



NEW ZEALAND
LAW SOCIETY

NZLS EST 1869

Canterbury Property Boundaries and Related Matters Bill

15/01/2016

Submission on the Canterbury Property Boundaries and Related Matters Bill

- 1.1. The New Zealand Law Society supports the remedial intention of the Canterbury Property Boundaries and Related Matters Bill (Bill) and the option adopted to address the issue of boundary movements caused by shallow land movements from the Canterbury earthquake sequence.
- 1.2. The Law Society wishes to raise one concern with the Bill, where the drafting appears contrary to the Bill's stated intention and is likely to give rise to complications in implementation. This relates to the treatment of the portion of surveys completed subsequent to the earthquakes but before this legislative solution comes into effect ("the interim period"), where surveyors completed deposited plans on the basis of the previously accepted principle that boundaries did not move when shallow land movements occurred.
- 1.3. Under the Bill, boundaries will be deemed to have moved in accordance with the shallow land movements. A portion of surveys completed in the interim period will be inconsistent with this approach, which may result in conflicts with neighbouring properties and issues with the reliability of the cadastre.
- 1.4. During consultation on the proposed legislation, LINZ suggested there would be mechanisms to remedy these conflicts, especially as they would be limited in number and readily identifiable. However, clause 8 of the Bill, whilst acknowledging the potential for issues, does not provide a definitive remedy for affected persons.

Clause 8 states:

- 8 Approved interim survey continues to determine boundaries
- (1) A cadastral survey (an **approved interim survey**) continues to determine the boundaries of any land surveyed within greater Christchurch if—
 - (a) it was done in good faith and without negligence in the interim period; and
 - (b) its cadastral survey dataset was determined to be compliant under section 9(a) of the Cadastral Survey Act 2002 in the interim period.
 - (2) However, this Act does not remove any conflict (a **boundary conflict**) between—
 - (a) the boundaries determined by an approved interim survey; and
 - (b) any boundaries as redefined by **section 7** or as determined by another approved interim survey.
 - (3) **Subsection (1)** does not prevent a boundary conflict from being resolved, such as by a process under the Land Transfer Act 1952 if the conflict relates to anything registered under that Act; see —

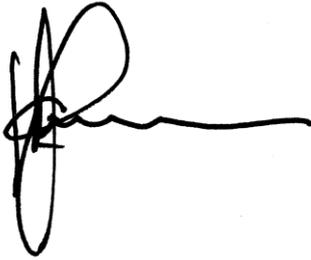
- (a) section 81 of that Act, which gives the Registrar-General of Land a power to correct a computer register:
- (b) section 172 of that Act, which gives a person who sustains certain losses a right to sue the Crown for damages.

- 1.5. Clause 10 however excludes liability for an interim survey or boundary determination on the basis that it is inconsistent with the approach mandated by the Bill.
- 1.6. Clauses 8 and 10 do not resolve the concerns with plans completed in the interim period. While clause 8(1) specifically approves plans completed in the interim period, clause 8(2) acknowledges that there will be boundary conflicts but does not provide a means of resolving them. The only reference to a possible solution is in clause 8(3), which refers to sections 81 and 172 of the Land Transfer Act 1952. Those sections cover corrections to title for misdescription, fraud, or a mistake or misfeasance. There is no specific reference to section 80 of the Land Transfer Act, although this is the section that gives a power to correct errors and supply omissions in titles.
- 1.7. However, given that clause 8(1) may have the effect of ratifying the interim surveys, it is not clear whether or how sections 80, 81 or 172 of the Land Transfer Act would be applied. As noted, clause 10 of the Bill also removes liability for these surveys and it is therefore not clear whether compensation of any form would be available for persons adversely affected by the approved surveys, including persons owning or affected by buildings that subsequently become encroaching structures.
- 1.8. These uncertainties create a problem for the certainty and credibility of the cadastre that is different from the one the Bill is designed to fix, albeit smaller in scale.

Recommendation:

- 1.9. The Law Society recommends the Bill be amended:
 - 1.9.1. **Either** to provide that a conflict between an interim survey and a survey under clause 7 (or between different interim surveys) constitutes an error or misdescription under sections 80 or 81 and is a mistake in the register for the purposes of compensation under section 172 (if those sections are intended to be used to address the boundary conflict issue); **or**
 - 1.9.2. To delete references to sections 81 and 172 entirely and create a new self-contained process that will provide for:
 - a) resolving conflicts between neighbours;
 - b) correction of titles; and
 - c) compensation where necessary.

- 1.10. The first option (outlined at [1.9.1]) would be less than ideal as affected persons would still be required to go through the processes in the Land Transfer Act to resolve their position. However, it would at least clarify that the Registrar can correct titles to align with the approach in the Bill and that any loss incurred could be claimed against the Crown.
- 1.11. The Law Society does not wish to appear in support of this submission, but is happy to do so or to meet with officials advising the Committee if that would be of assistance.

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Chris Moore
President
15 January 2016