

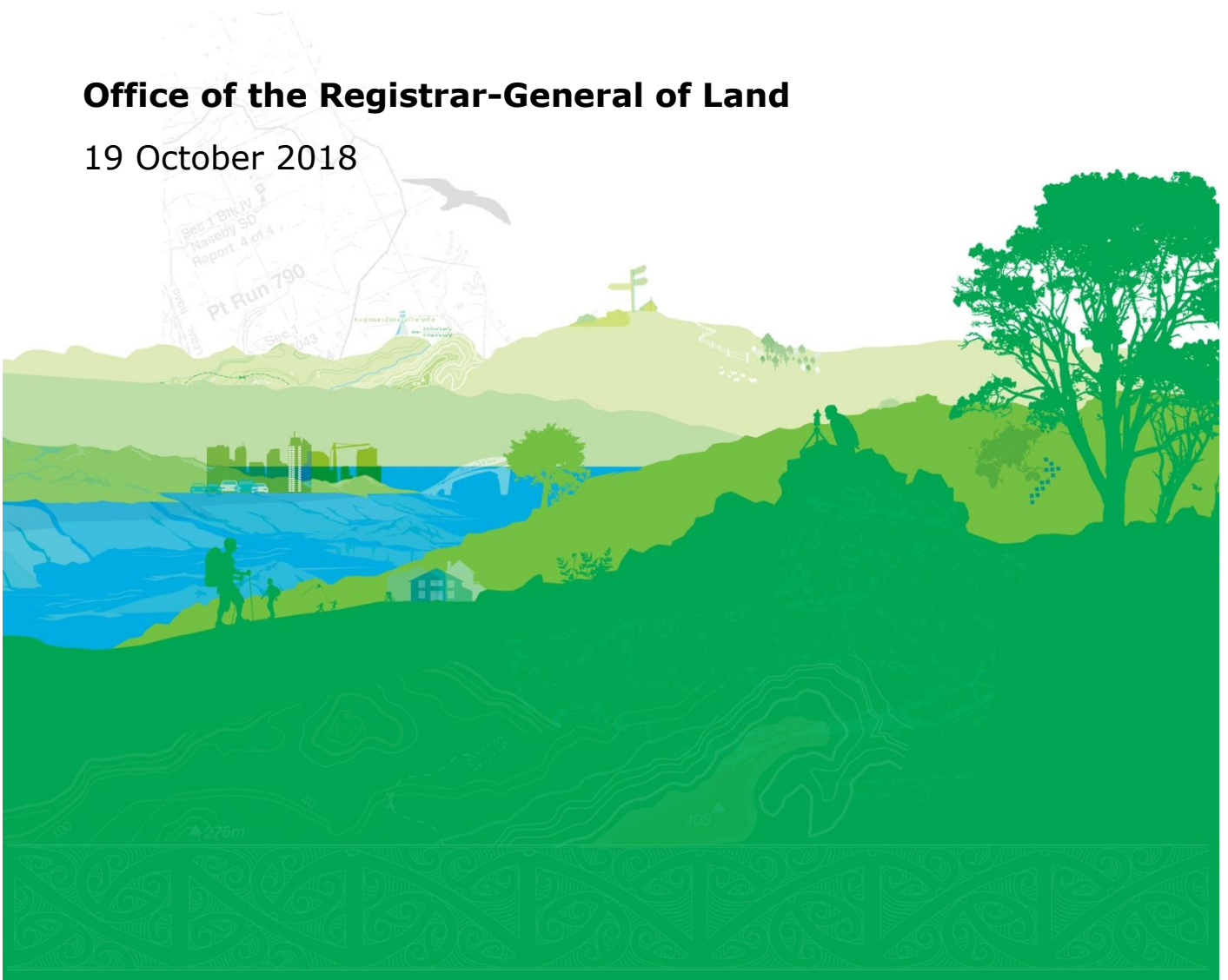
Removal of Easements

Guideline 2018

LINZG20774

Office of the Registrar-General of Land

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Introduction

A key end outcome of the land registration system is that *registered land owners or right holders have confidence that their rights are secure, well understood and easily tradable.*

Two intermediate outcomes which support this are that:

- *“the register correctly records the state of every title and legal substance of every transaction”*; and
- *“title information is easily found, obtained and interpreted.”*

When a registered easement has ended due to merger, redundancy or extinguishment, the grantor or grantee of the easement may apply to the RGL to have the easement removed from the register.

Sections 113, 114 and 115 of the Land Transfer Act 2017 (Act) set out the process for these applications, whilst regulation 5 and Schedule 2 of the Land Transfer Regulations 2018 (Regulations) set out the information that must be provided with them.

Purpose of this guideline

The purpose of this guideline is to provide additional guidance on the application and registration procedures for the removal of merged, extinguished or redundant easements under ss113-115 of the Act.

It is to be read in conjunction with the statutory provisions, and is designed to ensure that the requirements for applications and supporting evidence are transparent and well understood.

References

This guideline should be read in conjunction with the following:

- Land Transfer Act 2017
- Land Transfer Regulations 2018
- Land Transfer Act 2017 Forms Approval 2018
- Memorials Standard Guideline 2018

Interpretation

References in this guideline to sections, parts, subparts and regulations 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 2018 have the meaning given to them in that Act, unless otherwise stated.

Terms and Definitions

benefited land	the land, or interest in land, which has the benefit of an easement
benefited owner	person acquiring an easement, or the registered owner of land having the benefit of an easement
burdened land	the land, or an estate in land, which bears the burden of an easement
burdened owner	person creating or granting an easement, or the registered owner of land subject to an easement
easement	<p>a right to use burdened land in a particular way, but without the right to possession of that land.</p> <p>An easement may be created as attached or “appurtenant” to benefited land, eg a right of way over burdened land leading to benefited land, or “in gross”, eg the right for a network operator to place pipes or lines for the benefit of the network.</p> <p>In this guideline, where the context permits, “easement” includes a <i>profit à prendre</i>.</p>
<i>Gazette</i>	<i>The New Zealand Gazette - Te Kahiti o Aotearoa</i>
Grantee	<p>in relation to an easement or a <i>profit à prendre</i>, means—</p> <p>(a) the registered owner of the benefited land or, if the benefited land is land of the Crown with no registered owner, the Sovereign; or</p> <p>(b) the person entitled to the benefit of the easement or <i>profit à prendre</i></p>
Grantor	in relation to an easement or a <i>profit à prendre</i> , means the registered owner of the burdened land or, if the burdened land is land of the Crown with no registered owner, the Sovereign
identifier	a combination of letters or numbers, or both, by which a record of title, instrument or other document is uniquely identified
Independent Person	<p>A person who is independent of the client and the transaction. In particular someone who is not:</p> <ul style="list-style-type: none"> - related to them; - their partner or spouse; - part of their extended family group; - living at the same address; or

- involved with or benefitting from the transaction.

LINZ	Land Information New Zealand
LTA	Land Transfer Act 2017
LTR	Land Transfer Regulations 2018
<i>profit à prendre</i>	the right for a benefited owner to take from certain land of a burdened owner some product or natural resource of that land, without right to possession of that land
r, rr or regulation	indicates a regulation/s, in the Land Transfer Regulations 2018 unless otherwise specified
Record of title	means a record of title constituted under the Land Transfer Act 2017
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 an application

1.1 Context, criteria and process

Sections 113-115 of the Act enable the grantor or grantee of a registered easement that has come to an end, to apply to have that noted on the record of title and the easement moved from the current to historic title view for the land.

Where the easement has both burdened and benefitting land, a successful application will result in updates to both records of title.

Where an easement is for the benefit of a person (or company), rather than other land, it is known as an "easement in gross". This is common for easements to utilities companies; only the record of title against which the easement has been registered, which is the burdened land, will be updated.

Easements can only be noted as removed when the RGL is satisfied:

- the Applicant has fulfilled the criteria set out in the Act for the particular grounds upon which their application is based; and
- the easement is extinguished, after giving notice to interested parties; such notice is not required for extinguishment based on the lapse of a fixed time period.

The RGL is not authorised to initiate a removal an extinguished easement without an application from the grantor or grantee.

The application is made under the section of the Act relevant to the grounds upon which the application is based, and processed in the manner outlined in that section.

1.2 Form & required information

Applications relating to *easements and profits à prendre* can be under the following sections, depending on the grounds for the application:

Merger s113 and r18;

Extinguishment through lapse of time s113;

Extinguishment on occurrence of event s114; or

Redundancy s115 (*relates to easements only*).

Applications must satisfy the legal criteria for the particular statutory grounds relied on.

Applications must be in the approved form¹, and contain both the core information, and accompanying documents, described in r5 and Schedule 2 of the Regulations.

In addition, to satisfy the requirements of ss113-115, the application must contain a statement of the grounds for the application, being whichever of the following apply:

¹ See Land Transfer Act 2017 Forms Approval 2018 approved pursuant to s227(1)(4).

- that the easement or profit à prendre—
 - has merged; or
 - is extinguished because it was granted for a fixed period of time that has elapsed; or
 - that the easement or profit à prendre is extinguished because an event specified in the document creating it occurred and brought it to an end;

or

- that the easement is extinguished because it is redundant, in that—
 - all or part of the benefited land no longer adjoins the burdened land as a result of a subdivision or for any other reason; and
 - as a result, the easement has no practical effect.

A copy of the paper form application for an Application for extinguishment of Easement or profit à prendre is attached at Schedule 1, to illustrate typical requirements.

For the other forms, see Land Transfer Act 2017 Forms Approval 2018 approved pursuant to s227(1)(4).

The core information is listed in r5.

The accompanying documents required are:

Evidence that establishes that the easement or profit à prendre has merged or was granted for a fixed period of time that has elapsed (*s113 Applications to record merger, or extinguishment through lapse of time, of easement or profit à prendre*); or

Evidence that establishes that an event has occurred that brings the easement or profit à prendre to an end (*s114 Application to record extinguishment of easement or profit à prendre on occurrence of event*); or

Evidence that establishes that the easement is redundant (*s115 Application to record extinguishment of redundant easement*)

The form also contains a statutory declaration which can be used to evidence how the legal criteria are met. It should refer to the registered records relating to the easement in question and any other relevant supporting details.

Additional annexure schedules may be used to support the statutory declaration.

1.3 Grounds for application

1.3.1 Section 113 – Application based on merger

1.3.1.1 Grounds

An application can be based on merger if the ownership and possession of fee simple estates in both the benefited and burdened land become vested in the same person.

1.3.1.2 Evidence

Applicants may wish to provide evidence in support of their application by way of statutory declaration, from themselves and, where possible, an independent person. This could provide evidence to confirm that:

- a) the easement has determined due to merger; and
- b) the easement no longer benefits the benefited land; and
- c) the ownership and possession of fee simple estates in both the benefited and burdened land have become vested in the applicant; and
- d) there are no registered or unregistered interests at law or in equity to prevent the removal of the easement from the Register (see r18)

1.3.2 Section 113 – Application based on extinguishment through lapse of time

1.3.2.1 Grounds

An application can be based on extinguishment through lapse of time if the instrument creating the easement limits its duration (by way of a fixed time period or specific end date) and that period has expired.

1.3.2.2 Evidence

Applicants should provide evidence in support of their application by way of statutory declaration:

- a) confirmation that the easement is extinguished because it was granted for a fixed period of time that has elapsed, and
- b) reference to the clause in the instrument creating the easement that limits the term or duration of the easement.

1.3.3 Section 114 – Application based on extinguishment by occurrence of event

1.3.3.1 Grounds

An application can be based on determination by occurrence of event if the instrument creating the easement provides that the easement shall determine or be extinguished upon the happening of a specified event², and that the specified event has occurred.

1.3.3.2 Evidence

Applicants should provide evidence in support of their application by way of statutory declaration. Where relevant, a corroborating statutory declaration from an independent person should also be provided.

The evidentiary matters to be addressed would include:

- a) that the easement has been extinguished because an event specified in the document creating it occurred and brought it to an end; and
- b) reference to the clause or provision in the registered easement which provides for determination or extinguishment upon the occurrence of a certain event; and
- c) that the event has occurred and affirming that the easement no longer benefits the benefited land and is no longer in force, used, or operative; and
- d) either:
 - (i) another statutory declaration by a independent person with knowledge of the relevant facts, or
 - (ii) other independent evidence to verify the applicant's statutory declaration.

1.3.4 Section 115 – Application based on redundancy

1.3.4.1 Grounds

For an application to be successful, applicants need to satisfy the RGL that the statutory criteria have been established.

An application can be based on redundancy if all or part of the benefited land no longer adjoins the burdened land as a result of a subdivision or otherwise and, as a result, the easement has no practical effect.

² In other words, without any requirement for execution of an instrument of surrender.

This does not apply to easements in gross (s115(10)).

1.3.4.2 Evidence

Applicants should provide evidence in support of their application by way of statutory declaration. Where relevant, a corroborating declaration from an independent person should also be provided.

The evidentiary matters to be addressed would include:

- a) that the easement is extinguished because it is redundant, in that all or part of the benefited land no longer adjoins the burdened land as a result of a subdivision or for any other reason; and
- b) as a result, the easement has no practical effect; and
- c) that the easement no longer benefits the benefited land, and either
 - (i) cites the subdivision plan number; or
 - (ii) explains any other reason for separation of the benefited and burdened land; and
- d) either:
 - (i) another statutory declaration by a independent person with knowledge of the relevant facts, or
 - (ii) other independent evidence to verify the applicant's statutory declaration.

2 Exceptions

2.1 Determination or extinguishment by other means

Sections 113-115 of the LTA do not apply to claims that an easement has been determined or extinguished by other circumstances, such as a breach of term, covenant, or condition, or abandonment.

In these cases, the applicant should rely on other authority to modify or extinguish easements; for example, the Court's jurisdiction under s317 of the Property Law Act 2007.

3 RGL Notice to interested persons

The RGL must give notice, in the prescribed manner, and to the persons outlined in the Act and Regulations³, if satisfied the application complies with the statutory requirements.

Sections 220 (Public Notice), 221 (Giving of notice to persons other than RGL) and 223 (When notices given) also apply.

Notice is not required for applications for the extinguishment of easements is through merger or lapse of time under s113 of the Act.

A notice must contain the core and additional information and accompanying documents required by r26 and Schedule 6 of the Regulations.

It must specify the prescribed period within which is **20 working days** (r27) after the date on which the notice is given⁴.

Sections 114(5)(b) and 115(5)(b) of the Act require the RGL to give notice to every person who appears to the RGL to have an interest under the easement or profit à prendre. This includes:

- a) the registered owner of the benefited land;
- b) the grantee of an easement in gross, unless the application is based on *extinguishment on occurrence of event* (s114) or *extinguishment on occurrence of event* (s115) – s115(10);
- c) the lessee of the benefited land/easement;
- d) the mortgagee/encumbrancee of the benefited land;
- e) the mortgagee of an easement in gross; and
- f) the caveator of a caveat against the benefited land or against an easement in gross.

Notice must be:

sent to interested persons at the addresses for service supplied by the applicant. If there is any doubt as to the accuracy of the address, further steps should be taken to verify it.

publically notified. The requirement in sections 114(5)(a) and 115(5)(a) to give public notice will be met if s220 of the LTA has been complied with.

³ ss114(5) and (6), and 115(5) and (6), and regulations 26 and 27 and Schedule 6 of the Regulations

⁴ 4 A notice is given to a person in the manner set out in s223 of the Act.

4 Objections

4.1 Who may object

Any interested party may make an objection to an application for extinguishment of an easement based on occurrence of event or redundancy (s114(7) or 115(7)).

Objections should be in writing. A person does not necessarily have to be a registered interest holder, nor need to have been served notice by the RGL, in order to be an interested party.

4.2 RGL Consideration of objection

The RGL is obliged to consider any objections (s114(7), s115(7)).

If the objection is material, ie raises substantive conflicts of fact or evidence, the RGL may either return it (rejection) or retain it pending further information from the applicant or objector (requisition), using the process in s37.

Potential responses sought from an applicant via requisition can include:

- a) a response to the objection; or
- b) withdrawal the application; or
- c) obtaining the objector's consent to the removal of the easement; or
- d) obtaining a withdrawal of the objection.

An application should be rejected if the applicant and objector fail to reach agreement within the time specified in a requisition notice, or in any extension of time. If the objection is clearly spurious or immaterial the application may proceed.

4.3 RGL Decision and notification to objector and applicant

Having decided on the merits or otherwise of the objection, the RGL should notify both the applicant and the objector of the outcome (s114(7), s115(7)), in the manner outlined in s221 of the Act.

5 Making an entry on the register

The RGL must be satisfied with the proof of merger, extinguishment, or redundancy and will only make an entry on the Register after being satisfied the requirements of ss113, 114 or 115 of the LTA have been met, and any material objections have been resolved.

A suitable entry, in accordance with the Memorials Standard 2018 is:

“*[Identifier]* (Partial) Removal of the *[easement]* created by *[Instrument]* *[number]* – *[date/time]*”

Schedule 1: Application for Extinguishment of Easement or profit à prendre Form

This approved format may be used for paper lodgement under the Land Transfer Act 2017

Form 25

Application for Extinguishment of Easement or profit à prendre

(Sections 113, 114, or 115 Land Transfer Act 2017)

Land registration district

BARCODE

Applicant

Surname must be underlined.

Application

The applicant applies to the Registrar **to remove** the easement(s) and/or *profit(s) à prendre* scheduled below by making an entry on the register that the easement(s) and/or *profit(s) à prendre* is/are merged, or extinguished on the grounds set out in the statutory declaration in Annexure Schedule 1.

Schedule of easements and profit(s) à prendre

Continue in additional Annexure Schedule if required.

Purpose (nature and extent)	Shown/document number	Burdened Land (Record of Title)	Benefited Land (Record of Title <i>or</i> in gross)

--	--	--	--

Annexure Schedule 1

Delete words in [] as required.

I **solemnly and sincerely declare that:**

1. I am the [owner of the [benefited] [burdened land(s)] [grantee in gross] referred to in the attached application.
2. The [easement(s)] and/or profit(s) à prendre referred to in the Schedule of easements in the application [is] [are] merged, or extinguished on the following grounds –
 - a) [merger of ⁵] Or
 - b) Extinguished because it was granted for a fixed period of time that has elapsed⁶. Or
 - c) Extinguished because an event specified in the document creating it occurred and brought it to and end ⁷;
Or
 - d) Extinguished because it is redundant, in that –

⁵ Enter details of merger

⁶ Enter circumstances of expiry

⁷ Enter details of event

- All or part of the benefited land no longer adjoins the burdened land as a result of the subdivision shown on ⁸
- Or for any other reason ⁹

(e) and as a result the easement has no practical effect.

3. Addresses for service of notice are complete and accurate to the best of my knowledge and belief.

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

DECLARED at _____)
 this _____ day of _____ 20 _____)
 before me: _____)

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

Addresses for service of parties on whom notice to be served *Continue in additional Annexure Schedule if required. Include all persons entitled to any interest under the easement(s) or profit(s), including mortgages.*

Full name	Full postal address

⁸ Enter number of subdivision plan

⁹ Enter any other reason for extinguishment by redundancy

Attestation

	Signed in my presence by the Applicant
	_____ <i>Signature of Witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed):-</i>
	Witness name
	Occupation
	Address
Signature [Common seal] of Applicant	

Dated this day of 20

I **certify** that I am aware of the circumstances of the dealing set out in this instrument and do not know of any reason, in fact or in law, why the instrument should not be registered or noted.¹⁰

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Certified by [Practitioner for Applicant]
or [Applicant]

¹⁰ See Regulation 14(3) Land Transfer Regulations 2018.

Important notes for persons preparing or signing forms for registration under the Land Transfer Act 2017:

1. You should seek independent legal advice before signing this application instrument.
2. You should not sign this application instrument if you do not have the necessary legal capacity, e.g. if you are under 18 years of age, an undischarged bankrupt, or your property is subject to the Protection of Personal and Property Rights Act 1988 or other statutory restrictions.
3. If you are signing on behalf of a corporation you should ensure any necessary resolutions authorising the application have been made and the corporation is not under statutory management, in receivership or liquidation.
4. The witness cannot also be a party to the application instrument and must be able to confirm the identity of the person signing.
5. When registered this application instrument will become part of the public record under the Land Transfer Act 2017.