

Torrens*talk*

Survey and Title Information for Land Professionals

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Toitu te
Land whenua
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New LINZ Fees From July 2004

From 5 July 2004, new fees will apply to LINZ survey and title products and services.

The changes cover both electronic and manual transactions, and aim to ensure that fees continue to match the actual costs of transactions.

Electronic transactions continue to be cheaper

Lawyers and surveyors will continue to pay cheaper fees for electronic transactions compared to paper-based transactions. A discount will be applied to the new \$36 electronic lodgement fee to maintain this at the current pricing of \$21.

Savings for survey customers

The new fees bring in considerable savings for survey customers: the most commonly-used fees have dropped in price. Electronic fees and charges for survey lodgement are around a third of the price of manual products.

For example, there are reductions in the base survey fee for both manual and electronic customers:

- For manual customers, the fee drops by \$120 (from \$424 to \$304).
- Electronic users will save \$213 (from \$320 to \$107).

Reduced fees for new titles

Title lodgement customers will save \$37 (down from \$143 to \$106) for the creation of a computer register (new title) and \$20 (down from \$75 to \$55) for depositing any plan under the new schedule.

The prices for the most commonly-used services (lodgement and registration) will otherwise stay largely the same, while the most common combinations have not changed in price.

Title searches and licence fees for Landonline services

Fees for online title searches (with diagram or plan), guaranteed searches and historical title searches have all been reduced.

Licence fees for Landonline services and Digital Certificates will remain unchanged and continue to reflect third party costs relating to licences.

While the new fees will affect customers differently in the short term, transactions conducted electronically will continue to cost less than manual counterparts.

The fee changes were the subject of wide consultation.

More information on the full fees schedule is available on LINZ's website, www.linz.govt.nz, or from a LINZ processing centre.

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Welcome to the June 2004 issue of *Torrenstalk*. In this issue, we outline updates to the Cadastral Survey Guidelines and the PositioNZ active GPS control network.

In April this year, New Zealand's Surveyor-General, Tony Bevin, retired after a long and distinguished career of 42 years with the Departments of Lands and Survey, Survey and Land Information (DOSLI) and Land Information New Zealand (LINZ).

Tony first joined Lands and Survey in 1962 as a Draughting Cadet, and then progressed to a Survey Cadet. Notably, he was among the first graduates to receive a surveying diploma from the University of Otago in 1965. He has performed many roles since then, including Senior Surveyor; Inspecting Surveyor; Chief Geodesist; Chief Surveyor; Director of Surveys; Deputy Surveyor-General/Deputy Director General in DOSLI from 1988 to 1996; and two years managing the Crown Lands portfolio. He became Surveyor-General when LINZ was established in 1996.



Tony Bevin

Tony has made an invaluable contribution to the survey system in New Zealand. As Surveyor-General, he was an influential Chair of the Survey Board and the Reciprocating Survey Boards of Australia and New Zealand. His lifetime involvement with the New Zealand Institute of Surveyors, including as Vice President from 1986 to 1989, was recognised in him being made a Fellow in 1995.

Tony's enduring vision was to move New Zealand's 150 year paper-based survey system into the digital age. This is most evident in his leadership with the Landonline development programme.

New Zealand has benefited greatly from Tony Bevin's unique combination of big picture thinking and attention to detail. He provided leadership and vision to the survey system in a time of unprecedented change. We will continue in the direction he helped set, working with the survey profession to maintain a world-class survey system.

A more detailed account of Tony Bevin's career is available in the June edition of *Landscan*.

The Deputy Surveyor-General, Don Grant, is the Acting Surveyor-General while the position is being filled.

Don Grant
Acting Surveyor-General

Check out the latest quarterly statistics for activity volumes and performance information on the Titles and Records section of the LINZ website www.linz.govt.nz

Did you know you can access back issues of *Torrenstalk* on the Internet? Check out the Publications section of the LINZ website www.linz.govt.nz

Cadastral Survey Guidelines Update

As advised in previous editions of *Torrenstalk*, LINZ is progressively revising the Cadastral Survey Guidelines, and publishing them on the LINZ website as each chapter is completed.

The Guidelines can be accessed via links on the 'Surveyors' or 'Survey System' pages.

The updated chapters (Version 4.2) are identified as 'New' on the Cadastral Survey Guidelines web page.

Please note – the Cadastral Survey Guidelines Version 4.2 is for 'Hard-copy Plans' and Version 5.0 is for 'Digital CSD's and Digital Plans' (e-survey) prepared in accordance with Schedules 2 and 3 of the Surveyor-General's Rules for Cadastral Survey 2002/2 respectively.

The latest update to Version 4.2, Chapter 6 on 'Data Lodgement Format', was published in March 2004. This chapter, the largest in the Guidelines, has been extensively revised. Significant changes are recorded in the 'Change Log Version 4.2', which is also

published on the Cadastral Survey Guidelines web page.

Some of the more significant changes to Chapter 6 include:

- All of the adoptions necessary to define boundaries and to connect to NZGD2000 marks should be shown on the survey sheets (6.2.5.2).
- Terms relating to the annotation of survey marks – such as ‘renewed’, ‘reinstated’, ‘disturbed’, ‘unreliable’ etc – have been defined in the interests of national consistency. This is because there have been some regional variations in the use of these terms in the past (6.2.7.7).
- A unique identifier is required for new boundary marks in accordance with the SG rules (6.2.7.7.1).
- Requirements for the annotation of old boundary marks have been expanded to improve national consistency (6.2.7.7.2).
- Surveys can no longer be carried out under the Survey Regulations 1972 (6.2.8.1).
- Requirements for depicting accretion (including accretion not claimed) have been expanded (6.2.11.4).
- Extra information is provided on bearing corrections and scale corrections (6.2.18).

- Extra information is provided about ‘Survey Data Only’ CSD’s (6.4).
- Requirements for Lease surveys are clarified and Landonline provisions for lease plans are explained (6.13) – for background refer *Torrenstalk* issue 26, October 2003.
- There are new sections on Correcting Surveys (6.25) and Treaty Settlement Datasets (6.26).

LINZ is currently revising Chapter 11 – ‘Boundaries and Parcels’ – and will publish Version 4.2 on the Guidelines web page when completed.

A draft version of the Cadastral Survey Guidelines Version 5.0 for *e-survey* was published for the Landonline Stage 2 pilot. The draft is currently being revised to reflect changes resulting from the pilot, other changes to Landonline, and survey requirements. LINZ expects to complete the revision of Version 5 in the next few weeks.

The updated Guidelines for *e-survey* will be available through links on the Landonline ‘Training and support – FAQs and articles’ web page and on the ‘Surveyors’ page, LINZ website.

PositioNZ Network Update

The North Island component of the LINZ active GPS control network, PositioNZ, consisting of 15 continuously tracking GPS receivers, was completed in June 2003. Subsequent work has

concentrated on developing the South Island component of the network. Eight of the planned 14 stations in the South Island are now operating, with another two stations planned to come online within the next few weeks. Several additional stations in the North and South Islands, and at Scott Base in Antarctica, are also being considered.

The South Island stations have been designed with the capacity to provide real-time one-second data, and the North Island stations are progressively being upgraded to also provide the capacity for delivering real-time one-second data. LINZ is currently considering a service which enables users to submit a GPS dataset to LINZ via the Internet and have this dataset automatically processed with data from PositioNZ stations to provide the user with NZGD2000 coordinates. Later in the year, LINZ will carry out trials using one-second data from a number of sites to automatically process the data in real time.

Geodetic survey control contractors and a number of other users are currently using data from the PositioNZ network, which can be accessed through the LINZ website at www.linz.govt.nz/positionz. Although data from this network is not currently recommended for origin purposes on cadastral surveys, LINZ is investigating how data from the PositioNZ stations can be used for cadastral surveys in the future.

For more information see www.linz.govt.nz/positionz

Torrenstalk Replaced By New LINZ Publication

This June edition of *Torrenstalk* is the last in the current format. As part of a review to ensure we communicate effectively to our customers, Land Information New Zealand has decided to include survey and title regulatory information in our new monthly newsletter, *Landwrap*.

Landwrap, launched in May, brings together all the authoritative news and information survey and title customers need to know about LINZ, Landonline updates, and survey and title processing. In the future, it will also include the technical advice and national rulings previously supplied by *Torrenstalk*.

Landwrap is published monthly by email. A paper version is also available from the counters of LINZ’s Processing Centres. As well as replacing *Torrenstalk*, it has replaced both the *Survey and Title* newsletter and the email newsletter, *LUCIE*.

Landwrap will supply you with the same advice and rulings as *Torrenstalk*, but more frequently and in a format that lets you search for the information that most interests you.

Receiving *Landwrap*

You may already have received *Landwrap*. The first edition was published in late May. If you have not, and you would like to continue receiving news on survey and title information from LINZ, you can sign up for *Landwrap*:

- on the Landonline website www.landonline.govt.nz – there is a link to the newsletter from the home page
- by calling 0800 665 463 and selecting option 6, general enquiries
- or by filling out the form on the back of this issue of *Torrenstalk* and returning it by mail to LINZ.

RGL Rulings



This section contains rulings and decisions of the Registrar-General of Land arising from appeals, legal opinions and practice issues agreed to by all Senior Advisers Regulatory (Titles).

A principal aim has been standardisation of interpretation and practice nationwide.

The information is applicable in all LINZ offices.

Robbie Muir

Registrar-General of Land

1. Cancellation of Settlement Under the Joint Family Homes Act 1964

From time to time, landowners who hold property as joint tenants seek to alter the nature of their co-ownership by transferring the land to themselves as tenants in common. This can be problematic where land is settled under the Joint Family Homes Act 1964 ("JFHA"), as conversion to a tenancy in common is fundamentally at odds with the nature and purpose of a Joint Family Home ("JFH") settlement. The JFHA creates a joint tenancy on settlement and provides for no other form of co-ownership by the spouses.

If the owners of a settled property wish to be registered as tenants in common, the orthodox procedure is to apply for cancellation pursuant to section 10(1)(a) of the JFHA. This has the effect of cancelling the settlement and vesting the land in the applicants as tenants in common in equal shares. Because a transfer by the owners to themselves as tenants in common does not explicitly trigger the cancellation process under the JFHA, LINZ has traditionally insisted upon the use of the statutory application procedure.

In the light of feedback received on these matters, LINZ has recently reviewed its approach. It has been decided that, although the application for cancellation procedure is the preferred approach, transfers to tenants in common will be accepted for registration and treated as having the same effect. It is important that practitioners are aware that such transfers will operate to cancel a JFH in these circumstances, and advise their clients accordingly.

A much less common scenario arises where the owners of a JFH transfer the property to themselves as joint tenants, say, for the

purpose of creating a land covenant. In these circumstances, to avoid any confusion, the transfer should include a statement to the effect that the JFH settlement is to continue, if that is the intention of the owners.

2. Application to Deposit a Redevelopment Plan – Execution Under Section 44(4)(a) of the Unit Titles Act 1972

A LINZ customer has recently sought clarification over the question of who may sign the application to deposit a plan of redevelopment under section 44 of the Unit Titles Act 1972 ("UTA").

Section 44(4)(a) and (b) govern the requirements and read as follows:

"(4) A plan of redevelopment shall not be deposited unless—

- (a) The application is made by the sole proprietor of the units, or by the proprietors of all the units pursuant to their unanimous resolution; and
- (b) Every person who is entitled as mortgagee by virtue of any registered mortgage in respect of any unit affected by the redevelopment, and every caveator who claims any estate or interest in any unit affected by the redevelopment (being a caveator whose caveat was lodged with the Registrar before the deposit of the plan of redevelopment) has consented in writing to the redevelopment."

It is clear that the application must be made by the registered proprietor or the registered proprietors (if there are more than one) of the units. The question is whether all the registered proprietors are required to individually sign or whether the body

corporate is authorised to execute under seal pursuant to the mandatory unanimous resolution of the registered proprietors.

Section 44(4)(a) UTA is not specific about the mode of execution of the application, only that it has to be "made" by the registered proprietor(s).

However, an examination of the UTA reveals that the body corporate has limited power when it comes to execution of documents and generally this is confined to transactions relating to the common property (see, for example, section 17). It appears as though the only occasions where the body corporate may execute under seal is where the legislation permits this explicitly. That it has not done so in this case is a clear indication that the registered proprietors of the units must not only make the application, but they must also sign it.

Accordingly, an application pursuant to section 44(4)(a) of the UTA to deposit a plan of redevelopment must be signed by all of the registered proprietors.

3. Mortgagee Consent Requirements for Lots Vested Upon Subdivision

Section 224(b)(i) Resource Management Act 1991 ("RMA") reads:

"224 Restrictions upon deposit of survey plan

No survey plan shall be deposited under the Land Transfer Act 1952 or with the Registrar of Deeds for the purposes of section 11(1)(a) unless—

- (b) Where land shown on the survey plan will vest in the Crown or a territorial authority, there is endorsed on the survey plan or

deposited with the District Land Registrar or Registrar of Deeds, written consent to the subdivision given by—

(i) In the case of land subject to the Land Transfer Act 1952, every registered proprietor of an interest [including any encumbrance, in] the land;”

The above provision has to be read in conjunction with sections 238 and 239 of the RMA, which operate to terminate registered interests such as easements upon the deposit of the survey plan.

Because sections 224(b)(i) and 238 or 239 RMA combine to clear easements from the servient tenement, the consent of the registered proprietor of the dominant tenement is required. When that dominant tenement is subject to a mortgage the mortgagee is also the “registered proprietor of an interest ... in the land” affected.

This is consistent with the rules that apply under section 90E(3)(c) of the Land Transfer Act 1952 (“LTA”) where an easement is surrendered by the owner of the dominant tenement. If the surrender of an easement must be consented to by any mortgagee of the dominant tenement, it is logical to interpret section 224(b)(i) RMA as requiring that same consent if the easement is terminated by sections 238 or 239 of the RMA.

4. Variation of Priority Amount – Execution Requirements

A practitioner has recently sought clarification as to whether a Mortgage Variation Instrument that varies the priority amount must be executed by both the mortgagor and the mortgagee.

Section 80A(2) of the Property Law Act 1952 permits a mortgage to specify a maximum amount up to which advances made under the mortgage shall rank in priority to any subsequent mortgage. This amount is commonly called the “priority amount” or “priority sum”. By contrast, the “amount secured” by the mortgage is the amount owing at any particular time, the repayment of which is secured by the registered mortgage. This amount may or may not be the same as the priority amount at any particular time.

The phrases “amount secured” and “priority amount” are used distinctly from one another in the legislation and are clearly not synonymous.

The standard variation forms provide options to specify an increase or reduction in the amount secured, or to change the details of some existing clause in the mortgage to substitute a different priority amount. When the parties elect to change the details of an existing clause they are bound by the

provisions of s102(3) of the Land Transfer Act 1952, which require both the mortgagor and the mortgagee to execute.

The exceptions in s102(3) (which require execution by the mortgagor only in the case of an increase in the amount secured, or by the mortgagee only in the case of a reduction in that amount) do not apply where the priority amount is to be varied.

Accordingly, to comply with s102(3), a Mortgage Variation Instrument varying a “priority amount” clause in a mortgage must be executed by both the mortgagor and the mortgagee.

5. Procedure for Depositing Powers of Attorney

A power of attorney intended for use on a national basis may be lodged for deposit in any LINZ processing centre. With the advent of Landonline, it is no longer necessary to lodge a separate copy in each office. This has the advantage of allowing one unique reference number to be allocated, which is of particular benefit to banks and other organisations operating on a national level.

Practitioners are reminded that while it is acceptable to deposit a copy of a power of attorney in lieu of the original, the original document must be produced for sighting in a LINZ office.

e-dealing Review Programme Enters Second Year

The *e-dealing* compliance review programme has been in place for one year, and the Registrar-General of Land reports that it is a straightforward process in most cases. At the core, law firms need systems in place to ensure they keep the documentation that supports the validity of their certifications.

“Initially, when the review began in April 2003, we needed to work more with conveyancers to ensure they were submitting all the documents required to comply with the review”, says Robbie Muir, Registrar-General of Land. “Now, after a year, it’s running smoothly in most cases. In general, law firms are clearer about all the documentation they need to supply.

“Two of the more commonly-forgotten supporting documents that we require are authority from mortgagees to support registration of a new mortgage, and a certificate of non-revocation to support evidence of a discharge by an attorney.

“Where my office does not receive all the required documentation, our goal is to help law firms identify and address any gaps in the documentation and ensure the correct processes are in place moving forward. The point of the review is to ensure the integrity of the *e-dealing* system.”

e-dealing conveyancers are reviewed annually, the first time after they have

completed 10 dealings. The benefits of the first review on *e-dealing* sign-up are that conveyancers can check their firm’s processes for retaining evidence in an easily-accessible format, and its policy for password protection and security.

More detailed information on the *e-dealing* compliance review is available online at www.landonline.govt.nz Go to the ‘Registered user’ page and click on the ‘Frequently Asked Questions’ link.

The New Zealand Law Society has prepared a set of guidelines for lawyers to follow to ensure compliance with the review process. This is available at www.lawyers.org.nz

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Profession: (eg Lawyer, Surveyor, Local government)

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