

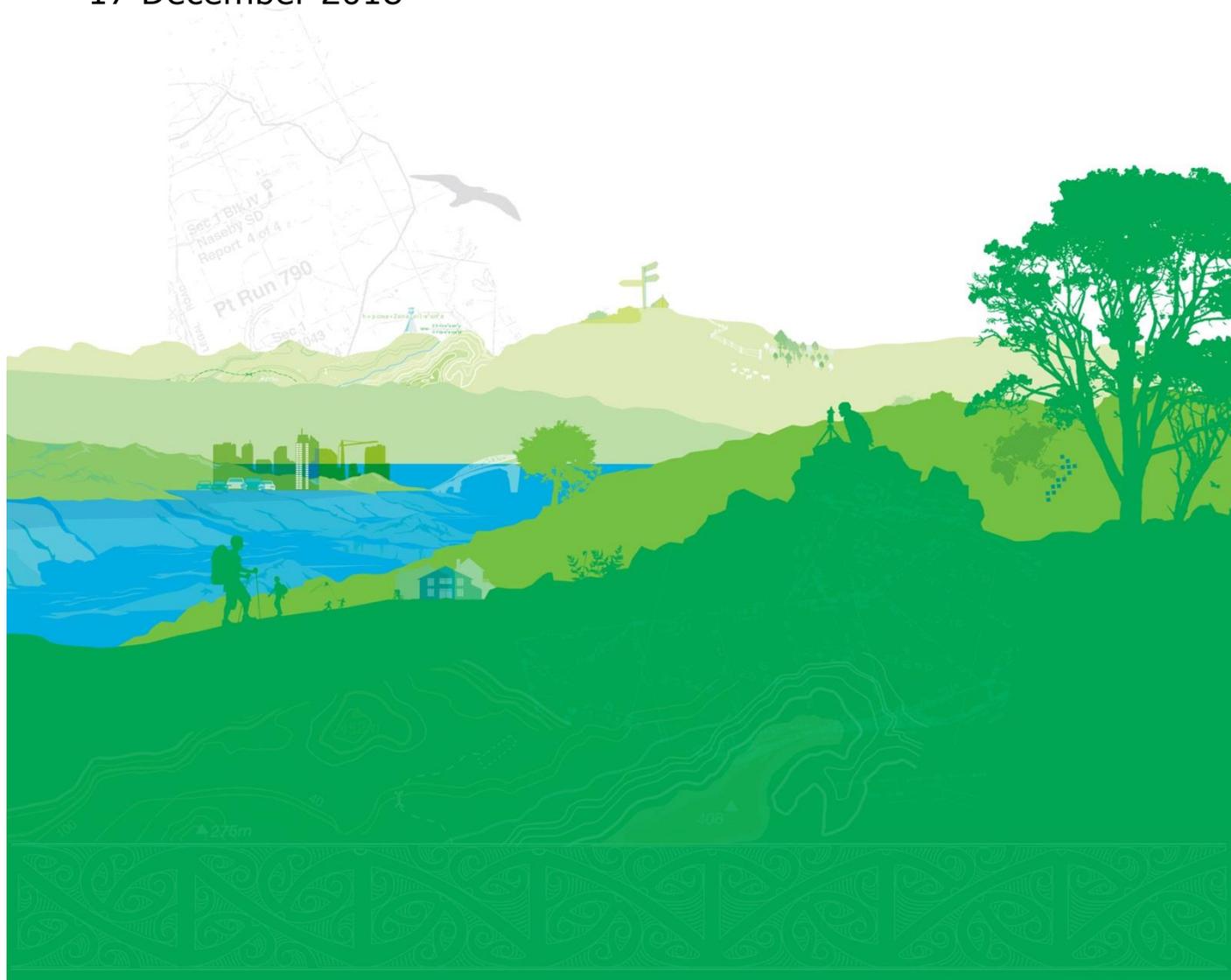
Adverse Possession

Guideline 2018

LINZG20778

Office of the Registrar-General of Land

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Introduction

Requirements and procedures for various types of application for securing registered title are prescribed under Part 4 of the Land Transfer Act 2017. This guideline provides commentary on the application process for the following operations:

- Application for title based on adverse possession
- Application in respect of limited title

Purpose of this guideline

This guideline is to assist individuals understand the statutory requirements and the processing steps for applications for adverse possession.

References

The following documents are relevant to this guideline:

- Land Transfer Act 2017
- Land Transfer Regulations 2018
- Approved Paper Forms for Land Transfer Act 2017
- Approved Electronic Forms for Land Transfer Act 2017
- Caveats and Other Stops on Registration Guideline 2018
- Requisition Periods Directive 2018
- Recording Memorials on the Register Standard 2018

Interpretation

References in this guideline to sections, parts, subparts and regulations refer to the Land Transfer Act 2017 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

Act	Land Transfer Act 2017
Caveator	means the person claiming the estate or interest to be protected by the caveat
Crown Grant	Documents evidencing land originally owned by the Crown granted to private owners before records of title and the current land transfer system. Held at Archives New Zealand
Deposited Plan (DP)	A survey plan deposited under s224 of the Act
Licensed Cadastral Surveyor	as defined in s4 of the Cadastral Survey Act 2002
LT Plan	Land Transfer Plan of survey prepared for deposit under s224.
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 or delegate
s, ss or section	indicates a subsection/s or section/s, in the Land Transfer Act 2017 unless otherwise specified.

1 Application for registered title based on adverse possession (Subpart 1 of Part 4)

1.1 Making the application

1.1.1 Introduction

Sections 155 to 170 of the Land Transfer Act 2017 set out the process under which a person who is not the registered owner of land but has been in possession for a long time may apply to become the registered owner. These provisions replace the regime for acquiring title by adverse possession set out in the Land Transfer Amendment Act 1963.

To qualify, the land involved must already be registered under the Land Transfer Act 2017 and the applicant must have been in adverse possession for a continuous period of at least 20 years (s 155(1)).

1.1.2 Form and required information

The application must include the basic information required under the regulations along with evidence, in the form of statutory declarations, setting out the relevant facts and circumstances of the applicant's adverse possession.

The approved application form is set out in Schedule 1. This form is designed to accommodate the core information and additional matters required under the regulations (see r5 and schedule 2).

The application must also include:

- The physical address of the land to which the application relates, if known to the applicant:
- The full name and address of the following, if known to the applicant:
 - a) every person who has or may have an estate or interest in any land to which the application relates:
 - b) every person, other than the applicant, who is an owner or occupier of adjoining land.

1.1.3 Establishing at least 20 years continuous adverse possession

1.1.3.1 Grounds for application

The application must show that the statutory criteria in s155 have been satisfied. In particular, it must establish that the applicant has been in continuous possession of the land for a period of not less than **20 years**.

The supporting evidence, in the form of statutory declarations, may include such matters as:

- how the land has been occupied and used over the period of adverse possession claimed in the application
- any periods of adverse possession by other persons through whom the applicant is claiming title
- whether the land has been fenced, otherwise enclosed or incorporated with other adjoining land for the exclusive use of the applicant
- any improvements to the land made by the applicant during the period of adverse possession
- whether the applicant has paid rates or made other payments in connection with the land
- supporting statutory declarations¹ from other persons who have knowledge of the relevant facts and circumstances

1.1.4 Land not subject to adverse possession

Applications are prohibited in the situations described in s159, which relate to land owned by central or local government or Māori, land held in trust for a public purpose, situations of mistaken boundary, or where land has been occupied in connection with adjoining land because of a change in the course of a river, creek or stream.

1.1.5 Disclaimer for land registered in the name of dissolved company

If the application relates to land which is registered in the name of a dissolved company and vested in the Crown as ownerless property, there are additional requirements which must be met under s170 before the application may proceed. This may, for example, involve taking steps to have the Crown disclaim the land.

1.1.6 Extension of time period of occupation – incapacity or minors

If a registered owner:

- a) is incapacitated at any time during the period of occupation; or
- b) a minor

the period of adverse possession occupation may be extended under ss157 or 158.

¹ Where possible, an independent objective declaration should be provided.

1.1.7 Authority for application – who must sign or certify

An electronic instrument form of application must be executed and certified in the manner outlined in Regulations 7, 11, 13 and 14 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 (regulation 11) of the Act, so doesn't need to be executed as well. The certifying practitioner acting for the applicant must hold appropriate evidence to support the certifications; the evidence as to authority from the applicant may be either a letter or an Authority and Identity form.²

A paper instrument form of application must be signed by the applicant and certified by the applicant or the applicant's practitioner (rr 13 and 14 and Schedule 3 of the Regulations).

1.1.8 Non-compliant Applications – requisition and rejection

If the application does not comply with the requirements of the Act and Regulations, it may be returned (rejected) or retained pending correction (requisitioned) as provided in s37 (s155(4)).

1.2 RGL Notice of application to registered owner

If satisfied that the requirements for establishing adverse possession have been met, the RGL must give notice of the application to interested parties, adjoining owners, and by way of public notice, as provided for in s161. The notice period prescribed by regulation is 60 working days after the day on which the notice is given (r27).

The notice must contain the following information and accompanying documents as required by r26 and schedule 6 of the Regulations:

- a description of the land to which the application relates, including its land registration district, the unique identifier of its record of title (if any) and its physical address (if known)
- the name of the registered owner
- a statement that a person claiming an estate or interest in land to which the application relates may, within the prescribed period of 60 working days, lodge a caveat under section 162 of the Act to prevent the application from being granted
- the grounds for the application

² See Authority and Identity Requirements for *E-dealing* Guideline 2018, terms and definitions "A&I Form".

- for a notice given to a person described in s161(1)(b) and (c), a copy of the application
- for a notice given to a person who it appears to the RGL has or may have an estate or interest in any land to which the application relates,—
 - a) a statement that the notice is sent to the person for that reason; and
 - b) a description of the estate or interest, including its unique identifier (if any)
- for a notice given to a person, other than the applicant, who is an owner or occupier of adjoining land,—
 - a) a statement that the notice is sent to the person for that reason; and
 - b) a description of the adjoining land, including the unique identifier for its record of title (if any).

The RGL may give further notice and specify a further period, if the RGL considers that giving notice has not been effective or that it is desirable to give further notice of the application (s161(3)).

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

1.3 Caveat against application

1.3.1 Who may caveat

A person claiming an estate or interest in the land may lodge a caveat preventing the application from being granted (s162).

1.3.2 Form of caveat and required information

The caveat must be on the approved form, and contain the prescribed information (s162(3)(a)) being the core information (regulation 5), and additional information (Schedule 2)- which is "a full description of the basis for the caveat in terms of sections 162(1) and 164 to 167." A copy of the approved paper form is attached at Schedule 2³.

The provisions for caveats against dealings set out in sections 144 (*144 Withdrawal of caveat against dealings*), 146-148 (*146 Second caveat against dealings may not be lodged, 147 Registrar not required to verify entitlement to lodge caveat against dealings, 148 Compensation for lodging of improper caveat against dealings*) apply to the caveat against the application (s162(4)). For further information see the Caveats and Other Stops on Registration Guideline 2018 and the Requisition Periods Directive 2018.

³ See Approved Paper forms for the Land Transfer Act 2017 or Approved electronic forms for the Land Transfer Act 2017 (pursuant to s227(1)(4)) for copies of both the electronic and paper forms.

1.3.3 RGL Notice to Applicant of Caveat

The Registrar must give notice to the applicant of the lodging of a caveat preventing an application from being granted (s163).

1.3.4 RGL Notice to Caveator to establish claim

For the purposes of ss165(2) and 167(3), the RGL will give notice to the Caveator to:

- a) establish the claim and become registered as owner of the estate or interest; or
- b) satisfy the RGL that the claim is valid but that it is of such a nature that it is not capable of being converted into a registered estate or interest.

The notice shall be given at the address in the caveat, in the manner described in s221 of the Act, and specify the prescribed period within which a person may give notice to the RGL, which is **60 working days** (regulation 27) after the date on which the notice is given⁴.

1.3.5 RGL Notice to Applicant to consent to caveator interest

For the purposes of ss166(2) (and 167(5)(b)) and 167(7)(b) the RGL will give notice to the Applicant of any caveats against the application, at the address given in the application, in the manner described in s221 of the Act, and specify the prescribed period within which a person may give notice to the RGL, which is **60 working days** (regulation 27) after the day on which the notice is given,⁵ that they agree to their title being made subject to the estate or interest of the caveator and any estate or interest through or under which the caveator derives title.

1.3.6 Subsequent processes based on nature of caveator

The four alternative processes for responding to caveats set out in the Act may initially appear somewhat complex, but they reflect the nature of the estate or interest being claimed by the caveator. If the RGL receives a caveat from:

- a) a **registered (legal) freehold owner**, that owner's rights defeat the applicants and the RGL must refuse the application for adverse possession;
- b) an **unregistered (beneficial/equitable) freehold** owner, it can only defeat the applicants rights if they either *prove* their entitlement and become the registered freehold owner, or satisfy the RGL that they can't (but that their claim is valid). Accordingly, the RGL must give the caveator notice to establish their claim – if the caveator doesn't, the caveat lapses;

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

⁵ A notice is given to a person at the time set out in s223 of the Act.

- c) a **registered (legal) owner of an interest less than the freehold** they do not have to establish their claim as it is already registered. Accordingly, if the RGL receives a caveat from that type of caveator, the RGL must give notice to the Applicant that they may agree to their title being subject to the caveator's estate or interest. If the applicant does not so agree, the RGL must refuse the application for adverse possession; and
- d) an unregistered (**beneficial/equitable**) **owner of an interest less than the freehold it must** be dealt with in a manner that combines the previous 2 processes – the caveator must be given notice to establish their claim, and if so, the applicant must be given notice that they may agree to their title being subject to the caveator's estate or interest.

These processes are listed separately below, with section references, for ease of reference.

1.3.6.1 Caveat by registered freehold owner (s164) – Application refused

The RGL must refuse an application for adverse possession if a caveat has been lodged by the registered owner of the freehold estates described in s164.

1.3.6.2 Caveat by beneficial or equitable freehold owner (s165) – Notice and caveat lapses or application refused

a) RGL Notice to Caveator

The RGL will give notice to a caveator who claims an estate or interest described in s165(1), requiring the caveator within **60 working days** (regulation 27) after the day on which the notice is given⁶, to:

- i. establish the claim and become registered as owner; or
- ii. satisfy the RGL that the claim is valid but incapable of conversion to a registered estate

(s165(2)).

b) When caveat lapses

If the caveator does not establish (a)(i) or (ii) within the time period, the caveat will lapse and the RGL will note that on the Register, in accordance with the Recording Memorials on the Register Standard 2018. The RGL will then proceed with registering the applicant as owner in accordance with s168 and 169 of the Act.

c) When application refused

⁶ A notice is given to a person at the time set out in s223 of the Act.

If the caveator establishes (a)(i) or (ii) within the time period, the RGL will refuse the application.

1.3.6.3 Caveat by registered or noted entitled owner of other estate or interest (s166)

a) RGL Notice to Applicant

The RGL will, if satisfied a caveat meets the requirements of s166(1), give notice to the Applicant for adverse possession, that the applicant may agree to their title being made subject to the caveator's interest as described in s166(2).

b) When caveat lapses & Application subject to caveator's interest granted

If the Applicant gives notice of agreement within the time period described in the notice referred to in a) above, the RGL will:

- i. lapse the caveat and note that on the Register in accordance with the Recording Memorials on the Register Standard 2018; and
- ii. create a record of title for the applicant subject to the caveator's interests, in the manner set out in s168, and cancel any previous record of title in the manner set out in s169.

c) When application refused

If the Applicant does not give notice of agreement the RGL will refuse the application.

1.3.6.4 Caveat by other person entitled to other estate or interest

a) RGL Notice to Applicant for agreement to title subject to caveat (s167(1) & (2))

The RGL will, if satisfied a caveat meets the requirements of s167(1) and (2), give notice to the Applicant for adverse possession, that the applicant may agree to their title being made subject to the caveat as evidence of the caveator's claim s167(7).

b) RGL notice to caveator (s167(3))

The RGL will give notice to a caveator who claims an estate or interest described in s167(1), requiring the caveator, within 60 working days after the day on which the notice is given⁷, to:

- i. establish the claim and become registered as owner of the estate or interest (s167(3)(a)); or

⁷ A notice is given to a person at the time set out in s223 of the Act.

- ii. satisfy the RGL that the claim is valid but incapable of conversion to a registered estate (s167(3)(b)).

c) When caveat lapses (s167(4))

If the caveator does not establish (b)(i) or (ii) within the time period, the RGL will lapse the caveat and note that on the Register, in accordance with the Recording Memorials on the Register Standard 2018. The RGL will then proceed with registering the applicant as owner in accordance with s168 and 169 of the Act.

d) When caveat doesn't lapse (s167(5))

If the caveator establishes the claim and becomes the registered as owner of the estate or interest ((b)(i)) within the time period, the caveat doesn't lapse, and s166 (Caveat of registered owner of, or person noted as entitled to, other estate or interest) applies in accordance with s167(5)(b).

e) When caveat doesn't lapse (s167(6) & (7))

If the Applicant satisfies the RGL that the claim is valid but incapable of conversion into a registered estate or interest ((b)(ii)) within the time period, the caveat doesn't lapse, the RGL must give notice to the Applicant for adverse possession that the applicant may give notice to the RGL within 60 working days after the day on which the notice is given that they agree to their title being made subject to the caveat as evidence of the caveator's claim (s167(7)).

1.2.1.8 (a) and (b) above apply to the notice from the RGL and by the applicant.

If the applicant gives notice within the time period, the RGL will create a record of title for the applicant subject to the caveat, in the manner set out in s167(8) and 168, and cancel any previous title in the manner set out in s169.

f) When application refused

If the Applicant does not give notice of agreement within the time period, the RGL will refuse the application for adverse possession (s167(9)).

2 Application for (title to) land in a Limited Record of Title

2.1 Making the Application

2.1.1 Introduction

These applications under s204 title typically arise (although not always) in the context of an application for removal as to limitations under sections 201 and 202 of the Act where the applicant is the adjoining owner in adverse possession of some of the land.

There are however two bases for the claim of title adverse to the registered owner under this section, namely, either a claim:

- by way of adverse possession as against the title of the registered owner that commenced before a limited certificate of title was issued for the land; or
- Under a title that appears from the RGL's minutes to exist or possibly exist.

s204(1).

The key criteria for applications under s204, is that anyone who at the time land was compulsorily brought under the Act and the first title issued:

- occupied land adversely to the registered owner; or
- owned land under any title, the existence, or probably existence of which, is set out in the RGL's minutes (except for the documentary owner recorded in the Deeds system)

may apply for title if they can demonstrate rightful entitlement to it. This is because they are protected from having time run against them by virtue of the (now) Limitation Act 2010.

An adverse occupier of land in a limited title whose possession commenced after the issue of the first limited title should make an application under s155.

The application is made under subpart 2 of part 4 (*Applications to bring land under Act*) and that subpart applies with all necessary modifications (s204(2)).

2.1.2 Form and required information

The application must be on the approved form, and contain the core and additional information and accompanying documents described in r5 and Schedule 2 of the Regulations.

The Additional information is:

- The physical address of the land to which the application relates, if known to the applicant:
- The full name and address of the following, if known to the applicant:
 - a) every person who has an estate or interest in the land:
 - b) every person, other than the applicant, who is an occupier of the land or an owner or occupier of adjoining land.

The Accompanying information is:

Evidence that establishes that the application complies with subpart 2 of Part 4 of the Act (*Applications to bring land under Act*) – see sections 171 and 172 of the Act, as applied by section 204(2) and (3).

In addition, as the application is made under subpart 2 of part 4 (*Applications to bring land under Act*) and that subpart applies with all necessary modifications (s204(2)), the Applicant must provide the following additional information (which is prescribed for applications under that part):

- The physical address of the land to which the application relates, if known to the applicant:
- The full name and address of the following, if known to the applicant:
 - a) every person who has or may have an estate or interest in the land:
 - b) every person, other than the applicant, who is an occupier of the land or an owner or occupier of adjoining land.

The other requirement for subpart 2 applications that the applicant provide “a full description of the basis for the application, including which paragraph of section 172(1) of the Act the applicant claims applies” does not need to be repeated here, as the application is based on s204(1) which already requires a full description of the basis for the application.

2.1.3 Survey requirements

Applicants must provide with their application an LT survey plan suitable for deposit in accordance with the usual requirement in s224 of the Act.

2.1.4 Process

If the applicant is the registered owner of land adjoining the claimed land, subpart 2 of Part 4 applies (*Applications to bring land under the Act*) with the modifications set out in s204(3), namely, that there is no requirement for public notice under s173(1)(a), and the RGL is not required to give notice to any person who has given written consent under s173(1).

We note the time periods applicable to subpart 2 part 4 notices for a person to lodge caveat preventing land being brought under Act (s173(1)) is **40 working days** (regulation 27).

Schedule 1: Application for record of title based on adverse possession

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

Form 37

Application for record of title based on adverse possession

(Section 155 Land Transfer Act 2017)

Land District

Record of Title (unique identifier)

All/part

Area/description of part

Record of Title (unique identifier)	All/part	Area/description of part

Applicant name

Surname(s) must be underlined.

Full address of applicant for service of notices

Physical address of land to which the application relates (if known to the applicant)

State any address, present or past, known to applicant.

Surname(s) must be underlined.

Full name and address of every person who has or may have an estate or interest in the land. And every person who is an owner or occupier of adjoining land (if known to the applicant)

Surname(s) must be underlined.

Application *Insert *the number of years and **date when possession began.*

The Applicant applies to the Registrar for the issue to the Applicant of a Record of Title under the Land Transfer Act 2017 for an estate in fee simple in the land described above,

on the ground that the Applicant has been in continuous possession, of the land, or that part of the land, described above, for a period of * years/from ** to the date of this application.

Evidence to support this application is set out below.

Continue in additional Annexure Schedule(s) if required.

Particulars of possession

- 1 **Period of personal possession** [*here state period and dates*].
- 2 **Periods of prior possession claimed** [*here state also the identity and, where applicable, the relationship and date of death of the persons through or under whom the applicant claims, and the manner in which possession was acquired by the applicant and by the persons through or under whom the applicant claims*].
- 3 **Manner of occupation** [*here state as fully as is known or can be ascertained the nature of the occupation of all persons concerned, eg, whether it has been continuous or broken, exclusive or divided, undisputed or by whom disputed, etc*].
- 4 **Is land fenced?** [*here state all information available regarding the fences, eg, age, extent, by whom erected, etc*].
- 5 **Have any payments by way of rent or otherwise been made or claimed?** [*here give full particulars as to amount, dates of payment, names of payees or claimants, reason for payments, etc*].

Evidence to support application

Give details of anything supporting claim, eg, documentary evidence, receipts for purchase money, payment of rates and other expenses, evidence of neighbours. Continue in additional Annexure Schedule(s) if required.

The following evidence supporting the claim **accompanies** this Application:

- 1 **Purposes for which land has been used** [*here cover the whole period if possible*].
- 2 **Improvements** [*here state what improvements are on the land and whether they were effected before or since the commencement of the period of adverse possession*].
- 3 **Acknowledgement** [*here state whether or not the applicant or any of the applicant's predecessors in possession or their agents ever acknowledge or acknowledged the title of the registered owner of the land and, if so, when and in what form*].
- 4 **Incapacity of registered owner** [*here state any knowledge or evidence available to establish that the registered owner of every estate or interest in the land is not suffering under any disability of infancy or unsoundness of mind*].⁸
- 5 **Definition of Land** [include with this application a certificate by a licenced cadastral surveyor that the occupation boundaries or any that exist, coincide with the title boundaries. Alternatively if this cannot be given, a survey plan suitable for deposit under section 224 LTA 2017.⁹
- 6 **Statutory Declarations** [*attach as Annexure Schedules statutory declaration(s) of person(s) of good repute, having long-standing knowledge of the land*].

Annexure Schedule 1

Statutory declaration

Insert names and addresses where indicated.

I,
of

⁸ Section 157 LTA 2017.

⁹ Section 156(2) LTA 2017.

and I,
of

solemnly and sincerely declare that:

- 1 I am/we are the applicant in the above application.
- 2 I am/we apply to issue a record of title based on adverse possession pursuant to section 155 of the Land Transfer Act 2017
- 3 I/we confirm record of title * has been created for the land subject to this adverse possession application [or a Crown grant has been registered under the Land Transfer Act 1952].
- 4
5 I/we confirm I/we have been in adverse possession of the land for a continuous period of not less than 20 years [being *include term*] and continue to be in adverse possession of the land.
- 6 I/we confirm this application is not prohibited by section 159 of the Land Transfer Act 2017.
- 7 To the best of my/our knowledge and belief, all the statements made in the application are true and complete.
- 8 I am/we are not in possession of any information not disclosed in the application, which would be adverse to the Registrar granting it.

AND I/we 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:)

Schedule 2: Caveat against Application

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

Form 40

Caveat against bringing land under the Land Transfer Act 2017

(Section 174 Land Transfer Act 2017)

Land registration district

Description of land to be brought under the Act¹⁰

Application number

(Include the reference number of the application seeking to bring land under the Act as stated in the notice)

Caveator

Surname(s) name to be underlined.

Estate or interest claimed and grounds for claim

(Including a full description of the basis for the caveat in terms of s174(1)(a) or (b) of the Act)

¹⁰ A title is required to be "affected" for the purposes of e-dealing lodgement. If no title exists then the pre-allocated title reference can be used. This can be obtained from the notice received by the caveator, or the new plan of survey.

Notice

Take notice that the Caveator forbids the bringing of the above land under the provisions of the Land Transfer Act 2017 until this caveat is withdrawn by the Caveator, or removed by order of the High Court, or until the same has lapsed under the provisions of section 177 of the Act.²

Address for service of Caveator

² Section 177 of the Act provides that this Caveat will be deemed to have lapsed 60 working days after receipt by the Registrar unless, within that time, the caveator has given written notice to the Registrar that court proceedings have been taken to establish title to the estate or interest claimed.

