



# **NEW ZEALAND INSTITUTE OF SURVEYORS**

**16 February 2017**

## **NEW ZEALAND CADASTRAL LAW EXAM**

### **WRITTEN EXAMINATION**

**CANDIDATES ARE REQUIRED TO ANSWER QUESTION 1  
AND ANY OTHER FOUR (4) OF QUESTIONS 2 TO 6.**

**THE EXAM IS WORTH A TOTAL OF 80 MARKS.**

**THE MINIMUM PASS MARK IS 40 (50%).**

**Question 1 is worth twenty (20) marks.**

**All other questions are worth 15 marks each.**

Should all questions be attempted, Question 1 and only the first 4 questions in the order they appear will be marked, unless it is clearly indicated that any particular attempted answer should not be marked.

**A maximum of two (2) hours is allowed to complete the exam.**

## **Question 1 – COMPULSORY**

### **Rules for Cadastral Survey 2010 (RCS), Surveyor-General's Rulings, & Standard for Lodgement of Cadastral Survey Datasets 2013 (Lodgement Standard)**

#### **Total 20 marks**

1A. When must Class A accuracies be used for a boundary and its associated boundary points under rule 3.2.1? (2 marks)

- When they are in an urban area, or are intended as a result of a survey to be in an urban area [rule 3.2.1(a)].
- When they are part of a parcel that is not in an urban area, but is used, or is intended as a result of a survey to be used, for intensive commercial, industrial, or residential purposes [rule 3.2.1(b)].

1B. Give an example of when class C accuracies may be used for a primary parcel boundary that incorporates all three key components of rule 3.2.3(a) [i.e. category of boundary definition; parcel area criteria; and the criteria in 3.2.3(a)(iii)-(v)]. (3 marks)

Class C accuracies may be used for a primary parcel boundary and its associated boundary points that are defined by adoption where this boundary is either:

- (i) part of a new parcel over 20 ha that comprises more than 80 % of the existing primary parcel being extinguished, or
  - (ii) part of a new parcel over 100 ha,
- and
- (iii) its boundary points do not meet class B accuracy tolerances in rule 3.3.1(a)(iv), or
  - (iv) it is part of a title that is to remain limited as to parcels or remain a Hawke's Bay interim title, or
  - (v) it is a water boundary or an irregular boundary;

1C. What is the horizontal accuracy tolerance (in metres, to two decimal places) between the boundary points at either end of a new 500 metre class B right-line boundary:

- (i) at 95% confidence level?
- (ii) at the maximum level? (2 marks)

- (i)  $\sqrt{[0.20^2 + (500 \times 0.0004)^2]} = 0.28\text{m}$
- (ii)  $0.30 + 500 \times 0.0006 = 0.60\text{m}$

**This question excluded from marking.**

1D. List the four different parcel types that can be used for unit title development parcels under rule 5.5.2. (2 marks)

Principal Unit, Accessory Unit, Future Development Unit, Common Property

1E. According to Rule 6.1 RCS, what is the duty of a surveyor when defining a boundary by survey? (3 marks)

- (a) to gather all evidence relevant to the definition of the boundary and its boundary points,
- (b) to interpret that evidence in accordance with all relevant enactments and rules of law, and
- (c) to use that evidence to determine the correct position of the boundary and boundary points in relation to other boundaries and boundary points.

1F. There are six exceptions under rule 7.1(a) from the requirement to ground mark, where practicable, each new boundary point on a new primary parcel. List 3 of these exceptions. (3 marks)

Each new boundary point on a new primary parcel, must be marked, where practicable unless:

- (i) it is a boundary point that is only between new parcels that are all intended to remain in Crown ownership, or
- (ii) it is on a survey under the jurisdiction of the Māori Land Court, or
- (iii) it is a boundary point that is only between parcels that are required to be, or as a result of the survey will be required to be, held in common ownership, or
- (iv) it is on a boundary where the parcels on each side of that boundary are required to be, or as a result of the survey will be required to be, subject to reciprocal rights of way, or
- (v) it is unlikely that it will need to be physically located in the foreseeable future because of the terrain, ground cover, or protected vegetation, or
- (vi) the boundary point is readily identifiable by occupation along the boundary.

1G. In addition to the heading 'Schedule of Existing Easements', what information must be included in a schedule of existing easements under rule 10.2.2(b)? (2 marks)

- (i) the easement parcel identifier,
- (ii) the purpose of the easement,
- (iii) the creating document reference, and
- (iv) the servient tenement.

1H. Ruling LINZR65300 specifies the official geodetic datum and the official geodetic projections approved by the Surveyor-General for use in cadastral surveys. Name the official geodetic datum and one of the official geodetic projections. (1 mark)

New Zealand Geodetic Datum 2000 (NZGD2000)

Any one of the 28 NZGD2000 Transverse Mercator meridional circuit projections listed in LINZR65300 e.g. Mt Eden 2000

- 1I. What specific information is required by standard 7 of the Lodgement Standard to be included in a survey report? (1 mark)

An assessment of the actions taken to address C-rule conflicts and warning messages and all adjustment report test failures and warning messages

- 1J. What is the meaning of 'topology class' in the Lodgement Standard and name one of the topology classes referred to in the Lodgement Standard? (1 mark)

The class assigned to a parcel in Landonline to indicate what topological rules apply; primary, secondary, tertiary, strata

## **Question 2**

### **Parts 1, 2, 6 and 10 Resource Management Act 1991 (RMA)**

#### **Total 15 marks**

2A. What is the purpose of the Act, as specified in section 5 RMA? (1 mark)

To promote the sustainable management of natural and physical resources.

2B. Section 3 RMA defines the meaning of 'effect', for the purposes of the Act, to include 6 categories of effects. List three of these categories of effects. (3 marks)

- any positive or adverse effect
- any temporary or permanent effect
- any past, present, or future effect
- any cumulative effect which arises over time or in combination with other effects
- any potential effect of high probability
- any potential effect of low probability which has a high potential impact.

2C. Section 6 RMA identifies seven matters of national importance. List three of these matters. (3 marks)

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:
- (g) the protection of protected customary rights.

2D. Section 87A RMA specifies 4 classes of activities for which resource consents are required.

- List the 4 classes of activities; and (2 marks)
- Describe the consent authority's powers to grant consent, and impose conditions, in respect of any two of them. (2 marks)

**(1) controlled activity**

- (a) the consent authority must grant a resource consent except if—
- (i) section 106 applies; or
  - (ii) section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011 applies; and
- (b) the consent authority's power to impose conditions on the resource consent is restricted to the matters over which control is reserved (whether in its plan or proposed plan, a national environmental standard, or otherwise)

**(2) restricted discretionary activity**

- (a) the consent authority's power to decline a consent, or to grant a consent and to impose conditions on the consent, is restricted to the matters over which discretion is restricted (whether in its plan or proposed plan, a national environmental standard, or otherwise)

**(3) discretionary activity**

- (a) the consent authority may decline the consent or grant the consent with or without conditions

**(4) non-complying activity**

the consent authority may—

- (a) decline the consent; or
- (b) grant the consent, with or without conditions, but only if the consent authority is satisfied that the requirements of section 104D are met.

2E. Under what circumstances is a territorial authority required to issue a consent notice under section 221 RMA? (1 mark)

Where a subdivision consent is granted subject to a condition to be complied with on a continuing basis by the subdividing owner and subsequent owners after the deposit of a survey plan.

2F. What must a certificate issued by a territorial authority pursuant to section 224(c) RMA state? (3 marks)

- that it has approved the survey plan under section 223
- that all or any of the conditions of the subdivision consent have been complied with to the satisfaction of the territorial authority
- that in respect of such conditions that have not been complied with—
  - (i) a completion certificate has been issued in relation to such of the conditions to which section 222 applies:
  - (ii) a consent notice has been issued in relation to such of the conditions to which section 221 applies:
  - (iii) a bond has been entered into by the subdividing owner in compliance with any condition of a subdivision consent imposed under section 108(2)(b) under section 108(2)(b)

### **Question 3**

#### **Parts 1, 2, 4, and 6 and Schedule 2 Cadastral Survey Act 2002 (CSA)**

#### **Total 15 marks**

- 3A. One purpose of the CSA is to provide for the maintenance of two systems that are critical to the determination of accurate positions and their relationships to one another in New Zealand.
- (i) What are the terms used for these two systems in section 3 CSA? (1 mark)
  - (ii) What does each of these terms mean according to section 4 CSA? (2 marks)
  - (iii) Who is responsible for maintaining these systems, pursuant to section 7 CSA? (1 mark)
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- (i) A **national geodetic system** and a **national survey control system**.
  - (ii) **(national) geodetic system** means a system that enables positions on the surface of the Earth to be determined by reference to a mathematical model that describes the size and shape of the Earth;  
**national survey control system** means a system used to determine the position of points, features, and boundaries in cadastral surveys, other surveys, and land information systems.
  - (iii) The Surveyor-General
- 3B. Pursuant to section 9 CSA, the Chief Executive of Land Information New Zealand has responsibility for seven functions. List four of these functions. (4 marks)

For the purposes of this Act, the functions of the chief executive are—

- (a) to determine whether cadastral survey datasets and cadastral surveys comply with standards set (by the Surveyor-General) under section 7(1)(c):
- (b) to provide facilities to receive cadastral survey datasets:
- (c) to set conditions for the use of the facilities referred to in paragraph (b):
- (d) to integrate new cadastral surveys into the cadastre:
- (e) to determine the structure of, and to store and provide access to, cadastral survey data:
- (f) to audit compliance with conditions set under paragraph (c):
- (g) to exercise any other functions conferred on the chief executive by this Act or the Minister.

- 3C. Pursuant to Schedule 2 CSA, a licensed cadastral surveyor is guilty of professional misconduct if the cadastral surveyor is found by the Cadastral Surveyors Licensing Board to have wrongly certified to the accuracy of any cadastral survey or cadastral survey dataset in four specific circumstances. List these four circumstances.

(4 marks)

A licensed cadastral surveyor is guilty of professional misconduct if the cadastral surveyor is found

(b) to have certified to the accuracy of any cadastral survey or cadastral survey dataset without having personally carried out or directed the cadastral survey and the related field operations:

(c) to have certified to the accuracy of any cadastral survey or cadastral survey dataset without having carried out sufficient checks to ensure the accuracy of the [entries in any field book and the accuracy of all calculations, working plans, and other] cadastral survey records that may have been made by any person employed by him or her in relation to the cadastral survey:

(d) to have certified to the accuracy of any cadastral survey carried out by the cadastral surveyor or under his or her personal direction if the operation of pegging and ground marking, and all other requirements of the cadastral survey, have not been carried out in accordance with standards set under Part 5:

(e) to have certified to the accuracy of any cadastral survey or cadastral survey dataset, knowing it to be defective:

- 3D. If, after conducting a hearing, the Cadastral Surveyors Licensing Board is satisfied that a licensed cadastral surveyor is guilty of professional misconduct, the Board may do 1 or more of 3 things. What 3 things, apart from ordering the cadastral surveyor to pay costs and expenses, are available under Section 39(2) for the Board to do as disciplinary action? (3 marks)

The Board may do 1 or more of the following:

- (a) order that the cadastral surveyor's licence be cancelled and the name of the cadastral surveyor be removed from the register:
- (b) order that the cadastral surveyor's licence, and his or her entitlement to obtain a renewal of the licence, be suspended for a period not exceeding 3 years:
- (c) order that the cadastral surveyor may, for a period not exceeding 3 years, practise but only subject to any conditions as to employment, supervision, relevant training or education, or otherwise that the Board may specify in the order.

## **Question 4**

### **Part 1 and sub-parts 1-11 of Part 2 of the Unit Titles Act 2010 (UTA)**

#### **Total 15 marks**

- 4A. What are the essential requirements of a principal unit that are specified in section 7(1) UTA? (4 marks)

In this Act, principal unit means—

- (a) a unit that is designed for use [(whether in conjunction with any accessory unit or not) as a place of residence or business or for any other use] of any nature, and that is shown on a unit plan as a principal unit; and
- (b) either—
- (i) contains a building or part of a building or is contained in a building (although the unit may or may not be bounded by the physical dimensions of the building); or
- (ii) is a car park.
- 4B. What are the four activities specified in Section 8 UTA that separately or together constitute a **redevelopment** under the UTA? (4 marks)
- (a) the subdivision by sale, transfer, or partition into 2 or more new units (whether or not any new unit is on the same level as any other new unit) of—
- (i) a unit or units shown on a deposited unit plan; or
- (ii) a unit or units shown on a deposited unit plan and the whole or part of any stratum or strata formerly forming part of the common property shown on the deposited unit plan;  
[ie the subdivision into 2 or more new units of a unit or units shown on a deposited unit plan, or of a unit or units and part of the common property shown on a deposited unit plan]
- (b) the enlargement of a unit shown on a deposited unit plan by the inclusion in the unit of any stratum that immediately touches upon that unit and was formerly part of the common property or part of another unit shown on the deposited plan;
- (c) the transfer into the common property of a unit or part of a unit;
- (d) the erection of 1 or more new units on the common property.
- 4C. Pursuant to section 65(1) UTA, under what circumstances may a redevelopment be carried out as an amendment to an existing unit plan instead of the substitution of a new unit plan for the existing unit plan? (3 marks)

The redevelopment

- consists solely of the adjustment of the boundary between 1 or more units shown on a unit plan
- the adjustment does not materially affect the common property
- the adjustment does not materially affect the use, enjoyment, or ownership interest of any unit the boundary of which is not being adjusted

- 4D. Under Section 55(2) UTA what happens to an access lot, or share of an access lot, owned by the registered proprietor of the base land on the deposit of a unit plan? (1 mark)

On the deposit of the unit plan, the access lot, or share of the access lot, owned by the registered proprietor of the base land becomes part of the common property.

- 4E. Pursuant to section 60(2) UTA, where are existing easements and covenants affecting the base land of a unit title development recorded in the land transfer register? (1 mark)

Section 60(2) UTA – the Registrar must require any easements and covenants [affecting the base land] to be recorded ... on the supplementary record sheet [for the unit title development].

- 4F. Section 73(1) UTA specifies two categories of incidental rights over the base land of a unit title development that are appurtenant to the common property and each unit in that development. List these two categories. (2 marks)

- rights of support, shelter, and protection; and
- rights for the passage or provision of [water, sewerage, drainage, gas, electricity, oil, garbage, air, all telecommunications and electronic services, and all other] services of any nature.

## **Question 5**

### **Aspects of: bringing Deeds land and dry river bed under the Land Transfer Act; limited titles; and adverse possession.**

**[Parts 2 and 12 Land Transfer Act 1952, Part 1 Land Transfer Amendment Act 1963, Sections 19-28 Limitation Act 2010]**

### **Total 15 marks**

- 5A. Under what section of the Land Transfer Act 1952 would a person make application for land held in the deeds registration system (deeds land) to be brought under the Land Transfer Act so that a computer register for the land could be issued in their name? (1 mark)

Section 19 Land Transfer Act 1952 [on the basis of s20(1)(a) LTA 1952]

- 5B. When an application to bring deeds land or dry river bed under the Land Transfer Act 1952 is made on the basis of adverse possession, what is the minimum period of uncontested, continuous possession that must be established under section 21 Limitation Act 2010? (1 mark)

12 years – s21(1)(b) Limitation Act 2010

- 5C. Pursuant to section 191(2) of the Land Transfer Act 1952, what are the three wording options that a limited certificate of title can be annotated with to describe the limitations that apply to the title? (3 marks)

A limited certificate of title shall be in form 2 of Schedule 1 or an equivalent computer register, with the addition, after the words "Certificate of Title Under Land Transfer Act", of the words "(Limited as to parcels)", or "(Limited as to title)", or "(Limited as to parcels and title)", as the case may require.

- 5D. Pursuant to section 200 of the Land Transfer Act 1952, who may make application for title to land already held in a limited certificate of title? (3 marks)

Section 200 - So long as any land continues to be comprised in a limited certificate of title any person claiming to be seised or possessed of an estate of freehold in that land or any part thereof—

- (a) by virtue of possession adverse to the title of the proprietor in whose name the certificate of title was issued; or  
(b) under any title the existence of which, or the probable or possible existence of which, is set forth in the Registrar's minutes—  
may make an application under the provisions of this Act ...

- 5E. Pursuant to Section 207(1) of the Land Transfer Act 1952, what 2 requirements must be met before the Registrar can issue an ordinary certificate of title for land held in a title that is limited as to parcels? (2 marks)

Section 207(1) - The Registrar shall not be bound on an application in that behalf to issue an ordinary certificate of title, or to issue an ordinary certificate of title in lieu of a certificate of title limited as to parcels, or to constitute a certificate of title limited as to parcels an ordinary certificate of title—

- (a) unless and until he is satisfied by the deposit of a survey plan, together with such other evidence as he may deem necessary, or by some other means, that no part of the land to which the application relates is held in occupation adverse to the title of the proprietor appearing by the Deeds Register and the instruments of title, or by the certificate of title limited as to parcels, as the case may be, to be entitled thereto:
- (b) until he has given to the persons appearing to him to be occupiers or proprietors of adjoining land such notices as he deems necessary of his intention to issue or constitute such an ordinary certificate of title, and until the expiration of the time limited in any such notice.

- 5F. What are the requirements under Section 3(1) of the Land Transfer Amendment Act 1963 for a person to be able to apply for fee simple title to land on the basis of possession? (3 marks)

Where—

- (a) Any person has been in possession of any land which is subject to the principal Act, being land for which a certificate of title has been issued or a Crown grant has been registered under that Act, for a continuous period of not less than 20 years, and continues in possession of the land; and
- (b) That possession was such that he would have been entitled to apply for a title to the land on the ground of possession if the land had not been subject to the principal Act,—  
he may, in accordance with the provisions of this Part of this Act, apply to the Registrar in the prescribed form for the issue to him of a certificate of title for an estate in fee simple in the land.

- 5G. Before the Registrar can issue title to land that has been successfully applied for under section 3 Land Transfer Amendment Act 1963, the extent of the land must be confirmed. What two alternative methods for doing this does Section 14(2) of the Act provide for? (2 marks)

S 14(2) -

- (d) supply a certificate by a licensed cadastral surveyor that the occupation boundaries coincide with the title boundaries of the land
- (e) Deposit a plan of survey of the land that is contained within the [title or occupation] boundaries as specified in section 14(3).

## Question 6

### Roads, Access (including walking access) and Easements

**[Part 21 Local Government Act 1974, Schedule 4 Land Transfer Regulations 2002, Parts 1 and 3 of the Walking Access Act 2008]**

#### Total 15 marks

6A. According to section 315 Local Government Act 1974, what effects do accretion and erosion have on a road along the bank of a river or stream or along the mean high-water mark of the sea or along the margin of any lake? (2 marks)

- Every accretion caused by the action of the river or stream or of the sea or lake shall form part of the road.
- Where any road is eroded by the action of the river or stream or of the sea or lake, the portion of road [so] eroded shall continue to be a road.

6B. Explain the main difference between a private road and private way, as defined in section 315 Local Government Act 1974. (1 mark)

Both are on private land, but a **Private road** is intended for the use of the public generally, whereas a **Private way** is for the use of certain persons or classes of persons, not for the use of the public generally.

6C. Pursuant to section 348(2) Local Government Act 1974, in granting permission to lay out or form any private road or private way, or grant or reserve a right of way over any private way, what requirements may the Council for the district impose? (2 marks)

- s348(2): [Subject to section 347], in granting any such permission the council may—
- (a) impose such conditions as to [widths, levels, entrances, courses, formation, cost of formation, maximum number of buildings to be erected fronting any such private road or private way, minimum distances between any 2 buildings, position of building line, and otherwise in all respects] whatsoever [as] the council thinks fit; and
  - (b) require the owner or owners to whom permission is given to enter into a bond to comply with any conditions imposed by the council.

6D. According to Schedule 4 of the Land Transfer Regulations 2002, what do the following terms mean in relation to an easement? (2 Marks)

- (i) grantee
- (ii) grantor

(i) grantee means the registered proprietor of the dominant land; or the person having the benefit of an easement in gross

(ii) grantor means the registered proprietor of the servient land

6E. In clause 2 of Schedule 4 of the Land Transfer Regulations 2002, easements are classified by reference to certain rights. List six of the seven rights referred to in the schedule. (3 marks)

- a right to convey water
- a right to drain water
- a right to drain sewage
- a right of way
- a right to convey electricity
- a right to convey telecommunications and computer media
- a right to convey gas

6F. What is the meaning of "walking access" as defined in section 4 Walking Access Act 2008? (1 mark)

**Walking access** means the right of any member of the public to gain access to the New Zealand outdoors by—

- (a) passing or repassing on foot over a walkway or other land over which the public has rights of access; and
- (b) performing any activity that is reasonably incidental to that passing or repassing

6G. If the NZ Walking Access Commission considers that all or part of any private land should be made available for use as a walkway, what does section 26 Walking Access Act 2008 enable them to negotiate an agreement with the landholder for? (2 marks)

- (a) an easement or lease over all or that part of the land (as the case may be) for use as a walkway; or
- (b) the purchase of any land that includes all or that part of the land (as the case may be) proposed for use as a walkway.

6H. Sections 22 and 28 Walking Access Act 2008 require any public or private land that is to be declared a walkway to be defined on a plan. What are the common plan requirements stipulated in these two sections? (2 marks)

- The plan must define the land in accordance with rules made by the Surveyor-General under section 49 of the Cadastral Survey Act 2002, unless the Surveyor-General grants an exemption or specifies alternative requirements in accordance with section 47(5) of that Act.
- The plan must be lodged with the chief executive and recorded in the cadastre.