

# TAKUTAI MOANA DUAL PATHWAY CONSULTATION

## Message from the Minister

***Ko te āio o te moana, ka whītikia e te kiore***

***When there is complete agreement in tribal affairs, great difficulties can be overcome***

Tēnā koutou

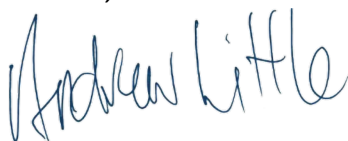
When you submitted your applications for customary marine title (CMT), you had a choice of whether to apply to the High Court, the Crown, or both.

Only one CMT can be issued per area of the takutai moana. Any groups that meet the test for CMT over an area can jointly hold the CMT (a shared CMT). However, if overlapping applications were not made to the same decision-maker, then they may not be considered alongside each other. This leads to a risk that some groups that can meet the test may not have their CMT recognised, because the first decision-maker is unable to consider their application. This is clearly wrong.

The takutai moana legislation did not anticipate this and has not been well set up to support CMT decision making in these situations. I am considering ways to change the legislation so that all applications that should be considered for CMT in an area are. This document sets out options for changes to the legislation. I want to hear your views on which of the three options you think would be best.

Please send your feedback to [takutaimoana@tearawhiti.govt.nz](mailto:takutaimoana@tearawhiti.govt.nz) or kōrero with Te Kāhui Takutai Moana about the issue by 5pm on 11 November 2022.

Nāku noa, nā



Hon Andrew Little

Minister for Treaty of Waitangi Negotiations



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## Potential changes to the legislation

### Option 1: Enable decision makers to take account of all relevant applications for an application area at the same time

Option 1 would enable all relevant applications to be considered at the same time by either the High Court or the Crown. If applicants did not wish to have their application considered by that decision maker, they may choose not to participate. However, if CMT is recognised for other applicants in the area as part of this process, any applicant who chose not to participate would not be able to have a CMT decision made in the other pathway for that area.

### Option 2: Enable a CMT to be varied to take account of decisions in the other pathway

Option 2 would mean decision makers could still only consider and determine the applications made in their pathway, but would enable a CMT issued in that pathway to be varied to include applicant groups if the other decision maker is satisfied, they also meet the test for CMT (a shared CMT).

For example, if the High Court made a CMT recognition order for one or more applicant groups in an area, and then at a later date the Minister determined further applicant groups in that area also meet the test for CMT, the further applicant group(s) could be added to the existing recognition order.

### Option 3: Combining options 1 and 2

Option 3 would enable either decision maker to take account of all the relevant applications in a coastline at the same time, irrespective of which pathway an application was originally made in. However, if applicants chose to stay in their original pathway and were also found to meet the test for CMT, they could be added to the recognition order or Act that was made in the other pathway.

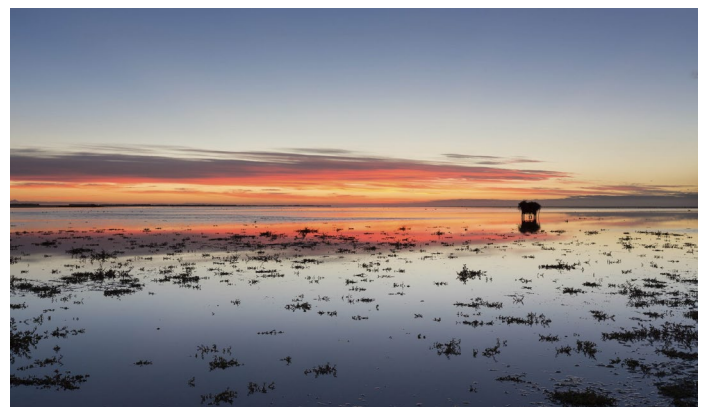
## Commentary on the options

It is important to note that there is an inherent trade-off to be made between enabling all applications for CMT to be considered and providing for CMT, once issued, to be enduring.

Option 1 would provide for CMT, once issued to be enduring, but may mean that some groups would have to participate in a process they did not originally choose, or risk not having their application for CMT considered at all.

Options 2 and 3 would mean that applicants can maintain their original choice without risking not having their application for CMT considered. But this would mean that a CMT can be issued and then later on when other applications are considered, other groups that also meet the test for CMT in this area can be added to the CMT. Groups may have to participate in more than one process.

Groups who are added later to a CMT could potentially be disadvantaged if the earlier holder(s) of CMT took decisions over that area that later groups may not have agreed with.





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## How will the change be implemented?

Each of these options will need legislative change. A draft Bill will need to be prepared and go through a Parliamentary process.

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## How does this relate to the ongoing Wai 2660 inquiry?

The Waitangi Tribunal is conducting a kaupapa inquiry into the Act (Wai 2660) and is due to report back later this year with findings. These may call for wider reforms to the Act that could involve changing some fundamental parts of it.

It is important to both address the pressing problem with the dual pathway now, so applicant groups are not unfairly denied having their application for CMT heard and determined, and to also consider a wider government response to Wai 2660 in future.

Changes made now to fix this dual pathway problem, will not affect the government considering all the findings and recommendations of the Tribunal once it releases its final report.

The longer this problem continues, the more applicants there will be who are at risk of not having CMT recognised. This is why it is so important to this dual pathway problem now.

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## What happens next?

Your feedback on these options is a crucial next step in the process and will be taken into account when Cabinet decides which option to progress.

Te Arawhiti will keep you updated on the process in future takutai moana pānui.

## HE PĀTAI

1. Which of the three options do you support and why?
2. Are there any options you do not support and why?
3. Are there any other matters you think should be taken into account when considering which of these options to progress with?

## How to have your say

Te Arawhiti staff are happy to receive your views by email or to kōrero with you.

Please email

[takutaimoana@tearawhiti.govt.nz](mailto:takutaimoana@tearawhiti.govt.nz)

Consultation closes at 5pm on  
11 November 2022