



SURVEY AND SPATIAL NEW ZEALAND

18 June 2020

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 100 MARKS.

THE MINIMUM PASS MARK IS 60 (60%).

All questions are worth twenty (20) 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 an “irregular boundary”, as defined in the Rules for Cadastral Survey 2010 Terms and Definitions? (1 mark)

“a boundary that is depicted as an **irregular line** but is **not a water boundary**”.

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

“a survey mark of a class specified by the Surveyor-General as **suitable for the connection of a cadastral survey to the national survey control network**”.

- 1c. Class B accuracies must be used for a boundary and its associated boundary points except in two situations as stated in Rule 3.2.2 Rules for Cadastral Survey 2010. What are these two situations? (2 marks)

(a) rule 3.2.1 requires class A to be used, or (1 mark)

(b) class C or class D is used in accordance with rules 3.2.3 and 3.2.4 (1 mark)

- 1d. Rule 5.3(c) Rules for Cadastral Survey 2010 lists three considerations for showing areas accurately to parcels. What are these three considerations? (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. List the four different parcel types that can be used for unit title development parcels under Rule 5.5.2 Rules for Cadastral Survey 2010. (2 marks)

Principal Unit (½ mark)

Accessory Unit (½ mark)

Future Development Unit (½ mark)

Common Property (½ mark)

- 1f. Rule 6.1 Rules for Cadastral Survey 2010 lists three duties of a surveyor when defining a boundary by survey. What are these three duties? (3 marks)

(a) **gather all evidence** relevant to the definition of the boundary and its boundary points, (1 mark)

(b) **interpret that evidence** in accordance with all relevant enactments and rules of law, and (1 mark)

- (c) **use that evidence** to determine the correct position of the boundary and the boundary points in relation to other boundaries and boundary points. (1 mark)
- 1g. A stratum boundary must meet two criteria, as stated in Rule 6.8 Rules for Cadastral Survey 2010. What are these two criteria? (2 marks)
- (a) a surface that is mathematically described where at least one point has a reduced level, or (1 mark)
- (b) a surface of a water body or the bed of a water body. (1 mark)
- 1h. Rule 7.3.2 Rules for Cadastral Survey 2010 requires at least one witness mark on a cadastral survey to be within the applicable horizontal distance for each of the boundary points specified. What is the specified distance for:
- (a) a Class A boundary point? (½ mark)
- (b) a Class C boundary point? (½ mark)
- (a) 150 metres.
- (b) 1000 metres.
- 1i. In addition to the heading ‘Memorandum of Easements’ or ‘Schedule of Easements’, what information must be included in a new schedule under Rule 10.2.1(b) Rules for Cadastral Survey 2010? (2 marks)
- (i) the easement parcel identifier, (½ mark)
- (ii) the purpose of the easement, (½ mark)
- (iii) the servient tenement, and (½ mark)
- (iv) the dominant tenement or grantee as appropriate (½ mark)
- 1j. The retention of all relevant field information for a CSD is covered in Rule 14(b) of the Rules for Cadastral Survey 2010. What is the minimum period that this field information needs to be retained and who may request that information during that time? (1 mark)
- “be retained for a period of at least seven years from certification (½ mark) and made available to the Surveyor-General or the Chief Executive on request (½ mark)”.
- 1k. What is the purpose of the Lodgement Standard, as specified in the Standard for Lodgement of Cadastral Survey Datasets 2013? (1 mark)
- “The standard sets the minimum requirements for the lodgement of cadastral survey datasets to assist with efficient and consistent processing and integration into the cadastre”.
- 1l. What is the definition of “live parcel”, as defined in the Standard for Lodgement of Cadastral Survey Datasets 2013 Terms and Definition? (1 mark)
- “A parcel in a CSD that has been approved by the tenure system manager (eg, deposited) and recorded in the live layer in Landonline”.

Question 2

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

Total 20 marks

2a. What are the three main purposes of the Cadastral Survey Act 2002, as listed under Section 3 of that Act? (3 marks)

- (a) to **promote and maintain the accuracy of the cadastre** by— (1 mark)
- (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; and
- (b) to **provide, either on an optional or mandatory basis, for the electronic lodging and processing of cadastral surveys**; and (1 mark)
- (c) to **provide for a national geodetic system and a national survey control system to be maintained**. (1 mark)

2b. What is the definition for the “national survey control system”, as specified in Section 4 Cadastral Survey Act 2002? (1 mark)

“National survey control system” means a system used to **determine the position of points, features, and boundaries in cadastral surveys**, other surveys, and land information systems.

2c. The Cadastral Surveyors Licensing Board may receive complaints of professional misconduct. What are the two types of complaints that can be received, as stated in Section 35(1) Cadastral Survey Act 2002? (1 mark)

- (a) a licensed cadastral surveyor has been **guilty of professional misconduct**: (½ mark)
- (b) a licensed cadastral surveyor is **not entitled to be a licensed cadastral surveyor**. (½ mark)

2d. Section 38(1) Cadastral Survey Act 2002 deals with the hearing of complaints against a licensed cadastral surveyor by the Cadastral Surveyors Licensing Board. What are the two criteria that the Board need to adhere to? (1 mark)

- (a) **must observe the rules of natural justice**; and (½ mark)
- (b) **may receive evidence even though it would not be admissible in a court of law**. (½ mark)

2e. Section 47 Cadastral Survey Act 2002 details the general duties in relation to a cadastral survey. Who can undertake a cadastral survey and who is responsible for a cadastral survey? (3 marks)

- (1) A cadastral survey must be **conducted by a cadastral surveyor or a person acting under the direction of a cadastral surveyor**. (1 mark)

- (2) In conducting a cadastral survey, a cadastral surveyor or a person acting under his or her direction **must comply with this Part and any regulations, standards, and rules made under it.** (1 mark)
- (3) A cadastral surveyor is **responsible for a cadastral survey** conducted by a person acting under his or her direction. (1 mark)

2f. If an error is found in a cadastral survey dataset affecting any title under the Land Transfer Act 2017 or any title or tenure under any other Act, Section 52(1) Cadastral Survey Act 2002 provides the Surveyor-General with what powers to deal with such a situation? (2 marks)

If an error is found in a cadastral survey dataset affecting any title under the Land Transfer Act 2017 or any title or tenure under any other Act, the Surveyor-General may, in **writing** (½ mark), require the cadastral surveyor responsible for the error to **undertake, or arrange to be undertaken** (½ mark), the work necessary to **correct the error within a time that the Surveyor-General considers reasonable** (1 mark).

2g. 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)

2h. List six circumstances, pursuant to Schedule 2 Cadastral Survey Act 2002, where a licensed cadastral surveyor is guilty of professional misconduct in any proceedings or appeal under Part 4 of that Act. (6 marks)

- (a) to have been **negligent in the conduct of, or failure to conduct**, any cadastral survey: (1 mark)
- (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**: (1 mark)
- (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: (1 mark)
- (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**: (1 mark)
- (e) to have **certified to the accuracy** of any cadastral survey or cadastral survey dataset, **knowing it to be defective**: (1 mark)
- (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**: (1 mark)

- (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: (1 mark)
- (h) to have been **convicted of any offence** against section 31 or section 58(b) or (c): (1 mark)
- (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: (1 mark)
- (j) to have **failed to comply with any requirement imposed under section 52**: (1 mark)
- (k) to have **persistently exercised the powers of entry** conferred by section 53 in an **unreasonable manner**: (1 mark)
- (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. (1 mark)

Question 3

Part 2, Subpart 4 of Part 3 and Subpart 4 of Part 4 Land Transfer Act 2017

Total 20 marks

- 3a. Section 11(1) Land Transfer Act 2017 identifies eight items that the Registrar must record in the Register. List these eight items. (4 marks)

The Registrar must record in the register—

- (a) the **particulars of land** that is subject to this Act: (½ mark)
- (b) the **particulars of estates and interests in land** that are registered under this Act: (½ mark)
- (c) the **names of the persons registered as owners** of those estates and interests: (½ mark)
- (d) the **particulars of instruments or other matters that are registered** or noted under this Act and that benefit, burden, or affect those estates or interests: (½ mark)
- (e) the **instruments themselves**: (½ mark)
- (f) any **certificate, notation, endorsement, memorandum, information**, or matter that relates to registered estates and interests in land and that is required to be recorded in the register under this Act or any other enactment: (½ mark)
- (g) the **plans deposited** under this Act: (½ mark)
- (h) any **prescribed information**. (½ mark)

- 3b. Section 12(1) Land Transfer Act 2017 sets out five different types of estates for which the Registrar may create a record of title. Identify at least four of these different types of estates. (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)

- 3c. Nine items are listed under Section 12(2) Land Transfer Act 2017 that must be contained within a record of title. List six of these items. (3 marks)

A record of title must comprise —

- (a) a **unique identifier** for the record of title: (½ mark)
- (b) a **description of the land** to which the record of title relates: (½ mark)
- (c) a **description of the type of estate or interest** in the land: (½ mark)
- (d) a **reference to any instrument** or other matter **creating the estate or interest or subdividing the land**: (½ mark)
- (e) a **reference to any record of title** or any **former document** of title from which the record of title derives: (½ mark)
- (f) the **name of the registered owner** of the estate or interest: (½ mark)
- (g) for each registered or noted instrument affecting the estate or interest,—

- (i) a **unique identifier**; and
- (ii) a **description of the type of instrument**; and
- (iii) the **date and time of its registration or notation** and any other information necessary to determine its priority: (½ mark)
- (h) any status affecting the **legal capacity of the registered owner** of the estate or interest notified to the Registrar under this Act or any other enactment: (½ mark)
- (i) **any other information** —
 - (i) that must be included under any other enactment; or
 - (ii) that the Registrar considers necessary to give effect to this Act or any other enactment. (½ mark)

3d. In terms of access to the register as stated under Section 40(1) Land Transfer Act 2017, what must the Registrar provide on request and on payment of the prescribed fee or charge? (1 mark)

The Registrar must, on request and on payment of the prescribed fee or charge, —

- (a) provide a person with a **copy of an instrument registered** or noted in the register or that forms part of the register: (½ mark)
- (b) provide a person with a **copy of a record of title**. (½ mark)

3e. Section 108(1) Land Transfer Act 2017 deals with the registration and surrender of easements and *profits à prendre*. List two of the documents and/or instruments either of which may be used in order to undertake the above. (1 mark)

The following must be used in order to register an easement or a *profit à prendre* or the surrender of an easement or a *profit à prendre*:

- (a) an **easement instrument** under section 109; or (½ mark)
- (b) a **transfer instrument** under section 73; or (½ mark)
- (c) in the case of an easement, a **deposit document** under section 110 together with the deposit under section 224 of a plan to which the deposit document relates. (½ mark)

3f. A deposit document used to create or surrender an easement on deposit of a plan must be in a form specified by the Registrar. What are the matters that need to be specified in a deposit document, as required under Section 110(3) Land Transfer Act 2017? (2 marks)

The matters that must be specified are —

- (a) the **burdened land** and, except for an easement in gross, the **benefited land**, including reference to the register; and (½ mark)
- (b) the **nature and extent of the easement**; and (½ mark)
- (c) if the easement is being created, the rights and powers that will apply to the easement by reference, without modification, to rights and powers —
 - (i) **prescribed by regulations**; or (½ mark)
 - (ii) **contained in a memorandum registered under section 209**. (½ mark)

- 3g. When considering if an easement can be extinguished if it is redundant under Section 115(2) Land Transfer Act 2017, what two considerations apply? (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)

- 3h. For the purpose of Section 197 Land Transfer Act 2017 (Subpart 4), what is the meaning of a **limited certificate of title**? (1 mark)

(a) is **limited as to parcels or title, or both**

- 3i. Section 201(1) Land Transfer Act 2017 sets out two methods by which the Registrar may remove the limitations from a limited record of title. Identify both these methods. (2 marks)

The Registrar may —

- (a) **note on a limited record of title** that the record of title is **no longer subject to the limitation**; or (1 mark)
(b) **create a replacement record of title** that is not subject to the limitation. (1 mark)

- 3j. What matters must the Registrar have regard to, when satisfying himself or herself that limitation can be removed from a record of title, as stated in Section 201(3) Land Transfer Act 2017. (2 marks)

The Registrar, in satisfying himself or herself that the limitation can be removed from the record of title,—

- (a) must have regard to—
(i) any action taken to **comply with any requisition or requirement** in the Registrar's minutes in relation to the record of title; and
(ii) any other matters the Registrar considers material; and (1 mark)
(b) may decide that **compliance with a requisition or requirement** has become **unnecessary because of the lapse of time**. (1 mark)

Question 4

Parts 14 and 16 Te Ture Whenua Maori Act 1993

Total 20 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. 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.**

- 4c. 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 how the two orders apply? (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)

- 4d. Pursuant to Section 315(1) Te Ture Whenua Maori Act 1993, list the categories of land the Maori Land Court may create easements over and for what purpose. (3 marks)

The court may—

- (a) create easements over **any land to which this Part applies for the purpose of being annexed to or used or enjoyed with any other land;** or (1 mark)
- (b) create easements over **any General land for the purpose of being annexed to or used or enjoyed with any land to which this Part applies;** or (1 mark)
- (c) create **easements in gross over any land to which this Part applies.** (1 mark)

- 4e. What consent is required under Section 317 Te Ture Whenua Maori Act 1993 before roadways can be laid out in the following circumstances?
- a) Over any Maori freehold land
 - b) Over General land
 - c) Over Crown land
 - d) Connecting with any State highway. (4 marks)

- (1) The court shall not lay out roadways over any **Maori freehold** land unless it is satisfied that the **owners have had sufficient notice of the application** to the court for an order laying out roadways and sufficient opportunity to discuss and consider it, and that there is a sufficient degree of support for the application among the owners, having regard to the nature and importance of the matter. (1 mark)
- (3) The court shall not lay out roadways over any **General land** without the **consent of each owner**. (1 mark)
- (4) The court shall not lay out roadways over any **Crown land** without the **consent of the Commissioner of Crown Lands**. (1 mark)
- (5) The court shall not lay out roadways connecting with any **State highway** without the **consent of the New Zealand Transport Agency** and the territorial authority for the district in which the connection would be effected. (1 mark)

- 4f. Section 320(4) Te Ture Whenua Maori Act 1993 states that no roadway shall be declared a road or street, without the consent in writing from two authorities. Who are these two authorities and the principal purposes of their respective control? (2 marks)

No roadway shall be declared a road or street pursuant to this section without the consent in writing of—

- (a) the **New Zealand Transport Agency and the territorial authority** for the district in which the land is situated, in the case of a **State highway** or a proposed State highway; or (1 mark)
- (b) the **territorial authority** for the district in which the **road** or proposed road is situated. (1 mark)

- 4g. Section 326B Te Ture Whenua Maori Act 1993 allows the Court to make an order granting reasonable access to landlocked Maori land. List at least four 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)

4h. State the two situations, pursuant to Section 332(1) Te Ture Whenua Maori Act 1993, where the Maori Land Court, or the Registrar, can require a survey of any Maori land to be undertaken. (2 marks)

- (a) the **court** is of the opinion that a **survey of any Maori land** is necessary or expedient for the **completion of any order** of the court or for the exercise of any powers or jurisdiction of the court in relation to that land; or (1 mark)
- (b) the **court, on the application of any owner of any Maori land**, makes an order requiring a survey of any Maori land to be made for any purpose, - (1 mark)

4i. Section 332(1) Te Ture Whenua Maori Act 1993, also states that the Maori Land Court, or the Registrar, may transmit to the Chief Surveyor of the district in which the land is situated a document for such a survey to be undertaken. What is this document? (1 mark)

“the court or the Registrar may transmit to the Chief Surveyor of the district in which the land is situated a **requisition for such a survey**, together with such particulars as to the nature or purpose of the survey as may be necessary”.

Question 5

Part 21 Local Government Act 1974 and Schedule 5 Land Transfer Regulations 2018

Total 20 marks

5a. According to Section 315 Local Government Act 1974, what effects do accretion and erosion have on a road along the bank of a river or stream or along the mean high-water mark of the sea or along the margin of any lake? (2 marks)

(4) Every **accretion** to any 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 caused by the action of the river or stream or of the sea or lake **shall form part of the road.** (1 mark)

(5) Where any 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 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.** (1 mark)

5b. Section 319 Local Government Act 1974 grants Council general powers in respect of roads. Identify ten of these powers. (5 marks)

The council shall have power in respect of roads to do the following things:

(a) to **construct, upgrade, and repair all roads** with such materials and in such manner as the council thinks fit: (½ mark)

(b) [Repealed]

(c) to **lay out new roads:** (½ mark)

(d) to **divert or alter the course of any road:** (½ mark)

(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: (½ mark)

(f) to **determine what part of a road shall be a carriageway,** and what part a footpath or cycle track only: (½ mark)

(g) to **alter the level of any road** or any part of any road: (½ mark)

(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: (½ mark)

(i) to **make and use a temporary road upon any unoccupied land** while any road adjacent thereto is being constructed or repaired: (½ mark)

(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: (½ mark)

(k) to **sell the surplus spoil of roads:** (½ mark)

(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. (½ mark)

5c. Section 342 Local Government Act 1974 deals with the stopping and closing of roads. Explain the two differences between stopping a road and closing a road, as provided for in that section of the Act. (1 mark)

The council may, in the manner provided in Schedule 10, —

(a) **stop any road** or part thereof in the district:

- provided that the council shall not proceed to stop any road or part thereof in a rural area unless the prior consent of the Minister of Lands has been obtained; or (½ mark)
- (b) **close any road to traffic** or any **specified type of traffic** (including pedestrian traffic) on a **temporary basis** in accordance with that schedule and impose or permit the imposition of charges as provided for in that schedule. (½ mark)

5d. When disposing of land not required for road, pursuant to Section 345(1) Local Government Act 1974, what four actions may Council consider taking to dispose of that land? (4 marks)

- (a) either—
- (i) **sell that part to the owner or owners of any adjoining land** for a price to be fixed by a competent valuer appointed by the council to value that part; or
 - (ii) grant a lease of that part to the owner or owners of any adjoining land for a term and at a rental and subject to such conditions as the council thinks fit;— and, if no such owner or owners is or are willing to purchase the land at the price fixed or, as the case may be, take a lease of that part for the term and at the rental and subject to the conditions fixed, the council may sell or lease the land by public auction or private tender; and a conveyance, transfer, or lease under the seal of the council shall constitute a valid title to the land; or (1 mark)
- (b) **apply that part, or any part thereof, to any purpose to which the council may apply land**, either under this Act or any other enactment; or (1 mark)
- (c) **grant a lease of that part, or any part thereof, for such term and on such conditions as it thinks fit for use for any purpose to which the council may apply land**, either under this Act or any other enactment; or (1 mark)
- (d) **transfer that part, or any part thereof, to the Crown for a public reserve or for addition to a public reserve or for any purpose of public convenience or utility or as Crown land subject to the Land Act 1948**. (1 mark)

5e. Schedule 5 Land Transfer Regulations 2018 classifies easements by reference to certain rights. List six of the seven rights referred to in the schedule. (3 marks)

- (a) a right to convey water: (½ mark)
- (b) a right to drain water: (½ mark)
- (c) a right to drain sewage: (½ mark)
- (d) a right of way: (½ mark)
- (e) a right to convey electricity: (½ mark)
- (f) a right to convey telecommunications: (½ mark)
- (g) a right to convey gas. (½ mark)

5f. Describe what the terms “benefited land” and “burdened land” means in relation to an easement, as specified in the Schedule 5 (Interpretation) Land Transfer Regulations 2018. (2 marks)

benefited land, in relation to an easement that benefits land, means the land that **takes the benefit of the easement** and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document (1 mark)

burdened land, in relation to an easement, —

- (a) means the **land over which the easement is registered** and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document; and
- (b) includes the easement area (1 mark)

5g. A grantee can exercise his or her rights of access to undertake works in respect to an easement, pursuant to Schedule 5(12) Land Transfer Regulations 2018. What actions must the grantee observe to access the property and follow when undertaking the required works? (3 marks)

- (2) However, the grantee must first **give reasonable notice** to the grantor. (½ mark)
- (3) The grantee must ensure that as **little damage or disturbance** as possible is caused to the burdened land or to the grantor. (½ mark)
- (4) The grantee must ensure that all work is **performed properly**. (½ mark)
- (5) The grantee must ensure that all work is **completed promptly**. (½ mark)
- (6) The grantee must immediately **make good any damage done** to the burdened land by **restoring the surface of the land** as nearly as possible to its former condition. (½ mark)
- (7) The grantee must **compensate the grantor for all damage caused by the work** to any crop (whether ready for harvest or not) or to any buildings, erections, or fences on the burdened land. (½ mark)

Question 6

Parts 1 and 5 and Subpart 3 of Part 6 Property Law Act 2007

Total 20 marks

- 6a. List the meanings of the following terms provided in Section 4 (Interpretation) Property Law Act 2007, for
- (a) Land
 - (b) Encumbrance
 - (c) Lease
 - (d) Mortgage
- (4 marks)

Land includes all estates and interests, whether freehold or chattel, in real property (1 mark)

Encumbrance includes a mortgage, a trust securing the payment of money, or a lien (1 mark)

Lease means a lease of property, whether registered or unregistered, and includes a short-term lease and an agreement to lease (1 mark)

Mortgage includes —

- (a) any charge over property for securing the payment of amounts or the performance of obligations; and
- (b) any registered mortgage; and
- (c) any mortgage arising under a mortgage debenture (1 mark)

- 6b. Section 276 Property Law Act 2007 deals with the effect of covenants made by two or more covenantors. How are these covenantors bound by the covenants? (1 mark)

A covenant made by 2 or more covenantors binds both or all the covenantors jointly and severally, unless a contrary intention appears in the instrument or in the short-term lease not made in writing.

- 6c. Section 277A(1) Property Law Act 2007 deals with covenants becoming void when the principal purpose of the covenant is to stop land being used for housing from some classes of people. What are these classes of people? (3 marks)

A covenant concerning land is void if a principal purpose of the covenant is to stop the land being used for housing for—

- (a) people on **low incomes**; or (1 mark)
- (b) people with **special housing needs**; or (1 mark)
- (c) people whose **disabilities mean that they need support or supervision** in their housing. (1 mark)

- 6d. As covered in Section 307C(1) Property Law Act 2007, a covenant in gross is binding in equity to whom? (2 marks)

A covenant in gross is binding in equity on —

- (a) **every person who becomes the owner of the burdened land**, —
(i) whether by acquisition from the covenantor or from any of the covenantor's successors in title; and
(ii) whether or not for valuable consideration; and
(iii) whether by operation of law or in any other manner; and (1 mark)
(b) **every person who is for the time being the occupier of the burdened land**. (1 mark)

- 6e. Pursuant to Section 307C(2) Property Law Act 2007, at what point does a covenant in gross cease to be binding on a person? (1 mark)

A covenant in gross ceases to be binding on a person referred to in subsection (1) when that person ceases to be the owner or occupier of the burdened land, but without prejudice to that person's liability for breach of the covenant arising before that person ceased to be the owner or occupier of the land.

- 6f. Subpart 3 of Part 6 Property Law Act 2007 deals with landlocked land. What does the term "reasonable access" mean, as spelt out in Section 326 (Interpretation) of that Act? (1 mark)

Reasonable access, in relation to land, means physical access for persons or services of a nature and quality that is reasonably necessary to enable the owner or occupier of the land to use and enjoy the land for any purpose for which it may be used in accordance with any right, permission, authority, consent, approval, or dispensation enjoyed or granted under the Resource Management Act 1991.

- 6g. When an owner applies for an order granting reasonable access to landlocked land, under Section 327(2) Property Law Act 2007, who must the application be served on, unless the court directs otherwise? (4 marks)

Unless the court directs otherwise, the application must be served on—

- (a) the **owner of each piece of land adjoining the landlocked land**; and (1 mark)
(b) every person who—
(i) has an **estate or interest in the landlocked land** or in any other piece of land (whether or not adjoining the landlocked land) that may be affected by the granting of the application; or (1 mark)
(ii) **claims to be a party to**, or to be entitled to a benefit under, **any instrument relating to land** of the kind specified in subparagraph (i); and (1 mark)
(c) the **relevant territorial authority**. (1 mark)

- 6h. Section 328(2) Property Law Act 2007 identifies four categories of land whereby the court must not make an order pursuant to subsection (1) when granting reasonable access to landlocked land. List the four categories of land this applies to. (2 marks)

The court must not make an order under subsection (1) granting reasonable access to landlocked land over—

- (a) land that is **part of a national park** within the meaning of the National Parks Act 1980; or (½ mark)
- (aa) any part of **Te Urewera land**, as defined in section 7 of the Te Urewera Act 2014; or (½ mark)
- (b) land that is a **public reserve** or part of a public reserve within the meaning of the Reserves Act 1977; or (½ mark)
- (c) a **railway line** within the meaning of the New Zealand Railways Corporation Act 1981. (½ mark)

6i. Pursuant to Section 329 Property Law Act 2007, what matters must a Court have regard to, when determining an application for an order for reasonable access? (2 marks)

In determining an application for an order under section 328, the court must have regard to

- (a) the **nature and quality of the access** (if any) to the landlocked land at the time when the applicant purchased or otherwise acquired the land: (½ mark)
- (b) the **circumstances under which the land became landlocked**: (½ mark)
- (c) the **conduct of the parties**, including any attempts they have made to negotiate reasonable access to the landlocked land: (½ mark)
- (d) the **hardship that would be caused to the applicant by the refusal of an order**, in comparison with the hardship that would be caused to any other person by the making of an order: (½ mark)
- (e) any **other relevant matters**. (½ mark)