



Institute of Cadastral Surveying (Inc)

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20 April 2018

Robbie Muir
Registrar-General of Land
Land Information New Zealand
consultation@linz.govt.nz

Dear Sir,

SECONDARY LEGISLATION FOR THE LAND TRANSFER ACT 2017

ICS makes comment on the secondary legislation consultation documents released on 5 March 2018 as follows:

1. Consultation document - p9

Court orders

From a cadastral surveyors perspective, it is more important that court orders are present on the record of title rather than how they got there, as without this information, it may not be possible for the cadastral surveyor to correctly define the boundaries of interests for affected land.

2. Transfer Regulation 2018 - Clause 25(2)

Notice periods

Clause 25(2) of the proposed regulations proposes a 60 working day notice period for all claims of adverse possession. It is believed this should be reduced to 20 working days to enable more efficient dealing with such transactions.

There is currently much disincentive to resolve gaps and overlaps in the cadastre (particularly in terms of the time involved), and it is believed a 20 day time period provides increased incentive to all parties for resolution of these.

3. Transfer Regulation 2018 - Clause 30(2)

Claim for compensation

It is felt that the \$10,000 limit for compensation by the Registrar (without referral to the Attorney-General) is unreasonably low, and may lead to further injustice and increased costs for the applicant.

It is believed the prescribed amount should be increased to the range of \$30,000 - \$50,000.

4. Transfer Regulations 2018 - Schedule 2

Application to record boundary change resulting from accretion or erosion

It is noted that the standard associated with this item also make reference to Dry Beds, and it would seem logical to include this situation in the Instrument, or, prepare a separate Instrument for Dry Beds.

5. Transfer Regulations 2018 - Schedule 2

Easement instrument, or transfer instrument, to create or surrender easement or profit a prendre

The additional information required does not appear to cover the situation of existing easements being carried forward where these easements have been cut into two or more portions on subdivision. Currently the creating document of the right is able to be shown instead of the benefiting land, and it is desirable this situation be carried forward.

6. Transfer Regulations 2018 - Schedule 5

2 Classes of easements

In terms of item (f), the terms "telecommunications and computer media" are perhaps past their use by date, and could better be expressed as "electromagnetic data".

7. Draft Transfer Regulations 2018 - Schedule 5

2 Classes of easements

It is believed it would be helpful if Party Wall easements also had rights and powers implied.

For example, where one party no longer has a building attached to the party wall (eg. after a fire, or demolition), it would be sensible for the party that still has a building attached to the party wall, to be able to gain access to the adjoining property to maintain the party wall and its weather proof ness.

8. Standards

Boundary Changes - Accretion and Dry Beds (Rivers and Streams) Standard 2018

It is believed the heading of his standard should also make reference to Erosion, after all it is the doctrine of "accretion and erosion". Both elements of the doctrine are commonly included in the same survey, while Section 4 of the Standard also includes a definition of erosion.

For clarity, ICS does not believe additional evidence to that shown on the diagrams of the survey is necessary to support a loss of land by erosion.

9. Standards

Boundary Changes - Accretion and Dry Beds (Rivers and Streams) Standard 2018

It is noted that in clause 4(1) of this standard that the terms Accretion, Avulsion and Erosion are defined as in common law. Perhaps reference to the relevant common law could be included for better clarity.

ICS notes that greatest impact on the cadastral surveying profession from the secondary legislation for the Land Transfer Act 2017 will be in the areas of; Accretion & Erosion; Dry Beds; Limitation as to Parcels; and Adverse Possession. Our members await consultation on new guidance documents associated with these items, as the content of the current guidance documents for these items can cause significant difficulties for parcel definition.

Yours sincerely

A handwritten signature in black ink that reads "B W Speirs". The letters are cursive and somewhat stylized, with the 'B' and 'S' being particularly prominent.

B W Speirs

Chairman
Legislation Sub-committee