



# Interim guideline to sea boundaries and the Marine and Coastal Area (Takutai Moana) Act 2011

LINZG65705

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### Your feedback

- (a) Feedback, in electronic format, should be on the technical content, wording, and general arrangement of this interim guide. You are welcome to scan and attach any drawings or diagrams.
- (b) Please provide supporting reasons for your comments and suggested wording for any proposed changes.

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## Terms and definitions

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### General

For the purposes of this guideline:

- (a) the following terms and definitions apply, and
  - (b) any reference to a rule is a reference to the Rules for Cadastral Survey 2010.
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Term/abbreviation	Definition
CFR	computer freehold register
common marine and coastal area	<ul style="list-style-type: none"><li>(a) The phrase 'common marine and coastal area' is a term defined in the Marine and Coastal Area (Takutai Moana) Act 2011 that, in summary, means the marine and coastal area, being the area from the line of mean high water springs (MHWS) out to New Zealand's territorial limits, other than:<ul style="list-style-type: none"><li>(i) 'specified freehold land' located in that area (being 'private' land - fee-simple land under the LTA or Deeds Registration Act 1908 not owned by the Crown or a local authority, and Māori freehold land or Māori reservations), and</li><li>(ii) Crown-owned reserves, conservation areas and national parks, and</li><li>(iii) the bed of Te Whaanga Lagoon in the Chatham Islands.</li></ul></li><li>(b) The terms 'common marine and coastal area', 'specified freehold land', and 'marine and coastal area' are fully defined in s 9 of the MACAA.</li></ul>
CSD	cadastral survey dataset
LA	local authority
LINZ	Land Information New Zealand
MACAA	Marine and Coastal Area (Takutai Moana) Act 2011
MHWM	mean high water mark
MHWS	mean high water springs
RGL	Registrar-General of Land

residue parcel

The definition of residue parcel in s4 of the Rules for Cadastral Survey 2010 sets out the circumstances where a residual portion of a primary parcel to be a 'residue parcel'. In respect to the common marine and coastal area, this applies to a residual portion of a primary parcel which is:

- (a) being defined as part of the bed of a lake, river, or common marine and coastal area, and
- (b) not currently recorded in the cadastre as the bed of a lake, river, or part of the common marine and coastal area, and
- (c) not intended to vest, and
- (d) not intended to have a new estate record.

RMA

Resource Management Act 1991

Rules

Rules for Cadastral Survey 2010

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## Foreword

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- Introduction**
- (a) Effective from 1 April 2011, the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA) replaced the Foreshore and Seabed Act 2004.
  - (b) MACAA has a significant impact on the manner in which land below mean high water springs (MHWS) is to be dealt with when the land is under survey. It impacts differently on land held in fee simple estate by a private owner than it does on land held by the Crown or a local authority (LA).
  - (c) MACAA also amended s 237A of the Resource Management Act 1991 (RMA) which has an impact on land being subdivided.
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- Purpose**
- The purpose of this guideline is to:
- (a) facilitate the correct interpretation of the Rules for Cadastral Survey 2010 (Rules) in regard to the survey of land affected by MACAA, and
  - (b) outline requirements for showing common marine and coastal area on a cadastral survey dataset (CSD).
- 

- Scope**
- This document gives an explanation of the:
- (a) impact of MACAA and RMA on land under survey, and
  - (b) Rules relating to the survey and CSD.
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**Intended use of guideline**

This guideline is intended to be used by licensed cadastral surveyors and those working under their direction when undertaking a cadastral survey and lodging a CSD with Land Information New Zealand (LINZ).

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## Foreword, continued

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### References

The following references are relevant in the application of this guideline:

- Land Information New Zealand, Office of the Surveyor-General 2010. *LINZS65003: Rules for Cadastral Survey 2010*. Wellington: LINZ.
  - Land Information New Zealand, Registrar-General of Land 2013. *LINZG20726: Registration guideline for the Marine and Coastal Area (Takutai Moana) Act 2011*. Wellington: LINZ.
  - Marine and Coastal Area (Takutai Moana) Act 2011.
  - Resource Management Act 1991.
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### Brief history of guideline

This is a new guideline.

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# 1 MACAA where land is being subdivided

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## **MACAA affects subdivisions of land**

- (a) The MACAA made significant changes to s 237A of the RMA. Section 237A(1)(b) requires the CSD to show any part of the land that is in the coastal marine area (land below MHWS) as part of the common marine and coastal area.
- (b) Many existing parcels extend below MHWS to MHWM, and in theory it would seem to be a relatively simple task to identify the land between MHWS and MHWM. However, water boundaries are movable and often they are no longer in the same physical position as the survey which previously recorded them. Also some early surveys may not have accurately recorded the location of these boundaries. These factors have introduced variations in how parcels comprising of common marine and coastal area are to be defined.
- (c) Explanations on the following variations are covered in this section. See:
  - (i) Where MHWS coincides with MHWM,
  - (ii) Where current MHWS is inland from old MHWM,
  - (iii) Where current MHWM is inland from old MHWM because of erosion,
  - (iv) Where current MHWS is within an inland parcel,
  - (v) Where current MHWS is seaward of old MHWM because of accretion or avulsion,
  - (vi) Where current MHWS is seaward of earlier poorly defined MHWM.
- (d) Land owned by the Crown or a local authority (LA) is treated slightly differently, even if held under the Land Transfer Act 1952. Refer to [MACAA where Crown/LA owns land](#).

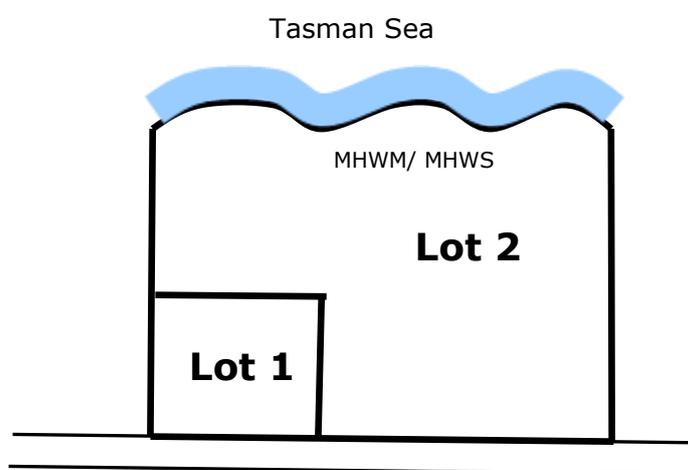
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## MACAA where land is being subdivided, continued

### Where MHWS coincides with MHWM

- (a) Where an existing primary parcel with a water boundary at MHWM is subdivided, and the current MHWM and MHWS are coincident, then no land becomes part of the common marine and coastal area. An example of this is where the water boundary is a cliff face.
- (b) In this case, the CSD diagrams should show along the water boundary the notation 'MHWM/MHWS'<sup>1</sup>.
- (c) For specific rule requirements see [Becoming common marine and coastal area under s 237A of the RMA](#).



**Figure 1: Where MHWM and MHWS coincide**

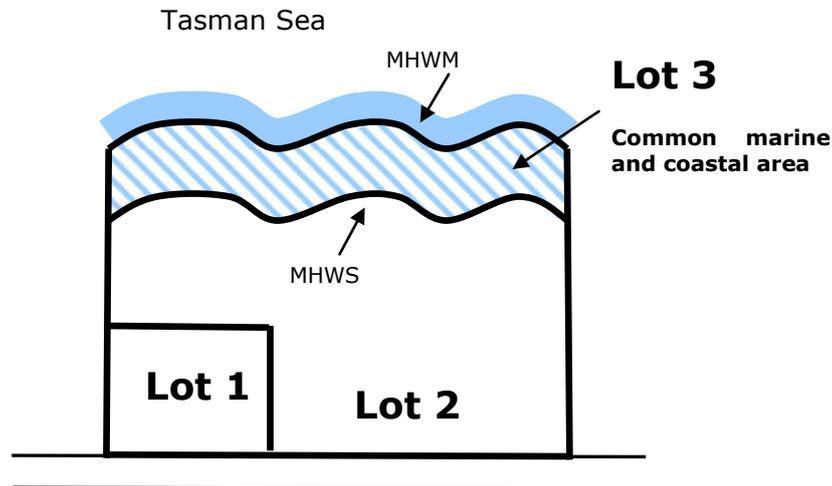
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<sup>1</sup>Rules 9.6.7(c) and 10.4.5(c) require the legal boundary to be described and s 237A RMA requires the CSD to show any part of the allotment that is in the coastal marine area as part of the common marine and coastal area. This notation is one way of complying with s 237A or demonstrating that s 237A is not applicable whilst complying with the Rules.

## MACAA where land is being subdivided, continued

### Where current MHWS is inland from old MHWM

- (a) Where an existing primary parcel with a water boundary at MHWM is subdivided and the current MHWS is inland from this boundary, then the land in the parcel below MHWS becomes part of the common marine and coastal area.
- (b) In this case, the CSD diagrams should depict the:
  - (i) MHWS boundary and the MHWM water boundary, and
  - (ii) land between MHWS and MHWM as a new primary parcel with an appellation (eg Lot 3), area, and an annotation 'common marine and coastal area'<sup>2</sup>.
- (c) For specific rule requirements see [Becoming common marine and coastal area under s 237A of the RMA](#).



**Figure 2: Where MHWS is inland of MHWM**

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<sup>2</sup>S 237A RMA requires the CSD to show any part of the allotment that is in the coastal marine area as part of the common marine and coastal area. This notation, in conjunction with the new primary parcel, is one way of complying with s 237A.

## MACAA where land is being subdivided, continued

### Where current MHWM is inland from old MHWM because of erosion

- (a) If, because of erosion, the current MHWM is further inland than the existing primary parcel boundary of MHWM, the surveyor may exercise their judgment and show either:
- (i) all of the land between the old MHWM and current MHWS as part of the common marine and coastal area, or
  - (ii) land between the MHWM title boundary and current MHWM as 'erosion (common marine and coastal area)' and the land between the current MHWM and the current MHWS in a new primary parcel as 'common marine and coastal area'<sup>3</sup>.
- (b) For specific rule requirements see [Becoming common marine and coastal area under s 237A of the RMA](#).

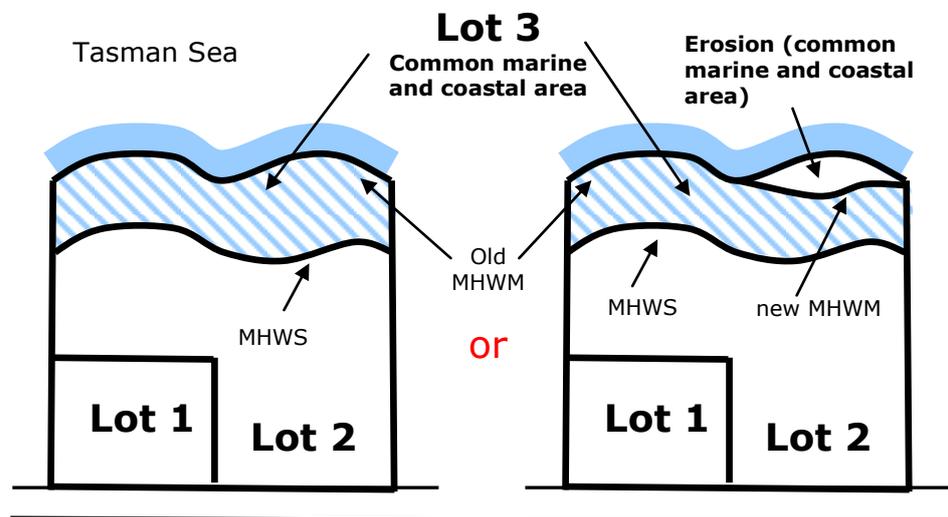


Figure 3: Where erosion affects MHWM

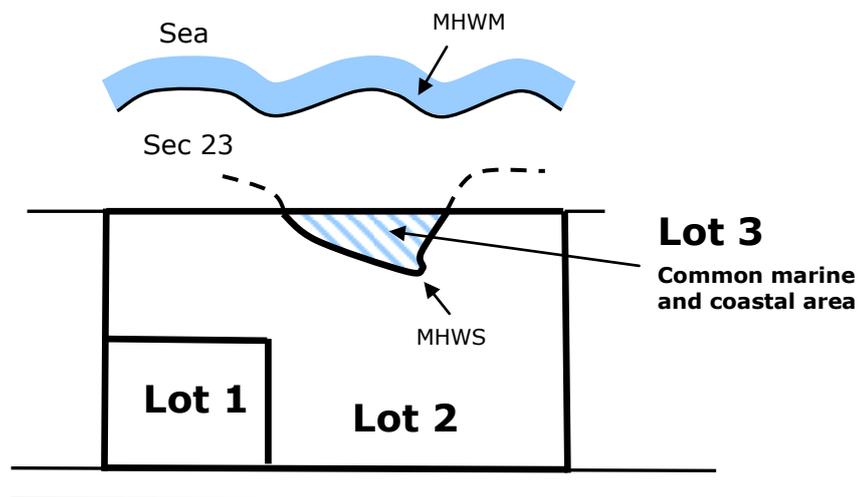
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<sup>3</sup>Section 237A RMA requires the CSD to show any part of the allotment that is in the coastal marine area as part of the common marine and coastal area. These notations, in conjunction with the new primary parcel, are one way of complying with s 237A.

## MACAA where land is being subdivided, continued

### Where current MHWS is within an inland parcel

- (a) The requirements of s 237A(1)(b) of the RMA apply to parcels with fixed boundaries as well as parcels that do not adjoin the sea.
- (b) Where an existing primary parcel is subdivided any land below MHWS becomes part of the common marine and coastal area.
- (c) In this case, the CSD diagrams should depict<sup>4</sup>:
  - (i) the new MHWS boundary, and
  - (ii) the land between MHWS and the fixed boundary as a new primary parcel with an appellation, area and the annotation 'common marine and coastal area'<sup>5</sup>.
- (d) For specific rule requirements see [Becoming common marine and coastal area under s 237A of the RMA](#).



**Figure 4: Where the parcel does not adjoin the sea**

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<sup>4</sup>S 237A RMA requires the CSD to show any part of the allotment that is in the coastal marine area as part of the common marine and coastal area. This notation, in conjunction with the new primary parcel, is one way of complying with s 237A.

<sup>5</sup>See footnote above.

## MACAA where land is being subdivided, continued

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### Where current MHWS is seaward of old MHWM because of accretion or avulsion

- (a) Where an existing primary parcel with a water boundary at MHWM is subdivided and the current MHWS is seaward from this parcel boundary because of accretion or avulsion, then one of the following two scenarios will apply.
- (b) In the case of avulsion or if not making a claim for accretion, there is no land in the parcel to become part of the common marine and coastal area and the old boundary of MHWM is retained ('defined by adoption' or 'accepted' as applicable and in some cases of avulsion, right lined in terms of rule 6.7). The CSD diagrams should depict<sup>6</sup>:
  - (i) the annotation 'MHWM' along the water boundary, and
  - (ii) enough information so that it is obvious that the MHWM title boundary is not coincident with MHWS **and** that MHWS is further out to sea.

**Note:** Two simple methods of providing this information as part of the CSD diagram are by including an attached diagram or by adding an annotation to the diagram eg 'Current MHWS is approximately 20m seaward of the MHWM boundary'.

This is illustrated in the left hand diagram of [Figure 5](#).

- (c) If a claim is being made for accretion, the claim is to be made to the current MHWM and the land between current MHWM and current MHWS is to be identified as land that will become part of the common marine and coastal area. This is illustrated in the right hand diagram of [Figure 5](#).
- (d) For specific rule requirements see [Becoming common marine and coastal area under s 237A of the RMA](#).

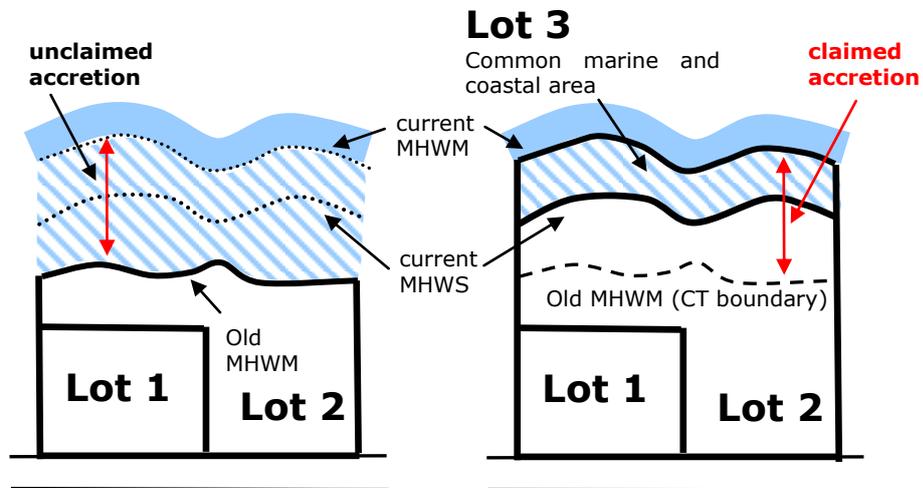
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<sup>6</sup>Rules 9.6.7(c) and 10.4.5(c) require the legal boundary to be described and s 237A RMA requires the CSD to show any part of the allotment that is in the coastal marine area as part of the common marine and coastal area. This notation and the additional information are one way of complying with s 237A or demonstrating that s 237A is not applicable whilst complying with the Rules.

## MACAA where land is being subdivided, continued



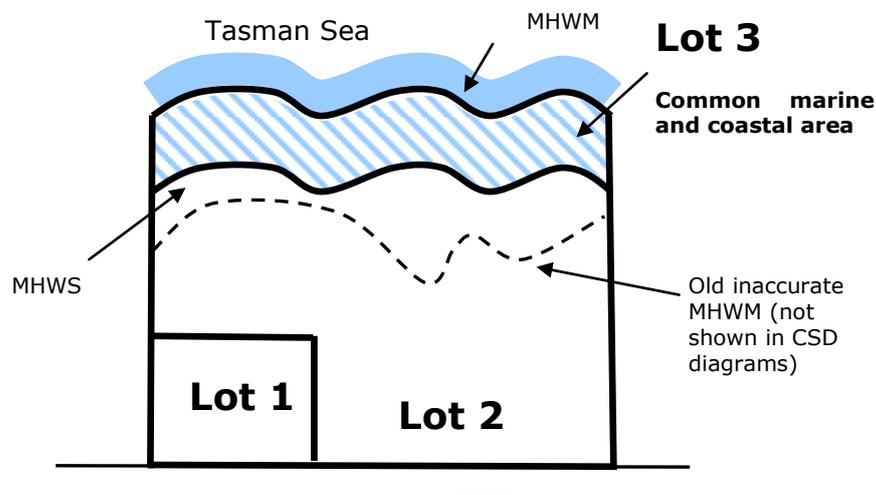
**Figure 5: Where there is accretion**

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## MACAA where land is being subdivided, continued

**Where current MHWS is seaward of earlier poorly defined MHWM**

- (a) Where an existing parcel is being subdivided and the current MHWS appears to be seaward of the existing MHWM parcel boundary because the earlier MHWM survey fix was inaccurate, then there is land in the title to become part of the common marine and coastal area.
- (b) In this case, the CSD diagrams should depict<sup>7</sup>:
  - (i) the new MHWS boundary, and
  - (ii) a 'better fix' of MHWM seaward of the new MHWS. In theory, this boundary should reflect MHWM at the time of the original survey. However, given this is a disappearing boundary; the 'defined by survey' current MHWM boundary line may be, in terms of rule 3.4, an approximation. The old inaccurate MHWM is not shown<sup>8</sup>, and
  - (iii) the land between the current MHWS and the seaward new MHWM as a new primary parcel with an appellation, area and annotation 'common marine and coastal area'.
- (c) For specific rule requirements see [Becoming common marine and coastal area under s 237A of the RMA](#).



**Figure 6: Where MHWS is seaward because of poor historic fix of MHWM**

<sup>7</sup>S 237A RMA requires the CSD to show any part of the allotment that is in the coastal marine area as part of the common marine and coastal area. This notation, in conjunction with the new primary parcel, is one way of complying with s 237A.

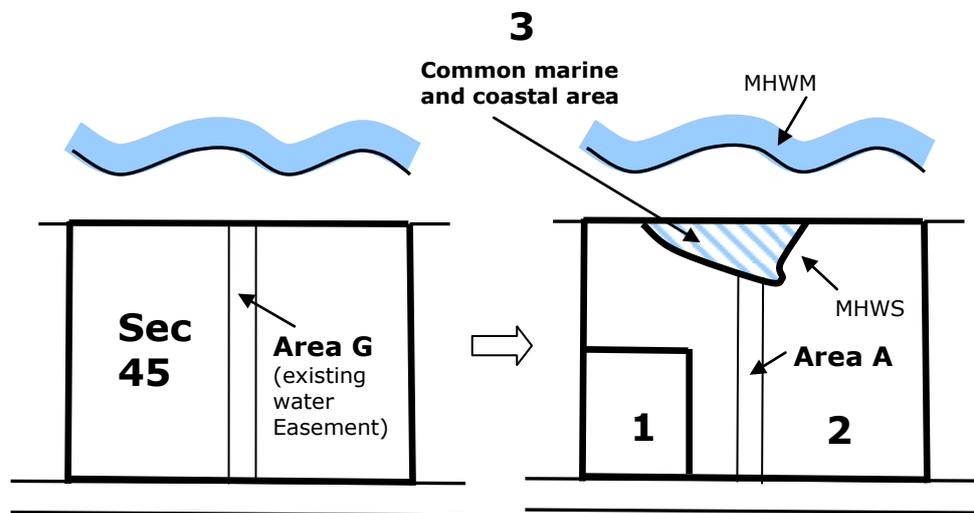
<sup>8</sup>A 'better fix' implies that the historic MHWM boundary was not an accurate portrayal of the boundary as it was on the ground at the time of the original survey and that the later better fix is an accurate portrayal of that same boundary at that earlier time. In this case the later 'better fix' replaces the earlier fix and the earlier fix is not shown in the CSD diagrams. Evidence to support the use of the 'better fix' must be recorded in the survey report.

## 2 MACAA and easements

### No easement in common marine area

- (a) There is no mechanism to register a new easement against land in the common marine and coastal area because there is no owner capable of granting an easement.
- (b) Where land is being subdivided, the portion of an existing easement that overlaps land that is to become common marine and coastal area is to be surrendered<sup>9</sup>. This surrendered portion is not normally depicted in the CSD diagrams.

In this case, the CSD diagrams must depict the extent of the existing easement that is to be retained.



**Figure 7: Where existing easement overlaps common marine area**

<sup>9</sup>Refer to page 15 of LINZG20726: Registration guideline for the Marine and Coastal Area (Takutai Moana) Act 2011.

### 3 MACAA where land is not being subdivided

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**MACAA where there is no parcel subdivision**

- (a) Where a parcel of 'specified freehold land' (see 'common marine and coastal area' in terms and definitions) is being defined by a survey but not subdivided in terms of the RMA, there is no requirement to identify land below MHWS as part of the common marine and coastal area. In this case, the parcel boundary, if defined in the title as being MHWM, may remain at MHWM.
  - (b) For Crown or LA land see:
    - (i) Where Crown/LA land has or will have CFR,
    - (ii) Where Crown/LA land will not have CFR.
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## 4 MACAA where Crown or local Authority owns land

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### MACAA where Crown/LA owns land

- (a) Land below MHWS owned by the Crown or a LA became part of the common marine and coastal area at the time MACAA came into effect [s 11 MACAA]. In some cases this also affects unformed legal roads [s 14 MACAA]. Note there are some exceptions<sup>10</sup>,
- (b) MACAA also requires Crown or LA land previously above MHWS, but which is now below MHWS as a result of erosion or other natural occurrence, to be part of the common marine and coastal area [s 11(4), MACAA]. This change does not need to be gradual or imperceptible.
- (c) These requirements apply to parcels with fixed boundaries as well as parcels that do not adjoin the sea.
- (d) For the manner in which the impact of MACAA is recorded when an affected primary parcel is resurveyed see:
  - (i) Where Crown/LA land has or will have CFR,
  - (ii) Where Crown/LA land will not have CFR.

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<sup>10</sup> Refer to definition of 'common marine and coastal area' in terms and definitions on page 4 above.

## MACAA where Crown or local Authority owns land, continued

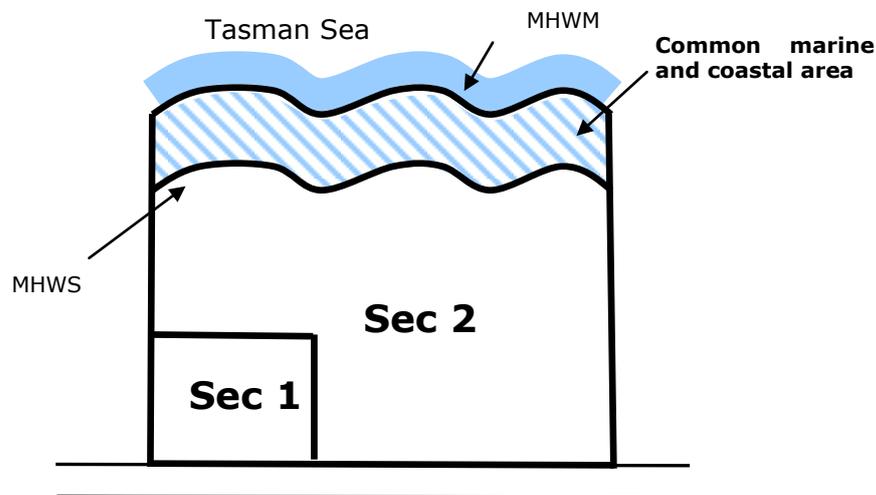
**Where Crown/LA land has or will have CFR**

- (a) Where land is owned by the Crown or a local authority<sup>11</sup> is held, or will be held, in a Computer Freehold Register (CFR), land below MHS is to be identified to reflect the divesting of a common marine and coastal area<sup>12</sup>.
- (b) The scenarios relating to differing MHW and MHS boundaries explained in s 1 of this interim guideline ([MACAA affects subdivisions of land](#)) also apply in these cases.

However, there is one key difference. For private land to become part of the common marine and coastal area it is to be depicted as a new primary parcel with appellation etc. Whereas for land owned by the Crown/LA, because the land is already part of the common marine and coastal area, it is to be depicted as a residue parcel without appellation etc. In these cases, the residue parcel is only identified by the annotation 'common marine and coastal area'<sup>13</sup>.

- (c) For specific rule requirements see [Land already part of common marine and coastal area as residue parcel](#).

In [Figure 8](#), the appellations of the primary parcels will be either Sections or Lots depending on the type of CSD.



**Figure 8: Where Crown/LA land is in CFR**

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<sup>11</sup>There are exceptions - refer to definition of 'common marine and coastal area' in terms and definitions on page 4 above.

<sup>12</sup>Refer to s 11(3) and s 23 MACAA.

<sup>13</sup>This notation, clearly related to the new residue parcel, is one way of demonstrating compliance with MACAA and r 2 ([definition of residue parcel](#))

## MACAA where Crown or local Authority owns land, continued

### Where Crown/LA land will not have CFR

4. Where land owned by the Crown or a LA<sup>14</sup> is not held or will not be held in a CFR and either:

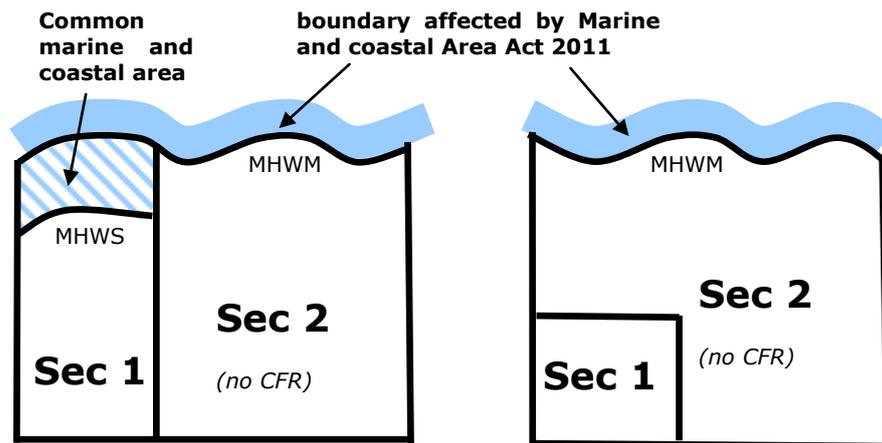
(i) is to be disposed of or is being identified for a legalisation action (including a public work or a statutory vesting), then the portion below MHWS is to be identified as a separate residue parcel. For specific rule requirements see [Land already part of common marine and coastal area as residue parcel](#) below.

Or

(ii) will continue to be owned by the Crown or a LA where its status will be unaffected by the legalisation or vesting, then there is no need to separately identify any portion below MHWS. Instead, where the boundary is MHWS, it is to be annotated 'boundary affected by Marine and Coastal Area Act 2011'.

**Note:** because the divested common marine and coastal area<sup>15</sup> has not been identified, the parcel as defined in the SO (survey office) CSD may not be suitable for a CFR to issue should this be required in the future.

5. In [Figure 9](#) the diagrams show land being disposed of or being identified for a legalisation action (eg to be set apart for road or vested as part of a treaty settlement) above MHWS as Sec 1 and below MHWS as 'common marine and coastal area'. In both cases, the ownership and status of Sec 2 is to remain unchanged and therefore the land below MHWS is not shown, but the boundary is annotated 'boundary affected by Marine and Coastal Area Act 2011'.



**Figure 9: Crown/LA land subject to legalisation or vesting**

<sup>14</sup>There are exceptions - refer to definition of 'common marine and coastal area' in terms and definitions on page 4 above.

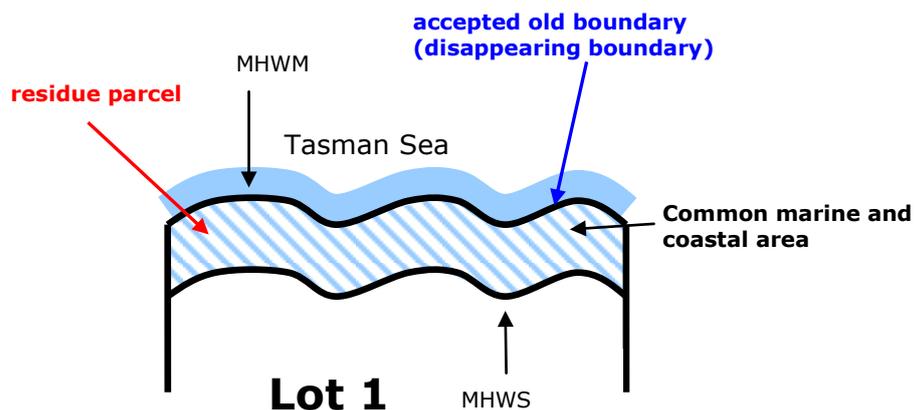
<sup>15</sup>Refer to s 11(3) and s 23 MACAA.



## 6 MACAA and the Rules

### Land already part of common marine and coastal area as residue parcel<sup>18</sup>

- (a) Where Crown or LA land below MHS is to be identified as a residue parcel (see [Where Crown/LA land will not have CFR](#) and [Private land acquired by Crown or LA](#))<sup>19</sup>. The Diagram of Survey and Diagram of Parcels must depict the:
- (i) old water boundary that is in common with the adjoining sea (the disappearing boundary) as an irregular accepted boundary in relationship to other boundaries [r 6.3(b), r 6.7(c), r 9.6.8, and r 10.4.6].
  - (ii) new water boundary as an irregular line at a scale that clearly shows its shape and relationship to other boundaries [r 9.6.7(a)(i) and r 10.4.5(a)].
  - (iii) legal description of the boundary 'MHWM' or 'MHWS' as applicable [r 9.6.7(c) and r 10.4.5(c)].
  - (iv) name or simple description of the adjoining sea [r 9.6.3(h)(iv) and r 10.4.2(f)(iv)].
- (b) In addition, the annotation 'common marine and coastal area' or, where applicable, 'erosion (common marine and coastal area)' should be depicted against the residue parcel [r 9.6.3(h)(iii), r 10.4.2(f)(iii), s 237A RMA and s 23 MACAA<sup>20</sup>].
- (c) In Landonline the parcel must be given the parcel intent 'hydro' so that it can be combined in Landonline with the adjoining sea [r 10.1(e)].



**Figure 11: Common marine and coastal area as a residue parcel**

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<sup>18</sup> This page updates pages 107 and 108 of the Interpretation guide to Rules for Cadastral Survey 2010

<sup>19</sup> R 2 Rule (definition of 'residue parcel')

<sup>20</sup> Rules 9.6.3(h)(iii) and 10.4.2(f)(iii) require a description, s 237A RMA requires the CSD to show any part of the allotment that is in the coastal marine area as part of the common marine and coastal area and s 23 MACAA requires a survey plan for deposit. This notation is one way of complying with or demonstrating that s 237A or s23 are not applicable whilst complying with the Rules

## MACAA and the Rules, continued

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### **Becoming common marine and coastal area under s 237A of the RMA<sup>21</sup>**

- (a) Where a portion of land is to become part of the common marine and coastal area under s 237A RMA, the Diagram of Survey and Diagram of Parcels is to depict the:
    - (i) the land as a new primary parcel which must have an appellation and an area [r 9.6.3 and r 10.4.2(d)],
    - (ii) old water boundary that is in common with the adjoining sea (the disappearing boundary) as an irregular accepted boundary in relationship to other boundaries [r 6.3(b), r 6.7(c), r 9.6.8, and r 10.4.6],
    - (iii) new water boundary as an irregular line at a scale that clearly shows its shape and relationship to other boundaries [r 9.6.7(a)(i) and r 10.4.5(a)],
    - (iv) legal description of the boundary 'MHWM' or 'MHWS' as applicable [r 9.6.7(c) and r 10.4.5(c)],
    - (v) name or simple description of the adjoining sea [r 9.6.3(h)(iv) and r 10.4.2(f)(iv)].
  - (b) The parcel should be annotated 'common marine and coastal area' or where applicable 'Erosion (common marine and coastal area)' [r 9.6.3(h)(iii), r 10.4.2(f)(iii) and s 237A RMA<sup>22</sup>].
  - (c) The parcel must be given the Landonline parcel intent 'common marine and coastal area [s 237A(1)(b) RMA]' [r 10.1(e)].
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<sup>21</sup> This page updates page 294 of the Interpretation guide to Rules for Cadastral Survey 2010.

<sup>22</sup> Rules 9.6.3(h)(iii) and 10.4.2(f)(iii) require a description and s 237A RMA requires the CSD to show any part of the allotment that is in the coastal marine area as part of the common marine and coastal area. This notation is one way of complying with or demonstrating that s 237A is not applicable whilst complying with the Rules.