



Interim standard for dealing with coastal reclaimed land

LINZS15004

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Terms and definitions

For the purposes of this interim standard, the following terms and definitions apply.

Any reference to a section in this interim standard is a reference to that section of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA) unless stated otherwise.

Term/abbreviation	Definition
cadastral survey dataset	as defined in s 4 of the Cadastral Survey Act 2002. Note that a survey plan is a component of a cadastral survey dataset.
computer register	as created by the Registrar-General of Land under ss 7 to 14 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002
developer	as defined in s 29(1) of the MACAA
dispose of	as defined in s 29(1) of the MACAA
eligible applicant	as defined in s 29(1) of the MACAA
freehold interest	as defined in s 29(1) of the MACAA
lesser interest	as defined in s 29(1) of MACAA
LINZ	Land Information New Zealand, the department responsible to the Minister for actions under the MACAA, and includes any service provider carrying out work on behalf of LINZ
MACAA	Marine and Coastal Area (Takutai Moana) Act 2011
Minister	as defined in s 29(1) of the MACAA
reclaimed land	as defined in s 29(1) of the MACAA
RFR	rights of first refusal
vendor	the holder of the freehold interest granted by the Minister under s 39(1) of the MACAA

Foreword

Introduction

Under Part 2, Subpart 3 of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA), the Minister can make decisions on: the status of reclaimed land, applications for an interest in reclaimed land, and rights of first refusal (RFR) on offers of reclaimed land. Certain information is required for the Minister to make such decisions.

Land vesting in the Crown becomes 'land of the Crown' and not 'Crown land' under s 2 of the Land Act 1948. The Minister for Land Information, on behalf of the Crown, is responsible for performing and exercising functions and powers under Part 2, Subpart 3 of the MACAA.

Purpose of the interim standard

The purpose of this interim standard is to ensure that applications for, and the vesting of interests in, reclaimed land are dealt with in a fair and transparent process that meets the requirements of the legislation.

Brief history of interim standard

This is a new standard for dealing with marine and coastal reclamations.

References

The following documents are necessary for the application of this interim standard.

- Marine and Coastal Area (Takutai Moana) Act 2011
- Resource Management Act 1991

1 Scope

- (a) This interim standard specifies the requirements for Land Information New Zealand (LINZ) to:
 - (i) confirm the status of reclaimed land,
 - (ii) process an application for an interest in reclaimed land,
 - (iii) assess that the RFR of reclaimed land to the Crown have been complied with, and
 - (iv) maintain records on reclaimed land.
- (b) This interim standard does not apply to:
 - (i) any matter not covered by Part 2, Subpart 3 of the MACAA, and
 - (ii) applications for interests in reclaimed land by customary marine title groups under s 43.

2 Intended use of interim standard

The interim standard must be used by LINZ when undertaking actions under Part 2, Subpart 3 of the MACAA.

3 Records of actions under the MACAA

Where reclaimed land has been identified as land of the Crown under the MACAA, LINZ must ensure that verifiable records are kept of every action taken on that land in respect of Part 2, Subpart 3 of the MACAA and that these records are available for audit.

4 Status of reclaimed land

4.1 Confirmation of status of reclaimed land

Before taking any action in respect of reclaimed land, LINZ must obtain a certificate from the Minister under s 30(4) or s 33(2) confirming that the land is reclaimed land subject to the MACAA.

4.2 Report to the Minister on status of reclaimed land

LINZ must submit a report to the Minister seeking a certificate confirming the status of the land under s 30(4) or s 33(2), whichever applies. The report must contain the information listed in Tables 1 to 4 below.

Table 1: Information required for all reports on the status of reclaimed land

Information required for all reports on the status of reclaimed land	
Details of the land	Where available, include: <ul style="list-style-type: none">(a) legal description,(b) estimated area,(c) location,(d) timeframe for its development,(e) illustrative plan depicting the area, and/or aerial photographs (before and after reclamation),(f) cadastral information, such as cadastral survey dataset, mean high water spring positions, and fixes,(g) current occupations and uses of the land, registered and unregistered interests, and(h) advice on the nature of adjoining land together with a copy of any computer registers.
Statutory section	Identification of the relevant section of the MACAA under which the status of the reclaimed land is confirmed.
Attachments	Copies of all supporting evidence.

Table 2: Additional information required where reclamation is the result of a lawful reclamation

Additional information required where reclamation is the result of a lawful reclamation (refer s 30(2))	
Details of lawful reclamation	<p>(a) a copy of the plan of survey for the land, approved by a regional council under s 245(5) of the Resource Management Act 1991, and</p> <p>(b) a certificate that meets the requirements of s 33(2), to be signed by the Minister</p>

Table 3: Additional information required where reclamation is the result of an unlawful reclamation

Additional information required where reclamation is the result of an unlawful reclamation (refer s 30(4))	
Details of unlawful reclamation	<p>(a) evidence, where available, that the reclamation has not been authorised; and</p> <p>(b) due diligence information, including details of:</p> <ul style="list-style-type: none"> (i) the nature of the land and reclamation, (ii) any structures on the land, hazards or issues associated with the land, and (iii) any matter that might affect the ability of the Minister to administer the land. <p>Note: The scale of due diligence investigation required to be undertaken will depend on the size and nature of the reclaimed land.</p>
Analysis and recommendations	<p>(a) analysis of any known implications of vesting or not vesting ownership of the land in the Crown,</p> <p>(b) a recommendation on whether to accept that the ownership of the reclaimed land should vest in the Crown, and</p> <p>(c) where the recommendation is to accept ownership of the land, a certificate that meets the requirements of s 30(4) for signature by the Minister.</p>

Table 4: Additional information required where the reclamation existed before the commencement of the MACAA

Additional information required where the reclamation existed before the commencement of the MACAA (refer s 31)	
Details of existing reclamation	<ul style="list-style-type: none"> (a) advice on legislation under which the land was previously held, (b) evidence and/or advice that reclaimed land is not set aside for a specific purpose (refer s 31(1)(b)), (c) advice on ownership of structures on the land, and (d) a certificate that meets the requirements of s 33(2), to be signed by the Minister.

4.3 Records of identified reclaimed land

LINZ must record the following information when land has been identified as reclaimed land under the MACAA:

- (a) legal description and area of the land;
- (b) status of the land as land of the Crown under the MACAA;
- (c) illustrative plan depicting the area, and/or before and after aerial photographs where available;
- (d) current occupations and uses of the land, registered and unregistered interests;
- (e) location;
- (f) developer of the reclamation, if known;
- (g) previous ownership and the relevant Crown agency;
- (h) advice of known liabilities and risk issues; and
- (i) cross-references to all other paper and electronic files in respect of the land.

5 Application for grant of interest in reclaimed land

5.1 Information required from applicant

LINZ must ensure that an application for an interest in reclaimed land is:

- (a) made in writing by an eligible applicant,
- (b) contains the information specified in Appendix A, and
- (c) is accompanied by payment for the prescribed fee.

5.2 Pending applications referred by the Minister of Conservation

Where a case is referred by the Minister of Conservation under s 41(7), LINZ must review the documentation provided by the Minister of Conservation (including all relevant files) to determine what information is already held, and whether additional information is required from the applicant.

5.3 Valuation of Crown's interest in reclaimed land

LINZ must obtain from a registered valuer a valuation of the financial value of the reclaimed land to the Crown.

5.4 Report to the Minister on an application

LINZ must submit a report to the Minister for the Minister to appropriately assess an application and make a proposed determination. The report must contain the information in Table 5 below.

Table 5: Information required for determination of application

Information required for determination of application	
Details of the land	<p>Include, where available:</p> <ul style="list-style-type: none"> (a) legal description, (b) estimated area, (c) location, (d) any structures on the land and their ownership, if known, (e) illustrative plan depicting the area, and/or aerial photographs (before and after reclamation), (f) cadastral information, such as cadastral survey dataset, mean high water spring positions, and fixes, (g) confirmation that the land is subject to the MACAA, and (h) current occupations and uses of the land, registered and unregistered interests.
Details of the applicant	<ul style="list-style-type: none"> (a) name of applicant, (b) address and contact details, (c) legal status, if a body corporate, (d) confirmation that the applicant is eligible in terms of s 35, (e) advice on whether the applicant is one of persons identified in s 37(2), and (f) confirmation that any prescribed fee has been paid.
Analysis of the application	<ul style="list-style-type: none"> (a) details of the grant of interest being sought, (b) confirmation that all relevant government policies have been considered and complied with, (c) summary of other views expressed by other government agencies, if any, (d) a full analysis for each of the matters set out in s 36(2), and (e) advice on whether any esplanade reserves or strips are required by resource consent approval.
Recommendations	A set of recommendations addressing all of the matters required under s 36(1).
Attachments	<ul style="list-style-type: none"> (a) a copy of the application, (b) a copy of the valuation of the Crown's financial interest in the land, and (c) copies of all supporting evidence.

5.5 Views of the applicant on the proposed determination or variation

LINZ must ensure that it has sought the views of the applicant, under s 38(2), before making a report to the Minister for a final determination under paragraph 5.6.

5.6 Minister's final determination

For the Minister to make a determination, LINZ must submit:

- (a) information provided under paragraph 5.4, updated where appropriate, and
- (b) a summary and analysis of the applicant's views on the proposed determination obtained under paragraph 5.5, with a copy of all correspondence.

5.7 Notification of determination

LINZ must provide a copy of the Minister's determination in writing to both the applicant and the relevant consenting authority.

5.8 Variation of determinations

Where a variation on the determination is requested or proposed, LINZ must provide the Minister with:

- (a) a copy of the original determination,
- (b) analysis and recommendations for a proposed variation, and
- (c) any other relevant information.

COMMENTARY

If the applicant's name changes after the determination is made, this will require a variation of the Minister's determination.

6 Vesting of an interest in reclaimed land

6.1 Information to support vesting of an interest

LINZ must ensure that, before any vesting of an interest in reclaimed land, it has obtained from the applicant:

- (a) a copy of the certificate issued by the regional council under s 245(5)(b) of the Resource Management Act 1991,
- (b) a copy of the cadastral survey dataset for the reclaimed land, approved by LINZ as to compliance with rules made by the Surveyor-General under the Cadastral Survey Act 2002, and
- (c) written confirmation from the applicant's solicitor that all conditions of the determination have been met or that adequate provision has been made to ensure that these conditions will be complied with.

COMMENTARY

A copy of the approved cadastral survey dataset is required to ensure that the survey definition has been accepted and that the parcel is therefore available for the issue of a computer register.

6.2 Report to the Minister on vesting

LINZ must submit a report to the Minister on the vesting that contains the following information:

- (a) advice confirming that the proposed vesting is in accordance with the Minister's determination or a variation under s 38(3);
- (b) advice confirming that all conditions imposed under s 36(1)(c) have been or will be complied with;
- (c) where a lesser interest is to be vested, a recommendation whether a computer register should be issued for the interest;
- (d) the draft gazette notice in a form that complies with s 39(2);
- (e) a copy of the report on the determination for grant of interest under paragraph 5.4;
- (f) a copy of the information provided by the applicant in paragraph 6.1; and
- (g) a copy of the sale offer, or lesser interest documentation for execution.

6.3 Form of sale offer or lesser interest

- (a) LINZ must draw up a sale offer or lesser interest documentation that meets the requirements of the particular interest being vested.
- (b) LINZ must ensure that the conditions for renewal of any lesser interest provides the time period for renewal as being not less than three months as set out in s 40(1).

7 Rights of first refusal on offers for reclaimed land

7.1 Report to the Minister on offer of reclaimed land

LINZ must submit a report to the Minister on any offer of reclaimed land made to the Minister under s 45(2). The report must contain the following information:

- (a) details of the land subject to the offer, including area, legal description, and owner;
- (b) a copy of current computer freehold register;
- (c) a due diligence report on the land offered, including:
 - (i) the nature of the land and reclamation,
 - (ii) any hazards or issues associated with it,
 - (iii) any matter that might affect the ability of the Crown to administer the land,
 - (iv) information on any known unregistered interest, and
 - (v) any change in the physical boundaries of the land;
- (d) a copy of the offer showing price and other terms and conditions;
- (e) views of other Crown agencies on whether there is a Crown requirement for the land;
- (f) a recommendation on whether the Minister should accept the offer and if the recommendation is to accept the offer:
 - (i) the purpose for which the land is required,
 - (ii) evidence that there is financial authority to purchase the land,
 - (iii) any other requirements or conditions that LINZ wishes the Minister to take into account, and
 - (iv) a current market valuation of the land;
- (g) a copy of the Minister's previous determination on the granting of the freehold interest and any subsequent variations.

COMMENTARY

There is a 90 day timeframe for the Minister to consider an offer of reclaimed land (refer s 45(7)).

7.2 Compliance with or exemption from rights of first refusal

To seek the Minister's approval to a certificate under s 44(3) of the MACAA, LINZ must ensure the following information is obtained from the vendor:

- (a) copies of the notices made to the Crown, iwi/hapu, and public tender under s 45;
- (b) written legal confirmation that the offers meet the requirements of s 45;
- (c) copies of any written responses received; or
- (d) evidence that the transaction is an exemption to the RFR under s 44(2).

7.3 Certification

Where reclaimed land has been disposed of in accordance with s 44(2) or s 45, LINZ must submit to the Minister:

- (a) a report on the vendor's compliance with, or exemption from, the RFR, and
- (b) a draft certificate under s 44(3) to be signed by the Minister.

Appendix A: Information required to process applications for a grant of an interest in reclaimed land

A.1 General information required

- (a) details of applicant, including:
 - (i) name of applicant,
 - (ii) address,
 - (iii) contact details, eg phone number, email address, fax number,
 - (iv) legal status of the company, and
 - (v) confirmation of authority of any agent acting for the applicant;
- (b) details of the land, where available, including:
 - (i) legal description,
 - (ii) estimated area,
 - (iii) location,
 - (iv) cadastral survey dataset, if available, or an illustrative plan depicting the area, and/or aerial photographs (before and after land reclamation),
 - (v) ownership and current zoning of all land adjoining where the reclamation is formed,
 - (vi) description of the current land use,
 - (vii) a summary of the historic land uses, and
 - (viii) structures on the land, including ownership;
- (c) application information, where known, including:
 - (i) details of the interest being sought, that is what level of interest is applied for and the rationale for why this is needed,
 - (ii) confirmation that the land is within the area covered by the MACAA, and
 - (iii) evidence that the applicant is eligible, in terms of s 35, to apply for an interest in the land;
- (d) details of proposed sub-leasing or mortgagee arrangements where appropriate;
- (e) confirm any other known interests or proposals for the land;

- (f) details of potential values and interests in the reclaimed land, including:
 - (i) advice on the public interest in the reclaimed land, including existing or proposed public use of the reclaimed land,
 - (ii) advice on the extent to which the public is benefiting from the proposed use of the reclaimed land,
 - (iii) details of any known historical claims under the Treaty of Waitangi Act 1975, or any pending applications under Part 4 of the MACAA, over the land,
 - (iv) written advice from the tangata whenua on any cultural values on the reclaimed land and surrounding area,
 - (v) advice on any natural or historic values associated with the reclaimed land,
 - (vi) advice on whether there is any potential public access, amenity or recreational values;
- (g) advice whether this land has been identified as potential redress by an iwi, if known; and
- (h) except for in the case of network utility operators, details of the resource consent for the reclamation and other approvals, including:
 - (i) the resource consent application,
 - (ii) the resource consent decision and conditions granted, including advice if there are any changes to those conditions, and
 - (iii) a copy of the district plan map.

A.2 Additional information required where reclamations have yet to be completed

- (a) detailed description of the proposed reclamation (building plan, earthworks, timelines, improvements and structures, nature of ownership);
- (b) details of how much has/will be invested and how the proposed reclamation will be funded;
- (c) details of the purpose for the reclamation.

A.3 Additional information required from a network utility operator

- (a) a statement of the activity proposed to be carried out, including any structures and equipment required to carry out the activity;
- (b) required term of the use of the land and any duration or frequency of use and access issues (where relevant);
- (c) assessment of the potential impact of the proposed activity (if granted) on the land and to any existing activity on the land, and describe any mitigation measures proposed;
- (d) plan of the location of the proposed activity;
- (e) a copy of any proposed easement document (where easement sought).

COMMENTARY

Note that LINZ has the discretion to waive some of the information requirements in this Appendix where it considers that sufficient information has previously been provided or that a specific requirement is not necessary in a particular case.