

Guidance on mapping to support applications for recognition of customary interests under the Marine and Coastal Area (Takutai Moana) Act 2011

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Office of the Surveyor-General



Authority and regulatory attributes

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Authority This guidance has been developed by the Surveyor-General to help applicant groups prepare maps of areas over which recognition of customary interests is sought under the Marine and Coastal Area (Takutai Moana) Act 2011.

 The Surveyor-General has no power to require compliance with the guidance.

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1.1	19 January 2024	Removed references to the MCA extending beyond the CMA in rivers (s 5.4.2 and Appendix A 'Rivers and Streams').

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Feedback

- (a) This guidance has been published to meet a pressing need. However, it needs to be tested in practice, and we welcome feedback.
- (b) Feedback should be in electronic format and sent to regulatorysubmissions@linz.govt.nz
- (c) Please provide supporting reasons for your comments. Feedback can include drawings or diagrams.

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1 Context

This guidance has been developed by the Surveyor-General to help applicant groups prepare maps of areas over which recognition of customary interests is sought under the Marine and Coastal Area (Takutai Moana) Act 2011 (**the Act**).

The Act provides for applicant groups (defined as “1 or more iwi, hapū or whānau groups ...”) to apply for recognition of customary interests.¹ Such rights are recognised under the Act in various ways, including through the recognition of customary property rights in the common marine and coastal area (called **customary marine title**), and the recognition of certain customary activities, such as waka launching and gathering natural materials, in the common marine and coastal area (called **protected customary rights**). The Act also provides for recognition of **wāhi tapu** and wāhi tapu areas in customary marine title areas. The term ‘**customary interests**’ is used throughout this document to refer to all these rights and interests.

Two pathways are available for seeking recognition of customary interests under the Act: engagement directly with the Crown, or a hearing in the High Court. The same package of rights is available under both pathways.

Close to 600 applications were received by the closing date; about 380 for recognition agreements with the Crown, and about 200 for determination by the High Court (175 of these also applied for recognition agreements with the Crown).²

This guidance is intended for use by survey and spatial professionals with expertise in land status investigations and mapping. It should be read and used in conjunction with High Court Practice Note 2022/1 ‘Mapping Guidelines for applications to the High Court under the Marine and Coastal Area (Takutai Moana) Act 2011’ [HCPN 2022/1].

The guidance should also be read alongside the legislation. The guidance does not constitute legal advice.

¹ Any applications must have been filed no later than 1 April 2017: Marine and Coastal Area (Takutai Moana) Act 2011, ss 95(2) and 100(2).

² From Te Arawhiti’s Year-to-Date Progress report 1 July - 31 March 2021.

2 Scope

This guidance is intended to apply to all applications under the Act for the recognition of customary interests, irrespective of which pathway is used. Specifically, the guidance is aimed at ensuring areas describing the extents of customary interests sought to be recognised under the Act are clearly identified in graphic form, to help the responsible Minister³ and the High Court make determinations.

It covers the preparation of a diagram or map required for a **protected customary right order** (s 109(3)(b)) and a **recognition agreement**.

2.1 Out of scope

The guidance is not intended to address the requirements for survey plans for a customary marine title order (s 109(4)(a)). The Surveyor-General will issue separate guidance for the preparation of such survey plans.

Neither does this guidance cover investigations required to assure decision-makers that customary title has not been extinguished. If a customary interest or title has been extinguished, it cannot be recognised under the Act, despite it being in the common marine and coastal area (CMCA).⁴

Although out of scope for the purposes of this guidance, survey and spatial professionals with expertise in land status investigations are well placed to contribute to these aspects if required.

³ The responsible Minister is the Minister who, with the authority of the Prime Minister, is for the time being responsible for the administration of any provision in the Act – see s 9. The responsible Minister is currently the Minister for Treaty of Waitangi Negotiations.

⁴ S 51(1)(c) states that a protected customary right “is not extinguished as a matter of law”. S 58(4) of the Act states that “customary marine title does not exist if that title is extinguished as a matter of law”.

3 Overview of mapping requirements

Maps of application areas (**application maps**) need to provide sufficient information to enable the responsible Minister or the Court (depending on the applicable pathway) to reliably identify the extent of each application area under consideration. The term 'application area' is used in this document to apply to the area of the customary interest that is sought.

Additionally, the Act specifically requires an order recognising a protected customary right to include a diagram or map that is sufficient to identify the area to which the order applies (s 109(3)(b)).

To provide flexibility, and avoid unnecessary work at the early stages, this guidance provides for two stages of boundary depiction accuracy and detail on application maps: an initial boundary map intended to indicate the application areas during the pre-determination processes; and a refined map intended for use after preliminary agreement or determination of rights. The requirements for initial application maps are set out in section 6 and the requirements for refined maps are set out in section 7.

For High Court determinations, the Act requires a customary marine title order to include a survey plan (cadastral survey dataset) that sets out the extent of the customary marine title area ([s 109\(4\)](#)). Wāhi tapu areas should be included in the survey plan, but protected customary right areas do not need to be shown (see [s 109\(3\)\(b\)](#) which requires a diagram or map). A survey plan must be prepared by a licensed cadastral surveyor to a standard of survey determined for the purpose by the Surveyor-General. Currently the standard of survey is set out in the [Cadastral Survey Rules 2021](#).

Survey plans can also be used to support legislation bringing the recognition agreements into effect under s 96.

Guidance on the application of the Cadastral Survey Rules 2021 for customary interests recognised under the Act will be published separately. This is likely to include the need for dispensations from aspects of the 2021 requirements.

The areas defined on such survey plans, once approved, will be depicted in the cadastre.

4 CMCA and application area boundaries

Customary interests are recognised under the Act within the 'common marine and coastal area' only. In broad terms this is the area seaward of the line of mean high-water springs (broadly, the high tide line) to the outer limits of the territorial sea. The term 'common marine and coastal area' (the **CMCA**) is defined in s 9(1) of the Act and explained further in section 4.1 below.

The responsible Minister and the High Court cannot determine applications seeking recognition of customary interests in respect of areas outside the CMCA. For example, land that is landward of the line of mean high-water springs ('MHWS'), or land held under the Land Transfer Act 2017 that is not owned by the Crown or a local authority, is outside the CMCA.

4.1 Landward boundaries of the CMCA

The extent of the CMCA up a river or stream is governed by the definition of 'coastal marine area' in the Resource Management Act 1991 (**RMA**).

The Act also excludes some categories of land below the line of MHWS from the CMCA:

- 'specified freehold land' - land which, immediately before the commencement of the Act, was either Māori freehold land, Māori reservation, or land held under the Land Transfer Act 2017 or Deeds Registration Act 1908 other than land owned by the Crown or a local authority (s 9(1));
- any area owned by the Crown with the status of conservation area, national park, or reserve (s 9(1));
- any road, although specific provisions in respect of unformed roads may bring them back into the CMCA (s 14);
- the bed of Te Whaanga Lagoon in the Chatham Islands⁵ (s 9).

Other lands of the Crown and land owned by local authorities (including local authority reserves) below the line of MHWS became part of the CMCA on the passing of the Act (s 11).

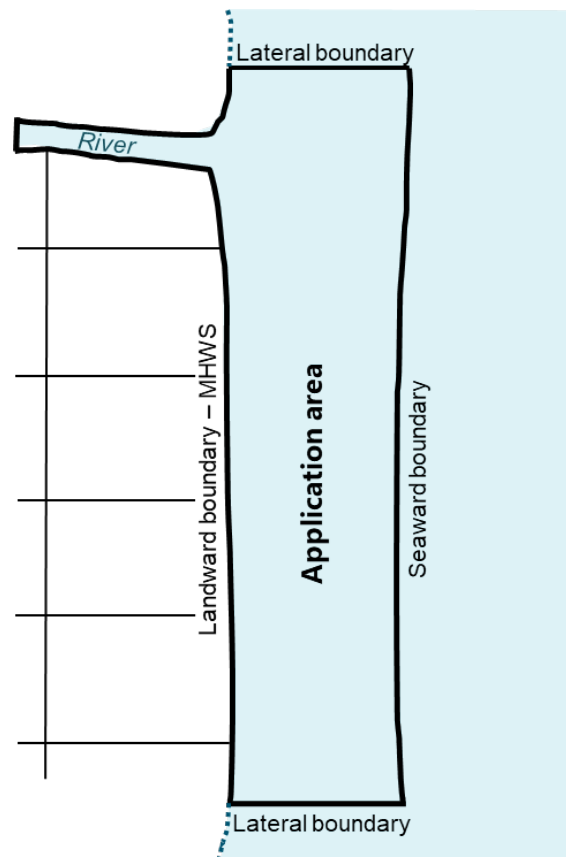
Appendix A provides an interpretation of the statutory provisions relating to the landward boundaries of the CMCA. This has been used to inform the mapping and survey plan requirements. Figure 7 and Figure 8 in Appendix A depict the nature of some types of landward boundaries.

⁵ Note that, although the Act refers to 'Te Whaanga Lagoon', the official geographic name, as notified in the NZ Gazette in 2009, page 1515, is 'Te Whanga Lagoon'.

4.2 Seaward and lateral boundaries

There are no restrictions on the location of a seaward or lateral boundary of an application area, provided it is within the CMCA. The seaward boundary of the CMCA is the outer limits of the territorial sea. Examples of seaward and lateral boundaries are shown in Figure 1.

The seaward boundary of an application area may, for example, be based on a tidal position such as the line of mean low water springs, an offset distance from a tidal position, or right-lined (straight) boundaries. Or an application area may, for example, extend out to the 'outer limits of the territorial sea'.



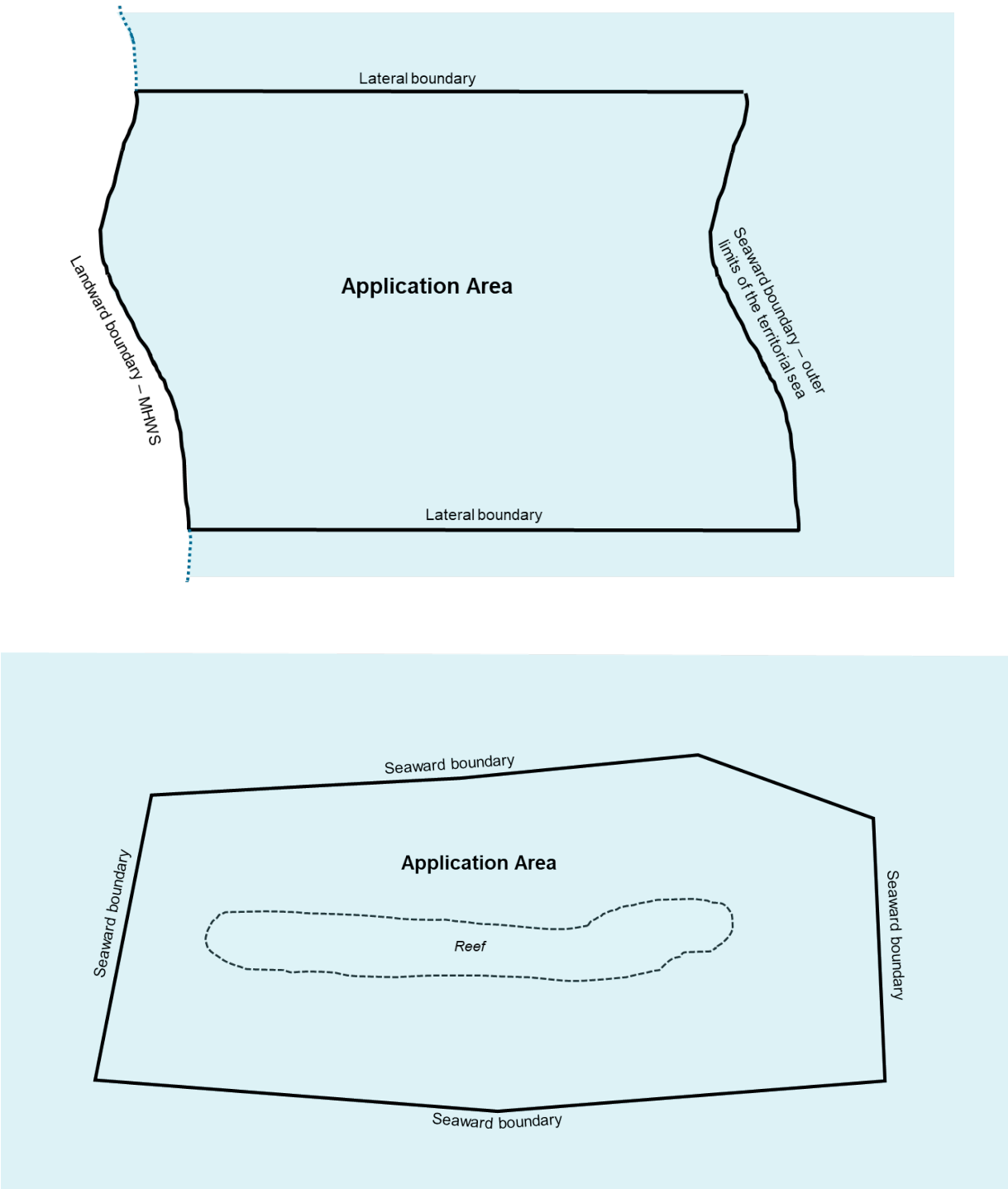


Figure 1 - Examples of seaward and lateral boundaries

5 General map depiction requirements

This section covers the generic mapping requirements, to the extent that they are applicable to each application. This is likely to be governed by how advanced the application is in the process, and whether the boundaries have been settled.

Requirements for the more detailed depiction of the landward boundaries of application areas are covered in subsequent sections.

5.1 High Court Practice Note

The High Court has issued Practice Note 2022/1 '[Mapping Guidelines for applications to the High Court under the Marine and Coastal Area \(Takutai Moana\) Act 2011](#)' [HCPN 2022/1] for applications that have been lodged with the High Court. The Practice Note sets out several mandatory requirements of application maps. In particular, see the [tables and appendix](#) in the Practice Note.

The Practice Note will also be helpful for the Office for Māori Crown Relations – Te Arawhiti and applicants when engaging on applications that have been made directly to the Crown.

The Practice Note requires maps to consist of two components:

- An **information frame** (or plan form) which provides information in relation to the map it contains, and
- A **main geographical map** which is a graphical representation of the application area and key features relevant to the application.

The Practice Note sets out detailed requirements for the information frame and general requirements for the geographical maps.

This guidance is intended to complement the Practice Note by providing further guidance on the depiction of boundaries and other relevant features in the geographical maps.

5.2 Digital format

It is recommended that the maps are available in digital spatial format (for example, a shapefile) to support further use.

Digital records produced for Court purposes should be in PDF or JPEG format to comply with the requirement in Table 1 of the Practice Note. However, note that the High Court requires maps to be submitted in paper form.

5.3 Base Maps

The High Court Practice Note requires the 'main geographical map' to contain a *base map* to provide context for the position of the application area in relation to the land. Recent orthorectified^{Error! Bookmark not defined.} aerial imagery is recommended for the base map.

Orthorectified aerial imagery is available from the [LINZ Data Service](#).

Alternatively, a topographic map (for example, NZ Topo50) may be useful as a base map where the extents of the map are large.

All base maps should be to scale and in terms of the New Zealand Transverse Mercator 2000 projection.

5.4 Application area boundaries

The boundaries of an application area should either:

- coincide with the landward boundary of the CMCA; or
- coincide with another recognised boundary such as the outer limits of the territorial sea; or
- coincide with a tidal position such as mean low water springs (MLWS), or
- be set at a specified offset from a recognised tidal position such as mean high water springs; or
- be a right-line or arc boundary.

There can be only one CMT in respect of a particular area of the CMCA. An applicant group may therefore need to amend its application area to exclude any portion in respect of which CMT has already been recognised.

5.4.1 Boundary across river mouths

If a riverbed is excluded from the application area (despite the CMCA extending upstream), the application area boundary should be shown as a straight line across the mouth, joining the lines of MHWS on each side.

Figure 2 shows an example where an application area boundary comprises a straight line across the river mouth.

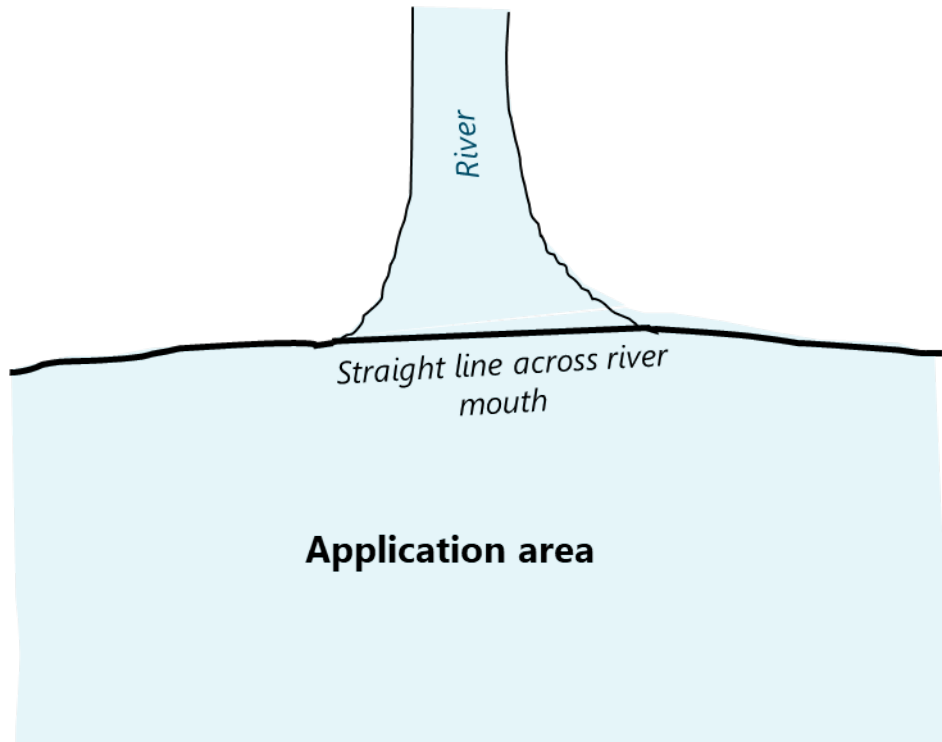


Figure 2 – Straight line across river mouth

5.4.2 Extent of the CMCA in rivers

The **marine and coastal area** means the area that is bounded on the landward side by the line of MHWS, and includes the beds of rivers and streams that are part of the coastal marine area as defined in the RMA. See the section on Rivers and streams in Appendix A for more details.

The **CMCA** includes the beds of rivers and streams that are part of the marine and coastal area, excepting any land that the Act excludes from the CMCA – see section 4.1.

In light of this definition, the landward extent of the marine and coastal area is therefore the landward extent of the coastal marine area, being the lesser of 1 kilometre upstream from the river mouth or the point upstream that is calculated by multiplying the width of the river by 5 – refer to [s 2\(1\) RMA](#). The applicable regional coastal plan should indicate the location of the river mouth and corresponding upstream landward boundary of the coastal marine area in rivers. Refer to the section on Rivers and streams in Appendix A if the river mouth has not been identified in the regional coastal plan.

Figure 3 shows two different scenarios of the extent of the CMCA in a stream. In the top scenario the CMCA extends to the boundary of the coastal marine area.

In the second example the stream is included in Lot 1, being specified freehold land. Further downstream near the mouth, the stream is excluded from the specified freehold land (Lots 2 and 3). The CMCA extends only to the southern boundary of Lot 1.

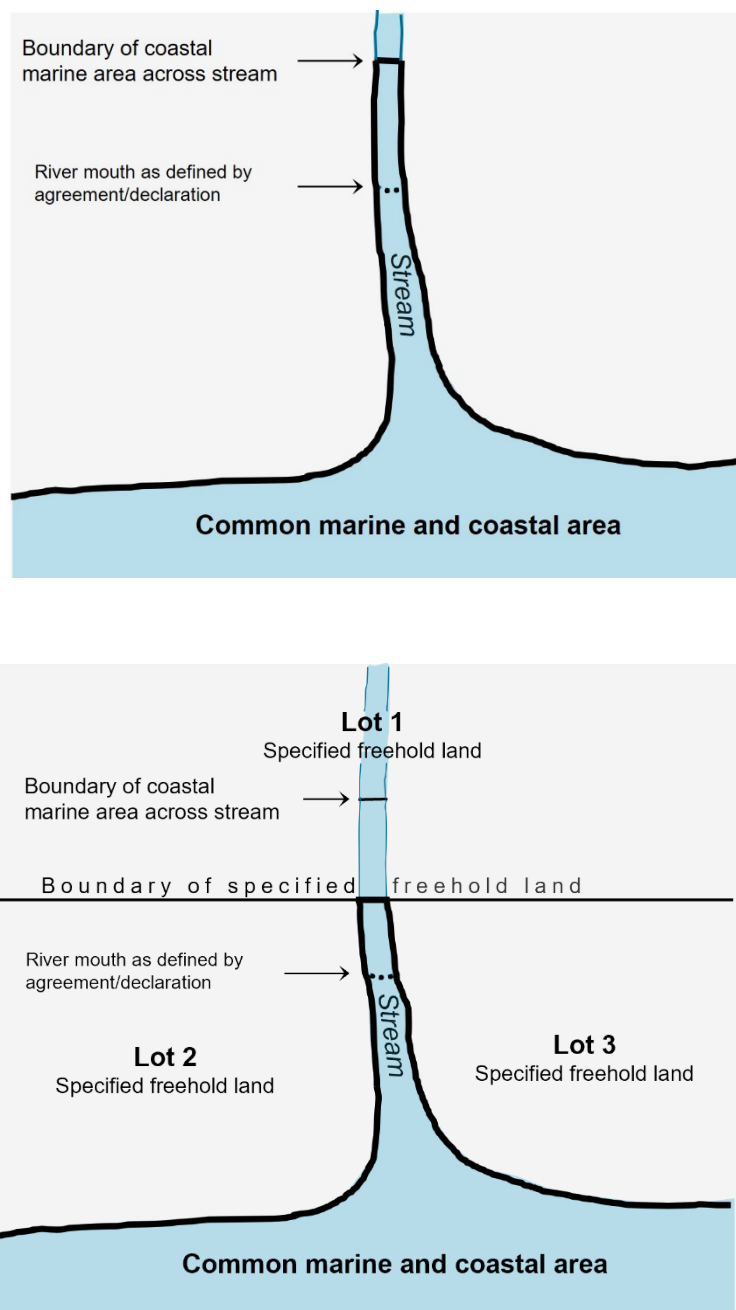


Figure 3 – Extents of the CMCA in a stream

5.4.3 Seaward boundaries of application area

The seaward boundary of an application area can be a combination of the boundary types specified in section 5.4, but in all cases the boundary cannot be recognised if it extends beyond the outer limits of the territorial sea.

The seaward boundaries should be accurately described so that any potential overlap between applications can be identified.

Where the seaward boundary is at the line of low water, it may be plotted from aerial imagery or other data.

Where a right-line or arc boundary is used, coordinates should be provided at each endpoint, so its location can be confidently reproduced. The format of the coordinates should be latitude and longitude, shown as decimal degrees to three decimal places (High Court Practice Note 2022/1).

In the case of an arc (other than one that defines the outer limits of the territorial sea) the radius of the arc should be stated, and it should be clear as to which side of the chord the arc lies.

Landonline shows an indicative representation of the outer limits of the territorial sea. This representation can be used in the application map to show the outer limit of the application area if applicable.

5.4.4 Lateral boundaries of application areas

Where the lateral extent of an application area does not coincide with an existing legal boundary, it should be a right line or arc boundary, or a combination of the two.

The boundary should terminate at a fixed end point of the seaward boundary and a specified point on or near the landward boundary. This also applies to the 'ends' of application areas that are narrow strips running along the coastline (for example, a PCR between MHWS and MLWS).

Coordinates should be provided at each end of the boundary, so its location can be confidently reproduced. The format of the coordinate is to be latitude and longitude and shown as decimal degrees to three decimal places (High Court Practice Note 2022/1).

The lateral boundaries should be accurately described so that potential overlap between applications can be identified.

5.5 Depiction of application area

It is essential that the extent of the application area is clearly depicted. Paragraphs 5.10 to 5.18 of the High Court Practice Note describe the general depiction requirements. In conjunction with those requirements, the following practices are recommended:

- (i) Depict the application area as per the application made to the responsible Minister or the High Court, taking into consideration the definition of the CMCA and exclusions noted in section 4.1. The responsible Minister and the High Court cannot determine applications seeking recognition of customary interests in respect of areas outside the CMCA.
- (ii) Present the information at a scale or scales that are sufficient to clearly show the relationship of the application area to cadastral boundaries (while noting the level of detail increases progressively as the extents of the application areas are refined).

- (iii) Identify any wāhi tapu area for which a wāhi tapu protection right is sought (s 78).
- (iv) Where the landward boundary of an application area is intended to coincide with the landward boundary of the CMCA, the line used to demarcate the application area boundary should be placed directly over the line of MHWS or the cadastral boundary line as appropriate. The line of MHWS should be annotated 'MHWS'.
- (v) Where the landward boundary of the application area is not intended to coincide with the landward boundary of the CMCA, then the boundary needs to be accurately described and located. Show nearby cadastral boundaries and the line of MHWS in this situation.
- (vi) Show the relationship to:
 - any recognised customary marine title areas, wāhi tapu areas and protected customary rights areas which adjoin or are close to the application area.
 - any other customary interests for which recognition is sought within the area of the application, for example wāhi tapu areas.
- (vii) The application area should be depicted in a manner that allows the underlying base map to be visible.
- (viii) Show the names of relevant topographical features and place names, and other contextual information.



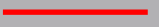
5.6 Adjoining application areas



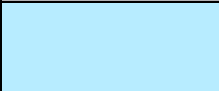
Where a seaward or lateral boundary is intended to coincide with the boundary of another customary interest application, the boundary in each application should be defined in the same manner.

5.7 Symbolology

Application areas should be depicted by using suitable line symbology for the boundaries. Infill colours or cross hatching should be avoided because it can make it difficult to interpret the base mapping and other details.

The following line styles and colours are recommended:

Boundary of a CMT area	Solid thick line		Black
Boundary of a wāhi tapu area	Solid medium line		Green
Boundary of a PCR area	Solid medium line		Red

Line of MHWS (where not coincident with the boundaries of the application area)	Dotted thick line		Blue
Cadastral boundaries (where not coincident with the boundaries of the application area)	Solid thin line		Yellow ⁶
Marine and coastal area (incl. all below line of MHWS)	Semi-transparent fill		Light blue

5.8 Annotations

Annotations should be made on the map or in the *information frame* to advise:

- (i) the source of the line of MHWS used; and
- (ii) that “the depiction of the boundaries on this plan may be approximate and not represent the true position of the legal boundaries”.

Landward boundaries

The intended position of the landward boundaries of the application area should be clearly described or defined.

Where a boundary is intended to coincide with the CMCA boundary, it should be described by either:

- a note on the map or in the *information frame*, for example to the effect that landward boundaries follow the CMCA boundary unless shown otherwise; or
- suitable notations along the boundary lines, for example ‘CMT boundary = CMCA boundary’.

In addition, the line of MHWS should be annotated ‘MHWS’ where the boundary of the application area is intended to coincide with it (see section 5.4).

Where the landward boundary of an application area does not coincide with the CMCA boundary, its position can be defined by coordinates or offsets (for example, from tidal positions), or described by suitable notations, for example “Wāhi tapu boundary at low water mark”.

Where the boundary is uncertain, this should be indicated in the information frame or in suitable notations along the boundary line – see section 6.1.3.

Note that the boundary may need to be more accurately defined in the refined map (see section 7) and in a cadastral survey dataset if applicable (see section 2).

⁶ Where over aerial imagery. Another colour may be more suitable where an alternative base map is used.

Seaward boundaries

The seaward boundary should be annotated with any applicable description, for example “outer limits of territorial sea” or “low water mark”.

A boundary which is offset from a legal boundary should have an annotation describing the legal boundary and the specified offset, for example “boundary 200m seaward of the line of MHWS”.

Submerged parcels

Where the status of a parcel that is substantially or wholly submerged is still to be investigated, annotate the parcel to that effect, for example “Status to be determined”.

In Figure 4, annotations show that the application area boundary is intended to coincide with the CMCA boundary, except where the application area boundary crosses the mouth of the inlet. An annotation also indicates that the position of part of the boundary is uncertain – further investigation is necessary to determine whether the boundary follows the edge of the estuary at MHWS, or a cadastral boundary which bisects the estuary. This uncertainty will eventually need to be resolved – see section 7.

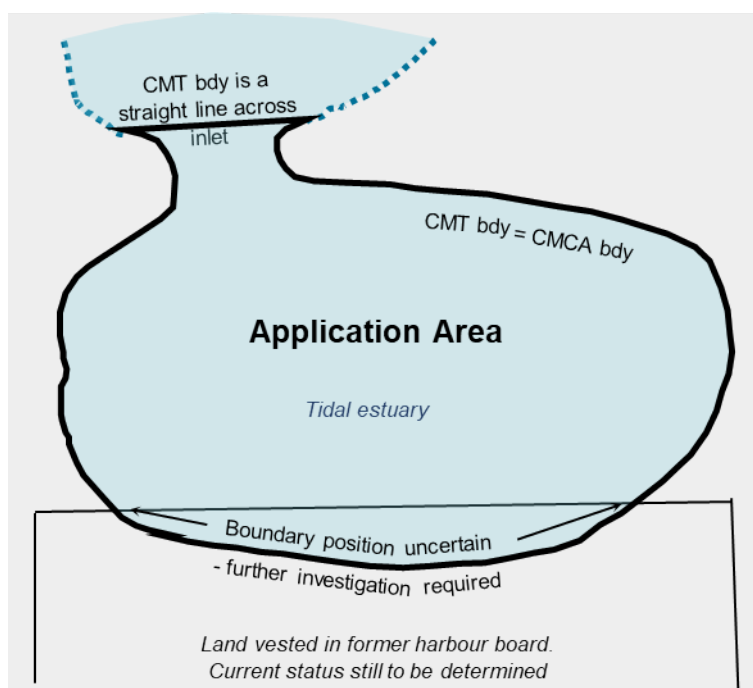


Figure 4 – Example of annotations to application area boundaries

5.9 Application Area Descriptor

Each customary interest area should be given a descriptor consisting of two components as specified in the table below: the type of area; followed by a unique identifier. The type of area may be abbreviated (as indicated) when depicted on the maps.

Type of Customary Interest Area	Unique Identifier	Abbreviation
"Customary Marine Title Area"	A number	CMT
"Protected Customary Right Area"	A capital letter	PCR
"Wāhi Tapu"	A capital letter	WT
"Wāhi Tapu Area"	A capital letter	WTA

For example: "Customary Marine Title Area 2" or "CMT 2"
 "Wāhi Tapu Area A" or "WTA A"

5.10 Line of MHWS / MHWS Data sources

The depiction of the line of MHWS is important to the demarcation of the application area boundaries. The need for accuracy of that depiction generally increases as the boundaries are refined through the application process, while also being dependent on the nature of the customary interest.

A 'NZ Coastline – Mean High Water' dataset is available from the [LINZ Data Service](#). It defines the line at a scale of 1:50,000 and may not be sufficiently accurate for the refined map – see section 7.2. In that case it may need to be enhanced by interpreting suitable aerial imagery.

Site specific data that more accurately maps the line of MHWS may be available from regional councils and Crown research institutes, such as GNS Science and NIWA.

LINZ has a "Coastal Mapping" project that aims to capture a more accurate Coastline dataset derived from LiDAR and bathymetry. This will enable the generation of more accurate and specific coastline positions, for example, Mean High Water Springs or Mean Low Water Springs. LINZ is planning on publishing a MHWS coastline on the LINZ Data Service in 2024.

5.11 Landonline cadastral boundaries

Cadastral boundaries near or within the application area should be shown on the application map.

The cadastre depicts all the parcels of land and roads, and their boundaries, in New Zealand. These cadastral boundaries, shown in Landonline's parcel fabric, may be used for the application maps. In all but the most extreme cases it should not be necessary to go back to the original survey plans to map the location of the boundaries more accurately.

This Landonline parcel fabric can be downloaded from the [LINZ Data Service](#).

It is important to note that 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. For example, subdivisions must be defined by survey before the new parcels are recognised and new titles issued. Similarly, water boundaries may have moved over time, but any accretion or erosion is not recognised in the cadastre until it has been defined by survey.

This means that any changes that occurred under the Act without supporting surveys, will not be reflected in the cadastre until the affected land is eventually defined by survey.

This includes:

- Parts of existing land parcels owned by the Crown or a local authority which became part of the CMCA on the commencement of the Act (s 11(3)).
- Parts of existing land parcels (other than a road) owned by the Crown or a local authority which, as a result of erosion or other natural occurrence, have become part of the CMCA after the commencement of the Act (s 13(2)).
- Land which has become part of the CMCA upon its acquisition by the Crown or a local authority after the commencement of the Act (s 17(1)).

This collectively means that along some parts of the coastline the cadastral boundaries depicted in Landonline may not coincide with the true boundary positions.

6 Initial application map

The assessment of the CMCA boundary and its spatial relationship to the application area should be to a standard that enables it to be relied upon by the responsible Minister or the Court (depending on the pathway used).

The application area boundary depiction will usually need to be further refined (see section 7) after the initial considerations, although in some cases (for example, some protected customary rights) the initial boundary depiction in the initial application map may be sufficient to enable the completion of a recognition order or agreement.

6.1 Landward boundaries

Section 4.1 and Appendix A describe how the landward boundaries of the CMCA are determined by the different land categories along the coast. Those landward boundaries follow either the cadastral boundaries (for example, for specified freehold land), or the line of MHWS (for example, for local authority land).

Notwithstanding this categorisation, an indicative depiction of the landward boundary of the application area will usually be sufficient for consideration of whether the statutory tests for recognition are met. Providing an indicative only depiction at this stage avoids unnecessary work determining landward boundaries which might be outside the parameters for recognition under the Act.

6.1.1 Landward boundary intended to coincide with CMCA boundary

Where the landward boundary of the application area is intended to coincide with the CMCA boundary, the initial application map should, with some exceptions noted in section 6.1.3 below, show the landward boundary along the line of MHWS, even though it might more correctly follow the cadastral boundary.

This recognises that:

- most landward CMCA boundaries are expected to fall into this 'line of MHWS' category anyway.
- many CMCA boundaries, being limited by the line of MHWS, will not overlap the cadastral boundaries anyway.
- in many cases there will be no material difference between the line of MHWS and a cadastral boundary that also follows the line of MHWS.

- the line of MHWS is likely to represent the current correct location of a cadastral boundary that was historically set at the line of MHWS, if it were to be defined on a new cadastral survey.
- this minimises effort and cost in compiling the maps and undertaking parcel analysis.

For example, in Figure 5 the line of MHWS is inland of the cadastral boundary. Provided the difference is not significant, the application area may be shown up to the line of MHWS.

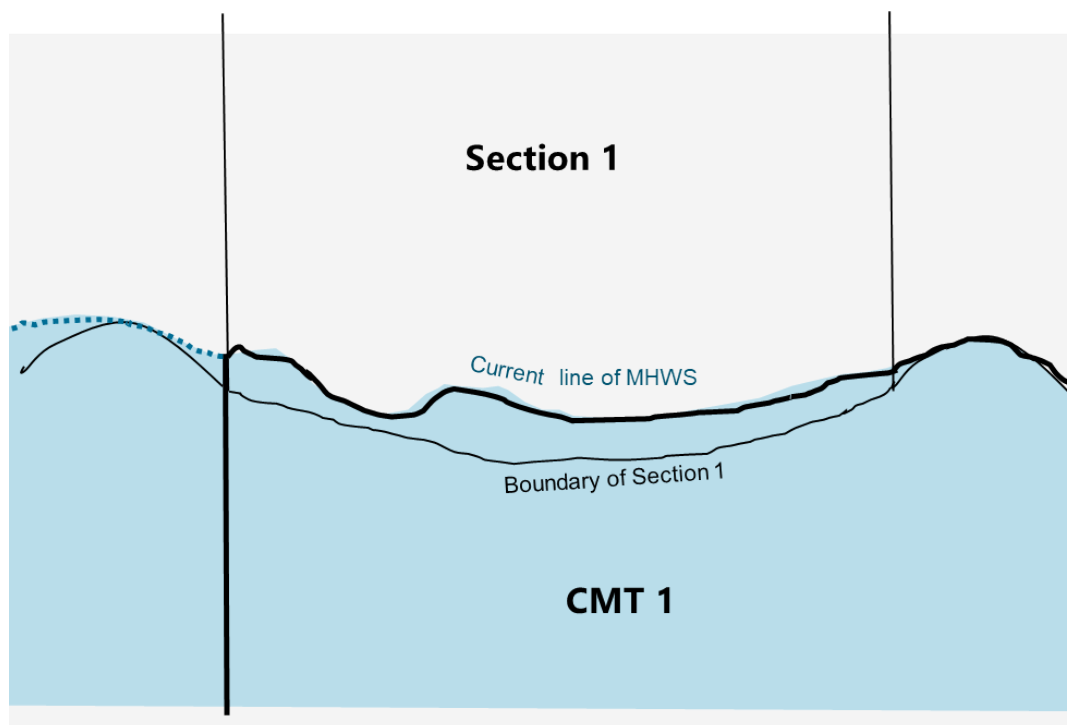


Figure 5 – Difference between line of MHWS and cadastral boundary

Detailed examination of the position of MHWS and property boundaries (as shown in Landonline) will only be necessary where it is evident that there are significant differences, or where substantial portions of parcels are under water – see section 6.1.3.

6.1.2 Landward boundary not intended to coincide with CMCA boundary

An indicative depiction will also usually be sufficient where the landward boundary of the application area is intended to be seaward of the CMCA boundary, provided the intent is clearly stated – see section 5.8.

For example, in Figure 6 the landward boundary of application area 2 does not coincide with the landward boundary of the CMCA. The landward boundary is instead offset by

100 metres from the landward boundary of the CMCA. Similarly, the seaward boundary of application area 2 is at an offset position (300 metres) from MHWS. In this example coordinates would need to be provided for the lateral boundaries of application area 2 – see section 5.4.4.

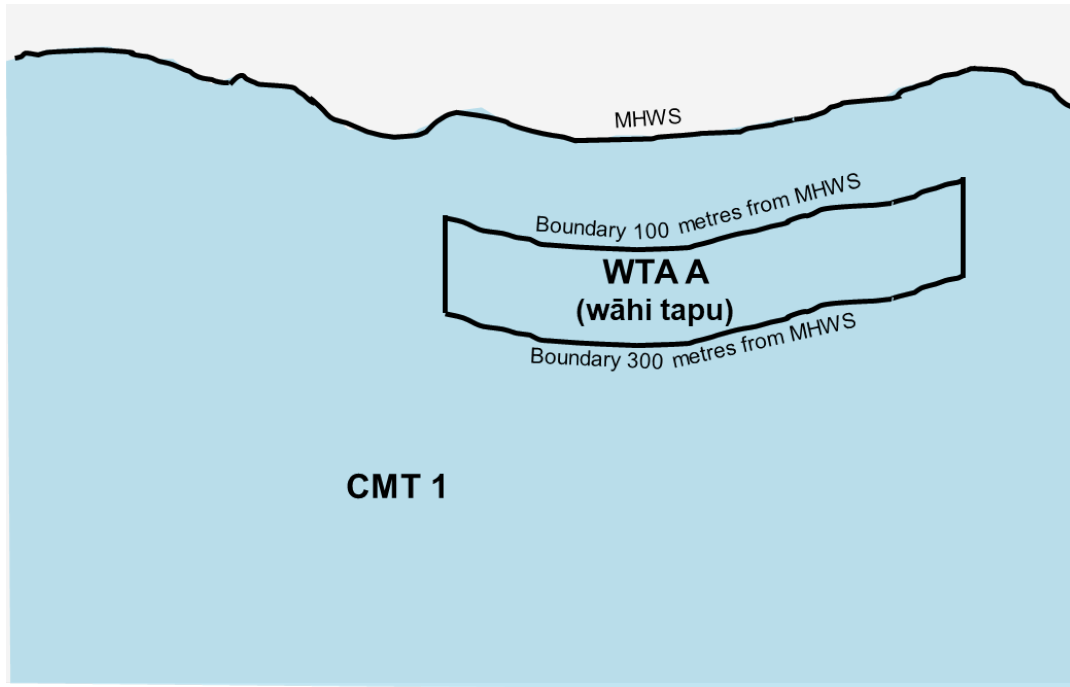


Figure 6 – Boundaries not coinciding with the landward boundary of the CMCA

Annotations or enlargement diagrams should be used where the landward boundary is close to the CMCA boundary, to clarify that the boundaries are not coincident.

6.1.3 Where further investigation of CMCA boundary is needed

Exceptions to the above approach are where:

- the line of MHWS is significantly further inland of the cadastral boundary (as shown in Landonline).
- significant portions of existing parcels, including roads, are under water.
- the applicants or statutory decision-maker require more certainty about the position of a CMCA boundary.

In these situations, the relevant boundaries should either be:

- highlighted or annotated to indicate that it is unclear whether the land is in the CMCA and that further work is needed (for the refined map), for example 'Status of land to be determined'; or

- investigated to determine whether the land is in the CMCA and, if it is not, either:
 - annotated to that effect; or
 - on confirmation from the applicant, adjusted to follow the cadastral boundary rather than the line of MHWS.

Refer to section 7 if further investigation or refined boundary depiction is required.

7 Refined Map

It is likely that the initial application map will need to be refined for a later stage of the Court or Crown engagement process for the following purposes:

- To exclude areas that the statutory decision maker has indicated will not be accepted as meeting the criteria for recognition, for example use and occupation since 1840 without substantial interruption.
- To exclude areas that the statutory decision maker has found to be outside the CMCA.
- To assist the decision maker in establishing whether uncertain areas (for example parcels that are substantially or completely submerged) are included in the CMCA. This involves investigation of adjoining or underlying parcels and is covered in the following sections.

7.1 Investigations

The level of investigation and analysis will depend on the intended outcome. For example, if the intent is to confirm whether parts of a parcel which are below the line of MHWS are part of the CMCA, then searching the documents of title to see whether the land was held by a local authority or the Crown at the time the Act came into force may be all that is required.

Depending on the purpose of the investigation, it may be necessary to research such things as:

- where the line of MHWS overlaps an existing parcel, the ownership and status of the parcel to determine whether the affected part is in the CMCA;
- the ownership and status of land in a parcel that is located completely below the line of MHWS to determine whether it is in the CMCA;
- where the line of MHWS overlaps a road, whether the road is formed or unformed;
- whether the bed of a river or stream is part of the CMCA.

Determining whether the land is within the CMCA will need to have regard for the different categories of land that are excluded under the Act, as described in section 4.1. These categories are described further in the table in section 7.2 below.

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.

7.2 Depiction of landward boundaries

The initial application map will have mainly shown the landward boundary of the application area along the line of MHWS where that boundary is intended to coincide with the landward boundary of the CMCA – see section 6.1.1. This line may continue to be used on the refined map, provided this level of accuracy meets the needs of the applicants and statutory decision-makers.

Applicants and decision-makers may consider that protected customary right areas are adequately defined in this way, especially if the areas are extensive and bounded by natural features. For the High Court pathway, the refined map will need to be sufficient to support the recognition order for a protected customary right under s109(3)(b).

For customary marine title and wāhi tapu areas, significant overlap of the line of MHWS with cadastral boundaries will need to be investigated.

This will involve identifying whether the affected land is in the CMCA. The following table indicates whether the application area boundary can continue to be depicted as following the line of MHWS or should be adjusted to coincide with the cadastral boundary depicted in Landonline. The table applies to application area boundaries that are intended to coincide with the landward boundaries of the CMCA.

If the line of MHWS significantly overlaps into...	then the application area boundary should be shown ...
specified freehold land	coinciding with the parcel's cadastral boundary. This should be derived from the existing cadastral boundary shown in Landonline.
land owned by the Crown with a status of conservation area, national park, or reserve	coinciding with the cadastral boundary of the overlapped Crown-owned parcel. This should be derived from the existing cadastral boundary in Landonline.
formed road	coinciding with the cadastral boundary of the road (containing the road formation). This should be derived from the existing cadastral boundary shown in Landonline.
unformed road ⁷	at the line of MHWS.
other lands of the Crown and land owned by a local authority (including local authority reserves)	at the line of MHWS.

⁷ The starting point is that unformed road in existence before the commencement of the Act is not part of the CMCA – s 14(1). However, the road may have become part of the CMCA, and be deemed to be stopped, if the responsible Minister has not signed a certificate under ss (4). See section on 'Unformed Roads' in Appendix A.

7.3 Wāhi tapu and wāhi tapu areas

If a wāhi tapu protection right is sought (s 78), its boundaries should be depicted with sufficient accuracy to reflect the prohibitions or restrictions that are to apply (e.g. public access). For example, a more detailed depiction or description of the boundaries may be needed than for a customary interest with no restrictions on public access.

7.4 Depiction of wholly or substantially submerged parcels

Parcels that are wholly or substantially submerged require particular attention to establish whether they are within the CMCA. For example, in the case of a portion of seabed that is held in a title in the name of a former harbour board, attention is required to determine if it is specified freehold land. This type of situation is most likely to arise in harbours and estuaries, where the status of the bed is often less certain.

Neither the responsible Minister nor the High Court can determine an application seeking recognition of a customary interest over land which has been found on investigation to not be in the CMCA.

The category (status) of each submerged area, including road, should be suitably indicated, for example, 'unformed road deemed to be stopped', 'former Crown land', or 'former local authority esplanade reserve'. This can be achieved, for example, by assigning an abbreviation to each area, with a legend in the side panel. Title references do not need to be shown.

7.5 Depiction of boundaries in rivers

If necessary, review or refine the depiction of the boundary across the mouths of rivers and streams (where the bed is excluded from the application area, despite the CMCA extending upstream – see section 5.4.1).

Where the application area is intended to extend up a river or stream, identify the extent of the CMCA boundary if it was not already done for the initial application map. The landward extent of the application area should be annotated to indicate either that it matches the extent of the CMCA (wherever that may be); or that it is fixed at a different location (which should be less than the extent of the CMCA).

Depiction of the application area within riverbeds may need to be revised to exclude areas where it is determined that customary marine title has already been extinguished – see section 2.1.

7.6 Refining seaward and lateral boundaries

The accuracy of the seaward and lateral boundaries in the initial application map should not need to be improved, since this should be relatively straightforward compared with the complexities of defining landward boundaries. See sections 5.4.3 and 5.4.4.

However, these boundaries may need to be altered in the refined map to reflect any formal amendments that have been made to the application area and the findings of the relevant decision-maker.

Appendix A – Interpreting the landward boundaries of the CMCA

Introduction

This appendix discusses the different categories of land adjoining the CMCA, which influence the position of the landward boundaries of the CMCA. It provides an interpretation of the provisions in the Marine and Coastal Area (Takutai Moana) Act 2011 and has been used to guide and inform the approach to mapping application areas. It does not constitute legal advice.

Overview

The maximum landward limit of the CMCA is the line of MHWS, except where the landward boundary crosses a river or stream, at which point the landward limit is the extent of the coastal marine area, as defined by the RMA.

However, the Act excludes some categories of land below MHWS:

- 'specified freehold land' - land which, immediately before the commencement of the Act, was either Māori freehold land, Māori reservation, or land held under the Land Transfer Act 2017 or Deeds Registration Act 1908 other than land owned by the Crown or a local authority (s 9(1));
- any area owned by the Crown with the status of conservation area, national park, or reserve (s 9(1));
- any road, although specific provisions in respect of unformed roads may bring them back into the CMCA (s 14);
- the bed of Te Whaanga Lagoon in the Chatham Islands¹ (s 9).

Other lands of the Crown, local authority land (including local authority reserves) and some unformed roads below MHWS became part of the CMCA on the passing of the Act (s 11), or subsequently in accordance with s 14(3), (4) and (5).

If, after commencement of the Act, the Crown or a local authority acquires any specified freehold land that is not accorded a status under an enactment, then any portion below MHWS is also added to the CMCA (s 17).

The effect of these exclusions is illustrated in Figure 7, where the current line of MHWS encroaches into the existing landward parcels. Heavy lines demarcate the extent of the CMCA. The 'wet' area (the land seaward of the current line of MHWS) is shown with a light blue wash.

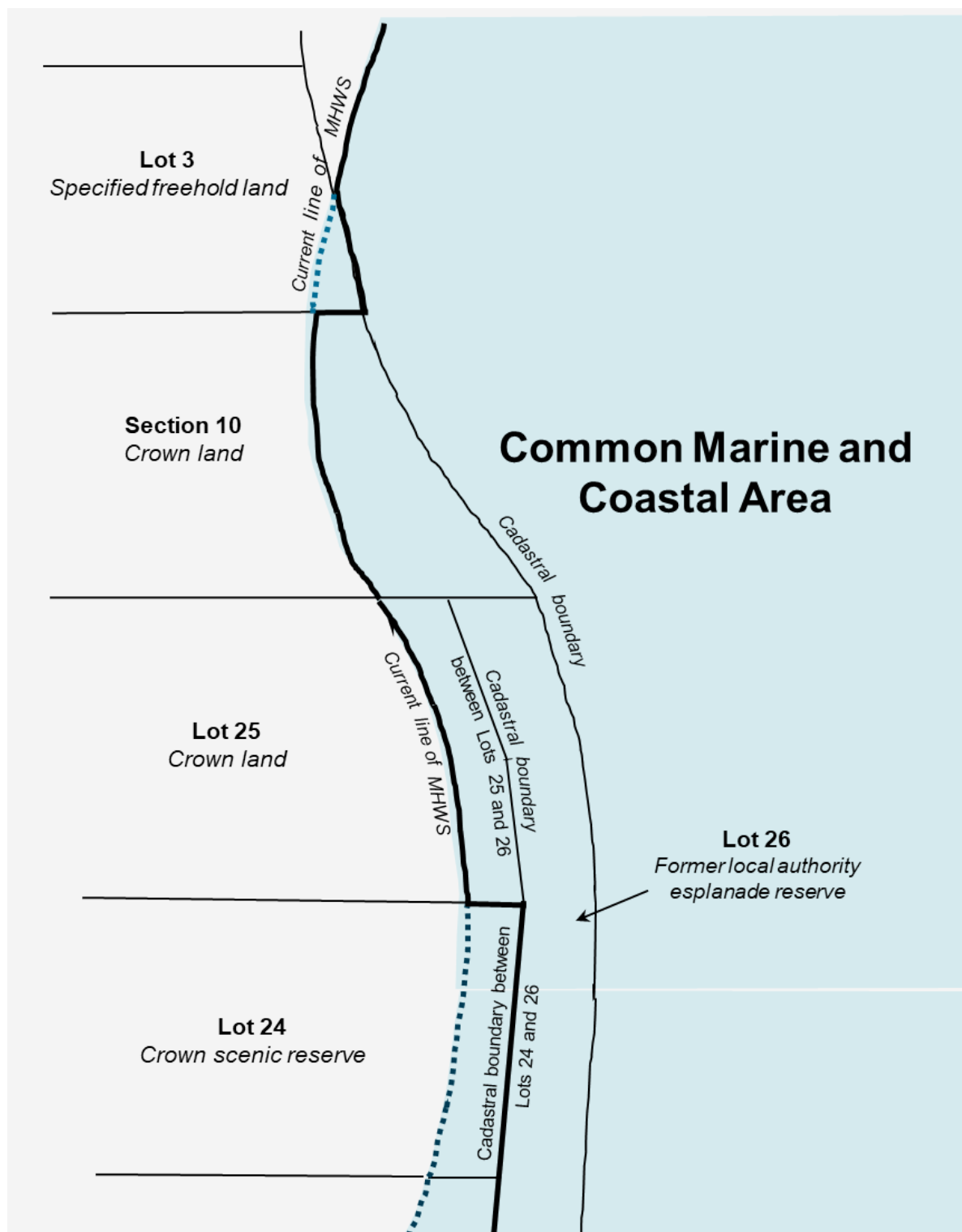


Figure 7 - Examples of CMCA landward boundaries, where the line of MHWS does not coincide with cadastral boundaries

Specified freehold land

Specified freehold land is excluded from the CMCA, and therefore from recognition in any order or agreement under the Act.

However, s 13(1) of the Act states that, except for land owned by the Crown or a local authority, the Act does not affect any enactment or the common law that governs accretions or erosions. If such enactments or common law mean that the boundary of specified freehold land has moved, then the boundary of the CMCA moves with it.

Such changes are recognised in the cadastre and affected titles only when it has been established that each change has occurred in accordance with the common law doctrine, and the affected land has been surveyed. Consequently, the cadastre (Landonline) may not accurately reflect the landward boundary of the specified freehold land where accretion or erosion has occurred.

While an initial application map (see section 6) may show the landward boundary of the CMCA along the line of MHWS, where it overlaps a parcel of specified freehold land, then the cadastral boundary should instead be used as the CMCA boundary.

Despite Landonline not necessarily showing the current location of the cadastral boundaries (see section 5.11), that representation of the boundaries may be used to demarcate the landward boundary of the CMCA/application area where it adjoins specified freehold land. It is not feasible to carry out the investigations and surveys required to update each title of specified freehold land as part of these processes under the Act.

For example, in Figure 7 above, Lot 3 is specified freehold land and is therefore excluded from the CMCA. The seaward boundary of Lot 3 follows the line of MHWS as at the date the parcel was surveyed. This position must continue to be used until it is proven that the boundary has moved due to accretion and erosion rather than avulsion. Accordingly, any recognition agreement or order cannot extend into Lot 3, despite part of it now being seaward of the line of MHWS.

Even though the CMCA does not legally overlap specified freehold land, for the initial application map a line of MHWS that overlaps such land can be used to indicate the boundary of the CMCA / Application Area, except where it overlaps to a significant extent. This is explained in more detail in section 6.1.

Crown-owned conservation areas, national parks and reserves

Like specified freehold land, Crown-owned conservation areas, national parks, and reserves are excluded from the CMCA (and therefore from recognition in any customary recognition order or agreement under the Act). The boundaries are not affected by the Act.

For example, in Figure 7 the line of MHWS now encroaches into Lot 24 (at the bottom of the diagram), which is held by the Crown as a scenic reserve. The CMCA can only extend up to the cadastral boundary. In this example the seaward boundary of Lot 24 is a right-line, but the situation would be no different if it was a movable water boundary.

Even though the CMCA does not legally overlap these lands, for the initial application map a line of MHWS that overlaps such land can be used to indicate the boundary of the CMCA / Application Area except where it overlaps to a significant extent. This is explained in more detail in section 6.1.

Other Crown land and local authority land

Where it has been established that the landward boundary of an application area abuts land owned by the Crown with a status other than that covered in the previous section, or land owned by a local authority, the boundary is at MHWS. This is because:

- with some exceptions, land owned by the Crown and local authorities that was below MHWS when the Act came into effect became part of the CMCA at that time (s 11). The exceptions are land owned by the Crown with the status of conservation area, national park, or reserve, as well as some roads. New surveys were not required for the divestment to take effect, so the boundary changes are generally not recorded in Landonline.
- if, after commencement of the Act, the Crown or a local authority acquires any specified freehold land that is not accorded a status under an enactment, then any portion below MHWS also becomes part of the CMCA (s 17).
- if any land owned by the Crown or a local authority, other than a road, becomes part of the marine and coastal area due to a natural occurrence or process, then that land becomes part of the CMCA. This applies even if the land was defined by fixed boundaries (s 13(2)). The 'natural occurrence or process' need not be gradual and imperceptible as in the case of erosion.

For example, in Figure 7 above, Lot 26 is a council-owned esplanade reserve. After this parcel was created, the line of MHWS has progressively moved across it and into the adjoining parcels. Accordingly, Lot 26 has become part of the CMCA pursuant to s 11(3) and (4) and s 13(2) of the Act.

In this example, the line of MHWS has extended further landwards, into Lot 24, but because this land is held by the Crown as a scenic reserve, it retains that status (as per the previous section).

Conversely, the parts of Lot 25 and Section 10, which are now seawards of the line of MHWS, have become part of the CMCA. These parcels are Crown land not covered by any of the exceptions listed above. In this example, the seaward boundary of Lot 25 has

been right-lined, whereas the seaward boundary of Section 10 is a movable water boundary. However, the outcome is the same; it makes no difference that the parcel has a 'fixed' right-lined boundary.

Roads

All roads, whether formed or unformed, that are in the marine and coastal area at the commencement of the Act are not part of the CMCA (s 14).⁸ However since that time nearly all unformed roads in the marine and coastal area have become part of the CMCA, as explained below.

Formed roads

A formed road is excluded from the CMCA under s 14(1) if it was in the marine and coastal area on the commencement of the Act, and under s 14(6) if it has been formed since the commencement of the Act.

A 'formed road' comprises not only the formed carriageway, bridle path or footpath⁹, but also all adjacent portions within the legally designated road corridor, some of which may now be seawards of MHWS. Thus, the full width of road corridor as legally designated (and usually surveyed) is not part of the CMCA.

Note that the definition of road includes the supporting subsoil of any road (s 9), so formed road may include submerged land under (for example) a road bridge.

Unformed roads

A road width that does not contain a road formation is unformed.

An unformed road that was in the marine and coastal area when the Act came into effect is deemed to be stopped, either under s 14(3) or the earlier [s 15\(4\) of the Foreshore and Seabed Act 2004](#), and is part of the CMCA. Although s 14 contains a provision for the responsible Minister to sign a certificate continuing the status of an unformed road beyond 1 April 2016¹⁰ and continuing to exclude it from the CMCA, no certificates have been signed at the date of publishing this guidance.

Note that these former roads continue to be shown as road in Landonline, because the change happened by force of law without any spatial identification of the affected land on a survey plan. The appearance in Landonline therefore implies that roads still

⁸ For the purposes of the Act, "road" means a road within the definition of s 315(1) of the Local Government Act 1974 or s 43(1) of the Government Roding Powers Act 1989, and a motorway within the meaning of s 2(1) of the Government Roding Powers Act 1989, and the supporting subsoil of such roads.

¹⁰ The first quinquennial anniversary mentioned in s 14(3).

exist, whereas they are now part of the CMCA if they are in the marine and coastal area.

If unformed road came into existence in the marine and coastal area after the Act came into force, for example due to a slip, it is now part of the CMCA (s 14(5)), but the road is not deemed to be stopped.¹¹ In this situation, land with the status of road could be included in a recognition agreement or order.

Example

In Figure 8 below, heavy lines demarcate the extent of the CMCA in an estuary. The 'wet' area (the land seaward of the current line of MHWS) is shown with a light blue wash.

A formed road (in this case a bridge) crosses the estuary. It is not part of the CMCA.

At the lower left of Figure 8, the end of an unformed road is now seawards of the line of MHWS and is now part of the CMCA.

In the upper part of the figure, the mouth of the estuary has cut into an unformed road and part of a local purpose reserve. These portions are also now part of the CMCA.

¹¹ If the road is subsequently formed, it ceases to be in the CMCA – s 14(6).

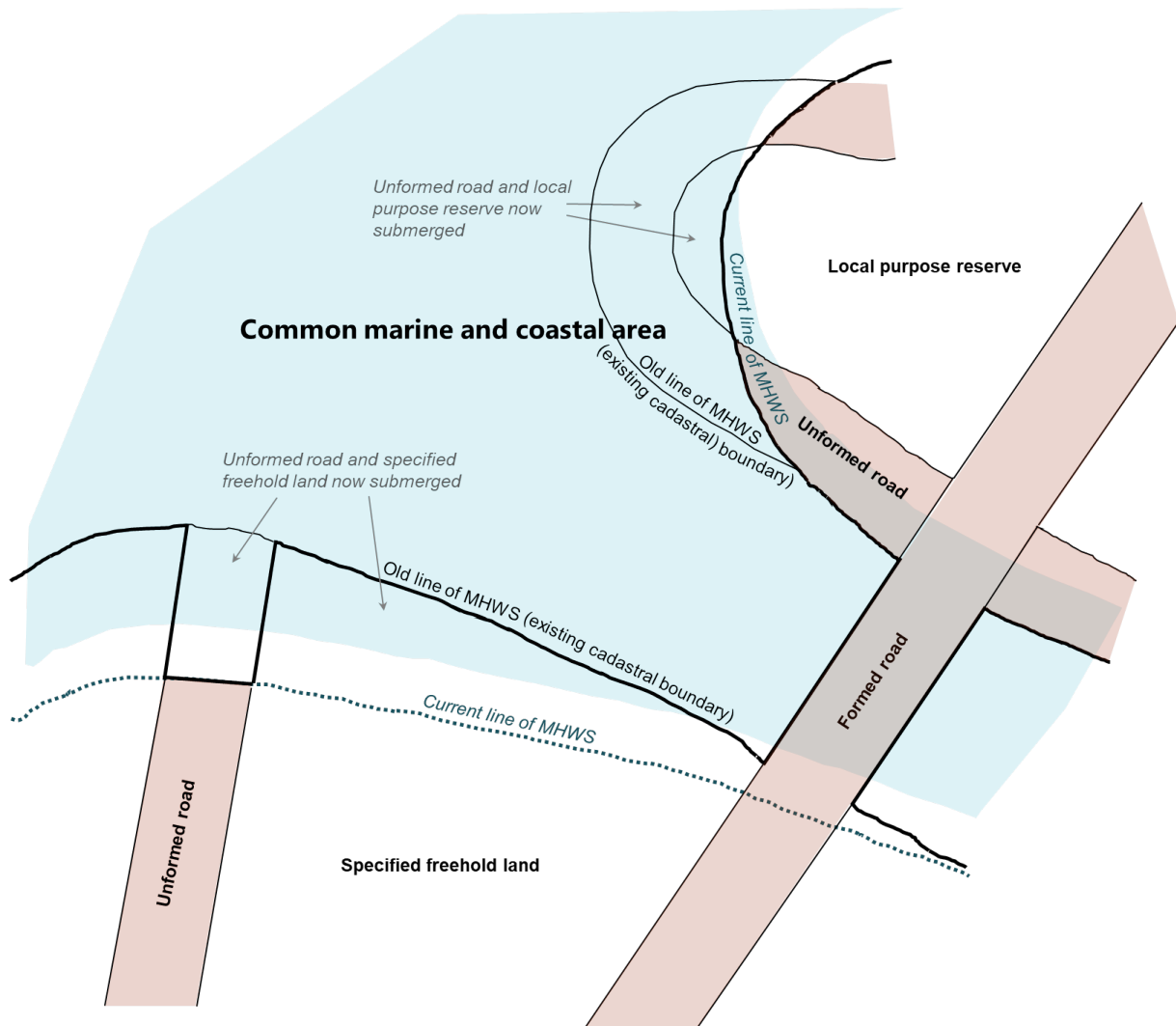


Figure 8 - Roads in the CMCA

Rivers and streams

The marine and coastal area means the area that is bounded on the landward side by the line of MHWS, and includes the beds of rivers that are part of the coastal marine area, as that term is defined in the RMA. The *coastal marine area* means the foreshore and seabed of which the landward boundary is the line of MHWS, except where that line crosses a river, in which case the landward boundary is defined in s 2 of the RMA as being the lesser of:

- 1 kilometre upstream from the mouth of the river; or
- the point upstream that is calculated by multiplying the width of the river mouth by 5.

For this purpose, the location of the river 'mouth' is as specified in the regional coastal plan or as declared by the Environment Court – see definition of 'mouth' in s 2 of the

RMA. If the river mouth has not been identified by either of these two processes, then the landward boundary of the coastal marine area is a straight line across the mouth, joining the lines of MHWS on each side until such time as the mouth has been legally defined.

The CMCA therefore extends up rivers and streams to the landward boundary of the coastal marine area, excepting specified freehold land or land owned by the Crown with a status of conservation area, reserve, or national park (see earlier sections in this Appendix).

Movable customary interest boundaries

Where the landward boundary of a customary interest in a recognition order or agreement abuts the landward boundary of the CMCA, then the coterminous boundary will move in conjunction with movement of the CMCA boundary due to accretion, erosion, or other change caused by a natural occurrence or process - see s 13(2).

A boundary which is coincident with, or offset from another tidal position (for example, the low water line) is considered to move with any future movement of the tidal position.

It is not necessary to record on application maps that these boundaries are movable.