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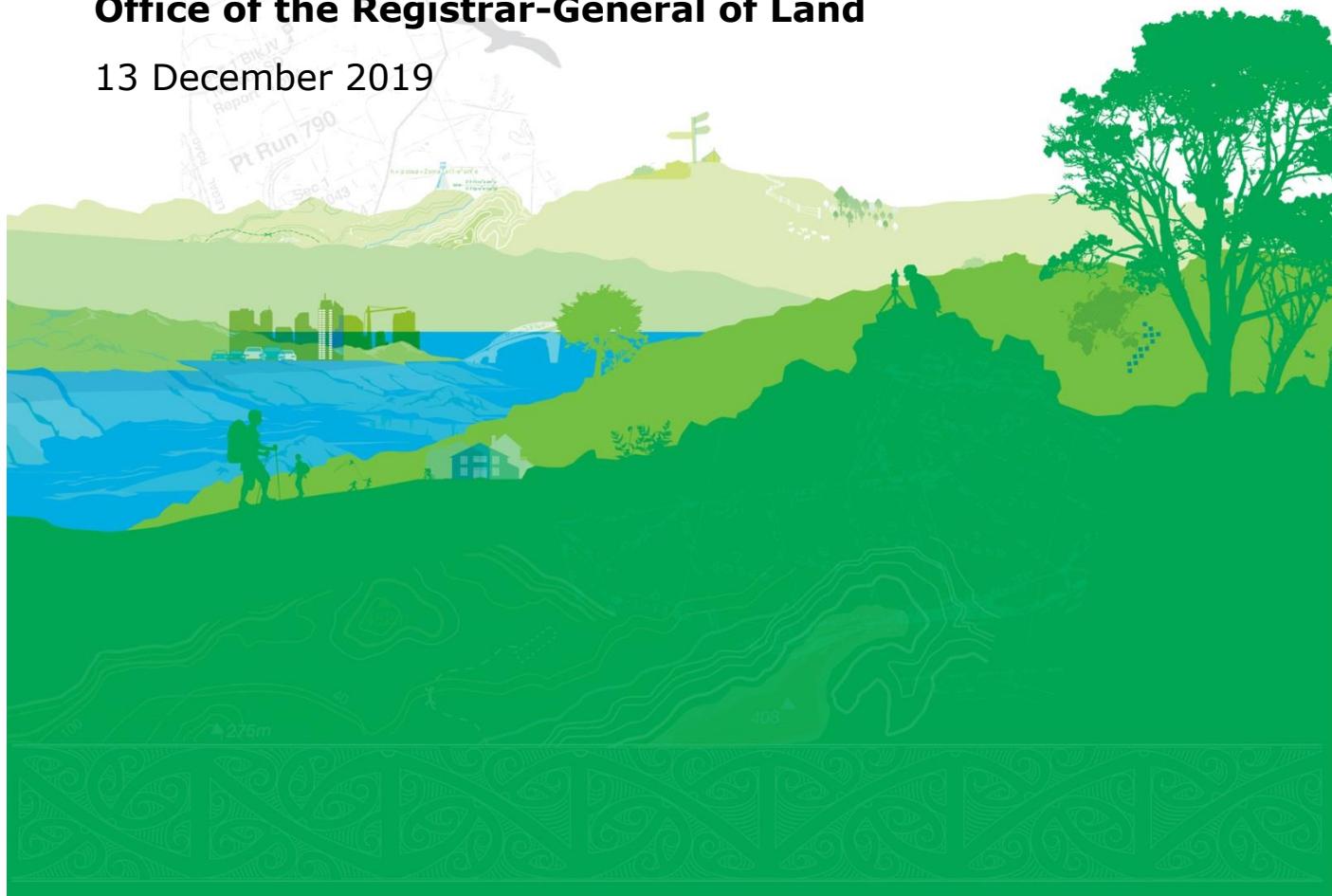
# Accretion and Erosion

## Guideline 2019

LINZG20783

**Office of the Registrar-General of Land**

13 December 2019



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## Foreword

A key intermediate outcome of the land transfer system is that the register correctly records the state of every title and legal substance of every transaction.

Where a river or stream has changed course gradually and imperceptibly over time, an adjoining landowner may in certain circumstances be entitled to apply to have their title adjusted due to accretion or erosion.

Section 21(1)(c) of the Land Transfer Act 2017 authorises the Registrar-General of Land to make alterations to record a boundary change resulting from accretion or erosion.

This can be contrasted with cases where the course of a river or stream has changed suddenly due to avulsion.<sup>1</sup> For more information on avulsion see [LINZS20013 Boundary Changes - Accretion and Dry Beds \(Rivers and Streams\) Standard 2018](#), and [LINZG20782 Application to bring land under the Act - Dry Riverbeds and Streambeds Guideline 2018](#).

## Purpose of this guideline

This guideline explains how a registered landowner may apply to have their record of title updated where accretion or erosion has occurred. It outlines what is necessary to fulfil the mandatory requirements set out in [LINZS20013 Boundary Changes - Accretion and Dry Beds \(Rivers and Streams\) Standard 2018](#).

This guideline supersedes:

- LINZG20711 Guideline for Accretion Claims published on 30 October 2007 and amended on 12 September 2013; and
- LINZG20783 Accretion and Erosion Guideline 2018 published on 13 November 2018.

## References

The following documents are relevant to this guideline:

- [Land Transfer Act 2017](#)
- [Land Transfer Regulations 2018](#)
- [LINZLF01231 Approved Paper Forms for the Land Transfer Act 2017](#)
- [LINZLF01232 Approved Electronic Forms for the Land Transfer Act 2017](#)

<sup>1</sup> Avulsion applications are not alteration applications but rather applications to bring land under the Act.

- [LINZS20013 Boundary Changes - Accretion and Dry Beds \(Rivers and Streams\) Standard 2018](#)
- [LINZG20775 Authority and Identity Requirements for E-Dealing Guideline 2018](#)
- [LINZG20776 Identity Requirements for Paper Instruments Guideline 2018](#)
- [Rules for Cadastral Survey 2010](#)

## Interpretation

References in this guideline to section(s) and regulation(s) refer to the Land Transfer Act 2017 and Land Transfer Regulations 2018 (as applicable) unless otherwise stated.

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 and definitions

Accretion	Is the common law doctrine of accretion.
Act	Land Transfer Act 2017.
Disinterested party	A person who is: (a) not employed by or related to the applicant; and (b) does not have any vested interest in the outcome of the application.
r, rr or regulation	Indicates a regulation/s, in the Land Transfer Regulations 2018 unless otherwise specified.
Regulations	Land Transfer Regulations 2018.
RGL	Registrar-General of Land appointed in terms of section 231 of the Act, and delegates.
s, ss or section	Indicates a section/s or subsection/s in the Land Transfer Act 2017 unless otherwise specified.
Standard	Means <a href="#"><u>LINZS20013 Boundary Changes - Accretion and Dry Beds (Rivers and Streams) Standard 2018</u></a> .

# Introduction

A landowner may apply to have their title altered to record a water boundary change due to accretion or erosion (s21 and r17).

Applications are made under s21(1)(c), following the process set out in s21 (*Registrar's Powers of Alterations*) and r17 (*Notices and objections about certain alterations to register*).

The process for the RGL to give notice to (and receive objections from) parties with registered estates or interests who may be materially affected by proposed alterations, is set out in r29.

*Please note: Where a boundary has changed as a result of avulsion, the landowner should not apply to have their title altered using an application for accretion.*

# Application for accretion (and erosion)

## 1 Application requirements

### 1.1 Form and required information

Applications must meet the requirements of the applicable legislation and common law as to content and form.

Applications must contain the following information specified in r5(1):

- (a) the *core information* specified in r5(2); and
- (b) the *additional information required* specified in Column 3 of the table in Schedule 2 of the Regulations being:
  - (i) a description of the land incorporating accretion or excluding erosion.
  - (ii) the full name and address, if known to the applicant, of every owner of land adjoining or opposite the accretion; and
- (c) the *accompanying documents required* specified in Column 4 of the table in Schedule 2 of the Regulations being:
  - (i) evidence that establishes a boundary change resulting from accretion or erosion.

Applications must be made in the approved forms that reflect the requirements set out above and specified in 1.2 and 1.3 below.

*Please note: In regards to (b)(ii) above, if an owner(s) of the land adjoining or opposite the accretion has consented to the application, their name and address is not required.*

## 1.2 Applications made in electronic form

Applications lodged by a practitioner by e-dealing must be made in Form 3 of the [Approved Electronic Forms for the Land Transfer Act 2017](#) and must be certified in the manner outlined in rr 7, 11, and Schedule 3 of the Regulations.

Before doing so, the certifying practitioner must hold suitable evidence of the applicant's authority and identity.<sup>2</sup>

## 1.3 Applications made in paper form

Applications lodged in paper form (a manual dealing) must be made in Form 3 of the [Approved Paper Forms for the Land Transfer Act 2017](#) and must be signed by the applicant and certified by the applicant or the applicant's practitioner in the manner outlined in rr 13 and 14 and Schedule 3 of the Regulations.<sup>3</sup>

# 2 When title incorporating accretion will issue

Clause 8 of the Standard, repeated here for ease of use, provides that:

*A record of title incorporating accretion will only be issued if,-*

- (a) *The application complies with section 21 of the Act, and regulation 17(2) and Schedules 2 and 3 of the Regulations, and is in the form approved under s227(1)(4) of the Act:<sup>4</sup>*
- (b) *The land subject to the application is adequately defined on a plan that complies with the Cadastral Survey Act 2002:*
- (c) *The applicant establishes that the boundary to be altered is one to which the doctrine of accretion applies:*
- (d) *The application is supported by evidence to establish that accretion has occurred:*
- (e) *Notice is given to all persons whose registered estate or interest may be affected by the issue of a record of title incorporating accretion, including in the case of applications for land adjoining the marine and coastal area any applicant group, customary marine title group, or protected customary rights group:*
- (f) *Any evidentiary disputes are resolved:*
- (g) *Regulation 17(2) of the Regulations is complied with.*

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<sup>2</sup> See also [LINZS20018 Authority and Identity Requirements for E-Dealing Standard 2018](#).

<sup>3</sup> See also [LINZG20776 Identity Requirements for Paper Instruments Guideline 2018](#).

<sup>4</sup> See also r6 of the Regulations; and Form 3 of the [Approved Electronic Forms for the Land Transfer Act 2017](#) and the [Approved Paper Forms for the Land Transfer Act 2017](#).

## 3 Survey requirements

Clause 8(b) of the Standard requires that '*The land subject to the application is adequately defined on a plan that complies with the Cadastral Survey Act 2002*'. To comply:

- (a) all of the applicant's land subject to the boundary change, including the land claimed as accretion, must be shown as a parcel on a plan prepared in terms of s224 of the Act and the [Rules for Cadastral Survey 2010](#); and
- (b) the plan must show all of the affected parcels in the applicant's current record of title.

## 4 Evidence to establish that accretion (or erosion) has occurred

For the requirements at:

- (a) clause 8(c) of the Standard that '*The applicant establishes that the boundary to be altered is one to which the doctrine of accretion applies*'; and
- (b) clause 8(d) of the Standard that '*The application is supported by evidence to establish that accretion has occurred*';

the following matters are relevant:

### 4.1 Legal requirements

- (a) The land in question has a movable water boundary;
- (b) The doctrine of accretion was not excluded at the time of the original grant or conveyance of the land; and
- (c) The area claimed is stable and has formed gradually and imperceptibly.

### 4.2 LINZ records

The application should refer to records held by LINZ that show that:

- (a) the land in question has a movable water boundary; and
- (b) the doctrine of accretion or erosion was not excluded at the time of the original grant or conveyance of the land.

An applicant should consider supplying copies of the records referred to, especially when those records are not available electronically.

### 4.3 Statutory declaration by applicant

The applicant should provide a statutory declaration declaring the particulars and evidence regarding the circumstances surrounding the movement in the position of the water boundary.

Where relevant, supporting material such as diagrams, illustrative locality plans, photographs and regional council records should accompany the statutory declaration.

## 4.4 Statutory declaration by another person

At least one disinterested party who is familiar with the land applied for should provide a statutory declaration that supports the circumstances surrounding the movement in the position of the water boundary as set out in the application.

*Please note: If the dealing is requisitioned and a change is made to the application form, the statutory declaration from the disinterested party may also require amendment to ensure it supports the updated application.*

## 4.5 Expert testimony

Where an application is likely to be disputed, a person qualified to give expert testimony about the soil composition of the area claimed as accretion should provide a statutory declaration that corroborates the applicant's statutory declaration.

## 4.6 Erosion

If the survey plan shows erosion as well as accretion, no separate application or supporting evidence is required in respect of the erosion. It is good practice to refer to the erosion in the accretion application.

# Assessment of application

## 5 Assessment of required information and form

Upon receipt of an application, LINZ will assess whether the application meets the requirements in 1 to 4 above.

## 6 Assessment of evidence

When considering the evidence supplied to establish accretion or erosion (as required by clauses 8(c) and (d) of the Standard), LINZ will assess whether the records referred to in the application establish the matters in 4 above.

Where there is insufficient or contradictory evidence LINZ may requisition or reject the application in accordance with s37.

*Please note: Where a boundary has changed as a result of avulsion, the landowner should not apply to have their title altered using an application for accretion.*

The following matters are relevant:

## **6.1 Original grant**

This should confirm that accretion was not expressly excluded by the words of the grant or the supporting survey. The original grant of land may be a Crown grant or some other document from which title originated.

## **6.2 Original survey**

This should confirm that the boundary in question was at the time of the grant intended to be a water boundary, and not an immovable boundary (which may be indicated for example by pegging or right lining, or by virtue of roads or reserves or other land between the land granted and the body of water at the time of the grant).

## **6.3 Subsequent title records and surveys**

All subsequent title records should confirm that accretion or erosion has not been excluded in a conveyance, transfer or redefinition of the land, and all surveys should show the boundary has not been made immovable.

## **6.4 Surveyor's report and other documents**

These should contain information about the existence of the accretion in support of the plan.

# **7 Assessing who may need to be notified**

Before giving notice under 9 and 10 below, LINZ will establish the parties who may need to be notified taking into account the following considerations:

## **7.1 Treaty of Waitangi claims**

Whether any adjoining land or beds of adjoining water are the subject of Treaty of Waitangi settlement negotiations, by:

- (a) sending a letter to Te Arawhiti – a sample letter is set out in Schedule 2; or
- (b) reviewing recent, similar applications for accretion relating to the same adjoining land or adjoining lake, river, or stream.

## **7.2 Applications adjoining the marine and coastal area**

Whether applications adjoining the marine and coastal area are subject to any application for customary marine title or protected customary rights, by contacting the Ministry of Justice.

## **7.3 Applications adjoining rivers subject to accords, deeds of recognition or other such rights**

Whether applications adjoining water (such as lakes and rivers) are subject to Treaty of Waitangi settlement mechanism (such as an accord or Deed of recognition) by contacting the Commissioner of Crown Lands.

## **7.4 Other adjoining owners and parties**

The owners of land (or, where applicable, other interests likely to be materially affected by the alteration) adjoining or situated opposite the accretion, by reference to the details supplied in the application and independent verification from LINZ records.

## **7.5 Māori land**

Whether the accretion affects or adjoins or is opposite Māori land. Where applicable, notice will be sent to the Registrar/Manager of the Māori Land Court for the district in which the land is located.

# **8 Assessment of other requirements**

Where there are no outstanding evidentiary conflicts, and the requirements of clause 8(a)-(d) of the Standard are satisfied, LINZ will give notice of intention to alter the register in accordance with 9 and 10 below.

## **RGL notice of intention to alter the register**

## **9 Notice to persons**

If the application and supporting evidence establishes an accretion claim, the interested parties will be notified, in the manner set out in 10 and 11 below, of the RGL's intention to alter the register.<sup>5</sup>

If any interested party:

- (a) consents in writing to the boundary change – see the recommended consent form at schedule 3; or
- (b) does not object;

LINZ will accept the application and update the record of title accordingly.

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<sup>5</sup> Sections 221 (*Giving of notice to persons other than Registrar*) and 223 (*When notices given*) also apply.

## 10 Interested parties to be notified

The interested parties to be notified include:

- (a) Treaty settlement claimants i.e. any relevant iwi group as advised by Te Arawhiti (see 7.1 above);
- (b) if adjoining land is in the marine and coastal area, any right holders in that area (see 7.2 above);
- (c) relevant iwi representatives in respect of any Treaty Settlement Accord or Deed of Recognition for the river as advised by the Commissioner of Crown Lands (see 7.3 above);
- (d) owners of land adjoining or situated opposite the accretion (see 7.4 above);
- (e) the Māori Land Court, if the accretion affects, adjoins or is opposite Māori land (see 7.5 above);
- (f) the Commissioner of Crown Lands;
- (g) the Ministry of Justice, if the land claimed is adjacent to the seashore or a tidal creek;
- (h) the Department of Conservation; and
- (i) the relevant local authorities (regional and district/city councils).

## 11 Form of notice

- (a) Regulations 29(2)(b) and (c) state that the RGL's notice of intention to alter the register must:
  - (i) specify the details of the alteration; and
  - (ii) state that the person may object to the alteration by giving notice to the RGL in accordance with s222 of the Act within 30 working days after the date on which notice is given to the person.
- (b) The notice should therefore:
  - (i) state the RGL's intention to issue a record of title incorporating the accretion; and
  - (ii) give an explanation of the legal basis for the accretion (or erosion) application; and
  - (iii) include a copy of the plan showing the claimed accretion or erosion (approved as to survey) and the surveyor's report, and any locality plan if relevant; and
  - (iv) include a copy of the application and supporting evidence.

A recommended form of notice is attached at Schedule 1.

## Objections to the alteration

### 12 Who may object

Any interested party may object to an application for accretion or erosion, within 30 working days after the date on which the RGL's notice is given to the person, by notice in writing:

- (a) emailed to: [customersupport@linz.govt.nz](mailto:customersupport@linz.govt.nz); or
- (b) submitted via electronic workspace facility using the 'Dealing Correspondence' Request type (this may be done through a solicitor); or
- (c) delivered by post to the LINZ Christchurch or Hamilton office.

Office	Postal Address	Courier Address
<b>Christchurch office</b>	Private Bag 4721 Christchurch 8140	CBRE House 112 Tuam Street Christchurch 8011
<b>Hamilton office</b>	Private Bag 3028 Waikato Mail Centre Hamilton 3240; or  DX GX 10069, Hamilton	Level 3 65 Bryce Street Hamilton 3240

### 13 RGL obligations to consider objections

The RGL is only obliged to consider objections received within the 30 working day period (r29(3)).

The decision whether or not to consider objections received after the deadline but before the register is altered shall be at the RGL's discretion, on a case by case basis.

Any objections received after the register is altered to show the claimed accretion cannot be considered by the RGL.

### 14 Dealing with objections

- (a) Regulation 29(3) requires that the RGL consider whether an objection is material.
- (b) If an objection is material, a copy of it will be sent to the applicant for their response and the application cannot proceed until the matter is resolved between the parties.
- (c) The RGL will consider an objection to be material if it:
  - (i) raises a substantive issue or produces conflicting evidence which calls the accretion claim into question; and

- (ii) is supported by material legal or evidential matters.

Once any material objections have been resolved, the application will be registered in the manner outlined in 15 and 16 below.

*Where an objection is not supported by material legal or evidential matters, the RGL may seek further information from the objecting party to help determine whether or not the objection is material. The fact that someone does not want an accretion claim to proceed does not, of itself, constitute a material objection.*

## Amending the register

### 15 Replacement record of title

Where the matters outlined in clause 8 of the Standard have been satisfied in accordance with the processes outlined above, LINZ will cancel the existing record of title and issue a new one in the applicant's name incorporating the land shown as accretion (and where applicable, erosion) on the plan submitted with the application.

## Schedule 1: Sample notice of intention to alter the register

Our Ref: [Application number]

Your Ref:

[Date]

[Name of Interested Person]

[Address]

### **Land Transfer Act 2017 – section 21**

#### **Notice of an application for accretion [and erosion] (*delete if not applicable*) at (...Bay ... River/ ... Stream/Lake ...) in the District/City of ...**

Land registration district:

Application number:

Applicant: [Name of Applicant]

c/- [Solicitor's firm name]

PO Box [number]

[Town/City]

Land applied for: [*land area*] square metres more or less shown on LT Plan [*plan number*] being accretion to [*Lot number and DP number*] comprised in Record of Title [*Record of Title number*] in the District/City of [*District / City*].

The applicant is the owner of land with a boundary that is the bank of a river or stream or shore of a lake or the sea. The applicant claims the position of the boundary has gradually shifted over time, with the result that land has been added to their property by a process of accretion. The applicant has applied to me to issue a correct title incorporating the accretion. [*Insert appropriate wording if erosion applies*]

A copy of the application, supporting evidence and the plan showing the accretion is enclosed with this notice. An explanation of the common law principles of accretion is set out below. [*Insert appropriate wording if erosion applies*]

The purpose of this notice is to allow you an opportunity to consider the attached information and to notify me if you object to the application.

You must notify me of your objection, within 30 working days after the date on which this notice is given, in writing by:

- Email to [customersupport@linz.govt.nz](mailto:customersupport@linz.govt.nz); or
- Submitting via electronic workspace facility using the 'Dealing Correspondence' Request type (via your solicitor); or
- Post to either the LINZ Christchurch or Hamilton office at:

Christchurch office: Private Bag 4721, Christchurch 8140.

Hamilton office: Private Bag 3028, Waikato Mail Centre, Hamilton 3240 or DX GX 10069, Hamilton.

The deadline for making an objection is (**expiration date**).

Following the expiry of this period, I will make a final decision on this application based on the evidence presented and the objections received.

for Registrar-General of Land

## The common law principles of accretion

The doctrine of accretion is a common law doctrine applying to water boundaries where the original grant or document described the land conveyed as having a natural boundary as opposed to an immovable boundary. Land described as having a natural boundary is known as a 'movable freehold' i.e. the original grant conveyed the foreshore as it was from time to time, not as it had been at the time of the grant<sup>6</sup>.

The doctrine of accretion applies to land under the Land Transfer Act 2017<sup>7</sup>, so that when either accretion or erosion take place a registered proprietor may become entitled to more or less land (as the case may be) than that originally comprised in that proprietor's title (*Attorney-General v Findlay* [1919] NZLR 513 at 517). The doctrine applies equally to the land of the Crown or other owners<sup>8</sup>.

The 1982 decision of the Privy Council in *The Southern Centre of Theosophy Inc v State of South Australia* [1982] 1 All ER 283 (PC) confirms that the doctrine of accretion is capable of being applied to an inland lake.

In *Tait-Jamieson v GC Smith Metal Contractors Ltd* High Court Palmerston North, 13 December 1983, A54/80<sup>9</sup>, Savage J suggested that there were three cumulative matters which must be satisfied before the (now) Registrar-General of Land could act under section 80 of the Land Transfer Act 1952 (now replaced by section 21 of the Land Transfer Act 2017):

- (i) The title's boundary must be the water;
- (ii) The doctrine of accretion must not have been excluded at the time of the original grant or conveyance of the land; and
- (iii) The so-called 'accretion' must have been formed gradually and imperceptibly.

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<sup>6</sup> Attorney-General, ex rel Hutt River Board v Leighton [1955] NZLR 750 (SC and CA) at 784.

<sup>7</sup> *Humphrey v Burrell* [1951] NZLR 262 (SC and CA); [1949] GLR 625 (SC), *Auty v Thompson* (1903) 5 GLR 541, and *District Land Registrar of Wellington v Snow* (1909) 29 NZLR 865; 11 GLR 733, See Attorney-General, ex rel Hutt River Board v Leighton [1955] NZLR (SC and CA) at 787.

<sup>8</sup> *Attorney-General v Findlay* [1919] NZLR 513; [1919] GLR 207 and *Gifford v Lord Yarborough* (1828) 5 Bing 163, 120 ER 1023 (HL).

<sup>9</sup>As noted in 'River Boundaries and the Land Registries', Cross, R. (1985) Butterworth's Conveyancing Bulletin, p. 51. Citation: (1985) 3 BCB 49.

## Schedule 2: Sample letter to Te Arawhiti

Our Ref: [Application number]

Your Ref:

[Date]

Te Arawhiti  
Te Kāhui Whakatau (Treaty Settlements)  
DX SX10111  
Wellington  
New Zealand

Dear

**Application for accretion [and erosion] at (...Bay/... River/ ... Stream/Lake ...) in the District/City of ...**

LINZ is considering an application by the owner of land adjoining the (foreshore at ... Bay/ the bank of ... River/... Stream/margin of Lake ...) to issue a correct title incorporating accretion.

Land registration district:

Application number:

Land applied for: [*land area in square metres*] square metres more or less shown on LT Plan [*plan number*], being accretion to (Lot... DP...) comprised in Record of Title [*Record of Title number*] in the District/City of....

A copy of the plan showing the accretion is enclosed.

I intend to send notices to the Crown and to anyone else who might claim an interest as owner of the claimed accretion, to give them an opportunity to tell me the application for accretion is invalid. If the Crown as owner of adjoining land or the bed of ... River/... Stream/Lake ... is negotiating with iwi as the result of a claim under the Treaty of Waitangi then I would like to send a notice to the iwi.

The purpose of this notice is to ask you the following:

Is the adjoining land or the bed of ... River/...Stream/Lake ... the subject of negotiation between the Crown and iwi as the result of a claim under the Treaty of Waitangi?

If so, can you please provide me with the name of a contact person for the iwi, and a contact mailing address?

I look forward to hearing from you and thank you in advance for your assistance.

Yours faithfully,

[*Staff member name and contact details*]

## Schedule 3: Recommended consent form

### Consent Form

*To support an application to record a boundary change resulting from accretion (or erosion) under regulation 17 of the Land Transfer Regulations 2018*

#### Record of Title (unique identifier)

#### Person giving consent

*Surname must be underlined*

#### Consent

The **person giving consent** hereby consents to the boundary change referred to in the application for accretion (or erosion) made by the applicant, \_\_\_\_\_  
\_\_\_\_\_  
[insert name of the applicant] as shown on approved LT Plan \_\_\_\_\_ [insert LT plan number].

#### Relationship to the applicant

The **person giving consent** is [tick one applicable]:

[ ] Owner of adjoining land – address or record of title number:  
\_\_\_\_\_

[ ] Owner of the property opposite the accretion – address or record of title number:  
\_\_\_\_\_

[ ] Other interested party (please specify):  
\_\_\_\_\_

#### Contact details

The **person giving consent** can be contacted using the following details:

Address:

Phone:

Email:

**Dated** this                    day of                    20

	<p><b>Signed in my presence by the person giving consent</b></p> <hr/>
	<p>Signature of Witness</p> <p><i>Witness to complete in BLOCK letters (unless legibly printed):</i></p> <p><b>Witness name</b></p> <p><b>Occupation</b></p> <p><b>Address</b></p>

*Signature of person giving consent*