

# Interim guidance on land status investigation and mapping to support claims for Customary Marine Title

## Context

This interim guidance has been developed by the Surveyor-General to support applicant groups under the Marine and Coastal Area Act (Takutai Moana) Act 2011 (the Act). It is preliminary and subject to change.

It is intended for use by professionals with expertise in statutory property investigations, surveying and mapping.

## Overview

The mapping of areas subject to a claim for Customary Marine Title (CMT) needs to provide sufficient information to enable the Court to make a decision on the extent of the CMT area.

Ideally the maps should include sufficient detail to enable the ready production of a survey plan that meets the requirements of s109(4)(a) of the Act, which includes complying with the Rules for Cadastral Survey. That survey plan will need to be prepared by a Licensed Cadastral Surveyor who will lodge it as a Cadastral Survey Dataset (CSD) for approval and integration into the cadastre<sup>1</sup>.

However while a high level of accuracy is required at the end of the claim process, these guidelines are intended to allow flexibility in the level of detail at earlier stages. This is partly to avoid the significant effort that can be involved in accurately locating the boundaries where the claim for CMT is not recognised.

The guidelines are also intended to assist the Court by enabling the provision of maps that provide a reliable depiction of the extent of the Common Marine and Coastal Area (CMCA). The extent of the CMT area is constrained by the boundaries of the CMCA as defined in the Act.

The maps will need to show the extent of the CMCA being claimed as CMT.

The landward boundaries of the CMCA are defined by the provisions in the Act. These extents have a maximum limit at the line of Mean High Water Springs (MHWS). However below that line the Act excludes categories of land from the CMCA (see definition of

<sup>1</sup> Surveyors preparing such a CSD should initially seek specialist advice from Toitū te Whenua LINZ with a *Survey Information – Complex* request.

CMCA), and hence from any CMT. For example, a Crown reserve, national park, or conservation area; and specified freehold land (see definition in Act) including Māori land and Land Transfer land. Other lands of the Crown, local authority land (including reserves) and some unformed roads became part of the CMCA on the passing of the Act (s11). It is important to note, however, that the cadastre was not updated to depict the change to boundaries that resulted from the divestment of title to Crown and local authority land that occurred on the passing of the Act. The cadastre depicts the extents of parcels of land for which rights have been created following approval of survey plans, as required by the Cadastral Survey Act 2002.

The final survey plans of a CMT area will be used to update the cadastre to accurately reflect the legal extents of CMT and the adjoining land. The specifications for those survey plans are likely to require changes to, or dispensations from, the Rules for Cadastral Survey 2021.

## Determining the line of MHWS

Locating the line of MHWS is crucial for determining the boundary of the CMCA and hence the boundary of any claim for CMT.

The line of MHWS is a 'movable' boundary under the common law doctrine of accretion and erosion. As the line can move with time (depending on the underlying topography as well as any long-term change in sea level), its location need not be accurately determined at any given point in time. The line should be sufficiently accurate to locate it correctly in relation to the adjacent parcels.

The cadastre records the coastal boundaries in the position in which they were last defined on a survey plan. In most cases this was a long time ago, perhaps over 100 years. The location recorded in the cadastre may therefore no longer align with the current location of the boundary. The difference between the line of Mean High Water Mark (MHWM) used on older surveys and the line of MHWS can be ignored on the maps prepared for a CMT claim.

Spatial data that accurately maps the line of MHWS (or alternatively the line of MHWM) may be available from regional councils, Crown research organisations or Toitū te Whenua LINZ.

Alternatively, the line may be able to be adequately interpreted from aerial imagery or lidar data.

The location of the line of MHWS can be particularly difficult to determine in estuarine areas.

Noting the provisions in s13 of the Act that recognise changes in the boundaries of the marine and coastal area, the Surveyor-General's preliminary view is that field determination of the line of MHWS is not necessary.

## Determining the CMT Boundaries

The landward extents of a CMT will often be determined by the intersection of the line of MHWS with the boundaries of parcels in the cadastre, as specified by the CMCA provisions in the Act. Determining the status of the land that is potentially affected and applying the provisions of the Act can require complex and time-consuming work.

The final survey plan will accurately define the extents of the CMT and its relationship to the abutting lands, as approval of the survey plan will result in any intersected parcels being updated in the cadastre. The final map of the extents of CMT determined by the Court does not need to be so detailed but should be sufficient to clearly indicate where the boundary is intended to lie, while not extending beyond the boundaries of the CMCA.

The guidance below allows for appropriate CMT boundaries to be mapped at a lower level of accuracy, with a description of the intended location of the boundary. This is intended for boundaries are not in doubt, noting that the survey plan will define them accurately and legally in accordance with the Court intentions.

CMT maps for the initial stage of the Court process should be indicative only, to avoid unnecessary work determining landward CMT boundaries that may not be recognised by the Court.

### Use of annotation where the line of MHWS more or less follows the existing cadastral boundaries

Where the line of MHWS more or less follows the existing boundaries depicted in the cadastre (such as along a regular beachfront) the maps can annotate the CMT boundary as '*CMT boundary follows CMCA boundary*'. This annotation is intended to be sufficient to give all interested parties confidence that, from a practical perspective, the CMT claimed or recognised includes all the 'wet' land up to the line of MHWS to the extent allowed by the Act (i.e. the legal boundary of the CMCA). This means that the CMT boundary will not follow the line of MHWS but will coincide with the boundary of any parcels of land excluded from the CMCA (such as specified freehold land) that lie below the line of MHWS.

### CMT in rivers

The CMCA includes parts of the beds of rivers upstream from their mouth. The extent of the CMCA up a river is not defined by the line of MHWS but by the definition of 'coastal marine area' in the Resource Management Act 1991 (RMA). A claim for CMT that includes CMCA that is the bed of a river will require more detailed assessment to determine its extent.

## CMT boundaries in other areas including harbours, estuaries and parcels under water

In remaining areas the extents of the CMCA are generally less certain and detailed analysis is likely to be required.

Parcels that are below (wholly or in part) the line of MHWS need to be investigated to see if they are specifically excluded from the CMCA under the Act (e.g. specified freehold land, conservation area, etc.). The seaward boundaries of such excluded parcels may be the boundaries of the CMCA and CMT.

Where the line of MHWS intersects a parcel that is not excluded under the Act, including some unformed roads, the boundary of the CMCA will most likely be at that line.

Investigation of the status of these parcels will involve interpretation of titles, statutory actions, related legislation, etc. against the criteria in the Act. In particular, investigation of land owned by the Crown or local authorities often requires specialist expertise in land status investigation. In exceptional cases, expert advice from Toitū te Whenua LINZ may be required.

The resulting assessments of the CMCA and CMT relationship to existing boundaries should be to a standard that enables it to be relied upon by the Court, including for the subsequent production of the survey plan (and CSD) for the recognition order.

## Mapping Requirements

The maps:

- should clearly depict the boundaries of the CMT claimed or recognised.
- for CMT boundaries near the foreshore, should depict the line of MHWS in relation to nearby cadastral boundaries.
- should use aerial imagery as a base map.
- should define (wet) CMT boundaries within the CMCA by either straight lines or boundaries that are coincident with the boundary of the territorial sea (12-nautical mile limit). Irregular lines should otherwise not be used.
- should present the information at scales sufficient to clearly show the relationship of the CMT boundaries to cadastral boundaries.
- should show the relationship to any adjoining area of CMT that is claimed or has been recognised.
- should depict the names of relevant rivers, place names and other contextual information.

- should comply with the High Court Practice Note 2022/1 *'Mapping Guidelines for applications to the High Court under the Marine and Coastal Areas (Takutai Moana) Act 2011'* [HCPN 2022/1].
- should be in terms of the NZTM2000 projection and include a NZTM2000 grid.
- should be also available in digital spatial format (e.g. a shapefile) to support further use.

### **Parcels excluded from the area of a CMT**

Where it is known that a parcel of land is within the marine and coastal area (e.g. below MHWS or in the bed of a river) but is excluded from the CMCA and hence the area of any CMT (i.e. specified freehold land, conservation areas, national parks or Crown reserves), such a parcel should be depicted as in the cadastre even where it may have been affected by erosion. This includes parcels that are wholly below the line of MHWS.

### **Existing parcels included in the area of a CMT**

The maps should depict any parcel of land from the cadastre that is within the CMCA and within the area of CMT claimed because it is below (wholly or in part) the line of MHWS and meets the criteria specified in the Act<sup>2</sup> (i.e. most Crown and local authority land, and some unformed roads). The depiction should use symbology that clearly indicates that the parcel is now within the CMCA and should include the parcel appellation where possible.

### **Exemption from accurate determination of relationship to parcel boundaries**

Notwithstanding the previous two paragraphs, where the line of MHWS more or less follows the existing boundaries depicted in the cadastre (such as along a regular beachfront) the maps need not accurately depict the relationship between the boundary of the area of CMT and parcels in the cadastre, but instead can annotate the CMT boundary as *'CMT boundary follows CMCA boundary'*.

Surveyor-General

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<sup>2</sup> sections 11(3)-(4), 13(2) 14(3)-(5)