2013

Consent Support

Reading and Interpreting Titles

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Titles (Computer Registers)

Most privately owned land in New Zealand is held under the land title system of the Land Transfer Act 1952, with an exception being some forms of Maori land. All property rights are derived from the Crown, and title to land in private ownership is a matter of public record. A title is the official document showing ownership of the land described in it, and the rights and restrictions that apply to the land. Titles have replaced paper certificates of titles (CTs) since 2002.

Land Information New Zealand (LINZ) is responsible for all land transfers and for keeping title records. LINZ holds titles electronically in Landonline, available for public search.

The system of registration of title to land in New Zealand is known as the Torrens system or the land transfer system. A parcel of land under the land transfer system has an individual title setting out:

- the title reference or 'identifier' and any prior title references
- the name of the registered proprietor and ownership history
- the legal description of the land, e.g. Lot 1 DP 456789
- the date the title was issued
- the land registration district
- the nature of the estate (e.g. an estate in fee simple)
- a note of any encumbrances, restrictions and interests to which the land is subject (e.g. mortgages, easements)
- a plan of the land, either drawn on it or attached to it.

Titles are based on survey plans, which are the record of ground marking (the 'monumentation' of the boundaries). Survey plans are carried out by licensed cadastral surveyors. Unless the titles are 'limited as to parcels', the Crown guarantees the area and dimensions on the title.

Key things to look for on a title

Titles may contain the following restrictions:

- limited as to parcels titles
- building line restrictions imposed under the Public Works Act 1981
- marginal strips under the Conservation Act 1987 and s58 strips under the Land Act 1948
- encumbrance/covenant
- easements and rights-of-way
- consent notices under s221 of the RMA
- notices under ss71-74 of the Building Act 2004 relating to building on hazard prone land
- notices under ss75-83 of the Building Act 2004 relating to the construction of buildings on two or more allotments
- amalgamation conditions imposed under s241 of the RMA
- memorials relating to the resumption of land in terms of s27A of the State Owned Enterprises Act 1986 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal).

Limited as to parcels titles

Titles that are 'limited as to parcels' are for sites where the area and dimensions of the title are not guaranteed. The notation of whether the site is limited is usually found at the top of the title.

Sites that are limited to parcels are generally older subdivisions where a proper survey was never undertaken. Sites may end up being much smaller once the formal survey occurs, affecting land-use matters such as density and bulk and location controls.

Generally, if subdivision is to occur, a surveyor will need to survey not only the entire site but also the surrounding sites in order to gather evidence as to where the boundaries are. The surveyor will use fencing, buildings, spouting (worst-case scenario!) and driveways to assist in determining official boundary positions.

Always be cautious about any types of applications (land-use or subdivision) involving sites that are limited as to parcels, given the site boundaries and area are not guaranteed.

Building line restrictions imposed under the Public Works Act 1981

Some properties will have building line restrictions recorded on the title, whereby a memorial is placed on the title stating "subject to building line restriction" (or BLR) plus the document number. Historically these were placed on the title at the time of subdivision where the road was less than 20 metres wide; they would specify that buildings were not allowed to be sited within a certain distance from the centreline of the road or the road boundary. Although they have little real relevance, they still have legal standing and can only be removed under section 327A of the Local Government Act 1974, or must be complied with.

Marginal strips under the Conservation Act 1987 and s58 strips under the Land Act 1948

Part 4A (Marginal Strips) of the Conservation Act 1987 (introduced by the Conservation Law Reform Act 1990) supersedes the Land Act 1948.

When Crown land that adjoined a water body was being sold or otherwise disposed of, s58 of the Land Act required a strip of land not less than 20 metres in width running parallel to that water body be reserved from sale or disposal. Part 4A of the Conservation Act now uses the term 'marginal strips' and has a similar provision to the replaced s58 of the Land Act.

When Crown land adjacent to foreshore, a lake, a river or stream greater than 3 metres wide is sold or otherwise disposed of, a strip of land no less than 20 metres wide is deemed to be reserved. Where a marginal strip is reserved following a sale or other disposal, this is required to be recorded on the title of the subject land. All strips previously created under s58 of the Land Act were deemed to become marginal strips under the Conservation Act.

There is a key difference between the strips created under s58 of the Land Act and marginal strips created under the Conservation Act. Those created under the Land Act do not move with any change of shape or alteration of the course of the abutting water

body, whereas those created under the Conservation Act do move.

Where Part 4A of the Conservation Act applies, land sold by the Crown will generally have a memorial on the title deeming the first 20 metres of this property (where it abuts a waterway) to be reserved from sale. Therefore, the owner of an ex-Crown property which is located adjacent to a waterway, would effectively not own the first 20 metres of that property. There is a process for applying to the Department of Conservation for management rights over this strip. (See Part 4A of the Conservation Act 1987 for more information).

- As a general rule, when reviewing an application that requires resource consent, consider the marginal strips that are noted on the title.

- Where land is subject to Part 4A of the Conservation Act 1987, you need to check to see if works are occurring within 20 metres of the mean high-water mark (or near the edge of a lake or river). If they are, the applicant will need to obtain rights to use this land from the Department of Conservation. This is a separate process from determining who might be adversely affected.

Encumbrance/ covenant

The title may record an encumbrance or covenant on the property. It is important to check all the way through the title, as the information may not be recorded at the top.

A land covenant is an interest in land according to the Property Law Act 2007 and is registered on the title of a property. The intent of a covenant is to limit or restrict the owner and any future owners as to how they use the land/property.

Some encumbrances/covenants may be private agreements between parties; others may be imposed by the council. It is becoming increasingly common for developers to use private covenants for controlling how future owners both develop and maintain the land, particularly for residential developments that are being marketed with certain characteristics.

The need for council-imposed covenants is generally identified through the assessment of a land-use consent application, or for longer-term protection through a subdivision consent application. Information on why a council encumbrance or covenant was imposed should be held on the relevant council property file.

Types of restrictions that may be imposed through covenants include:

- use of materials
- minimum size of dwelling
- protection of native bush, wetlands, etc.
- protection of historic buildings and features
- bulk and location, particularly heights and views
- approval of plans by the developer (even after building/resource consent is obtained)
- duration of the construction period
- use of the site for a home occupation
- the use of minor residential units
- pets and animals
- Queen Elizabeth II (QEII) conservation covenants.

A council would generally only enforce a council-imposed covenant, and would not get involved with the enforcement of private covenants.

Easements and rights-of-way

An easement is defined as a right for the owners of one lot to carry out some form of activity over another lot (e.g. an electricity easement allows electricity to be conveyed to a property over another property). A right-of-way is a particular type of easement, which allows the owners of a lot vehicle and/or pedestrian access over a portion of another lot.

It is important to:

- check on the title whether people have the right of access over other properties
- check the conditions of the easement
- note that not all rights-of-way are shown graphically on the title, and that the survey plan will need to be consulted in those cases.

A right-of-way or easement will be described as having 'servient' and 'dominant' tenements. A servient tenement is the lot that owns the land over which the right-of-way or easement passes. A dominant tenement is the lot that has the right to pass over or access the land over which the right-of-way or easement passes.

Consent notices under s221 of the RMA

Consent notices are a form of covenant between the council and the land owner and can only be imposed through a subdivision consent. They relate to conditions that must be complied with on a continuing basis by the owner and subsequent owners after the deposit of the survey plan (s221 of the RMA). Such conditions may include engineering works, density, site coverage, and the location of building platforms. Because a consent notice is an agreement between the council and the land owner, the council would enforce any non-compliance.

Consent notices are legally deemed to be an instrument creating an interest in the land within the meaning of s62 of the Land Transfer Act 1952, and a covenant running with the land when registered under the Land Transfer Act. Section 221(3) of the RMA enables conditions specified in consent notices to be varied or cancelled by agreement between the land owner and the council, at any time after the deposit of the survey plan.

Notices under ss71-74 of the Building Act 2004 relating to building on hazard prone land

Notices under ss71-74 of the Building Act 2004 regarding hazard-prone land, prohibit building consents for buildings, or major alterations, on sites subject to hazards in some specified circumstances. However, there is an exception in this section that a building consent can be issued where certain requirements are met, one of which is that a notation is placed on the title that a consent has been issued.

Specifically, under s71 of the Building Act a building consent can not be issued at all if the land and the proposed building work can not be adequately protected from the particular hazard. However, a development could be allowed under s72 even if there is still a risk from the hazard, as long as the work itself will not accelerate or worsen that risk, and provided there is a warning on the title (s74).

It is important that you discuss any proposals involving a site with a s71 restriction on a title with the council building officers.

The relevant provision was formerly s36 of the Building Act 1991.

Notices under ss75-83 of the Building Act 2004 relating to the construction of buildings on two or more allotments

Section 75 of the Building Act 2004 gives a council the ability to issue a building consent to construct a building over land that is owned by the applicant in fee simple, and comprises or partly comprises two or more allotments of one or more existing subdivisions; the provision is that a notice be registered on the title requiring that the affected allotments cannot be transferred or leased, except in conjunction with any affected allotments.

It is important to discuss with a council building officer, any proposals involving a site with a s75 restriction on a title.

The relevant provision was formerly s37 of the Building Act 1991.

Amalgamation conditions imposed under s241 of the RMA

Sections 220(1)(b) and 220(2)(a) of the RMA provide for a subdivision consent to be issued subject to a condition requiring that land be amalgamated and held either in one title or subject to a covenant between the land owner and the council that restricts its disposal, lease or otherwise except in conjunction with other land.

Section 241 requires this condition is entered on the title as a memorandum. This then restricts the land owner from disposing of any separate parcels of land, or land being held on other titles, unless the approval of council is obtained.

It is important to discuss with a local authority subdivision officer, any proposals involving a site with a s241 memorandum.

Memorials relating to the resumption of land in terms of s27A of the State Owned Enterprises Act 1986 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal)

Section 27A of the State Owned Enterprises Act 1986 requires a memorial (a formal notation or record) be placed on all titles to Crown land transferred to any state-owned enterprises under that Act. The effect of such a memorial is that under s27B, the Waitangi Tribunal can in specified circumstances order the Crown to take back or 'resume' a property to be used in settling a Treaty claim, unless the Crown and claimant groups first agree on a settlement. There is provision for similar memorials to be noted on the titles of former Crown railway land, and land transferred by the Crown to tertiary educational institutions.

These memorials remain on the titles even if they are sold to third parties, and are not removed until claims over the area concerned have been settled, or affected Maori groups agree to their removal. The memorial warns third parties that the property may be used for settling Treaty claims through resumption by the Crown. If this happens, compensation is paid as if the property were being acquired under the Public Works Act

1981.

- It is important to discuss with a council subdivision officer or legal adviser, any proposals involving a site with a s27A memorandum.
- An applicant proposing to develop or purchase land with a s27A memorandum should be advised to seek legal advice.

Maori Land

Maori land is defined by s129 of Te Ture Whenua Maori Act 1993. In short, the status of Maori land is as follows:

- Maori customary land - land held by Maori in accordance with tikanga Maori. It has not been transferred into freehold title by the Maori Land Court, nor ceded to the Crown
- Maori freehold land - land where the ownership has been determined by the Maori Land Court by freehold order
- General land owned by Maori (other than freehold) - land owned by five or more people and where the majority of owners are Maori
- Crown land reserved for Maori - land set aside by the Crown for the use and benefit of Maori.

Defining Maori land is complex and technical in some instances. If there is uncertainty about whether the land is Maori land or not, check with the Maori Land Court.

The ownership of Maori freehold land is confirmed by the Maori Land Court and granted title by the Crown. Section 123(1) of Te Ture Whenua Maori Act 1993 states that orders affecting title to Maori freehold land must be registered against the title to that land under the Land Transfer Act 1952 or the Deeds Registration Act 1908. In other words, the Registrar of the Maori Land Court can present orders for the purpose of registration in the Land Title System, which is the process by which a title is issued for land. Before Te Ture Whenua Maori Act, it was not compulsory for orders made by the Maori Land Court to be registered with LINZ and therefore the LINZ record may not be complete.

Searching for Maori land records

If the land description includes a Maori Block name as part of the description, the Maori Land Information Base (MLIB) on Te Puni Kokiri 's website is a good resource. However, the data underpinning the MLIB should be regarded as indicative only. To obtain definitive information, enquiries should be made to the Maori Land Court which holds the majority of Maori land records.

Land Information New Zealand (LINZ) is an alternative contact, especially if the land description does not include a Maori block name.