



Marine and Coastal Area (Takutai Moana) Ownership of Structures Regulations 2015

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 13th day of April 2015

Present:

The Right Hon John Key presiding in Council

Pursuant to sections 19(4) and 118(1)(g) of the Marine and Coastal Area (Takutai Moana) Act 2011, His Excellency the Governor-General makes the following regulations, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the advice of the Minister of Justice after consultation with the Minister for Treaty of Waitangi Negotiations in accordance with section 118(2) of that Act.

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Regulations

1 Title

These regulations are the Marine and Coastal Area (Takutai Moana) Ownership of Structures Regulations 2015.

2 Commencement

These regulations come into force on 14 May 2015.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Marine and Coastal Area (Takutai Moana) Act 2011

council means the regional council with statutory functions in the part of the common marine and coastal area in which the structure is located

inquiry means an inquiry under section 19(2) of the Act to ascertain the identity or whereabouts of the owner of a structure.

4 Application

These regulations apply to an inquiry a council undertakes under section 19(2) of the Act.

Timing of inquiry

5 Council to determine when to begin inquiry

A council may, in its discretion, determine when to begin an inquiry, having regard to—

- (a) the relative priority of the inquiry in relation to other inquiries that the council is required to, or has decided to, undertake; and
- (b) any adverse effects of, or risks posed by, the structure to which the inquiry relates; and
- (c) the resources available to the council.

Inquiry process

6 Inquiry process

- (1) Once a council has decided to begin an inquiry, the council must notify the Director-General of Conservation.

- (2) In undertaking an inquiry, a council must take the measures required by regulation 7.
- (3) If the council has not ascertained the identity and whereabouts of the owner of the structure after taking the measures required by regulation 7, the council must—
 - (a) request information and advice from the Director-General of Conservation in accordance with regulation 8; and
 - (b) take into account any information or advice provided by the Director-General of Conservation in response to the request.
- (4) If the council has not ascertained the identity and whereabouts of the owner of the structure after taking into account the information and advice provided by the Director-General of Conservation, the council must report to the Director-General of Conservation in accordance with regulation 9.
- (5) An inquiry is completed when—
 - (a) the council ascertains the identity and whereabouts of the owner of the structure; or
 - (b) the council reports to the Director-General of Conservation in accordance with regulation 9.

7 Measures to identify or locate owner of structure

- (1) In undertaking an inquiry, a council must take as many of the following measures as the council reasonably considers are relevant in the circumstances:

Structure

- (a) examine the structure:

Relevant records

- (b) examine the relevant records of the council and any other relevant local authorities, including records of historical consents, permits, or other approvals applying to the construction, occupation, or use of the structure;
- (c) search public records such as the electoral roll, the companies register, and telephone directories;
- (d) use New Zealand Post's New Zealand Change of Address service;
- (e) inquire whether other relevant organisations (past or present and including government agencies such as the Department of Conservation, the Ministry of Transport, the Ministry for Primary Industries, and Heritage New Zealand Pouhere Taonga) issued consents, permits, or other approvals, or hold relevant information:

Legislation

- (f) analyse any legislation that may address ownership of the structure:

Public notices

- (g) place a notice on the structure or on land in close proximity to it;
- (h) place a notice in a newspaper circulating in the area within which the structure is located:

Inquiries related to liquidation, bankruptcy, and death

- (i) if there is reason to suspect that the likely owner is a company that has been removed from the companies register and has not been restored, seek information from the company directors and the liquidator (if a liquidator was appointed):
- (j) if there is reason to suspect that the likely owner has been declared bankrupt, seek information from the Official Assignee:
- (k) if there is reason to suspect that the likely owner has died,—
 - (i) examine the public death records held by the Department of Internal Affairs to confirm the death; and
 - (ii) take any reasonable measures to establish the identity of the new owner:

Other inquiries

- (l) seek information from council staff members who may have knowledge of the ownership of the structure:
 - (m) seek information from land-based neighbours in the vicinity of the structure (including relevant organisations such as boating clubs) and persons holding consents for other coastal structures in the vicinity:
 - (n) if the structure is in a customary marine title area, seek information from the relevant customary marine title group:
 - (o) seek information from any known family members or known associates of the likely owner:
 - (p) search relevant Internet sites, including social media sites.
- (2) A council does not need to take a measure listed in subclause (1) if the council has taken the measure within the 3 years before the council decided to begin the inquiry.
 - (3) In addition to the measures listed in subclause (1), a council may take any other measure that the council considers could help to ascertain the identity or whereabouts of the owner of the structure to which the inquiry relates.

8 Advice from Director-General of Conservation

- (1) A council's request to the Director-General of Conservation for information and advice under regulation 6(3)(a) must be in writing and must include—
 - (a) a record of the measures that the council has taken to attempt to ascertain the identity or whereabouts of the owner of the structure (including measures that regulation 7(2) applies to); and

- (b) any information that the council has been able to gather during the inquiry.
- (2) The Director-General of Conservation must respond to the council's request within 15 working days of receiving the request, unless the council consents to an extension of time.
- (3) The Director-General of Conservation may request an extension of time to respond to the council's request if there are special circumstances (such as the structure's ownership history being complex).
- (4) A council must not unreasonably withhold consent to a request for an extension of time.
- (5) A council may proceed to complete its inquiry if it does not receive the response of the Director-General of Conservation within—
 - (a) 15 working days, as required by subclause (2); or
 - (b) the period of any extension granted under that subclause.
- (6) The Director-General of Conservation's response to the council's request may include—
 - (a) information on the identity or whereabouts of the owner of the structure; and
 - (b) advice on additional measures the council could take to ascertain the identity or whereabouts of the owner of the structure (which may include measures not listed in regulation 7(1)); and
 - (c) any other relevant information or advice.

9 Report to Director-General of Conservation

A council's report to the Director-General of Conservation must include—

- (a) a copy of the records the council is required to keep under regulation 10(2); and
- (b) the name and contact details of the council officer responsible for liaising with the Department of Conservation; and
- (c) a description of the structure; and
- (d) if possible, 1 or more recent colour photographs showing the elements making up the structure; and
- (e) the GPS co-ordinates of the structure's location; and
- (f) a map or plan on A4 or A3 paper that includes—
 - (i) the name of the bay or coastal area in which the structure is located; and
 - (ii) the location of the structure; and
 - (iii) nearby structures or landmarks; and
 - (iv) a north symbol; and

- (v) a scale.

Record-keeping requirements

10 Record-keeping requirements

- (1) A council must keep a record of—
- (a) the structures in respect of which the council is undertaking an inquiry; and
 - (b) the structures the council has identified in respect of which it must undertake an inquiry under section 19(3) of the Act; and
 - (c) other structures in respect of which the council has decided to undertake an inquiry; and
 - (d) the priority given to each inquiry referred to in paragraph (b) or (c) and the reasons for the priority.
- (2) In respect of each inquiry a council undertakes, the council must keep records of—
- (a) the date the council decided to begin the inquiry; and
 - (b) the measures taken by the council in undertaking the inquiry; and
 - (c) the information gathered during the inquiry.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 14 May 2015, prescribe the steps that a regional council must take in undertaking an inquiry under section 19(2) of the Marine and Coastal Area (Takutai Moana) Act 2011 to ascertain the identity or whereabouts of the owner of a structure. The regulations require the council—

- to notify the Director-General of Conservation of a decision to begin an inquiry; and
- in undertaking an inquiry,—
 - to take as many of the measures listed in *regulation 7(1)* as the council considers relevant in the circumstances; and
 - if those measures fail to ascertain the identity or whereabouts of the owner, to seek advice and information from the Director-General of Conservation and take any advice or information received into account; and

- if the council has been unable to ascertain the identity or whereabouts of the owner after taking the information and advice from the Director-General of Conservation into account, to report to the Director-General of Conservation; and
- to keep records in respect of—
 - structures that are or will be the subject of inquiries; and
 - particulars of each inquiry the council undertakes.

The regulations also clarify that a council is able to determine when to begin each inquiry.

Regulatory impact statement

The Office of Treaty Settlements produced a regulatory impact statement on 17 June 2014 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <http://nz01.terabyte.co.nz/ots/DocumentLibrary/RegulatoryImpactStatement-MACAOwnershipofStructuresRegs2015>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 16 April 2015.

These regulations are administered by the Office of Treaty Settlements.