

LINZ OP G 01228

Accretion and Erosion

Guideline 2018

LINZG20783

Office of the Registrar-General of Land

13 November 2018



Contents

Introduction	3
Purpose of this guideline	3
References	3
Interpretation	3
Terms and Definitions	4
1 Application for Accretion (and Erosion)	5
1.1 Making the application	5
1.1.1 Introduction.....	5
1.1.2 Form and required information.....	5
Authority	6
1.1.3 When title will be altered.....	6
1.1.4 Survey requirements	6
1.1.5 Evidence: establishing that the applicant is entitled to the alteration of the boundary due to the accretion or erosion	7
1.1.5.1 Legal requirements	7
1.1.5.2 LINZ records	7
1.1.5.3 Statutory declaration by applicant.....	7
1.1.5.4 Statutory declaration by another person.....	7
1.1.5.5 Expert testimony	7
Erosion.....	8
2 Assessment of application	8
2.1 Assessment of required information and form	8
2.2 Assessment of evidence	8
2.3 Establishing parties to be notified	9
2.3.1 Treaty of Waitangi claims	9
2.3.2 Applications adjoining the marine and coastal area	9
2.3.3 Applications adjoining rivers subject to accords, deeds of recognition or other such rights	9
2.3.4 Other Adjoining owners and parties	9
2.3.5 Māori land	9
2.4 Assessment of other requirements.....	10
3 RGL notice of intention to alter the register	10
3.1 Notice to persons – Regulation 29	10
3.2 Interested parties to be notified	10
3.3 Form of notice.....	11
4 Objection	11
4.1 Who may object	11
4.2 Timeframe	12
4.3 Dealing with objections	12

5	Amending the register	12
5.1	Replacement record of title	12
5.2	Record and retain details	12
Schedule 1: Application for a new record of title incorporating accretion (and erosion)		13
Schedule 2: Sample notice of intention to alter the register		13
Schedule 3: Sample letter to Office of Treaty Settlements		19

Introduction

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.

This can be contrasted with cases where the course of a river or stream has changed suddenly due to avulsion (for more information on avulsion see *Boundary Changes Accretion and Dry Beds (Rivers and Streams) Standard 2018*, and the *Dry River Guideline 2018*).

Purpose of this guideline

This guideline explains how a registered landowner who has established title to land formed by accretion or erosion may apply to have their record of title updated accordingly. It outlines the factual and legal requirements necessary to fulfil the mandatory requirements set out in the *Accretion and Dry Beds (Rivers and Streams) Standard 2018*¹.

It should be read in conjunction with the relevant statutory provisions and applicable RGL Standards Guidelines and Directives.

References

The following documents are relevant to this guideline.

- Land Transfer Act 2017;
- Land Transfer Regulations 2018;
- *Accretion and Dry Beds (Rivers and Streams) Standard 2018*;
- Requisitions Periods Directive 2018;
- Forms Approval 2018;
- Rules made by the Surveyor-General under section 49 of the Cadastral Survey Act 2002.

Interpretation

Transfer Act 2017 and Land Transfer Regulations 2018 (as applicable) unless otherwise stated.

¹ Other than those relating to Avulsion (of dry river and stream beds) – refer Dry River Guideline 2018. Avulsion applications are not alteration applications but rather applications to bring land under the Act.

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

accretion	is the common law doctrine of accretion.
Act	Land Transfer Act 2017
Affected party	any person, including a landowner, whose registered estate or interest would be materially affected were an application to be accepted and a correction made
Fixed water boundary	means, for the purpose of this guideline, an immovable boundary near water that has been defined by survey along a defined line, and where it is not intended that the boundary be the edge of the water.
independent person	a person who is— not employed by or related to the applicant; and will not benefit from the outcome of the application
Interested Parties	
Movable Water Boundary	means, in this guideline, a movable boundary defined as the edge of the water, in contrast to a fixed water boundary.
OTS	Office of Treaty Settlements
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.
the standard	LINZS20013: Boundary Changes – Accretion and Dry Beds (Rivers and Streams) 2018
s, ss or section	Indicates a subsection/s or section/s, in the Land Transfer Act 2017 unless otherwise specified.

Surveyor-General's Rules Rules made by the Surveyor-General under section 49 of the
Cadastral Survey Act 2002

1 Application for Accretion (and Erosion)

1.1 Making the application

1.1.1 Introduction

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

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

Applications are made under s21(1)(c), following the process set out in s21 (*Registrar's Powers of Alterations*) and regulation 17 (*Notices and objections about certain alterations to register*).

1.1.2 Form and required information

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

These requirements are reflected in the fields on the approved form² which must be completed prior to lodgement, and which themselves reflect the regulations which require applicants to provide the specified "core" and "additional information", as well as accompanying documents (see r5, and the part of Schedule 2 of the Regulations).

A copy of an approved paper form of Application is attached at Schedule 1 to illustrate typical requirements.

The core information is listed in r5 of the Regulations.

The additional information required under r5 includes:

- A description of the land incorporating accretion or excluding erosion;
- The full name and address, if known to the applicant, of every owner of land adjoining or opposite the accretion.

The accompanying documents required are:

² See Land Transfer Act 2017 Forms Approval 2018 which approve (i) electronic template forms where possible and otherwise electronic image forms – both for electronic lodgement, and (ii) paper forms for manual lodgement (under s227(1)(4)).

- Evidence that establishes a boundary change resulting from accretion or erosion.

Authority

Applications may be lodged as electronic instruments which must be executed and certified in the manner outlined in rr 7, 11, and Schedule 3 of the Regulations.

An electronic instrument that is certified is, on registration, treated as having been executed by the parties in column 3 of the table in Schedule 3 of the Act, so doesn't need to be executed as well (r 11).

The practitioner acting for the caveator must hold appropriate evidence to support the certifications.

1.1.3 When title will be altered

Clause 8 of the Standard provides that record of title incorporating accretion will only be issued if:

- a) The application complies with s21 of the Act, and r17(2) and rr5 and 7 and Schedules 2 and 3 of the Regulations, and is in the form approved under s227(1)(4) of the Act and r6;
- 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; and
- f) Any evidentiary disputes are resolved.

1.1.4 Survey requirements

The requirement in clause 8(b) of the standard that 'the land subject to the application is adequately defined on a plan that complies with the Cadastral Survey Act 2002' will ordinarily be met if:

- a) the applicant's land, including the land claimed as accretion land claimed is shown on a plan to be deposited under section 224 of the Act as a separate lot or a discrete area, and
- b) the plan complies with the Cadastral Survey Act 2002 and the Surveyor-General's Rules.

1.1.5 Evidence: establishing that the applicant is entitled to the alteration of the boundary due to the accretion or erosion

For the requirement at 8(d) of the standard that 'the application is supported by evidence to establish that accretion has occurred' the following matters are relevant:

1.1.5.1 Legal requirements

- a) the land in question has a moveable 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.

1.1.5.2 LINZ records

The application refers to records held by LINZ that show that:

- a) the land in question has a moveable 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.

1.1.5.3 Statutory declaration by applicant

A statutory declaration from the applicant 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.

1.1.5.4 Statutory declaration by another person

A statutory declaration from at least one independent person³ who is familiar with the land applied for that corroborates the application.

1.1.5.5 Expert testimony

Where an application is likely to be disputed, a statutory declaration from a person qualified to give expert testimony about the soil composition of the

³ As defined in Terms and Definitions

area claimed as accretion that corroborates the applicant's statutory declaration.

If the survey plan includes erosion supporting evidence is not ordinarily required but the erosion should be referred to in the accretion application.

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.

2 Assessment of application

2.1 Assessment of required information and form

Upon receipt of an application, the RGL will assess whether the applicant has supplied the required information in the required format. These requirements are described in the following parts of paragraph 8 of the Standard:

Paragraph 8(a) – the application is in the approved form, and includes the core information (r5) additional information, accompanying documents, and execution or certifications (Schedules 2 and 3 of the Regulations); and

Paragraph 8(b) – the land is adequately defined on a plan.

2.2 Assessment of evidence

As part of the RGL's consideration of the evidence supplied to establish accretion or erosion (as required by clause 8(d) of the Standard), the RGL will assess whether the LINZ records referred to in the application establish the matters in paragraph 1.1.5.

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

The following matters are relevant.

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.

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).

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.

Surveyor's report and other documents

Ordinarily these will contain information about the existence of the accretion in support of the plan.

2.3 Establishing parties to be notified

LINZ staff will establish the parties who required notice under section 3 below, by making the following assessments:

2.3.1 Treaty of Waitangi claims

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

- i) sending a letter to OTS, in the form set out in Schedule 3: Sample letter to Office of Treaty Settlements
, or
- ii) reviewing recent, similar applications for accretion relating to the same adjoining land or adjoining lake, river, or stream.

2.3.2 Applications adjoining the marine and coastal area

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

2.3.3 Applications adjoining rivers subject to accords, deeds of recognition or other such rights

Assess 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), ordinarily by contacting the Commissioner of Crown Lands.

2.3.4 Other Adjoining owners and parties

Assess who 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 applicant and independent verification from LINZ records.

2.3.5 Māori land

Assess if 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

2.4 Assessment of other requirements

Where there are no outstanding evidentiary conflicts, and the RGL is satisfied the requirements of paragraph 8(a)-(d) of the standard are satisfied the RGL will give notice of intention to alter the register in accordance with section 3 below.

3 RGL notice of intention to alter the register

3.1 Notice to persons – Regulation 29

The RGL cannot under s21 alter the register to record a boundary change arising from accretion or erosion unless any person with a registered estate or interest materially affected by the alteration:

- consents; or
- following notice to that person by the RGL of intention to alter the register, they do not object.

Even if the applicant supplies or the RGL receives consents from all such persons prior to any notification, the RGL must still notify *other* parties outside of those with registered estates or interests, who by virtue of the law of accretion or erosion, may have an interest in the land. Details of such parties are listed below.

221 (*Giving of notice to persons other than Registrar*) and 223 (*When notices given*) also apply.

A recommended form which incorporates the requirements of regulation 29 is attached at Schedule 2.

3.2 Interested parties to be notified

The requirement to give notice, will ordinarily be met if notice in the form set out in 3.3 below is given to the following parties (which includes those identified in accordance with 2.3 above):

- a) Treaty settlement claimants ie any relevant iwi group as advised by OTS (see 2.3.1 above);
- b) owners of land adjoining or situated opposite the accretion (see 2.3.5 above);
- c) the Māori Land Court (if the accretion affects or adjoins or is opposite Māori land) (see 2.3.5 above);
- d) the Commissioner of Crown Lands;

- e) the Ministry of Justice (if the land claimed is adjacent to the seashore or a tidal creek);
- f) the Department of Conservation;
- g) the relevant local authorities (regional and district/city councils);
- h) 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 2.3.3); and
- i) if adjoining land is in the marine and coastal area, any right holders in that area (see 2.3.2 above).

3.3 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 section 222 of the Act within 30 working days after the day on which the Registrar's notice is given. Section 222(3) requires the RGL give notice of the address of the designated land registry office for posting the notice of objection under s222(1)(a).
- b) The requirements of (a)(i) above will ordinarily be satisfied where the notice:
 - i) states the RGL's intention to create a record of title incorporating the accretion; and
 - ii) gives an explanation of the legal basis for accretion and erosion applications (where applicable); and
 - iii) includes 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) includes a copy of the application and supporting evidence;
 - v) includes the designated office and any other information specified or prescribed for the purposes of s222

A recommended form of notice is attached at Schedule 2.

4 Objection

4.1 Who may object

Any person, may object to an application for accretion or erosion by notice in writing given in the manner outlined in s222(1).

4.2 Timeframe

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 shall be at the RGL's discretion, on a case by case basis. Any objections received after the register is altered cannot be considered by the RGL.

4.3 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 Registrar will ordinarily 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.
- d) The fact that someone does not want an accretion claim to proceed does not, of itself, constitute a material objection.

Once any material objections have been resolved, the application will be registered in the manner outlined in Section 5 below.

5 Amending the Register

5.1 Replacement record of title

Where the matters outlined in section 8 of the standard have been satisfied in accordance with the processes outlined above, the RGL 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 deposited plan submitted with the application.

5.2 Record and retain details

When issuing a record of title incorporating land claimed as accretion, the requirements of the Recording of Memorials on the Register Standard 2018 will be complied with.

Schedule 1: Application for a new record of title incorporating accretion (and erosion)

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

Form 3

Application for new record(s) of title incorporating accretion

(Regulation 17 Land Transfer Regulations 2018)

Land Registration District

BARCODE

1.

Record of Title (unique identifier)

Applicant

New Record of Title (unique identifier) *if known*

Lot

Plan number

New Record of Title (unique identifier) <i>if known</i>	Lot	Plan number

Application

The **Applicant applies** to the Registrar to issue (a) new record(s) of title for the land described above, including accretion shown on the Plan, on the grounds set out below.

Grounds for Application

1. The Applicant is the registered owner of the land in the above record of title.
2. The land affected by the boundary change has a moveable water boundary shown on survey plan [*specify number*], which defines the original boundary, and on survey plan [*specify number*], which defines the boundary as changed by the accretion or erosion.

3. The land was originally granted or conveyed on [*specify date*] by [*specify particular Crown grant or instrument*], which did not exclude the doctrine of accretion and erosion.
4. The change in position of the water boundary has occurred gradually and imperceptibly over time.

Evidence to Support the Application

The following evidence supporting the claim accompanies this Application:

2. Statutory declaration by the Applicant.
3. Statutory declaration by (*insert name*) as disinterested party (i.e. someone who is not employed by or related to the Applicant and does not have any vested interest in the outcome of the Application).
4. Statutory declaration by (*insert name*) of (*insert place of abode*), (*insert professional occupation*) a person qualified to give expert testimony about the soil composition of the area claimed as accretion.
5. (*Insert details of other evidence*).

The full name and address, if known to the applicant, of every owner of land adjoining or opposite the accretion (unless they have consented to this Application)

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 for accretion or erosion.
2. You should not sign this application for accretion or erosion 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 for accretion or erosion 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 for accretion or erosion and must be able to confirm the identity of the person signing.
5. When registered this application for accretion or erosion will become part of the public record under the Land Transfer Act 2017.

Schedule 2: 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 applicable*) at (...Bay ... River/ ... Stream/Lake ...) in the District/City of ...

Land registration district:

Application number:

Applicant:

name)

Applicant's name
c/- (*Solicitor's firm*)

PO Box...
Town/city

Land applied for:
square

(*Land area in square metres*)
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...

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 disagree with the application. You have until (*expiration date*) to do this.

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 'moveable freehold' ie the original grant conveyed the foreshore as it was from time to time, not as it had been at the time of the grant⁵.

The doctrine of accretion applies to land under the Land Transfer Act 1952⁶, 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 a subject⁷.

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, A54/80⁸, Savage J suggested that there were three cumulative matters which must be satisfied before the (now) Registrar-General of Land could act under section 81 of the Land Transfer Act 1952:

- (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.

⁵ *Attorney-General, Hutt River Board v Leighton* [1955] NZLR 750 (SC and CA) at 784.

⁶ *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.

⁷ *Attorney-General v Findlay* [1919] NZLR 513; [1919] GLR 207 and *Gifford v Lord Yarborough* (1828) 5 Bing 163, 120 ER 1023 (HL).

⁸As noted in 'River Boundaries and the Land Registries', Cross, R. (1985) *Butterworth's Conveyancing Bulletin*, p. 51. Citation: (1985) 3 BCB 49

Schedule 3: Sample letter to Office of Treaty Settlements

Our Ref: (Application number)

Your Ref:

(Date)

OFFICE OF TREATY SETTLEMENTS
PO Box 919
Wellington 6140

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)