

New Zealand Institute of Surveyors

Canterbury Property Boundaries and Related Matters Bill

Supplementary Information for Local Government and Environment Committee

11 February 2016

NZIS: We Are the Future of Location and Measurement

Thank you for the opportunity to present to you today on our submission on the Canterbury Property Boundaries and Related Matters Bill.

My name is Shane Dixon. I am a Licenced Cadastral Surveyor (LCS) under the Cadastral Survey Act 2002 and a Registered Professional Surveyor with the New Zealand Institute of Surveyors (NZIS). I am also the Chairperson of the Canterbury branch of NZIS. I have been practising as a surveyor for 18 years and in Christchurch for the past 10 years.

With me today is Mark Allan our elected national President of NZIS. Mark is a Licensed Cadastral Surveyor and Registered Professional surveyor. He has been practicing as a surveyor for 40 years, including 30 years in Christchurch.

We are present before you today on behalf of the wider NZIS membership.

The New Zealand Institute of Surveyors is New Zealand's leading advocacy body for professions involved in location and measurement sciences. This includes a wide variety of surveying specialisations¹ as well as spatial scientists and surveying engineers. These professions all deal somewhat in the power of 'where'. Founded in 1888, the Institute celebrated its 127th anniversary this year with a membership in excess of 1300 professionals.

Our purpose is articulated in our vision to aspire to "An internationally recognised professional organisation that promotes growth, innovation, excellence and community needs for all facets of surveying and spatial science in New Zealand."²

Although some of the members may remember us from our submission and presentation on the Christchurch Regeneration Bill, we have also been involved in the LINZ Sector Leaders Working Group and the Canterbury Working Group for consultation on the Bill before us. We state with confidence that we are the leading body of experts guiding the content of it and though we have welcomed the introduction of the Bill as a solution to the many issues being faced by surveyors in Canterbury over the past 6 years, we do have a number of concerns about it in its current form.

¹ Such as hydrographic, cadastral, and land development and urban design specialists.

² See the NZIS Strategic Plan 2015-2020

While we continue to support our original submission we take the opportunity to make further comment on those parts we find most concerning about the bill and to clarify our position. Those parts are movable water boundaries, conflict resolution, and indemnity and liability.

A. Movable Water Boundaries

We wish to make a brief comment on the issue of movable water boundaries – although it is not our primary concern in this presentation.

At the time of making our submission, the treatment of movable water boundaries (or what was under the heading ‘Issue 3’) was an issue of considerable debate. The recommendations made to the Committee represented a consensus of membership views. In brief those recommendations were:

1. That expert legal advice be obtained to determine if the proposed wording of Clause 7(2) will over-ride established common law principles in dealing with the movement of moveable water boundaries due to avulsion.
2. If so, then moveable water boundaries should be specifically excluded from the provisions of Clause 7(2).

Since making these recommendations to you our discussions have evolved. Essentially, whilst we still stand by the first recommendation that legal advice be sought, we no longer believe that the second recommendation should be included in our submission. The majority of NZIS members do not believe that case law exists to confirm that the movement of water boundaries in greater Christchurch can be considered avulsion. However, this should be clarified by expert legal advice. Notwithstanding this, the treatment of natural water boundaries should not conflict with the key principle of the Bill: that legal boundaries in greater Christchurch have moved with land movement caused by the Canterbury earthquake sequence.

B. Conflict Resolution

An issue that the membership felt incredibly strongly about in the Bill was that of potential conflicts and how to address them. There are over 300 land survey conflicts identified to date, and there will likely be more discovered in future. NZIS strongly urges the committee to address the lack of provision for the resolution of conflicts in the Bill. We supplement our original recommendations to you as follows:

1. The establishment of a process for resolution of conflict to property owners, initiated by the Registrar General of Land and/or Surveyor General, in circumstances where there is a real loss of property rights (not limited to certificate of title matters) or where a loss of property rights is not able to be addressed under the Land Transfer Act 1952 (LTA 1952).
2. Amending Clause 8(3) to include a boundary conflict resolution process initiated by the Surveyor General and/or the Registrar General of Land where those available under the LTA 1952 are unable to be applied.
3. Provide for compensation to property owners in circumstances where there is a loss of real property rights not necessarily limited to certificate of title matters.
4. Obligate surveyors to notify LINZ of boundary conflicts when they are encountered during their normal business.

The Bill is primarily about clarifying the law relating to locating property boundaries on land affected by movement and about addressing consequential problems; such as increasing costs for property owners and delays to rebuilding work. While the Bill provides the much-needed clarity on boundary determination it falls short on addressing: how the conflicts will be resolved; how costs to property

owners will be minimised, and; how delays to the rebuilding works will be avoided. The effect of deferring a resolution of these problems to some later time will result in any resolutions happening at much higher costs and, as much larger problems that will be infinitely more difficult to fix. This is:

- a. Not ideal for government;
- b. Not ideal for the public; and
- c. Not ideal for us.

We strongly urge the Committee to include a resolution process. Regardless of what kind of process is established, the Surveyor General, Land Information New Zealand and Registrar General of Land must be integrally involved as decision makers and advisors: they are experts in this area and maintain a position of independence that is required in order to make such a process genuine. This also assists in avoiding any potential court process.

We submit a proposed new Clause which supports our recommendations and addresses the consequential problems, as desired by the Bill. Clause 8A is, as follows:

8A *Removal of boundary conflict*

- 1) *When, in the act of carrying out their normal business, a Licensed Cadastral Surveyor identifies to their satisfaction that a boundary conflict (as defined by section 8(2)) exists, then they must notify the Surveyor-General and/or Registrar General of Land in writing.*
- 2) *Where it appears to the satisfaction of the Surveyor-General and/or Registrar General of Land that a boundary conflict as defined by section 8(2) exists then, they must take action to remove or resolve the conflict.*
- 3) *To satisfy subsection (2) they must –*
 - a. *Give notice to any person appearing to be affected and give a reasonable period for any response; and*
 - b. *Commission and approve a boundary adjustment that removes a boundary conflict (if necessary); and*
 - c. *Cancel or correct any computer register and, if appropriate, create a new computer register; and*
 - d. *Pay, remedy or otherwise provide compensation to any person adversely affected by the removal or resolution of the conflict.*
- 4) *To avoid doubt, this section applies to –*
 - a. *Boundary conflict that relates to anything registered under Land Transfer Act 1952; or*
 - b. *Any consequential loss of property or other right that does not relate to anything registered under the Land Transfer Act 1952 and where the consequential loss results from a boundary adjustment that removes a boundary conflict.*

NZIS should be a key stakeholder involved in the development of the details of any conflict resolution process.

C. Indemnity and Liability

We reinforce to you our position that under no circumstances should this bill indemnify surveyors for negligent work or work not done in good faith. Further it should only cover work that is done by a Licensed Cadastral Surveyor or those working under their direct supervision.

We supplement our original recommendations to you on indemnity and liability as follows:

1. Further clarity and definition in the terminology to clearly state the limits of what and who the Bill intends to indemnify.
2. The removal of liability provided in Clause 10 is limited to Licensed Cadastral Surveyors (and those working under their direct supervision).
3. The inclusion of wording to explicitly exclude negligent work from being indemnified. We suggest including a clause 1(c): *“that was done in good faith and without negligence.”*

We believe that if the Committee does not make these changes, there would be a significant loss of confidence in our profession and also the New Zealand boundary definition system.

We submit an amended wording for Clause 10:

10 No liability for certain earlier surveys and boundary determinations

- 1) *No Licensed Cadastral Surveyor, or person working under their direct supervision, is liable for anything merely because a cadastral survey or boundary determination of land in greater Christchurch-*
 - a. *That was done in the interim period was done on the basis that boundaries did, or did not, move with the movement of land caused by the Canterbury earthquakes; or*
 - b. *That was done before the commencement of this Act is inconsistent with the determination of boundaries in accordance with Section 7; or*
 - c. *That was done in good faith and without negligence.*
- 2) *To avoid doubt, this section removes-*
 - a. *Any liability under section 52 of the Cadastral Survey Act 2002 or section 7 of the Crown Grants Act 1908; and*
 - b. *Any liability for a determination of compliance under section 9(a) of the Cadastral Survey Act 2002.*

Conclusion

Again, we thank you for your time today. The NZIS membership has put a lot of effort into our submission and this presentation as we are very passionate about supporting the best outcome possible for the property issues in Canterbury. At this point both Mark and I would be happy to take any questions you may have.

For more information please contact:

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