

Reclaimed Land

A guide for developers applying for an interest in reclaimed land under the Marine and Coastal Area Act 2011

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Introduction

This guide explains how you – as a developer - can apply for an interest in reclaimed land under the Marine and Coastal Area (Takutai Moana) Act 2011 (the Act).

The Act provides a new regime for the granting of interests in reclaimed land formed from the common marine and coastal area. The Act gives LINZ new responsibilities in relation to the granting of an interest in reclaimed land.

Background

What is reclaimed land?

Reclaimed land is permanent land formed from land that was formerly below the line of mean high-water springs and - as a result of a reclamation - is now located above this line. It doesn't include land that arises as a result of natural processes such as accretion, or structures such as breakwaters or sea walls.

Land may be reclaimed for a number of purposes including port company developments, airport runway extensions, marinas and other land uses.

Following the passage of the Act, the ownership of all existing reclaimed land that was not in private title was vested in the Crown. This land is now administered by the Minister for Land Information.

What is the 'line of mean high-water springs'?

The line of 'mean high-water springs' refers to the average of the levels of each pair of successive high waters (or high tide).

Who can apply for an interest in reclaimed land?

Under the Act, only certain parties can apply for an interest in reclaimed land. This is limited to the developer of the reclaimed land, which is the person who holds the resource consent for the reclamation – in other words, the land that will be formed by the reclamation.

Network utility operators may apply for an interest in reclaimed land, where it requires a lesser interest. For example, they may apply for an easement in an area of reclaimed land for their network utility operation. If you are a network utility operator seeking an interest in reclaimed land, please contact LINZ directly.

Land Information New Zealand (LINZ) processes these applications for the Minister for Land Information. Decisions are made by the Minister for Land Information or their delegate.

What interest can I apply for?

You can apply for either a **freehold interest** or a **lesser interest** in reclaimed land. A freehold

interest means an estate in fee simple, but doesn't include a stratum estate created under the Unit Titles Act 1972 or the Unit Titles Act 2010. A lesser interest includes a lease, licence, easement or other right or title to occupy or use the land.

What do I need to have before I can apply?

To be eligible to apply you must obtain all necessary resource consents for the reclamation from the relevant local authority. In determining whether or not to grant resource consent, the local authority will consider the environmental effects of the reclamation.

Making an application

When can I apply for an interest in reclaimed land?

You can apply at any time after you have all of the necessary resource consents for the reclamation. This may be prior to commencing construction, or after the reclamation has been completed.

There is a two stage application process:

Step one

The Minister for Land Information (or their delegate) will determine whether or not to grant you an interest in the reclaimed land – this is referred to as 'making a determination'. If their determination is to grant you an interest in the reclaimed land, this will take effect after the reclamation has been completed and the requirements of section 245 of the Resource Management Act 1991 have been met. This includes completing surveys of the reclaimed land.

Step two

Once step one is completed, you can then apply to have the interest in the reclaimed land vested in you. If the Minister is satisfied with your application, and you have met any conditions imposed, then the interest in the reclaimed land will be vested in you.

How do I make an application?

Apply in writing to:

The Manager Crown Property Management
Land Information New Zealand
Private Bag 5501
Wellington 6145.

You must provide the information outlined on the last page of this guide with your application.

Will I need to pay a fee when I apply for an interest in reclaimed land?

Yes. The Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012, developed by the Ministry of Justice, set out the fees for applications and other actions for reclaimed land.

These took effect on 18 January 2013. The regulations also set out a method to determine the fee payable by you for LINZ to obtain a valuation of the Crown's interest in the reclaimed land. The fees are set out on page 5 below.

How long will the determination take?

The time taken will depend on the complexity of your application, the standard of the information you provide and the work required by LINZ to process it. There is no statutory timeframe within which an application for consent must be determined.

How much will I have to pay for the interest in reclaimed land?

The Minister for Land Information (or delegate) will determine how you need to pay the Crown for the interest in reclaimed land. The amount you're required to pay is called the 'consideration'. This may include payment for any freehold interest, rent or other charge. LINZ will obtain an independent valuation of the Crown's interest in the land, which will inform the Minister's determination.

What does the Minister consider before making a decision?

The Minister must consider the matters set out in section 36(2) of the Act. We recommend you look at this section to ensure your application contains the information required by the Minister. If you consider that any of the matters raised in section 36(2) are not applicable to your case, please provide clear reasons in your written application for the Minister to consider.

Can I be assured of getting a freehold interest?

Under the Act, certain parties who apply for an interest in reclaimed land must be granted a freehold interest, unless:

- they do not want a freehold interest; or
- the Minister determines that good reason exists not to grant a freehold interest.

These parties are:

- a port company (as defined in s2(1) of the Port Companies Act 1988);
- a port operator (as defined in s650J(6) of the Local Government Act 1974); or
- the companies that operate either the Auckland or Wellington International Airports (or their subsidiaries).

My development has changed since the Minister's determination – what happens?

If your development or circumstances change, you can apply to the Minister for a variation to the determination. Please contact LINZ as soon as you become aware of the need to make a variation. This variation is separate to any Resource Management Act requirements that may apply.

How or when am I granted my interest in the reclaimed land?

You can apply to have the freehold or lesser interest vested in you after the reclamation has been completed and the reclaimed land has vested in the Crown (see above). The Minister may vest the interest if satisfied that:

- the vesting complies with the previous determination;
- any conditions imposed by the Minister have or will be met; and
- a certificate under s245(5)(b) of the Resource Management Act has been issued for the land.

The Minister will vest the interest by a notice in the Gazette. For freehold interests - and lesser interests deemed appropriate - the Minister will request that the Registrar-General of Land issues a computer register for the land. To complete this, a fee will be required from you.

Table of fees

Fee description	Fee amount
Application for interest in reclaimed land by a developer or network utility operator	\$3,100 and a valuation services fee calculated in accordance with regulation 10 of the Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012.
Application for variation of the Minister for Land Information's (or their delegate's) determination.	\$570
Vesting of interest in reclaimed land	\$2,840 in the case of a freehold interest, or \$2,140 in the case of a lesser interest
Application for renewal of interests less than freehold	\$1,360
Application for interest in reclaimed land by customary marine title group	\$2,245 and a valuation services fee calculated in accordance with regulation 10 of the Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012. When vesting an interest in a customary marine title group, the group must pay a fee of: \$2,840 in the case of a freehold interest, or \$2,140 in the case of a lesser interest
Request for certificate under section 44(3) of Act that any subsequent disposal of a freehold interest granted by the Minister is in accordance with the Act.	\$280

Information required with application

1 Applicant details

- **Applicant name** – this should be an individual or company name, which is the name of the entity that the interest will be vested in.
- **Physical address**
- **Postal address**
- **Phone (day, mobile, fax)**
- **Email address**
- **Incorporation and shareholder information** – if you are applying for an interest in reclaimed land for a company, please provide details of registration. A copy of the certificate of incorporation must be provided.
- **Name of contact person for application**
- **Details of agent/consultant (if different from the contact person above)** – please note if an agent/consultant is working for the applicant, you must also provide confirmation of the authority for that person to act on your behalf.

2 Details of the land

- **Legal description** – if applicable
- **Estimated area**
- **Location**
- **Current and future use** – please provide details of the existing and potential activities that are/may be undertaken on the reclaimed land
- **Date of construction** – if the reclamation has been completed
- **Summary of any historic land uses**
- **Inventory of any structures on the land, including ownership**
- **Zoning from the District Plan** – proposed or existing.
- **Contamination** – confirmation that there is no known contamination associated with the land.
- **Plans and photographs** – the following must be attached to the application:
 - cadastral survey dataset - if available - or an illustrative plan depicting the area of reclaimed land;
 - aerial photographs showing the area before, and after - if the reclamation has been completed;
 - a planning map from the relevant territorial authority;
 - a plan identifying the ownership of all land adjoining the completed/proposed reclamation; and
 - a Quickmap (or similar) search.

3 Details of the application

- **Confirmation that the land is subject to the Marine and Coastal Area Act 2011**
- **Eligibility** – please provide evidence that you are eligible - in terms of section 35 of the Act - to apply for an interest in reclaimed land.
- **Interest required** – identify the interest that you’re seeking in the reclaimed land, including advice about the purpose for the interest and why this is the minimum interest necessary to achieve your purposes.
- **Other Arrangements** –
 - detail any proposed sub-leasing or mortgagee arrangements, where applicable (i.e. do you propose to lease/sub-lease parts of the land to others, or obtain a mortgage over the land if an interest is granted?)
 - confirm any other known expressions of interest in the land, or other proposals for use of the land.

4 Details of potential values and interests in the reclaimed land

NOTE –some of the following information may be included in the resource consent application or decision for the reclaimed land. If so (and the information has not changed since consent was granted), a cross-reference to the relevant document is sufficient.

- **Public interest in the reclaimed land** - identify any public interest in the reclaimed land.
- **Extent of public benefit** - identify any public benefit from the construction and use of the reclaimed land.
- **Historical claims under the Treaty of Waitangi Act 1975, or any pending applications under Part 4 of the MACAA, over the land** – written advice from the Office of Treaty Settlements as to whether there are any claims over the reclaimed land or any applications for customary marine title in the area.
- **Cultural Values to tangata whenua** - written report from an authorised representative of the tangata whenua on any cultural values on the completed/proposed reclaimed land and the surrounding area. Information to help you to identify the appropriate iwi to approach is provided on Te Puni Kōkiri’s website. Please note that there may be more than one iwi with an interest in the area.
- **Natural or historic values**
 - detail any natural values on the land, including any indigenous vegetation, ecosystems, fauna, the margins of waterways, coastal environment or wetlands
 - written advice from the NZ Historic Places Trust advising whether there are any historic features including historic sites, wahi tapu and archaeological sites on the reclaimed land.
- **Potential public access, amenity and recreational values**
 - detail any potential recreational use for the land;
 - detail any amenity values associated with the land;
 - advise whether members of the public will have access over the land, in order to gain access to, from and along the coastal marine area; and

- detail any proposed limitations on public access over the land, and the reasons for these limitations.
- **Use as potential redress** – provide written advice from the Office of Treaty Settlements on whether this land has been identified as potential redress by an iwi, if known, as part of a proposed Treaty Settlement.

5 Resource Consent

- **Except in the case of network utility operators, please provide details of the resource consent for the reclamation and other approvals, including:**
 - the resource consent application
 - the resource consent decision and conditions granted, including advice if there are any changes to those conditions
 - a copy of the district plan map.

6 Costs of reclamation

- **Breakdown of all costs** - this should provide either:
 - all costs incurred in building the reclamation - if the reclamation has been completed - including the dates those costs were incurred
 - a budget for a proposed reclamation.

7 Additional information required where reclamations have yet to be completed

- **Please provide a detailed description of the proposed reclamation** (i.e. the building plan, earthworks, timelines, improvements and structures and the nature of the ownership).

8 Application Fee

The required application fee must be paid before LINZ can start processing your application.