



MARINE AND COASTAL AREA (TAKUTAI MOANA) ACT 2011

PART 2: INTERESTS IN LAND AND STRUCTURES, RESIDUAL CROWN FUNCTIONS, PUBLIC RIGHTS, SUBDIVISION AND RECLAMATIONS

Information for local government

INTRODUCTION

This paper provides detailed guidance on the provisions in Part 2 of the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act) of particular relevance to local government. It covers interests in land and structures, the Minister of Conservation's residual management functions, public rights, subdivision and reclaimed land.

BACKGROUND

The Act repeals the Foreshore and Seabed Act 2004 (the 2004 Act) and restores the ability to determine and legally recognise customary interests extinguished by that Act (sections 5 and 6).

The area previously known as “foreshore and seabed” under the 2004 Act, is largely now included in the marine and coastal area. This area equates in most respects with the “coastal marine area” as defined in the Resource Management Act 1991 (RMA). It extends from mean high water springs (MHWS) on the landward side to the outer limits of the territorial sea. Where the line of MHWS crosses a river, the landward boundary of the marine and coastal area is the same as the landward boundary of the coastal marine area i.e. the amount of river bed included in the marine and coastal area is the same as that included in the coastal marine area under the RMA (section 9 – Interpretation).

The Act does not limit or affect any resource consent granted before the commencement of the Act, or any activities that can be lawfully undertaken without resource consent or other authorisation (section 20).

References to “the Minister” in this paper means the Minister for Treaty of Waitangi Negotiations except in relation to the provisions governing reclaimed land where the Minister is the Minister for Land Information.

SPECIAL LEGAL STATUS TO COMMON MARINE AND COASTAL AREA

A large proportion of the marine and coastal area is accorded a special legal status and is called the “common marine and coastal area” (CMCA). The CMCA is made up of all land in the marine and coastal area other than specified freehold title, the bed of Te Whaanga Lagoon in the Chatham Islands, and land held by the Crown as a conservation area under section 2(1) of the Conservation Act 1987, a national park under section 2 of the National Parks Act 1980 or a reserve under section 2(1) of the Reserves Act 1977.

Under the Act, “specified freehold title” means any land that is:

- Māori freehold land within the meaning of section 4 of Te Ture Whenua Māori Act 1993; or
- set apart as a Māori reservation under Te Ture Whenua Māori Act 1993; or
- registered under the Land Transfer Act 1952 and in which a person other than the Crown or a local authority has an estate in fee simple that is registered under that Act; or
- subject to the Deeds Registration Act 1908 and in which a person other than the Crown or a local authority has an estate in fee simple under an instrument that is registered under that Act.

Section 11(2) provides that neither the Crown nor any other person owns, or is capable of owning, the CMCA. This provision recognises that the CMCA is an area that all New Zealanders value. Specific provisions in the Act protect customary, recreational, commercial, and conservation uses in this area.

THE STATUS OF LOCAL AUTHORITY LAND

Divesting of land held at commencement

Consistent with the non-ownership regime in the CMCA, section 11(3) of the Act divested local authorities of all land on commencement of the Act (April 1, 2011), to the extent it had not already been divested by the 2004 Act. Local authorities were able to apply to the Minister of Conservation for redress under section 25 of the Act for a period of 12 months following commencement if they acquired their title by purchase.

Where land is owned in freehold title by a Council Controlled Organisation (CCO) or a Council Controlled Trading Organisation (CCTO) the issue of whether land is divested under the Act (or was vested in the Crown under the 2004 Act) depends on the legal constitution of the organisation and what is recorded on the computer freehold register. Where a CCO or CCTO is a company, then it is a separate legal person and not part of the council. Accordingly it would not be divested of any land. Where a CCO or CCTO is an entity that can own land in its own name (not the council's) then it is also not divested.

Section 21 of the Act preserves any proprietary interests such as leases, licences and easements granted in respect of land in the CMCA. This is a transitional provision to cover what are thought to be a very small number of interests that were not deemed to be coastal permits under the RMA when that Act commenced in 1991, or which have not expired since then.

If the interest was granted by a person other than the Crown, it is deemed to have been granted by the Crown. The Crown may grant a renewal or extension of a proprietary interest only if the interest contains a right of renewal or extension. As such, this section continues proprietary interests where they have a right of renewal but not where they only have an option to apply for a renewal.

It should be noted that this provision does not cover coastal permits granted under the RMA such as mooring licences (which are not proprietary interests), or local authority regulatory processes that are not related to land ownership such as liquor licences.

Land acquired after commencement of the Act

In cases where a council acquires freehold land after the commencement of the Act, this land, to the extent that it lies within the marine and coastal area, automatically becomes part of the CMCA on acquisition (section 17). The council does not therefore own it. The Act provides an exception in relation to specified freehold land (defined in section 9) that is accorded a status under an enactment other than the Act.

Land acquired or lost through a natural occurrence or process

Section 13(1) clarifies the status of land where changes occur as a result of erosion¹ or accretion² at the boundary with the CMCA. It provides that the Act does not affect any enactment or the common law that governs accretions or erosions.

The common law doctrine on erosion and accretions provides that, in relation to land that has a moveable natural boundary (that is, a boundary delineated by a line related to tides such as MHWS or the margin of a river):

- any gradual and imperceptible, accretion into the water extends the boundary of the land; and
- any gradual and imperceptible erosion of the land by the water diminishes the boundary of the land and extends the area of the body of water.

Land added to the CMCA

As a result of the operation of the common law, private land with a moveable boundary that is lost because of erosion becomes part of the CMCA and no compensation is available.

In contrast, land in private title that has a fixed boundary and is eroded remains in private title even if the boundary is now under water.

The situation under the common law is qualified by section 13(2) of the Act in relation to Crown or local authority land other than a road (which would include Crown-owned reserve land being managed by local authorities). Section 13(2) provides that if, as a result of a *natural occurrence or process*, such land becomes part of marine and coastal area, then this land becomes part of the CMCA. In this case, land is lost from the title and added to the CMCA whether it has occurred through gradual or imperceptible erosion or whether it is the result of a sudden inundation (such as the collapse of a cliff).

¹ The removal of dry land or the encroachment of water over the land.

² The process of gaining more land by the withdrawal of the water, or the building up of dry land by natural processes.

If a formed road over land owned by a local authority or the Crown is inundated by the sea, the portion that is lost (either by a gradual process of erosion or by a sudden loss) continues to have the status of road and does not become part of the CMCA. The definition of “road” in the Act includes a road within the meaning of section 315(1) of the Local Government Act 1974. The Act preserves the legal situation under section 315(5) of the Local Government Act 1974 which provides: “Where any road along the bank of a river or stream or along the mean high-water mark of the sea or along the margin of any lake is eroded by the action of the river or stream or of the sea or lake, the portion of road so eroded shall continue to be a road.”

Land lost from the CMCA

Extra land can build up by the washing up of sand and earth by the sea or a river to make an addition to existing land, or by land being left dry by the sea shrinking back below the usual MHWS or by a river changing its bed. However, note that unlike additions to the CMCA, which can be caused by avulsion (rapid erosion), dry land will be removed from the CMCA only if it was created in accordance with the common-law doctrine of accretion and erosion (eg gradual and imperceptible). For example, the sudden collapse of a cliff face into the sea would cause the inundated portion to become part of the CMCA, but a subsequent sudden collapse resulting in a build-up of dry land would not necessarily cause its removal from the CMCA.

Land that is removed from the CMCA due to a natural occurrence or process, where title is not determined by an enactment or the common law, vests in the Crown and is Crown land subject to the Land Act 1948 (section 13(3)).

TITLES CONTAINING LAND IN THE COMMON MARINE AND COASTAL AREA

Sections 22 and 23 provide for the cancellation of freehold titles (computer freehold registers) that wholly or partly comprise land in the CMCA.

These provisions are needed because any land in freehold title held by local authorities or the Crown at the Act’s commencement or purchased thereafter is automatically part of the CMCA and no longer owned. An example is private land purchased by a local authority for roading.

If a freehold title is wholly comprised of CMCA land, the Minister of Conservation requests the Registrar-General of Land (Registrar) to cancel that title. The Registrar is required to issue a computer interest register for any registered or notified interest e.g. an easement, to which the computer freehold register is subject (section 22).

If the freehold title consists partly of CMCA land and partly of other land that is above the line of MHWS (this other land is called adjacent land), either the Minister of Conservation or the adjacent land owner can obtain from the Registrar under section 23:

- the cancellation of the original freehold title containing the CMCA and adjacent land; and
- the issue of a freehold title for that adjacent land (subject to any existing registered or notified interest); and
- if applicable, the issue of a computer interest register for any registered or notified interest in the CMCA that was part of the cancelled freehold title.

Guidance in relation to the above can be found at <http://www.linz.govt.nz/about-linz/news-publications-and-consultations/search-for-regulatory-documents/registration-guideline-for-the-marine-and-coastal-area-act-2011-linzq20726>. This is intended to be used by LINZ staff but may be of interest to local authorities.

VESTING OF PROTECTED LAND IN THE CROWN

Section 12 enables areas of the CMCA to be vested in the Crown by Order in Council, made on the recommendation of the Minister of Conservation, if the area has become a conservation area, a national park, or a reserve. Such land would therefore be removed from the CMCA. This provision does not apply to areas where customary marine title (CMT) has been recognised.

This provision enables the Crown to own and manage areas of the CMCA that have high conservation value and to implement management measures that rely on ownership (such as granting of leases, licences and concessions over conservation land).

ROADS IN THE MARINE AND COASTAL AREA

Formed roads

Any formed road that is in the marine and coastal area on the commencement of the Act is not part of the CMCA (section 14(1)). The ownership, management, and control of roads that are not part of the CMCA is determined and governed by the legislation that applies to the road (section 14(7)).

Unformed roads

The 2004 Act deemed all unformed or “paper” roads of local authorities below MHWS to be stopped and vested in the Crown as public foreshore and seabed (refer to section 15(4) of the 2004 Act). Crown paper roads continued in Crown ownership.

The Act temporarily excludes these Crown paper roads from the CMCA but provides that any such road will be automatically stopped and included in the CMCA unless, on the day before the fifth, tenth, or 15th anniversary of the commencement of the Act, a certificate signed by the Minister states:

- that the formation of the road has commenced; or
- that the Minister believes that the formation of the road is intended to be commenced (having regard to the specified matters).

Where the Minister has signed such a certificate before the 15th anniversary, that certificate remains current until the Minister exercises discretion at a future date to sign a certificate stating that the formation has not commenced and there is no longer an intention to commence formation. The road is then deemed to be stopped (section 14(4)).

Prior to the fifth anniversary of the Act’s commencement, local authorities should thus identify any Crown paper roads that are not currently being formed, but where future formation is considered in the local interest, and raise this with the Government. This will provide the opportunity for a certificate to be sought from the Minister if necessary.

Once a road is formed, it has the status of a road and is permanently excluded from the CMCA (unless at some future time it is stopped under the Local Government Act 1974 or Public Works Act 1981 when it becomes part of the CMCA).

A paper road that comes into existence after the commencement of the Act is part of the CMCA but ceases to be part of it once formation is complete (sections 14(5) and 14(6)).

STRUCTURES

Ownership

Structures fixed to, or under or over, any part of the CMCA are considered to be personal property and are not affected by the no-ownership status of the CMCA (section 18(2)).

A person is presumed, unless the contrary is shown, to own a structure if a resource consent is held for occupation of the part of the CMCA in which the structure is located. This provides some assistance for local authorities that may be contemplating bringing enforcement proceedings under the RMA for certain structures.

Local authority powers under other existing legislation in respect of structures continue in force after the passing of the Act (section 18(5)).

“Structure” is defined to have the same meaning as given in the RMA (any building, equipment, device, or other facility made by people and which is fixed to land, and includes any raft) and to also include any breakwater, groyne,³ mole⁴ or other such structure that is made by people and is fixed to land (tying in with the exclusion of those from the definition of reclaimed land in section 29 of the Act).

Abandoned structures

Section 19 deems the Crown to be the owner of structures in the CMCA that have been abandoned. A structure is considered abandoned for the purposes of section 19 if the relevant regional council, after due inquiry, is unable to ascertain the identity or whereabouts of the owner.

An inquiry is necessary if there is no current resource consent in respect of a structure and ownership is uncertain. Inquiries must be undertaken in accordance with regulations made under section 118(1)(g). The regulations⁵ will contain a menu of potential steps with councils required to undertake those that are relevant in the circumstances.

On assuming ownership of an abandoned structure, the Crown will be liable only in limited instances relating to matters of health and safety or for any significant adverse effect on the environment (section 19(5)(c)). The Crown is not liable for any breaches committed before it became the deemed owner, or for any effects attributable to anything done or omitted, in respect of a structure, before it became the deemed owner (section 19(5)(a) and (b)). This ensures that the Crown will not be faced with

³ A wall built into a river or the sea to protect the shore from erosion.

⁴ A massive wall usually made of stone, which extends into the sea and encloses or protects a harbour.

⁵ As at October 2013 these were under development.

inappropriate obligations, such as the need to obtain a resource consent when one was not held, or face prosecution for an unauthorised structure.

Where appropriate, the Crown, through the Department of Conservation (DOC), will discuss proposed remedial work or removal of such structures with the relevant regional council and other relevant agencies.

RATES IN RESPECT OF LAND AND CROWN STRUCTURES

The Act has consequentially amended Schedule 1: Part 1 of the Local Government (Rating) Act 2002 (which lists fully non-rateable land) to remove reference to foreshore and the bed of the territorial sea in clause 2(b) and (c) and to provide the following additional areas of land that are non-rateable:

- land in the CMCA including any CMT area;
- the bed of Te Whaanga lagoon in the Chatham Islands; and
- structures in the CMCA that are owned by the Crown.

The previous ability of territorial authorities to rate private structures authorised by certain leases and licences or agreements in the CMCA has not been carried over in the Act.

PUBLIC RIGHTS IN THE CMCA

Rights of access

Free public access within the CMCA is guaranteed under section 26 of the Act (subject to any authorised prohibitions or restrictions covered below). This continues the statutory right of access created under the 2004 Act.

Every individual has, without charge, the right to enter, stay in or on, leave, pass and repass in, on, over, or across the CMCA, and to engage in recreational activities. These rights do not extend to corporate entities (but do cover company employees carrying out work-related activities). This is because corporate entities do not have a physical presence and so cannot pass and repass over the area. This is the same as under the equivalent provision in the 2004 Act. The Act does not provide any limit on the length of time that people can stay in or on the CMCA.

This guarantee of public access does not apply to privately owned land in the marine and coastal area. In cases of dispute regarding access to such privately owned foreshore, the Walking Access Act 2008 enables the Walking Access Commission to negotiate with title holders for public access.

The guarantee of public access within the CMCA is meaningful for most people only if foot or vehicle access is available to the foreshore from “dry” land. A range of measures are employed by councils to maintain and enhance such access. These include the development of coastal access strategies, the provision of areas of open public space in district plans, requirements for esplanade reserves and strips at the time of subdivision, the establishment of regional parks, and control of the location and design of buildings and structures. Councils are encouraged to continue such efforts.

The access right within the CMCA is subject to any authorised prohibitions or restrictions imposed within a wāhi tapu area under the Act⁶, or imposed by, or under, any other enactments. Other enactments include bylaws, regional plans and district plans.

Restrictions on public access may be imposed, for example, through:

- conditions on coastal permits allowing the holder exclusive occupation for reasons such as ensuring the security of buildings and business operations, and health and safety;
- conditions on resource consents for activities such as triathlons or water skiing competitions;
- bylaws to manage access of vehicles, dogs and horses for public health and safety reasons and to minimise impacts on other recreational activities; and
- protection mechanisms for the environment targeted at users such as vehicle drivers.

The Act did not make any changes to provisions allowing charging under the RMA associated with coastal permits (e.g. coastal occupation charges, administration, monitoring and inspection charges) although minor changes were made to the coastal occupation charging regime.

Prior to the passing of the Act, the coastal occupation charging regime applied to the coastal marine area. It now applies to the common marine and coastal area. This means that coastal occupation charges cannot now be imposed on persons occupying conservation areas within the meaning of section 2(1) of the Conservation Act 1987, national parks within the meaning of section 2 of the National Parks Act 1980, reserves within the meaning of section 2(1) of the Reserves Act 1977 and the bed of Te Whaanga Lagoon in the Chatham Islands. However, DOC's powers to charge for concessions in such areas remain unchanged.

Navigation and fishing rights

Rights of navigation within the marine and coastal area effectively continue under the Act and apply to both private and public land. Every person has the right to enter and pass through the marine and coastal area by ship, and temporarily anchor, moor etc. Unlike the access right, this applies to "persons" and not "individuals". A legal person includes a corporation sole, a body corporate and an unincorporated body (section 29 Interpretation Act 1999).

As with access rights, navigation can be subject to any authorised prohibitions or restrictions imposed in a wāhi tapu area under section 79 or under any other enactment. This would include, for example, regional council navigation safety bylaws.

Section 28 provides that nothing in the Act prevents the exercise of any fishing rights. This is subject, however, to section 79 which provides that wāhi tapu conditions may affect the exercise of fishing rights, but not to the extent that they prevent fishers from

⁶ The Office of Treaty Settlements is developing regulations relating to the appointment and role of wardens for promoting compliance with conditions relating to wāhi tapu in the CMCA. Wardens will be appointed by the CMT group.

taking their lawful entitlement in a quota management area or fisheries management area.

MINISTER OF CONSERVATION'S RESIDUAL ROLE

The Minister of Conservation has a residual management role in the CMCA (section 119). This is not intended to limit or override the powers of local authorities or other bodies in the CMCA. The inclusion of this provision in the Act is important, however, because the CMCA is common area that is not owned.

The Minister may carry out a particular management function over the CMCA only to the extent that the same or a similar function is not conferred on a local authority or other person. The Minister's powers include the recommendation of regulations and the making of bylaws. However, the Minister must be satisfied that any regulations or bylaws are necessary for the proper management of the CMCA, and that the objectives of proposed regulations or bylaws cannot be, or are not being, achieved under an existing enactment.

There has been no change to general local authority bylaw-making powers with respect to the CMCA and such powers are not affected by the Act (section 119(2)).

Enforcement powers under section 122 allow the Director-General of Conservation, or his or her delegate, to direct a person to stop undertaking an activity that may be a breach of regulations or bylaws made under the Act, or to forcibly move a vehicle or vessel. Non-compliance with these directions is an offence. Delegates of the Director-General may be warranted officers within the meaning of the Conservation Act⁷ or employees of local authorities.

SUBDIVISION

The Act amended section 237A of the RMA to require a plan of subdivision to show any land that is in the coastal marine area as part of the CMCA. Previously, section 237A required such land to vest in the Crown, but the requirement was subject to any rule in a district plan or any resource consent that provided otherwise. A territorial authority has responsibility for ensuring compliance (refer section 223(2) of the RMA).

RECLAIMED LAND

Introduction

Reclaimed land is defined in the Act and basically means permanent land formed from land that was previously below the line of mean high-water springs. It does not include structures such as breakwaters, moles, groynes, or sea walls or land that arises as a result of natural processes such as accretion.

⁷ Officers warranted under the Conservation Act can include DOC staff and honorary warranted officers. In addition, all Police, rangers appointed under the Wildlife Act 1953, Reserves Act 1977, and National Parks Act 1980, and any fisheries officer appointed under Part 6 of the Fisheries Act to exercise powers in relation to freshwater fisheries are deemed to be a warranted officer within the area of New Zealand to which their appointments relate.

Central and local government both have decision-making roles regarding reclaimed land. Regional councils consider the environmental effects and whether to grant a resource consent as per their standard RMA functions. Central government, on behalf of the Crown as owner of reclaimed land (refer next section below), decides whether to vest a legal interest in a reclamation in a person, and if so, at what price.

All Crown functions and powers under the reclamations provisions in the Act are performed and exercised by the Minister for Land Information (referred to as “the Minister” below).

“Reclaimed land” subject to the relevant part of the Act is:

- new reclaimed land because the reclamation is completed after the commencement of the Act (section 30); and
- existing reclaimed land owned by the Crown and not set apart for a specified purpose (other than reclaimed land subsequently declared to be subject to the Land Act 1948) (section 31).

The Act makes a number of significant changes to the previous regime:

- It allows for applications for an interest in land (such as fee simple title) to be determined before the reclamation is completed (although such a determination does not amount to vesting the interest in the applicant). Determinations of interests in land could be made before the Act came into effect under section 355 of the RMA but this did not tend to happen in practice. The ability to make determinations addresses concerns about funding uncertainty under the 2004 Act.
- It allows an applicant to potentially obtain fee simple title in reclaimed land. Local authorities that have developed a reclamation will be eligible to apply for fee simple title just like other developers. By contrast, the maximum interest an applicant could obtain under section 355AA of the RMA (now repealed) was a leasehold interest for a maximum of 50 years (port companies could obtain a leasehold interest for up to 50 years including a perpetual right of renewal on the same terms as the original lease, to the extent the land continued to be used for port facilities). This change also provides greater investment certainty for developers of reclamations.
- Only the person who constructs a reclamation or a network utility operator can apply for an interest in a reclamation. An exception applies where reclaimed land has been subject to the Act for more than 10 years and no application for the grant of an interest has been made. In that case any person may apply (section 35(3)). This contrasts with the previous situation where any person or local authority could apply for an interest under section 355(1) RMA which led, in some cases, to competing applications.
- The Minister for Land Information is responsible for granting interests in reclaimed land subject to the Act (except under certain transitional situations). Under the 2004 Act, the Minister of Conservation performed this role.

When does the Crown become owner of reclaimed land?

For new reclamations created after commencement of the Act, the full legal and beneficial ownership of the land is vested in the Crown when the plan of survey of the

reclamation is approved under section 245(5) of the Resource Management Act 1991 (section 30(2)). This is a necessary pre-requisite for the Crown to then grant an interest in the reclaimed land to another party.

With respect to unlawful reclamations, the full legal and beneficial ownership vests in the Crown if the Minister signs a certificate stating this to be the case and describing the reclaimed land. This, in the absence of proof to the contrary, is sufficient evidence of Crown ownership (sections 30(4) and (5)).

Existing reclaimed land owned by the Crown under other legislation and not set apart for a specified purpose is now deemed to be land of the Crown, subject to the new legislation (except under certain transitional situations).

Application and decision making process for the grant of interests

The application and decision making process for the grant of interests in reclaimed land is set out in sections 35-41. Separate provisions in section 43 apply in cases where a CMT group is the developer and the area to be reclaimed lies within the group's CMT area. Those provisions are covered in the next sub-section of this paper.

Who can make applications for interests in reclaimed land?

Those eligible to apply for interests in reclaimed land are:

- The developer, including a person who retrospectively applies for consent under section 355A of the RMA for an unlawful reclamation. A freehold or lesser interest can be obtained.
- A network utility operator as defined in the RMA. Only an interest less than freehold can be obtained.
- Any person where no interest has been granted in the land, the reclamation has been subject to the Act for more than 10 years, and there is no current application for an interest. A freehold or lesser interest can be obtained.

When can applications be made?

Eligible applicants may apply to the Minister under section 35 for the grant of an interest in reclaimed land any time prior to, during, or after completion of a reclamation. The eligible applicant will be required to pay fees set in the Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012.

How are applications determined?

When an application is made for an interest in reclaimed land, the Minister must determine the following matters in accordance with section 36(1):

- a) Whether an interest is to be granted and, if so, whether it is to be a freehold interest or lesser interest.
- b) The terms and conditions of any lesser interest (if such a lesser interest is to be granted).
- c) Any conditions that must be fulfilled before any interest is granted.

- d) Encumbrances, restrictions or conditions (if any) that should attach to any interest.
- e) Any consideration for the grant of interest, including payment, rental or other charge.

In determining the above matters, the Minister must consider the criteria set out in section 36(2) of the Act. A determination made at this stage does not result in the vesting of an interest in reclaimed land in the applicant.

The Minister must notify an applicant once a determination is made (section 38(1)).

The Minister may subsequently vary a determination on his or her own initiative or on application by the applicant before an interest is vested. Variations can be made for any reason, including to take account of any matters listed in section 36(2).

The Minister must give the applicant a reasonable opportunity to comment on a proposed determination or variation.

Under section 37, the Minister, on receiving an application from certain entities, must proceed on the basis that the entity is to be granted a freehold interest unless the entity does not wish to be granted a freehold interest or the Minister is satisfied, after considering the criteria in section 36(2), that there is good reason not to grant a freehold interest. These entities are any port company, port operator, or the companies that operate the Auckland or Wellington International Airports.

Vesting of an interest in reclaimed land

The Minister may, by notice in the *Gazette*, vest in an applicant an interest in reclaimed land (section 39) if satisfied that:

- the vesting is in accordance with a determination made under section 36(1) as modified by any variations; and
- any conditions imposed when a determination is made under section 36 have been complied with or adequate provision has been made to ensure compliance; and
- the reclamation has been completed and the regional council has issued a plan of survey under section 245(5) RMA.

Section 39(2) sets out the information that must be contained in the *Gazette* notice.

Application by CMT groups for reclamation of CMT land

In cases where a CMT group is the developer of reclaimed land in its CMT area, section 43 of the Act applies rather than sections 31-41.

The process is largely similar to that covered for other reclamations (see above). The Minister, on receiving an application for an interest in the reclaimed land, must proceed on the basis that the CMT group is to be granted a freehold interest. This reflects the fact that CMT already provides an interest in land which is akin to private title. Exceptions are when:

- the CMT group does not wish to be granted a freehold interest; or

- the Minister is satisfied, after considering the criteria in section 36(2), that there is good reason not to grant a freehold interest.

Transitional provisions

In cases where an application was made under the RMA but not determined by the Minister of Conservation before the commencement of the Act, the applicant had 180 days after the Act took effect to apply to the Minister of Conservation to have the application considered under the new legislation. Unless this occurred, the application would continue to be considered and determined under the previous legislation. The former option was possible only if the application was not in competition with any other application and the applicant was eligible to apply under the Act. This provision has already expired (sections 41 and 42).

Rights of first refusal

The first time that a freehold interest in reclaimed land is disposed of (other than land reclaimed from CMT areas by a CMT group), a right of first refusal in favour of the Crown and then local iwi and hapū applies. This right is recorded on the computer register at the time the Crown vested the freehold interest. This record can be removed if the Minister is satisfied that the right of first refusal process set out below is complied with.

The right of refusal does not apply to a transaction where the reclaimed land is one of several assets that are being sold (section 44).

The right of refusal process is as follows:

- The proprietor must first offer the reclaimed land to the Crown via a written notice to the Minister stating the terms on which the Crown may acquire the freehold interest.
- If the Crown does not accept the offer within 90 days of receipt of the notice, the proprietor may give public notice to all iwi and hapū within the area in which the reclaimed land is located. The public notice must be addressed to all such iwi and hapū and invite tenders from their representatives for the acquisition of the freehold interest on terms that are not more favourable than those offered to the Crown.
- If no such iwi or hapū enters into a contract to acquire the freehold interest within 90 days of receiving public notice, the proprietor may invite tenders from any person for the freehold interest. This must occur before two years have elapsed since the offer was made to the Crown.

Local authorities are referred to LINZS15004 - Interim Standard for dealing with coastal reclaimed land <http://www.linz.govt.nz/about-linz/news-publications-and-consultations/search-for-regulatory-documents/interim-standard-for-dealing-with-coastal-reclaim>. LINZ must use this standard when dealing with applications for, and the vesting of an interest in, marine and coastal reclaimed land. This will ensure applications are dealt with fairly and transparently.

RELATIONSHIP WITH LOCAL ACTS

Section 123 provides that if a provision of a local Act is inconsistent with a provision in the Act, then the Act prevails. However, the Act includes three exceptions to this rule: The Timaru Harbour Board Act 1876 Amendment Act 1881, the Timaru Harbour Board Reclamation and Empowering Act 1980, and the Wellington Harbour Board and Wellington City Council Vesting and Empowering Act 1987.

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.