



MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011

CUSTOMARY MARINE TITLE GROUP PLANNING DOCUMENT

Information for local government

INTRODUCTION

This paper on customary marine title planning documents has been prepared for local government practitioners. As such it is confined to covering the obligations on local authorities under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act), with respect to the Resource Management Act 1991 (RMA) and Local Government Act 2002 (LGA).¹

The relevant provisions are set out in sections 85-93 of the Act.

WHAT IS A PLANNING DOCUMENT?

Under the Act, a customary marine title (CMT) holder has the right to prepare a planning document in accordance with its tikanga (section 85(1)). The planning document allows the CMT group to express its preferences on use, development and protection in relation to its CMT area.

A planning document may (section 85(2)):

- identify issues relevant to the CMT area;
- set out the regulatory and management objectives of the CMT group; and
- set out policies for achieving those objectives.

A planning document cannot include rules and, accordingly, councils will have the flexibility to find the most efficient and effective methods for meeting the objectives and implementing the policies set out in the document.

A planning document applies to the CMT area and can also apply to parts of the common marine and coastal area (CMCA) outside of the CMT area where the relevant group exercises kaitiakitanga (section 85(4)). The weight required to be given by

¹ Refer to sections 89-91 of the Act for obligations on the New Zealand Historic Places Trust, Director-General of Conservation and Minister of Fisheries.

decision makers to matters within a CMT area is greater than to matters outside² (refer below).

The planning document may only include matters that can be regulated under (section 85(5)):

- the Conservation Act 1987 (and Acts listed in Schedule 1 of that Act);
- the Historic Places Act 1993;
- the Local Government Act 2002; and
- the Resource Management Act 1991 (RMA).

The preparation of a planning document is not mandatory. CMT groups will make a decision on whether to develop one having regard to existing provisions in council planning documents and other matters.

WHICH LOCAL AUTHORITIES HAVE OBLIGATIONS UNDER THE ACT?

Regional councils

Obligations on local government relating to planning documents under the Act and RMA fall on regional councils.

Territorial Authorities

The Act does not impose obligations directly on territorial authorities under the RMA. District plans will be influenced by planning documents to the extent that the matters covered by planning documents result in regional policy statements and regional plans being altered. When preparing or changing its district plan, a territorial authority must 'have regard to' any proposed regional policy statement or proposed regional plan and 'give effect to' any regional policy statement and 'not be inconsistent with' a regional plan.

Obligations relating to planning documents in respect of the LGA fall on all local authorities (see below).

OBLIGATIONS ON REGIONAL COUNCILS

Section 93 of the Act sets out the obligations on regional councils with respect to the matters in planning documents and the procedural steps they must follow.

Obligations following lodgement

Following the lodgement of a planning document by a CMT group, the regional council is required to identify those matters that relate to resource management issues within its functions under the RMA. If, for example, a planning document includes the objective of closing the CMT area to commercial fishers, this would lie solely within the jurisdiction of fisheries legislation and not be a matter for consideration. If, however, a planning

² The wording hierarchy in the planning document provisions, in descending significance, is "recognise and provide for", "take into account", "have regard to".

document deals with siltation arising from coastal subdivision that is affecting the survival of fisheries resources, then this would legitimately be an RMA matter.

The regional council will also need to identify the extent to which legitimate RMA matters in a planning document are relevant within the CMT area and those that are relevant to areas outside.

This preparatory work places a regional council in a good position to fulfil obligations under the Act that commence on registration of the planning document. A planning document is deemed to be registered 20 working days after it is first lodged with a regional council (section 86(2)).

Interim obligations following registration

Following registration, two key interim obligations apply:

- The relevant regional council(s) with jurisdiction over the CMT area must attach the planning documents to those copies of its relevant regional documents (regional plans, proposed regional plans, regional policy statements and proposed regional policy statements) that are publicly available. This would include reference copies at a regional council's offices and libraries, and on its website (section 93(1)).
- A regional council must "have regard to" the relevant resource management matters in a registered planning document (i.e. those matters identified following lodgement discussed above) when considering resource consent applications under section 104 of the RMA that, if granted, would directly affect all or part of the area to which a planning document applies. Applications for resource consents that have been accepted before a planning document is lodged, but are still being processed after registration, are not subject to this obligation.

The above obligations continue until (section 93(5)):

- a regional document, altered in accordance with the relevant provisions, becomes operative under the RMA; or
- if no alterations are made, for 30 working days after a CMT group is informed of this by the council.

Obligations relating to the alteration of regional documents

The process

A regional council must initiate a process to determine whether to alter its regional documents and, if so, to what extent in order to (section 93 (6)):

- *recognise and provide* for matters in the planning document that relate to the CMT area; and
- *take into account* any matters in the planning document that relate to areas outside the CMT area.

This process may be commenced at any time after a planning document is registered but no later than the next proposed change to, or variation or review of, any provision in a relevant regional document that applies to a CMT area (section 93(7)).

The process is essentially in two parts. The first part occurs prior to public notification and is carried out under the Act rather than the RMA. It involves consideration of the relevant resource management matters identified following lodgement of the planning document and analysis as to whether these matters should result in alterations being made to regional planning documents and notified for public submission.

This analysis is similar to that which would be undertaken when a council undertakes a statutory review of its regional policy statement and regional plans. While this part of the process is undertaken under the Act, councils must consider the requirements in Part 5 of the RMA including the need to carry out a section 32 analysis and consider Part 2 matters. If the process required by the Act has been triggered by a full plan review under the RMA, then this analysis might in practice be integrated with the pre-notification stage of that review.

The second part of the process is carried out under the RMA and commences with public notification of a proposed policy statement or plan under clause 5 of the First Schedule.

Decisions relating to alterations to regional documents

The obligation to “recognise and provide for” matters in a planning document does not require councils to give effect to the provisions in a planning document within their own regional documents. Rather, as noted above, a council must initiate a process to determine whether to alter their regional documents, and if so, to what extent (section 93(6)). Ultimately, any alterations must be made only if they would achieve the purpose of the RMA.

Decisions on alterations to regional documents must follow the process set out in Schedule 1 of the RMA and meet the requirements in Part 5 of the RMA (section 93(9)). This ensures that any alterations in a proposed regional document are subject to public submissions and potentially, appeal. It also means that all relevant matters are weighed and balanced in the process, including costs and benefits identified through the section 32 analysis and the provisions of Part 2.

Is it possible for no alterations to be made to a regional document?

Yes. A council may decide not to alter a regional document but only on the grounds that the matters in a planning document (section 93 (10)):

- are already provided for in a regional document; or
- would not achieve the purpose of the RMA; or
- would be more effectively and efficiently addressed in another way.

If a regional council decides that no alterations should be made (i.e. it will not notify any alterations in a proposed policy statement or plan under clause 5 of Schedule 1 of the RMA), it must inform the CMT group in writing with reasons within 5 days of that decision (section 93 (11)).

OTHER ISSUES

How will resource consent applicants know when a planning document is lodged?

Once a planning document has been finalised by a CMT group, it must be lodged with the regional council, other agencies listed in the Act, and the chief executive of Land Information New Zealand (LINZ) (section 86). The chief executive of LINZ must, without delay, enter the planning document on the marine and coastal area register, provided he or she is satisfied that it meets all the requirements for registration (section 114). This provides a permanent record of all planning documents. It will be posted on the LINZ website and be available for public inspection and copying.

Where can CMT areas be recognised?

CMT can be recognised over a part of the CMCA if the threshold tests are met. Refer to section 58 for the CMT test and section 9 for relevant definitions.

What requirements apply to the development of a planning document?

The Act does not prescribe the process for development of a planning document and does not specify how often one may be issued. It is anticipated that many CMT groups will work closely with regional councils when preparing a planning document. This will help ensure a planning document is drafted in a way that facilitates its consideration through a regional document change or review process. In particular, councils could provide helpful advice to a CMT group on the way in which policies and objectives could be expressed in a planning document.

CMT and other Māori groups are encouraged to work towards achieving consistency in approach where a CMT planning document, an 'iwi management plan' under the RMA³, and a management plan or strategy prepared by Tangata Tiaki/Kaitiaki under customary fishing regulations⁴ address the same or similar management issues in a particular area.

OBLIGATIONS UNDER THE ACT IN RELATION TO THE LOCAL GOVERNMENT ACT 2002

Section 88(2) provides that on and after the date that a planning document is registered (20 days after being lodged with a regional or district council) a local authority must take the planning document into account when making any decision under the LGA in relation to a CMT area. A relevant example might be decisions on whether to develop bylaws restricting vehicle access to beaches.

It should be noted that the obligations do not extend to any area outside of the CMT area covered by a planning document.

³ Referred to as "a planning document recognised by an iwi authority" in section 61(2A) and section 66(2A) of the RMA.

⁴ Known as an "iwi planning document" under clause 16 in each of the Fisheries (Kaimoana Customary Fishing) Regulations 1998 and Fisheries (South Island Customary Fishing) Regulations 1999.

Disclaimer

Although every effort has been made to ensure that this guidance document is as accurate as possible, the Ministry of Justice will not be held responsible for any action arising out of its use. Direct reference should be made to the Marine and Coastal Area (Takutai Moana) Act 2011 and expert advice should be sought if necessary.