

NZIS Limited Titles Masterclass

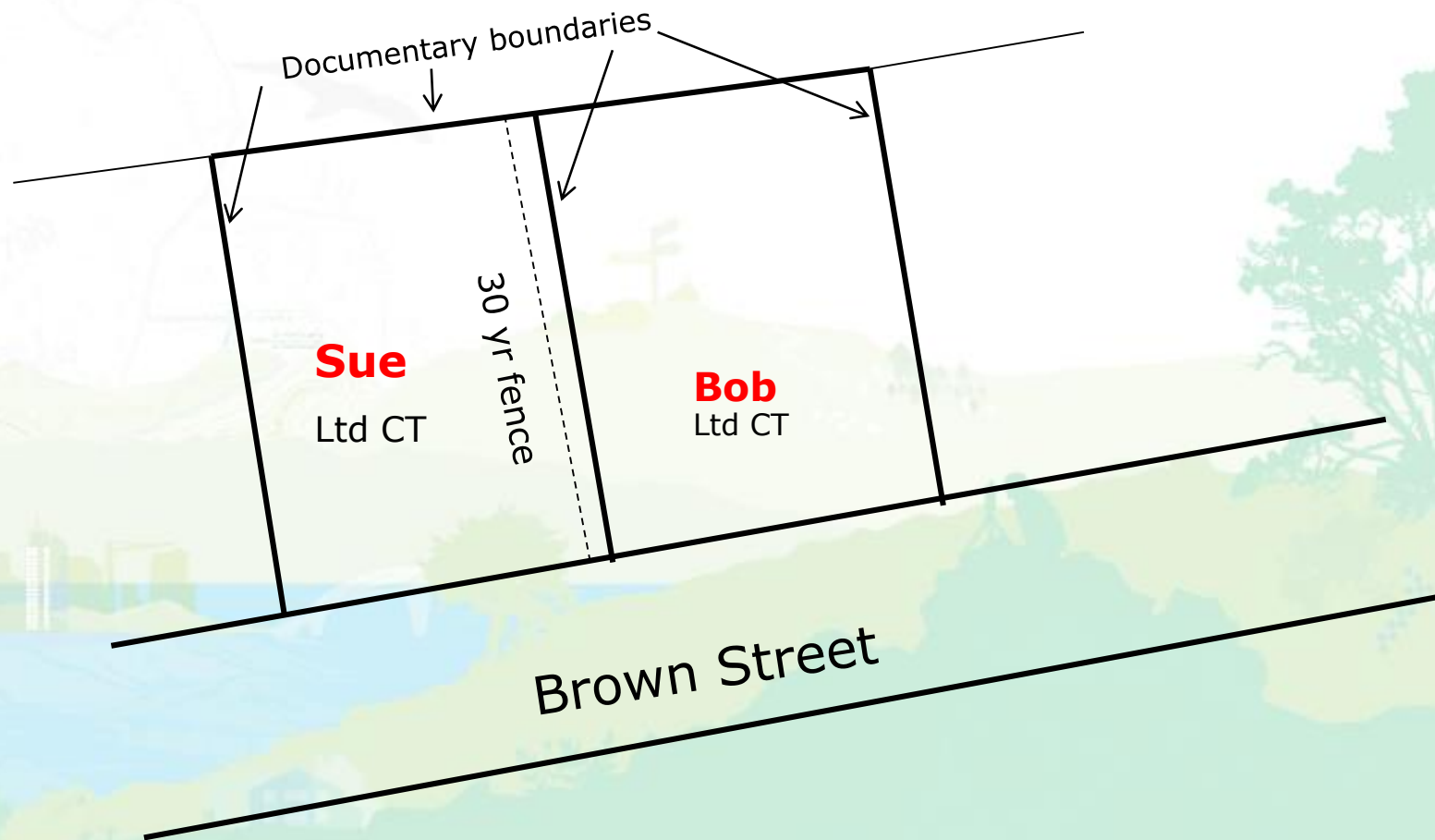
Mark Smith| Assistant Surveyor-General (Survey Compliance)

Robert Andrell| Solicitor to Registrar General of Land

Michael Hart| Senior Advisor to Registrar General of Land

Lloyd McGarvey| Cadastral Surveyor

Upset in Brown Street



- Session One
 - Basics of Limited titles and their definition
 - Introduction to Adverse possession
- Session Two - Workshop
- Session Three – Advanced Aspects of Limited Title Boundaries & Adverse Possession

Common Law Title

- “Title” = right to possession
- Relativity of title
- Adverse possession
- Statute of limitations



Deeds System

- Deeds registration
- Plan requirements
- No certainty of title



Land Transfer Act 1870

- LTA 1870
- State guarantee
- Application – advertising and notice, plus caveats
- Plan for deposit



Compulsory Registration of Titles 1924

- Land Transfer (Compulsory Registration of Titles) Amendment Act 1924
- Limited as to Title
- Limited as to Parcels
- S199 LTA 1952
- Adverse possession

Surveys to Remove Limitations

“If a resurvey of a title, limited as to parcels is to be completed with efficiency, it is important that surveyors have a clear understanding of the legal requirements which apply and the necessary information which must be gathered and supplied to obtain approval for the issue of an ordinary certificate of title.

In those few situations which end in court, it is essential that the surveyor can support the definition in terms of statute law and not rely solely on years of field experience and anecdotal evidence.”

MH Warburton, ‘The Doctrine of Possession in New Zealand’s Land Transfer System’ (1995)

Summary

- Standard of definition
- Rule 6.1 – duty of surveyor
- Best definition of original cadastral layout
- Role of occupation – old and undisputed
- A little more or less
- Relationship of occupation to documentary boundary
- Consider adverse possession/residue parcels

Standard of Definition

- Defined by survey [rule 6.2(a)(viii)]
- Defined by adoption [rule 3.2.3(a)]
- Accepted [rule 6.3(a) or (c)]
- Alternative process (Interpretation Guide p169)

Defined by Survey

- Boundary defined in terms of rule 6.1 RCS 2010
- Duty of surveyor
- Gather all relevant evidence
- Interpret evidence in accordance with law
- Determine correct position of boundary

Gathering Evidence

- Date of the first land transfer title
- Best definition of original parcel boundaries
- Occupation and its relationship to boundaries

Searching Titles


- Confirm status
- Deeds index reference
- Date of issue of first certificate of title
- Clarify information
- Adjoining titles
- Titles by diagram on transfer

[Land and Deeds—104.]

NEW ZEALAND.

H.B. Vol. 7 fol. 97
Register-book,
Vol. 102, folio

Reference: Land Transfer (Compulsory
Registration of Titles)
Act, 1934.
Deeds Index. Vol. 3, Fol. 80
Application No. C-2702.



CERTIFICATE OF TITLE UNDER LAND TRANSFER ACT.
LIMITED AS TO PARCELS AND TITLE.

This Certificate, dated the First day of August one thousand nine hundred and twenty-seven
under the hand and seal of the District Land Registrar of the Land Registration District of HAWKES' BAY Witnesseth that
GODFREY KNOWLES HOLDSWORTH of Waipawa Dairyman

is seized of an estate in fee-simple (subject to such reservations, restrictions, encumbrances, liens, and interests as are notified by memorial under written or endorsed hereon, subject also to any existing right of the Crown to take and lay off roads under the provisions of any Act of the General Assembly of New Zealand) in the land hereinafter described, as the same is delineated by the plan hereon bordered green, be the several admeasurements a little more or less, that is to say: All that parcel of land containing Two Acres more or less situate in the Borough of Waipawa being part of Block 45 Tekegata Crown Grant District and being also Lots 61 and 71 on Deeds Plan No. 14.

R. F. BAIRD
District Land Registrar.

(L.S.)

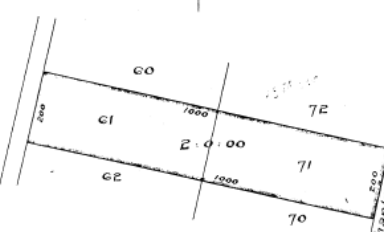
54661 Outstanding Mortgage (96/202) dated 3rd July 1918
Godfrey Knowles Holdsworth to The Waipawa County Permanent
Building and Investment Society. R.F. BAIRD,
4.6.29
C.T. HARNBY, A.L.R. District Land Registrar

54662 Outstanding Mortgage (96/202) dated 3rd July 1918
Godfrey Knowles Holdsworth to Mary Ellen Koronev. R.F. BAIRD,
4.6.29
C.T. HARNBY, A.L.R. District Land Registrar

62648 Outstanding Mortgage (112/352) dated 22nd January
1923 Godfrey Knowles Holdsworth to The Waipawa County
Permanent Building and Investment Society. R.F. BAIRD,
4.6.29
C.T. HARNBY, A.L.R. District Land Registrar

Ceased to be limited as to title.
Dated this 7th day of May, 1929. W.A. DOWD,
A.L.R.

4600 Mortgage Godfrey Knowles Holdsworth to The State) *Copy*



Searching Survey Data

- Original plan of land
- Plans of subsequent surveys
- Other survey records
- Evaluate information



Survey Work

- Establish orientation and survey network
- Look for old survey marks relevant to definition
- Establish the reliability of marks found
- Survey relevant occupation and record its nature and age
- Recommendation - take photos

Other Evidence

- Oral evidence
- Adjoining owners' consents
- Documentary evidence



Interpreting Evidence

- Relevant enactments
- Common law precedent
- Case law



Documentary Boundaries

- “In terms of Section 199, it is clear that in the first instance, all titles should be treated as ordinary as far as survey definition is concerned.”
(MH Warburton)
- Hierarchy of evidence
 - natural features
 - original & undisturbed monuments
 - old & undisputed occupation
 - abuttals
 - mathematical evidence

Role of Occupation

“In many cases evidence of the original monumentation has disappeared and the re-establishment of the original cadastral layout must be determined by long standing occupation. It is important that the surveyor maintains a clear distinction between a definition of this type, which is the reproduction of the original section boundaries, as opposed to the definition of what is a new boundary established by adverse occupation.”

MH Warburton

Role of Occupation

- Supports mathematical evidence
- Reliable evidence of original boundary?
- Distributing shortage and excess

'A Little More or Less'

- Consider when deciding whether or not to accept occupation as original boundary
- How much is it?
- No set amount or formula
- Report on your reasoning

CSD Information

- Survey report
- Occupation information

Adverse Possession

- Occupation of another's land, that is of sufficient time and quality to establish a rightful entitlement to ownership of that land
- A limited certificate of title does not prevail against the title of a person adversely in actual occupation of (at the time the title was issued), and rightfully entitled to, any part of the land. [Section 199 LTA 1952]
- Adverse possession must be considered

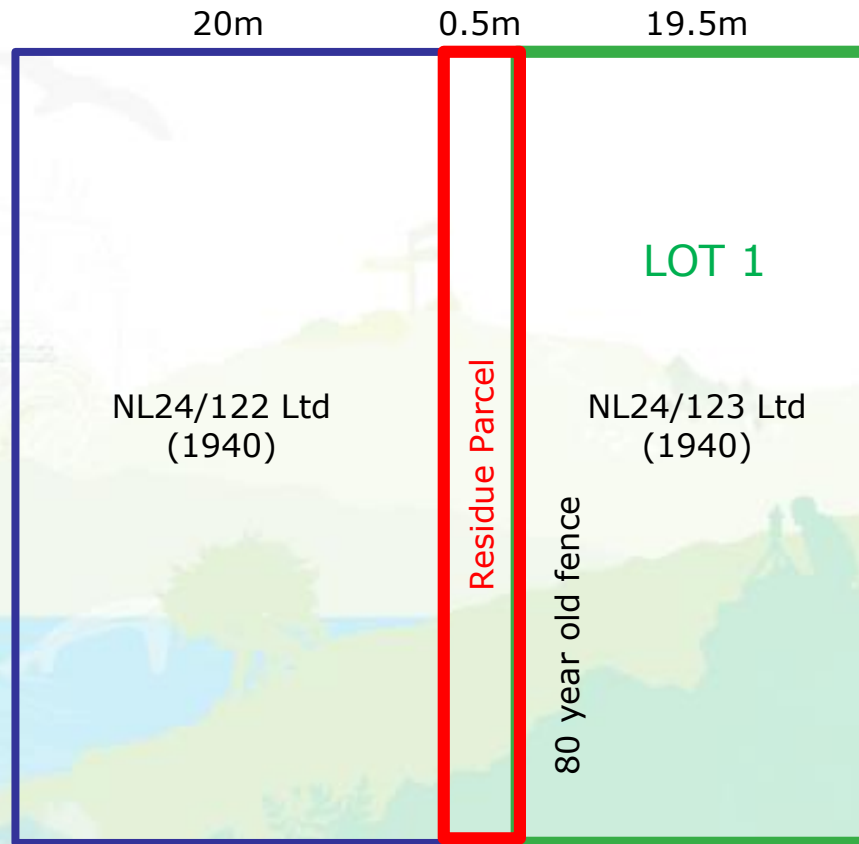
The residual portion of a primary parcel which remains as a result of a survey for removal of limitations as to parcels or for an adverse possession claim ...

[Rule 2 Definition RCS 2010]

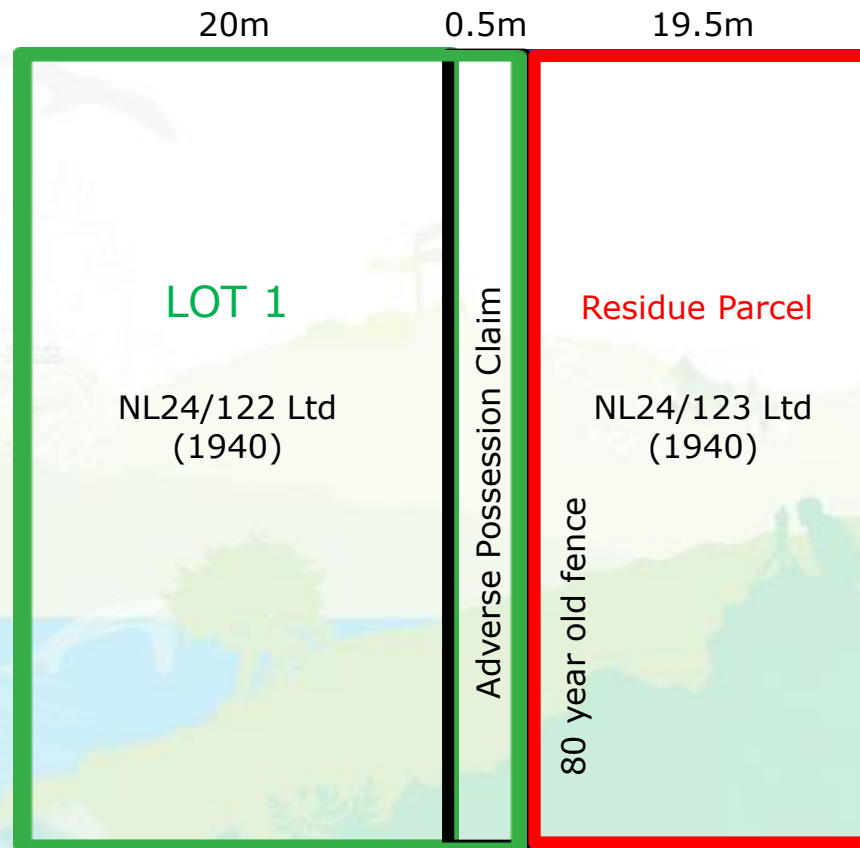
Summary

- Standard of definition
- Rule 6.1 – gathering & interpreting evidence to determine the correct position of the boundary
- Best definition of original cadastral layout
- Role of occupation – old and undisputed
- A little more or less
- Relationship of occupation to documentary boundary
- Consider adverse possession/residue parcels
- Survey report & occupation diagram

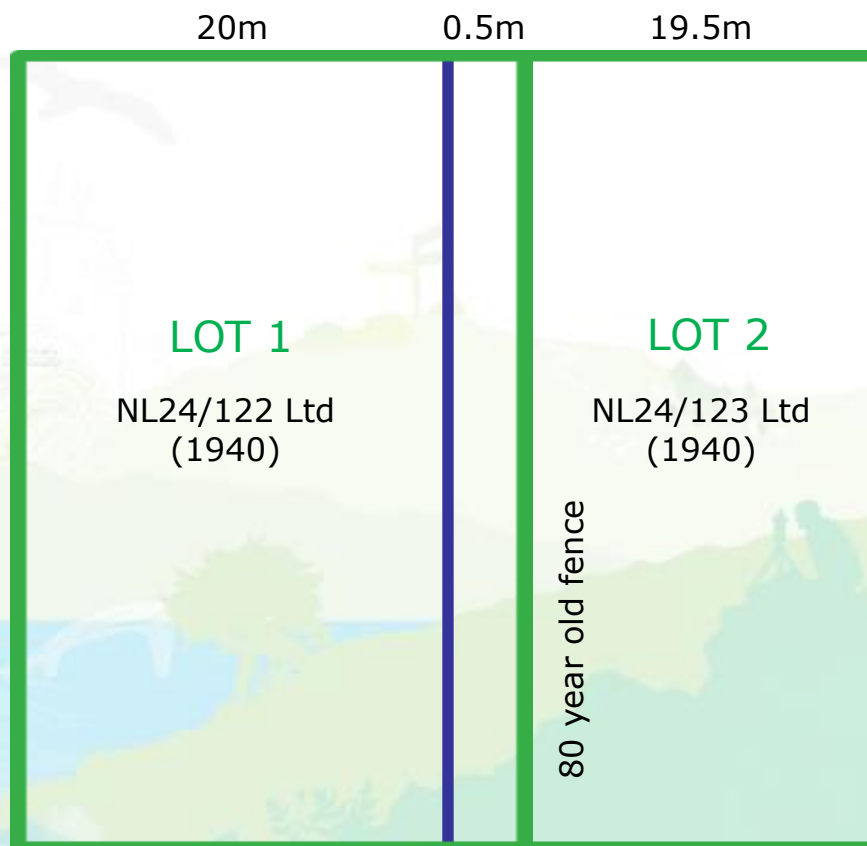
Adverse possession of land under survey



Adverse possession of adjoining limited title



Boundary Adjustment



The Workshop Stuff

Task One:

A straightforward uplifting of limitations CSD

Group to answer 6 Questions

Task Two:

A more testing uplifting of limitations CSD

Group to answer 6 Questions

Task Three:

A complex triple dip situation

More Questions to answer

Summing up Case Studies

Case Study One:

Clear and clean – note cunning use of s226 certificate

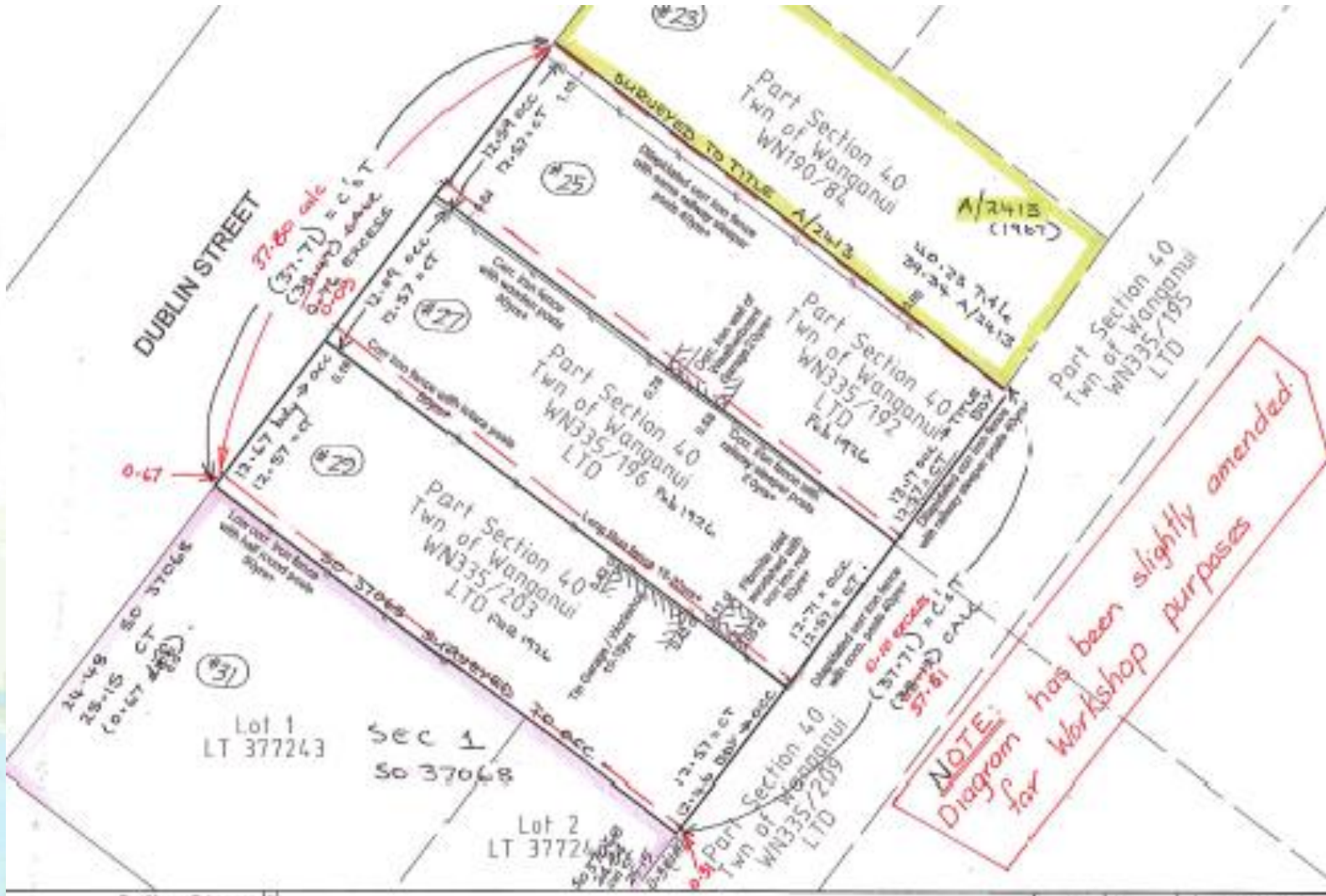
Case Study Two:

Judge Potter ruled that the caveat remain

Case Study Three:

Pictures needed!

Case Study Three



Uplifting Limitations

- Deposit of Plan
- Notice to adjoining owners
- Consent of adjoining owners
- Caveats by adjoining owners
- Issue of Ordinary Title

Adverse Possession

- Land in someone else's limited title
- S200 LTA
- Possession predating first title
- Application
- Notice, Advertising and Caveats
- Consents
- LT Amendment Act 1963 – possession post dating first guaranteed or limited title

(Other points)

- LT Amendment Act 1963
- Water boundaries
- New limited titles

Hawkes Bay interim titles

- “Not conclusive”
- Conclusive after 6 years “except description and delineation”
- Survey
- Consent of adjoining limited or interim titles

Adverse Possession of Public Land

Firstly determine Documentary boundaries

- Roads and Streets
- Land reserved for any purpose
- Marginal Strips
- Held for a Public Work
- **None** can be claimed by Adverse Possession

s172(2) Land Act 1948

s51 Public Works Act 1981

Exclusions – s21 LT Amendment Act 1963

- Any Land owned by the Crown (with exceptions)
- Māori Land
- Land held in fee simple by a local authority
- Land in trust for public purpose
- Land where occupation purports to be on the boundary but is not
- Land separated from applicants land by road, other land or water body.

Claiming Adverse Possession of Crown Land

Question:

Can adverse possession of Crown Land be claimed?

Answer:

Yes - if it is unalienated land of the Crown without title

Adverse Possession of Crown Land

Unalienated Crown Land requires

- continuous adverse possession for at least
60 years
- Application to the SG for approval
- Assent by the Governor General

s19 LT Act 1952

Applications to Show

- 60 years Occupation
- no acknowledgement of the Crown's ownership
- rates payments
- land use
- improvements to indicate intention to possess
- occupation monuments

