

# 11. BOUNDARIES AND PARCELS

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## 11. BOUNDARIES AND PARCELS

### 11.1. Parcels

The main purpose of the Surveyor General's Rules is to set appropriate standards of survey to adequately define land parcels to support a fully state guaranteed certificate of title and other forms of tenure.

The objective of Rule 19 is to address the deficiencies (area and dimension) in the survey and title system that is a consequence of the past practice of issuing title to residue parcels

Surveyors should now consider that excising a new parcel from an existing parcel does not leave a "balance parcel" instead, the subdivision is creating two or more new parcels, both capable of having title issued and being transferred, from the existing parcel.

This is particularly true for digital surveys where the surveyor must ensure that the survey does not create gaps or overlaps in the cadastral network. When creating new primary parcels, it is necessary to identify the existing parcels to be extinguished (thus ensuring no overlap of the underlying and new rights). This, in turn makes it necessary to ensure that the "hole" left in the cadastre by the extinguished parcel is completely filled by new primary parcels (thus ensuring no gaps in the cadastre). This means that all balance parcels must be accounted for. It is also important to note that roads, rivers and other hydro parcels are not "voids" in the cadastre but are also treated as parcels that have to comply with the same rules.

**Note:** Rule 19 requires surveyors to account for the whole of the parcel, not necessarily the whole of the title. Where a surveyor is subdividing an existing part parcel and there are other part parcels of the same appellation within the title that are not contiguous with the portion under survey then these do not have to be accounted for.

In applying Rule 19 to digital surveys the following criteria will apply:

Under Rule 19(2A) the survey must account for all balance parcels in all cases. However in the case of marginal strip, railway, road, lake, river, stream, sea or any balance parcels created under the Public Works Act 1981 the balance parcels do not need to be fully dimensioned.

#### Class I Surveys

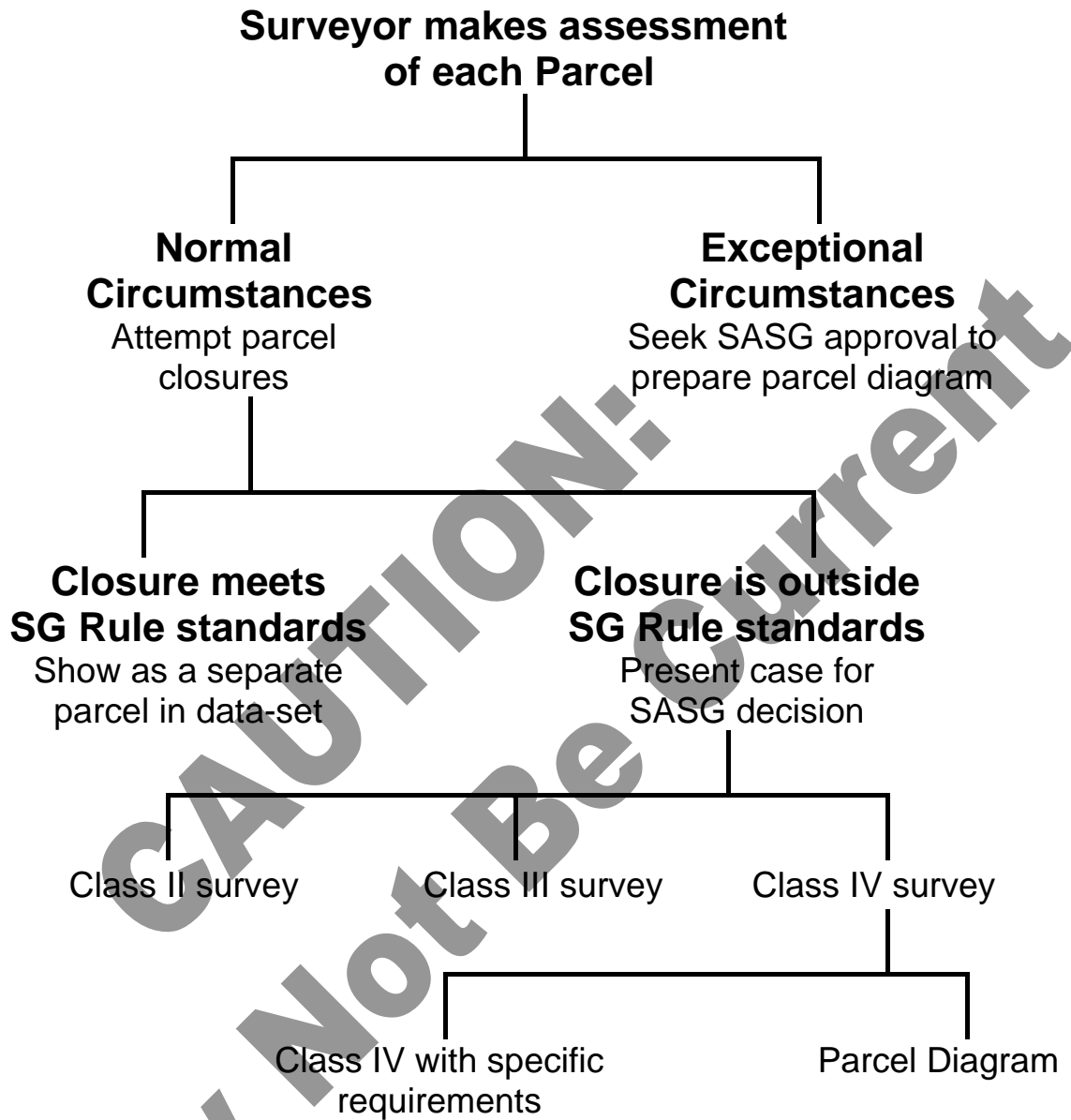
- All aspects of survey definition standards for the parcels including accuracy tolerances are to be met, however Rule 26(3) may apply or the Senior Advisor to the Surveyor-General may approve a proposal pursuant to Rule 44 before the CSD concerned is submitted.
- Where Rule 19(2A) does not apply, the parcels should be fully dimensioned.

### **Class II and III Surveys**

- All aspects of survey definition standards for the parcels including accuracy tolerances are to be met unless the Senior Advisor to the Surveyor-General has approved a proposal pursuant to Rule 44 before the CSD concerned is submitted.
- Where Rule 19(2A) does not apply, the parcels should be fully dimensioned except where a dispensation under Rule 44 permits an undimensioned parcel diagram.

**CAUTION:  
May Not Be Current**

The following diagram illustrates the decision making process in determining requirements for class of survey required.



**Generally the following criteria may be used in justifying the use of a Class IV survey:**

- the potential value of the land subsequent to the subdivision versus the cost of full survey
- the purpose of the survey and the proposed land use (i.e. will the survey result in more intensive land use?).
- that the tenure does not warrant the same expectation of accuracy
- the adequacy of existing survey data
- misclosures outside the limits of error that are within the regulations or rules applicable at the time the underlying survey was completed
- that parcel boundaries are comprised of a significant amount of natural boundary and it is unreasonable in the circumstances to require re-fixing
- physical difficulties of surveying the land being subdivided

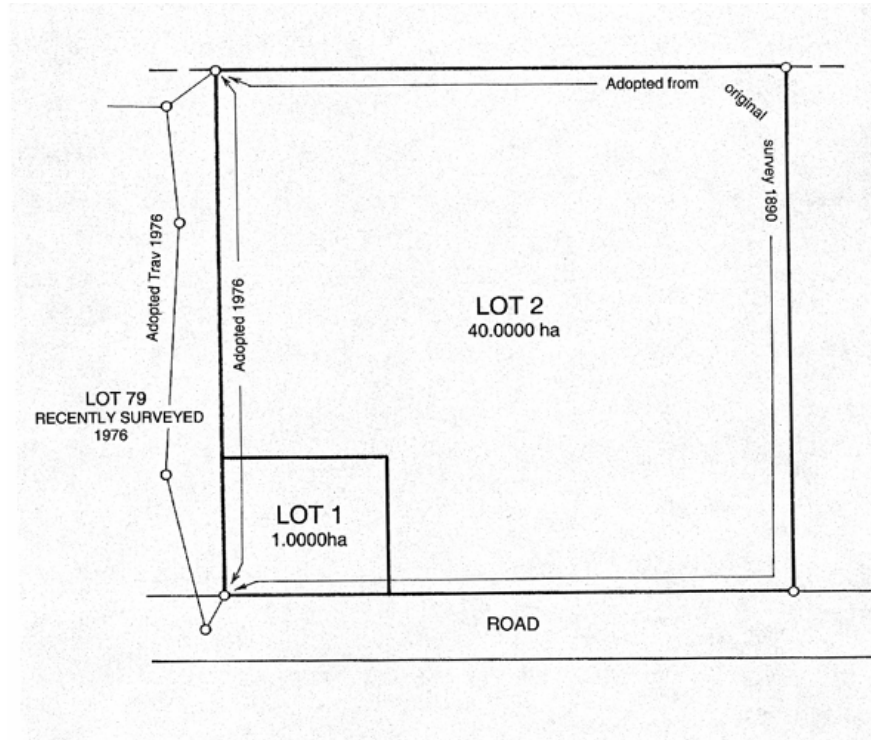
With high value land it should not be assumed that the Senior Advisor to the Surveyor-General will decide that a Class IV survey is appropriate.

**Generally the following criteria will determine the use of a Parcel Diagram (Exceptional circumstances)**

- The purpose of the survey and the proposed land use.
- That the underlying title is limited as to parcels or is an interim title (Hawke's Bay) and the owner has no desire to remove these limitations from the balance title.
- That parcel boundaries are comprised of a significant amount of natural boundary and it is unreasonable in the circumstances to require re-fixing.
- That parent parcel dimensions cannot be determined in full from the current cadastral records.
- Physical difficulties of the land being subdivided.
- The cost of survey relative to the land value of the parcel.

The following examples are indicative only to illustrate the general approach to be taken in following the decision tree and in dealing with Rule 19.

**Normal circumstance.**

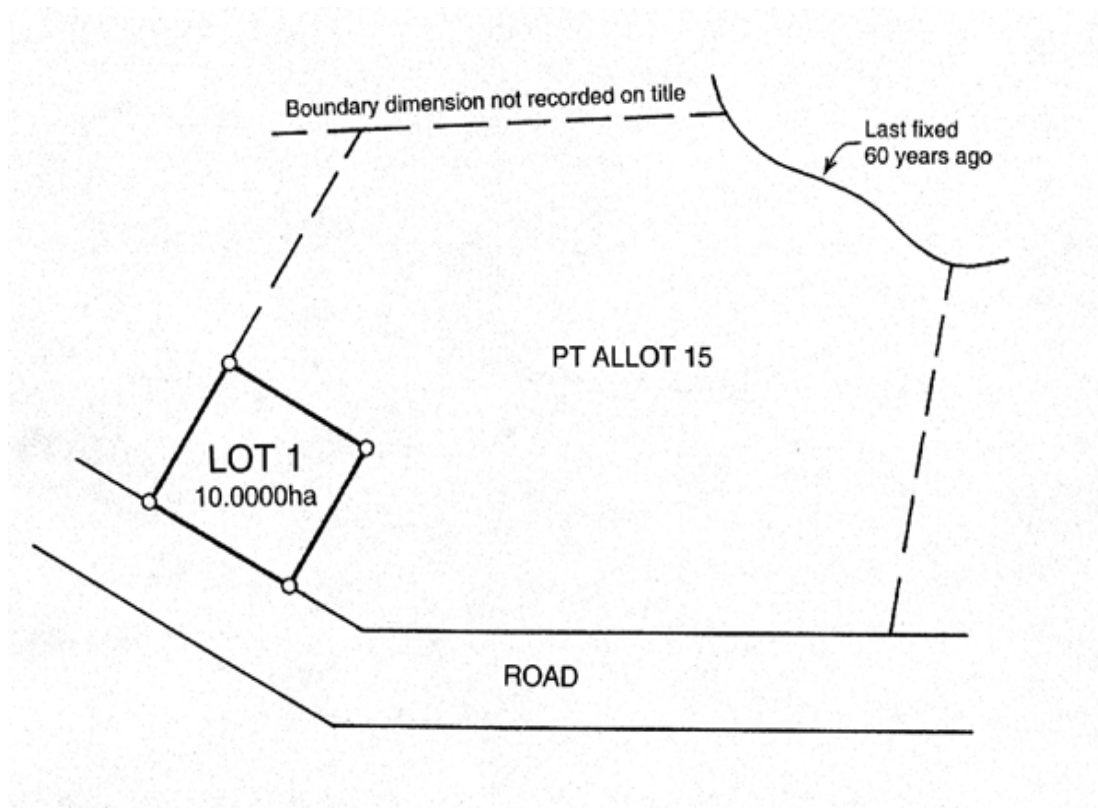


- Lot 1 is surveyed to Class I or II standards.

A close is attempted for Lot 2, adopting the latest data available. If the misclose is within the accuracy necessary to meet the requirements of Rule 26 (including 26(3)), then the parcel is to be submitted as part of the digital dataset in the normal manner.

- If the parcel does not close within the required accuracy tolerances then, using the described criteria, a case is presented to the Senior Advisor to the Surveyor General for a decision as to the appropriate class and if Class IV, any specific requirements.

This decision must be sought before the CSD is submitted.

**Exceptional circumstance.**

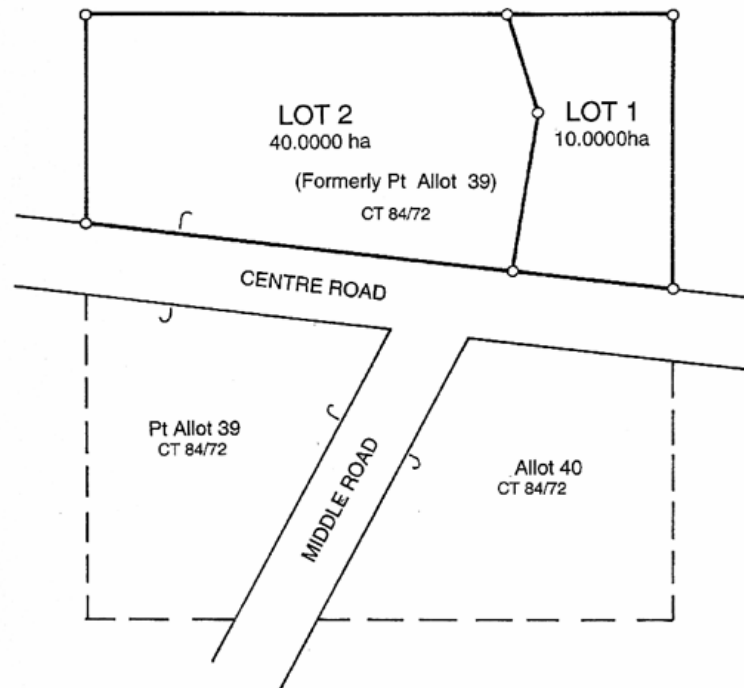
- The title for Allotment 15 is limited as to parcels, the northern dimension is not known and the client wishes to create a small block of 10ha (without limitation) and the balance of the land in a limited title.
- In this instance the Senior Advisor to the Surveyor-General may accept a Parcel Diagram for the residue land due to the missing boundary data.
- This parcel can be digitally adopted from the spatial information held in **Landonline**. Any deficiencies in title, area, accuracy, or missing dimensions should be added manually as annotations to the title sheets of the digital plans.

e.g.

- “*Limited as to Parcels*”,
- “*Area not determined by Survey*”,

### Dealing with the Parcel

Where a title is comprised of a number of parts of the same allotment, that are severed, the surveyor has to deal with the entire parcel being subdivided and not necessarily the other parcels in the title. The exception to this is if the individual parts do not have separately identified areas and the area of the balance parcel can not be deduced (as is required with a Parcel Diagram).



- In this example CT 84/72 is made up of parts of Allot 39 and Allot 40 in three separate parcels.
- Lot 1 is being sold to an adjoining owner.
- In accordance with Rule 19 the entire parcel north of Centre Road has to be dealt with.
- There is no requirement to deal with the two parcels on the southern side of Centre Road. The exception would be if the three parcels comprised in CT 84/72 had a single area, and the area of Lot 2 was to be deduced. The balance parcels would be shown as Lots 2, 3 and 4, with one title having a composite area issuing for all three lots.
- Surveyors are advised to consult with the Senior Advisor to the Surveyor General where there is any doubt as to what is required for compliance with Rule 19.

Further examples are contained in Section 6 (*Data Lodgement Format*)

## 11.2. Unique Appellations

1. The objective of Rule 20 is to ensure a unique appellation or unique identifier identifies all parcels of land irrespective of the proposed use of the parcel (and the survey standard supporting the parcel dimensions).
2. This rule will apply to new parcels defined on legalisation datasets, which are now required to be identified by a section number (This provision does not apply to the balance parcel where the purpose of the action is an acquisition under the Public Works Act). The new sections and their appellations will only come into being when the gazette action has been completed, which will be some time after the dataset is approved. The sections will not show in the current parcel layer of *Landonline* until then. They will however be viewable if the approved parcel layer is made visible.

**CAUTION:**  
**May Not Be Current**

### **11.3. Definition of Diagram on Transfer Titles.**

#### **11.3.1. Unpegged Boundaries**

When defining unsurveyed boundaries originating from a “Diagram on Transfer” the documentary dimensions of the first parcel transferred out of the parent title are the principle evidence for definition. This is because the original owner forfeited occupation rights to the portion being transferred by dispensing with survey. In some cases a definition based on long standing occupation may be acceptable; however this will require prior consultation with the Help Desk Technical Advisor.

#### **11.3.2. Pegged Boundaries**

Some transfer diagrams contain a note: “*Boundaries pegged*” and are signed by a Registered Surveyor. In this circumstance, if there is no record of the location of these marks or occupation evidence, the procedure outlined in 11.3.1 should be used.

In other cases however, there is survey information included on the diagram, and this should be used to reproduce the boundaries as pegged. Surveyors should therefore always check transfer documents to obtain any definition information they may contain.

## 11.4. Easements

### 11.4.1. Need for a Dataset

1. Unless otherwise allowed for specifically in legislation, easements are to be presented in a CSD. The practice of creating an easement on a diagram in terms of Sec 167(1) Land Transfer Act 1952 is not appropriate.
2. A computed dataset will normally be used where Section 167 (1) applies. (refer to *Dispensations*)

### 11.4.2. Easement Shape

1. Any new easement is to be a fully dimensioned parcel (an Easement Area and Right of way area - refer to definitions in Surveyor General's Rule 2
2. In some land districts, Line and Centre Line easements have been permitted. The creation of these types of easements is no longer permitted.

### 11.4.3. Ground Monumentation

#### 11.4.3.1. Principles

The need to survey and the need to place ground monumentation for easements is dependent on:

- the type of right being created
  - the quality of the survey definition of the underlying parcel
1. The type of right being created:
    - In the instance where a land owner grants a right to another to share the occupancy of the surface of the land involved, there is a need to demarcate the extent of this occupancy. An example is a right of way.
    - Where the owner retains the right to occupy the surface with limitations, there is no need to demarcate its extent. Examples are service easements such as water or electricity.

Note that whilst the Crown does not require pegging, the surveyor may determine that it is in the interests of either party to peg and do so.

2. The quality of the survey definition of the underlying parcel:  
Where the land to be subject to an easement (other than ROW):
  - has poor survey definition or is limited as to parcels; and
  - the easement traverses more than one title then,whilst the easement does not have to be pegged, there is a need to define the position of the service/infrastructure in terms of the local cadastre and show the survey ties to the as built services on an occupation diagram to be attached as a supporting document to the CSD.

In the future, when the survey definition is upgraded (i.e. through subdivision) the surveyor is then able to, if necessary, recalculate the easement in terms of the latest definition. Examples where this may apply include petrochemical pipeline or telecommunication cable easements.

### **11.4.3.2. Rights of Way Monumentation**

1. Class I Surveys  
Peripheral boundaries of Rights of Way must be monumented as for a primary parcel boundary. The Senior Advisor to the Surveyor-General may allow dispensations in some Class I situations.
2. Class II & III surveys.  
One side of parallel sided rights-of-way must be pegged at each angle or terminal points (consistently on the same side where possible), or the centre line marked with metal marks. Irregular width Rights-of-Way must be pegged on both sides. If pegging is impractical then Class IV (Rule 44) may apply in which case, an application for dispensation should be made before survey to the Senior Advisor to the Surveyor-General.
3. Class IV Surveys.  
Any variance with Class I, II or III pegging requirements that are agreed with the Senior Advisor to the Surveyor-General.
4. Intersection Pegging  
Intersections with parcel boundaries are to be pegged in Class I surveys on both sides. In Class II and III, a minimum of one side only is to be pegged.

### **11.4.3.3. Easements (other than R'sOW) and Land Covenant Monumentation**

Easements (e.g. water, communication, electricity) and covenants (e.g. restrictive, height) do not have to be monumented. The survey fix of the service and its relationship to easement boundaries does not have to be included in the dataset (it is the surveyor's responsibility to ensure that the easement as dimensioned in the CSD, encompasses the service). In these circumstances, for surveys of easements or covenants only, the dataset is Computed.

### **11.4.4. Easement Notation**

1. For new and existing easements (to be retained), ensure that each area (i.e. each separately defined portion of an easement) is identified with a letter. In the case where an easement encompasses the whole of a parcel, the parcel appellation will suffice.
2. Note that the purpose of an easement is not required to be stated in schedules that are provided as images. The purpose is however required in a memorandum of easements. Such memoranda are also supplied as an image of a schedule and attached as a supporting document.

### **11.4.5. Intersection of Easements**

Where the underlying parcel is being subdivided and new easements overlap existing easements (that are to be retained), the overlap is to be separately and uniquely identified as easement parcels and dimensioned.

### 11.4.6. Easement Dimensions

1. All new easements are to be fully dimensioned in the dataset (and will thus appear on the non-primary parcel sheet of the digital plan), including the intersection with existing easements.
2. Dimensions are to be shown where existing easements intersect with parcel boundaries.

### 11.4.7. New Easement Schedule

1. Where an easement is a requirement of a resource consent, it is to be tabulated in a schedule headed *Memorandum of Easement*. If the easement is not compulsory then it is to be tabulated in a schedule headed *Proposed Easement*. These schedules will be attached to the CSD as an image of a supporting document.
2. The format for the memorandum or schedule to be shown on an image and attached to the eSurvey as a supporting document is as follows:

MEMORANDUM OF EASEMENT <i>(when a condition of the Resource Consent)</i> or PROPOSED EASEMENT <i>(when the easement is not compulsory)</i>			
Purpose	Shown	Servient Tenement	Dominant Tenement (or Grantee)

Ensure the schedule describes the following:

- Purpose

The purpose is to be specific. General terms such as services are not acceptable. Refer to Schedule 4 of the Land Transfer Regulations 2002 for the common classes of easements, the rights and powers implied in those easements and the rights and powers implied in all classes of easements.

- Shown

The letter or, in the case where the whole of the lot is subject, then the appellation.

- Servient Tenement

The servient tenement appellation must be correctly shown. When an easement crosses a title which comprises more than one surveyed allotment the servient tenement is deemed to consist of only those allotments which are crossed, not the whole title. The reason is that should the title be subdivided, the easement will only dominate the newly created parcel/s which it crosses.

- Dominant Tenement / Grantee

Note:

- The dominant tenement appellation must be correctly shown. i.e. the full description of the parcels which comprise the complete title is required. The reason is that should the title be subdivided rights will be brought

down on all parcels of the former title regardless of the fact that they may not be physically related to the easement.

- the grantee must be a legal entity.

#### 11.4.8. Existing Subject Easements to be Retained

Ensure that all existing subject easements to be retained are fully dimensioned in the dataset (and thus appear on the non-primary parcel sheet of the digital plan):

1. All existing easements must be uniquely identified:

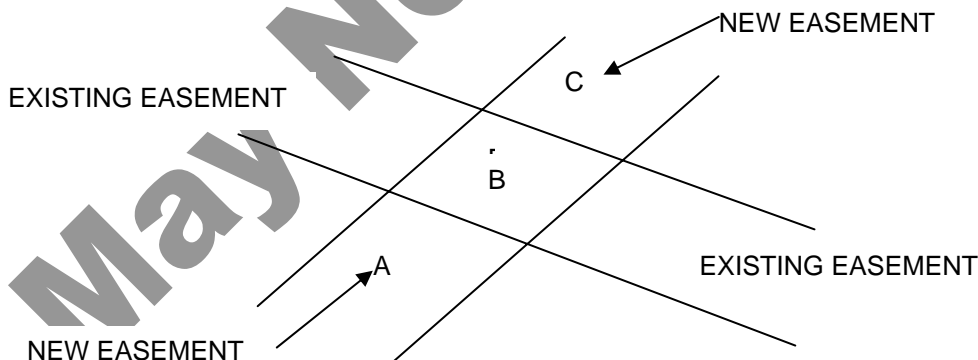
- with an appellation in terms of the new survey;
- spatially by being fully dimensioned with boundary lines identified as secondary parcel boundaries;
- and in a schedule supplied as an image of a supporting document formatted as per the following example:

EXISTING EASEMENT(S)			
Purpose	Shown	Servient Tenement	Creating Document

Note that existing centreline easements can be identified as a-b-c-d- as for a line easement.

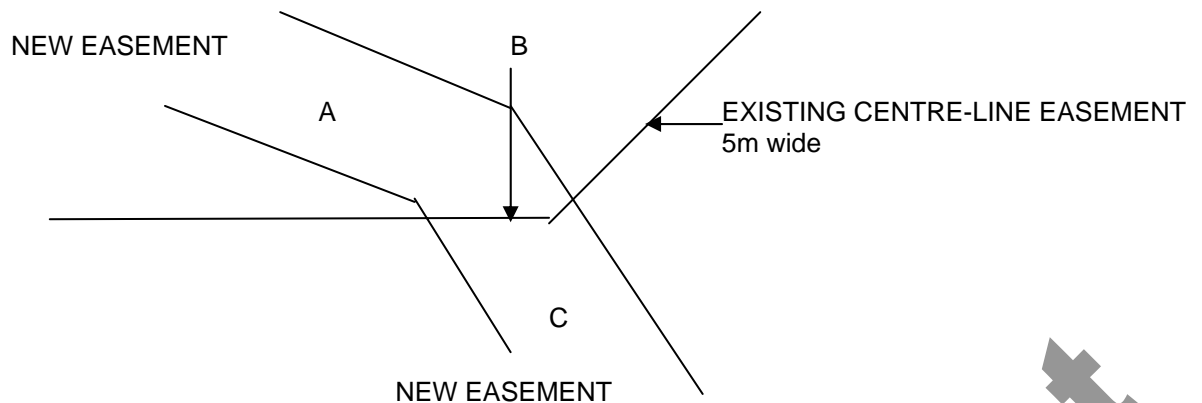
2. The survey or document that defines the easement dimensions must be referenced in the schedule.
3. Where easements are severed by new boundaries or the boundary definition is altered, or where new easements intersect existing easements, new intersections to the easement must be calculated in terms of the parent information (i.e. if centreline, the intersection should be to the centreline; if a parcel, to both sides).

#### Example where all easements are polygon parcels



Easements A, B and C are fully dimensioned

### Example where the easements are of different parcel types



The new easement is shown as A and C and the easement parcels fully dimensioned.

The existing easement is shown as B and only the line is dimensioned.

#### 11.4.9. Existing Appurtenant Easements

Existing appurtenant easements are not shown (the exception being a unit development).

#### 11.4.10. Instruments Creating Easements

Section 90 Land Transfer Act 1952 (as amended by the Land Transfer (Computer Register and Electronic Lodgement) Amendment Act 2002) provides that a “transfer instrument” may be used for transferring land or creating easements. This is equivalent to a memorandum of transfer.

Section 90A Land Transfer Act provides that an “easement instrument” may also be used for creating or surrendering easements. This replaces the easement certificate procedure.

The sections dealing with easement certificates have been repealed. Any uncreated easements in registered easement certificates are deemed to be created.

Under section 90B easements can be created or surrendered upon the deposit of a plan. In the case of an eSurvey, this will be the digital title plan.

Under section 90E of the Land Transfer Act it is possible for easements to be created even where the dominant and servient tenements are in common ownership.

#### 11.4.11. Uncreated Easements

The following notes are general guidelines. Legal advice should always be sought to confirm specific issues and the local authority’s intention. Such issues are to be outlined in the survey report.

## 1. Non-Conditional Easements

- a) If a non-conditional easement shown on an existing deposited plan is not intended to be created (brought forward), and no instrument (including an easement certificate) has been registered, it may be disregarded when a new dataset is submitted in respect of the same land
- b) If the easement is to be created on deposit of the new digital title plan, then it must be specified in an image of a schedule of existing easements attached as a supporting document and included in the new dataset (no creating document number can be shown)

## 2. Conditional Easements

- a) If a conditional easement shown on an existing deposited plan is not intended to be created (brought forward), the condition should be cancelled under section 243(f)(ii) of the Resource Management Act 1991 before the new digital title plan is deposited. The easement would therefore not have to be included in the new dataset.
- b) If the easement is to be created on deposit of the new digital title plan, then it should be specified in a schedule of existing easements attached as a supporting document and included in the new dataset (no creating document number can be shown)

### **11.4.12. Consents**

#### **11.4.12.1. Right of Way**

1. Approval of a ROW is pursuant to Section 223 of the Resource Management Act 1991 as part of a subdivision or Sec 348 Local Government Act 1974 if not part of a subdivision.
2. Whenever Councils certify their approval of digital plans/datasets on which private ways and private roads are depicted, the subdivision approval given pursuant to Section 223 will be accepted as an approval of the granting or reserving of rights of way over such private ways.
3. An easement dataset defining a right of way may have the associated digital title plan deposited whether or not it is endorsed with a consent pursuant to section 348 of the Local Government Act 1974.
4. The Crown is not bound by Section 348 Local Government Act 1974 but may elect to respect its requirements.

#### **11.4.12.2. Non Right of Way Easements and Covenants**

These do not require local authority approval.

#### **11.4.12.3. Application of 223 Certificate (Resource Management Act 1991)**

The Local Authority may impose a condition requiring easements in relation to any land whether part of the subdivided land or not.

#### **11.4.13. Access Strips ( Sec 237B; Resource Management Act 1991)**

1. Access strips provide public access to or along any river, or lake or the coast or to any esplanade reserve or strip, other reserve or other land owned by the Crown or a local authority. Section 237(b) Resource Management Act 1991 sets out the provisions for access strips.
2. An access strip can not be imposed as a condition of a resource consent.
3. Survey and digital plan requirements for an access strip are the same as for a ROW.

#### **11.4.14. Access Strips (Pt IVA Land Transfer Act 1952)**

Secs 89A - 89E of the Act deals with access strips which were:

*“... in the opinion of the Registrar, laid off for the sole purpose of providing access from any of the allotments comprising the subdivision to an existing road or street...”*

In general, these sections of the Act apply to proposed road lines laid out on deposited plans or deeds plans to provide access to the proposed lots. For various reasons, the roads have not been formally recognised as being legal and the land remains in the parent title of the subdivision.

Past practice has been to record as a memorial on a Certificate of Title the fact that the subject land has legal access in terms of Part IVA of the Land Transfer Act 1952.

It is appropriate that the status of parcels in relation to legal access should be recorded as an annotation on the face of the digital plan. This should also be referred to in the survey report.

#### **11.4.15. Crown Land (no title)**

1. Easements over Crown land (no title) were normally shown on SO datasets although an LT dataset can be used. The easement is then memorialised against a Computer Interest Register which acts in the same manner as a title for the land would. Consent is by the Commissioner of Crown Lands (or his/her delegate on behalf of HM the Queen as owner).
2. In cases where easements cross both land transfer land and very small portions of Crown Land such as riverbeds and water races the RGL, on application, may accept the inclusion of that Crown land in the LT dataset.

#### **11.4.16. Easements raised by the Crown and exempt from Pt XI Land Transfer Act 1952**

Statutes, which enable the Crown to demonstrate the location of an easement by way of a diagram or plan, are:

- Land Act 1948, Sec 60B, Pipeline easements
- Housing Act 1955, Secs 25 to 29 but in particular Sec 26, Pipeline certificates
- Irrigation Schemes Act 1990, Sec 4.

In the interests of all parties it is recommended that these easements are shown on a Land Transfer dataset.

#### **11.4.17. Irrigation Schemes Act 1990 (Sec 4)**

Irrigation schemes are shown on datasets in terms of their existing fix.

- Survey is necessary only where:
  - new parcel boundaries are created and an accurate fix of the easement is required to demonstrate its relationship to those boundaries or
  - when a proposed easement commences or terminates at a water race of this type.
  - when a proposed easement intersects with a water race. Here the race is fixed by survey to establish an accurate relationship.
- 1. Where the races cross land registered under the Land Transfer Act the easement is recorded against the appropriate certificate of title.
- 2. Where the race crosses Crown land the easement is recorded in *Landonline*.

#### **11.4.18. Land recorded in Proclamations & Gazette Notices**

When an easement is registered against land recorded in a proclamation or a gazette notice a Computer Interest Register will be issued for that land).

#### **11.4.19. Legal Roads**

Certificates of title are not issued for legal roads and no easement can therefore be registered (Conveyancing Bulletin Vol 4 p36).

#### **11.4.20. Marginal Strips**

1. An easement may be granted over a marginal strip under the Conservation Act 1987.
2. The easement is defined by survey in the normal manner (i.e. depending whether it is a ROW or other easement type.).
3. The dataset will show the portion of easement over the marginal strip as a separate parcel with dimensions (normally 20.00 wide from the present position of the bank which may not coincide with the CT position). This separate parcel will have a letter to identify it.

#### **Note:**

- As a marginal strip is deemed to be excluded from the title from which it is reserved, the easement would not be recorded on that title (unless it is appurtenant thereto), although the digital title diagram and area would indicate the inclusion of the marginal strip.
- The easement will be recorded as a Computer Interest Register as provided in section 17ZA(2) Conservation Act 1987 and amended by Sec 9 Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002.

### 11.4.21. Party Walls

1. A party wall easement is a right that is defined by dimension.
2. Where a party wall easement is to be created, the dimensions may be computed.
3. Where the party wall is the purpose of the survey, a computed dataset is sufficient.
4. Where as part of a subdivision, the end of a party wall coincides with an angle in a boundary with the wall being visible on the outside of the building, the end parts of the wall may be taken as the boundary monuments. (Note: a description of the wall and its relationship to the boundary angle is to be included in the dataset in the form of an image of an occupation diagram which will be incorporated in the digital survey plan). Where the wall is not visible, another form of monumentation is necessary.
5. Unless specified, a party wall easement is not restricted in height and hence a wall cross section in the digital title plan is not necessary. If the easement is defined by height, the height is taken to be above ground level, not MSL. Note: a cross section may be necessary where the height changes. This will normally take the form of an image of a supporting document (plan graphic) which will be incorporated in the digital plans.
6. Where survey structured survey information (traverse marks and observations) does not form part of the CSD, any existing physical wall is to be shown on an image of an occupation diagram with its width and relationship to the primary parcel boundary and computed easement shown.

### 11.4.22. Public Works Act 1981 Easements

1. The Crown or Territorial Authorities may acquire or grant easements by way of the gazettal process (Sec 28. “Particular estates in land may be acquired or taken”, Sec 48. “Easements may be granted over land held for public work”).
2. Datasets prepared for this purpose should comply with the legalisation dataset format.

### 11.4.23. Walkways

1. The New Zealand Walkways Act 1990 establishes the right to declare or proclaim land as a Walkway.
2. Where private land is involved, the walkway is to be shown in a Land Transfer dataset for the purposes of a Lease or as an Easement in Gross (Her Majesty the Queen being the Grantee). Note where a lease is for 35 years or longer a subdivision consent is required.
3. Where public land is involved the walkway is to be shown on a Legalisation Dataset.

4. Survey definition is similar as for rights of way.
5. The survey description is to read:  
*Walkway to be established over Lot ..... DP .....*
6. Walkways are required to be shown in the same manner as easement and covenants.
7. The following schedule is to be attached to the CSD, in image form, as a supporting document:

LAND FOR WALKWAY PURSUANT TO SECTION 6 or 8 NEW ZEALAND WALKWAYS ACT 1990		
Shown	Servient Tenement	In favour of
A	Pt Lot 6 DP 152617	Her Majesty the Queen

#### 11.4.24. Waterways

1. Where the title boundary is the bank of a river and it is proposed to create an easement beyond (or between) the bank, the easement boundaries may be included in the dataset and dimensioned but the easement is not shown in a schedule. It may be given the appellation of:  
*Part bed of ..... River/Harbour*
2. Where a title exists for, or specifically includes the bed then it is to be included in the dataset as a normal easement.
3. Where the bed has no specific title and the presumption *ad medium filum* applies, an easement between opposite banks, by presumption also extends to meet at the stream middle-line. If an easement is to be depicted then the two separate easement parcels with separate identifiers will be required. (The difficulty with an *ad medium filum* stream is that the DLR has no title to register the easement against and no proof of ownership under the Land Transfer Act of the grantors right to create the easement).
4. Where *ad medium filum* does not apply (e.g. navigable or tidal etc) a single easement parcel is created with one identifier.

## 11.5. Natural boundaries (and Irregular boundaries)

### 11.5.1. Rule of Practice

1. It is a rule of practice that generally in the absence of special statutory authority, the Registrar-General of Land will not issue a certificate of title to land covered with water. In applying this rule, where a parcel is bounded by water, title will include only that land up to the waters edge (natural boundary).
2. Where a water course is fully contained within a title and ownership remains with the registered proprietor then there is no necessity to remove the water course from the title being subdivided, unless this is required under the Resource Management Act 1991.
3. A watercourse can be removed from the title by creating two new parcels (one to each bank) with a presumptive *ad medium filum* right to the centreline.
4. Where two parcels are separated by a river/stream (the bed is not dry) and there exists a presumptive right of ownership to the centreline, the two parcels and the river/stream bed can be combined into one Lot/Section in one title, i.e. the reverse of item 2 above can apply. If the title is to be subsequently subdivided, one survey dataset can be prepared to carry out both actions.

### 11.5.2. Accretion And Erosion

1. This doctrine of gradual and imperceptible addition to and eating away of land applies along the banks of navigable and non navigable rivers and streams, and along the seashore.
2. Where a title *limited as to parcels* is bounded by a natural boundary, the position of the bank at the time of survey to remove the limitation is considered the title boundary unless avulsion has occurred. If there has been avulsion then the limited title extends to the position of the natural boundary as it was when the limited title was issued. (Ref. Turner J in *Duncan v Aongatete Quarry Limited 222/57*, an unreported case from the Auckland Supreme Court).
3. When undertaking surveys involving moveable boundaries which may be affected by accretion and erosion the following process is strongly advised because each case must be assessed individually. No generic solution can be given because of the wide variety of factual evidence that arises.
  - (a) Investigate the title/s fully.
  - (b) Discuss with your client the options.
  - (c) Discuss with the LINZ Help Desk the total situation based on the clients instructions and any provided factual evidence.
4. Erosion is deemed to have been lost from the title and must be excluded from the title (Note however *Maori Land Datasets* in Section 6).
5. In the case of an accretion claim adjoining a river or stream, the digital plan is to show the title boundaries for the parcels on both banks and the current

position of both banks. If through meeting this or any other requirements outlined below irregular lines that do not form a current parcel boundary are required, this information will have to be shown on an image of a supporting diagram supplied as a plan graphic.

6. The digital plan prepared to support issue of a new title in terms of the accretion and erosion of the natural boundary must show:
  - the former and new positions of the natural boundary with the land between them labelled Accretion or Erosion, each with an area. The former boundary is added to the title sheets of the digital plan as a “CT” boundary. Erosion areas are created as separate parcels. Areas of accretion are to be identified by manual annotation on the title sheets of the digital plan.
  - legal description and CT reference for the parcel on the opposite bank to the accretion claim (manual annotation on digital plan). This must be added by manual annotation to the title sheets of the digital plan
  - in some cases there may be evidence that the bank position has not changed (e.g. river confined in a gorge) but the present fix disagrees with the underlying position of the bank, without accretion, erosion or avulsion having occurred. This indicates that the previous definition was inaccurate, and the surveyor may certify the present fix in the survey report as being a “better definition” without having to produce the declarations mentioned in item 11 below. In this case the underlying position is not shown in the dataset and there will be no “erosion” or “accretion” areas. The report must give full details and reasoning.
7. On Land Transfer and Maori land datasets the accreted areas should not be shown as separate parcels as the accretion assumes the appellation of the title to which it accretes. The area of accretion must be identified with a separate area by means of a manual annotation on the title sheets of the digital plan.
8. On Legalisation datasets, accreted areas are dealt with in isolation to the title and are created as separate parcels. Where accretion is not being claimed but there is a significant amount of land outside the title boundary, it should be defined as part of the dataset for future consideration as land capable of being claimed.
9. An accretion claim is to be supported by relevant detail in the survey report.
10. The Registrar General may require the claim to be supported by signed statements from independent parties or former owners and issue notices to adjoining owners, the Local Authority and the Regional Authority.
11. The surveyor may provide supporting evidence by obtaining statutory declarations which will be attached to the survey as images of supporting documents. A declaration should be made by an independent competent person having intimate knowledge of the area and stating:
  - the number of years that the declarant has known the subject area and
  - that the accretion has been gradual and not artificially induced or the result of sudden catastrophe and

- that the accretion is consolidated land and, in the case of a river, the present banks can be regarded as permanent and not liable to inundation in normal conditions.

12. When an accretion claim is made against land of the Crown subject to the Land Act, the assent of the Commissioner of Crown Lands should be provided.

For L.T. Datasets, the practice is for the RGL to notify the CCL as adjoining/affected land owner to seek his/her consent to the proposed action. There should be no additional action required of the surveyor.

13. Where an accretion claim is part of land under subdivision, it may be shown as part of the same dataset. Note, however, that if the accretion is unsuccessful, the dataset may not proceed to deposit.

14. A road may be extended by accretion but cannot be eroded.

15. The doctrine does not apply to a boundary that originally was not bounded by water i.e. was originally separated from the water by other land.

(Refer to Law for Surveyors, Book 5 for a more in depth discussion of Accretion and Erosion)

### **11.5.3. Adopted Natural Boundaries**

1. The position of natural boundaries can be adopted from previous survey fixes providing this fix approximates the present day position of the watercourse.
2. The surveyor must certify to this effect by reference in the survey report. This requirement applies to all datasets from which title can issue including survey, compiled and computed datasets.
3. Some earlier surveys established boundaries along the centreline of rivers or streams (i.e. the certificate of title expressly includes the bed of a watercourse up to the middle either by virtue of description or by delineation of the land on the plan). Here, the owner has been given an indefeasible title to a specific line. Such a boundary is considered to be a fixed boundary and not subject to the doctrine of accretion and erosion.

With the possible exception of Maori land, there are two options for the determining the extent of the new allotments.

- The boundary may be created along the watercourse bank thus excluding the river/ streambed from the new parcels. The new boundary takes on all the attributes of a natural boundary and is subject to accretion and erosion.

The dataset incorporates:

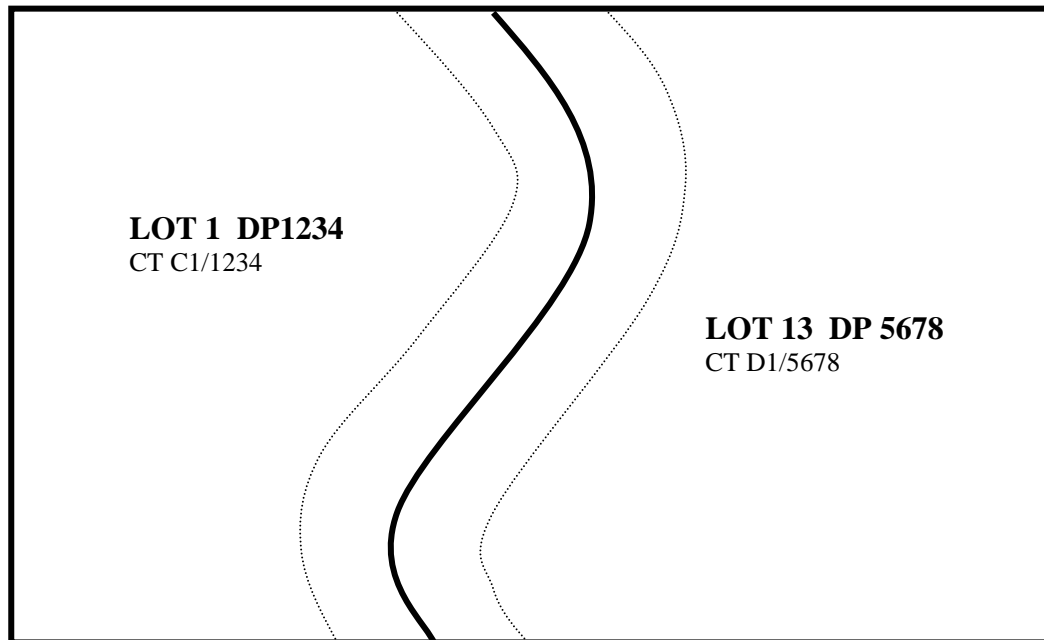
- A general note as a manual annotation on the title sheets of the digital plan and/or in the survey report: “Stream/river boundary produced from centreline offsets shown on SO/DP and established on the true left/right bank of the stream x metres wide”.
- An area for the part bed of the river annotated stream/river bed on the title sheet of the digital plan or on an image of plan graphic attached as a supporting document (and incorporated in the digital plans).

- The boundary of the subject CT manually included in the title sheets of the digital title as a CT boundary.
- The boundary is retained along the centre line of the watercourse. Here, the river may gradually move away from the course in which the middle line was originally fixed, but the title boundary will not move with it. Eventually the owner of the riparian right may be deprived of access to the river. The centre line is to be right-lined in terms of the underlying survey fix (i.e. scaled and protracted or by a similar process), with the source of the adoption identified in the survey report.

**CAUTION:**  
**May Not Be Current**

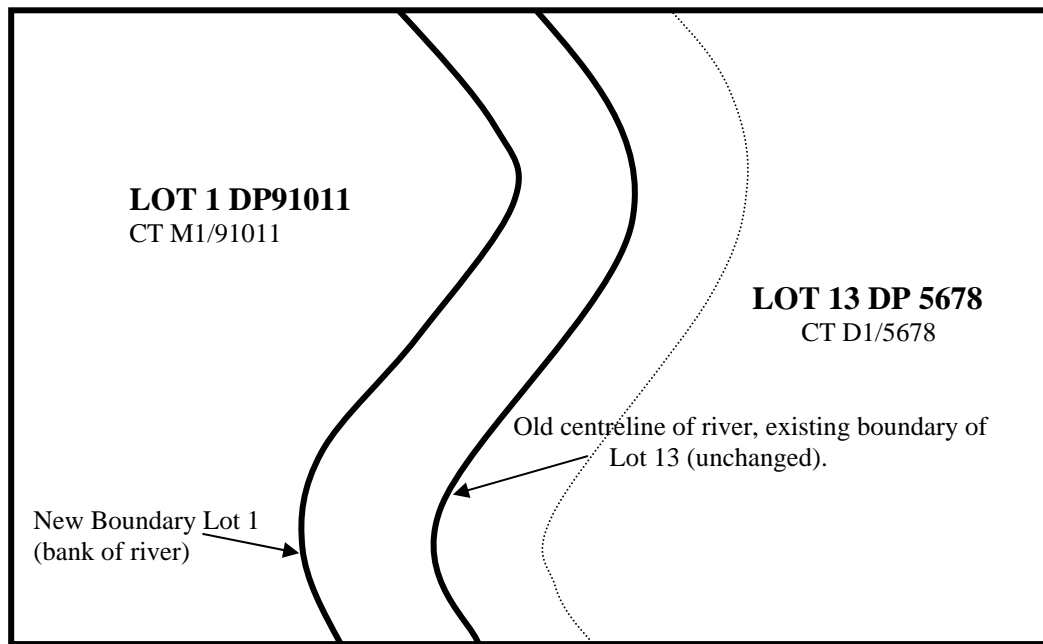
### 11.5.3.1. *Frequently Asked Questions*

Some frequently asked questions on adopted natural boundaries are as follows.  
E.g.



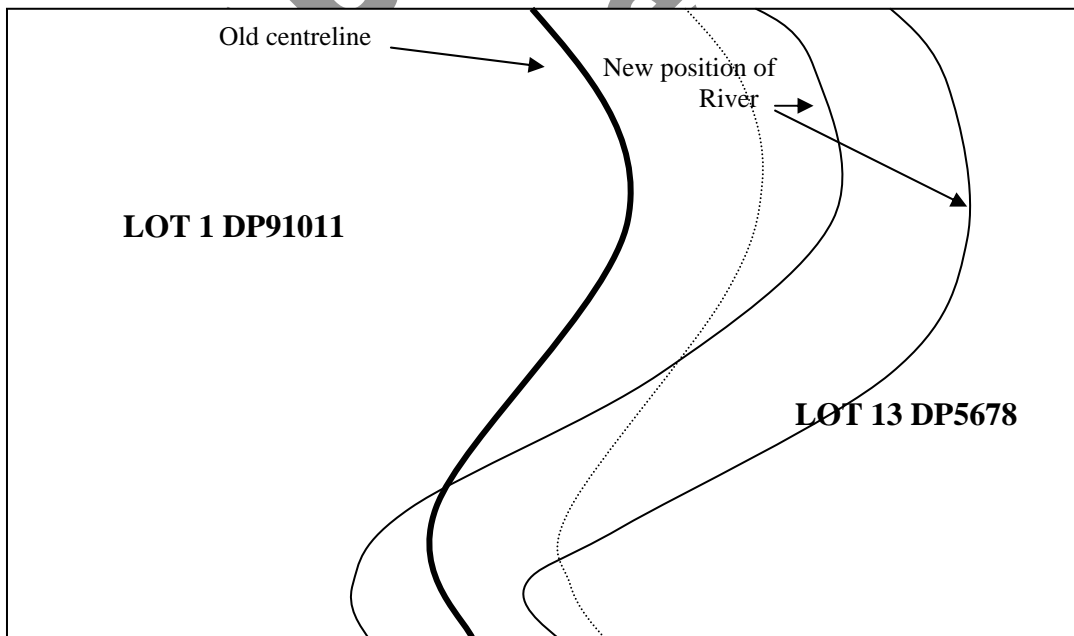
The existing boundary between Lot 1 and Lot 13 is the centreline of the river. Lot 1 is to be resurveyed, and the owner has elected to take the river bank as the boundary. This then becomes a natural boundary subject to accretion and erosion.

Note that if only one side of the river is dealt with, the opposite boundary retains the fixed (centreline) boundary and there is potential for conflict between the new natural (moveable) boundary and the fixed centreline boundary.



Subsequently the river moves (gradually and imperceptibly) giving rise to two scenarios that require further clarification:

### Scenario A



**Can the area between the old centreline (boundary of Lot 13 DP5678) and the new position of the river be claimed as accretion by the owner of Lot 1 DP91011?**

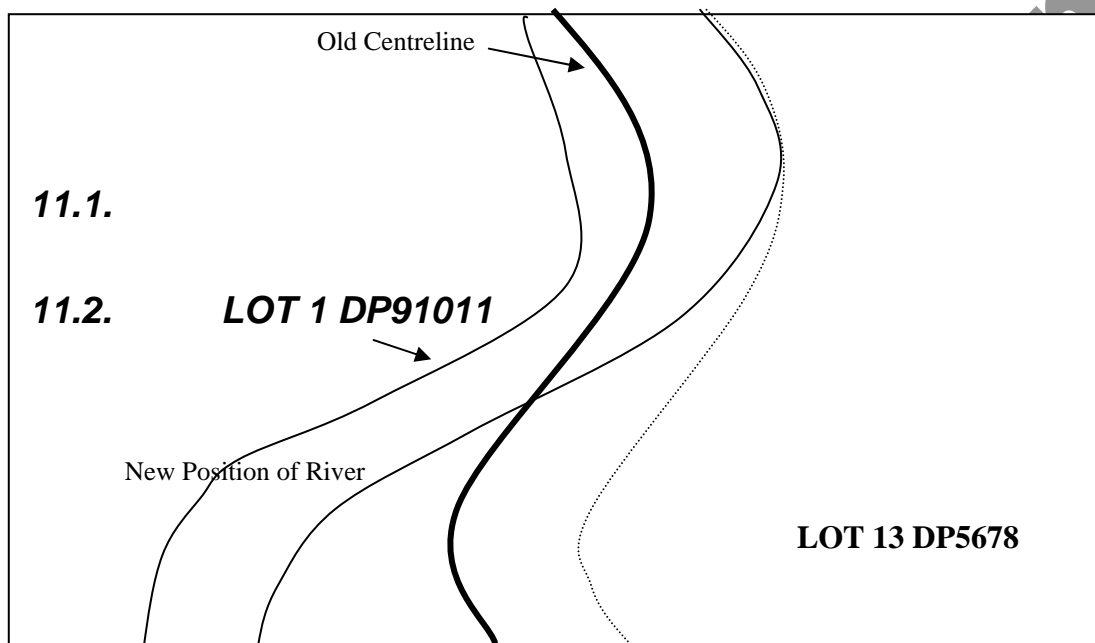
*No. Although the owner of Lot 1 DP91011 has a moveable boundary and could claim accretion/erosion, the right to make that claim cannot override the*

*neighbour's indefeasible right to the land within the fixed boundary. An application for accretion/erosion with the centreline fixed cannot take land that is part of someone else's title.*

**Is the owner of Lot 1 DP 91011 forced to revert to a fixed right-lined boundary (the old centreline) again, as accretion cannot be claimed past this point?**

*In effect Yes.*

## Scenario B



**Who owns the land between the new position of the river and the old centreline?**

*The Crown would own that land. The owner of Lot 13 DP5678 cannot claim it because his/her boundary is fixed so accretion/erosion does not apply. The owner of Lot 1 would need to make an application to have his/her title altered to reflect the erosion.*

**What *ad medium filum* rights are available/applicable for the parcels that end up with a natural boundary?**

*Ad medium filum is a rebuttable presumption that you own the land to the centreline of the river. That presumption can be rebutted in several ways, for example, the Crown owns the riverbed or there is a competing ownership claim. If a landowner has a natural boundary then this rebuttable presumption applies. There is no need to define the boundary by survey in this circumstance.*

*The doctrines of accretion and erosion also apply if the land has a natural boundary. This means that the landowner may make application to have land included or removed from their title if a gradual change (by way of accretion or erosion) has occurred. Adjoining owners would all be notified in these cases so that all competing claims can be identified. The crucial test of whether the change has been gradual and imperceptible is also tested through this notification process.*

#### **11.5.4. Avulsion and Artificial Diversion**

1. Avulsion is:

- the act performed by a river or stream when it suddenly erodes or breaks through its banks and flows in another position or cuts off a perceptible amount of land from one owner and may add land to another.
  - rapid erosion of the shoreline by waves during a storm.
2. Where land abuts a water boundary which has been subject to avulsion or artificial diversion, ownership remains to the existing title boundary. Upon survey where water has moved away from the title boundary and water no longer demarcates the old natural boundary, it will be necessary for this boundary (or the river centre-line if *ad medium filum* applies and the bed is being claimed) to be right-lined and pegged.
  3. Where the water has moved into the title then there is the option of either excluding the new water course from the new parcels (identified as a separate stream/river bed parcel with an area) or including it entirely within the new parcel.
  4. Where the new position of the bank is not being used as a parcel boundary, the water course is to be shown as a topographical feature on an image of a plan graphic attached to the dataset as a supporting document (and included in the digital plans).
  5. It will not be possible to certify that there has been no change to an adopted natural boundary where avulsion has occurred, but the dataset must include an annotation to show this. See Chapter 6.2.11.1 Item 3.

#### **11.5.5. Better Survey Fix**

1. Where the present position of a natural boundary differs from that previously defined, in some instances this difference can be attributed to an earlier definition of lesser accuracy.
2. A claim for a better fix is to be supported by relevant argument in the survey report.
3. The dataset should include the new fix with the appropriate new area calculation. No reference to the underlying fix is to be provided on the digital plans.

#### **11.5.6. Dried Up River/Stream Beds**

Notwithstanding that areas and measurements are normally shown to the bank of a watercourse, there is a presumption of ownership to the centre-line (*ad medium*

filum) unless the water course is tidal, navigable or otherwise vested in public ownership (Local Authority, Crown) or specifically excluded from the title.

The presumption the riparian owner takes to the centreline is rebuttable by the language of the documents from which title originates, the subject matter or circumstances. Such a rebuttal must be clearly shown. It is not rebutted by description in words; or plans or maps showing the boundary; estimations or precise definitions of area; or because the original boundary is identifiable. (See *Southern Centre of Theosophy Inc v State of South Australia* (1982)).

1. If the bed of the watercourse with *ad medium filum* rights has dried up then a claim may be made to the centre-line. . The claim is an application to issue title to the old bed and as such, needs supporting evidence. The survey report should provide detail on three key elements of this evidence:
  - The application of *ad medium filum*.
  - A statement regarding the stream having dried up and how that occurred.
  - A statement regarding who is in occupation of the old bed and for how long (i.e. to prove title has not been lost by adverse possession).
2. In this case:
  - The old river centre-line is to be defined by a series of right lines.
  - The old river centre-line shall be pegged unless prior dispensation is obtained from the Senior Advisor to the Surveyor-General.
  - The portion of underlying old bed is to be identified by annotation on the title sheets of the digital plan as “Old River Bed” or “Old Stream Bed”.
  - The old banks (one of which forms a boundary of the piece of dry bed being claimed) can be digitally adopted from the spatial data held by *Landonline*.

#### **11.5.7. Irregular Boundaries**

1. New irregular boundaries are **not** permitted except as **may** be applicable under Rule 31(3)(b).

Note: new marginal strips and esplanade strips are not affected by this requirement.

2. In the past, irregular boundaries have been permitted in certain circumstances, generally being a wavy line parallel to a water boundary. The position of these irregular boundaries is fixed and does not move with any movement of the water boundary.
  - Upon resurvey, where any new allotment is less than 4 ha then this adopted boundary shall be right-lined. It is also to be pegged unless prior dispensation is obtained from the Senior Advisor to the Surveyor-General. On new parcels 4ha and over the boundary may remain as an irregular line adopted from *Landonline* spatial data.

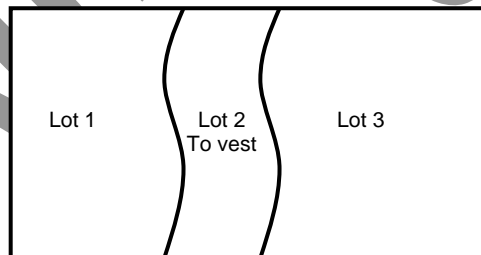
In all circumstances, where water once demarcated a boundary but due to any reason no longer demarcates this boundary, the Senior Advisor to the Surveyor-General should be consulted with a view to determining whether the boundary is to be right-lined. The boundary may also require pegging unless prior dispensation is obtained.

### 11.5.8. **New Natural Boundaries**

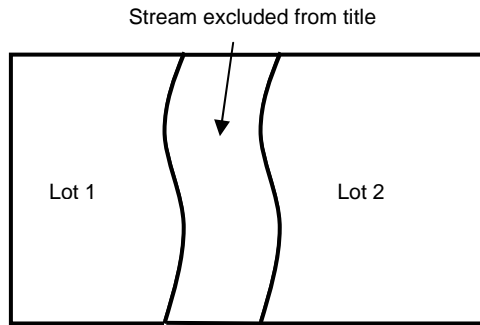
1. Where a parcel is to be bounded by water then the boundary should be the near edge of the water. Refer to the definition of *Bed*, *Coastal Water*, *Foreshore* and *River* in Section 2 Resource Management Act 1991 to establish the limit of the waters edge.
2. In terms of Rule 11 (natural boundaries) where an existing parcel is subdivided by a new natural boundary, then existing straight line boundary must be monumented as close as practicable on each side of the new natural boundary.

There are several possible options for the configuration of the new allotments:

- Define the boundaries of each side of the watercourse and show the waterbed as a lot to vest in the Local Authority or Crown (pursuant to Sec 237 RMA 1991).



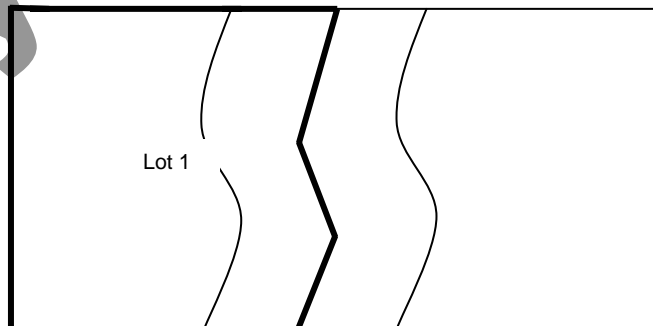
- Define the boundaries of each side of the watercourse and show the waterbed as a separate parcel excluded from the new titles. There is a presumption that *Ad Medium filum* will apply. The doctrine of accretion and erosion would apply to the boundaries. The streambed parcel is part of the dataset but does not require an appellation in this case. The information to be included in the dataset (as an annotation on the title sheets of the digital plan or on an image of a plan graphic attached as a supporting document) will include:-
  - annotation for the riverbed/ stream bed parcel
  - area of the bed
  - average width for the watercourse (if regular)
  - direction of flow
  - both banks with an appropriate description (e.g. top of bank x metres high)



- Define one side of a watercourse as the common boundary between two parcels. This would mean that the watercourse is contained entirely within one of the parcels and this owner would have ownership of the bed. The doctrine of accretion and erosion would apply to the boundary. The opposite side of the watercourse (internal to one of the parcels) should be shown in an image of a plan graphic attached as a supporting diagram.



- Define the common boundary to the parcels as a series of right-lines along the centreline of the watercourse. This would mean that half of the watercourse is contained entirely within one of the parcels and each owner would have ownership of the bed. The boundary is not moveable and the doctrine of accretion and erosion would not apply to the boundary. The sides of the watercourse (internal to the parcels) should be shown in an image of a plan graphic attached as a supporting diagram.



The survey report should outline which option has been used.

3. Where aerial photography or digitising is used:
  - the survey control is to be detailed in the survey report

- the photo/serial number and date is to be shown in the report
- a copy of the photo or map plot is to be retained and supplied if requested.

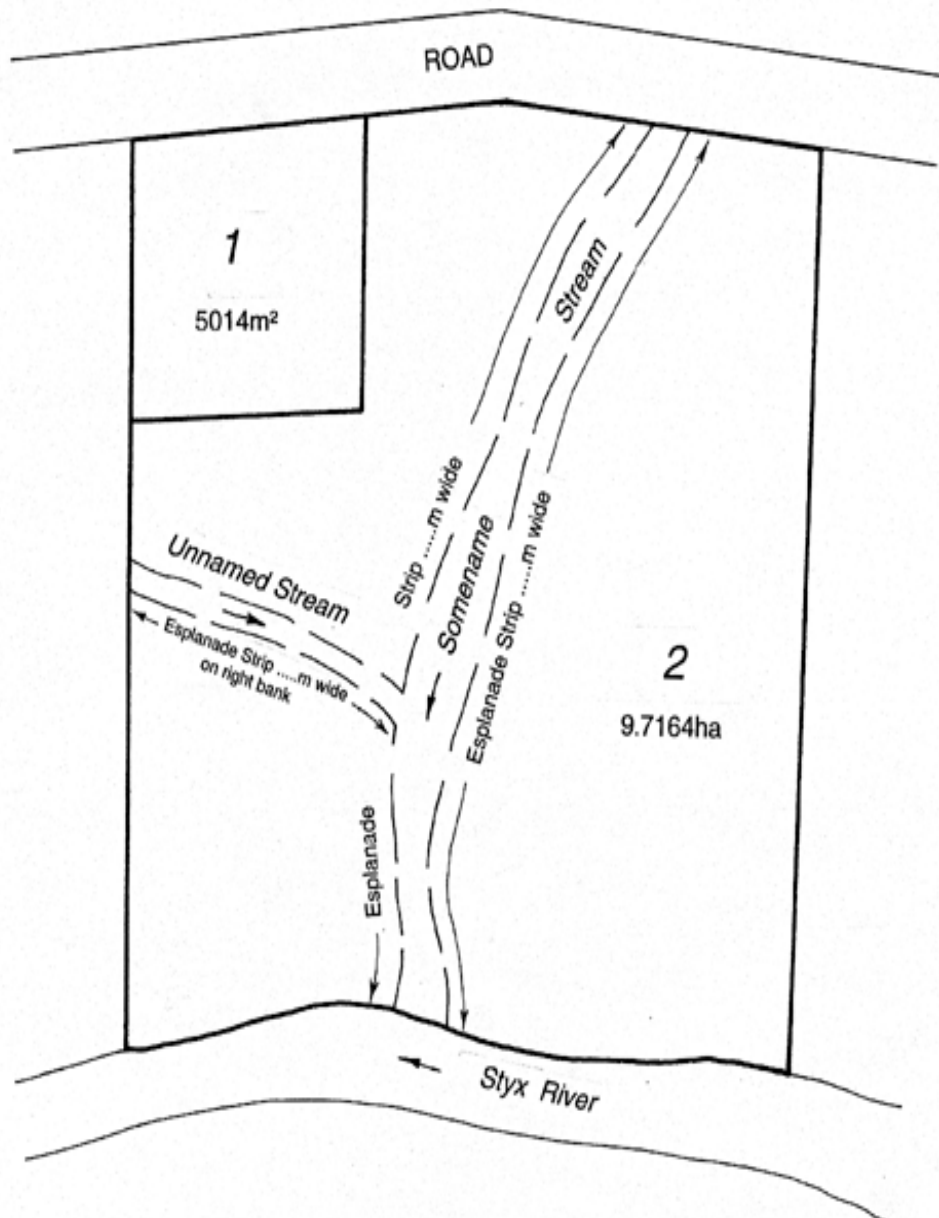
### **11.5.9. Esplanade Reserves**

1. These reserves are unique and separate parcels.
2. New esplanade reserves are laid off from the present bank.
3. The landward boundary does not move with any movement of the water course bank.
4. In the past, the landward boundary may have been defined by an irregular line parallel and at a fixed offset to a bank. Refer to Chapter 5 (Dispensations) and section 11.5.7 (Irregular Boundaries) regarding the need for the right lining and pegging of these boundaries when surveying these parcels or abutting land.

### **11.5.10. Esplanade Strips**

1. An esplanade strip is a right over land created pursuant to the Resource Management Act 1991. This may be upon subdivision with a survey dataset or by agreement without a survey dataset. Note the ownership of the land over which the strip is created does not change, but the territorial authority gains an interest in the in the land. (Sec 232 Resource Management Act 1991)
2. They may be created along water edges which are:
  - new or existing boundaries of a parcel of land or
  - within a parcel of land.
3. Where the bank is a boundary of a parcel, the bank is to be defined by survey sufficient for the issue of title. The landward boundary of the esplanade strip, however, in terms of section 237(2) is not to be defined as it moves as the bank it is laid off from, moves. The extent and width of the esplanade strip is identified by notation on an image of a plan graphic supporting document as shown in the diagram below.
4. New esplanade strips are laid off from the present bank. Note the present bank may be different to that shown on the CT diagram, but this is not relevant unless the title no longer has a natural boundary because avulsion has occurred (i.e. the river has moved away from the title).
5. A strip may vary in width providing that the point, where the strip changes in width, is a fixed point on the watercourse (i.e. can be defined by survey). An esplanade strip cannot change in width as it runs along the length of a watercourse (i.e. a tapering strip is not permitted).
6. A strip does not have to run the entire length of a watercourse within or adjacent to a parcel, providing the end points are fixed points.
7. Strips created by subdivision or by agreement prior to the 17 December 1997 Resource Management Act Amendment, do move with any movement of the water course bank. Esplanade strips created by agreement subsequent to the 1997 amendment do not move. In this case, any change in the position of the bank is dealt with by cancelling the existing agreement and registering a new one.

- Note that ownership of the stream bed remains unchanged by the presence of an esplanade strip.



### 11.5.11. Marginal Strips

1. Subject to Sec 24A, 24AA and 24B when the Crown sells, or otherwise disposes of any land, the Crown retains a marginal strip of land 20m wide extending along any foreshore, lake edge (in certain circumstances) or along the banks of any stream or river with an average width of 3m or more (not being a canal) [refer Pt IVA Conservation Act 1987].
2. Marginal Strips are one or the following types.
  - a. strips created under the current provisions of Sec 24(1) & (2) Conservation Act 1987 (see 11.5.11.1 below)
  - b. strips created prior to the Conservation Act 1990 between 1 April 1987 and 10 April 1990 under Sec 24(8) Conservation Act 1987. See 11.5.11.1A below)
  - c. Parcels previously shown as Crown Land reserved from sale under Section 58 Land Act 1948 or similar section in earlier legislation (S24 (3) Conservation Act 1987) (see 11.5.11.2 below).
3. When the Crown does sell or dispose of land, the title is memorialised with a reference to Pt IVA Conservation Act 1987. There may not be a recent survey dataset depicting the spatial definition of the marginal strip. Note that the memorial will be in place irrespective of whether the land contains or abuts water.
4. Where there is a strip of land between the boundary of a parcel of disposed Crown Land and a water boundary, a marginal strip does not affect the land (refer Torrens Talk, Oct 1999,p10)

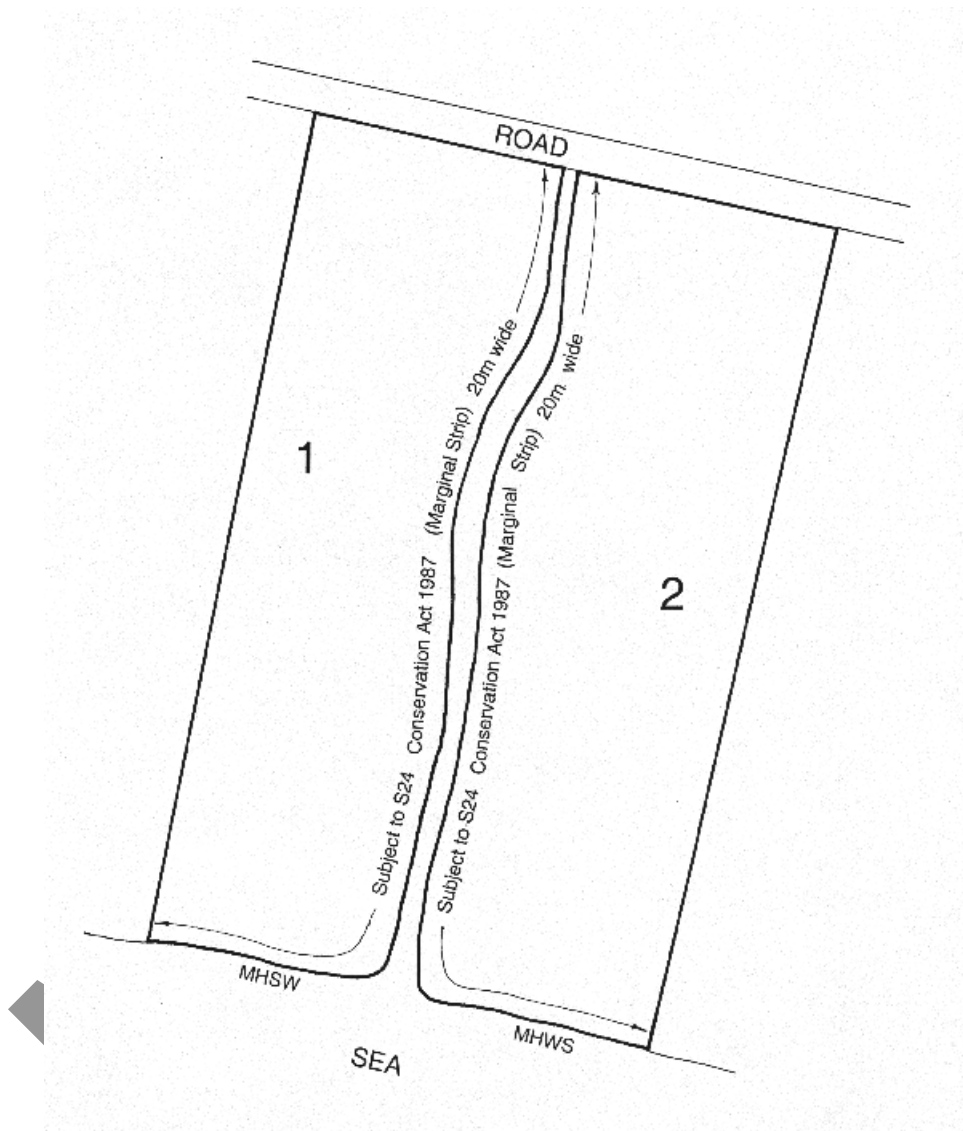
#### 11.5.11.1. Marginal Strips created under Secs. 24(1) and (2) Conservation Act 1987

1. Marginal Strips are owned by the Crown. The dimensions and area in the abutting parcel include the marginal strip but the notation makes it clear that the strip is excluded.
2. New marginal strips are laid off from the present bank, the bank being defined sufficiently for the issue of title. The landward boundary of the strip is not surveyed as it moves, as the bank it is laid off from moves. The extent of the marginal strip is identified by annotation on the title sheet of the digital plans or on an image of a plan graphic attached as a supporting document as shown in the diagram below.
3. A note regarding the exclusion of the presumed ownership to the middle of a river (*ad medium filum*) of the parcel abutting the marginal strip is to be manually annotated on the title sheets of the digital plans. A suggested format is:  
*The bed of the .....River is excluded from Lot.../Section ... hereon pursuant to Section 24F Conservation Act 1987*
4. The landward boundary of a marginal strip moves with any movement of the water course bank.

5. Note that the notations required in 2 and 3 above also apply to subsequent subdivision datasets.
6. The boundary will be annotated “Subjected to 24(1) or (2) Conservation Act 1987 (Marginal Strip) 20m wide” Refer to diagram.

### Depiction of Marginal Strip

**Note: The diagram below illustrates a method to show the extent of a marginal strip as a supporting document**



#### **11.5.11.1A Marginal Strips created under Sec. 24(8) Conservation Act 1987 (Repealed April 1990).**

1. These strips were created by the disposition of Crown Land or State Forest Land between 1 April 1987 and 10 April 1990 amendment to the Conservation Act 1987,

2. They are treated as fixed. This is because the ambulatory provisions were not introduced until the passing of the Conservation Law Reform Act in 1990. Refer to Section 24(3) and 24G(7) Conservation Act 1987.

#### **11.5.11.2 Land previously shown as Crown Land reserved from Sale under Section 58 Land Act 1948 or Previous Enactments [S24(3) Conservation Act 1987]**

1. These marginal strips are unique and separate parcels.
2. The landward boundary does not move with any movement of the water course bank.
3. In the past, the landward boundary may have been defined by an irregular parallel and at a fixed offset to a bank. Refer to Chapter 5 (*Dispensations*) and section 11.5.7 (*Irregular Boundaries*) regarding the need to the right lining and pegging of these boundaries when surveying these parcels or abutting land.
4. Parcels are to be annotated “*Crown Land reserved from Sale (Marginal Strip)*”

#### **11.5.12. Tidal Boundaries**

1. The usual boundary of a title to land adjoining tidal water is the line of Mean High Water (MHW) or Mean High Water Springs (MHWS). This is not always the case and it is essential that the correct boundary is established and not just assumed to be MHW or MHWS. It may be necessary to refer to the Crown Grant and the wording used to describe the seaward boundary. Upon subdivision, the application of Sections 237(A)(1) and (2) Resource Management Act 1991 will determine whether a MHW boundary will need to be redefined to MHWS. With subdivision of Crown Land, as the land between MHW and MHWS is already in Crown ownership no additional parcel is required to be included in the dataset (unless it is part of the underlying parcel in which case it will need to be included as required by Rule 19(2A).
2. Where a parcel is created (between MHW and MHWS) refer to Chapter 6 (Coastal Marine Areas).
3. The line of MHW is the mean of all ordinary high tides through the course of a lunar cycle. As it is not feasible for observations to be made over this length of time, practical determinations may include:
  - fixing the edge of consolidated ground or permanent vegetation or toe of bank.
  - relating to a temporary gauge by levelling from the nearest benchmark. Whilst an approximate determination may be made by this method, because of errors in levelling and distance from tide gauges, results must always be checked by physical evidence. Only surveys very close to tidal recording sites should use levels to determine the line of MHW/MHWS.
4. There is a mistaken belief that once the height of Mean High Water has been established from long-term tidal records, that it is a simple matter to establish Mean High Water Mark by levelling from the nearest Survey Control mark, which may be many kilometres away from the tide gauge. This method is

only capable of producing reliable results if the job is within a few kilometres of the gauge and the range of the tides is the same. It must always be checked by physical evidence such as on-site observation of a high tide predicted to coincide with Mean High Water. The height of the tide should afterwards be confirmed with the appropriate Port Authority to confirm that it was the same height as predicted.

### **11.5.13. Specific Natural Boundaries**

#### 1. Lake Taupo

(Section 14(3A) Maori Land Amendment and Maori Land Claims Adjustment Act 1926 as inserted by Section 11/1974 Maori Purposes Act).

The margin of Lake Taupo has been fixed as being the 357.015 metre contour in terms of Moturiki Datum (358.378 metres Taupo Datum) and that this is to be used for all surveys adjoining this Lake.

#### 2. Lake Rotorua

Lake Rotorua is controlled at 280.10 metre Moturiki Datum. The lake gauge is at Mission Bay (The National Institute of Water and Atmospheric Research and Environment Bay of Plenty). Geodetic Database ID 21982.

#### 3. Lake Waikaremoana

A Surveyor General ruling determined that the boundary of the lake bed is to be the 2020 foot contour, Kaitawa Datum, where there is no existing surveyed boundary. Kaitawa Datum heights are available on marks near the outlet structure at Onepoto, and the height difference between Kaitawa Datum and control survey marks nearby in terms of Gisborne Provisional Datum 1926 is shown on Gisborne survey dataset SO 7285.

## 11.6. Adverse Possession

1. Possession of land adverse to a title can occur in three circumstances:
  - land held under the deeds system (Deeds Registration Act 1908)
  - land held under the land transfer system, but in a title limited as to parcels
  - land held under the land transfer system in a “guaranteed” title
2. An application for the issue of a land transfer title by the adverse possessor of deeds land requires evidence of 12 years of continuous possession by the applicant (pursuant to the Limitation Act 1950) and, in almost all circumstances, a digital plan of the subject land will need to be deposited.
3. Circumstances relating to limited titles are dealt with below.
4. An application for the issue of title to the adverse possessor of land held in a guaranteed title may be made pursuant to the Land Transfer Amendment Act 1963, the key provisions of which are:
  - applicant’s possession has been continuous for not less than 20 years and possession continues (s 3). The period is extended to 30 years in certain circumstances (s 4).
  - the application is advertised by the District Land registrar (s 7).
  - certain persons can lodge caveats (s 8-12). This provides adequate safeguards against dispossession for registered owners who do not occupy their land for an extended period but who become aware of an action to claim their land by another person.
  - survey of the land is required except where a complete title is the subject of the application. In the latter case certification by a licensed cadastral surveyor, rather than a survey is required (s 14). The extent of the land which may be applied for in relation to the “title boundary” and “occupation boundary” is set out in s 14 and becomes the subject of a deposited digital title plan.
  - in general, no application will be considered where adverse possession occurs on Crown land, Maori land, land owned by a local authority or land held in trust for any public purpose.
5. In addition there are circumstances where adverse possession may be dealt with pursuant to s 129A of the Property Law Act 1952. This provides for relief in cases of mistake as to boundaries or the identity of land. When the parties involved are unable to resolve the situation an application may be made to the High Court for an order in terms of s 129A. Depending on the nature of the court order, a survey dataset may have to be prepared to deal with the land in question.

6. Surveyors must be aware that apparent adverse possession does not necessarily occur when occupation does not coincide with a title boundary. In cases where boundary or adjacent witness marks do not exist to give certainty to the definition of the title boundary, the “little more or less” provisions in the title may apply. While no definitive statement can be made as to what constitutes a “little” more or less, it must be born in mind that occupation, particularly long standing occupation, may provide the best evidence of the boundary position. This is often the case when old surveys are involved or the terrain is difficult or large miscloses exist in the underlying survey. It is often inappropriate to lay off a title dimension and to consider a variation with occupation as constituting adverse possession or encroachment by one of the parties involved.

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## 11.7. Titles Limited as to Parcels

Limited titles were introduced into the Land Transfer system with the passing of the Compulsory Registration of Titles Act 1924 now Pt XII of the Land Transfer Act 1952.

As a consequence of the above, the concept of rights established by adverse possession, which was recognised by Sec 2 of the Real Property Limitations Act 1833, was incorporated into the land transfer system in specific circumstances.

### 11.7.1. Field Survey

1. For a claim by way of adverse possession to be made against the documentary owner, occupation must meet the requirements of Sec 199(3) of the Land Transfer Act 1952. The occupation must therefore predate the issue of the first Land Transfer title or proof must be provided that occupation of lesser years is a replacement for occupation that does meet those criteria.

Possession of the land enclosed by the occupation must be “actual, open, manifest, exclusive and continuous”.

2. Requirements:

- Establish the original cadastral framework of the subject parcel and those surrounding in terms of documentation and good survey practice.
- If there is no occupation on the boundaries subject to survey the boundaries must be repegged or marked otherwise as appropriate.
- If the boundary of a limited title is in common with a parcel held in an ordinary certificate of title then, providing occupation within the limited title does not support a claim against it, then the ordinary title must be respected and marked. That is, if the holder of the ordinary CT is in occupation of land held in the limited title and is able to establish a claim of adverse possession, the occupation must be marked.
- Where two limited titles abut each other, and occupation is of the requisite age then this occupation is to be marked.
- In an urban situation where land under survey is part of a group of limited titles, it will usually be necessary to measure the occupations of several adjacent lots in both directions along the street, along the rear boundaries, and across the street.
- The purpose is to identify occupation which represents the original cadastral pattern as opposed to occupation which is clearly adverse to documentary title.
- The above may also apply in a rural situation where the adjoining allotment boundaries are relatively close.
- All occupation surrounding the subject land must be fixed and the type, age and its relationship to the boundaries shown on an image of an occupation diagram attached to the eSurvey as a supporting document.

This image will be automatically included in the digital survey plan. If there is no occupation this fact is also to be shown.

### **11.7.2. Adopted Boundaries**

Where the purpose of a survey dataset is to uplift limitations as to parcels, in terms of Sec 207(1)(a) of the Land Transfer Act 1952 it is not acceptable to adopt boundaries unless:

- the boundaries are from subdivisions that took land out of a limited title, the balance of which is currently being dealt with or,
- the survey was carried out relatively recently, the boundary marks are in place, are reliable and in terms of longstanding occupation.

#### **Class I Survey**

All boundary angles are to be re-established by survey.

#### **Class II and III Survey**

An alternative to re-establishing boundary angles is to show the occupation in relation to the adopted boundary on an occupation diagram and have the adjoining owners sign this diagram prior to submission. This gives the owners signing the document the opportunity to question the surveyor on the location of the boundary and if they are not satisfied then the surveyor has to re-establish the boundary angles. An image of this occupation diagram is then attached to the eSurvey as a supporting document and will be automatically included in the digital survey plan

The rationale is as follows: It is quite common for an ordinary Certificate of Title to adjoin another that is limited as to parcels. When the ordinary Certificate of Title is redefined, it is not possible to demand that the surveyor disclose and address the issue of any adverse possession by the owner of the ordinary Certificate of Title over the adjoining Certificate of Title that is limited as to parcels. Even if the documentary boundary has been re-marked (and this is not an essential) the owner of the ordinary Certificate of Title or a successor in title may continue to occupy up to a long standing occupation and consider that the land occupied is rightfully theirs. Issues of this sort must be disclosed and addressed before limitations as to parcels can be uplifted.

- Where the boundary of a limited title is common with a road, the documentary boundary of the road is accepted except where the road/ fence encroached into the land prior to the issue of the first title. It should also be noted that where road encroached into a title post issue of the first title then the Crown (or its successor in ownership of roads, a Territorial Authority), will not claim against it.
- Where a survey was carried out over part of land in a limited title from which a normal title issued in some instances, the common boundary between the title and the residual part limited title was annotated as no longer limited. This practice is not acceptable and the RGL no longer accept titles, limited as to parcels in part only.

- When a title limited as to parcels is acquired by the Crown either by way of purchase or by the Public Works Act 1981, this action does not extinguish any rights of possession which may be running against the title acquired.
- In general terms, it is not possible to claim against the Crown by way of adverse possession. (Refer to Sec 172 of the Land Act 1948 and Sec 51 of the Public Works Act 1981.) Conversely the Crown will not claim against a land transfer title by way of adverse possession.

### 11.7.3. Dataset Detail.

#### 11.7.3.1. Occupation

The description and age of all occupation and its relationship to all boundaries is to be shown on an image of an occupation diagram and attached to the dataset as a supporting document. Where there is no occupation, an annotation to this effect is also to be shown. The occupation diagram image will be automatically included in the digital survey plan.

#### 11.7.3.2. Survey Report

1. In addition to the standard set of supporting data, the following should be supplied:
  - The role of occupation in the final definition of the parcel and the type and age of that occupation.
  - Reasons should be given for ignoring any occupation.
  - Where there is no occupation on the boundary, a statement must be made as to who is currently utilising the land and for how long.
2. Where there is some doubt about the documentary boundaries as pegged or the validity of the occupation which has been accepted as the boundary, it may be prudent to have adjoining owners demonstrate their acceptance of the definition by signing the occupation diagram before it is imaged and attached to the eSurvey. This action may firstly expedite approval of the survey dataset and secondly, eliminate the risk of a caveat being lodged when the RGL takes action in terms of Sec 207 of the Land Transfer Act 1952. A suggested certification is as follows -

I, \_\_\_\_\_ Registered Proprietor of the land in CT  
 \_\_\_\_\_/\_\_\_\_\_ agree to the definition of the boundary with CT \_\_\_\_\_/\_\_\_\_\_  
 shown hereon and consent to the issue of a Certificate of Title in  
 accordance therewith

\_\_\_\_\_  
 Signatory

3. If owner's signatures are not obtained, the provision of a list of the names and addresses of adjoining owners will assist the District Land Registrar to fulfil the requirements of Sec 207 of the Land Transfer Act 1952.

**11.7.4. Suggested Reference Material**

- (a) Surveyor and the Law: NZ Institute of Surveyors.
- (b) The Doctrine of Possession in New Zealand's Land Transfer System. M H Warburton. NZ Surveyor, issue 285, March 1995.
- (c) Guidelines for Surveys of Titles "Limited as to Parcels", Wayne Nickles, 1998 (copies of this paper are available from Chief Surveyor Auckland).
- (d) NZIS Wellington Branch. Seminar notes P V Hughes 1987

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