



# Institute of Cadastral Surveying (Inc)

Post Box 775, Timaru, 7940

Ph. (03) 686 9400

Email: [sec@ics.org.nz](mailto:sec@ics.org.nz)

Web: [www.ics.org.nz](http://www.ics.org.nz)

12 April 2017

Hon Mark Mitchell  
Minister for Land Information  
NZ Parliament

## **Cadastral Survey Amendment Rules 2017 (Cadastral survey rules for greater Christchurch)**

We write to you with considerable concern about the above rules, and in particular, LINZ's policy in regard to allowing SO datasets to be lodged defining affected primary parcel boundaries (which avoids subsequent updating of title records).

You are probably aware that the Institute opposed survey legislation following the Christchurch earthquakes, on the basis that informed leadership of the survey profession within LINZ and current survey practice (ie relying on survey monuments and the hierarchy of evidence) would indeed document boundary positions in their correct location.

Notwithstanding the Act is now law, as are the recently gazetted rules supporting that legislation, we seek now to influence the way this legislation is implemented within LINZ and to the wider profession.

## **LINZ Decision Report dated 3 March 2017 – Cadastral Survey Amendment Rules 2017**

We have taken note of this report and are very concerned that the decision making process is flawed, particularly in regard to Section 2.3.1 Cadastral survey datasets – SO versus LT. There are a number of statements in this section of the report which are misleading at best, and are not based on factual information.

Part way through Para 4 of Section 2.3.1 it states that *“The traditional approach is to provide a landowner with a choice of instructing the surveyor to prepare either an SO boundary reinstatement CSD or LT CSD to record the resurvey. In most cases the SO boundary reinstatement CSD is used as it is considerably cheaper and less onerous, noting that this information can be used at a later date in an LT CSD to update the title.”*

These statements do not withstand scrutiny. It has for many many years been the policy of the Surveyor-General, Chief Surveyors, LINZ and its predecessor Departments, that boundary dimension changes from the documentary title as a result of land deformation due to earthquakes required lodgement of a full LT dataset (which enables the title to be updated to reflect the ground truth). There may be occasional divergence to this policy where circumstances are exceptional, eg. where SO datasets are lodged by the Crown as an aid to definition, or where LT datasets have not deposited.

However, there has been relatively strict adherence to this policy by a century of administrators through many earthquake events and Chief Surveyors have been extremely loath to allow changes to the documentary survey dimensions without upgrading the title. To do so on SO datasets, places approved surveys in conflict with the dimensions on “guaranteed” titles and could lead to legal action by landowners, future landowners, Councils, builders, architects etc, insurers, surveyors, lawyers and the Crown. Allowing SO datasets of earthquake deformed boundaries as of

right starts an unprecedented dual official dimension record (survey verses title) of the same boundary (well beyond the “little more or less” to be expected), which in our view is untenable. It has the potential to undermine public confidence in the integrity of the cadastre, place cadastral surveyor credibility at risk with the public and their clients, and encourages poor survey practice.

Only since the advent of the Rules for Cadastral Survey 2010 and the Christchurch earthquakes has the process of lodging an SO dataset of deformed boundaries become prevalent in this particular area of New Zealand (and this could hardly be called traditional). It was not unreasonable in the immediate aftermath of these earthquakes that LINZ needed to make some ad-hoc decisions to enable cadastral transactions to be processed and to enable rebuild activities to proceed with haste. However, the complete policy about-turn by LINZ now reflected in the current legislation, has exacerbated these issues in the meantime. To now continue with this flawed policy of allowing SO datasets to define deformed boundaries seven years after the quakes, needs much more reflection and attention.

Paragraph 5 of Section 2.3.1 states *“To require an LT CSD in every case would no doubt result in aligning the survey and title records (or “heal the cadastre” as some surveyors express it). However, my analysis showed this would be prohibitively expensive and could provide incentives for landowners to not pay for the surveyor to record the survey in the cadastre. In other words, this approach risks the resurvey not being recorded in the cadastre at all. Therefore, I have determined that a new rule is not necessary for greater Christchurch.”*

Furthermore, Section 2.3.4 Clarity of language and the need for guidance goes on to state *“I agree that clear language is important but note survey terminology must reflect the law it supports and use terms that are unambiguous. Although many of the requirements are simple in concept, writing up exceptions to the requirements introduces considerable complexity.”*

To write rules for the “exceptions” is one of the fundamental flaws of the current rules and introduces complexity not sought by surveyors. The default LINZ position should be to require LT dataset lodgement for earthquake deformed boundaries, with the ability for the surveyor to request dispensation when extenuating circumstances apply (eg hardship, loss to the cadastre etc). This makes much better sense than allowing poor survey practice as of right.

We agree that there are additional costs in creating LT datasets for these boundaries. Perhaps LINZ could come partly to the party by dispensing with examination and deposit fees for these datasets. However, these additional costs are the cost of maintaining an unambiguous and authoritative cadastre. If survey work is not lodged as a result it does not have legal status, and does not affect the cadastre.

Paragraph 6 of Section 2.3.1 states *“It is clear there remains confusion among surveyors and lawyers about the relationship between the cadastral survey and land tenure systems, particularly on the role of survey office plans and land transfer plans and how and when they are used to update titles. There is also concern about use of title diagrams for designing land developments. I understand the concerns. However, I believe this is a broader issue for cadastral surveying that is outside the scope of the rules for greater Christchurch.”*

This situation is only prolific in Christchurch. It will soon have effect in Kaikoura, and wherever further significant earthquakes may occur, particularly given the acknowledged economic drivers in submitting only SO plans. This paragraph describes exactly the type of chaos that allowing such a policy encourages – a loss of confidence in the cadastre. It also describes that the Surveyor-General is unable or unwilling to act, or cannot decide what actions to take. To not do so now, risks significant further and more widespread consequences to the cadastre. Only the Surveyor-General can take this action.

In conclusion, we believe the default LINZ position regarding boundaries deformed by earthquake (anywhere in NZ) should be to require submission of LT datasets (including both survey and title information). This requires firm leadership by LINZ to enforce this policy, and only in exceptional circumstances should dispensation from this policy be given. Rules and guidance should not promote poor practice.

We look forward to your response to this issue.

Yours faithfully

Simon Jenkin  
President