

Conversion of perpetual leases to freehold

Recommended practice

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Approval

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| Director of Surveys | Russell Priebbenow | 12/10/2018 |

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1 Perpetual leases requiring a new survey plan at conversion to freehold

This practice describes a range of alternative methods to survey a perpetual lease to enable a freeholding action to occur, where the current plan is not suitable. Conversely, this practice can be used to assess an existing perpetual lease survey plan to determine if the current plan is acceptable for the freeholding action. It does not follow that this recommended practice can be applied more generally, either to land that has been surveyed in accordance with this practice or to other freehold land.

There is currently a standard for surveys of land in remote areas (CSR¹ Standard 3.34.2 *Specifications for surveys of land in remote area*) which could be applied in many cases. Except where indicated in this document, it is not intended that the standard of survey be any less than in CSR¹ Standard 3.34.2. Where it is indicated that a lesser standard may be applicable, this will need to be by way of an exemption² from the relevant standard in accordance with Sections 18 to 20 of the SMI Act.

Notwithstanding the methodology set out here, surveyors have the option to apply for an exemption² from the standards where it is not practical to comply with them, and propose other methods that give satisfactory certainty in the location of boundaries and unambiguous definition of the land.

2 General approach

The approach to be taken in preparing a survey plan for the freeholding of a perpetual lease is to ensure that there is sufficient survey information shown on the plan to enable the corners of the land to be marked.

For corners that have not been marked previously, this is in effect treating the corner as surveyed if there is sufficient dimensional information on the plan to accurately describe its relationship to other marks (i.e. it is no different to a previously marked corner where the original mark is gone).

[Exemption required²]

It is essential that surveyors research the material relevant to the definition of any unsurveyed boundaries, including the legal description and the departmental file.

3 Dimensions

CSR¹ Standard 3.18 *Dimensions* applies to survey plans for conversion.

4 Boundaries

CSR¹ Standard 3.34.2 permits boundaries in remote areas to be surveyed without running the line. Wherever indirect methods (e.g. imagery, computed boundaries from hand-held GNSS etc) are used to determine dimensions for right line boundaries, the terminal points must be monumented and there

¹ All references to standards within the Cadastral Survey Requirements refer to version 7.1 Reprint 1.

² See Exemption requests section.

needs to be suitable connection of the terminal points to datum. (However, see the section below regarding internal roads).

To satisfy the requirements of the regulations regarding the recording of permanent improvements, an assessment should be made as to whether there are any improvements that are affected by the boundaries.

5 Unmarked secants

CSR¹ Standard 3.18 *Dimensions* accommodates situations where there are unmarked secants on internal roads. In other words, if one side of a road has been surveyed previously, and the road is of a defined width, that is sufficient to define the road.

For external roads, CSR¹ Standard 3.43.1 *Opposite side of road unsurveyed* applies a similar approach, on the condition that the secants have been marked. Under this recommended practice roads or railways that form the external boundary of land are not required to have been marked if the opposite side of the corridor has been surveyed and the corridor is of defined width.

[Exemption required²]

CSR¹ Standard 3.34.2 *Specifications for surveys of land in remote area* may also be applied if the relevant criteria are satisfied.

6 Natural features

Natural features may be utilised for the definition of a boundary, in accordance with CSR¹ Standard 4.17 *Other natural features as boundaries*, including:

- a) the requirement that a points table is required in all situations where a new plan is being prepared; and
- b) the option for deriving the location of the natural feature from imagery, with the usual report requirements.

7 Internal Roads - unsurveyed

7.1 No road formation

If there is no road formation, the dimensions of the road boundaries should be derived from the best available information as per the original intended location of the road corridor. There needs to be a physical connection between these derived dimensions and the existing cadastre – i.e. as a minimum, surveying the intersection of the road with the external boundaries of the parcel.

[Exemption required²]

If there is no road formation, it is not a requirement to consider the future need for the road as part of the freeholding process (i.e. it is not mandatory to investigate whether the road is still required).

7.2 Formed roads

For an unsurveyed, dedicated road of known width, an assessment should be made of the difference between the location of the dedicated road corridor, based on the best available source information, and the physical location of the road formation, to determine whether the road is:

- a) on alignment – they are generally in the same location, and no evidence of change over time;
or
- b) off alignment – there is a significant difference.

There are a range of survey options available under the current CSR¹, including CSR¹ Standard 3.34.2 *Specifications for surveys of land in remote area* if the relevant criteria are satisfied.

7.3 Internal roads – on alignment

Alternatively the location of the formation could be derived from suitably controlled imagery or PPK GNSS, and boundary dimensions derived from those measurements (rounded as appropriate). Regardless of the method used for determining the location of the formation, marks need to be placed at intervals consistent with CSR¹ Standard 3.34.2.

There needs to be a physical connection between these derived dimensions and the existing cadastre – i.e. as a minimum, surveying the intersection of the road with the external boundaries of the parcel. The derived dimensions become definitive, and are shown as 'calc' (where there are numerous dimensions, the 'calc' status can be done by statement on the plan, provided it unambiguously identifies the dimensions to which it applies).

It is the surveyor's responsibility to ensure sufficient accuracy is achieved from the selected methodology (i.e. ensuring that the road formation is fully contained within the derived dimensions). If imagery is used as an information source, its accuracy must be confirmed.

7.4 Internal roads – off alignment

The department's position is that any inconsistency between the legal and physical location of roads is not a consideration as part of the conversion action. However, the lessee may choose to have the misalignment resolved as part of the conversion action. If the lessee chooses to have the inconsistency resolved, the 'on alignment' methods above shall be used, in conjunction with an action for simultaneous road opening and closure.

If the inconsistency is not to be resolved, the dimensions of the road boundaries should be derived from best available information as per the original intended location of the road corridor. There needs to be a physical connection between these derived dimensions and the existing cadastre – i.e. as a minimum, surveying the intersection of the road with the external boundaries of the parcel and placing marks at intervals consistent with CSR¹ Standard 3.34.2. The location of the current formation is to be shown on the plan, to disclose the misalignment.

8 Fences to be adopted

For an unsurveyed boundary that is described in the legal description of the perpetual lease as following a fence, then the following options apply:

1. Survey the boundaries to conventional survey accuracies, with right lines generally following the location of the original fence. In this case the surveyed lines become the boundary.
2. The fence may be measured using a lower-accuracy technique (e.g. RTK with short observation times), with right lines generally following the location of the original fence, if:
 - a. its location is generally consistent with the legal description; and
 - b. there is no evidence that the current fence is not in the 'original' location.

If these conditions apply, the dimensions for the boundary may be derived from the measurements with a suitable notation on the face of the plan.

3. If access to the fence is not practical, the fence may be plotted from the best and current, suitably controlled imagery, if:
 - a. its location can be clearly identified in the imagery;
 - b. its location is generally consistent with the legal description; and
 - c. there is no evidence that the current fence is not in the 'original' location.

If these conditions apply, the dimensions for the boundary may be derived from the imagery with a suitable notation on the face of the plan.

[Exemption required²]

Under options 2 and 3 it is appropriate for fences to vary somewhat from the lines joining the identified fence corners (recognising the practices used in fencing large holdings). The identified fence corners become the “monuments” and the derived dimensions become secondary to the physical fencing. In either case, measurements should be sufficiently accurate to ensure that the location of the boundary is known in relation to improvements close to the boundary, and the measurements must have a survey uncertainty of <1m for option 2 and ≤5m for option 3. A notation is required on the face of the plan:

The identified fence corners between Stn X and Stn Y define the location of the boundary.

If there is some doubt as to the degree of consistency between the fencing and the legal description, agreement is required between adjoining owners if the fencing is to be adopted. In this case appropriate dealings are required to record the agreement and its effect on adjoining tenure³.

³ Where a plan is being prepared for a lease (Lease A) and the determination of a boundary involves the consent of the adjoining lessee, the adjoining lease (Lease B) will be the subject of an adjustment notice approved by the Minister (or the Minister's delegate) under Section 360A(3)(d) of the Land Act 1994. The purpose of the adjustment notice is to give effect to the definition of the common boundary for Lease B. The existence of the adjustment notice will be recorded as an administrative advice against the lease title for Lease B. Evidence of Lessee A's consent will be by their signature on the reverse of the plan. Evidence of Lessee B's consent will be in written form accompanying the plan (e.g. a signed letter).

9 No survey evidence

If a boundary has never been surveyed, and there is no information identifying the boundary or anything particular on the ground identifying the boundary then the boundary must be surveyed and marked in accordance with the CSR¹, noting the flexibility provided by CSR¹ 3.43.2 *Other unsurveyed boundaries*. CSR¹ Standard 3.34.2 may be applied if the relevant criteria are satisfied.

However, for remote areas of the parcel where ground survey and marking is not practical, the boundary may be defined by dimensions without physical marking of the corner, as long as the survey contains a suitable connection to datum and to the remainder of the survey.

[Exemption required², if beyond the scope of CSR¹ Standard 3.43.2 *Other unsurveyed boundaries*]

10 Exemption requests

There are a number of situations (see boxed items) where this recommended practice indicates that it may be acceptable to adopt a practice that differs from that required by the CSR¹, particularly the requirements of CSR¹ Standard 3.23 *Marking*. To achieve this, the surveyor will need to apply to the chief executive for an exemption from complying with the standard in accordance with Sections 18 to 20 of the SMI Act.

The grounds for seeking an exemption are set out in subsection 18(1): “If a surveyor, surveying associate or surveying graduate reasonably believes it is impractical for the person to comply with a survey standard for a particular survey”.

Subsection 18(2)(b) requires applications to address this point: “as briefly as possible, explain why the person believes it is impractical for the person to comply with the survey standard for the survey”.

Possible reasons why it is impractical to mark particular corners include:

- access to the corners is difficult and adequate definition can be provided for the boundary dimensions and corner locations without placing marks;
- although the corner has not been marked, its location is defined in relation to existing surveyed corners in the vicinity, so there is limited additional benefit to be derived from incurring the cost of marking the corner.