

Supplementary Submission on the Canterbury Property Boundaries and Related Matters Bill

To the Local Government and Environment Committee

Personal Details

This submission supplements the formal submission made by Christchurch City Council on 15 January 2016 (final version sent 19 January 2016).

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

The Council staff contacts are Michael Croucher, Survey team leader and Judith Cheyne, Senior Solicitor:

Michael.croucher@ccc.govt.nz (ph 03 941-8703)

Judith.cheyne@ccc.govt.nz (ph 03 941-8649)

Introduction

1. The Christchurch City Council (CCC) sent a draft submission to the Select Committee on 15 January 2016.
2. Following confirmation by the Council's Submissions Panel an amended submission was forwarded to the Select Committee on 19 January 2016, with comment that Council was preparing a supplementary submission that would follow in due course.
3. The following material is intended to supplement CCC's principle submission.
4. There are two matters further to those addressed in Council's principle submission on which Council has recommendations to make to the Committee.

Clause 4 - Interpretation - 'landslip'.

5. Clause 4 provides the following interpretation for the term 'landslip':
landslip 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) had become loose material after the movement (other than by liquefaction).
6. It is unclear whether this definition includes areas of mass movement, and the Council recommends that it needs to be made clear whether or not land which has been identified as a mass movement area falls within or outside the definition of 'landslip'.
7. Following the Canterbury Earthquakes the GNS Science Consultancy Report 2012/317 identified 36 areas of mass movement on the Port Hills. The report describes mass movement as 'the geomorphic process by which material (rock and soil) move down-slope, typically as a mass, under gravity (Cruden and Varnes, 1996)'. This definition suggests the slower 'mass movement' of land is still a form of landslip, but as it can be caused by an earthquake or triggered by rainfall it is not clear whether or not the intention was to include or exclude this land from the scope of the Bill.

Recommendation

8. That the interpretation for 'landslip' be clarified as to whether or not mass movement areas are included or excluded.
9. Whether or not mass movement areas are included or excluded from the definition of landslip the Council recommends that property owners of such land are still able to access the boundary conflict resolution processes the Council recommends in its next submission.

Clause 8(3) - Boundary conflict resolution.

10. Clause 8(3) states;

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—

- (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.*

Clause 8(3) allows for conflicts between the boundaries determined by an approved interim survey; and any boundaries as redefined by clause 7 or as determined by another approved interim survey to be resolved. The clause does not provide a mechanism through which affected landowners can reach resolution outside of the judicial system.

CCC supports the formation of a boundary conflict resolution body, comprised of suitably qualified professionals, to adjudicate boundary disputes between landowners. CCC believes that such a body should be established and fully funded by the Crown. Greater Christchurch is in the unique situation where there is likely to be a significantly larger number of boundary disputes as a result of the earthquakes, including in mass movement areas (see above submission). Greater Christchurch residents should not be required to take on the burden of further cost following the earthquakes. The purpose of the Bill is to clarify the law in this area and assist with boundary determinations. The Bill does not do this in a complete way, without a boundary conflict resolution body being established.

11. Clause 8(3)b references section 172 of the Land Transfer Act 1952, which provides for any person who sustains certain losses a right to sue the Crown for damages. Section 172 only allows for compensation where a mistake or misfeasance of Registrar results in a loss of land, or of any estate or interest in land. It does not allow for compensation for a loss of property rights. For example; take a boundary conflict that does not result in a change to the Register for one landowner but does result in the neighbours dwelling becoming noncompliant with local authority planning controls i.e. boundary setback and recession plane restrictions. While one of the landowners has not suffered damages resulting from a loss of land or interest in land they have suffered a real loss of property rights in terms of privacy and outlook. Pursuant to section 172 they would not be entitled to compensation from the Crown.

Recommendation

12. That provision be made within clause 8(3) to enable the formation of a boundary conflict resolution body, comprised of suitably qualified professionals, including representatives from Land Information New Zealand, fully funded by the Crown.
13. Provide compensation for property owners in circumstances where there is a real loss of property rights, not limited to Registrar matters only.

Conclusion

14. If you require clarification of any points raised in this supplementary 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

A handwritten signature in blue ink, appearing to read 'D Adamson', is positioned above the printed name.

David Adamson
General Manager City Services

CHRISTCHURCH CITY COUNCIL