



**YOUR NATIONAL SOURCE
FOR LAND AND PPSR INFORMATION**

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Introduction

We trust you will find this publication a helpful addition to your resources. For further information regarding LANDinfoNET Limited and our services, including full Land and PPSR search and registration, please visit www.landinfo.net.nz or phone 0800 106 206

:: AN EXTENSION OF YOUR OFFICE ::

Comments from the General Manager, Janelle Weir

WELCOME to the first issue of LANDinfoNET's newsletter for 2010. 2010 has begun with a great deal of enthusiasm for the team here with our recent purchase of Hamilton Legal Services business interests. So an extra big welcome into the fold to our new HLS clients. Please rest assured you will receive the same expert, timely service you were accustomed to from HLS now from LANDinfoNET.

LANDinfoNET has near on 40 years experience and prides itself in providing you with timely, accurate information and a range of tools and services designed to maximize our value to your business. We trust you will find our newsletter both relevant and helpful. For previous newsletter issues please visit www.landinfo.net.nz.

If you have regular contact with our consultancy team, you may be aware by now that David Barker has resigned from LANDinfoNET to set up on his own as a Licensed Conveyancer. We wish Dave all the best with his endeavors and thank him for his years of support and experience. He will certainly be missed.

We would now like to take this opportunity to introduce you to Greg Strange, LANDinfoNET's new LT Consultant. Greg has a 14 year history at Land Information New Zealand where he was a Property Rights Analyst for the past 8 of those years. Greg has a strong background in Maori land dealings, unit title plan dealings and has extensive knowledge of subdivisional property transactions and conveyancing. Greg is

also expert in creating, setting up, changing and providing advice surrounding eDealing. He can also provide accurate advice and direction with interpreting rejection/requisition notices from LINZ. Please feel free to utilize Greg and his vast knowledge and experience. We trust you will find him as helpful and knowledgeable as you have found our other consultants.

Along with Greg, Roger Fielding and Dianne Watson are available as always to assist with all your consultancy and subdivisional matters both straightforward and complex. Rest assured we have the staff, skills and experience to continue to support you in the manner you are accustomed and expect.

Feature Team member - Roger Fielding

This newsletter we are featuring Roger Fielding, Land Transfer Consultant.

Roger is our dark horse, on the surface he's a mild mannered consultant, but hidden underneath after hours he is an intense kayaker and a soulful trumpeter.

Roger has had 15 years experience at Land Information New Zealand 10 of those years as a Land Registrar which involved checking registration, plan deposits issuing new certificates of title, basically all facets of processing documentation and plans to ensure that all statutes were complied with to enable registration to take place. He has also spent some time at LINZ doing quality assurance work making sure LINZ standards were met. Roger joined LANDinfoNET in January 2001 and is now affectionately known to us as Roger "the Rock" Fielding.

Roger has provided some pertinent articles below in this newsletter we hope you will find helpful, he is looking forward to assisting you in your enquiries from the small and straight forward to the large and complex and can be contacted on 0800 106206 or email rogerf@landinfo.net.nz.

LINZ Issues

Discharge of Encumbrance – by Roger Fielding

There is a Discharge of Encumbrance template provided in Landonline for use when electronically discharging an encumbrance. This relates to a situation where the encumbrancee is giving a discharge of the encumbrance and most people by now will be familiar with the procedure as it is similar to a discharge of mortgage.

In addition to the usual method of discharging an encumbrance there is another method of discharge, which is a rarity, under Section 113 Land Transfer Act 1952. This relates to a situation where the encumbrancee is not usually the one who is giving the discharge but, for example, the encumbrancer (landowner) may be seeking to remove the encumbrance from the title without any input from the encumbrancee.

A client was wanting to utilize Section 113 Land Transfer Act 1952 to do such an electronic discharge but it did not seem to exactly fit any of the templates or other types of documents available for use electronically so we queried the Registrar-General of Land's Office and received confirmation that a Section 113 discharge application should not be registered electronically and would therefore need to be completed as a paper transaction.

There is a danger that a practitioner may just see the Section 113 discharge as being another form of discharge and go ahead and use the electronic template to discharge the encumbrance while keeping all the necessary evidence/declarations on their file.

Therefore, LINZ has advised us that they plan to publish something about this subject soon in their Landwrap column so as to distinguish more clearly the different types of discharges and their requirements for registration.

Limitations as to Parcels and Road/Rail Boundaries – by Roger Fielding

We recently asked Land Information New Zealand (LINZ) for clarification of what requirements they have in respect of consents to be obtained or notices to be served upon adjoining owners of roads that abut a title that is having its limitations as to parcels removed by a new survey plan to be deposited at LINZ.

This came about because of some inconsistencies and unexpected requisitions received from LINZ.

LINZ has responded as follows:

Section 207(2) LTA requires the RGL to give notice to such adjoining owners as he deems appropriate, so seeking the address for authority responsible for an adjoining road should be the norm. LINZ standard instruction is to notify and ensure consent has been obtained from:

- **NZ Transport Agency, if the Lots adjoin a State Highway designated as a limited access road; and**
- **the local authority, if a road fronts/abuts the limited title and the plan has no subdivisional approval**

A similar requirement applies in the case of a railway.

Therefore, when seeking to remove limitations as to parcels, the address or the consent of the adjoining road/rail owners will be required in addition to the owners of the other land adjoining the title having its limitations removed. The exception seems to be a local authority road if the new plan has subdivision approval.

On the subject of the removal of limitations as to parcels just a reminder that:

- For all the adjoining owners who do not consent to the newly surveyed boundaries, LINZ will need you to supply them with the address for service of that adjoining owner. LINZ will send the adjoining owner/s the notice in order to give them an opportunity to object to the boundaries set out on the new plan. Any objection would need to be in the form of a caveat in form 21 of Schedule 2 to the Land Transfer Regulations 2002
- When LINZ serves notice upon an adjoining owner, they will give a period of 21 days for any objections to be received. In practice LINZ will allow a few days for the notice to reach the adjoining owner and then start the 21 (consecutive) day count. When that period is over LINZ will proceed with the issuing of new titles, if no objections have been received
- It has often been thought, incorrectly, that adjoining owners who have titles whose boundaries are defined on a modern deposited survey plan, do not have to consent or have a notice served upon them. LINZ will insist that the consent or notice procedure is applicable to all adjoining land whether or not it has a limited or established boundary, as the adjoining owner could possibly be using and occupying an amount of land beyond their established boundary
- Owners of land on a boundary which is on the corner, or point, of the land having its limitations removed also need to be involved in the consent/adjoining owner notice process
- If adjoining owner notices are required to be served then the usual practice is to supply LINZ with a list of addresses when you apply for a new title to issue,

however LINZ can be requested to separately serve notice upon the adjoining owners at an earlier time so that when you are ready to apply for titles you do not have to go through another 21 day wait. This can be a bit risky as far as gaining an advantage for your timeframes goes though because sometimes an adjoining property will be transferred to another party and then the new owner needs to be involved in the consent/adjoining owner notice process

- If for some reason your dealing needs to be withdrawn from registration or gets rejected but adjoining owner notices have already been served as a result of a request in that dealing, you can request LINZ to hold over the notice process so that you do not have to go through that process again when you are ready to submit the dealing back to LINZ. Again, if any of the adjoining owners have transferred their land in the meantime you will need to face the consent/adjoining owner notice process again for that particular new owner

Noting of Land Covenants on Land Titles– by Roger Fielding

We have recently sought clarification from Land Information New Zealand (LINZ) regarding their policy on the noting of land covenant rights on land titles.

Originally when land covenants (originally called restrictive covenants) were noted on land titles, there was only the power for the servient land to be noted of the existence of the covenant i.e. only the land subject to the burden of the land covenant could be noted as there was no authority for the land benefiting (dominant land) to be noted.

With changes to the Property Law Act 1952 that all changed and there was then the ability for the land covenant to be noted on both the servient and dominant land. LINZ's policy was to automatically note the servient land, as they had been doing, but in respect of the dominant land, a request to note it on that land would need to have been endorsed on the document creating the land covenant. Later LINZ changed their policy to one of noting both the servient and dominant tenements automatically and not requiring any requests.

Recently ourselves and other clients have been inconvenienced by inconsistent practices by LINZ who in some offices would not note land covenants created in Deeds or Transfers on the dominant tenement, yet other offices would.

The result of our enquiry with the Registrar-General of Land's office is as follows, they say:

Covenants created by any land transfer instrument or deed of covenant must be notified on all dominant and servient titles whether or not a request for notification is made. The only exceptions are:

- 1. The instrument is in respect of land being part of a building scheme, in which case, notification is required only on the servient title; or**
- 2. The owner of the dominant land requests notification only on the servient land title.**

The second exception mentioned above is quite straight forward to understand, however, the first exception may require some further explanation as follows:

You may have the idea that a building scheme pretty much covers most land covenants that are created these days since covenants relating to building are commonplace, however, LINZ are talking about a *very specialized method of creating covenants called a building scheme* which used to be the prevalent way of creating land covenants in large subdivisions before the advent of the Easement Instrument document. In the building scheme situation a developer would set up a building scheme land covenant by creating the land covenant over a single servient tenement

in a subdivision when that particular allotment had a purchaser and was transferred to the new purchaser. The covenant would be created in the Transfer document over the land transferred and in favour of all other allotments in the subdivision (dominant tenements). There would be a clause in that Transfer to the effect that like covenants would be registered over the rest of the allotments in favour of the remaining ones once they were sold off too. And so the process would be repeated until each allotment had been sold. This type of scheme is virtually redundant now, and now the most common way to create land covenants in a subdivision is by the use of the Easement Instrument which instantly sets them all in place while the developer is still named as the owner of the titles in the subdivision, and that method has nothing to do with a building scheme.

Contacting the LANDinfoNET Consultants

Our Land Transfer Consultants Roger Fielding, Greg Strange and Dianne Watson are always available for consultancy and technical advice issues on any matters. Please do not hesitate to contact them with any queries that you have.

Roger 0508 534 251 LANDinfoNET Limited rogerf@landinfo.net.nz

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Dianne 0508 534 251 LANDinfoNET Limited diannew@landinfo.net.nz

Roger and Greg have a prior cumulative experience of working with LINZ as senior Land Registrar for over 30 years, please ensure you utilise their ongoing knowledge and resources as an "extension of your office". A team of registration clerks support Roger, Dianne, and Greg to ensure they are free for high-end consultancy.

PPSR / Company's Services

Historic Charges Registered on a Company File

With the introduction of the Personal Property Securities Act (PPSA) all charges registered against a company were required to be re-registered on the PPSR. The Ministry of Economic development (Companies office) still make note of the historic charges registered against a company prior to the introduction of the PPSA on the list of documents registered.

If you are searching for a particular charge that is referred to on the companies office website as 'archived' then we recommend viewing the scanned image that can be noted in the list of documents as 'documents registered pre (date)'. These scanned images are of most documents filed before the dated stated and can sometimes include the historic charges. Otherwise the Companies office have advised that charges not scanned have been destroyed as they are deemed not 'key documents' because they were superseded by the Personal Property Securities Register.

An authority to destruct the majority of paper files held by the Companies office was made with the consent of the chief Archivist, but there was a requirement for certain files to be transferred to Archives New Zealand (primarily public, listed, Issuers, co-operative and Maori related companies). If you are searching for a copy of an historic document registered against a company, in most cases the charges would have been destroyed, but a search of the Archives New Zealand records would need to be completed to ascertain if they are holding the documents, we are happy to conduct a search on your behalf.

If you would like more information on the above please contact Janelle or Marian on 0800 106 206.

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A Big Thank You

Once again thank you for your continued support, we hope that you find this newsletter and the information it contains useful. We wish you all continued success for the rest of 2010.

If you have any questions regarding this newsletter, please contact Janelle Weir, LANDinfoNET's General Manager on 0800 106 206 or at janellew@landinfo.net.nz

Feel free to phone our call free number 0800 106 206 and ask for Janelle Weir for further information.

Regards The LANDinfoNET Limited team.

An extension of your office.

Freephone **0800 106 206** ::: Freephone **0508 534 251**

visit us at www.landinfo.net.nz

Disclaimer:

Although every effort has been made to ensure the accuracy of the information within this newsletter, we are not liable for the results of any action taken on the basis of the information given or any errors or omissions.

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