

Application to bring land under the Act – Dry Riverbeds and Streambeds

Guideline 2018

LINZG20782

Office of the Registrar-General of Land

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Introduction

Dry land which was formerly river or stream¹ bed may in certain circumstances be the subject of an application to bring land under the Land Transfer Act 2017. This typically arises where, due to avulsion, a river or stream has abruptly changed course.

If the river or stream is not already held within a registered title, and the *ad medium filum* presumption applies (ie it is not Crown-owned), a person who has acquired a possessory title to the dry bed may secure registered title by applying under the provisions of Subpart 2 of Part 4 of the Act.

This can be contrasted with cases where the course of a river or stream has moved gradually and imperceptibly over time resulting in accretion or erosion to adjacent land (for more information on accretion see the *Accretion and Dry Beds (Rivers and Streams) Standard 2018*, and the *Accretion Guideline 2018*).

Purpose of this guideline

This guideline explains how a landowner may apply to bring former river or stream bed under the provisions of the Act. It outlines the factual and legal requirements necessary to fulfil the mandatory requirements for such applications in the *Accretion and Dry Beds (Rivers and Streams) Standard 2018*.

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*
- *Forms Approval 2018*.
- *Caveat Guidelines 2018*.
- *Requisition Periods Directive 2018*.
- *Memorials Standard 2018*.

¹ The bed of a tidal river is coastal marine area within the meaning of the Marine and Coastal Area Act 2011. Navigable rivers are subject to statutory vesting in the Crown – s354(1)(c) Resource Management Act 1991, unless granted to a private owner.

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

| | |
|---------------------------------|---|
| Accord | an agreement made under Treaty of Waitangi Claims settlement acts or other legislation |
| Act | Land Transfer Act 2017 |
| Caveator | means the person claiming the estate or interest to be protected by the caveat |
| r, rr or regulation | indicates a regulation/s, in the Land Transfer Regulations 2018 unless otherwise specified |
| Registrar-General of Land (RGL) | appointed in terms of section 231 of the Act, includes delegates |
| Regulations | Land Transfer Regulations 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 for Cadastral Survey 2010 |

1 Application to bring land under the Act – dry stream or river bed due to avulsion

1.1 Making an application

1.1.1 Introduction

A landowner may apply to bring former river or stream bed² under the provisions of the Act, as provided in s172 of the Act. An application may only be made:

- (a) in relation to the land described in s171; and
- (b) by the persons described in ss172(1); and
- (c) if the preconditions in ss172(3)-(9) are satisfied. These require:
 - a. consent from various parties; and
 - b. states applications subject to trusts affecting the land; and
 - c. requires all undivided owners to be applicants; and
 - d. has conditions for applicants who are mortgagees exercising powers of sale.

The process is set out in ss171-183 of the Act.

Applications can only be made in respect of land:

- (a) not already subject to the Act; and
 - (b) not Maori land (as defined in s4 of Te Ture Whenua Maori Act 1993); and
 - (c) which has been alienated or contracted to be alienated by the Crown.
- (s171)

1.1.1.1 Form and required information

Applications under s172(1)(a) 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 form³ which must be completed prior to lodgement, and which themselves reflect the regulations which require applicants to provide the specified “core” and

² The bed of a tidal river is coastal marine area within the meaning of the Marine & Coastal Area Act. Navigable rivers are subject to statutory vesting in the Crown – s354(1)(c) Resource Management Act 1991, unless granted to a private owner.

³ 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)).

“additional information”, as well as accompanying documents (see r5, and the part of Schedule 2 of the Regulations that relates to the particular type of caveat being lodged).

A copy of the approved paper application form is attached at schedule 1 to illustrate typical requirements.

The *core information* is listed in r5.

The *additional information* for Applications to bring land under the Act is listed in Column 3 of Schedule 2 of the Regulations:

the physical address of the land to which the application relates, if known to the applicant;

a full description of the basis for the application, including which paragraph of section 172(1) of the Act the applicant claims applies;

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 *accompanying documents* are listed in Column 4 of Schedule 2 of the Regulations as:

Evidence that establishes that the application complies with subpart 2 of Part 4 of the Act (see ss171 and 172 of the Act)

1.1.1.2 When title will be issued

Paragraph 6 of the Standard provides that a record of title incorporating dry land which was formerly the bed of a river or stream will only be issued if—

- a) the application complies with s172 of the Act, rr 5 and 6 and Schedules 2, 3 and 6 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 application is supported by evidence that establishes that the land claimed is dry land to which the applicant is legally entitled;
- d) All legal requirements to give public notice are complied with in accordance with se173(1)(a) of the Act;
- e) Any caveats are removed, and evidentiary disputes are resolved.

1.1.2 Survey requirements

The requirement in paragraph 6(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 land claimed is shown on a plan lodged for deposit under s224 of the Act as a separate lot or a discrete area, and
- b) the plan is suitable to deal with an application for title to land formerly under water, and
- c) the plan complies with the Cadastral Survey Act 2002 and the Surveyor-General's Rules.

1.1.3 Evidence: establishing that the land is dry land to which the Applicant is legally entitled

Paragraph 6(c) of the standard requires that 'the application is supported by evidence that establishes that the land claimed is dry land to which the applicant is legally entitled'. The following matters are relevant:

1.1.3.1 Legal requirements

- a) The land has become dry by avulsion; and
- b) The "*usque ad medium filum aquae*" presumption applied to the land in question when it was alienated from the Crown; and
- c) The river or stream was non-navigable and non-tidal; and
- d) The land is not already comprised in a record of title; and
- e) The land is not subject to the Marine and Coastal Area (Takutai Moana) Act 2011; and
- f) The applicant has a right under the "*usque ad medium filum aquae*" presumption and there is no other person in possession of the land with a better claim for title than the applicant's, or
- g) The applicant is in adverse possession and has been in continuous possession, personally and through their predecessors in title, for at least 12 years to the present day.

1.1.3.2 Evidence required for application

LINZ records

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

- a) the land has been alienated from the Crown,

- b) the *usque ad medium filum aquae* presumption applies and has not been rebutted, and
- c) the former river or stream formed the boundary of the adjoining land.

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

Statutory declaration by applicant

The applicant should declare the particulars and evidence described below.

- a) the circumstances surrounding the movement in the position of the water boundary or drying up of the former body of water. Relevant supporting material such as diagrams and photographs should accompany the statutory declaration; and
- b) details of the applicant's possession of the land applied for. This should include details of any mortgages, encumbrances, or claims affecting the land.

Statutory declaration by another person

At least one disinterested person who is familiar with the land applied for should provide a statutory declaration that corroborates the application⁴.

1.1.4 Additional information: persons with estate or interest in land and adjoining owners

The Applicant must provide (s172, Schedule 2 Regulations) the full name and address (if known to the applicant) of:

- 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.

Where possible, landline, cellphone and email contact details are also recommended.

1.1.5 Withdrawal of application to bring land under the Act

Applicants may withdraw such applications under s180 any time before registration, provided that:

- a) any s174 caveator consents; and

⁴ A disinterested person is one who is not employed by or related to the applicant and does not have any vested interest in the outcome of the application.

- b) anyone who consents to the application under ss172(3)-(5) or (8) consents; and
- c) in both cases if no consent, a court order approves the withdrawal.

1.2 RGL notice of application

1.2.1 Notice to persons outlined in s173

The RGL must give notice (in the manner and to the persons outlined in s173 of the Act) of an application, if satisfied the application complies with subpart 2 of Part 4 of the Act). In addition to the parties outlined in 1.1.4 above, the RGL will give notice to the interested parties described in the next section.

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

The notice must be in the approved form (*see Forms Approval 2018*) which incorporates the requirements of s173(2) and the matters set out in Schedule 6 of the regulations

Additional Information Required

A description of the land to which the application relates, including—

- (a) its physical address (if known);
- (b) its owner

A statement that, within the period specified in the notice, a person specified in section 174(1) of the Act may lodge a caveat under that section to prevent the land being brought under the Act.

A description of the basis for the application, including which paragraph of section 172(1) of the Act the applicant claims applies.

The grounds for the application that are intended to establish that the application complies with subpart 2 of Part 4 of the Act (*see sections 171 and 172 of the Act*)

For a notice given to a person who it appears to the Registrar has or may have an estate or interest in the land,—

- (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 occupier of the land or an owner or occupier of adjoining land,—

- (a) a statement that the notice is sent to the person for that reason; and
- (b) if applicable, a description of the adjoining land, including the unique identifier of its record of title (if any)

Accompanying documents required

A copy of the application, but only for a notice given to—

- (a) a person who it appears to the Registrar has or may have an estate or interest in the land; or
- (b) a person, other than the applicant, who is an occupier of the land or an owner or occupier of adjoining land

1.2.2 Interested parties to be notified

The interested parties to be notified should include:

- a) firstly, the Office of Treaty Settlements⁵,
- b) owners of land adjoining or situated on the opposite bank of the river or stream,
- c) the Māori Land Court (if the claim affects or adjoins or is opposite Māori land),
- 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, and
- g) the relevant local authorities (regional and district or city council).
- h) iwi groups with an accord.

1.3 Objection against evidence

Any person who has material evidence that contradicts the applicant's claim, even if that person does not have a registered interest, may object in writing to an application for title for a former stream or river.

1.4 Caveat against applications

The period prescribed by r25 within which a person may lodge a caveat to prevent the application which the notice must specify is 60 working days (s173(2)(a)).

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 (s173(3)). Any requests to do so must be referred to the RGL.

Without limiting the RGL's discretion, such situations may include where a notified person requests further time on reasonable grounds such as lack of actual receipt near until just prior to the expiry of the notice period (although deemed receipt in accordance with the Act).

1.4.1 Who may caveat

A person claiming an estate or interest in the land may lodge a caveat preventing the RGL from bringing land under the Act (s174).

⁵ This is to check whether the Crown is negotiating a treaty claim relating to the land with iwi. If they are, we give notice to the iwi, which is best given at the same time as notice to the rest of the interested parties.

1.4.2 Form and required information

The caveat must be in the approved form (see attached example Schedule 2), and contain a full description of the basis for the caveat in terms of ss174(1)(a) or (b).

1.4.3 Effect of caveat

As long as a caveat against bringing land under this Act remains in force, the RGL must not bring the land under the Act (s175).

1.4.3.1 RGL notice to applicant of caveat against application

The RGL must give notice to the Applicant (in the manner described in s221 of the Act) at the address given in the Application, of any caveats against bringing land under the Act (s176).

This notice will generally be given within 5 working days of the caveat.

Section 223 determines when notices are deemed to have been given

1.4.3.2 Withdrawal of caveat

A caveator may withdraw the caveat *at any time prior* to the RGL's notice to the caveator referred to above being given (as determined by s223).

1.4.3.3 Caveat by person claiming entitlement to freehold estate (s174(1)(a))

The caveat *will lapse* unless (ss 177(2) and (3)) within 60 working days after the date on which the caveat is lodged:

- (a) the caveator commences a proceeding in the court to determine the entitlement of the applicant to have the land brought under this Act; and
- (b) gives notice to the RGL in accordance with s222 that the proceeding has been commenced.

The RGL must give effect to any Court Order under s177(4) (s177(5)); copies of the following documents must be served on the RGL (s177(6)):

- (a) a sealed copy of every order or decision of the court under this section:
- (b) a copy of a notice of appeal against an order or a decision of the court under this section:
- (c) a sealed copy of every order or decision of a court on appeal under this section

1.4.3.4 Caveat by a person claiming entitlement to and estate that is not a freehold whether under an instrument or not (s174(1)(b))

1. The RGL will refuse the registration unless the applicant, within **20 working days** after receiving the Registrar's notice about the caveat under s176:
 - (a) gives notice to the RGL in accordance with s178(2) and in the manner outlined in s222; and
 - (b) serves notice on the caveator at the address stated in the caveat in the manner outlined in s221;stating whether or not the applicant agrees to the land being brought under this Act subject to the estate or interest of the caveator (**s178(2)**).
2. The RGL will:
 - (a) lapse the caveat; and
 - (b) register the applicant as the owner of the estate to which the application relates subject to the estate or interest of the caveatorif the Applicant (within the timeframe referred to in 1 above) gives and serves a notice stating that the applicant agrees to the land being brought under the Act subject to the estate or interest of the caveator (s178(3)).
3. The RGL must give effect to any Court Order served under s178 (s178(7)) (see paragraph c below) resulting from the following notices and actions by the Applicant and caveator (within the timeframes):
 - (a) Notice by the applicant that the applicant does not agree to the land being brought under this Act subject to the estate or interest of the caveator (in accordance with paragraph 1 above);
 - (b) The caveator:
 - a. commencing a proceeding in the court (within **60 working days** after the notice is served on the caveator – s178(4)) to determine the entitlement of the applicant to have the land brought under this Act free from the estate or interest of the caveator; and
 - b. giving notice to the Registrar that the proceeding has been commenced.
 - (c) Copies of the following documents must be served on the RGL (s178(8)):
 - a. a sealed copy of every order or decision of the court under this section:
 - b. a copy of a notice of appeal against an order or a decision of the court under this section:
 - c. a sealed copy of every order or decision of a court on appeal under this section

4. The RGL will lapse the caveat if the applicant does not serve the notice outlined above within the time period.

1.4.3.5 RGL may require instrument from applicant

1. The RGL may require the Applicant and caveator to lodge for registration or notation an instrument:

- (a) in suitable form; and

- (b) containing sufficient particulars;

to create or record the estate of interest of the caveator for the purposes of giving effect to an agreement or order under s178 (s179(1)).

2. If the interest cannot so be registered or noted, the RGL may require the Caveator to lodge a s138 caveat (s179(2)).

1.5 Registration of applicant

The RGL must register the applicant as owner of the estate to which the application applies, if the criteria in s181 are satisfied.

Requirements on the RGL relating to cancellation of previous documents are in s182.

Schedule 1: Application to bring land under the Land Transfer Act 2017 – Paper Instrument

This approved format may be used for lodgement as a paper instrument under the Land Transfer Act 2017
Form 39

Application to bring land under the Land Transfer Act 2017

(Section 172 Land Transfer Act 2017)

Land registration district

BARCODE

Unique identifier / Description of land

Applicant and full address of applicant for service of notices *Surname(s) must be underlined.*

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 occupier of the land, or 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*].
- 6 **Is the land being claimed former stream or river bed?**
[*Here include details of how the presumption of "usque ad medium filum aquae" applies and other legal requirements.*]

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 proprietor of the land and, if so, when and in what form*].
- 4 **Disability of registered proprietors (applicable only where period of possession is less than 30 years)** [*here state any knowledge or evidence available to establish that the registered proprietor of every estate or interest in the land is not suffering under any disability of infancy or unsoundness of mind*].
- 5 **Dry stream, or river bed** [*if applicable, include evidence which supports 'item 6' of the 'particulars of possession' above, including reference to LINZ records which supports this*].
- 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

Application to bring land under the Land Transfer Act 2017

Statutory declaration

*Insert names and addresses where indicated.***I,**

of

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 bring the above-stated land under the Land Transfer Act 2017 pursuant to section 172 [*State the specific paragraph within s 172(1) which applies*]

3 I/we confirm the above-stated land is not subject to the Land Transfer Act 2017, and is not Maori land as defined in section 4 of Te Ture Whenua Moari Act 1993.

4 I/we confirm the land has been alienated or contracted to be alienated by the Crown by Crown grant or other instrument being [*state the crown grant or other instrument*]*[If the land was former stream or river bed, a declaration regarding the circumstances of water boundary movement and how the land became dry]*5 *[A declaration detailing possession of the land, including details of any interests affecting the land]*

6 To the best of my/our knowledge and belief, all the statements made in the application are true and complete.

7 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:)**A person authorised to take a statutory declaration under the [Oaths and Declarations Act 1957](#)**

Dated this day of 20

Attestation

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

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.⁶

Certified by [Practitioner for Applicant] or
[Applicant]

⁶ 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.

Schedule 2: Caveat against bringing land under the Act 2017 – Paper Instrument

This approved format may be used for lodgement as a paper instrument 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

BARCODE

Description of land to be brought under the Act

Application number

(Include the reference number of the application seeking to bring land under the Act as stated in the notice)⁷

Caveator

Surname(s) name to be underlined.

⁷ 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.

Note:

1. NB: If you have sought the services of a Conveyancing Professional to lodge the caveat electronically, they will need to use the allocated title reference which will be quoted in the notice received, or shown with the relevant survey plan of the land.
2. Its recommended parties seek independent legal advice when completing and lodging this form under the Land Transfer Act 2017.
3. The contents of this form when entered on the register will become a matter of public record.