Report No.	17-144
Information Only - No Decision Required	

MARINE AND COASTAL AREA ACT (TAKUTAI MOANA) ACT 2011

1. EXECUTIVE SUMMARY

1.1. The **Marine and Coastal Area (Takutai Moana) Act 2011 (MACA)** provided Māori (until the deadline of 3 April 2017) with a course to seek recognition of customary marine title and protected customary rights within the common marine coastal area. There have been 24 applications lodged with the High Court, or via direct engagement with the Crown, for coastal areas that fall within the Horizons' region.

1.2. With immediate effect from the lodging of those applications, anyone now seeking resource consent for an activity within the common marine coastal area must notify, and seek the views of the applicant group, prior to applying for consent. Horizons Consents staff are aware of this obligation.

1.3. Successful MACA applicants will be conferred with rights, while councils will have obligations placed on them. Our lawyer has provided advice on those rights, obligations and the implications.

2. RECOMMENDATION

That the Committee recommends that Council:

a. receives the information contained in Report No. 17-144

b. receives the information contained in the memo 'Statutory implications of the Marine and Coastal Area (Takutai Moana) Act 2011'.

3. BACKGROUND

3.1. MACA replaced The Foreshore and Seabed Act 2004. The new Act acknowledges the importance of the marine and coastal area and, with limited exceptions, implements a no-ownership regime. It provides for the recognition of the customary interests of iwi, hapū and whānau in the common marine and coastal area while guaranteeing public access to all New Zealanders. Two distinct areas are referred to within:

- Marine and coastal area; the area between the mean high water springs and the outer limits of the territorial sea, 12 nautical miles from shore.
- **Common marine and coastal area (CMCA)**; those parts of the marine and coastal area that are not in private ownership or part of a conservation area. The CMCA is not, nor can it ever be, owned.

3.2. Iwi, hapū and whānau had until 3 April 2017 to lodge an application for recognition of customary interests, either via the High Court, or through direct engagement with the Crown. Applicants were able to apply under both processes. The Act provides for recognition of two types of customary interests:

- **Customary marine title (CMT);** this is similar to, but is not ownership. Recognition of CMT confers a number of rights, including:
    a. resource management agreement permission rights;
    b. conservation permission rights;

  c. the right to be notified and consulted when other groups apply for marine mammal watching permits in the area;
  d. the right to be consulted about changes to Coastal Policy Statements;
  e. a wāhi tapu protection right which lets the group seek recognition of a wāhi tapu and restrict access to the area if this is needed to protect the wāhi tapu;
  f. the ownership of minerals other than petroleum, gold, silver and uranium which are found in the area;
  g. the interim ownership of taonga tūturu found in the area;
  h. the ability to prepare a planning document which sets out the group's objectives and policies for the management of resources in the area.

- **Protected customary rights (PCR);** these rights can be granted for a customary activity like collecting hāngi stones or launching waka in the common marine and coastal area. Holders of PCR do not need resource consent to carry out that activity and local authorities can't grant resource consents for other activities that would have an adverse effect on that PCR.

3.3. The tests for achieving CMT and PCR are set out in the Act. CMT applicants will need to prove that they currently *hold the area* in accordance with tikanga, and that they have used and occupied the area without substantial interruption since 1840.

3.4. PCR applicants will need to prove that they *have exercised the activity* in accordance with tikanga from 1840 through until today.

4. Current Situation

4.1. A total of 186 MACA applications were lodged with the High Court, many just prior to the cut off date. The number of applications has caused some difficulty for all; the Court, Crown Law, applicants and interested parties. Not all interested parties (e.g. councils) were notified by applicants as required. There was also some confusion as to where the applicant areas were; this has been rectified with most applications having been mapped by the Crown Law Office.

4.2. Attorney-General records indicate that 17 High Court applications lie within the Horizons' region, some of these are also seeking direct engagement with the Crown. There are a further twelve applicants who have filed via direct engagement with the Crown. All coastal areas of the region have been claimed by two or more applicants. Most applicants have sought CMT, with the majority seeking both CMT and PCR. Only one applicant is seeking just PCR.

4.3. Crown Law has proposed that, with effect 30 June 2017, all interested parties and applicants have six weeks to obtain copies of applications in which they may have interest. They then have a further four weeks to file memoranda listing applications in which they wish to appear. Upon completion the Attorney General will have a further eight weeks to file and serve an amended notice of appearance for each application.

4.4. Horizons will join court hearings as an interested party. Buddle Finlay has been engaged to act on our behalf, to watch and listen and ensure that any rulings made by the Court are workable for Horizons. The lawyers have advised that it is unlikely that any case management conferences will be held this year.

4.5. To facilitate the management of applications the Attorney-General has proposed grouping those that may be heard together, (generally by regional and district council boundary) and is now awaiting feedback from all parties. The current proposition will see applicants within the Horizons' region being assembled into two groups; namely the west and east coast.

5. Immediate Obligations

5.1. The majority of obligations under MACA apply only after the rights are formally recognised. That is the date on which the High Court order is sealed, or in the case of an agreement, the date on which the agreement is brought into effect.

5.2. A notable exception relates to anyone who is applying for a resource consent, a permit, or an approval in relation to an area of the CMCA, that is the subject of a CMT application. These people must notify and seek the CMT applicant group(s) views on the resource consent application prior to lodging.

5.3. As stated earlier, all of Horizons coastal areas have MACA applications pending, therefore anyone currently considering applying for a consent in the CMCA will need to notify, and seek the views of the applicant group(s). Horizons' senior planners are aware of this obligation and a map (offering more detail than the map produced by Crown Law) indicating applicants and their CMT areas is being produced to assist all.

6. Post Determination Obligations

6.1. Recognition of CMT and PCR confers a number of rights on the successful applicants and places obligations on councils; the attached memo provides detail on these. The memo also provides details on activities that are exempt from the effects of CMT and PCR.

6.2. With the duration that the decision process is likely to take, particularly given the added complexity of overlapping claims, we have time to ensure that our processes will align to meet the requirements of the Act. Further advice will be provided to council as appropriate.

7. SIGNIFICANCE

7.1. This is not a significant decision according to the Council's Policy on Significance and Engagement.

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SENIOR POLICY ANALYST IWI

Tom Bowen
POLICY & STRATEGY MANAGER

ANNEXES

A Statutory implications of the Marine and Coastal Area (Takutai Moana) Act 2011

B Map of Marine and Coastal Area Applications for Horizons Region