

# **Title Fees (*Land Transfer Act 2017*) 2018 Consultation**

**Consultation Document**

**23 March 2018**



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## Introduction

Land Information New Zealand (**LINZ**) is consulting on the fees charged for searching and registering a property transaction. It's proposed that these fees for land title products and services remain at current rates.

The existing title fees are set out by the Land Transfer Regulations 2002. When the Land Transfer Act 2017 is enacted at the end of 2018, those regulations will be revoked: the replacement regulations will use language that reflects the terminology of the new Act.

While LINZ is proposing that the fees don't change, the descriptions of some products and services are changing as a result of the Land Transfer Act 2017; for example, a "certificate of title" is now a "record of title" reflecting the services in new digital environment.

LINZ is keen to hear your views on the questions and proposal in this paper. LINZ invites you to submit your feedback to us by Friday 27 April 2018.

Please email your submissions to [consultation@linz.govt.nz](mailto:consultation@linz.govt.nz) with 'Title Fees Review' in the subject line.

Once LINZ has received your feedback, we will develop recommendations for the Minister and Cabinet to consider. The intention is to have the fees gazetted before early October 2018 and effective from 12 November 2018.

## Proposal for consultation: no change to current title fees levels

The proposal for consultation is to implement a new fee regulation that generally maintains the status quo – refer to Attachment 1.

With this proposal there are no changes to the:<sup>1</sup>

- existing cost recovery policy setting;
- structure of the title fees; and
- level, or quantum, of each fee.

There is a change to both the authorising Act (now the *Land Transfer Act 2017*) and the regulations specifying the fee for products and services (the title of the proposed regulation has not been determined). Also the description of the service and the service delivery will reflect the new Act. This is summarized in Appendix 1.

## Overview

### Why are we proposing change?

An element of New Zealand's land title system is the functions of searching a title and registering information on a title. These functions, collectively referred to as "title" functions, are currently cost recovered by fees established by Schedule 5 of the *Land Transfer Regulations 2002*.

The *Land Transfer Act 2017* revokes the *Land Transfer Regulations 2002*,<sup>2</sup> which were established under the *Land Transfer Act 1952*. The intention of the revocation was to update the regulations for the modern language in the new Act and to recognise that land transfer register is now electronic. The revocation was proposed on the basis that the existing policy settings remained the same.

A new title fee regulation is required to be established by 12 November 2018 (the date the *Land Transfer Act 2017* is effective).

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<sup>1</sup> This proposal does not cover the title fees set in the Retirement Villages (Fees) Regulations 2006 established under sections 101 and 102 of the *Retirement Villages Act 2003*.

<sup>2</sup> Section 249(1).

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## What we are proposing?

We are proposing new title fees under the *Land Transfer Act 2017* with the fees set at the same level as the existing fees for title services in the *Land Transfer Regulations 2002*. The description of the products and services will reflect the services in the *Land Transfer Act 2017*.<sup>3</sup> Appendix 1 provides a summary of the products and services under the different Acts and the associated fee.

This proposal maintains the existing policy rationale that products and services with private benefits should be funded by the individual(s) benefiting from the activity.

## What is the title system?

New Zealand's land title system (a Torrens land title system) records all registered legal interests in land so people can buy, sell, or develop property with certainty. This certainty of property rights, underpinned by the State guarantee of title to land, supports important elements of New Zealand's economy.

Every property transaction involves actions that use the title system. For example, when selling a house:

- both the buyer and seller will obtain title searches to confirm ownership and the interests that affect the land;
- mortgages or other interests may need to be discharged or registered on the title; and
- title ownership needs to be transferred from the seller to the buyer.

LINZ primarily manages the title system using the electronic Landonline database.

The title system contributes to New Zealand being ranked number one in the world for "registering property" by the World Bank in their June 2017 report.<sup>4</sup> A summary of their report for selected countries is:

Country	Time (days)	Cost (% of property value)	Quality of the Land Administration Index (0-30) <sup>5</sup>
<b>New Zealand</b>	<b>1</b>	<b>0.1%</b>	<b>26.0</b>
Australia	4.5	5.2%	20.0
Canada	4	2.9%	21.5
China	19.5	3.4%	18.3
Germany	52	6.7%	22.0
United Kingdom	21.5	4.8%	24.5
United States	15.2	2.5%	17.6

## What is the impact of the *Land Transfer Act 2017* on title fees?

The Government has updated New Zealand's land transfer laws with the passing of the *Land Transfer Act 2017*. The Act aims to simplify, modernise and consolidate the previous land transfer legislation (*Land Transfer Act 1952*) to make it more accessible and to improve certainty of property rights. The overall effect is the retention of the fundamental principles of the existing system (registration as a prerequisite for the acquisition of legal title and State-guarantee of title) subject to some changes to ensure that people continue to be secure in their property ownership.

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<sup>3</sup> Example; the 2017 Act refers to a 'record of title' while the 1952 Act refers to a 'certificate of title'.

<sup>4</sup> <http://www.doingbusiness.org/data/exploretopics/registering-property>

<sup>5</sup> The quality of land administration index has five dimensions: reliability of infrastructure, transparency of information, geographic coverage, land dispute resolution, and equal access to property rights.

The *Land Transfer Act 2017* revokes the existing title fees (*Land Transfer Regulations 2002*). The intention of the revocation was to update the regulations for the modern language in the new Act. The revocation was on the basis that the existing policy settings remained the same.

Part of the implementation of the *Land Transfer Act 2017* is establishing new title fee regulations before 12 November 2018.

## What are title fees?

The existing title fees, in Schedule 5 of the *Land Transfer Regulations 2002*, were established pursuant to sections 235 and 236 of the *Land Transfer Act 1952*. A list of the current title fees (and proposed fees) is provided in Appendix 1.

The existing fees were last reviewed in July 2011.

Title fees have been recovered from users over a number of years on the basis that:

- the title service provides a private benefit to the user (example; state guarantee of title and an authoritative, efficient and cost effective transfer process);
- users of title services should pay for the cost of the service; and
- a fee based on the long run average costs of the service mitigates some of the market failure risks from monopoly supply.

LINZ reports annually any accumulated surplus, or deficit, associated with title and survey fees in a memorandum account.<sup>6</sup> The purpose of memorandum account reporting is to increase transparency for fee charging practices, provide a credible commitment that LINZ will not inadvertently benefit from over-recovery, focus LINZ on possible over (or under) recoveries; and encourage LINZ to apply a long-term perspective.

The expectation is that the balance of a memorandum account will trend toward zero over a reasonable period of time, with interim deficits being met either from LINZ's cash reserves or from a capital injection from the Crown.

The current balance (30 June 2017) of the Survey and Title memorandum account is \$47.3m surplus. It is projected that by 30 June 2018 Survey and Title memorandum account will be \$30.0m

There are two main factors that created the current surplus:

- **Fees have not been adjusted since 2011.** In 2011 fees were increased to fund a \$40.1m deficit in the memorandum account. This deficit was caused by the 33% drop in property transactions that occurred during the 2007/08 global financial crisis.

Post 2011 the property market transaction volume recovered faster than forecasted and a surplus has been recorded in the memorandum account balance since 2014.

<sup>6</sup> The reporting is at an aggregate level including both title and survey fees.

The memorandum account is now known as the *Survey and Title* memorandum account. In previous years the memorandum account was called the *Landonline* memorandum account.

The following table summaries the movement in the *Survey and Titles* memorandum account:

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Balance – 1 July	\$28.7	\$11.8	(\$10.7)	(\$26.9)	(\$40.1)	(\$25.5)	(\$5.6)	\$12.1	\$27.8	\$44.0
Revenue	\$45.2	\$36.0	\$34.6	\$36.2	\$58.0	\$64.6	\$65.6	\$67.8	\$74.3	\$71.7
Expenses	\$62.1	\$58.4	\$50.9	\$49.3	\$43.5	\$44.7	\$47.9	\$52.1	\$58.1	\$68.4
Net	(\$16.9)	(\$22.5)	(\$16.3)	(\$13.1)	\$14.5	\$20.0	\$17.7	\$15.7	\$16.3	\$3.3
Balance – 30 June	\$11.8	(\$10.7)	(\$26.9)	(\$40.1)	(\$25.5)	(\$5.6)	\$12.1	\$27.8	\$44.0	\$47.3

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- **Improvements have reduced the costs for some activities.** By introducing the Landonline system, digitising land records, and shifting from a paper-based system to an electronic system, LINZ has reduced the cost of property transactions. This included reducing:
    - LINZ offices from 12 to three; and
    - reducing title processing staff.

The key future impacts on the Survey and Title memorandum account balance, which is projected to decrease to \$30.0m by 30 June 2018, are:

- **Slow down in property transactions.** There is emerging evidence that the volume of property transactions is decreasing. The volume of title revenue that LINZ receives each year is very sensitive to the volume of property transactions.<sup>7</sup>
- **ASaTS.** The Advanced Survey and Title Services (ASaTS) project is a project to potentially replace the existing *Landonline* system (the system for managing New Zealand's property transactions). Introduced in April 2000, *Landonline* was a pioneering technology platform in the delivery of land title and survey services. *Landonline* plays a critical role in the New Zealand property market and wider economy by enabling users (primarily lawyers, conveyancers and surveyors) to efficiently and confidently complete property transactions on behalf of the public and business through an online platform. *Landonline* is reaching the end of its economic life.

The current evaluation costs of ASaTS are being charged to the memorandum account.

The future impact of the ASaTS development on the memorandum account is unknown until there are decisions on the ASaTS Implementation Business Case. Future decisions on the ASaTS Business Case are expected during 2018.

## Future impact of the ASaTS on survey and title fees

The ASaTS project, if approved, will fundamentally change the way in which survey and title services are delivered in the future (from approx. 2021).<sup>8</sup>

If the decision is made to proceed with ASaTS, due to the anticipated change in service delivery, a fee review of both title and survey fees should commence in 2019.

## Comment on proposal for consultation

This option, no change to the current title fees level, is considered a valid option because:

- if the ASaTS development is approved there will be a fundamental fee review of both title and survey fees commencing in 2019. It is considered inefficient for customers to be involved in two title fee reviews over two years;
- there is likely to be a short-term negative impact on the Survey and Title memorandum account due to the:

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<sup>7</sup> Corelogic NZ Monthly Property Market & Economic Update; February 2018

Regional sales volume (year on year) in the majority of main centres are showing decreased housing sales volumes;

1. Auckland -8%,
2. Hamilton -4%,
3. Tauranga -5%
4. Wellington -0%,
5. Christchurch +10%,
6. Dunedin -2%

<sup>8</sup> The key driver for the ASaTS development is protection of services delivered by the land title system from technical vulnerabilities. In achieving this protection there are additional real benefits that can be achieved for service delivery at the same time.

- reduced volume of property transactions; and
- evaluation costs of ASaTS being charged to the memorandum account; and
- in 2019 it is anticipated there will be more reliable information to model the future title fees on. This includes:
  - decisions on ASaTS development; with impacts on the Survey and Title memorandum account balance; and
  - the impact of reduced property transaction volumes on the Survey and Title memorandum account balance.

### Consultation question

Proposal	Questions
<p>The proposal is to implement a new fee regulation that maintains the status quo (makes no changes to the current structure or levels of title fees) but gives effect to the <i>Land Transfer Act 2017</i>.</p>	<p>Do you agree with not changing the current title fee settings:</p> <ul style="list-style-type: none"> <li>i. Why or why not?</li> <li>ii. If you disagree, what alternative would you prefer?</li> </ul>

## Appendix 1: Current fees and proposed fees

In the tables below, **n/a** means that the electronic workspace or non-workspace process (as the case may be) is not applicable to the relevant item.

It is anticipated that the proposed 2018 fee regulations will simplify the schedule and adopt a plain English style. This table is provided for the purpose of comparison of the 2011 amendments to the fees under the *Land Transfer Act 1952* and the proposed 2018 fees under the *Land transfer Act 2017*.

### Part 1 Search fees

Service under the <i>Land Transfer Act 1952</i> Schedule 5 of the <i>Land Transfer Regulations 2002</i> (as amended by the <i>Land Transfer Amendment Regulations 2011</i> )	Service under the <i>Land Transfer Act 2017</i> Proposed fees payable	Fee if done via approved electronic workspace facility <sup>9</sup> (\$ GST incl)	Fee if not done via approved electronic workspace facility <sup>10</sup> (\$GST incl)
1 For inspecting in a land registry office— (a) a grant or certificate of title, or a lease or licence granted under the Land Act 1948	<i>note the 2017 Act does not provide for inspecting in a land registry office – no fee is proposed</i>	n/a	15
(b) any other document	<i>note the 2017 Act does not provide for inspecting in a land registry office – no fee is proposed</i>	n/a	15
2 For providing, under section 33(3) or (4) of the 2002 Act,	2 For providing, under section 40(1),		
(a) a search copy of— (i) a grant, certificate of title, or computer register; or (ii) a lease or licence registered or entered in the register in accordance with the Land Act 1948	(a) a search copy of— (i) a record of title	5	15
(b) a search copy showing only current information (other than the relevant plan or diagram)		5	15

<sup>9</sup> Electronic workspace facility means a facility approved under section 25 of the *Land Transfer Act 2017*.

<sup>10</sup> In the *Land Transfer Regulations 2002* this is referred to as: "Fee if done manually".

(c) a search copy showing current and historical information (other than the relevant plan or diagram)		5	15
(d) a search copy under, and for the purposes of, section 172A of the 1952 Act		5	15
(e) a structured text view of an instrument (other than a detailed structured text view)	(b) a structured text view of an instrument (other than a detailed structured text view)	No Fee	15
(f) a copy of any other document	(c) a copy of an instrument registered or noted in the register or that forms part of the register	5	15
3 For certification as a true copy	3 For certification as a true copy	n/a	11

## Part 2 Registration and other fees

<b>Service under the <i>Land Transfer Act 1952</i></b> Schedule 5 of the <i>Land Transfer Regulations 2002</i> (as amended by the <i>Land Transfer Amendment Regulations 2011</i> )	<b>Service under the <i>Land Transfer Act 2017</i></b> Proposed fees payable	<b>Fee if lodged via approved electronic workspace facility<sup>11</sup></b>  <b>(\$GST incl)</b>	<b>Fee if not lodged via approved electronic workspace facility<sup>12</sup></b>  <b>(\$GST incl)</b>
1 For presentation and deposit of an instrument— (a) on presentation of an electronic instrument from an approved electronic workspace facility	1 For lodging and deposit of an instrument— (a) on lodgement of an electronic instrument from an approved electronic workspace facility under section 25 of the 2017 Act (including lodgement of an instrument in place of an instrument that was found not to comply with section 26 and rejected and returned, under section 37(1)(a) of the 2017 Act)	72	n/a
(b) on presentation of a paper instrument by either of the following means (including presentation of an instrument in place of an instrument that was found not to be in order for registration, and returned, under section 43(1)(a) of the 1952 Act): (i) by deposit in a secure facility under section 47(1)(b) of the 1952 Act; or (ii) by post under section 47(1)(c) of the 1952 Act	(b) on lodgement of a paper instrument by post under section 34(3) of the 2017 Act (including lodgement of an instrument in place of an instrument that was found not to comply with section 26 and rejected and returned, under section 37(1)(a) of the 2017 Act)	n/a	72
(c) on presentation of a paper instrument by hand at a public counter under section 47(1)(a) of the 1952 Act (including presentation of an instrument in place of an instrument that was found not to be in order for registration, and returned, under section 43(1)(a) of the 1952 Act)	<i>note the 2017 Act does not provide for lodgement of instruments at a public counter – no fee is proposed</i>	n/a	92

<sup>11</sup> In the Land Transfer Regulations 2002 this is referred to as: "Fee if done via approved electronic workspace facility".

<sup>12</sup> In the Land Transfer Regulations 2002 this is referred to as: "Fee if done manually".

2 For registration (including automatic registration), deposit, or filing of any instrument, dealing, or document, unless specifically exempted or provided for elsewhere	2 For registration, notation or entry in the register (including automatic registration, notation or entry in the register), <sup>13</sup> deposit, or filing of any instrument, dealing, or document, unless specifically exempted or provided for elsewhere	8	104
3 If any instrument or other matter purports to deal with or affect land included in more than 1 computer register, for each computer register other than the first	<i>n/a</i>	No fee	No fee
4 For the creation of a computer register under section 7, 9 (in relation to an interest referred to in subsection (1)(a)), 11, or 13 of the 2002 Act	4 For the creation of a record of title under section 12 of the 2017 Act	135	135
5 For depositing a plan	5 For depositing a plan <sup>14</sup>	101	101
6 For approving a form	6 For approving a form	80	80
7 For advertising an application or notice required to be advertised	7 For advertising an application or notice required to be advertised	231	231
8 For sending a notice on the application or request of any person, whether required by the 1952 Act or another enactment (including for preparing and sending notice of the lodging of a caveat under the 1952 Act or notice of the lodging of a claim under section 42 of the Property (Relationships) Act 1976)	8 For sending a notice on the application or request of any person, whether required by the 2017 Act or another enactment (including for preparing and sending notice of the lodging of a caveat under the 2017 Act or notice of the lodging of a claim under section 42 of the Property (Relationships) Act 1976)	5	5
9 On resubmission of an instrument in place of an instrument that was found not to be in order for registration, and returned or retained, under section 43(1) of the 1952 Act	9 On resubmission of an instrument in place of an instrument that was found not to comply with section 26 and returned or retained, under section 37(1)(a) or (b) of the 2017 Act	13	88

<sup>13</sup> Automatic registration means the electronic registration of the document (reference regulation 3 of the Land Transfer Regulations 2002).

<sup>14</sup> Plan means a graphical representation of 1 or more cadastral surveys (reference regulation 3 of the Land Transfer Regulations 2002).

## Part 3 Audit fees

<b>Service under the <i>Land Transfer Act 1952</i></b> Schedule 5 of the <i>Land Transfer Regulations 2002</i> (as amended by the <i>Land Transfer Amendment Regulations 2011</i> )	<b>Service under the <i>Land Transfer Act 2017</i></b> Proposed fees payable <sup>1</sup>	<b>Fee</b> (\$ GST incl)
1 Examining evidence produced to the Registrar under section 164C(3)(a) of the 1952 Act that meets any requirements under section 164C(1) or (2) of the 1952 Act, where no action is taken under section 164B(2) or 164C(3)(b) of the 1952 Act	1 Examining evidence produced to the Registrar under section 30 of the 2017 Act that meets any requirements under section 30(1) or (2) of the 2017 Act, where no action is taken under section 29(1) or 30(3) of the 2017 Act	No fee
2 Examining evidence produced to the Registrar under section 164C(3)(a) of the 1952 Act that does not meet the requirements under section 164C(1) or (2) of the 1952 Act, where no action is taken under section 164B(2) or 164C(3)(b) of the 1952 Act	2 Examining evidence produced to the Registrar under section 30 of the 2017 Act that does not meet the requirements under section 30(1) or (2) of the 2017 Act, where no action is taken under section 29(1) or 30(3)(b) of the 2017 Act	130 per hour plus reasonable disbursements
3 Requiring a statement under section 164C(3)(b) of the 1952 Act	3 Requiring a statement under section 30(3) of the 2017 Act	130 per hour
4 Any other action relating to the audit of a certification for the purpose of exercising (or deciding whether to exercise) the powers under section 164B(2) of the 1952 Act	4 Any other action relating to the audit of a certification for the purpose of exercising (or deciding whether to exercise) the powers under section 29 of the 2017 Act	130 per hour plus reasonable disbursements

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## Appendix 2: Legal

### Publication of submissions

LINZ is subject to the Official Information Act 1982 and the Privacy Act 1993.

LINZ is required to carry out its functions with transparency. Part of LINZ's purpose in collecting submissions is so that we can share the points of view that we receive. LINZ may publish the submissions and information that you provide to LINZ or it may provide that information to other parties.

### Confidentiality

If you are providing us with information which you wish to remain confidential please notify us of this. In particular, identify which part(s) of your submission you consider should remain confidential, and explain the reason(s) for that.

Please note that LINZ is bound by the Official Information Act 1982. That Act will apply to any information that you provide to LINZ and we may be required to release the information that you provide notwithstanding your notification and identification of confidentiality.

### Personal information

LINZ is bound by the Privacy Act 1993. Any personal information, including your name and address, which you supply to us in the course of making a submission or providing a point of view, will be used by LINZ only in conjunction with the purpose of collecting the submissions.

When you make your submission, you consent to your personal information being published, unless you tell us otherwise. If you do not want your personal information published, please tell us when you make your submission.

### Disclaimer

The opinions and proposals contained in this document are currently under consideration; no final decision has been made in relation to the opinions and proposals and they do not reflect any decided or approved government policy.

LINZ does not accept any responsibility or liability whatsoever whether in contract, tort (including negligence), equity or otherwise for any action taken as a result of reading, or reliance placed on LINZ because of having read any part, or all, of the information in this consultation document; or for any error, inadequacy, deficiency, flaw in, or omission from, this consultation document.