



NEW ZEALAND INSTITUTE OF SURVEYORS

21 June 2018

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, Surveyor-General's Rulings, & Standard for Lodgement of Cadastral Survey Datasets 2013 (Lodgement Standard)

Total 20 marks

- 1a. What is the definition of “reinstated” in relation to a survey mark that applies to all of New Zealand, except for greater Christchurch, as defined in the Rules for Cadastral Survey 2010 Terms and Definitions? (1 mark)

“a new survey mark has been placed in the same position of a previous survey mark that has not been found”.

- 1b. What is the definition of “boundary mark” as defined in the Rules for Cadastral Survey 2010 Terms and Definitions? (1 mark)

“a cadastral survey mark positioned at a boundary point”.

- 1c. When must Class D accuracies be used and when may Class D accuracies be used for a boundary and its associated boundary points as stated in Rule 3.2.4 Rules for Cadastral Survey 2010? (2 marks)

(a) Class D must be used for a boundary or boundary point that has been accepted in terms of rule 6.3. (1 mark)

(b) Class D accuracies may be used for a non-primary parcel boundary and its associated boundary points where this boundary intersects or coincides with a primary parcel boundary that meets the criteria for an accepted boundary in rule 6.3. (1 mark)

- 1d. Rule 5.3(c) Rules for Cadastral Survey 2010 lists three criteria for areas assigned to parcels. What are these three criteria? (3 marks)

(i) must be correctly calculated from its boundary information. (1 mark)

(ii) may be rounded to one part in 1000 or 0.0001 ha, whichever is greater (1 mark)

(iii) must not be less than 0.0001 ha. (1 mark)

- 1e. Every new parcel for Maori freehold land must be described in a CSD using a particular sequence as prescribed under Rule 5.5.3(a) Rules for Cadastral Survey 2010. What is this sequence? Also state an alternative that is permitted under Rule 5.5.3(b) Rules for Cadastral Survey 2010? (2 marks)

(i) a block name, (½ mark)

(ii) a unique parcel identifier [refer to rule 5.5.4], and (½ mark)

(iii) the type and number of the CSD creating the parcel. (½ mark)

Irrespective of (a), an alternative legal description that has been confirmed by the Maori Land Court may be used for components (i) and (ii). (½ mark)

1f. Rule 6.5(a) Rules for Cadastral Survey 2010 requires a parcel boundary to be defined in its horizontal extent by one of five types of boundary. List four of these types of boundaries. (2 marks)

- (i) a right-line boundary.
- (ii) an arc boundary.
- (iii) a water boundary.
- (iv) an irregular boundary.
- (v) a permanent structure boundary. (½ mark each)

1g. List the three situations where irregular boundaries are permitted under Rule 6.6 Rules for Cadastral Survey 2010? (3 marks)

- (b) An existing irregular boundary that is not a previous water boundary must be converted to one or more right-line boundaries, except that it may remain as an irregular boundary if:
 - (i) it is accepted in terms of rule 6.3, or (1 mark)
 - (ii) it is a class C boundary in terms of rule 3.2.3. (1 mark)
- (c) Irrespective of (b), the landward boundary of a movable marginal strip or esplanade strip must be an irregular boundary, except where it coincides with an underlying parcel boundary. (1 mark)

1h. Rule 7.4.2 Rules for Cadastral Survey 2010 requires at least two permanent reference marks on a cadastral survey to be within a specified distance of at least one boundary point that is required to be witnessed. What is the specified distance for:

- (a) a Class A boundary point. (½ mark)
- (b) a Class B boundary point that is an extensive rural boundary point. (½ mark)

- (a) 300 metres.
- (b) 1000 metres.

1i. Rule 9.3 Rules for Cadastral Survey 2010 deals with vector information on CSD Plans. What vector information must a CSD Plan include? (3 marks)

- (a) the source CSD type and number for each adopted vector, distance, bearing and arc in the CSD, (1 mark)
- (b) any bearing adjustments applied to each CSD from which a bearing was adopted in the CSD, and (1 mark)
- (c) information identifying whether every bearing, distance and arc included in the CSD Plan has been calculated, measured, or adopted. (1 mark)

1j. What additional information must be included in a survey report under Standard 7 of the Standard for Lodgement of Cadastral Survey Datasets 2013? (1 mark)

Pre-validation reporting – specifically, an assessment of the actions taken to address C-rule conflicts and warning messages, and all adjustment report test failures and warning messages.

- 1k. What facility does the Standard for Lodgement of Cadastral Survey Datasets 2013 designate for receiving CSDs for approval as to survey? (1 mark)

Landonline [refer to the definition of Landonline and Lodgement Standard 3(a)].

Question 2

Parts 3, 6 and 10 Resource Management Act 1991

Total 15 marks

- 2a. Under Section 11(1A) Resource Management Act 1991, a person may subdivide land if the subdivision meets certain criteria. What are these criteria? (2 marks)
- (a) either -
 - (i) the subdivision is expressly allowed by a **resource consent**; or
 - (ii) the subdivision **does not contravene a national environmental standard, a rule in a district plan**, or a rule in a proposed district plan for the same district (if there is one); and (1 mark)
 - (b) the subdivision is shown on a **survey plan** that is –
 - (i) **deposited** under Part 10 by the Registrar-General of Land, in the case of a survey plan described in paragraph (a)(i) or (b) of the definition of survey plan in section 2(1); or
 - (ii) **approved** as described in section 228 by the Chief Surveyor (now Surveyor-General), in the case of a survey plan described in paragraph (a)(i) of the definition of survey plan in section 2(1). (1 mark)
- 2b. Section 87 Resource Management Act 1991 provides the meaning of the term for five types of **resource consent**. List four of these types of resource consents. (2 marks)
- (a) a consent to do something that otherwise would contravene section 9 or section 13 (in this Act called a **land use consent**): (½ mark)
 - (b) a consent to do something that otherwise would contravene section 11 (in this Act called a **subdivision consent**): (½ mark)
 - (c) a consent to do something in a coastal marine area that otherwise would contravene any of sections 12, 14, 15, 15A and 15B (in this Act called a **coastal permit**): (½ mark)
 - (d) a consent to do something (other than in a coastal marine area) that otherwise would contravene section 14 (in this Act called a **water permit**): (½ mark)
 - (e) a consent to do something (other than in a coastal marine area) that otherwise would contravene section 15 (in this Act called a **discharge permit**). (½ mark)
- 2c. In certain circumstances as specified in Section 106(1) Resource Management Act 1991, the consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions. What are the two circumstances stated in that subsection? (2 marks)
- (a) there is a significant risk from **natural hazards**; or (1 mark)
 - (b) sufficient provision has not been made for **legal and physical access** to each allotment to be created by the subdivision. (1 mark)
- 2d. Section 221(1) Resource Management Act 1991 requires a territorial authority to issue a consent notice in certain circumstances. What are these circumstances? (3 marks)

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 (**not being a condition in respect of which a bond** is required to be entered into by the subdividing owner, **or a completion certificate** is capable of being or has been issued), the territorial authority shall, for the purposes of section 224, issue a consent notice specifying any such condition. (1 mark each)

- 2e. What are the two criteria stated in Section 223(1) Resource Management Act 1991 that allows an owner of any land to submit to a territorial authority for its approval, a survey plan in respect of that land? (1 mark)
- (a) a **subdivision consent** has been obtained for the subdivision to which the survey plan relates, and that consent has **not lapsed**; or (½ mark)
 - (b) a **certificate of compliance** has been obtained, and that certificate has not lapsed. (½ mark)
- 2f. Esplanade strips are created under Section 232 Resource Management Act 1991. State the six requirements of subsection (2) for an instrument creating an esplanade strip. (3 marks)
- (a) be in accordance with Schedule 10; and (½ mark)
 - (b) be in a prescribed form; and (½ mark)
 - (c) be created in favour of the territorial authority; and (½ mark)
 - (d) create an interest in land, and may be registered under the Land Transfer Act 1952; and (½ mark)
 - (e) when registered with the Registrar-General of Land, run with and bind the land that is subject to the instrument; and (½ mark)
 - (f) bind every mortgagee or other person having an interest in the land, without that person's consent. (½ mark)
- 2g. Section 238(1) Resource Management Act 1991 deals with the vesting of roads upon deposit of a survey plan by the Registrar-General of Land, or when a Chief Surveyor (now Surveyor-General) approves a survey plan to which section 228 applies. List the four instances under this section that a road can be vested in a local authority or the Crown, free from all interests in land including any encumbrances (without the necessity of any instrument of release or discharge or otherwise). (2 marks)
- (a) In the case of a regional road, in the territorial authority or regional council, as the case may be: (½ mark)
 - (b) In the case of a Government road declared as such under any Act, in the Crown: (½ mark)
 - (c) In the case of a State highway, in the Crown or the territorial authority: (½ mark)
 - (d) In the case of any other road, in the territorial authority. (½ mark)

Question 3

Parts 1, 2, 4, and 6 and Schedule 2 Cadastral Survey Act 2002

Total 15 marks

- 3a. What are the definitions for “cadastre” and “cadastral survey dataset” as specified in Section 4 Cadastral Survey Act 2002? (1 mark)

“Cadastre” means all the cadastral survey data held by or for the Crown and Crown agencies. (½ mark)

“Cadastral survey dataset” means the set of cadastral survey data necessary to integrate a cadastral survey into the cadastre. (½ mark)

- 3b. Section 7 Cadastral Survey Act 2002 deals with functions and duties of the Surveyor-General. In exercising his or her functions under subsection (2), the Surveyor-General must have regard to four matters. What are they? (4 marks)

(a) the risks to the Crown and owners of interests in land of inaccuracies in cadastral surveys; and (1 mark)

(b) the efficiency and effectiveness of measures to manage risks to the accuracy of cadastral surveys; and (1 mark)

(c) the efficiency with which the costs and benefits of those measures will be allocated among the Crown, cadastral surveyors, current and future owners of land, and other parties; and (1 mark)

(d) the use of cadastral survey data for purposes other than cadastral surveys. (1 mark)

- 3c. If the Cadastral Surveyors Licensing Board, after conducting a hearing in accordance with Part 4 of this Act, is satisfied that a licensed cadastral surveyor has been guilty of professional misconduct, the Board may order an appropriate course of disciplinary action. Section 39(2) Cadastral Survey Act 2002 lists three types of orders that can be imposed on a licensed cadastral surveyor. What are they? (3 marks)

(a) order that the cadastral surveyor’s licence be cancelled and the name of the cadastral surveyor be removed from the register: (1 mark)

(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: (1 mark)

(c) order that the cadastral surveyor may, for a period not exceeding 3 years, practice but only subject to any conditions as to employment, supervision, relevant training or education, or otherwise that the Board may specify in the order. (1 mark)

- 3d. Section 54 Cadastral Survey Act 2002 deals with obstruction of a cadastral surveyor whereby a person commits an offence who knowingly obstructs or hinders that cadastral surveyor, or a person assisting that cadastral surveyor, from carrying out certain activities. Provide the three activities as stipulated in this section. (3 marks)

(a) performing the cadastral surveyor’s duties and functions in relation to a cadastral survey; or (1 mark)

- (b) ascertaining or marking out a boundary or cadastral survey line; or (1 mark)
- (c) fixing, placing, restoring, repairing, or setting up a cadastral survey mark. (1 mark)

3e. The offence of placing false cadastral survey marks is dealt with under Section 56 Cadastral Survey Act 2002. What are the criteria set out in this section that determine placement of a peg or mark to be an offence? (2 marks)

- (a) that is not a cadastral survey mark properly placed; and (1 mark)
- (b) with the intention of causing any person to believe that it is a cadastral survey mark placed in that position for the purposes of a cadastral survey. (1 mark)

3f. An infringement offence as defined under Section 59 Cadastral Survey Act 2002 is an offence under any of Sections 54 to 57 Cadastral Survey Act 2002. List the four types of offences under these sections. (2 marks)

Section 54 – Obstruction of cadastral surveyor. (½ mark)

Section 55 – Interference with survey marks. (½ mark)

Section 56 – False cadastral survey marks. (½ mark)

Section 57 - Unlicensed persons not to act as licensed cadastral surveyors. (½ mark)

Question 4

Part 14 Te Ture Whenua Maori Act 1993

Total 15 marks

- 4a. State the principal purpose of Part 14 as stipulated under Section 286(1) Te Ture Whenua Maori Act 1993? (1 mark)

The principal purpose of this Part is to facilitate the use and occupation by the owners of land owned by Maori by rationalising particular landholdings and providing access or additional or improved access to the land.

- 4b. There are a number of modes in which the Maori Land Court may partition land under Part 14 of this Act. List the modes of partition as stipulated under Section 290(1) Te Ture Whenua Maori Act 1993. (4 marks)

- (a) into parcels held by single owners in severalty: (1 mark)
- (b) into parcels held by 2 or more owners as joint tenants: (1 mark)
- (c) into parcels held by any number of owners as tenants in common together with owners holding as joint tenants: (1 mark)
- (d) into parcels held by 2 or more owners as tenants in common. (1 mark)

- 4c. A partition order must comply with the provisions of the Resource Management Act 1991, except in one particular circumstance as provided for under Section 301(1) Te Ture Whenua Maori Act 1993. Explain what this particular circumstance is? (1 mark)

This section applies to every partition of land by the court except for a **partition into parcels to be held by owners who are members of the same hapu.**

- 4d. Section 307 Te Ture Whenua Maori Act 1993 deals with amalgamation orders, whilst Section 308 Te Ture Whenua Maori Act 1993 deals with aggregation orders. Describe what the two orders relate to? (2 marks)

Section 307(1) – Where the court is satisfied that any land to which this Part applies, and that comprises 2 or more areas held in separate titles, can be conveniently worked or dealt with as if it were held in common ownership under 1 title, the court may **cancel the several titles under which the land is held and make an amalgamation order substituting for those titles 1 title for the whole of the land.** (1 mark)

Section 308(1) - Where the court is satisfied that any 2 or more areas of land to which this Part applies could be more conveniently worked or dealt with if they were held in common ownership, but that there is no reason to cancel the existing titles, it may **make an aggregation order vesting the area of land in the aggregate of the owners of those areas.** (1 mark)

4e. For the purpose of providing access, or additional or improved access, pursuant to Section 316 Te Ture Whenua Maori Act 1993, describe the two situations as stated in this section that the Maori Land Court may lay out roadways? (2 marks)

(2) For the purpose of providing access, or additional or improved access, to any land which this Part applies, the court **may lay out roadways over any other land.** (1 mark)

(3) For the purpose of providing access, or additional or improved access, to any land other than land to which this Part applies, the court **may lay out roadways over any land to which this Part applies.** (1 mark)

4f. Provide the meaning of “landlocked land” as defined under Section 326A Te Ture Whenua Maori Act 1993 and the two types of land it applies to? (1 mark)

“Landlocked land” means a piece of land that has no reasonable access to it and is either

–

(a) Maori freehold land: or (½ mark)

(b) General land owned by Maori that ceased to be Maori land under Part 1 of the Maori Affairs Amendment Act 1967. (½ mark)

4g. Section 326B Te Ture Whenua Maori Act 1993 allows the Maori Land Court to make an order granting reasonable access to landlocked Maori land. List four of these matters that the Court must have regard to when considering an application for reasonable access that are provided in subsection (4). (4 marks)

(a) the nature and quality of the access (if any) to the landlocked land that existed when the applicant purchased or otherwise acquired the land; and (1 mark)

(b) the circumstances in which the landlocked land became landlocked; and (1 mark)

(c) the conduct of the applicant and the other parties, including any attempts that they may have made to negotiate reasonable access to the landlocked land; and (1 mark)

(d) the hardship that would be caused to the applicant by the refusal to make an order in relation to the hardship that would be caused to any other person by the making of the order; and (1 mark)

(e) the requirements of Part 3B of the Conservation Act 1987, if the application affects a conservation area; and (1 mark)

(f) issues of public safety raised by a rail operator, if the application affects a railway line; and (1 mark)

(g) such other matters as the court considers relevant. (1 mark)

Question 5

Reserves and Marginal Strips (Reserves Act 1977 and Part 4A Conservation Act 1987)

Total 15 marks

- 5a. Sections 17 to 23 Reserves Act 1977 provides for seven types of reserves. List six of the seven types of reserves. (3 marks)

Section 17 – Recreation reserves.

Section 18 – Historic reserves.

Section 19 – Scenic reserves.

Section 20 – Nature reserves.

Section 21 – Scientific reserves.

Section 22 – Government purpose reserves.

Section 23 – Local purpose reserves. (½ mark each)

- 5b. What are the two purposes of scenic reserves as stipulated under Section 19(1) Reserves Act 1977? (2 marks)

It is hereby declared that the appropriate provisions of this Act shall have effect, in relation to reserves classified as scenic reserves –

- (a) for the purpose of protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment, and use of the public, suitable areas possessing such qualities of scenic interest, beauty, or natural features or landscape that their protection and preservation are desirable in the public interest: (1 mark)
- (b) for the purpose of providing, in appropriate circumstances, suitable areas which by development and the introduction of flora, whether indigenous or exotic, will become of such scenic interest or beauty that their development, protection, and preservation are desirable in the public interest. (1 mark)

- 5c. Section 48(1) Reserves Act 1977 lists six situations where a right of way or any other easement may be created over any part of a reserve. List these situations. (3 marks)

Subject to subsection (2) and to the Resource Management Act 1991, in the case of reserves vested in an administering body, the administering body, with the consent of the Minister and on such conditions as the Minister thinks fit, may grant rights of way and other easements over any part of the reserve for –

- (a) any public purpose; or (½ mark)
- (b) providing access to any area included in an agreement, lease, or licence granted under the powers conferred by this Act; or (½ mark)
- (c) the distribution or transmission by pipeline of natural or manufactured gas, petroleum, biofuel, or geothermal energy; or (½ mark)
- (d) an electrical installation or work, as defined in section 2 of the Electrical Act 1992; or (½ mark)
- (e) the provision of water systems; or (½ mark)
- (f) providing or facilitating access or the supply of water to or the drainage of any other land not forming part of the reserve or for any other purpose connected with any such land. (½ mark)

- 5d. Pursuant to Section 24(1) Conservation Act 1987, where must marginal strips be reserved from the sale, or other disposition of any land, by the Crown? And what is the nominal width required for these marginal strips? (2 marks)

There shall be deemed to be reserved from the sale or other disposition of any land by the Crown a strip of land **20 metres wide** extending along and abutting the landward margin of – (½ mark)

- (a) **any foreshore**; or (½ mark)
(b) the normal level of **the bed of any lake** not subject to control by artificial means; or (½ mark)
(c) **the bed of any river or any stream** (not being a canal under the control of a State enterprise within the meaning of section 2 of the State-Owned Enterprises Act 1986 and used by the State enterprise for, or as part of any scheme for, the generation of electricity), being a bed that has **an average width of 3 metres or more**. (½ mark)

- 5e. Section 24B Conservation Act 1987 allows the Minister to provide exemption from the provision of marginal strips that would otherwise be required by Section 24 of the Act. What are the two criteria, as stipulated in subsection (2), which allows this to be considered?

(2 marks)

The Minister may make a declaration under subsection (1) only if satisfied –

- (a) that the land has little or no value in terms of the purposes specified in section 24C; or (1 mark)
(b) that any value the land has in those terms can be protected effectively by another means. (1 mark)

- 5f. What are the three purposes of a marginal strip as stipulated under Section 24C Conservation Act 1987? (3 marks)

- (a) **for conservation purposes**, in particular –
(i) the maintenance of adjacent watercourses or bodies of water; and
(ii) the maintenance of water quality; and
(iii) the maintenance of aquatic life and the control of harmful species of aquatic life; and
(iv) the protection of the marginal strips and their natural values; and (1 mark)
(b) **to enable public access to any adjacent watercourses or bodies of water**; and (1 mark)
(c) **for public recreational use** of the marginal strips and adjacent watercourses or bodies of water. (1 mark)

Question 6

Parts 1 and 2 and Subpart 4 of Part 3 Land Transfer Act 2017

Total 15 marks

6a. What are the four fundamental principles of the Torrens system of land title in New Zealand that Section 3(b) of the new Land Transfer Act 2017 proposes to retain? (4 marks)

- (i) provide security of ownership of estates and interests in land: (1 mark)
- (ii) facilitate the transfer of and dealings with estates and interests in land: (1 mark)
- (iii) provide compensation for loss arising from the operation of the system: (1 mark)
- (iv) provide a register of land that describes and records the ownership of estates and interests in land; and (1 mark)

6b. What is the interpretation of “instrument” as described in Section 5 of the new Land Transfer Act 2017? (1 mark)

- (a) means a document in paper or electronic form; and (½ mark)
- (b) includes a caveat document. (½ mark)

6c. What is the interpretation of “land” as described in Section 5 of the new Land Transfer Act 2017? (2 marks)

- (a) estates and interests in land; (½ mark)
- (b) buildings and other permanent structures on land; (½ mark)
- (c) land covered with water; (½ mark)
- (d) plants, trees, and timber on or under land. (½ mark)

6d. Under Section 12(1) of the new Land Transfer Act 2017, the Registrar may, from the information recorded in the register, create a record of title in five different circumstances. List four of these circumstances as stipulated under this subsection. (2 marks)

The Registrar may, from the information recorded in the register, create a record of title for –

- (a) freehold estates: (½ mark)
- (b) leasehold estates: (½ mark)
- (c) stratum estates under the Unit Titles Act 2010: (½ mark)
- (d) any other estates or interests in land that are or may be registered under this Act or for which a record of title is required by another Act: (½ mark)
- (e) a proclamation or notice published in the Gazette and registered under this Act pursuant to any other Act. (½ mark)

- 6e. Section 53 of the new Land Transfer Act 2017 stipulates two circumstances whereby a person does not acquire title by registration to a public road or reserve. What are these two circumstances? (1 mark)

A person does not acquire title by registration to a public road or reserve if the road or reserve has been –

(a) included in the record of title unlawfully; or (½ mark)

(b) acquired under an unauthorized instrument. (½ mark)

- 6f. What do the terms “grantee” and “grantor” mean in relation to an easement or a *profit à prendre*, under Section 107 of the new Land Transfer Act 2017. (2 marks)

Grantee, in relation to an easement or a *profit à prendre*, means –

(a) the registered owner of the benefited land or, if the benefited land is land of the Crown with no registered owner, the Sovereign; or

(b) the person entitled to the benefit of the easement or *profit à prendre* (1 mark)

Grantor, in relation to an easement or a *profit à prendre*, means the registered owner of the burdened land or, if the burdened land is land of the Crown with no registered owner, the Sovereign. (1 mark)

- 6g. Section 115 of the new Land Transfer Act 2017 deals with redundant easements. If a redundant easement needs to be extinguished, according to subsection (1), who may apply to whom to make an entry on a record of title that the easement is extinguished? (1 mark)

The **grantor** or the **grantee** of an easement may apply to the **Registrar** to make an entry on a record of title that the easement is extinguished.

- 6h. Under Section 115(2) of the new Land Transfer Act 2017, an easement is redundant if two criteria are met. What are these two criteria? (2 marks)

For the purposes of this section, an easement is extinguished if it is redundant, meaning that –

(a) all or part of the benefited land no longer adjoins the burdened land as a result of a subdivision or for any other reason; and (1 mark)

(b) as a result, the easement has no practical effect. (1 mark)

Answer Guide for 2018 Cadastral Law Exam Research Assignment

Question 1: Acquisition processes under the Public Works Act 1981 (PWA) – worth 20 marks

Notes on marking:

The answers for Q1 provide an outline of the acquisition process, as asked for in the assignment, not an exhaustive description of the process. Marks may be awarded for aspects of the process that are not included in this outline where considered appropriate, but additional marks will not be awarded for detail that is considered unnecessary.

Notes for clarification of use of LINZ standard and guideline for the acquisition of land under the PWA:

- (a) LINZ [Standard for the acquisition of land under the Public Works Act 1981 \(LINZS15005\)](#) only applies to local authorities when they are compulsorily acquiring (s26 PWA) or setting apart (s52 PWA) land where the approval or decision of the Minister of Land Information is required. Paragraph 12 and Appendix B of that standard must be used by a local authority when compulsorily acquiring land for local works [LINZS15005 p7].
- (b) LINZ [Guideline for the acquisition of land under the Public Works Act 1981 \(LINZG15703\)](#) is intended to assist Crown agencies and their accredited suppliers when applying the acquisition provisions of the PWA. The guideline may also be used by local authorities when undertaking acquisitions under the PWA [LINZG15703 p10].
- (c) Therefore, LINZS15005 and LINZG15703 do not have to be used by the PDC except where they are seeking a proclamation from the Governor-General under s26 PWA.

Note on acquisition authority:

The proposed widening of Kaipuke Road by the Pukeatua District Council (PDC) is a 'local work' in terms of the PWA [s2 PWA definition of 'local work']. PDC is empowered by s16(2) PWA to acquire land required for a 'local work' for which it has financial responsibility. Therefore, none of the options below will involve acquisition of land by a Crown agency i.e. 'Crown acquiring agency'.

(i) Acquiring the land for road by agreement made under s17 PWA (Worth 7 marks)

- The PDC can acquire each portion of land for road by entering into an agreement with the owner(s) of each affected property to purchase the land they want to acquire for road [s17(1) and s20(1)(a) PWA]; this includes owners of any estate or interest in the land (s2 PWA definition of land).
- In specific circumstances, the Māori Land Court or an agent appointed by the Māori Land Court, or the Public Trust can act on behalf of the owners [s17(4)-(6) PWA].
- An agreement under s17 PWA is not limited by the PWA as to its terms and conditions, but would usually include: the amount payable for the purchase of the land, or the means for determining that amount on settlement; timing of settlement; responsibility for survey and legal costs; any non-monetary undertakings by the Council; provision for the Council to carry out works on the land before settlement; and a description of the land to be acquired [LINZG15703 p50-51].
- While not a statutory requirement for acquisition by agreement under s17, the Council may serve notices of desire to acquire land under s18 PWA on the owners of the affected properties, as part of the process of negotiating agreements with them. If an agreement is not able to be reached with an owner, a notice of desire must be served on every person with an interest in the relevant land before the Council can proceed to take that land compulsorily [s18(1)(a) PWA].

- If a notice of desire to acquire land is served on an owner, the notice also needs to be registered by the Council against the certificate of title for the affected land [s18(1)(b) PWA]. Anyone investigating the title will then be able to identify that PDC want to acquire land from the title.
- Owners are entitled to compensation from the PDC for the land acquired from them and any associated injurious affect or damage [s60(1) PWA]. If an owner is agreeable to the acquisition, but agreement cannot be reached on the amount of compensation payable, the Land Valuation Tribunal may be used to determine the compensation [s80(1)(c)].
- Once an agreement under s17 PWA is entered into, the Council may register a compensation certificate under s19 PWA against the certificate of title for the affected land. The agreement will then be binding on anyone who subsequently acquires an estate or interest in that land [s19(5) PWA].
- In the case of each affected property, only part of that property will be acquired for road. Therefore, the Council will need to arrange for a cadastral survey to be carried out and a cadastral survey dataset (CSD) approved, in accordance with the Cadastral Survey Act 2002 (CSA) and the Rules for Cadastral Survey 2010 (RCS 2010), that defines the portion of land being acquired [s32 PWA or s167(1) LTA 1952].
- S110 PWA provides powers of entry for cadastral survey, subject to giving reasonable notice. (S111 PWA also provides powers of entry for other survey and investigation activities that are reasonably necessary for the purposes of carrying out the road widening).
- An agreement under s17 PWA can be implemented either by a declaration under s20 PWA or by a memorandum of transfer (i.e. transfer instrument) under the Land Transfer Act 1952 (LTA 1952) [s17(2) PWA].
- **If an acquisition agreement is to be implemented through a declaration under s20 PWA**, the Council will need to submit documentation to Crown Property Clearances at Land Information NZ (LINZ), including a copy of the title plan from the approved CSD and a draft declaration/gazette notice for execution by the Minister of Land Information or his/her delegate [LINZS15005 p29].¹
- The Minister, if satisfied that the owner of the land has agreed to his land being acquired and that no private injury will be done by the acquisition, or that compensation is provided for any private injury that will be done by the acquisition, may issue a declaration in writing that the land is acquired for road [s20(1) PWA]. [Note that it is not a requirement to comply with the provisions of s18 & s19 PWA before a declaration under s20 is made].
- Once the declaration/gazette notice has been signed by LINZ, it is published in the NZ Gazette. The declaration does not have effect until it is published in the Gazette or until such later date as specified in the declaration [s53 PWA & LINZG15703 p71].
- The Council is responsible for registering the gazette notice under s57 PWA with LINZ as soon as possible after the gazette notice is published [LINZS15005 p29]. LINZ will then issue a new certificate of title for the remaining land in the affected property not acquired for road [s57(4)(c) PWA].
- **If an acquisition agreement is to be implemented by a memorandum of transfer under the LTA 1952²**, the Council will need to submit documentation to LINZ to effect the transfer of the land to Council, its vesting as road in the Council, and the issue of a new title for the remaining land not acquired for road [LINZS15005 p29]. (Note that this would be a subdivision under the Resource Management Act 1991 (RMA), but exempt from subdivision consent by s11(1)(b) RMA).

¹ LINZ Crown Property Clearances have recently come to the view that s20 PWA is not the appropriate mechanism to acquire land for road, and s114 PWA is the specific provision to declare land to be road. Therefore, a gazette notice to acquire land for road pursuant to s20 may not be approved by LINZ, as they have been in the past.

² This option is generally only used for acquisition of whole titles, not part titles.

- If any s18 notices of desire to acquire land or s19 compensation certificates are registered on affected titles as part of the acquisition process, the Council should ensure these are discharged from those titles when the acquisition has been completed and all associated requirements have been satisfied [s18(4) & s19(7) PWA].

(ii) Taking the land for road compulsorily by Proclamation made under s26 PWA (Worth 8 marks)

- Before proceeding to take the required strip of land compulsorily from an affected property, the Council must serve notice of its desire to acquire the land on every person having a registered interest in the land, register the notice of desire to acquire land against the certificate of title for the affected land, invite the owner to sell the land to it, advise the owner of the estimated amount of compensation they would be entitled to or betterment they would be liable to pay (on the basis of a valuation by a registered valuer), and make every endeavour to negotiate in good faith with the owner in an attempt to reach an agreement for the acquisition of the land [s18(1) PWA].
- In specific circumstances, the Māori Land Court or an agent appointed by the Māori Land Court, or the Public Trust can represent the owners where land is being taken compulsorily [s18(5)-(7) PWA].
- The PDC can proceed to (compulsorily) take the land required for road from a property if, after 3 months:
 - (a) the owner fails to respond to an invitation under s18(1) PWA by the Council to sell the land to it; or
 - (b) the owner refuses to negotiate with the Council; or
 - (c) an acquisition agreement under s17 PWA cannot be reached with the owner [s18(2) PWA].
- Where the owner of the land cannot be found, has no power to sell the land, is under a legal disability, or is deceased without any legal administrator, the Council can proceed to take the land without trying to negotiate an agreement [s18(7) PWA & LINZG15703 p17].
- Once the relevant requirements of s18 PWA have been met, and an acquisition agreement has not been entered into for any of the above reasons, the Council will need to arrange for a cadastral survey to be carried out and a CSD approved, in accordance with the CSA and RCS 2010, that defines the portion of land required to be taken for road [s23(1)(a) PWA].
- Powers of entry onto land for the purposes of carrying out such a cadastral survey are provided under s110 PWA. The Council must give notice to the owner or occupier of the land of the intention to exercise these powers, and the people carrying out the survey must have with them evidence of their authority and identity, and produce it if required to do so. (S111 PWA also provides powers of entry for other survey and investigation activities that are reasonably necessary for the purposes of carrying out the road widening).
- The Council must also publish a notice of intention to take the land in the NZ Gazette and twice in a local newspaper [s23(1)(b) & s2 definition of public notice], and serve a notice, including a copy of the approved CSD, on the owner of, and persons with a registered interest in, the land of the intention to take the land [s23(1)(c) & Schedule 1 PWA].
- A copy of the published notice of intention also needs to be registered by the Council against the certificate of title for the affected land [s23(7) PWA].
- Every person having an estate or interest in the land intended to be taken may object to the taking of the land to the Environment Court within 20 working days after the publication or service on them of the notice of intention [s23(3) & clause 7 of Schedule 1 PWA].
- If an objection to the notice of intention is received, the Environment Court will forward a copy of the objection to the Council, who must send a reply to the objection to the Court and the objector.

- The Court will then conduct a hearing, at which the Council and the objector(s) are entitled to be heard, to determine if the land reasonably needs to be taken. After the hearing, the Environment Court will prepare a written report on the objection(s) and the court's findings and provide it to the Council and the objector(s). The report and findings of the court are binding on the Council [s24 PWA].
- If no objections to the notice of intention are received or, if made, withdrawn by the objector or disallowed by the Environment Court, the Council may submit a request, signed by the Council's Chief Executive, to the Governor-General to take the land proposed to be taken [s26(1) PWA]. This is done by submitting the necessary documentation to LINZ, including evidence that the requirements of s18 & s 23 PWA have been complied with, written confirmation from the Environment Court that no objections were made, or that any objections were withdrawn or disallowed, an approved CSD of the land required to be taken, and a draft proclamation for execution by the Governor-General [LINZS15005 p27].
- A recommendation for the Governor-General to take the land by proclamation is made by the Minister of Land Information [LINZG15703 p64].
- The Governor-General, if he or she sees fit, signs the proclamation, which is then published in the NZ Gazette and in a local newspaper within one month of the proclamation being made. The proclamation takes effect when it is published in the Gazette or on such later date as specified in the proclamation, but the land doesn't vest in the Council until 14 days after it is published in the Gazette [s26(2) & (3), s53 PWA & LINZG15703 p71].
- The Council is responsible for registering the gazette notice under s57 PWA with LINZ as soon as possible after the gazette notice is published [LINZS15005 p27 & LINZG15703 p71]. LINZ will then issue a new certificate of title for the remaining land in the affected property not acquired for road [s57(4)(c) PWA].
- Once the land has been taken by proclamation, the owner of any estate or interest in the land can initiate a claim for compensation for the estate or interest that was taken. If the owner fails to do this, the Council can initiate a determination of compensation. The amount of compensation will be determined by the Land Valuation Tribunal [Part 5 PWA].
- The Council should ensure that any s18 notices of desire or s23 notices of intention to acquire land that were registered on affected titles as part of the acquisition process are discharged from those titles when the acquisition has been completed and all associated requirements have been satisfied [s18(4) & s23(8) PWA].

(iii) Declaring the land to be road under Part 8 PWA (Worth 5 marks)

- The PDC may ask the Minister of Land Information to declare the required strip of land from a property to be road under s114(1) PWA and to vest it in the PDC [s114(3)(a) PWA].
- Before requesting such a declaration by the Minister in respect of an affected property, the Council would need to obtain written consents from anyone with a registered interest in the land comprising that property (i.e. owners, mortgagees, dominant tenements, etc), the Minister of Conservation if the land is public reserve, and the PDC as the territorial authority in whose district the land is situated and in whom the recreation reserve is vested [s114(2) PWA].
- The Council will need to enter into some form of agreement with the owners giving consent. Any such agreement is likely to cover similar matters as an agreement under s17 PWA in (i) above (i.e. compensation for land, responsibility for survey & legal costs, etc).
- If an owner is agreeable to the acquisition, but agreement cannot be reached on the amount of compensation payable, the Land Valuation Tribunal may be used to determine the compensation [s80(1)(c)].
- Once a written consent required under s114(2) PWA has been given, the Council may register a certificate of consent under s115 PWA against the certificate of title for the affected land.

- Where, after the registration of a s115 certificate, any person registers an interest in the affected land, the consent of that person is not required in order for the Minister to make a declaration under section 114(1) PWA. [s115(4) PWA].
- In the case of each affected property, only part of that property will be declared to be road. Therefore, the Council will need to arrange for a cadastral survey to be carried out and a CSD approved, in accordance with the CSA and RCS 2010, that defines the portion of land to be declared road.
- The Council will need to submit documentation to Crown Property Clearances at LINZ, including copies of all the consents required under s114(2) PWA, a copy of the title plan from the approved CSD and a draft gazette notice for execution by the Minister of Land Information or his/her delegate [LINZS15005 p31].
- Once the gazette notice has been signed by LINZ, the Council is responsible for arranging publication of the notice in the NZ Gazette [LINZG15703 p71]. The notice has effect on the day it is published in the Gazette, or on such later date as specified in the notice [s114(3) PWA].
- The Council is also responsible for registering the gazette notice under s57 PWA with LINZ as soon as possible after the gazette notice is published [LINZS15005 p29]. LINZ will then issue a new certificate of title for the remaining land in the affected property not acquired for road [s57(4)(c) PWA].
- If any s115 certificates of consent are registered on affected titles as part of the acquisition process, the Council should ensure these are discharged from those titles when the acquisition has been completed and all associated requirements have been satisfied [s115(8) PWA].
- Note: sections 116 to 119 PWA are not considered to be relevant to this proposal as no road stopping is involved and s119(1), relating to severances, will not apply to any of the affected land.

Question 2: Matters relating to specific properties – worth 10 marks

- (i) Tirohanga 5B Block is Māori freehold land as defined in s2 Te Ture Whenua Māori Act 1993, beneficially owned by more than 4 persons and is not vested in any trustee or trustees. Therefore the Council can apply to the Māori Land Court (Te Kooti Whenua Māori) to make an order under the provisions of Part 10 of Te Ture Whenua Māori Act 1993 and appoint an agent to act on behalf of the owners [s17(4) & (5), s18(5) & (6) PWA, LINZS15005 p10 & LINZG15703 p20].
- (ii) The land acquisition affects six principal (Units 1, 2, & 21-24) and the common property of the unit title development on Lot 2 DP 83621. Therefore Council will need to negotiate with each of the owners of the stratum estate in freehold of Units 1, 2, & 21-24 and the owner of the common property, which is the body corporate of the unit title development [s3(a), s4(c), s19 & s54 Unit Titles Act 2010].
- (iii) Lot 1 DP 52002 (Cross-lease development): The land acquisition will take part of the exclusive use area of Flat 1 and part of the common area used by all of the flats. The owners of the three flats own the underlying fee simple estate of Lot 1 DP 52002 as tenants in common in undivided shares. Therefore, the Council will need to negotiate with the owners of all three flats.
- (iv) Since the owner Section 3 Town of Tirohanga is deceased, no acquisition agreement under s17 PWA or consent under s114 PWA will be able to be obtained from the owner, so the land required for road from this property will need to be taken by proclamation under s26 PWA. Notice of desire to take the land will need to be given by publishing it twice in a local newspaper pursuant to s4(1)(d) PWA. A period of 3 months should be allowed from the date of the second publication before

proceeding to take the land using ss23-26 PWA [s18(2) & (7) PWA & LINZG15703 p17]. (It is a possibility that Option (i) - acquisition by agreement could be used if the Public Trust were appointed to act on behalf of the deceased owner under s81 PWA).

- (v) The owners of Section 4 Town of Tirohanga are likely to be able to apply to the RGL for freehold title to:
- all of Section 3, under s3 of the Land Transfer Amendment Act 1963 (or s155 LTA 2017 after it has come into force at the end of this year) based on their continuous adverse possession of Sec 3 for over 20 years.
 - the part of Section 5 they occupy, under s200 LTA 1952 (or s204 LTA 2017 after it has come into force at the end of this year) based on their adverse possession of this land commencing before the issue of the first limited title [s199(3) LTA 1952; s204(1)(a) LTA 2017].

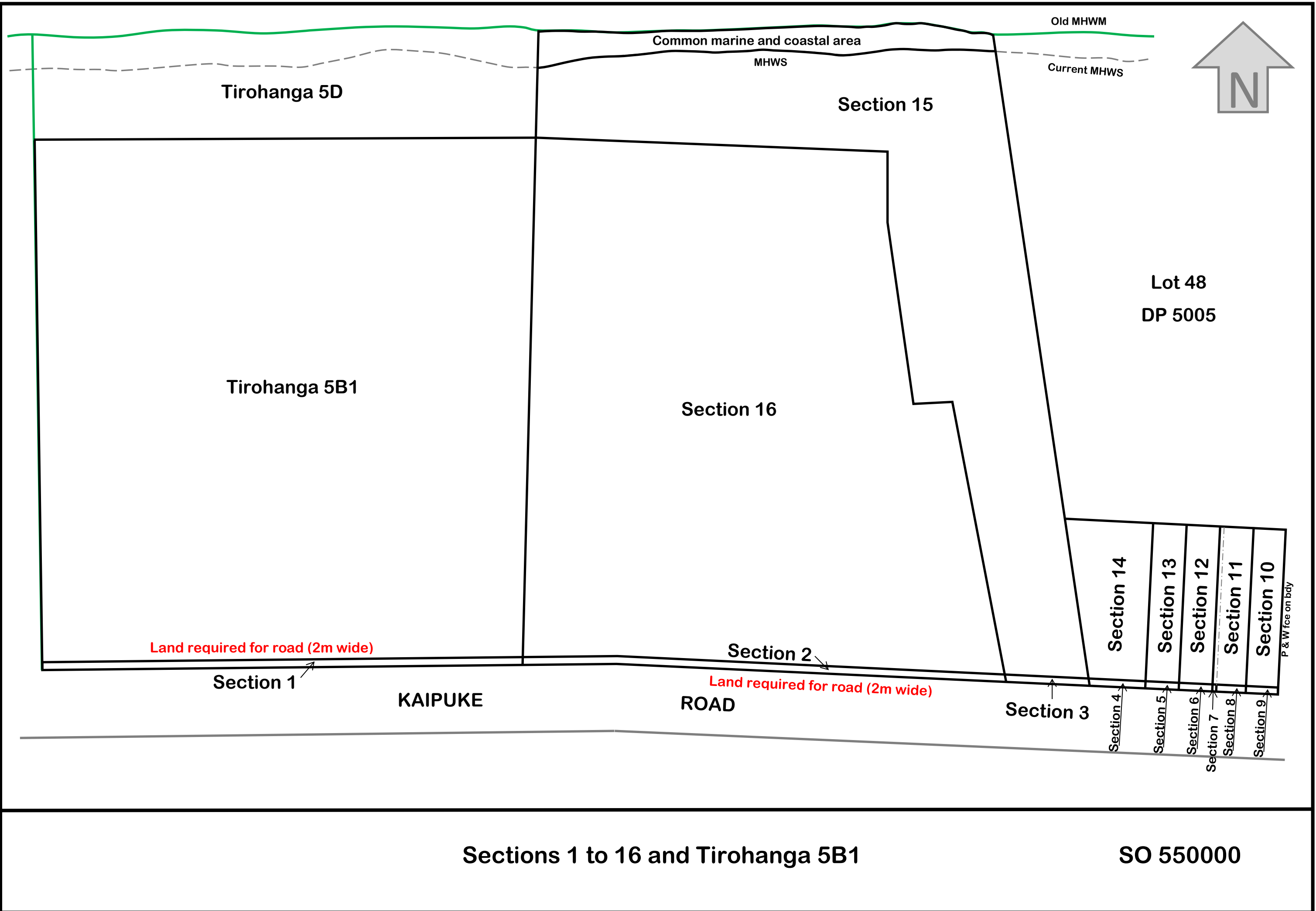
Question 3: CSD requirements – worth 10 marks

- (i) **Parcels on a SO Legalisation CSD (see attached 'answer plan' – SO 550000) (Worth 7 marks)**
- All land in the existing primary parcels being extinguished on this new CSD must be included in one or more new primary parcels, residue, or balance parcels on that CSD [r5.1(a)(i) RCS 2010]. The extent of all primary and residue parcels must be fully depicted on the Diagram of Parcels in the CSD [r 10.4.2(a) & (d)].
 - The new parcels for the strips of land required for road must be shown as Sections on the SO CSD, each with a unique numerical parcel identifier (e.g. Sections 1 to 9 SO 550000) [r5.5.1(a), r5.5.2 & r5.5.4 RCS 2010].
 - The new parcels for the portion of each existing primary parcel that is not being acquired for road must also be shown as Sections on the SO CSD with unique numerical parcel identifiers (e.g. Sections 10 to 16 SO 550000), except for the Maori Freehold Land, Tirohanga 5B Block. It must have a Māori land appellation approved by the Māori Land Court [[LINZG65703](#) p50 & 54] either as specified in rules 5.5.3(a) & 5.5.4 RCS 2010 (e.g. Tirohanga 5B1 SO 550000), or an alternative legal description as confirmed by Māori Land Court [r5.5.3(b)].
 - It would be acceptable, and even advisable, to show the land required for road from Section 5 Town of Tirohanga as two legalisation parcels with the boundary between them following the existing fence line (e.g. Sections 7 & 8 SO 550000). This would allow these two parcels to be dealt with separately if necessary e.g. if the owners of Section 4 claim title up to the fence, or if the owners of Section 5 remove limitations.
 - The land required for road from Sections 5 & 6 Town of Tirohanga could be shown as one section (i.e. instead of Sections 7-9) since the underlying parcels are in the same ownership.
 - A SO Legalisation CSD cannot be used to remove limitations as to parcels from land that will not be subject to a statutory action. Therefore, when determining the boundaries of the parcel for the remainder of Section 5 Town of Tirohanga, possessory occupation should not be taken into account. [<https://www.linz.govt.nz/kb/781#legalisationsurveys>] This means that the portion of Section 5 being occupied by the owners of Section 4 must be included in the new Section defined for the remainder of Section 5 (shown as Section 11 SO 555000).
 - The portion of Tirohanga 5C Block below MHWS is part of the common marine and coastal area (CMCA) as defined by s9 of the Marine and Coastal Area (Takutai Moana) Act 2011 (MAACA). Therefore, the Council's title to the land below MHWS has been divested by either s11(3) or s11(4) MAACA. The portion of Tirohanga 5C above MHWS that is not to be acquired for road will be shown on the SO Legalisation CSD as a new primary parcel (Section 15 SO 550000). The portion of Tirohanga 5C below MHWS will be shown as a residue parcel with no appellation but

identified by the annotation 'common marine and coastal area' [r2 definition of residue parcel, r5.5.1(c) & r10.4.2(f)(iii) RCS 2010].

(ii) Requirement for a new Unit Plan (Worth 3 marks)

- Sections 15(3) & (4) of the Unit Titles Act 2010 (UTA) specify that if an estate or interest in a unit title development is acquired under the PWA, and the UTA requires a new unit plan to be deposited in respect of the transfer of that estate or interest, the acquiring authority (PDC in this case) must prepare the new unit plan at its own expense.
- A new unit plan will be required because the acquisition of land for road will necessitate the transfer of parts of six principal units into the common property (s68 UTA redevelopment) and the transfer of part of the common property out of the unit title development (s56 UTA sale of common property). S57(1) & s68(2) UTA both require new unit plans to replace the existing unit plan.
- One CSD, being a 'Unit Plan in Substitution', will be suitable. It must show the final effect of the removal of the land i.e. the remaining common property, all existing units and the remaining portions of the principal units, which must be redefined as new whole units with new appellations [s57(4) & s69(1) UTA].



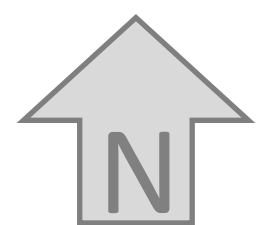
Tirohanga 5D

Common marine and coastal area

Old MHWS

MHWS

Current MHWS



Section 15

Lot 48
DP 5005

Tirohanga 5B1

Section 16

Land required for road (2m wide)

Section 1

KAIPUKE

Section 2

Land required for road (2m wide)

ROAD

Section 3

Section 14

Section 13

Section 12

Section 11

Section 10

Section 4

Section 5

Section 6

Section 7

Section 8

Section 9

P & W fce on bdy

Sections 1 to 16 and Tirohanga 5B1

SO 550000