

SUBMISSION ON THE CANTERBURY PROPERTY BOUNDARIES AND RELATED MATTERS BILL

General

The Institute of Cadastral Surveying Inc (ICS) believes that the effects this legislation has been designed to address are not the result of the Canterbury earthquakes themselves, but result from the actions and inactions of the Office of the Surveyor-General after those earthquakes.

ICS is concerned that the experience, knowledge and skill levels of the Office of the Surveyor-General have fallen to an all time low, and have reached the point of being insufficient to offer adequate or informed advice to Government on cadastral survey matters, both in relation to the greater Christchurch situation, and more generally nationally.

This concern is highlighted by the guidance document issued by the Surveyor-General on 19 February 2015 (Proposed guidance for surveyors locating boundaries in areas affected by shallow surface movement caused by the Canterbury earthquakes - copy attached), which was to have immediate effect, but proved to be fundamentally flawed, and was withdrawn 9 days later on 27 February 2015.

ICS is of a view that the Bill is not required to regulate cadastral surveying in the aftermath of the Canterbury earthquakes (nor at a national level in the case of clause 11), and is yet another example of the lack of understanding of the basic concepts of cadastral surveying within the Office of the Surveyor-General.

Clause 3

Clause 3 (Purposes) subclause (c) is "maintain public confidence in the cadastre". ICS would submit that this item can safely be removed from the Bill, there being no doubt that the current record which makes up the cadastre is safe. The real question is whether the New Zealand public can have confidence in Land Information New Zealand's (LINZ) management of the cadastre, and this legislation does not appear to concern itself with that issue.

Clause 4

In clause 4 (Interpretation), the term landslip is defined as;

"means the movement by way of falling, sliding, or flowing of materials that -

(a) formed an integral part of the ground before the movement; but

(b) has become loose material after the movement (other than by liquefaction)."

This introduces five terms that also require interpretation:

1. falling

2. sliding
3. flowing
4. loose material, and
5. liquefaction

While the legislation is only intended to apply to the greater Christchurch area, these terms are not defined in other legislation affecting cadastral surveying, and they will therefore establish the best definition of these terms outside the targeted area (eg. in Moreaki) where land movement is well documented.

Clause 8

Clause 8 of the Bill includes the term "Approved interim survey". This is a totally new term to cadastral surveying, and if enacted would need an extensive definition. Alternatively, ICS believes the term itself is the result of poor drafting, and is actually meant to mean an "Approved survey undertaken in the interim period".

In this case clause 8 would be headed;

"Approved survey undertaken in the interim period continues to determine boundaries"

subclause 2(a) would read;

"the boundaries determined by an approved survey undertaken in the interim period; and"

subclause 2(b) would read;

"any boundaries as redefined by section 7 or as determined by another approved survey undertaken in the interim period."

Clause 8(1)(a) also introduces a new term to cadastral surveying, "in good faith". Since this term is immediately followed by the words "and without negligence", the term "in good faith" is redundant, and this should be either removed, or a definition of its meaning included.

Clause 9

Clause 9 of the Bill is making reference to a resource management issue, and ICS believes this can be addressed more successfully through the District Plans of the greater Christchurch area by the inclusion of a statement along the lines of;

Non compliance with a yard, recession plane, coverage, area, or other similar performance standard of the District Plan in the period 4 September 2010 - 31 December 2015 that are the direct result of an incorrect boundary definition survey undertaken during that same period shall deemed to be complying with the District Plan.

Clause 10

Clause 10 of the Bill has to include the most bizarre combination of words ever to appear in New Zealand legislation, "No person is liable for anything". When you consider that in New Zealand legislation the word person also means a company, the effects of this term are simply undeterminable, with the potential for significant unintended consequences certain.

Clause 10(2)(a) would appear to prohibit the Surveyor-General from requiring a Cadastral Surveyor to undertake a survey to correct a mistake in any survey undertaken during the interim period. Such a prohibition is rather strange considering the Surveyor-General's power under s52 of the Cadastral Survey Act 2002 is discretionary. The only possible explanation for this subclause then is to prohibit the Courts from instructing the Surveyor-General to issue a s52 CSA 2002 requirement to correct an inadequate survey undertaken during the interim period.

Similarly, clause 10(2)(b) would appear to prohibit the Courts from requesting the Chief Executive of LINZ to confirm (or otherwise) whether a cadastral survey undertaken in the interim period complied with the regulations in force at the time of survey.

ICS is not sure who clause 10 of the Bill is trying to protect, but it is certainly not the landowners of the greater Christchurch area. ICS can report to the Committee that it's members are not seeking a waiver of liability for the cadastral surveys conducted by them during the interim period, nor do they believe a waiver of liability should be extended to other parties.

ICS believes clause 10 of the Bill is inappropriate, the potential for significant adverse unintended consequences outweighing any benefit the House may see in it.

Clause 11

Clause 11 of the Bill is the only item not directly related to the Canterbury earthquakes, but instead, is of national significance.

The inclusion of this clause in the Bill is another indication of the perilous state of the experience, knowledge and skill levels of the Office of the Surveyor-General. The Surveyor-General presently sets standards for the conduct of cadastral surveys in terms of s7(1)(c) and s49(1)(a) of the Cadastral Survey Act 2002, and develops standards for the integration of those cadastral surveys into the cadastre for the Chief Executive of Land Information New Zealand in terms of s7(1)(e) of the Cadastral Survey Act 2002.

The current standards for cadastral survey (Regulations for the purposes of the Regulations (Disallowance) Act 1989) are 61 pages long, while the Office of the Surveyor-General has produced on an ad-hoc basis a 333 page guidance document on how to interpret those standards, which would obtain legislative backing if clause 11 of the Bill were enacted.

As the Committee will appreciate, to give legislative backing to a 333 page document that is subject to continuous ad-hoc review by the LINZ without regulatory oversight, will have a flow on cost to the New Zealand public. To give some estimate to that cost, a 20 minute increase in time spent by a cadastral surveyor on each of the approximate 12,000 cadastral surveys lodged with LINZ each year has a value in the region of \$600,000, and while the current cadastral survey processing requisition rate is approximately 40% this will also likely increase to say 60%, which will have additional fees of approximately \$300,000 per year.

With the current lack of experience, knowledge and skill of cadastral surveying within the Office of the Surveyor-General, ICS believes it would be highly unwise to extend the powers of the Surveyor-General to include powers removed from regulatory oversight, and that will increase costs to the public.

ICS would also highlight to the Committee that the current standards for the conduct of cadastral surveys are presently undergoing review (ICS met with the Surveyor-General in August 2015 to offer its assistance in that review), and if the Surveyor-General is unhappy with the content of the current standards he promulgates, he should use the due process of that review to address his concerns, rather than resorting to actively legislating for guidelines that are outside that process.

ICS remains committed to assisting the Office of the Surveyor-General to make integrated and comprehensive standards for the conduct of cadastral surveys and their integration into the cadastre within the existing regulatory environment, believing this would deliver better and more cost effective outcomes for the New Zealand public, and asks the Committee not to enact clause 11 of the Bill.

Conclusion

If ICS may offer the Committee some guidance on the underlying rationale for the Bill, that boundaries move with land in earthquake events. This fact is well established in a tectonically active New Zealand, as evidenced by those cadastral surveys undertaken in the Napier region since its earthquake in 1931, and the current regulations for the conduct of cadastral surveys, which require parcel boundaries to be defined **relative** to adjoining parcel boundaries.

ICS believes the landowners of greater Christchurch (or indeed New Zealand in the case of clause 11) will in no way be disadvantaged if this Bill progresses no further. Increasing the experience, knowledge and skill levels of the Office of the Surveyor-General to better understand the legislative environment it administers in relation to cadastral surveying will resolve the issues this Bill has been developed to "solve", without the potential for significant unintended consequences inherent the Bill.

The Institute of Cadastral Surveying Inc asks that the Committee recommend to the House that the Bill be removed from the order of business of the House, its enactment not being in the public interest.