

Alterations to the Register

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Introduction

Two key outcomes of the land transfer system are:

- that the register correctly records the state of every record of title and legal substance of every transaction, and
- to guarantee fair outcomes for registered landowners or right-holders who are deprived of their rights.

The land transfer system includes checks and controls to ensure matters are correctly recorded when conveyancing transactions are registered. While this ordinarily happens without issue, and the register is properly updated with the relevant details, given the complexity of some conveyancing transactions errors can sometimes occur.

The Registrar has the discretionary power to make alterations under section 21(1)(a)-(d) of the Land Transfer Act 2017 (the Act) to:

- correct registration errors made by the Registrar
- correct errors made by some other person when preparing or submitting documents for registration
- record a boundary change resulting from accretion or erosion, or
- give effect to an order or a direction of a court.

Registration confers an indefeasible title guaranteed by the Crown under section 51 of the Act, and care is taken to exercise this power only in appropriate cases.

A person who suffers a loss or damage because of a LINZ registration error may make a claim for compensation under Subpart 3 of Part 2 of the Act.

Purpose

To provide guidance to practitioners and others who prepare or submit documents for registration about:

- the Registrar’s powers to alter the register to correct an error under section 21(1)(a) and 21(1)(b) or give effect to an order or a direction of a court under section 21(1)(d)
- how to request an alteration to the register to correct an error
- how the Registrar will assess the request
- the different methods the Registrar may use to alter the register, and
- how practitioners can correct their own errors.

This guideline does not provide guidance on alterations to record boundary changes resulting from accretion or erosion made under section 21(1)(c) of the Act.

This guideline supercedes the Alterations to the Register Guideline 2018 – LINZG20779 issued on 19 October 2018.

References

The following documents are relevant to this guideline:

- [Land Transfer Act 2017](#), and
- [Land Transfer Regulations 2018](#).

Terms and definitions

Terms used in this guideline that are defined in the Land Transfer Act 2017 have the meaning given to them in that Act, unless otherwise stated.

Terms	Definitions
Act	Land Transfer Act 2017
Alteration	A change to the register to correct an error under s21(1)(a) or (b) of the Act or give effect to an order or a direction of a court under s21(1)(d) of the Act.
Registrar	The Registrar-General of Land appointed in terms of s231 of the Act, and delegates in terms of s233.
Regulations	Land Transfer Regulations 2018

1 Registrar's powers to alter the register

The Registrar's powers to alter the register are set out in section 21 of the Act. Sections 21(1)(a), (b) and (d) state that the Registrar may alter the register to:

- correct an error made by the Registrar
- correct an error made by a person in preparing or submitting a document or information for registration, and
- give effect to an order or a direction of a court.

Section 21(2) of the Act states that the Registrar must not alter the register under s21(1)(a) or (b) if the alteration would materially affect the registered estate or interest of any person unless:

- the person consents in writing, or
- the Registrar gives notice of intention to alter the register and no material objection to the proposed alteration is received.

The process for giving notice and considering objections is set out in regulation 29 and described in more detail in paras 3.1 to 3.3 of this guideline.

2 Lodging a request with the Registrar to correct an error

Any person may lodge a request with the Registrar to correct an error:

- made by the Registrar, or
- made by a person in preparing or submitting a document or information for registration.

2.1 How to lodge a request

Practitioners and other Landonline users may submit a request via Landonline using the following request types:

- Titles Correction, or
- Titles Correction Prevents Registration (if the error is preventing registration of a dealing).

Any other person may lodge a request in writing:

- by emailing CustomerSupport@linz.govt.nz, or
- by posting or couriering it to our Toitū Te Whenua LINZ Christchurch or Hamilton office:

Office	Mailing Address	Courier / Physical Address
Christchurch Office	Private Bag 4721 Christchurch 8140	CBRE House 112 Tuam Street Christchurch 8011
Hamilton Office	Private Bag 3028 Hamilton 3240, or DX GX10069	Level 3 65 Bryce Street Hamilton 3204

2.2 Information to include in the request

The information to be included in the request is (as relevant):

- the records of title affected, and
- the details of the error.

The Registrar may be able to expedite the alteration if the following documents are provided:

- consent from every person whose registered estate or interest will be materially affected by the alteration (to support a request to alter the register or to cancel registration - see paras 3, 4 and 6), and

- in the case of a conveyancing error, a statutory declaration from the practitioner responsible explaining the circumstances that gave rise to the error (e.g. to support a request to cancel registration – see para 4).

2.3 Consideration of the request

Upon receipt of the request, the Registrar will consider whether:

- there has been an error of the kind referred to in s21 of the Act, and
- there are sufficient grounds to make an alteration to the register to correct the error

The Registrar will consider the relevant circumstances including whether the affected record of title has been the subject of further registration since the error was made. If, for example, the property in question has changed hands in the interim then, depending on the nature of the error, indefeasibility of title may preclude correction.

The Registrar will generally consider making an alteration to correct a conveyancing error only where the matter cannot more properly be rectified by conventional conveyancing methods. Practitioners should therefore take all reasonable steps to rectify errors they have made in the course of preparing or submitting transactions by registering further correcting instruments, with authority from all the relevant parties, before seeking an alteration under s21(1)(b). See para 5 for more detail.

The Registrar will then consider:

- how the error should be rectified (including, where appropriate, altering the register by cancelling registration of the instruments in question– see clauses 3, 4 and 6), and
- whether the registered estate or interest of any person will be materially affected by the alteration.

3 Alteration to the register

In the case of corrections of the kind referred to in s21(1)(a) or (b) of the Act, if the alteration would materially affect the registered estate or interest of any person, then the Registrar must give notice as provided in s21(2)(b)(i), unless the party has already consented to the proposed alteration.

By contrast, alterations may be done without notice or consent if the alteration is giving effect to a court order or direction under s21(1)(d), or to correct minor errors where the alteration would not materially affect any registered estate or interest.

3.1 Registrar's notice of intention to alter the register

The Registrar's notice of intention to alter the register is given in accordance with reg 29 of the Land Transfer Regulations 2018. The notice will:

- include the details of the alteration, and
- state that the person may object to the alteration by giving notice to the Registrar within 30 working days after the date on which the notice is given (the deadline will be specified in the notice).

3.2 How to notify the Registrar of an objection

A person may object to the proposed alteration by notifying the Registrar of their objection within the time period specified in the notice.

A notice of objection may be given to the Registrar:

- by submitting it via Landonline using the request type: Titles Correction (using a lawyer or conveyancing practitioner)
- by emailing CustomerSupport@linz.govt.nz, or
- by posting or couriering it to LINZ (see para 2.1 for office details).

If a person does not object to the alteration, they may instead choose to provide their consent (in the form in Appendix A). Consent is preferred in situations where all the affected persons agree to the alteration, and there is some urgency for the register to be altered. If consent is provided by all persons who received notice, the Registrar can make the alteration without waiting for the notice period (30 working days) to expire.

3.3 How the Registrar considers objections

The Registrar will consider whether each objection received by the deadline is material. Objections received after the deadline but before the alteration is made may be considered at the discretion of the Registrar. Objections received after the alteration is made will not be considered.

If there is a material objection, the Registrar is precluded from making the proposed alteration as provided in s21(2) of the Act. In these circumstances, unless the objection is withdrawn, the Registrar can take the matter no further unless authorised to do so by an order or direction of the court as per s21(1)(d) – see also para 3.4 below.

What is a material objection?

The term 'material objection' is not defined in the Land Transfer Act 2017 but, in accordance with its ordinary meaning, the term can be understood to mean 'significant or important'. So, if a person's objection is trivial (for example, objecting to a spelling correction) it is unlikely to be material. However, if the objection relates to a significant loss in value or loss of an interest in the land, then it is more likely that it will be material.

Sections 51-57 of the Act provide for certain exceptions which may override a person's title, for example, where an existing easement has been omitted from a record of title. An objection based on one of these exceptions is unlikely to be considered material.

3.4 Disputes

The alteration regime in s21 of the Act is not designed to resolve contentious title matters where material objections have been raised and the parties involved are in dispute as to whether the proposed alteration should proceed. As the Registrar has no remit to make judicial determinations on such matters, the parties may need to seek resolution via the courts if they are otherwise unable to reach agreement on the matter.

If it has been determined through court proceedings that an alteration should be made, the relevant court order or direction may be lodged for registration to have these matters recorded in accordance with s21(1)(d) of the Act.

3.5 Consent to an alteration

Consent to an alteration may be obtained in the form set out in Appendix A.

3.6 Making the alteration

The Registrar will make the alteration if:

- notice is served and no material objection to the proposed alteration is received
- the person has consented to the alteration, or
- it is necessary to give effect to an order or direction of the court (as provided in s21(1)(d) of the Act).

4 Cancellation of registration

In appropriate cases errors may be rectified by cancelling registration, where this is necessary to make an alteration authorised under s21 of the Act. This may arise, for example, where a practitioner has made a conveyancing error and is unable to rectify this through further registration.

In such cases, any person whose registered interest in the land would be materially affected by cancelling registration of an instrument, must be notified in accordance with s21(2)(b) unless they have consented to the alteration.

4.1 Documents to cancel registration

To support an alteration made by cancelling registration by consent, the Registrar will generally require the following documents:

- consent from every person whose registered estate or interest will be affected by the alteration (s21(2)(a)) – see the form in Appendix A, and
- a statutory declaration from the practitioner who certified the instrument explaining the circumstance that gave rise to the error and why it should be corrected by cancelling registration (s30(3)(b)) – see the form in Appendix B.

4.2 Making the alteration

If, upon receipt of the documents referred to in para 4.1, the Registrar decides that an alteration should be made, the Registrar will:

- cancel registration of the instrument(s) or dealing
- notify the requester that the alteration to the register has been made, and
- provide a copy of the corrected record of title to the requestor.

Where required, the practitioner responsible for the matter may then register new instruments in the correct manner to give effect to the transaction authorised by the parties.

5 Practitioner errors

Where a practitioner has made a conveyancing error, they should take all reasonable steps to rectify the matter by registering further correcting instruments. This may require the lodgement of a subsequent dealing to:

- reverse the error that was made, and
- re-lodge the instrument(s) as intended.

If there is any doubt as to how to correct an error in the register, the practitioner should lodge a request with the Registrar – see para 2 above. The Registrar will consider the request (as described in para 2.3 above) and provide advice on next steps.

5.1 Documents required for subsequent dealing

Practitioners must comply with their obligations under s30 of the Act when registering further instruments to correct a conveyancing error. Every instrument must be properly authorised by the relevant parties in the usual manner.

Existing authorities (A&Is) may only be relied on if those authorities are sufficient to support the certifications for the correcting instruments.

New A&Is may be needed to support new or different instruments where the existing A&Is do not support the required certifications (e.g. if the authority records incorrect details that may have led to the error, or the authority no longer supports the certification because the instrument details have been amended).

6 Errors on plans

If an alteration to a record of title is proposed to give effect to a survey plan correction (in the case of a survey error), and the alteration would materially affect the registered estate or interest of a person, the Registrar will give notice of intention to alter the register (following the processes set out in para 3 of this guideline).

Appendix A: Consent form

Consent Form

Section 21(2)(a) Land Transfer Act 2017

In the matter of Request or Dealing Number:

Person giving consent¹

Insert name of person giving consent

Estate or interest of Person giving consent

Insert e.g. Registered owner of RT XXXXX or Mortgagee under Mortgage No. XXXXXXXXX

Consent

I consent to [insert details – see examples below].

Examples:

- *the alteration set out in Toitū Te Whenua LINZ's letter dated XXXXX affecting Record of Title XXXXX.*
- *the cancellation of registration of Transfer 1234567.1 from XX to XX affecting Record of Title XXXXX.*
- *an alteration to Record of Title XXXXX namely [insert details].*

Dated

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Attestation

The witness must not be a party to the alteration (i.e. not a Person giving consent)

	<p>Signed in my presence by the Person giving consent</p> <p>_____</p> <p><i>Signature of witness</i></p> <p><i>Witness to complete in BLOCK letters</i></p> <p>Witness name:</p> <p>Occupation:</p> <p>Address:</p>
<p>Signature [common seal] of Person giving consent</p>	

¹ Consent must be given by each person (i.e. each owner / interest-holder) personally, or by an attorney under a properly completed power of attorney with the appropriate certificate of non-revocation. If the power of attorney has not been deposited with Toitū Te Whenua LINZ then a certified copy of the power of attorney must accompany this consent form.

Appendix B: Statutory declaration

Statutory Declaration

Section 30(3)(b) Land Transfer Act 2017

I (Enter your full name)

of (Enter the town / city where you live)

do solemnly and sincerely declare that:

1. Explain the circumstances that gave rise to the error in the register and why it should be corrected by cancelling registration.
2. Describe the steps that have been put in place to avoid the error from occurring again in the future.
3. I request that the Registrar-General of Land cancel registration of [insert details e.g. Transfer 1234567.1 from John Doe to Jane Doe] affecting Record of Title XXXXX.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Your signature

Declared at (Place, i.e. town or city)

Date signed

DD / MM / 20

Before me (Signature of witness)

Name of witness

Place where witness lives

Occupation of witness