This is because the RMA addresses the placement or construction of structures within the Coastal Marine Area, and the consequent occupation of the Coastal Marine Area by such structures as two activities, both of which require resource consent unless they are permitted by a rule in a Plan. As with other long-established activities, the adverse effects of the initial and on-going occupation of the Coastal Marine Area have already occurred, and provided that the structure was originally placed in accordance with the relevant laws at the time, there is little purpose to be served in now requiring resource consent to occupy the Coastal Marine Area.

As a rough estimate, the status quo would involve some 300 applications. The preparation, submissions and processing of such applications will be costly and time-consuming for all parties, with few, if any, environmental benefits.

Nevertheless, at least some conditions are required to establish where the structure is located, what part of the Coastal Marine Area it occupies and how it was lawfully placed there in the first place. Additionally, adverse effects in terms of safety that may occur as a result of the structure's continued occupation or presence in the Coastal Marine Area need to be addressed.

The fact that many structures which have been lawfully established presently occupy the Coastal Marine Area without legal authority means that Environment Canterbury must either ignore this fact or require compliance. By making their occupation of the Coastal Marine Area a Permitted Activity, the compliance issue is addressed. However, automatic occupation rights may not always be appropriate, and conditions are therefore needed so that these aspects may be checked. Conditions that require identification of the structures and evidence of their lawful establishment lessens the burden on regional ratepayers of Environment Canterbury having to undertake extensive and expensive surveys. It also frees up regulatory and enforcement resources in order that they may be focussed more strongly on dealing with new structures and their adverse effects, rather than structures that are already in place and were established in accordance with the laws that applied at the time.

This approach is considered to provide an appropriate and efficient and effective means of achieving Objective 8.1 of the Plan. The proposal is both enabling and deals with potential adverse effects, thus meeting the purpose of the RMA while best meeting the Objective.

## **7.2 Plan Change 2-Exclusive Occupancy in designated Boatshed Areas.**

It is proposed to include provisions that make the occupation of the Coastal Marine Area by any lawfully established Boatshed in a Boatshed Area to include the explicit right to exclude other persons from the boatshed interior.

The alternatives are:

- (a) To not provide for the right to exclude others as proposed; or
- (b) To include the provision for all lawfully established boatsheds; or
- (c) To extend this exclusive occupancy to other lawfully established structures.

The RMA definition of “occupy” is reproduced in full above (see Section 5). Section 12 of the RMA provides that no person may occupy the Coastal Marine Area without the authority of a rule in a coastal plan or a resource consent. For most structures, the very physical presence of the structure requires occupation rights be obtained.

However, case law has determined that such occupation rights do not necessarily include exclusive occupation (*Hume v Auckland Regional Council* [2002] 3 NZLR 363; (2002) 8 ELRNZ 211; [2002] NZRMA 422 (CA)). Rather, if there is an intention to exclude other persons from any structure occupying the Coastal Marine Area, then this must be expressly provided for by the rule or the resource consent authorising the occupation. Therefore, although there are common law rights to protect ones own property, the exclusivity of occupancy still needs to be explicitly addressed by a rule or as part of a consent to occupy.

It is considered reasonable for boatshed owners to be able to exclude others from the interior of their boatsheds, where those boatsheds occur within designated Boatshed Areas. This is because these areas have been specifically identified as areas where the natural character and access values have already been compromised due to the existence of numerous and in some cases, long-established, private boatsheds. By generally limiting boatsheds and exclusive occupancy to these areas, it is intended to avoid the adverse effects of boatsheds occurring spasmodically throughout the coast.

Where a boatshed is located outside the Coastal Marine Area but the rails or slipway is inside the Coastal Marine Area, it is considered that the need for exclusive occupancy is not as apparent. Therefore, it is considered appropriate that if the boatshed owner wants exclusive occupancy of such slipway or rails, this must be applied for through a resource consent.

The erection and placement of a boatshed are Non-Complying Activities outside the designated Boatshed Areas. Although this plan change proposes to provide for the occupation of the Coastal Marine Area by a Lawfully Established Structure as a Permitted Activity subject to conditions (proposed addition to Rule 8.23), it would be inappropriate for this to automatically generate exclusive occupancy rights to owners of boatsheds outside Boatshed Areas as a Permitted Activity without considering the potential effects on others.

Other structures, where their locations are not in places especially designated for the purpose of those structures, are best considered on a case by case basis. The effects of granting exclusion rights cannot be known in advance. For most wharves or jetties, even those in private ownership, explicit exclusion of others (e.g. members of the public) is not generally necessary, and should not therefore be provided for as a Permitted Activity.

The proposal is both enabling and deals with adverse effects, thus meeting the purpose of the RMA and providing an appropriate means of meeting Objective 8.1 of the Plan.

### **7.3 Plan Change 2-Definitions of Lawfully Established and Authorised Structures.**

It is proposed to alter the existing definition of "Authorised Structure" and to define "Lawfully Established Structure".

The proposed new definitions are detailed below:

#### **Authorised Structure**

Means a Lawfully Established Structure that is expressly allowed to occupy the Coastal Marine Area by:

- (a) a rule in a regional coastal plan and any proposed regional coastal plan; or
- (b) a resource consent; or
- (c) the Act.

**Lawfully Established Structure**

Means

- (a) a structure, the erection and placement of which has been authorised:
- (i) as a Permitted Activity by a rule in this plan; or
  - (ii) by a resource consent issued in accordance with the rules in this plan; or
  - (iii) by a resource consent issued prior to 2 July 1994; or
  - (iv) by a permission, licence, permit or authority deemed to be a coastal permit by Section 384 of the Act;
- or
- (b) a swing mooring that was erected or placed, or occupied the Coastal Marine Area, through a permission, licence, permit or authority issued under Bylaws made under Part VI of the Harbours Act 1950 prior to 1 October 1991, and where the permission, licence, permit or authority remained current on 1 October 1991; or
- (c) a structure that is part of a marine farm for which a lease or licence was granted under the Marine Farming Act 1971 for the marine farm, including the structure, prior to 1 October 1991, and where the lease or licence remained current on 1 October 1991; or
- (d) a structure that has been in place prior to 1878 and the enactment of the first Harbours Act.

In the existing plan “Authorised Structure” is defined almost exactly as is now proposed for the definition of “Lawfully Established Structure”. The difference is the addition of (d), which relates to the establishment of structures prior to statutory governance.

The reason for replacing the existing Authorised Structure definition with a definition of Lawfully Established Structure is that the current definition of Authorised Structure only covers the placement and erection of a structure and not the occupation of the Coastal Marine Area by that structure.

Under the Harbours Act 1950 it was possible for a structure to have an approval under Section 178 of the Harbours Act 1950 for the placement or erection of the structure, but lack the approval under Section 156 of the Harbours Act 1950 for a foreshore licence required to make the structure authorised under that Act. In the same way, it is possible to have the erection or placement of a structure authorised by a resource consent under Section 12(1) of the RMA, but to lack the necessary Section 12(2) (a) resource consent authorising the structure’s occupation of, and ongoing presence within, the Coastal Marine Area.

Under the current Plan definition, a structure that is in fact unauthorised under the RMA (in terms of occupation) can meet the Plan definition of "authorised". The current definition also includes the RMA Section 418 (6A) protection that expired 1 year after the Plan became operative. It is therefore circular in the sense that the Plan makes something "authorised" that has become "unauthorised" by the RMA.

Irrespective of the proposed new Permitted Activity rules, this definition should be changed, so as to ensure that the Plan definition of "authorised" is consistent with the RMA provisions.

Under proposed Plan Change 2, the intent is to provide for the occupation rights of any structure that has been lawfully constructed or placed, as a Permitted Activity. Therefore, the definition in the Plan of "Authorised Structure" should be retained, but changed from defining "Authorised Structure" to defining "Lawfully Established Structure". A clause relating to the establishment of structures prior to statutory governance should also be added to the definition of "Lawfully Established Structure" for completeness, and in recognition that there are several known structures within the Canterbury Region that were constructed within the Coastal Marine Area prior to enactment of the first Harbours Act.

The proposed change, making what was previously defined as an "Authorised Structure" now a "Lawfully Established Structure" has implications for other Rules in Chapters 7 and 8 of the Plan that provide for activities in relation to an "Authorised Structure" as Permitted Activities. The proposed change will generate an additional requirement for such structures to have their occupancy rights confirmed before the Permitted Activity rights can be legally exercised. This is consistent with the intention of proposed Plan Change 2 to require this of all such structures.

It is noted that occupancy rights are already confirmed for Port Company structures in port areas and there are separate Permitted Activity provisions relating to work carried out for network utilities.

This part of the proposed change is consequential to and necessary for other parts of Proposed Change 2 so is both enabling and deals with adverse effects, thus meeting the purpose of the RMA and meeting the Objective in Chapter 8 of the Plan.