

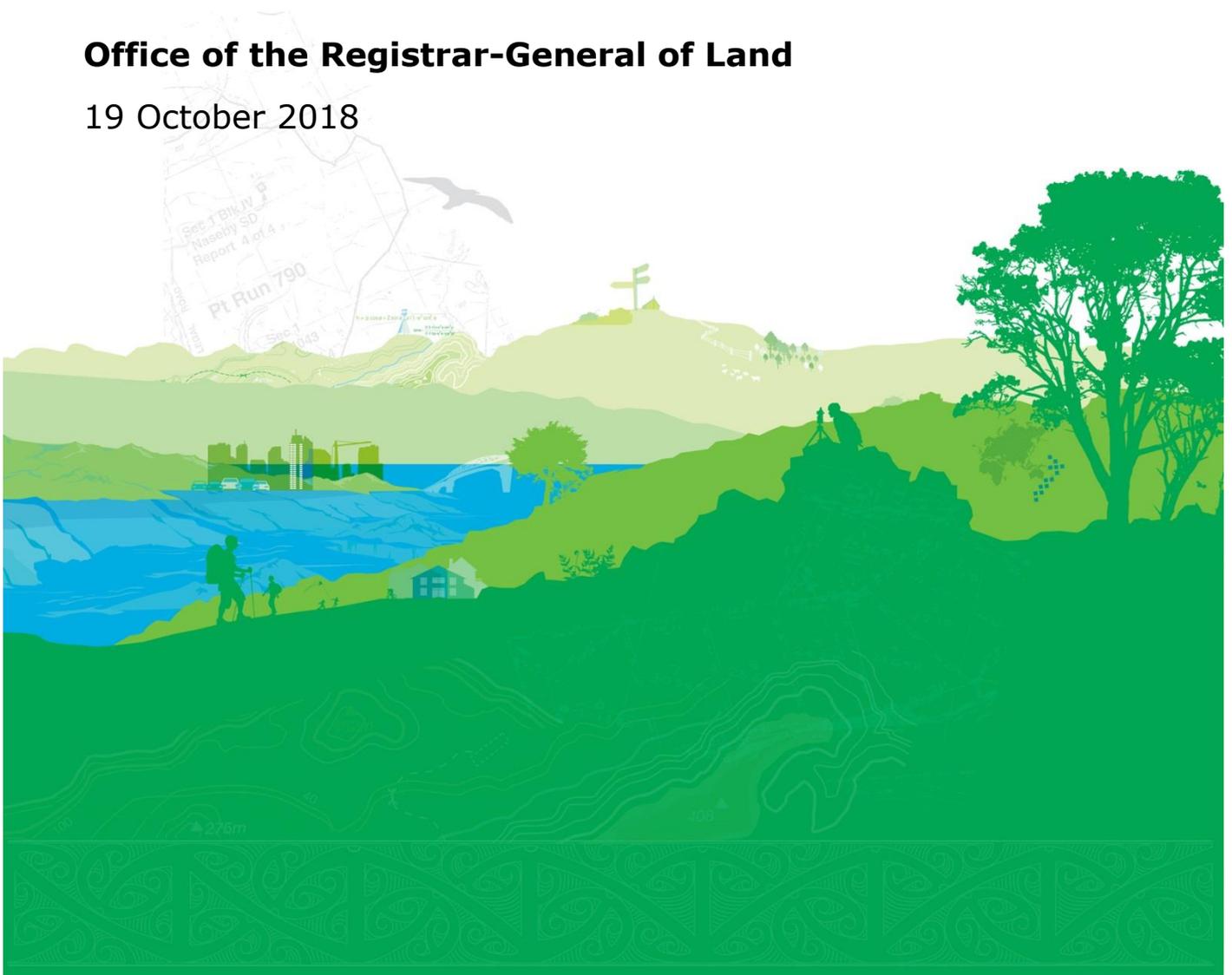
Alterations to the Register

Guideline 2018

LINZG20779

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Introduction

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.

As errors are sometimes made in entering information in the register, section 21 of the Land Transfer Act 2017 (the Act) authorises the Registrar-General of Land (RGL) to make alterations to the Register in certain circumstances. This is a discretionary role.

However, as a cornerstone of the system is that registration confers an indefeasible title guaranteed by the Crown (section 51 of the Act), care must be taken to only exercise this discretionary alterations power in appropriate cases.

Purpose of this guideline

This guideline is to:

1. assist individuals and practitioners:
 - a. understand the circumstances and limitations on LINZ staff with delegated authority from the RGL to alter the Register to make alterations;
 - b. understand how that alterations process:
 - is transparent, fair, and procedurally sound;
 - does not override or adversely affect the rights of registered owners or interest holders; and
 - ensures the methods of alteration in ss21(1)(a) & (b) of the Act are applied consistently and appropriately.
2. ensure individuals and practitioners are aware of their responsibilities when an error to which s21(1)(b) of the Act applies is made.

21 Registrar's powers of alteration

- (a) correct an error made by the Registrar or a person acting under a delegation under section 233:
- (b) correct an error made by a person in preparing or submitting a document or information for registration:
- (c) record a boundary change resulting from accretion or erosion:
- (d) give effect to an order or a direction of a court.

Note:

For alterations recording a boundary change resulting from accretion or erosion see *Boundary Changes – Accretion and Dry Beds (River and Streams) Standard 2018*.

For alterations by change or correction of name see *Applications to Change or Correct Names in the Registrar-General of Land’s Records Guideline 2018*.

References

The following documents are relevant to this guideline:

- Land Transfer Act 2017, particularly section 21
- Land Transfer Regulations 2018
- Recording Memorials on the Register Standard 2018

Terms and Definitions

Act	Land Transfer Act 2017
Alteration	means a change to the Register by the RGL to correct an error
LINZ	Land Information New Zealand
Practitioner	as defined in section 5 of the Act
r, rr or regulation	indicates a regulation/s, in the Land Transfer Regulations 2018 unless otherwise specified
Register	as defined in section 5 of the Act, means a record of title created under section 12 of the Act for an estate or interest in land
Regulations	Land Transfer Regulations 2018
Record of Title	as defined in section 5 of the Act, created by the RGL under section 12 of the Act
RGL	Registrar-General of Land
s, ss or section	indicates a subsection/s or section/s, in the Land Transfer Act 2017 unless otherwise specified.

1 Making the alteration

When correcting an error under ss21 of the Act, the following requirements should be followed:

- a) The details of the correction, including the date and time of the alteration, must be recorded as a separate entry on the Register¹, and
- b) The details must be retained on the Register to show what the error was and how it was corrected.

2 Grounds for alterations

2.1 To correct an error made by the RGL

The RGL may alter the register to correct an error made by a person acting under delegated authority (see ss21(1)(a) the Act). The RGL cannot alter an error in an instrument.

Before making the correction, staff with delegated authority will need to assess whether the alteration will **materially affect** the registered estate or interest of any person. See [section 5](#) of the guideline (below) on what could constitute someone being *materially affected*, and the processes to follow if they are.

2.2 To correct an error made by someone other than the RGL

Section 21(1)(b) of the Act authorises the RGL to correct an error made by a person in preparing or submitting a document or information for registration.

Section 21(1)(b) guidance is divided into three areas;

- Practitioner errors [section 3](#)
- Cancellation of registration [section 4](#)
- Errors on deposited plans [section 7](#)

3 Practitioner errors

If a registered instrument contains errors by a Practitioner and consequently does not have the intended effect, the Practitioner who prepared the documentation should resolve the error where possible.

This may mean preparation and registration of further documents (with appropriate additional supporting authorities for the further dealing) to correct the error in the original instrument.

¹ In accordance with the *Recording Memorials on the Register Standard 2018*.

These could be new authorities to enable dealings which correct the error to be lodged, ahead of re-lodging the intended transaction. They could also be new versions of the original authorities where if they were incorrect (they may have contributed to the error – e.g. if the original authorities are in incorrect names).

Examples of when a practitioner is able to fix their own conveyancing error:

Example: A typographical error in the priority amount in a new Mortgage

This can be corrected by registering a Variation of Mortgage instrument. Both the landowner and the lending institution will need to be contacted to provide authority and instruction for the variation.

Example: A Mortgage is discharged off the wrong Title

The lending institution will need to be contacted to provide authority and instruction to re-register the Mortgage that was inadvertently discharged and then the discharge can be registered against the correct Title using the existing discharge authority.

Example: A new Mortgage is registered against the wrong Title

The lending institution will need to be contacted to authorise the discharge of the mortgage, and then the new Mortgage can be registered against the correct Title using the existing authority and instruction from the landowner and the lending institution.

Example: Vendor owns land in more than one Record of Title and the wrong Record of Title is selected and transferred

Two new Transfers will need to be registered. One to transfer the incorrect title back into the name of the correct landowner – both parties will need to be contacted to obtain authority and instruction. The second (original) Transfer can then be registered against the correct Title using the existing authorities.

If a practitioner is in doubt as to whether they can or should resolve their own conveyancing error, the practitioner should lodge a request in Landonline “Titles – Title Information” or “Titles – Title Correction”.

4 Cancellation of registration

In some situations it may not be possible, or appropriate, for a practitioner to correct their error by further registration i.e. a correcting dealing and re-lodging of the intended dealing.

The RGL may approve cancellation of registration in these circumstances. This function is an exception to the process for practitioner errors above, and the RGL will need to assess the circumstances before approving this method.

4.1 What is cancellation of registration under section 21(1)(b) of the Act

Cancellation is a discretionary power of the RGL to cancel a registered instrument or dealing where further registration by Practitioners involved is not appropriate or possible.

4.2 Application – criteria, process and form

If an error is one able to be remedied by the RGL's powers of alteration, then a request can be made to the RGL setting out the circumstances of the error. This can be sent to LINZ by:

- Email to LINZ customer support customersupport@linz.govt.nz
- Lodged as an *e-dealing* titles correction request.
- Letter addressed to the Registrar-General of Land.

A recommended statutory declaration from by Practitioner for cancellation of registration is set out in Schedule 1.

4.3 Required information

Cancellation of registration by the RGL under s21(1)(b) of the Act will be an alteration which materially affects the registered estate or interest of a person (s21(2) of the Act). Relevant consent will be required from affected parties.

If original documentation set out below is provided to the RGL, this will ordinarily mean the cancellation can be completed:

- a) A statutory declaration from the certifying Practitioner outlining the situation and requesting cancellation of registration of the relevant dealing. The declaration should set out the background circumstances giving rise to the error, any steps that have been put in place to avoid the error occurring again. The record of title reference, relevant instrument number to be cancelled, and a request for the RGL to cancel registration of the dealing – see the example statutory declaration form in schedule 1;
- b) A statutory declaration from a Partner of the firm confirming the contents of the statutory declaration from the certifying Practitioner in section a) above;
- c) Authority from registered estate or interest owner(s) who are materially affected by the cancellation of the instrument or dealing, requesting cancellation of the relevant instrument or dealing.

Below are examples of when it is not appropriate or possible for a practitioner to correct their own conveyancing error, and the RGL may cancel registration:

- A Transmission to executor is registered when a Transmission to administrator was authorised, and vice versa;
- An estate or interest is transferred inadvertently to a deceased person;
- An estate or interest is transferred inadvertently into the name of a Trust contravening s153 of the Act;
- The name of the transferee or mortgagee is inadvertently recorded as a non-legal entity.

5 Alterations where a person with a registered estate or interest is materially affected

5.1 Materially affected estate or interest holders

If it's not clear whether an estate or interest holder could be materially affected, the matter should be escalated to an Operations Solicitor or the RGL team.

Where someone is considered materially affected as set out in s21(2) of the Act, the RGL cannot make an alteration to correct the register unless first:

- a) The person consents in writing to the alteration; or
- b) The RGL gives notice of intention to alter the register²:
 - i. To every person whose registered estate or interest would be materially affected by the alteration;
 - A. specifying the details of the alteration; and
 - B. stating 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 the RGL's notice is given to the person; and
 - ii. Considers whether each objection received by the deadline is material.

5.2 When to seek consent

Where reasonably practicable, all reasonable efforts should be made to obtain consent from materially affected parties.

5.3 If consent not obtained – serve notice

If it is not reasonably practical to seek consent, then it may be more appropriate for notice to be served in accordance with s221 of the Act and r29 of the Regulations (which requires a 30 working day period for response). A recommended form is attached at Schedule 2.

This is an assessment carried out by the RGL or those with delegated authority.

5.4 Disputes over materially affected

Any dispute between affected parties that has resulted from the error must be resolved between those parties. All disputes must be notified to the RGL.³

² Regulation 29 Land Transfer Regulations 2018

6 Not materially affected

If an alteration does not materially affect the registered estate or interest of any person, then staff with delegated authority are authorised to make an alteration of the type described in ss21(1)(a)-(b) of the Act without consent⁴.

7 Errors on deposited plans

7.1 Minor errors

Under s21(1) of the Act additional or corrective information distinguishing as such may be marginally added to a plan i.e. the cadastral survey dataset after it has been deposited.

Corrective information should be added to correct only minor errors that result in no material change to the area or boundary under the Act.

7.2 Major errors

- a) Under s52 of the Cadastral Survey Act 2002, the Surveyor-General can require a cadastral surveyor to correct an error in a cadastral survey dataset that affects a Record of Title under the Act or any title or tenure under any other Act.
- b) Where it is not appropriate for a correcting survey under s52 of the Cadastral Survey Act 2002. The Surveyor-General can instead authorise a survey under s226 of the Act, the cost of which will be met by the Crown.
- c) If a correction to a survey under s52 of the Cadastral Survey Act 2002 or s226 of the Act results in a material change to the area or boundary of land under the Act, the plan will allocate a new legal description for the land. Once the plan has a status of *approved as to survey* a request for new title can then be lodged for registration.
 - i. It is important estate or interest holders materially affected consent to the new corrective survey.⁵ In some instances it may be more appropriate for Practitioners to complete corrective registration by discharging/removing a materially affected interest and re-registering as appropriate. Parties will also need to consider compliance with the Resource Management Act 1991 subdivision requirements for boundary changes.

³ It is not the RGL's role to intervene when there are disputes between parties or contentious issues to resolve. If the parties involved cannot reach agreement, such matters should be resolved through appropriate proceedings in the High Court. The RGL will abide by the decision of the Court and correct the Register when required. See *Housing Corporation of New Zealand v Maori Trustee* [1988] 2 NZLR 662, 699 for further commentary on the RGL's role when Court proceedings have been taken to resolve a registration dispute.

⁴ See Boundary Changes – Accretion and Dry Beds (Rivers and Streams) Standard 2018 – LINZS20013 and Accretion and Erosion Guideline 2018 for s21(1)(c) alterations.

⁵ It would be appropriate to lodge consent from all registered owners materially affected by the corrective survey. This can be attached to the request for new title along with the consent from other estate interest holders. If you require assistance please lodge a Landonline "Title – Titles Information" Request via Landonline.

Schedule 1: Statutory declaration by practitioner for cancellation of registration

I *[full name of practitioner]* of *[town/city of residence]*, *[occupation]* do solemnly and sincerely declare that:

1. *[Explanation of the circumstances of the transaction that led to the error in the RGL's records]*
2. *[Describe the steps that have been put in place to avoid the error occurring again in future transactions]*
3. I request the cancellation of registration of *[instrument type, number and parties e.g. Transfer 1234567.1 from Donald Duck to Mickey Mouse]* affecting *[Record of Title e.g. CFR WN123/45]*.

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

Signature

DECLARED at *[town, country]*

this *[dd]* day of *[Month]* 20*[yy]*

before me:

Signature

Name

A person authorised to take a statutory declaration under the Oaths and Declarations Act 1957

Schedule 2: Recommended form of notice

RGL Recommended Notice

Notice to Registered Owner (and/or representative) for Proposed Alteration to the Register

(Regulation 29 Land Transfer Regulations 2018)

Date:

Name:

To:

Name and Address of Registered Owner

This is notice of the Registrar's intention to alter the Register as set out below:

[Include details of the proposed alteration to the register, including record(s) of title and instrument references].

The Registered owner of the above estate or interest, may object to the alteration by giving notice to the Registrar in accordance with section 222 of the Land Transfer Act 2017 **within 30 working days** after the date on which this notice is given in accordance with section 223 of the Land Transfer Act 2017 to the person (the deadline).

If no material objection is received by the deadline, the Registrar will proceed with altering the register as described above.