

HPLB/LTB Paper 08/04

**Observations on the Submission
By the Hong Kong Institute of Surveyors dated 13 May 2004**

Purpose

This paper provides comment by the Administration on the submission made by the Hong Kong Institute of Surveyors in their letter to the Bills Committee of 13th May 2004.

Specific Comments

2. In response to the specific points made by the HKIS, the Administration has the following comments (using the reference numbers in the HKIS letter):

(I)(a)

The statements quoted by the HKIS do not evidence any misconception by the Administration; they are simply statements of fact. Persons dealing in urban area land, or in units within multi-storey buildings, are not affected by issues of the boundaries of demarcation district lots (DD lots). The Administration understands that problems can arise with the boundaries of DD lots, but as noted in para 5.2 of LC paper no CB(1)2305/02-03(09) “where there are particular uncertainties over boundaries, there are already channels to deal with them, e.g negotiated settlements between the parties and obtaining Court rulings”. The Lands Department has a dedicated unit to deal with complex cases in which Government land may be involved whenever they arise. The Department also addresses individual land boundary disputes as they arise during the course of its work on resumption, infrastructure development or other matters. In the longer run, if further deployment of resources are possible or additional resources are made available, the Lands Department will consider undertaking more re-surveys of the DD lots or outsourcing some of such work.

(I)(b)

Clause 92(4) is essential to ensure that in determining the boundaries of a lot, the Director of Lands will not make any boundary determination that might affect the interests of the neighbouring lot owners. Regarding HKIS's comment that the Director of Lands should provide service for rectification of erroneous plans, the Administration wishes to clarify that the Lands Department has in fact been providing such service on a need basis. In rectifying an erroneous plan, the Lands Department will need to ascertain whether the land boundaries as shown on the plan in question are in fact wrong, obtain the agreement of the land owner(s) concerned that the land boundaries as shown on a new plan are correct, and cause an agreement (e.g. a deed of rectification) to be made between the Director of Lands and the lot owner(s) concerned to effect the rectification of boundaries. The Administration is of the view that the rectification of erroneous plans and registration of titles are two separate issues. With regard to the functions of the Director of Lands as set out in Clause 92(3), the Administration considers that the inclusion of "survey for preparation of boundary plans" is not necessary because such work can be carried out by authorized land surveyors. After all, the Director of Lands will be obliged to decide whether the plan prepared by the authorized land surveyor is acceptable, and if so, cause the plan to be registered.

(I)(c)

The Administration agrees with the HKIS that the plans contained in the Block Government Leases are of value for reference and as a basis for boundary definition. The statement to which the HKIS refers is simply a statement that "*these plans cannot be used as the basis for determination of land boundaries under the Bill*" [underlining added for emphasis]. This statement was made in the context of a suggestion that the Land Titles Bill should contain a mechanism to require old or inadequate boundary plans to be updated. The Administration does not consider that a requirement should be made under the Land Titles Bill that old boundaries should be updated or that this is a necessary condition for registration of title. To do so is liable to bring neighbours into

disputes since one person's boundaries cannot be resurveyed without involving all his neighbours.

(I)(d)

The Administration agrees with the HKIS that it is not a necessary purpose of the Land Titles Bill to guarantee land boundaries. The Administration also agrees that the better the quality of plans attached to land registered in the Land Registry, the more helpful this is to owners or to the Courts in case of any dispute¹. As noted in (I)(c) above, however, the Administration does not consider that problems with old boundaries should be addressed by a requirement for resurvey under the Land Titles Ordinance.

(II)(a)

As noted above, the Administration agrees that better quality plans are beneficial. But, upgrading of old plans is not a pre-requisite of granting title.

(II)(b)

The statement to which the HKIS refers was a response to an earlier remark by the HKIS that "Clause 49(1)(b) leaves it to the Land Registrar to specify the 'particular part of the land' as the easement". This is a misreading of Clause 49(1)(b). What it says is that the Registrar may require the applicant to show in the instrument creating the easement either "the registered land" or "the particular part of the land so burdened". The Land Registry is not in a position to verify any plan produced by the applicant if so required by this clause.

¹ Reference may be made to Gibson LJ in *Hambrook v Fox*, Court of Appeal (England & Wales) 1993, cited in Ruoff & Roper, 'Registered Conveyancing' 4.21.

"...caution is appropriate when one looks at an Ordnance Survey plan or a Land Registry Plan...One must always look to features on the ground. But in my judgement it would be going too far to say that no help is obtainable from such plans...whilst I accept that the plan would not normally determine the exact location of the boundary of a property...it may assist the court to look at the plan in order to decide where a boundary lies."

Conclusion

3. The Administration appreciates the interest of the HKIS and other parties in improving the quality of boundary plans where these may be unsatisfactory at present. The benefit of plans that are recognized by all parties as reliable aids is well understood. The Administration is of the view that the operation and development of the Land Survey Ordinance, rather than the addition of survey requirements to the Land Titles Bill, is the better way to establish these plans. This view is based on the experience that any process which forces owners into disputes with their neighbours over settlement of their respective boundaries is detrimental to the society and if made a requirement for the grant of title registration may undermine that process. Reference may be made to the first Act to introduce title registration in England, the 1862 Land Registry Act, which required boundary surveys. A Royal Commission established to review the failure of that Act noted:

“ Everyone who has had experience with conveyancing knows that although the difficulties of identifying parcels seems to be serious and numerous, yet in point of fact they hardly ever arise. The conveyancer sitting in his chambers is unable to identify things of which the description varies from time to time. But the attorney or land agent, seeing with his own eyes, and communicating directly with the person in possession, is in the vast majority of cases satisfied that his employer is getting the thing he contracted to have...the purchaser is content to take the property as his vendor had it, and to let all questions of boundary lie dormant.

But the Act of 1862 prevents a transfer on those terms. People who are quite content with an undefined boundary are forced to have it defined. And this leads to two immediate consequences. First, notices have to be served on adjoining owners and occupiers which may and sometimes do amount to an enormous number, and the service of which may involve great trouble and expense....The second mischief is that the people served with notices immediately begin to consider whether some injury is not about to be inflicted on them. In all cases of undefined boundaries they find that such is the case, and a dispute is thus forced upon neighbours ...”.

4. The Administration recommends, therefore, that the Land Titles Bill should not be made the instrument for addressing concerns over the quality of boundary plans through any mandatory mechanism.

Housing, Planning and Lands Bureau
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