



Guideline for accretion claims

LINZG20711

12 September 2013

Table of contents

TERMS AND DEFINITIONS	3
FOREWORD	4
Introduction	4
Purpose	4
Scope	4
Intended use of guideline	4
References	5
Superseded documents	5
1 MAKING THE APPLICATION	6
Application format	6
Survey plan	6
Establishing that the doctrine of accretion applies	6
2 EVIDENCE REQUIRED FOR APPLICATION	7
Requirements	7
LINZ records	7
Statutory declaration by applicant	7
Statutory declaration by another person	7
Expert testimony	7
Erosion	7
3 GIVING NOTICE	8
When notice should be given	8
Treaty of Waitangi claims	8
Form of notice	8
Interested parties to be notified	9
4 EVIDENTIARY DISPUTES	10
Who may object	10
Dealing with objections	10
5 CONSIDERING THE APPLICATION	11
Original grant	11
Original survey	11
Other surveys	11
Surveyor's report	11
Verification of supporting material	11
6 AMENDING THE REGISTER	12
Replacement computer register	12
APPENDIX A: SAMPLE NOTICE TO INTERESTED PERSONS	13
APPENDIX B: SAMPLE LETTER TO OFFICE OF TREATY SETTLEMENTS	15
APPENDIX C: APPLICATION FOR NEW COMPUTER REGISTER(S) INCORPORATING ACCRETION	16

Terms and definitions

Term/abbreviation	Definition
accretion	where water recedes gradually and imperceptibly from the land, or where a river gradually and imperceptibly moves away from one bank, adding to the land by depositing shingle and silt
LINZ	Land Information New Zealand
LTA	Land Transfer Act 1952
OTS	Office of Treaty Settlements
RGL	Registrar-General of Land
the standard	<i>LINZS20005: Standard for title adjustments arising from water boundary changes</i>
Surveyor-General's Rules	Rules made by the Surveyor-General under section 49 of the Cadastral Survey Act 2002

Foreword

- Introduction**
- (a) Accretion occurs where a property is bounded by water, has a moveable boundary, and further land is added to the property due to gradual and imperceptible changes in the position of the water boundary. When this occurs the property owner is entitled to have the title corrected to reflect the current position of the water boundary. This guideline provides guidance for making an accretion application and for the consideration of applications.
 - (b) If land is gradually and imperceptibly added to, or eroded from a water boundary of a property, the registered proprietor may apply to the RGL to have their title corrected to show the true position of that boundary. The RGL may issue an amended title under s 80 of the LTA if:
 - (i) the RGL is satisfied that accretion or erosion has occurred, and
 - (ii) the doctrine of accretion is not excluded.
 - (c) This guideline provides guidance on the legal doctrine of accretion, which applies where land has a moveable boundary.
-

Purpose The common law rules that determine when a property owner is entitled to the land built up by water movement are contained in New Zealand and overseas case law. This guideline aims to clarify what the Registrar-General of Land (RGL) requires when applications for accretion claims are presented and processed.

Scope This guideline focuses on the following aspects of accretion applications:

- (a) application formalities,
- (b) survey requirements,
- (c) evidentiary requirements,
- (d) procedures for giving notice, and
- (e) evidentiary disputes.

Intended use of guideline This guideline is intended to be used when lodging and processing applications for accretion claims.

continued on next page

Foreword, continued

References

The following documents are necessary for the application of this guideline.

- LINZ 2007, *LINZS20005: Standard for title adjustments arising from water boundary changes*, Registrar-General of Land, LINZ, Wellington
 - Rules made by the Surveyor-General under section 49 of the Cadastral Survey Act 2002
-

Superseded documents

This guideline supersedes the following documents:

- LINZ 2003, *RGL Standard 31: Standard for Accretion Applications*, Registrar-General of Land, LINZ, Wellington
 - LINZ 2003, *RGL Standard 32, Standard for Processing Accretion Applications*, Registrar-General of Land, LINZ, Wellington.
-

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 presented in writing or some other approved format,
 - (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:

- (a) the applicant’s land, including the land claimed as accretion, is shown as a parcel on a plan prepared in terms of s 167(1) of the LTA and the Surveyor-General’s Rules, and
 - (b) the plan shows all of the affected parcel in the applicant’s current computer register.
-

Establishing that the doctrine of accretion applies

The requirement in the standard that ‘the applicant must establish that the doctrine of accretion applies’ will ordinarily be met if the applicant demonstrates that:

- (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.
-

2 Evidence required for application

Requirements The requirement in the standard that ‘the application must be supported by evidence to establish that accretion has occurred’ will ordinarily be met if the matters in [LINZ records](#), [Statutory declaration by applicant](#), [Statutory declaration by another person](#), and [Expert testimony](#) are addressed.

LINZ records

- (a) The application should refer to records held by LINZ that show that:
 - (i) the land in question has a moveable water boundary, and
 - (ii) the doctrine of accretion was not excluded at the time of the original grant or conveyance of the 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 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.

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.

Expert testimony If an application is likely to be disputed, a person qualified to give expert testimony about the soil composition of the area claimed as accretion should provide a statutory declaration that corroborates the applicant’s statutory declaration.

Erosion If the survey plan shows erosion as well as accretion no supporting evidence is required in respect of the erosion. It is good practice to refer to the erosion in the accretion application.

3 Giving notice

When notice should be given If the application and supporting evidence establish an accretion claim at face value, interested parties should be notified.

Treaty of Waitangi claims Before notice is given there should be an assessment of whether the adjoining land or the bed of the adjoining lake, river, or stream is the subject of Treaty of Waitangi settlement negotiations. It is recommended that this determination be made in the following way:

- (a) by letter to the Office of Treaty Settlements (OTS), which follows the form set out in [Appendix B: Sample letter to Office of Treaty Settlements](#), or
 - (b) from information relating to recent, similar applications for accretion relating to the same adjoining land or adjoining lake, river, or stream.
-

Form of notice The requirement in the standard that 'notice is given to all interested parties' will ordinarily be met if the notice:

- (a) follows the form of the sample notice in [Appendix A: Sample notice to interested persons](#),
 - (b) states the particulars of the claimed accretion,
 - (c) states the RGL's intention to issue a computer register incorporating the accretion,
 - (d) gives an explanation of the legal basis for accretion applications,
 - (e) includes a copy of the plan showing the claimed accretion (approved as to survey) and the surveyor's report, any locality plan if relevant,
 - (f) includes a copy of the application and supporting evidence,
 - (g) sets a period of at least one month within which the recipient of the notice may object to the issue of a computer register incorporating the claimed accretion, and
 - (h) is 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) Treaty settlement claimants ie any relevant iwi group as advised by OTS,
 - (b) owners of land adjoining or situated opposite the accretion,
 - (c) the Māori Land Court (if the accretion 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/city councils).
-

4 Evidentiary disputes

Who may object Any interested party, including a person who does not have a registered interest or a person who has not been formally notified, may object in writing to an application for accretion.

Dealing with objections

- (a) An objection is substantive if it raises an issue or produces conflicting evidence which calls the accretion claim into question. The objection should be based on material legal or evidential matters. The fact that someone does not want an accretion 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.

5 Considering the application

Original grant The original grant of land should be examined to 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 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 an immovable boundary by pegging or right lining, and
 - (b) there were no roads or reserves or other land between the land granted and the body of water at the time of the grant.
-

Other surveys All subsequent surveys of the boundary in question should be examined in case the boundary has been made immovable and accretion or erosion has been excluded in a subsequent conveyance, transfer or redefinition of the applicant's land, after the initial grant.

Surveyor's report The surveyor's report and other supporting documents and correspondence connected to the plan showing the claimed accretion should be examined. These documents may contain information about the existence of the accretion in support of the plan.

Verification of supporting material Other material, such as existing LINZ records, should be examined to independently verify that the boundary in question is a water boundary and that accretion may be claimed.

6 Amending the register

Replacement computer register

- (a) If there are no outstanding objections, the land claimed as accretion may be incorporated in the register. The existing computer register should be cancelled and a replacement computer register or registers should be issued in terms of the deposited plan showing the accretion.
 - (b) The form at [Appendix C: Application for new computer register\(s\) incorporating accretion](#) should be used to apply for a new computer register.
-

Appendix A: Sample notice to interested persons

Our Ref: *(application number)*

Your Ref:

(Date)

(Name of Interested Person)

(Address)

Land Transfer Act 1952 – section 80

Notice of an application for accretion at (...Bay ... River/ ... Stream/Lake ...) 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 accretion to (Lot... DP...) comprised in Computer Register (computer register 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.

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.

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 grant¹.

The doctrine of accretion applies to land under the Land Transfer Act 1952², 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 subject³.

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, A54/80⁴, 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.

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

2 *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.

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

4As noted in 'River Boundaries and the Land Registries', Cross, R. (1985) *Butterworth's Conveyancing Bulletin*, p. 51. Citation: (1985) 3 BCB 49

Appendix B: 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 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 Computer Register (*computer register 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)

Appendix C: Application for new computer register(s) incorporating accretion

(Section 80, Land Transfer Act 1952)

BARCODE

Land Registration District

Certificate of Title/Computer Register

Applicant

Surname(s) must be underlined

New Computer Register(s)

Lot

Plan number

New Computer Register(s)	Lot	Plan number

Application

The **Applicant applies** to the Registrar to issue (a) new computer register(s) 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 proprietor of the land in the above Certificate of Title/Computer Register
2. The land has a moveable water boundary, as shown on Plan (the survey plan supporting the original grant or conveyance of the land) and on Plan(s) (survey plans redefining the boundary).
3. The land was originally granted or conveyed on *(insert date)* by *(e.g. Crown grant)* recorded as *(insert reference)* and the doctrine of accretion was not excluded in the original grant or conveyance.
4. The accretion was added to the land due to gradual and imperceptible changes in the position of the water boundary, as shown by the evidence set out below.

Evidence to support the Application

- The following evidence supporting the claim accompanies this Application:
1. Statutory declaration by the Applicant.
 2. 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).
 3. 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.
 4. *(Insert details of other evidence.)*

Attestation

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

Dated this		day of		20
-------------------	--	--------	--	----

--

[Solicitor for] the Applicant

Names and full addresses of owners of land adjoining or situated opposite the accretion, and any other person to be given notice of Application (unless they have consented to this Application)

--