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Proposed cadastral survey rules for greater Christchurch

The New Zealand Law Society welcomes the opportunity to respond to the *proposed cadastral survey rules for greater Christchurch* consultation document. The Law Society's Property Law Section has reviewed the consultation document and feedback is provided below.

The need for new rules

The consultation document states that new cadastral survey rules are needed to support the Canterbury Property Boundaries and Related Matters Act 2016 (Act), which came into force on 30 August 2016. The Act has introduced new principles for determining boundaries particular to greater Christchurch. Cadastral rules are needed to provide a means to assist surveyors to make judgements about the location of boundaries post-earthquake so that their surveys and cadastral survey datasets are adequate for cadastral and land tenure purposes.

General comments

The consultation document emphasises that it is "important that [the proposed new] rules are a workable and reasonable response to the new law".¹ The Law Society has significant reservations about the proposed rules and recommends that they be redrafted to address the concerns listed below.

It is appreciated that it is not necessary to resurvey most of the properties where boundaries are affected by earthquakes. However, where a survey is required it is important for owners of land to know what they own and to be able to establish their boundaries. When the situation arises for a survey plan to be done – for example, defining a right of way – it should be done correctly with a new title issuing.

The indefeasibility of title is important and vital to the Cadastre. The Law Society considers that the Surveyor Opinions (SOs) will not assist indefeasibility and that the proposed rules will not contribute to restoring the cadastre.

¹ *Proposed cadastral survey rules for greater Christchurch* consultation document, 31 August 2016, LINZ, at p 2.

Specific comments

Proposed Rule 20.7 – Defining underlying boundaries with non-primary parcels

The proposed rule allows a Surveyor Opinion (SO) to take the place of a new title plan and new title in certain circumstances. It is intended that the SO will relate to the earthquake-affected boundary only, and will not be attached to the neighbouring title.

This gives rise to a number of problems:

1. There does not appear to be any guarantee that the SO may be seen on the affected title. The SOs may not readily be available for viewing.
2. Lawyers need to advise their clients on the title and on what they are purchasing. There is no guarantee that the boundaries will be clearly redefined in an SO.
3. Lawyers also need to bring to a client's bank's attention any issues with a title. The SO may not be well received by a bank, thus not allowing a purchaser to purchase a property affected by an SO. This could also reduce the value of the property for the vendor.
4. There may be an SO redefining a boundary on one property, but not on the adjoining neighbour's property. The SO affects the boundary of both properties, and it is therefore essential that it show on the neighbour's property. For example, Property A has an SO on the boundary with Property B. The SO does not show on the title of Property B and the owner of Property B knows nothing about it. This can become an issue in the following circumstances:
 - (a) When the owner of Property B sells, does the purchaser's solicitor now have to search every title with a boundary with Property B to see if there are any SOs?
 - (b) The parties decide to build a fence. The owner of Property A claims that the boundary is in a different place to Property B.
 - (c) The indefeasibility of title is affected, especially for Property B.
 - (d) Is LINZ still going to guarantee a title with an SO on the neighbour's property?

The proposed rule would also allow for the legal description to be amended to include "partially redefined by Deposited Plan XXXXX". This does not define the boundaries of the property. It leaves the property area in question. Can the title still be guaranteed by LINZ?

This description could also put the title back into a situation similar to "limited as to parcels". The value of the property would be significantly reduced, banks may not lend on the title, and also the removal of the limitation may end up as complicated and difficult as a removal of a parcel limitation under section 200 of the Land Transfer Act 1952.

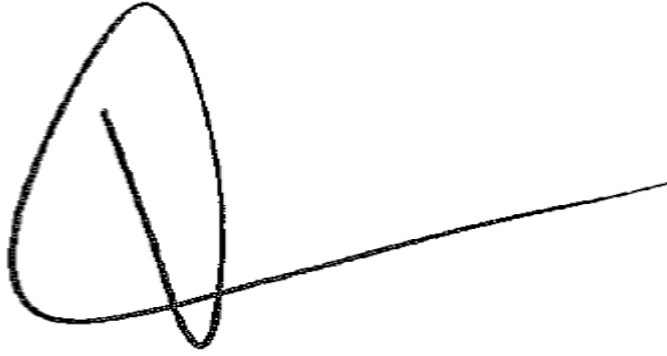
It was apparent at the stakeholder meeting in Christchurch on 20 September 2016 that there was considerable opposition by the surveyors present to the SOs. The Law Society considers that the SOs should not be used.

Proposed Rule 20.8 – Defining underlying boundaries on unit title and cross-lease developments

This proposed rule would allow SOs to be adopted in certain instances. However, due to the temporary nature of an SO, and the fact that it is not necessarily approved by a neighbouring owner, the Law Society recommends that SOs should not be used in these instances.

If further discussion with the Law Society's Property Law Section would assist, please contact the Property Law Section Manager, Katrina Thomas (katrina.thomas@lawsociety.org.nz / 04 463 2963).

Yours faithfully

A handwritten signature in black ink, consisting of a large, stylized loop on the left and a long, thin horizontal line extending to the right.

Andrew Logan
Vice President