

Canterbury Property Boundaries and Related Matters Bill

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to clarify the law relating to locating legal property boundaries on land affected by movement resulting from the 2010 and 2011 Canterbury earthquake sequences. The purpose is also to provide for guidelines to be issued about standards set under the Cadastral Survey Act 2002, to assist with boundary determinations in greater Christchurch after the earthquake sequences but also for more general use in future to maintain public confidence in the cadastre.

Properties in greater Christchurch were affected by land movement resulting from the 2010 and 2011 earthquake sequences. In the worst affected areas, it has been difficult for surveyors to locate legal property boundaries because the measurements between survey pegs and marks in the ground may no longer match those recorded on the official survey plans.

In these cases, it has been difficult for surveyors to identify and interpret physical evidence of boundaries, all of which moved with land movement, in light of the generally accepted principle that legal property boundaries are fixed except in the case of gradual and imperceptible water boundary movement.

This uncertainty has resulted in surveys taking longer to complete, reluctance by some surveyors to undertake surveys in the worst affected areas, more cost to property owners, and delays to rebuilding work.

The Bill addresses this problem by providing that legal boundaries of land in greater Christchurch have moved with land movement caused by the 2010 and 2011 Canterbury earthquake sequences.

The Bill also provides for the Surveyor-General to issue guidance for surveyors in order to achieve consistent interpretations of, and improved compliance with, rules and standards made under the Cadastral Survey Act 2002.

To enhance clarity and certainty, the Bill also—

- confirms that the title of the registered landowner under the Land Transfer Act 1952 continues to enjoy all the benefits of registration, including indefeasibility and the Crown guarantee; and
- confirms that a survey approved by Land Information New Zealand in the interim period (after the earthquakes and before the commencement of this Bill) continues to determine the boundaries surveyed; and
- confirms that licensed cadastral surveyors and the Crown will not be liable for surveys done and approved in the interim period merely because they were done on the basis that the boundaries did or did not move with the land; and
- states that certain boundary corrections that arise from the Bill will not be subdivisions for the purposes of the Resource Management Act 1991 (and therefore will not require a subdivision consent).

Departmental disclosure statement

Land Information New Zealand is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2015&no=82>.

Regulatory impact statement

Land Information New Zealand produced a regulatory impact statement on 13 August 2015 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of the regulatory impact statement can be found at—

- <http://www.linz.govt.nz/land/surveying/canterbury-earthquakes/information-for-canterbury-surveyors-post-earthquake-cadastral>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 states the Bill's Title.

Clause 2 specifies the Bill's commencement date.

Clause 3 states the purpose of the Bill.

Clause 4 defines certain terms used in the Bill.

Clause 5 provides that the Bill binds the Crown.

Clause 6 states that *clauses 7 and 8* apply to all boundaries that determine the spatial extent of land. It includes, for example, the vertical boundaries of stratum estates and the boundaries of interests in land (such as easements).

Clause 7 redefines the boundaries of land in greater Christchurch to reflect ground movements caused by the Canterbury earthquakes. The boundaries are redefined as from the commencement of the Bill. An enactment or anything else that applies to the land is intended to then apply to the land as redefined, without triggering anything that applies when land changes.

Clause 8 preserves the boundaries of any land surveyed within greater Christchurch if the survey was done in good faith and without negligence, and approved under the Cadastral Survey Act 2002, in the period from 4 September 2010 until the commencement of the Bill. Any conflict with boundaries as redefined by *clause 7*, or as determined by another such survey, is also preserved. A boundary conflict may be resolved by a boundary adjustment or by an appropriate process under the Land Transfer Act 1952.

Clause 9 provides that certain boundary adjustments that remove boundary conflicts are not subdivisions of land under the Resource Management Act 1991.

Clause 10 excludes liability relating to a cadastral survey or boundary determination of land in greater Christchurch that was done before the commencement of the Bill on the basis that boundaries did, or did not, move with the movement of land caused by the Canterbury earthquakes.

Clause 11 amends the Cadastral Survey Act 2002 so that the Surveyor-General may issue guidelines about standards set under that Act.

Hon Louise Upston

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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 15

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, 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).

5 Act binds the Crown

This Act binds the Crown. 35

Part 2 Boundary movement provisions

Boundaries to be determined on basis of boundary movement

- 6 Application of boundary provisions** 5
- 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.
- 7 Boundaries moved when land moved by Canterbury earthquakes** 10
- (1) The boundaries within greater Christchurch on and from the commencement of this Act are redefined as set out in this section.
 - (2) The boundaries are deemed to have moved 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. 15
 - (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.
 - (4) This section applies—
 - (a) despite any other enactment, but subject to **section 8**; and 20
 - (b) despite any rule of law.
- 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 25
 - (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— 30
 - (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*— 35

- (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.
- 9 Boundary adjustment that follows moved boundaries is not subdivision** 5
- 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* 10
- 10 No liability for 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 15
 - (b) that was done before the commencement of this Act is inconsistent with the determination of boundaries in accordance with **section 7**.
 - (2) To avoid doubt, this section removes—
 - (a) any liability under section 52 of the Cadastral Survey Act 2002 or section 7 of the Crown Grants Act 1908; and 20
 - (b) any liability for a determination of compliance under section 9(a) of the Cadastral Survey Act 2002.
- Related amendment to Cadastral Survey Act 2002*
- 11 Section 7 amended (Functions and duties of Surveyor-General)** 25
- (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: