



NEW ZEALAND INSTITUTE OF SURVEYORS

2016

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.

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. A vector between two old non-boundary survey marks measures 0.10m longer than the distance of 201.98m last recorded in a CSD integrated into the cadastre. Is this difference a conflict in terms of the RCS? (1 mark)

No. The difference of 0.10m between the two distances exceeds the maximum accuracy standard of 0.06m for non-boundary marks that are 201.98m apart [rule 3.1(b)], but this is not a conflict in terms of the RCS. Rule 2 RCS defines 'conflict' as relating to boundaries only.

- 1B. Which survey marks are specified by the Surveyor-General as suitable to be used as cadastral survey network marks in cadastral surveys? (1 mark)

A survey mark is suitable for use as a cadastral survey network mark if it has been assigned a NZGD2000 coordinate with a Landonline order 6 or better [LINZR65302].

- 1C. When must bearings in a cadastral survey be oriented in terms of an official geodetic projection? (3 marks)

- When a survey defines or marks a new primary parcel boundary point, unless the survey does not make a new field measurement or if the survey is a boundary reinstatement survey [rule 4.1]
- When a new covenant parcel is being defined in terms of rule 16.3(a) [rule 16.4(a)]
- When the relationship of a non-primary parcel and its underlying parcel is being defined in terms of rule 17.1(a) [rule 17.1(d)(ii)]

- 1D. 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.

- 1E. What boundaries and boundary points may be accepted under rule 6.3(c) RCS? (1 mark)

Existing boundaries and their associated boundary points that are part of a new primary parcel over 100 ha and are not in common with another new parcel on the survey that is 100 ha or less.

1F. Must an adopted boundary point, which is on a primary parcel boundary that is being defined by survey, be witnessed? (1 mark)

Yes. R7.3.1(a) requires every boundary point on a primary parcel boundary that is being defined by survey to be witnessed.

1G. What type of CSD is not required to include a survey report? (1 mark)

A monumentation CSD under rule 11 [rule 11.2(f)].

1H. Pursuant to rule 8.2(a), what must a survey report contain in relation to old survey marks? (3 marks)

- reasons for not relying on an old survey mark
- information about old survey marks not located or reasons why they were not searched for
- an assessment of the adequacy of the number and location of old survey marks used to define boundaries

1I. Pursuant to rule 10.4.8, there are six parcel annotations that must be depicted on the Diagram of Parcels in specific situations. Name any three of these annotations and the situation when each of them is required. (3 marks)

- 'width unknown' – existing centreline easement of unknown width
- 'area not determined by survey' – parcel area derived from class D boundaries
- 'limited as to parcels' – land in a parcel intended to remain in a title limited as to parcels
- 'Hawke's Bay interim title' – land in a parcel intended to remain in a Hawke's Bay interim title
- 'Subject to Part 4A Conservation Act 1987' – land in a parcel intended for disposal by the Crown, or land already subject to Part 4A Conservation Act 1987
- 'boundary accepted from existing survey' – accepted boundary under rule 6.3(c)

1J. What is the purpose of the Lodgement Standard, as stated in the Standard? (1 mark)

To set the minimum requirements for lodgement of CSDs to assist with efficient and consistent processing and integration into the cadastre. [See page 5 of the Lodgement Standard under 'The purpose of this standard'].

1K. What facility does the Lodgement Standard designate for receiving CSDs for approval as to survey? (1 mark)

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

1L. What additional information must be included in a survey report under standard 7 of the Lodgement Standard? (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.

Question 2

Parts 1 and 2 Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA)

Total 15 marks

- 2A. What is the 'marine and coastal area', as defined in Section 9(1) MACAA? (4 marks)

Section 9(1) - marine and coastal area

(a) means the area that is bounded, on the landward side, by the line of mean high-water springs; and on the seaward side, by the outer limits of the territorial sea; and

(b) includes the beds of rivers that are part of the coastal marine area (within the meaning of the Resource Management Act 1991); and

(c) includes the airspace above, and the water space (but not the water) above, the areas described in paragraphs (a) and (b); and

(d) includes the subsoil, bedrock, and other matter under the areas described in paragraphs (a) and (b).

- 2B. According to Sections 9(1) and 14(1) MACAA, which parts of the marine and coastal area are excluded from the common marine and coastal area? (4 marks)

Section 9(1) - common marine and coastal area means the marine and coastal area other than—

(a) specified freehold land located in that area; and

(b) any area that is owned by the Crown and has the status of any of the following kinds:

(i) a conservation area within the meaning of section 2(1) of the Conservation Act 1987:

(ii) a national park within the meaning of section 2 of the National Parks Act 1980:

(iii) a reserve within the meaning of section 2(1) of the Reserves Act 1977; and

(c) the bed of Te Whaanga Lagoon in the Chatham Islands

Section 14(1) - any road, whether formed or unformed, that is in the marine and coastal area on the commencement of this Act is not part of the common marine and coastal area.

- 2C. What freehold land is specified by Section 9(1) MACAA as not being included in the common marine and coastal area? (4 marks)

Section 9(1) - specified freehold land means any land that, immediately before the commencement of this Act, is—

(a) Maori freehold land within the meaning of section 4 of Te Ture Whenua Maori Act 1993; or

(b) set apart as a Maori reservation under Te Ture Whenua Maori Act 1993; or

(c) registered under the Land Transfer Act 1952 and in which a person other than the Crown or a local authority has an estate in fee simple that is registered under that Act; or

(d) subject to the Deeds Registration Act 1908 and in which a person other than the Crown or a local authority has an estate in fee simple under an instrument that is registered under that Act

2D. According to section 35 MACAA, who may apply for an interest in reclaimed land that is subject to subpart 3 of Part 2 of the Act (i.e. vested in the Crown)? (3 marks)

- A developer of the reclaimed land
- A network utility operator
- Any person, if after 10 years no interest has been granted in that reclaimed land and no current application for the grant of an interest in that land is awaiting the Minister's determination.

Question 3

Parts 1, 2, 3 and 10 Resource Management Act 1991 (RMA)

Total 15 marks

3A. 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.

3B. Section 3 RMA defines the meaning of 'effect', for the purposes of the Act, to include 6 categories of effects. Please list three of them. (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.

3C. Under section 11(1)(a) RMA, no person may subdivide land unless the subdivision meets two criteria. What are these two criteria? (2 marks)

The subdivision is:

- expressly allowed by a national environmental standard, a rule in a district plan as well as a rule in a proposed district plan for the same district (if there is one), or a resource consent
- shown on a survey plan that is either deposited by the RGL, or approved by the relevant Chief surveyor (now Surveyor-General) under section 228 RMA

3D. In section 218 RMA, the term 'subdivision of land' is defined as meaning the division of an allotment in any one of five ways. Please list three of them. (3 marks)

- by an application to the RGL for the issue of a separate certificate of title for any part of the allotment; or
- by the disposition by way of sale or offer for sale of the fee simple to part of the allotment; or
- by a lease of part of the allotment which, including renewals, is or could be for a term of more than 35 years; or
- by the grant of a company lease or cross lease in respect of any part of the allotment; or
- by the deposit of a unit plan, or an application to the RGL for the issue of a separate certificate of title for any part of a unit on a unit plan

3E. Section 227 RMA provides that where a survey plan has been deposited and another survey plan of the same land is subsequently deposited, the approval given to the first survey plan is deemed to be cancelled except as to conditions to which sections 221 and 243 apply. In general terms, what do sections 221 and 243 relate to? (1 mark)

- section 221- consent notices
- section 243 - easements

3F. Give an example for each of the following situations:
(a) where section 240 RMA 'Covenant against transfer of allotments' would apply to a subdivision; and
(b) where section 241 RMA 'Amalgamation of allotments' would apply to a subdivision. (2 marks)

Section 240 'Covenant against transfer of allotments': a subdivision where the TA requires allotments to be held in the same ownership, usually because it is not practical for them to be held together in the same title.

Section 241 'Amalgamation of allotments': a subdivision where the TA requires allotments to be held in one certificate of title

[Refer to sections 220(1)(b) and 220(2)(a)]

3G. 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 4

Parts 1, 4, 5 and 6 and Schedule 2 Cadastral Survey Act 2002 (CSA)

Total 15 marks

- 4A. One of the purposes of the Act is to promote and maintain the accuracy of the cadastre. What are the three ways that section 3 CSA specifies for doing this? (3 marks)

By—

- (i) requiring cadastral surveys to be done by, or under the direction of, licensed cadastral surveyors; and
- (ii) requiring cadastral surveyors to meet standards of competence to be licensed; and
- (iii) providing for the setting of standards for cadastral surveys and cadastral survey data.

- 4B. For the purposes of the Act, what does 'cadastre' mean? (1 mark)

Cadastre means all the cadastral survey data held by or for the Crown and Crown agencies.

- 4C. Who may receive a complaint alleging that a licensed cadastral surveyor has been guilty of professional misconduct? (1 mark)

The Cadastral Surveyors Licensing Board of New Zealand (refer to sections 4 & 35)

- 4D. Section 53 CSA provides for a cadastral surveyor to obtain authorisation from the Surveyor-General to enter land for the purpose of conducting a cadastral survey or the installation of a survey mark. Outline the powers and responsibilities that attach to this authority. (4 marks)

Powers:

- (a) enter and re-enter any land at reasonable times, with or without any assistants, aircraft, boats, vehicles, appliances, machinery, and equipment that are reasonably necessary for the conduct of the cadastral survey or to install the survey mark; and
- (b) on any land, do all things necessary or required of him or her for the proper conduct of the cadastral survey or the installation of the survey mark.

Responsibilities:

- (a) before exercising any of the powers, give reasonable notice to the occupier of the land of the intention to exercise those powers.
- (b) produce evidence of his or her identity and authority to exercise the powers—
 - (i) if practicable on first entering the land or premises; and
 - (ii) whenever subsequently reasonably requested to do so.

- 4E. Schedule 2 CSA lists twelve circumstances where a cadastral surveyor can be found guilty of professional misconduct. List 6 of these circumstances. (6 marks)

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

(a) to have been negligent in the conduct of, or failure to conduct, any cadastral survey:

(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:

(f) to have made any entry in any field book or other record that purports to have been derived from actual observation or measurement in the field, if in fact it has not been so derived:

(g) to have supplied to the Surveyor-General or the chief executive any erroneous information in relation to any cadastral survey, cadastral survey mark, or boundary, knowing the information to be erroneous in any material particular:

(h) to have been convicted of any offence against section 31 or section 58(b) or (c):

(i) to have failed to comply with any conditions imposed by the Board under section 39(2)(c) or (7) or the High Court on any appeal against an order under section 39:

(j) to have failed to comply with any requirement imposed under section 52:

(k) to have persistently exercised the powers of entry conferred by section 53 in an unreasonable manner:

(l) to have failed, without reasonable cause, to perform any duty imposed on licensed cadastral surveyors by standards set by rules made under section 49.

Question 5

Roads, Access and Easements [Part 21 Local Government Act 1974 (LGA), Schedule 4 Land Transfer Regulations 2002 (LT Regs), Sections 24-30 Housing Act 1955 (Housing Act)]

Total 15 marks

- 5A. Explain the main difference between a private road and private way, as defined in section 315 LGA. (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.

- 5B. According to section 315 LGA, 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.

- 5C. Section 319 LGA sets out the general powers of councils in respect of roads? Please list any five of them. (5 marks)

- (a) to construct, upgrade, and repair all roads with such materials and in such manner as the council thinks fit:
- (b) *[Repealed]*
- (c) to lay out new roads:
- (d) to divert or alter the course of any road:
- (e) to increase or diminish the width of any road subject to and in accordance with the provisions of the district plan, if any, and to this Act and any other Act:
- (f) to determine what part of a road shall be a carriageway, and what part a footpath or cycle track only:
- (g) to alter the level of any road or any part of any road:
- (h) to stop or close any road or part thereof in the manner and upon the conditions set out in section 342 and Schedule 10:
- (i) to make and use a temporary road upon any unoccupied land while any road adjacent thereto is being constructed or repaired:
- (j) to name and to alter the name of any road and to place on any building or erection on or abutting on any road a plate bearing the name of the road:
- (k) to sell the surplus spoil of roads:
- (l) for the purpose of providing access from one road to another, or from one part of a road to another part of the same road, to construct on any road, or on land adjacent to any road, elevators, moving platforms, machinery, and overhead bridges for passengers or other traffic, and such subways, tunnels, shafts, and approaches as are required in connection therewith.

- 5D. What is the main difference in effect between stopping a road and closing a road, as provided for in section 342 LGA? (1 mark)

Stopping a road results in the permanent removal of its status as a road, whereas closing a road is the temporary closing of a road to traffic or a specific type of traffic.

- 5E. Pursuant to section 348 LGA, what must a landowner do before laying out or forming any private road or private way, or granting or reserving a right of way over any private way? (1 mark)

Obtain permission to do so from the Council of the district.

- 5F. According to Schedule 4 LT Regs, what do the following terms mean in relation to an easement? (3 Marks)

- (i) dominant land
- (ii) servient land
- (iii) grantee

(i) dominant land means the land that takes the benefit of the easement

(ii) servient land means the parcel of land over which an easement is registered (or the stipulated part of that land shown on a plan of the easement)

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

- 5G. Pursuant to section 25 Housing Act, what classes of easement certificates may be issued by Housing NZ Corporation? (2 marks)

- pipeline certificates
- right of way certificates
- party wall certificates

Question 6

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

Total 15 marks

6A. Outline the general purpose of the Reserves Act, as provided for in section 3 of the Act. (6 marks)

- providing, for the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing—
 - (i) recreational use or potential, whether active or passive; or
 - (ii) wildlife; or
 - (iii) indigenous flora or fauna; or
 - (iv) environmental and landscape amenity or interest; or
 - (v) natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community, or other special features or value:
- ensuring, as far as possible, the survival of all indigenous species of flora and fauna, both rare and commonplace, in their natural communities and habitats, and the preservation of representative samples of all classes of natural ecosystems and landscape which in the aggregate originally gave New Zealand its own recognisable character:
- ensuring, as far as possible, the preservation of access for the public to and along the sea coast, its bays and inlets and offshore islands, lakeshores, and riverbanks, and fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development.

6B. List six of the seven types of reserves provided for in sections 17 to 23 of the Reserves Act. (3 marks)

Recreation, Historic, Scenic, Nature, Scientific, Government Purpose, Local Purpose (½ mark each)

6C. What is the purpose of a Local Purpose Reserve? (1 mark)

- for the purpose of providing and retaining areas for such local purpose or purposes as are specified in any classification of the reserve.

6D. Pursuant to section 24 Conservation Act, when and where must a marginal strip be reserved? (3 marks)

When - upon the sale or any other disposition of any land by the Crown (1 mark)

Where - along and abutting the landward margin of any foreshore (of the sea), or the bed of any lake, or the bed of any river or any stream being a bed that has an average width of 3 metres or more (2 marks)

- 6E. How would you identify whether or not land held in a certificate of title was subject to Part 4A Conservation Act? (1 mark)

Section 24D(1) Conservation Act - Upon the registration of any disposition by the Crown of any land under the Land Transfer Act 1952, the District Land Registrar of the land registration district affected shall, without fee, record on the certificate of title for that land a statement to the effect that the land to which the certificate of title relates is subject to this Part (i.e. look for the statement on the title 'subject to Part 4A Conservation Act 1987').

- 6F. When marginal strips have been reserved from the sale of a parcel of Crown Land, what effect does this have on the description and area of the land comprised in the certificate of title for that parcel? (1 mark)

Section 24D(6) Conservation Act - The land comprised in the certificate of title shall be deemed to be all the land described in that certificate of title, with the exception of any portion that is deemed to be reserved as marginal strip; and may be defined for the purposes of the issue of a certificate of title as if this Part had not been passed. (i.e. the description and area of the land are the same as if the marginal strips were included in the title, but the land actually held in the title does not include the marginal strips).