

Submission on the Canterbury Property Boundaries and Related Matters Bill

To the Local Government and Environment Committee

Personal Details

This submission is from Christchurch City Council, 53 Hereford Street, Christchurch 8001.

The Council wishes to appear in support of its submission. It will be represented by Councillor Ali Jones and appropriate technical and legal staff.

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Introduction

1. The Christchurch City Council (CCC) would like to thank the Local Government and Environment Committee for the opportunity to submit on the Canterbury Property Boundaries and Related Matters Bill (the Bill).
2. Christchurch has seen many changes since it became New Zealand's first City in July 1856 but none more so than what has transpired since September 2010. This Bill is important to the Council as a landowner, as a representative for the residents in its district, as a regulatory authority and as a statutory authority responsible for infrastructure around the city, including watercourses in its district.
3. CCC supports the intent of the Bill because it provides certainty around the spatial extent of property rights associated with land affected by the 2010 and 2011 Canterbury earthquake sequences.
4. It also supports the intent of clause 10 of the Bill, which will exclude liability for anything relating to a cadastral survey of land in Christchurch done before the Bill commences, on the basis boundaries did or did not move with the movement of land and that might now be inconsistent with the determination of boundaries proposed in clause 7.
5. However, there is one major issue which the CCC wishes to comment on and to recommend that a change be made in the Bill.
6. There are also some minor matters on which the Council has recommendations to make to improve the clarity of the Bill.

Major issue - Clause 6 - Application of boundary provisions and watercourses

7. 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, the boundaries of interests in land (such as easements), water boundaries, fixed boundaries and moveable boundaries. Clause 7 provides an exclusion for boundaries subjected to landslip.
8. Lateral spreading is the finite, lateral movement of saturated soil deposits caused by earthquake-induced liquefaction, which more prevalently occurs along the banks of water bodies. Lateral spreading, being the result of liquefaction, does not fit the interpretation for "landslip" given in clause 4.
9. In the event of lateral spreading the banks of waterways typically move towards the centreline of the water body, thereby narrowing the bed and reducing the flow capacity of the watercourse. Such movement along waterways has resulted in substantial post-earthquake flooding issues for large areas of Christchurch.
10. The movement of land adjacent to water bodies caused by lateral spreading falls outside the doctrine of accretion and erosion and under common law is classified avulsion. Well

established case law exists on how boundaries subjected to avulsion are treated in New Zealand. Avulsion, when possible, can only be claimed by an adjoining owner after a period of prolonged occupation.

11. In the current legal environment, CCC therefore has a window of time in which to widen the watercourse back to its pre-earthquake width where needed, without the burden of purchasing land.
12. However, clause 6, as currently proposed, will allow for boundaries subjected to lateral spread to move with the land, thereby placing areas of avulsion in private ownership, by default, immediately the Bill comes into force. This means that in order to excavate a lateral spread affected watercourse back to its pre-earthquake width CCC would need to purchase the areas of avulsion. This will place an additional and substantial financial burden on CCC's ability to alleviate drainage issues in the city.
13. The purpose of the Bill, as stated in clause 3, is to, among other things, '*support the planning, rebuilding, and recovery of affected communities, including the repair and rebuilding of land, infrastructure, and other property...*'.
14. The Bill needs to be amended to address this issue, which is something that comes within the purposes in the Bill. It will support cost efficient repair and rebuilding of infrastructure by CCC, which will also support the recovery of those communities affected by post-earthquake flooding.

Recommendation for a change to clause 6

15. That clause 6 be reworded to, either:
 - a. expressly exclude any boundary that directly separates dry land from the bed of a water body (whether water, fixed irregular or right lined boundaries, and including moveable boundaries) from the provisions of clauses 7 and 8; OR
 - b. provide that, in respect of any boundary that directly separates dry land from the bed of a water body (whether water, fixed irregular or right lined boundaries, and including moveable boundaries), clauses 7 and 8 only apply where the Council has confirmed in writing that it does not require any area of avulsion for the purposes of any works it will carry out.

Minor recommendations*Clause 8*

16. Clause 8 of the Bill could be clearer in its reference to a 'cadastral survey' being defined as an 'approved interim survey' in that clause. CCC's recommendation is that the wording 'in the interim period' currently found in subclause (a), should be included at the start of the clause, as follows:

"(1) A cadastral survey done in the interim period (**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; and
(b) its cadastral survey dataset was determined to be compliant under section 9(a) of the Cadastral Survey Act 2002 in the interim period...."

17. The term 'cadastral survey' in clause 10 also references one that is done in the interim period. It may aid clarity if the term 'an approved interim survey' is also used in clause 10 (but also see the submission below in paragraphs 19-21).

Clause 10

18. Clause 10 uses the term 'boundary determination', but there is no interpretation of this term in clause 4 of the Bill. As clause 10 removes liability in relation to a 'boundary determination' (in addition to a cadastral survey) it would be preferable if the Bill makes it clear what constitutes a 'boundary determination'.
19. Alternatively, this phrase may be captured within the term 'cadastral survey', which has the same meaning as in section 4 of the Cadastral Survey Act 2002 ('...**the determination and description of the spatial extent (including boundaries) of interests under a tenure system**'.). If so, the term 'boundary determination' can be removed from clause 10.
20. The most important recommendation the Council has regarding clause 10 is for the addition of wording to that clause. As noted in the previous paragraph 'cadastral survey' has a wide definition, and because there is no limiting wording as there is in clause 8(1)(b) ('its cadastral survey dataset was determined to be compliant under section 9(a) of the Cadastral Survey Act 2002 in the interim period'), the use of this term in clause 10 could extend beyond the limits of a legal survey submitted to LINZ by a Licensed Cadastral Surveyor.
21. The definition of cadastral survey appears to capture everything that pertains to showing or describing the spatial extent of a property boundary regardless of who prepared it. This would include Building Location Certificates and topographical/engineering/architectural plans showing property boundaries that have been submitted to Council for consenting (and other) purposes. As a result the Council might not be exempt from liability under clause 10 for any consents it issued during the 'interim period' based on boundary information that is later proven to be erroneous.
22. To remove any potential liability CCC considers that section 10(1) should include the following words in bold:

'(1) No person is liable for anything **done by them in good faith and without negligence** merely because a cadastral survey or boundary determination of land in greater Christchurch—

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- (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
- (b) that was done before the commencement of this Act is inconsistent with the determination of boundaries in accordance with section 7.....'

Conclusion

23. If you require clarification of any points raised in this submission, or any additional information, please contact Judith Cheyne, Senior Solicitor, Legal Services Unit, judith.cheyne@ccc.govt.nz (ph 03 941-8649) or Michael Croucher, Survey Team Leader, michael.croucher@ccc.govt.nz (ph 03 941-8703)

Yours faithfully



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