



Institute of Cadastral Surveying (Inc)

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**Deputy Chief Executive/
Registrar-General of Land
Strategy and Stewardship Group**

Land Information New Zealand

PO Box 5501

Wellington 6145

Attn: Mr Robbie Muir
via email (rmuir@linz.govt.nz)

Accretion and Erosion Guideline 2018 LINZG20783

Dear Robbie,

Following from your emails of 4 October 2018 and 9 November 2018. We had noticed the release of a number of new guidelines in support of the Land Transfer Act 2017, recently listed on the LINZ website and dated 19 October 2018.

It is of concern that this new information does not appear to have been subject to any external consultation process.

We note that the consent and notice provisions required under the above guideline and the "Application to bring land under the Act – Dry Riverbeds and Dry Streambeds. LINZG20782" guideline are, on occasion, and often in situations of low value rural land, overly onerous.

However, it is the new guideline on Accretion and Erosion that particularly concerns us.

Definition of Fixed Water Boundary and Movable Water Boundary

We note the inclusion of definitions for the above terms in the guideline:

Fixed water boundary means, for the purpose of this guideline, an immovable boundary near water that has been defined by survey along a defined line, and where it is not intended that the boundary be the edge of the water.

Movable Water Boundary means, in this guideline, a moveable boundary defined as the edge of the water, in contrast to a fixed water boundary.

The guideline then proceeds to outline the legal requirements (Sec 1.1.5.1) and LINZ records (Sec 1.1.5.2) that are required to be provided by the applicant who wishes to alter their boundary by accretion and erosion, as the “land in question has a movable water boundary” (amongst other things).

Commentary

Access to the common law doctrine of accretion (and erosion) for any applicant is dependent on having a water boundary.

Where it is clear that the original grant (or supporting survey) does not establish the property boundary along such a water boundary, but some other (right-lined or pegged or other) position, then accretion to the bank cannot be claimed by the owner. Good survey practice should ensure that eroded land (as it no longer exists) was removed from subsequent titles on resurvey, in these circumstances.

When water boundaries have moved on resurvey, in some circumstances surveyors have been directed by LINZ to right-line and/or peg previous water boundary positions. This direction either (most recently) through the Rules for Cadastral Survey 2010 or modern guidance/guidelines issued by LINZ in some Land Districts – generally North Auckland and South Auckland.

Many surveyors have had concerns about this policy, and the possible effects on riparian and ownership rights, and particularly the ability of the landowner to claim accretion in the future.

Indeed, the way in which the current guideline is written, it would appear to convey the “current” LINZ thinking that where a previous water boundary has been required to be right-lined/pegged, that all rights associated with that previous ambulatory boundary have been lost (and depriving existing and future owners of those rights).

We do not agree. This presumption does not appear to be backed by any legislation, the common law, or case law. It appears that LINZ are asserting this guideline as “quasi” legal decisions regarding ownership rights. This policy will inevitably give rise to parcels of land which are along the margins of water where ownership is unknown/disputed, is prohibitively expensive to deal with, and/or land which is unmaintained.

The current “Omapere” case (currently before the Court of Appeal) although not addressing the issue directly, peripherally raises questions around the advisability of right-lining/pegging former water boundaries.

Our view is that in all but exceptional circumstances (and there may very occasionally be some), previous water boundaries that do not reflect the current position of the river/stream etc on resurvey, remain as an ambulatory (irregular) line. This means that any rights associated with those boundaries remain, and are not modified by subsequent arbitrary survey decisions.

Action Requested

We would like to see the ***immediate withdrawal*** of the guideline in its current form, and it being re-written to respect common law, and preserve the rights of all land owners having frontage to a (previous) water boundary.

As an allied action, and in conjunction with the current review of the Rules for Cadastral Survey, we are seeking the current requirements to right-line and peg former water boundaries (in some circumstances) to be removed.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Pat Sole', is positioned above the typed name.

Pat Sole
President
Institute of Cadastral Surveying

Copy: Acting Surveyor-General