

Canterbury Property Boundaries and Related Matters Bill

Government Bill

As reported from the Local Government and Environment Committee

Commentary

Recommendation

The Local Government and Environment Committee has examined the Canterbury Property Boundaries and Related Matters Bill and recommends that it be passed with the amendments shown.

Introduction

The aim of the Canterbury Property Boundaries and Related Matters Bill is to provide certainty, and to support the regeneration of Christchurch, by clarifying the law relating to legal property boundaries in Christchurch. This bill is also intended to maintain public confidence in the cadastre (official record of survey and related information that defines the location of land boundaries).

The 2010 and 2011 Canterbury earthquakes caused land movement that affected property boundaries. About 11,000 properties are estimated to have moved by at least 20 centimetres.

This land movement has caused problems where survey pegs and marks have moved, and their location no longer matches what is recorded on official survey plans. This has made it difficult for surveyors to apply the generally accepted principle that legal property boundaries are fixed except in the case where there is gradual and unnoticeable water boundary movement.

Since the earthquakes, Land Information New Zealand has approved various surveys, but the surveys have not all been done on the basis of the “boundaries moved” principle. The boundaries determined by these approved surveys, if done in good faith and without negligence, would continue to be valid after this legislation has been enacted.

Additionally, this bill would clarify that neither the Crown nor any person would be held liable for decisions made in preparing, in approving, or from relying on surveys during the interim period between the earthquakes and the commencement of this legislation.

To achieve consistent interpretations of, and improve compliance with, the Cadastral Survey Act 2002, this bill would amend that Act to allow the Surveyor-General to issue guidelines to surveyors about standards.

This commentary covers the main amendments that we recommend to the bill.

Definition of Canterbury earthquakes

We recommend amending the definition of “Canterbury earthquakes” in clause 4 to include earthquakes and aftershocks between 14 February 2016 and 14 February 2022.

We believe this change is necessary because early data on the 14 February 2016 Christchurch earthquake suggests that further boundary movement has occurred. Our amendment would help to future-proof the legislation and clarify for surveyors that they must take movement since the 2010 and 2011 earthquakes into account.

We consider that a six-year period would be sufficient. This would allow for the risk profile of Christchurch to be re-evaluated and new legislation to be introduced towards the end of the six-year period if necessary.

Addressing a title conflict

We recommend amending clause 8(1) to clarify that an approved interim survey must satisfy the provisions in both 8(1)(a) and 8(1)(b).

We recommend amending clause 8(3) to clarify how the Land Transfer Act 1952 would operate if a property title conflict arises from an overlap between an interim survey and a survey conducted under clause 7 of the bill.¹ This would be for the purpose of correcting property titles and for compensation under section 172 of the Land Transfer Act.

Dispute resolution framework

Most submitters suggested that the bill include a dispute-resolution framework for resolving disputes about property boundaries.

We consider that existing processes under the Property Law Act 2007 and the Land Transfer Act provide adequate mechanisms to resolve disputes. Conflicts are also able to be resolved by the agreement of both parties.

¹ We received the following advice: *Land Transfer Act remedy process for title conflict* and *Resolving property boundary conflict process example* which provide a visual representation of this process. These documents are available on the Parliament website.

Adding a further dispute-resolution mechanism could work against the desired objective by introducing further complexity. We also note that the overall effect of this bill would be that property boundaries would be located where property owners expect them to be. This should result in fewer potential conflicts and disputes than may have otherwise occurred without this legislation.

For the above reasons, we do not consider it necessary to legislate for a new dispute-resolution framework.

Liability for earlier surveys and boundary determinations

We recommend amending clause 10 to specify that, provided the specified criteria are met, there would be no liability for surveys and boundary determinations done in the interim period (between 4 September 2010 and the commencement of this legislation).

We also recommend amending this clause to clarify that liability exemptions in this clause do not exclude liability for the following that do not relate to the “boundary movement” principle:

- negligence
- bad faith
- misconduct
- non-compliance with statutory obligations and professional standards.

Guidelines to have no legal status

We recommend amending clause 11 to clarify that guidelines issued by the Surveyor-General would have no legal status.

This amendment would clarify that the bill does not propose to change the current process for developing and issuing guidelines. Reference to the issued guidelines in this clause is intended only to emphasise that the Surveyor-General can issue guidelines.

Application of the definition of landslip

We note the concern raised by submitters about the geographical application of the definition of “landslip”. The definition used in this bill would apply only to landslips in greater Christchurch that are caused by an earthquake between 4 September 2010 and 13 February 2022, and only for the purposes of this bill.

We note that the guidelines to be issued by the Surveyor-General would help surveyors interpret this definition and also allow for pragmatism and judgement.

Appendix

Committee process

The Canterbury Property Boundaries and Related Matters Bill was referred to the committee on 3 November 2015. The closing date for submissions was 15 January 2016.

We received and considered 11 submissions from interested groups and individuals. We heard from five submitters in Wellington.

We received advice from Land Information New Zealand and the Parliamentary Counsel Office.

Committee membership

Scott Simpson (Chairperson)

Matt Doocey

Sarah Dowie

Paul Foster-Bell

Joanne Hayes

Tutehounuku Korako

Ron Mark

Hon David Parker

Eugenie Sage

James Shaw

Meka Whaitiri

Dr Megan Woods and Todd Muller participated in the consideration of this item of business.

Canterbury Property Boundaries and Related Matters
Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Louise Upston

Canterbury Property Boundaries and Related Matters Bill

Government Bill

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Schedule 1
Transitional, savings, and related provisions

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The Parliament of New Zealand enacts as follows:**1 Title**This Act is the Canterbury Property Boundaries and Related Matters Act **2015**.**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Purpose

The purpose of this Act is to—

- (a) provide certainty to surveying and titles in greater Christchurch following the Canterbury earthquakes: 10
- (b) support the planning, rebuilding, and recovery of affected communities, including the repair and rebuilding of land, infrastructure, and other property in greater Christchurch:
- (c) maintain public confidence in the cadastre.

Part 1

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Preliminary provisions**4 Interpretation**

In this Act, unless the context otherwise requires,—

cadastral survey and **cadastre** have the meanings given by section 4 of the Cadastral Survey Act 2002 20**Canterbury earthquakes** means any earthquake in Canterbury in the period starting on 4 September 2010 and ending on ~~31 December 2012~~ 13 February 2022, and includes any aftershock in that period**greater Christchurch** means the districts of the Christchurch City Council, the Selwyn District Council, and the Waimakariri District Council, and includes the coastal marine area adjacent to those districts 25**interim period** means the period starting on 4 September 2010 and ending on the commencement of this Act**landslip** means the movement by way of falling, sliding, or flowing of materials that— 30

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

- (b) had become loose material after the movement (other than by liquefaction).

4A Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.

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5 Act binds the Crown

This Act binds the Crown.

Part 2

Boundary movement provisions

Boundaries to be determined on basis of boundary movement

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6 Application of boundary provisions

Sections 7 and 8 apply to all boundaries that determine the spatial extent of land (whether horizontal or vertical boundaries, and including moveable boundaries), including the boundaries—

- (a) in any cadastral survey or the cadastre; or
(b) of any estate or interest in land or any title to land.

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7 ~~Boundaries moved when land moved redefined as moving with movement of land caused by Canterbury earthquakes~~

- (1) The boundaries within greater Christchurch on and from the commencement of this Act are redefined as set out in this section. 20
- (2) The boundaries are deemed to have moved or to move with the movement of land caused by the Canterbury earthquakes (whether the movement was horizontal or vertical, or both), unless the movement was a landslip.
- (3) ~~To avoid doubt, nothing in this section affects the validity of an estate or interest in land, and the land (as moved) continues to be the same land, and affected by the same interests, as before the commencement of this Act.~~ 25
- (3) To avoid doubt, nothing in this section affects—
- (a) the validity of an estate or interest in land, and the land (as moved) continues to be the same land, and affected by the same interests, as before the movement; 30
- (b) the boundaries within greater Christchurch before the commencement of this Act.
- (4) This section applies—
- (a) despite any other enactment, but subject to **section 8**; and
- (b) despite any rule of law. 35

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 the survey satisfies the following (an approved interim survey):
 - (a) it was done in good faith and without negligence in the interim period; and 5
 - (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 the following boundaries (**a boundary conflict**): 10
 - (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~~ and a boundary conflict between the boundaries that define land for the purposes of registration under the Land Transfer Act 1952 (meaning the boundaries shown on a plan deposited under section 167 of that Act or otherwise incorporated in the register kept under that Act) is to be treated as an error for the purposes of— 15
 - (a) section 81 of that Act, which gives the Registrar-General of Land a power to correct a computer register: 20
 - (b) section 172 of that Act, which gives a person who sustains certain losses a right to sue the Crown for damages.

9 Boundary adjustment that follows moved boundaries is not subdivision 25

A boundary adjustment that removes a boundary conflict referred to in **section 8** by adjusting the boundary to comply with **section 7** is not a subdivision of land for the purposes of section 11 or Part 10 of the Resource Management Act 1991.

Earlier surveys and boundary determinations 30

10 No liability ~~for in relation to~~ certain earlier surveys and boundary determinations

- (1) ~~No person 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~~ 35

- (b) ~~that was done before the commencement of this Act is inconsistent with the determination of boundaries in accordance with **section 7**.~~
- (1) This section applies to a cadastral survey or boundary determination of land in greater Christchurch—
- (a) that was done in the interim period; and 5
- (b) that was done on the basis that boundaries did, or did not, move with the movement of land caused by the Canterbury earthquakes (the **basis**).
- (1A) No person is liable for performing or approving the survey or determination if the liability would not have arisen had the survey or determination been done on the opposite basis. 10
- (1B) No person is liable for anything done or not done in the interim period in reliance on the survey or determination if the liability would not have arisen had the survey or determination been done on the opposite basis.
- (2) To avoid doubt, this section ~~removes~~—
- (a) ~~removes~~ any liability under section 52 of the Cadastral Survey Act 2002 or section 7 of the Crown Grants Act 1908; ~~and~~ but 15
- (b) ~~any liability for a determination of compliance under section 9(a) of the Cadastral Survey Act 2002.~~
- (b) does not remove liability for any negligence, bad faith, misconduct, or breach of legal obligations or professional standards that does not relate to whether boundaries did, or did not, move with the movement of land caused by the Canterbury earthquakes. 20
- (3) In this section, **approving** means determining compliance under section 9(a) of the Cadastral Survey Act 2002.
- Related amendment to Cadastral Survey Act 2002* 25
- 11 Section 7 amended (Functions and duties of Surveyor-General)**
- (1) This section amends the Cadastral Survey Act 2002.
- (2) After section 7(1)(g), insert:
- (ga) to issue guidelines about standards set by the Surveyor-General under this Act: 30
- (3) After section 7(2), insert:
- (3) Guidelines issued under **section 7(1)(ga)** do not have legal effect.

Schedule 1
Transitional, savings, and related provisions

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Part 1
Provisions relating to Act as enacted

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1 **No transitional, savings, or related provisions**

There are no transitional, savings, or related provisions relating to this Act as enacted.

Legislative history

22 October 2015
3 November 2015

Introduction (Bill 82–1)
First reading and referral to Local Government and Environment
Committee