



# Guideline for dry stream or river bed claims

LINZG20710

12 September 2013

# Table of contents

<b>TERMS AND DEFINITIONS .....</b>	<b>3</b>
<b>FOREWORD .....</b>	<b>4</b>
Introduction .....	4
Purpose .....	4
Scope .....	4
Intended use of guideline .....	4
References .....	4
<b>FOREWORD, CONTINUED .....</b>	<b>5</b>
Brief history of guideline .....	5
<b>1 MAKING THE APPLICATION .....</b>	<b>6</b>
Application format .....	6
Survey plan .....	6
Establishing that the land is dry land to which the applicant is legally entitled .....	6
Legal requirements .....	6
<b>2 EVIDENCE REQUIRED FOR APPLICATION .....</b>	<b>7</b>
LINZ records .....	7
Statutory declaration by applicant .....	7
Statutory declaration by another person .....	7
<b>3 GIVING NOTICE .....</b>	<b>8</b>
When notice should be given .....	8
Form and publication of notice .....	8
Interested parties to be notified .....	9
<b>4 CAVEATS AND EVIDENTIARY DISPUTES .....</b>	<b>10</b>
Who may object .....	10
Dealing with evidentiary disputes .....	10
Dealing with caveats .....	10
<b>5 CONSIDERING THE APPLICATION .....</b>	<b>11</b>
Original grant .....	11
Original survey .....	11
Surveyor's report .....	11
Verification of supporting material .....	11
<b>APPENDIX A: SAMPLE NOTICE FOR THE GAZETTE AND NEWSPAPER .....</b>	<b>12</b>
<b>APPENDIX B: SAMPLE NOTICE TO INTERESTED PERSONS .....</b>	<b>13</b>
<b>APPENDIX C: SAMPLE NOTICE FOR THE GAZETTE AND NEWSPAPER .....</b>	<b>15</b>

## Terms and definitions

---

<b>Term/abbreviation</b>	<b>Definition</b>
avulsion	where the change in the physical boundary between land and water was not gradual and imperceptible but either sudden or perceptible as it was occurring
the Gazette	the New Zealand Gazette - Te Kahiti o Aotearoa: the official newspaper of the Government of New Zealand
LINZ	Land Information New Zealand
LTA	Land Transfer Act 1952
LTR	Land Transfer Regulations 2002
RGL	Registrar-General of Land
the standard	LINZS20005: Standard for title adjustments arising from water boundary changes
Surveyor-General's Rules	Rules made by the Surveyor-General under section 49 of the Cadastral Survey Act 2002

---

## Foreword

---

- Introduction**
- (a) When avulsion occurs in the case of a non-navigable river or stream, a person claiming ownership may apply to the Registrar-General of Land (RGL) to have a computer register issued for the land that was formerly under water. This guideline provides guidance for the making of applications for land formerly under water and the processing of those applications.
  - (b) The RGL has issued a standard that specifies the requirements for title adjustments arising from water boundary changes ('the standard'). This guideline supports the standard by recommending a method for addressing its requirements.
- 

**Purpose** This guideline is intended to clarify the RGL's requirements when applications for title to land formerly under water are presented and processed.

---

- Scope** This guideline focuses on the following aspects of dry river bed claims:
- (a) application formalities,
  - (b) survey requirements,
  - (c) evidentiary requirements,
  - (d) caveats and evidentiary disputes,
  - (e) procedures for giving notice, and
  - (f) examination and verification of supporting material.
- 

**Intended use of guideline** This guideline is intended to be used when lodging and processing applications for dry river bed claims.

---

- References** It is intended that this guideline be read in conjunction with:
- LINZ 2007, *LINZS20005: Standard for title adjustments arising from water boundary changes*, RGL, LINZ, Wellington
  - Rules made by the Surveyor-General under section 49 of the Cadastral Survey Act 2002
- 

*continued on next page*

## Foreword, continued

---

**Brief history of  
guideline**

This is a new guideline.

---

# 1 Making the application

---

## Application format

The requirement in the standard that ‘the application for title must be made in an acceptable form’ will ordinarily be met if:

- (a) the application is made in the manner specified in s 19 and s 20 of the LTA,
  - (b) the application is executed by the applicant in accordance with s 157 of the LTA, and
  - (c) the application complies with the Land Transfer Regulations 2002 (LTR).
- 

## Survey plan

The requirement in the standard that ‘the application must be supported by adequate survey definition’ will ordinarily be met if the land claimed is shown on a plan prepared in terms of s 167 of the LTA and in accordance with the Surveyor-General’s Rules.

---

## Establishing that the land is dry land to which the applicant is legally entitled

The requirement in the standard that ‘the application must be supported by evidence that establishes that the land claimed is dry land to which the applicant is legally entitled’ will ordinarily be met if the applicant demonstrates the legal requirements in [Legal requirements](#), and the evidentiary requirements in paragraph [Evidence required for application](#).

---

## Legal requirements

- (a) The land has become dry by avulsion,
  - (b) the *usque ad medium filum aquae* presumption applied to the land in question when it was alienated from the Crown,
  - (c) the river was non-navigable and non-tidal,
  - (d) the land is not already comprised in a computer register,
  - (e) the land is not subject to the Marine and Coastal Area (Takutai Moana) Act 2011, and either
  - (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.
-

## 2 Evidence required for application

---

- LINZ records**
- (a) The application should refer to records held by LINZ that show:
    - (i) the land has been alienated from the Crown,
    - (ii) the *usque ad medium filum aquae* presumption applies and has not been rebutted, and
    - (iii) the former river or stream formed the boundary of the adjoining land.
  - (b) 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 provide a statutory declaration setting out:
- (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**
- (a) At least one disinterested person who is familiar with the land applied for should provide a statutory declaration that corroborates the application.
  - (b) 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.
-

### 3 Giving notice

---

**When notice should be given**

If the application and supporting evidence establish a case for bringing the land under the LTA, the application should be notified in accordance with s 23 of the LTA.

---

**Form and publication of notice**

The requirement in the standard that 'all legal requirements to advertise are complied with and notice is given to all interested parties' will ordinarily be met if the advertisement and notice:

- (a) follow the form of the sample notice for the *Gazette* and newspaper in [Appendix A: Sample notice for the \*Gazette\* and newspaper](#) and the sample notice to interested persons in [Appendix B: Sample notice to interested persons](#) respectively,
- (b) describe the land to be brought under the LTA in terms of the survey plan,
- (c) state the RGL's intention to bring the land under the LTA and issue a computer register for the land,
- (d) state that the land is formerly part of the bed of a body of water, identified by its common name,
- (e) set a period of not less than one month after the date of publication of the advertisement of the application in the *Gazette* within which a caveat forbidding the bringing of land under the LTA may be lodged (s 23 of the LTA and r 39 of the LTR),
- (f) are advertised in the *Gazette* and in one or more newspapers published in the locality (s 23 of the LTA) and follow the form set out in [Appendix B: Sample notice to interested persons](#),
- (g) are posted in a conspicuous place in the LINZ office for the land registration district in which the land is situated (s 26 of the LTA),
- (h) include a copy of the application, supporting evidence and the plan showing the dry stream or river bed, and
- (i) are provided to the interested parties set out in [Interested parties to be notified](#).

---

*continued on next page*



## Giving notice, continued

---

### **Interested parties to be notified**

The interested parties to be notified should include:

- (a) the Office of Treaty Settlements, using the form set out in [Appendix C: Sample notice for the Gazette and newspaper](#),
  - (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).
-

## 4 Caveats and evidentiary disputes

---

- Who may object**
- (a) A person who has or claims to have an interest in the land claimed by the applicant may lodge a caveat against bringing the land under the LTA (s 136).
  - (b) Any person who has material evidence that contradicts the applicant's claim, even though that person does not have a registered interest, may object in writing to an application for title for a former stream or river.
- 

- Dealing with evidentiary disputes**
- (a) An objection is substantive if it raises an issue or produces conflicting evidence which calls the claim into question. The objection should be based on material legal or evidential matters. The fact that someone does not want a dry river bed claim to proceed is not a sufficient reason to refuse an application in itself.
  - (b) When a substantive objection is received, the application should not proceed until the matter is resolved between the parties.
  - (c) A copy of the objection should be supplied to the applicant to allow the applicant to respond.
- 

**Dealing with caveats**

When a caveat under s 136 of the LTA is lodged, notice should be given to the applicant in accordance with the LTA. The application should not proceed until the caveat lapses or is removed.

---

## 5 Considering the application

---

**Original grant** The original grant of land and other LINZ records should be examined whenever possible to confirm that the *usque ad medium filum aquae* presumption was not expressly excluded by the words of the grant. The original grant of land may be a Crown grant or some other document from which title originated.

---

**Original survey** The survey relating to the original grant of land should be examined to confirm that:

- (a) the boundary in question was intended to be the water boundary and was not intended to be immovable by pegging or right lining, and
- (b) there were no roads or reserves or other land between the land granted and the stream or river at the time of the grant.

---

**Surveyor's report** The surveyor's report and other supporting documents and correspondence connected to the plan showing the land applied for should be examined. This report may contain evidence that the land formerly covered by water is dry land as well as information about how that came about.

---

**Verification of supporting material** Other material, such as existing LINZ records, should be examined to independently verify that the land applied for has become dry land in the manner alleged. Methods for doing this may include, but are not limited to, checking whether:

- (a) any adjoining or nearby survey plans also define the dried body of water, and
- (b) previous surveys disclose earlier attempts to gain title.

---

## Appendix A: Sample notice for the *Gazette* and newspaper

---

### Land Transfer Act notice

The owner of land adjoining the bank of (... *River/... Stream*) in the *District/City of...* has applied to me to bring (*part of*) the dry bed of the (... *River/... Stream*) under the provisions of the Land Transfer Act 1952 and issue a computer register for it in their name.

Land registration district:

Application number:

Applicant:

*Applicant's name*

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

*PO Box...*

*Town/city*

Land applied for:

*(Land area in square metres) square metres more or less shown on LT Plan (plan number), being part of the former bed of (... river/...stream) adjoining (Lot... DP....) comprised in Computer Register (computer register number) in the District/City of....*

I hereby give notice of my intention to bring the land applied for under the provisions of the Land Transfer Act 1952 and issue a title for it in the name of the applicant unless a caveat forbidding the same is lodged on or before (*date*).

Dated this (*date*) at the (... ..) Land Registry Office, Land Information New Zealand.

(Name of staff member)

## Appendix B: Sample notice to interested persons

---

Our Ref: *(application number)*

Your Ref:

*(Date)*

*(Name of Interested Person)*

*(Address)*

### **Land Transfer Act 1952 – section 19**

#### **Notice of an application for title to dry bed of (... *River/ ... Stream*) in the *District/City of ...***

Land registration district:

Application number:

Applicant:

*Applicant's name*

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

*PO Box...*

*Town/city*

Land applied for:

*(Land area in square metres) square metres more or less shown on LT Plan (plan number), being part of the former bed of (... river/...stream) adjoining (Lot... DP....) comprised in Computer Register (computer register number) in the District/City of....*

The applicant claims to be the owner of the above land and has applied to me for registered title.

A copy of the application, supporting evidence and the plan showing the dry stream or river bed is enclosed with this notice. An explanation of the common law principles of ownership of stream or river beds by adjoining land-owners is set out below.

The purpose of this notice is to allow you an opportunity to consider the attached information. If you have an interest in the land you may lodge a caveat, or if you have material evidence contradicting the applicant's claim you may notify me if you disagree with the application. You have until *(expiration date)* to do this.

Following the expiry of this period, and providing I do not receive any caveats or material objections, I intend to bring the land applied for under the provisions of the Land Transfer Act 1952 and issue a title for it in the name of the applicant.

for Registrar-General of Land

## Ownership of stream and river beds

At common law, in the absence of evidence to the contrary, where land is bounded by a non-tidal stream or river (that is, the non-tidal river is a boundary of the land), a grant of that land and subsequent conveyances are presumed to include the bed of the stream or river to its middle line. This presumption is also known as *usque ad medium filum aquae*.<sup>1</sup>

This presumption may be rebutted where there are circumstances that show the stream or river bed was not granted to the landowner(s) eg a public, navigable (though non-tidal) river subject to a right of passage.<sup>2</sup>

By section 14 of the Coal-mines Act Amendment Act 1903 and subsequent Acts and section 354(1) of the Resource Management Act 1991, the beds of navigable rivers remain vested in the Crown.

Where land has a boundary that is a non-navigable stream or river, the certificate of title or computer register issued for that land does not usually include any part of the bed of the stream or river, and the Registrar will decline to make any endorsement on the title as to whether or not the land-owner has any rights to the stream or river bed.<sup>3</sup>

The bed, or part of the bed, of a non-navigable stream or river that has become dry land by a process or event that was sudden and perceptible in its progress (avulsion) and is not already comprised in a land transfer title, may be the subject of an application for title by the adjoining land-owner by virtue of that land-owner's presumptive *usque ad medium filum aquae* rights, being an application under Part 2 of the Land Transfer Act 1952 to bring the land under the Act.

---

1 R v Morison [1950] NZLR 247; [1949] GLR 567; Re the Bed of the Wanganui River [1962] NZLR 600 (CA)

2 Mueller v Taupiri Coal-mines Ltd (1900) 20 NZLR 89; 3 GLR 138

3 See Attorney-General, ex rel Hutt River Board v Leighton [1955] NZLR 750 where the majority of the NZ Court of Appeal found the owner of adjoining land was not entitled to a computer register for part of the former bed of the adjoining river which had dried up, because of the difficulties in applying section 206 of the Coal Mines Act 1925 and the rights of river boards (now regional councils) under the River Boards Act 1908, and also the possibility of problems arising under section 35 of the Crown Grants Act 1908 as to 'creeks'.

## Appendix C: Sample notice for the *Gazette* and newspaper

---

Our Ref: (*Application number*)

Your Ref:

(*Date*)

OFFICE OF TREATY SETTLEMENTS

PO Box 919

Wellington 6140

Dear ...,

### **Application for title to dry bed of (... *River/ ... Stream*) in the *District/City of ...***

Land Information New Zealand is considering an application by the owner of land adjoining the bank of (... *River/... Stream*) to bring (*part of*) the dry bed of the (...*River/...Stream*) under the provisions of the Land Transfer Act 1952 and issue a title for it in the name of the applicant.

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 part of the former bed of (... *river/...stream*) adjoining (*Lot... DP....*) comprised in Computer Register (*computer register number*) in the *District/City of....*

A copy of the plan showing the land applied for is enclosed.

I intend to send notices to the Crown and to anyone else who might claim an interest as owner of the claimed (*dry river/stream*) bed, and to cause notice of the application to be advertised in the *Gazette* and in one or more newspapers published in the locality, to give them an opportunity to tell me the application is invalid. If the Crown as owner of adjoining land or the bed of (... *River/... Stream*) 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 (... *River/... Stream*) or adjoining land 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)