IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV-2010-476-000624

BETWEEN **THE INSTITUTE OF CADASTRAL SURVEYING INCORPORATED**

Plaintiff

AND **LAND INFORMATION NEW ZEALAND**

Defendant

Hearing Commenced: 01 March 2012

Appearances: C O'Connor for the Plaintiff

G Gardner for the Defendant

NOTES OF EVIDENCE TAKEN BEFORE THE HON JUSTICE CHISHOLM

MATTER CALLED: 11.07 AM

THE COURT:

Now as I understand it all of the recording systems are up and running and I think it would be best if we moved straight to the explanation of the diagram annexed to your submissions Mr O'Connor.

COUNSEL – MR O'CONNOR:

Yes Sir. I think that's Mr Speirs.

THE COURT:

I think that's Mr Speirs. He could perhaps, I think, ideally he would give evidence and then Dr Grant can respond.

COUNSEL – MR O'CONNOR:

Yes Sir.

THE COURT:

Does that sound a reasonable approach to the matter so I can just gain some understanding. And the other thing, is there a set of the Cadastral Rules passed under the Act in the material somewhere? I am sure it is.

COUNSEL – MS GARDNER:

Yes, it will be in with Dr Grant's affidavits Sir at DVG3.

Mr O'CONNOR CALLS

BRUCE WILLIAM SPEIRS (SWORN)

Q. Just by way of background Mr Speirs. Your full name is?

A. Bruce William Speirs.

Q. And you are a cadastral surveyor residing in Timaru?

A. I am.

Q. And what is your involvement with the Institute of Cadastral Surveying Incorporated?

A. I am the secretary of the Institute and have been since its inception in 2002.

Q. And how long have you been a cadastral – registered cadastral surveyor?

A. Licensed cadastral surveyor came in 2002, before that of course I was a registered surveyor under the previous Survey Act since 1988.

Q. Now Mr Speirs in relation to this matter you've presented a pictorial diagram in terms of, I hope, to assist the Court in determining how a cadastral survey dataset comes with being and how it is incorporated into the cadastral, if you like. Have I correctly summarised that?

A. Ah, yes, can do.

THE COURT:

Q. Just pause here. As I understand it this diagram has been or will be emailed to the off site stenographers. Has that happened? That is fine.

So that will assist them a little bit in understanding the terminology. What I am after Mr Speirs is a very simple explanation. I am not after detail. It is so that I can understand what this diagram is designed to tell me and then Dr Grant will have an opportunity to make his comments. Whether I will allow cross-examination I have not decided, and will address, once you have just gone through this diagram and explained it to me, but I am only after a very simple explanation if that is possible.

A. I hope so. So the diagram itself is designed to show cadastral survey dataset is and that's in the square box. If we start at the top of the diagram it talks – it says the "Cadastre" which is the sum of all the cadastral survey data held by the Crown, or Crown bodies. And that cadastral survey data has a considerable number of documents and I have listed three examples there – SO means survey office plan, called it ABC; LT means land transfer, we're talking about cadastral surveys here and obviously a document of some description. To expand on the LT –

Q. Just before you go from the survey office, does that in layman's terms refer to what we used to describe as survey plans and that sort of thing?

A. No, it's a class of survey plan, um, generally undertaken on behalf of the Crown, for example the legalisation of a road survey will be a survey office plan rather than a land transfer plan or data, Sir. So the land transfer ones are taken in terms of section 167 of the Land Transfer Act.

Q. Oh right, I've got you.

A. And so we expand out, what is a typical land transfer? Now according to the definitions the intent of a cadastral survey dataset is to get a cadastral survey integrated into the cadastre, straight behind effectively and this is why I've laid it out that way. Now cadastral survey data has four components according to the section 4 of the Act, that's cadastral survey. Cadastral survey is related to –

Q. Just pause for a moment please. So you were saying you have got cadastral survey –

A. Okay, cadastral survey related information for which the Act has no further explanation. There is no definition in the Act for that. It has survey system information, or the necessary survey information in fact.

The necessary tenure system and information. And what we're trying to do is we're trying to get that cadastral survey into the cadastre. So it comes then in effect, we - since we get by separate definition for the cadastral survey related information we can't determine what it is on its own, and that's why it's lumped in with cadastral survey. But cadastral survey itself, according to the Act, has two component parts. One is a spatial determination of interests in land and the other is the spatial description of interests in land.

Q. And that's so, oh yes, and the word "spatial" is used in the definition?

A. Yep. In general terms a spatial determination is the physical work out in the field and that's what I would consider the cadastral survey. The spatial description is the stuff that's done after this, including the preparation of the diagram and that broadly would relate to the cadastral survey related information. And so we have some field work, if it's required, so it's not every case you require field work. For example most easements don't require field work. If you have field work then you should have a record of that, whether that's a hard copy or electronic format and to be able to undertake that definition so that pegging of the spatial extent of interest in land, you need to do a definition. You need to be able to re-define the underlying parcels which are applied in the survey.

Q. The boundaries?

A. Yeah. And so again the spatial description describing that survey report which has considerable non spatial content explaining (inaudible 11:17:04). You have a number of calculations such as, um, orientation, varying adjustments, scale adjustments, (inaudible 11:17:20) information, definition of information etc. There's about nine component parts of the – that you may or may not have. Because we need to now integrate into the electronic cadastre or partially electronic cadastre because paper records still form part of the cadastre previous to Landonline of course, we have to enter a lot of data that we've collected in the field survey and in doing the definition into that Landonline software, a number of screens that are available on Landonline and this is, um, the head of information such as "Lots 1 and 2 being subdivision

of ..." (whatever it is), and a whole lot of different information there. So that's the effect is should appear in the system basically, and there are then two ways to generate the survey graphic that is required and the type of graphic which was always required. One is with Landonline data screeners themselves, um, you can manipulate – the data you put into the various screens comes through into what they call plan generation Landonline and then it puts all the information entered previously on a diagram and you can manipulate that, manipulate that all round the effectively the sheet, the borders –

Q. And so is that a working process for the surveyor using a computer model that Landonline has provided but it is the surveyor's prerogative to apply the informations gathered –

A. Yes –

Q. Using that model. So it is a progressive exercise?

A. It is.

Q. Okay.

A. But that's only one of two ways to generate those diagrams.

Q. Yes.

A. The other way is to generate them outside of Landonline and then scan them and enter them as a scanned document into Landonline. And that's required for example in cross-lease situations. You can't do that inside Landonline plan generation.

Q. Is that because there is not a computer model capable of doing that or why is it outside the normal approach?

A. Um, sorry but I'm a wee bit out of my league here –

Q. Okay, that's all right.

A. Sorry, we don't do unit titling or cross-leases, but it is my understanding that the information shown on there, because there may be for example buildings are drawn on it –

Q. Sure –

A. Which then they (inaudible 11:20:37) distance, so that's purely a diagrammatic scene which Landonline could not handle in terms of plan generation (inaudible 11:20:47) so that's the cadastral survey and its related information, cadastral survey related information but we also

have some very specific survey system information which is necessary to integrate the cadastral survey into the cadastre.

Q. Just before you move away from the two subheadings, "spatial determination" and "spatial description", they ultimately feed into the end result. Why have you drawn a distinction between the determination and the description?

A. They are two separate –

Q. Two separate processes are they?

A. Yes.

Q. Okay.

A. But the determination is the physical side of the work.

Q. Oh I see, okay.

A. And the description is how you describe that to the next person coming along.

Q. I see, thank you.

A. And so if we move over to the survey information it isn't necessary to have unique survey identifiers and that for example is the LT reference above, LT xyz, to be able to reference it in the future. We can create these in isolation but how do we search it in the future so there has to be unique identifiers, and then it is necessary the cadastral survey into the cadastre. And similarly there two pieces of information that are needed out of this survey system information to integrate it. One is the – each parcel has to have a unique identifier, um, so it's Lot 1 or it's easement (inaudible 11:22:41) so you can again reference the particular parcel in the description which is what most people see.

Q. Is that why rather than referring to the old certificate of titles we now have information described as unique identifier, is that right?

A. No. You need to – the, um, there are two systems. There's a survey system and there's a title system. And while, how best to describe it, the title system is actually the most important part, under 167 of the LT Act, the registrar requires cadastral surveys in certain circumstances and that was the question you had of Craig before, so section 167, they're actually two separate items although they use data from, for example to compile a computer register you need certain survey

information, survey system information, which is why we've given you that on that side as well, given you example of to where that goes.

Q. So what I was talking about is I've jumped the gun a wee bit have I, because is that in the next, under "Tenure system"?

A. Yes.

Q. That title?

A. Computer registers –

Q. Yes, that's right –

A. But they have nothing to do with cadastral survey but cadastral survey has quite a lot to do with computer registers, except that we have to describe, identify the underlying registers which we are to distinguish of course as part of the survey. So once you've got your cadastral survey, sorry the spatial determination, the spatial description and the necessary survey information, tenure system information, we apply the certification at that point and then we go through an integration process, which is under section 7(1)(e) of the Act by the chief executor.

Q. Can you just explain in simple terms what the integration process is?

A. So you've got a whole lot of electronic data sitting, it's not live – so you've got the live database and you've got a whole lot of cadastral information which is not live. To make it live you have to integrate the two together. So that integration process requires certainly, um, processes within the Landonline software.

Q. Can you give me an example then. Let's say that you have surveyed a parcel of land and done the formal bit as necessary for the certification and in practical terms, as I understand it, you would have done all the field work and all the other work that is necessary to give a unique identification to – or spatial identification is it, to that piece of land, you then certify and then what sort of additional information might come in if part of the integration process?

A. There should be no additional information as such from that, but as part of the requirements of data entry in the Landonline for example we have to link our new – so if we put in a boundary mark, we've replaced a boundary mark from a previous survey, we have to link the new mark to the old mark in the databases, and that's a linking process, and also you

have to do that with parcels as part of the Landonline. Technically and I believe in the correspondence LINZ accept that that is not part of the dataset, it's outside the dataset itself and there's that, and LINZ audit, the pre-validation check done on the data when we put it into Land – submit it into Landonline and LINZ do some sort of work process to make sure that it's of a standard that's acceptable for them to integrate it into the cadastre, so that's LINZ function and it's the chief executive that is responsible for that under section 1 – ah, 7(1)(e).

Q. Is this effectively a transitional phase where we've got an old system and a new system and we're trying to get everything out of the new system, or is that not right?

A. That's a question I don't think even LINZ can give you an answer to. The – while we are transitioning to the digital environment the hard copy records still are the records, um, of previous surveys and I'm sure the Courts would rely on those hard copy records in any determination, so the cadastre become a mixture at this stage.

Q. Yes, the only reason I asked that question was that when I looked at section 7(1)(e) the function and duty of the solicitor – surveyor-general is to set standards for integrating new cadastral surveys into the cadastre. Oh I see, I've misunderstood that. So that's really bringing the surveyor's to work into the cadastre –

A. Mhm –

Q. I think I've got it the first part.

A. And the wee note at the bottom is quite important, is that once the cadastral survey data is a part of the cadastre then that information is available to the rest of the cadastre as survey, survey system information.

Q. Yes, all right. Up to the - all the functions in the cadastral survey dataset box would have been performed by the individual surveyor or under his or her direction I assume?

A. With one exception only and that's the item under "Survey system information". When you survey the plot that's issued by Land Information New Zealand.

Q. Yes, okay. We'll take a break in a moment but perhaps we could start on the right-hand side of the diagram.

A. Okay. The far right is not used in this case. It's just if there was some other example. I've strictly related this to the land transfer system –

Q. Yes –

A. Where the idea is we're going to issue new or alter existing computer registers in terms of 167 of the LT Act, and so you're able to draw all your information you require from the survey system information because the associate at cadastral survey dataset has lodged and been integrated into the cadastre. It has to happen before new title can be (inaudible 11:32:43), or whatever, so the survey system information there is a list of things that are needed, that are necessary, before the register can – it's my understanding, I'm not a lawyer, it's just our understanding of this, so you need to get the surveyor identified, parcel identified, and that could be for example it will be "Area A" under the new system. A parcel area if it's a primary parcel, um, and that's because the New Zealand public expects to see areas on their registers and local authorities require it for their functions in terms of the Resource Management Act, and a title graphic. Now the title graphic is the title graphic that was in the cadastral survey, survey related information, and it just needs to be a straight copy of that information.

Q. And that's the plan, plan is a bad word, but a plan of the title in simple terms?

A. Yes. And simple, and layman's terms the older title plan from the hard copy system and we have no functions in terms of the computer registers. That's entirely the function of the Registrar-General of Land, so cadastral survey has no function except that we have certified certain information in the cadastral survey dataset from which the Registrar-General is reliant and that's the title graphic we've identified we have, so the tender information system is virtually a new title, and you obviously need a reference number for it. You'll need a section 223 Resource Management Act certification and that certification from the local authority, it relates to the consent that was issued for the subdivision and it will have many conditions regarding memorandum of

easement, amalgamation, vesting, esplanade, reserves, covenants and also again (inaudible 11:35:00) authority certification of section 224(c) of the Resource Management Act and that's basically that you've met the conditions of the consent and the conditions, consent notices are the most common other document that the Registar-General will need before because that's an ongoing condition that has to be registered against the register.

Q. This might be a silly question but if you've completed the surveying process and certified, can the surveyor been drawn back into the process if for example the local – the territorial authority says that there's a problem with the easement or something like that or perhaps the territorial authority is saying, "We're not going to certify the subdivision"?

A. Yes, but surveyors have their own risk management techniques to manage those risks. If I may, my own example is we will not submit dataset until we know the 223 certification has been issued.

Q. Yes –

A. To get around that very problem.

Q. Oh I see. So you will delay your certification –

A. Until we have –

Q. And is that one of your worries that having delayed your certification other people might have input into what to certify and what not?

A. No, that's not what it is.

Q. No. Okay.

A. Having said that, that's how I do it, I know for example my present agenda for the Court, um, will get survey approval before you did apply for a section 223 certificate from the council. The rationale there is until the cadastral survey dataset is approved as to survey there can be change and therefore technically something could through which the District Council is not aware of the changes, and that's how he manages his risk in that case. So these things, we just have to figure out how to manage our risk in terms of the various issues involved.

COURT ADJOURNS: 11.38 PM

COURT RESUMES IN COURTROOM 4: 12.20 PM

THE COURT ADDRESSESS COUNSEL

THE COURT:

Q. We were just about to the other column, were we?

A. Yes, we were discussing some of the computer register tender system information. So all of that information is required, it is necessary, for the computer registers to be issued by the integration into the cadastre?

Q. Yes.

A. But they are not specially related, and they are not necessary to integrate the cadastral survey into the cadastre?

Q. Mhm. Okay, all right. Well Mr Speirs thank you very much.

THE COURT ADDRESSES COUNSEL

EXAMINATION CONTINUES: MR O'CONNOR

A. So you mentioned practical examples of data at or after certification, it would be our contention that at the moment the cadastral survey dataset plan and the title plan as compiled by the Landonline system, are being added after the certification process. It's quite clear in how we do things that they are generated, compiled, after the certification is applied.

THE COURT:

Q. Pausing there Mr Speirs, would they be part of the dataset provided by the relevant cadastral survey or not?

A. I don't believe so.

Q. The reason I ask that is because the certification required under the rules does refer to the dataset provided by the surveyor?

A. Yes.

Q. Mmm, okay.

A. But the thing there of course is those documents which are created after the certification LINZ apply our certification to those, at the moment.

Q. Sure. Because the information, or the data that you have certified is one of the building blocks, it's for the issue of a title, or whatever steps have to be taken by LINZ?

A. Yes.

Q. Okay?

A. So we are quite happy to our certification to the information that's inside the cadastral survey dataset, we don't want to see our certification used for later purposes of the department of LINZ

Q. I am just wondering how in a practical sense it would be possible to achieve any other regime. Do you understand what I am saying? If you have got a building process and part-way through there is a certification that the data provided by the surveyors is accurate, presumably later steps have to proceed on the basis that the information is accurate otherwise the whole system would fall over?

A. Indeed, they are allowed to rely on our certification that our data is correct, however, they then create documents from that data, with other data that we may not have provided -

Q. And a title being an example?

A. No – tricky. I have tried to explain that, so we have got a title graphic, which the cadastral surveyor has provided with a dataset, cadastral survey dataset, and that has been approved. LINZ then take that as one component of something they call a title plan, which I don't believe has any unique function, because then to issue a computer register they take the diagram they created, and it may have been modified in the title plan which is compiled by Landonline system for the computer register. It would be far simpler if they just took the title graphic provided by the cadastral surveyor, transferred that straight into the register, the computer register. Because it appears in the computer register we are not liable for the computer register. Our liability resides inside the cadastral survey dataset. If it's wrong inside the cadastral survey dataset then we are liable by coming back, but if they have for example, and this practice has stopped – they used to strip the bearing off our title

graphic so they disappeared in creating the computer register, and they have altered the document we certified. If for example there is a transposition, that is the swapping of two figures, or other error on the compilation process that the department does, that LINZ does, I don't want to be liable for that thank you.

Q. Well, yes. That explains where you are coming from I think, yes, that is fine. Thank you very much Mr Speirs, that is really helpful to give me a practical insight into what happens and where you are coming from, so thank you very much.

A. That's okay.

WITNESS EXCUSED

THE COURT ADDRESSES MS GARDENER

MS GARDENER CALLS

DONALD BRUCE GRANT (SWORN)

Q. Your name is Donald Grant?

A. Yes, Donald Bruce Grant.

Q. You are the present Surveyor General?

A. Yes, that's correct.

Q. I would just like you to comment on Mr Speirs evidence if you would, if you have any particular comments and to assist the Judge if he has any particular questions in relation to the diagram?

A. Okay.

THE COURT:

Q. Thank you very much.

A. I do have some notes I took during Mr Speirs' evidence as to his – is it okay for me to refer to those?

Q. Yes sure. I do not want to get too bogged down into the nuts and bolts Dr Grant, it's an overview that I am after, but you should feel free to respond to any matters raised by Mr Speirs that you feel require a response from you.

A. Okay, yes that sounds fine. I will start off perhaps with the diagram, um, and the different perspective on it. There are some aspects of it I am comfortable with it and other aspects where I have different perspective, so perhaps I can go through those. First of all starting at the top Mr Speirs referred to the definition of the cadastre, and I was comfortable with the way he described that, and cadastral survey data, um, the next level down if you will notice, it shows a number of different components to get cadastral survey data, and the bottom part of the diagram flows out of one of those components, which is land transfer surveys. So one of the things perhaps I just should mention at that point is that the Act, the rules for cadastral survey, the processes for integration, and the surveyors certification, all of those things apply to the entire cadastre, not only just in this example. So there are other legislative regimes for some other kind of cadastral survey data, so this isn't a full picture. So I guess the point from that is that the way in which

we manage the cadastre has been generalised to cover all of the information which lies within it.

Q. Yes?

A. Okay. If we come down within the next level down and there is a box around information which is in cadastral survey dataset. I guess perhaps the – actually I might take a high level view just before I go inside that box. If you actually go to the bottom of the diagram you can see that the information in the box is shown as being integrated into the cadastre. Some of the information in the computer registers is shown as being integrated into the cadastre and there may be some other sorts of data which is also integrated into the cadastre. So at that point, just taking a high level view I think perhaps if I can refer to the definition of a cadastral survey dataset, it's that set of data which is necessary to integrate a cadastral survey into the cadastre, so the process of integrating a cadastral survey into the cadastre is actually quite a broad process. It includes the information which has been provided by the licensed cadastral surveyor, but it also, in order to complete the integration process, the full integration of a cadastral survey into the cadastre, it also includes other information, some of which won't have come from the licensed survey but which is necessary for the final integration of that survey, and if I can perhaps clarify what I mean by that, the survey comes in, if it's correct it will be approved and some of that information from the survey will be integrated into the cadastre and that is the information that came from the surveyor. Some of the other final steps for full integration of that survey into the cadastre don't actually occur until other legal steps have taken place, including for example you could say in the case of a land transfer survey, at the point at which the Registrar General of Land deposits the survey and issues new titles, the information relating to that survey has its status changed, and the change in status of a cadastral survey once it has been deposited, which in fact for example includes changing it from a LT plan number to a DP plan number.

Q. Sorry, could you repeat that again? The changing from - ?

A. Until plans are deposited they are identified as LT 122346 for example. After deposit they are identified as DP 123456, same number.

Q. Oh yes?

A. And the status of the plan is changed, the status of the parcels that were created by that survey have changed. The visibility of the information in the cadastre has changed so that when people come in and look at it they will now see the new current parcels and titles rather than the previous.

Q. So before it becomes a deposited plan it is, perhaps this is not the right word, but effectively provisional and when it has been ticked off it becomes deposited?

A. Yes, that is correct, and provisional is – the actual status assigned to it at that point is approved. It's been approved as to survey, but it hasn't been deposited, so it hasn't been through the legal processes. So there are some steps of integration that occur at that point, after approval, and there are other steps which don't finally take place until finally the titles have been issued at the end of the process.

Q. Now where do the resource management steps fit in. I guess as far as easements and so on are concerned, under whatever the section is, you have to have the certificate from the local body before the plan could be deposited?

A. That's correct, yes.

Q. And what is the other 220, or 223 or something, certificate?

A. There is 223 and 224.

Q. A 224 certificate, what is that about again?

A. That – actually I am not certain on that myself, but understanding is 223 confirms that the survey plan as complied with the resource consent, 224 I think indicates that any necessary works have been completed. They would both be necessary prior to deposit.

Q. Okay, yes?

A. They can come from a variety of source those certificates.

Q. Okay, yes?

A. Which is a detail I might get into later because I think it is material to this particular case before us. So the other thing I would say is that this

information, all of this information being integrated into the cadastre, at once again at a high level view, Mr Speirs indicated that the survey system, the cadastral survey system and the land transfer system are essentially separate systems I think, two separate systems, which is the phrase used, and certainly there are separate aspects to them in that they are the regulator for part of it, and the Registrar General of Land is the regulator for the other part. But in fact there is considerable linking and integration and also a high level of over-lap between the information that is in those systems and perhaps if I can refer in the cadastral survey exception 69(2) which states that any reference in any other enactment to a plan is taken as referring to a cadastral survey dataset. One such reference and another enactment is the reference in the Land Transfer Act to a survey plan. The combination of those two legal provisions means that a cadastral survey dataset is not only part of the cadastre, it's also in its entirely part of the register. So there is a very large overlap between what we call the cadastre and what the Registrar General of Lands calls the register. A converse overlap is that, as I indicated, in order to finalise, if you like, the integration of a cadastral survey into a cadastre there are a number of legal documents which do appear on this diagram provided by Mr Speirs, and those documents and tenure system information are a necessary part of completing the process whereby – they are a necessary part of integrating a cadastral survey, the final integration of it, into the cadastre, and therefore if you look at them in the definition as I mentioned of cadastral survey dataset being that set of cadastral survey data necessary to integrate a survey into the cadastre, that also means –

Q. Sorry you were quoting there?

A. The definition of cadastral survey dataset, it's in paragraph 33 of the comments.

Q. Yes I have got that? Derived from cadastral surveys and related information. So it is the and related information that you are emphasising?

A. I am referring to some of this related information and quite a lot of that related information has not actually been provided by the surveyor, but

nevertheless it is a necessary part of integrating the cadastral survey and therefore it falls within the definition I believe of the survey dataset.

Q. And under (b) of the definition there is survey system information and tenure system information, is tenure system - ?

A. Yes it is, it is defined further down in paragraph 33.

Q. So in the tenure system you might have, what, bonds and that sort of thing?

A. Well yes if that's necessary to create the transfer of interests under the tenure system. One – a couple of examples that are necessary to create the transfer of integration, transfer of interests, are the Resource Management Act certificates, which is the subject of this discussion as well.

Q. Yes that is the 223 and 224?

A. Yes. So I would regard the 223 and 224 certificates as part of the cadastral survey dataset even though in many cases they won't have been provided by the surveyor. They can have been provided directly by the territorial authority or they could have been lodged with the registrar by another party.

Q. And – oh you are probably wanting to press on, but as I understand it at the moment, the certification is one of the primary issues between the institute and LINZ and Mr Speirs explained, as I understood it, that they are concerned about the certification being relied on in relation to processes in which the surveyor has not provided any input I suppose. What is your nutshell response to that. Do you say it is not an issue, or?

A. The certificate statement, it was actually discussed between the department and the institute, it just explains when the rules have been formulated, and as a result of a submission from the institute to myself when I was forming those rules I agreed that the institute had a point with the previous draft of the certification statement which didn't contain those words provided by me, and as a result of their submission I accepted that – well, my original understanding was that in law they wouldn't be responsible for anything that wasn't provided by them anyway, but nevertheless for the avoidance of doubt it was useful add those words provided by me into the certification statement so as to

make it clear that the information that they are responsible for is the information which has been provided by me – provided by them obviously, and on which other related processes in the whole land transfer and tenure system depend. So they provide certain information and they take the responsibility for the correctness of the information they provide. They cannot be held responsible for information which has not come from them, and that was the reason why I agreed to, for the avoidance of doubt, to the addition of those words to that certification statement.

Q. And Mr Speirs mentioned that as I understood it, but I might not have grasped it completely, that instead of LINZ using the surveyors plan, and that is probably not the right word, LINZ modifies it at least to the extent of taking off the bearings and things like that, and he said that the practice had changed. The concern seemed to be, well why doesn't LINZ simply use the plan drawn by the surveyor. Now have I grasped, first, what Mr Speirs was saying?

A. Yes, I think you have. If I can respond to that particularly, we are getting down to quite a detailed level but perhaps it's a seminal one –

Q. And possibly a policy issue which the Court has got no place in. But I am still trying to just understand what all the issues are?

A. That's right. I think it's probably worth clarifying that. There were two plans produced based on the information provided by the surveyor, and one of those plans had the information included in the bearings which was provided by the surveyor. There was another one, that's the CSD plan which included a number of – quite a range of information and the CSD plan is a technical name of it, and it includes the title graphic and the survey graphic and a whole lot of other information, and it did include the bearings that Mr Spears referred to. The other one, which is produced at the same time is a sub-set of that information and the bearing information was not displayed on that. It had been discussed with various users that that information was not necessary on that particular product, if you could call it that, and it therefore wasn't helpful. Subsequently there had been representations made to the department that that information should be included on both of those and so the

policy was changed. If I can take a step backwards to my role in this. The rules that I set provide the minimum set of information that must be there. The way in which the department created plans based on the surveyors information made them available to the surveyor prior to certification so the surveyor could check the layout of them and the information that was contained within them, and then having confirmed the layout of those the surveyor could then make a proper judgment as to whether they were prepared to certify them or not. The rules were designed to be technology independent and therefore not get down into the details of how exactly this information gets packaged together, and so when the department decided to change that practice, as Mr Speirs referred to, which is correct, that didn't necessitate a change in the rules because the rules were operating at a more – at a higher level of the information that must be provided, not the exact format in which it must be provided.

Q. So the change meant that the surveyor completed his or her work, certified it and then LINZ took up its role, without requiring the surveyor to check what LINZ had done. Is that correct or not?

A. Yes, at the point of which the surveyor lodges a set of information and there is certain items of information, if you can call it that, which get added by the department which, because they are not provided by the surveyor, the surveyor is actually not responsible for. One of those such items was mentioned by Mr Speirs in the box under survey system information, the unique survey identifier. As Mr Speirs said, that's a piece of information which is actually provided by LINZ, not the surveyor, therefore the surveyor wouldn't be held responsible for it. Also, as I mentioned earlier, that, in the case of land transfer plans, is one that changes on deposit. So LINZ undertakes the action of changing LT 123456, into DP 123456, now that is a change to the plan, something has changed on the plan, it's one which the department has done which the surveyor is not responsible for that change having been made. So the great majority of the information that is contained within those plans is information which the surveyor provided and which the surveyor was able to confirm their satisfaction of how it was packaged

together prior to their certification. There are some administrative changes that do get made by the department afterwards, but obviously because they are made by the department and because they are not, they don't fall within the definition of provided by me in the surveyor certification, and therefore the surveyor is not going to be held responsible for those.

Q. Probably off the point really. If I as a member of the public want to say check a deposited plan, how far does a member of the public, or how far can a member of the public delve into the surveying process and all the data that was used to arrive at the spatial identification or whatever you would call it. Because am I correct in understanding that the once the survey work is completed the cadastre will include such information as is necessary to show how the surveyor got to the end of the road?

A. Yes, yes it will.

Q. And can I as a member of the public check that out?

A. You certainly can. It's not commonly done because it is normally relied on at face value and relying on at face value is almost always suitable. But the one – in fact this is something which is now better under Landonline than it was previously, within the Landonline system we keep a copy of all of the information that is provided, including anything that might be superseded. In doing so we have an audit trail of when it was changed, when it was provided, who it came from and all that sort of information. So in the event that a member of the public had a concern about information that was in a cadastral survey dataset they could ask us to confirm where that information actually came from and we would then be able to identify whether it came from the surveyor or not. If I can just give you a detailed example. There have been a couple of cases where, I am aware of, that a surveyor has themselves said, "Something has happened in my plan and I didn't do it" and we were able to follow the computer trail in the database and identify actually on a certain date one of the members of your staff did actually provide us with this information. So that's something that a surveyor can do, but something that any member of the public can do. It's a

public record, and that information it's not easily obtained at that detailed level, but it is all obtainable.

Q. I do not know whether this is a fair question or not, but I will ask it. The purpose of the certification, is it just to make sure that someone is accepting responsibility?

A. That's essentially it, not just that someone is accepting responsibility, but actually that the person who is accepting responsibility is a competent and proper person to do so. So you have a set of interlocking systems I guess that help with that. You have the licensing regime of the cadastral surveyors licensing board, so there's a statutory board, it's a statutory licensing regime, and that determines that surveyors are both competent and proper people to be carrying out these functions. The licensing board also has disciplinary procedures, so if a surveyor takes responsibility for some information and it proves to be incorrect, depending on the severity of the error, the licensing board can be called into play to consider whether or not that surveyor actually is still a fit and proper person to be taking that responsibility. There are other provisions in the Cadastral Survey Act, s 52, whereby if a survey affecting any title is discovered to have an error in it, I, as Surveyor General, can require that surveyor to correct that error. So that's the error that the surveyor has taken responsibility for. Clearly I can't require a surveyor to take responsibility for information that they didn't provide, but in the process of producing a cadastral survey dataset it is certainly not uncommon that the surveyor will provide information from their staff, they will provide information from other sources which they believe to be both relevant and important, and they consider has been properly obtained, and the surveyor has provided the information as well, then we hold them responsible for it to the extent that it has been properly obtained and that it is relevant to that dataset. If you don't mind, at this point it's possibly useful for me to introduce the issue of the 223 certificates because they are one such type of – or can be, one such type of data. Once again I am getting down to the details, but the rules for cadastral survey do not require surveyors to provide the Resource Management Act certificates. They are necessary for the final

step of integration, so the department has to obtain them from some source, but necessarily from the surveyor. What commonly happens is that surveyors in order to expedite their surveys will actually obtain and provide those certificates to the department, and they will include them within their survey prior to the certification.

Q. The certificate is signed by a territorial authority?

A. Yes it is. Now when they include those certificates in the dataset prior to certification it becomes, I believe – there's two aspects of that. One, it has been provided by them. Secondly, it is part of the data which is necessary for the full and final integration of a cadastral survey into the cadastre. Having said that, there are aspects of their certification of it's correctness which you would obviously have to take into account. The surveyor – the territorial authority is the issuing authority for that certificate, so the surveyor cannot be held responsible for whether the territorial authority has done a proper job. The surveyor can however be held responsible for whether that certificate was properly obtained, or in fact whether it is actually applicable to the dataset that they have actually lodged. And in fact following on from some of the comments that Mr Speirs made before when he was talking about the sort of managing of different risks associated with the Resource Management Act certificates. If a surveyor –

Q. Just before you move on. But you were saying could be responsible for two things. The obtaining of the certificate, or the circumstances under which it is obtained?

A. Yes. Maybe I will cover that one first.

Q. And there was one under which obtained –

A. Whether or not it actually relates to the dataset which they have subsequently lodged. Perhaps those two are closely related. When a territorial authority issues that certificate they do so based on a copy of the cadastral survey data that's put before them, so they are certifying, we have received a copy of the cadastral survey dataset and they make judgements on whether it complies with the resource consent. If the copy of the cadastral survey data – if the copy of the plan perhaps I should say, if it were subsequently were to change following their

certification, there is the potential for that certification to become invalid. There is also, I have to say, the potential for subsequent changes to be immaterial to that certification and therefore the certification is not invalid. So there is a responsibility when the surveyor does lodge a certificate, that they are lodging it in respect to the same dataset that they are asking us to approve and not one which is materially different. So there is an opportunity there for the surveyor to either carelessly or much less likely fraudulently, provide a certificate which in fact is not related to the dataset that it purports to relate to.

Q. Yes?

A. So the certificates are not required to be in the cadastral survey dataset, but that is not uncommon for them to be included with the information provided by the surveyor prior to their certification and having been included with the infection provided by them it gets packaged up by the department within the plans. If it's not there it doesn't get packaged up. If I can go inside the box. First of all I guess, I hope it's clear from my discussion, that if you were talking about the box of what is a cadastral survey dataset I see that box going right across the whole page. So what is a cadastral dataset, it's those things that are in the box, but it's also the things that are in the other columns in the right-hand side. I think what the confusion that has perhaps been caused here is the confusion between what is a cadastral survey dataset –

Q. Could you just pause for a moment there.

A. To the extent that those other things are needed for integration. The confusion I think that's happening here is the distinction between what is a cadastral survey dataset, which I think in terms of the Act is a very broad definition, and which parts of a cadastral survey dataset is the surveyor responsible for, and a slightly narrower set of which parts of a cadastral survey dataset is the surveyor required by the rules to provide. So there's a minimum set that the surveyor is required by the rules to provide, there is additional information which surveyors frequently provide and are different to that minimum set because it facilitates the subsequent processes if they have gathered it all together and included it with that dataset. It's not necessary for them to do that, but having

done – they have done so in order to speed up the process within their department of approval and eventual issue of title. Then there are those aspects of a cadastral survey dataset which don't come from the surveyor at all, and which therefore a surveyor is not responsible for. And just following up on that last point perhaps, as I mentioned before, because the department –

Q. Just one small point that I have noticed. The box talks about cadastral survey dataset –

A. Yes –

Q. The definition talks about cadastral survey data –

A. There are two different definitions.

Q. Of course, cadastral survey dataset, yeah, so the definition of cadastral survey dataset that was being focussed on?

A. Yes, that's correct. I think there's not, I don't think any agreement between ourselves and the Institute on the definition, well certainly indicated by this diagram I think the cadastral survey data includes all of these things. The question is how – what is the extent of scope of the dataset and that hinges essentially on what does, "necessary to integrate" mean, um, and some of Mr Speirs – and some of Mr Speirs' discussions he has tended to focus on what could be called spatial integration which is one part of integration, which is to making sure that all of the points and lines and polygons that are provided by the surveyor match up with all the other points and lines and polygons that are in the cadastre and that's – that's certainly a necessary part of integration and it's a technically complex part of it, and an interesting one for surveyors, but it is not the entirety of integration. So anyway there's – I would treat that box as being a description of the information in a cadastral survey dataset that a surveyor is required to provide. It's not a complete definition of the cadastral survey dataset but it is, um, it is a way of saying these bits of the cadastral survey dataset will – must come from, the surveyor must provide them, um, except they've got a few differences there which I won't talk about at detailed level, but if I could come down inside that box there's a split up between cadastral survey and, and the survey system information, tenure system

information so if I can refer you back to the definitions of – we've got cadastral survey dataset means the set of cadastral survey data so its therefore referring back to the definition of cadastral survey data, and cadastral survey data is described in a couple of ways. (a) says it is information in or derived from cadastral surveys and related information and that's a very broad definition. It is slightly narrowed by (b), um, narrowed perhaps, no, not narrowed, I think it is categorised by (b) in which so the information – this information, we're talking about in (a) is of two broad groups. There are survey system information and tenure system information, so in that diagram the cadastral survey heading is drawn as if it's mutually exclusive with the survey system information and the tenure system information, whereas I believe we have cadastral survey data and (a) describes essentially where it comes from and (b) how it may be broadly categorised and the definition in (b) is there perhaps also for the avoidance of doubt that people might think that cadastral survey data only relates to the technical survey issues of boundaries and lines and points and polygons and so on. This is clarifying the fact that the cadastral survey data also includes textural information relating to tenure systems and documents and other information which isn't presented in a classical survey form but it is a necessary part of cadastral survey data. So underneath cadastral survey dataset I wouldn't separate them. I think it's quite unhelpful to separate them out as if they are three mutually exclusive columns. Um, that's perhaps the main thing I need to say there.

Q. When you talk about the columns, so that I'm clear, you talked about three columns –

A. This –

Q. You're meaning within the box?

A. Well I mean within the box there are three – in fact there are four columns but there's one cadastral survey and then that's broken down to two, then there is survey system as if it is a different thing and tenure system information as if that's a different thing.

Q. Fine, I just want to be sure that I had the rights columns.

A. Yeah, sorry, in fact referring to three columns was confusing because there are actually four. The other thing, no, one other thing I will mention, um, in here is that if we go outside of that box, so if we take the things in that box as being the things which the surveyor must – the part of the cadastral survey dataset which a surveyor is required to provide, it's not complete in the sense that there are some things outside the box which are the surveyor can also be required to provide. If you look under "computer registers" and then under "tenure system information" over there you will see a memorandum of easement, now that is the rules for cadastral survey –

Q. You've computer registers and memorandums –

A. Under "computer registers" –

Q. Oh I see, it's in the second column under tenure system is it?

A. Tenure system information, the third item down is memorandum of easement.

Q. Okay.

A. That's indicated, it sits under 223 certification, and I've already discussed the fact that it's correct that the 223 certification doesn't have to be provided by the surveyor but the memorandum of easement is required by the rules to be provided by the surveyor and therefore that should be, if we're going to redefine that box as being that information which the surveyor is required to provide then that information should be inside the box. Um, now that is a matter of I guess you could say technical or policy difference between myself and the Institute of Cadastral Surveyors. They believed that it shouldn't have been included within the rules. Um, I consulted with, fully and as required and decided that it should be included within the rules so that is currently within the rules.

Q. So there was a process by which you created the rules –

A. Yes –

Q. And it involved consultation –

A. Yes –

Q. And any further changes from here have to be implemented by you I suppose –

A. Yes –

Q. But I haven't looked specifically at the Act, in consultation I presume with the Institute –

A. Yes –

Q. And whoever else might be specified?

A. Yes. Actually there is one exception to that which applies to Canterbury which was a set of rules following the Canterbury earthquakes which were promulgated under emergency powers without consultation.

Q. Yeah. Promulgated by you or –

A. By myself, and under an order in council. But in fact the next step, even with those ones, is to – is this year we will be going through the full, proper full process of incorporating those changes within the rules. Um, there is one exception to – I can't quite just how you described it but any changes must go through that process. Certainly any additional requirements must go through that process. I do have another power where in a particular situation if I think any of the rules are impracticable or unreasonable I can waive them in that circumstance, or I can waive a particular rule and replace it with certain other requirements. So I have, I have power to, um, the survey dispensation is the process that's used and it's frequently recalled to by surveyors. I do have the power to say, "In this particular circumstance although this rule applies, um, it's impracticable or unreasonable to apply that rule and I will allow the dataset to be approved even though it doesn't comply with that aspect." I may require less onerous conditions to be complied with.

Q. Mr Speirs' affidavit exhibited correspondence between the Institute and LINZ and primarily yourself I think –

A. Yes –

Q. That extended over a year or more –

A. Yes –

Q. And that correspondence post-dated the rules I presume. I didn't stop to think about that.

A. I think most of it pre-dated, or I think there was quite a lot prior to the rules. I actually can't remember now whether any of it was – whether

any of it continued – I think actually some of it may have continued after the rules were propagated.

Q. When did the rules come in? In 2010?

A. In May last year. Sorry, May 2010.

Q. So in terms of interpretation the rules are there and they have the power of a regulation?

A. Yes they do, yes. Um I think I have probably mostly covered the diagram. If I may just take a second and refer to my notes and see if there is any other aspects that I wanted to discuss. Actually there is one other comment that Mr Speirs made that I wish to challenge in fact. As I wrote it down, um, he was talking about the linking of marks and parcels, new marks and parcels to old marks and parcels using the Landonline software to do that linking, and he stated, "LINZ has accepted that this is not part of the dataset" I don't accept that is not part of the dataset, it is necessary information for integrating the survey into the cadastre, it is provided by surveyors, um and I believe that it clearly is part of the dataset. It is not expressly described in the rules that it must be done that way, but the practical way of providing that information is to carry out that function within Landonline and having carried it out in that way it becomes part of the dataset. Mr Speirs also mentioned that a surveyor has no function in the register, but I think I have covered the point that in fact the information provided (inaudible 13:17:05) is in fact part of the register. Oh yes, so there is one other aspect and I think we need more clarification between what is the survey graphic and the title graphic on this diagram and the CSD plan and the title plan which are described as being required by the rules. Those plans contain graphical information and textural information, so there are two types of information on those plans. The most complex part of that information and also the part of it the eye naturally goes to when you first look at a survey plan is the picture of the land, so that's the information that people tend to rely on first as something which has clearly come from a surveyor. However, the textural information or any other information that is on the plan is still a component of the plan, and particularly where, you know, that information has been provided by the

surveyor. For example there is a requirement that the plan contain any – actually I am not quite sure of the words, but any other consents or requirements of law, so any other information that is required by law consents and other statements that are required by law to be on a survey plan are required to be on that plan, that will generally be in a textural form sitting beside the graphical part of the survey. So the surveyor provides the using in the manner that Mr Speirs described, using the software develops the graphical part of the survey plan. They also have the ability there to enter textural information which is incorporated on the plan face as textural information and there is also other information which, if they have provided it in a document form, or image form, will be also incorporated into the plan and the full set of information is the plan, the graphical bit of it is certainly a necessary part of it, but it is not the entirety of the plan. So where in this box if again we were to describe this box as being the information the surveyor must provide, the items survey graphic and title graphic are not complete. The surveyor certainly has to provide those, but in fact the surveyor has to provide those in the form of a plan, which the software will compile from the information that they provided. One other thing I might refer to in the description of managing risk, and I think it's at the high level, um, Mr Speirs referred to different ways of, um, of the surveyor in managing that risk. That is essentially the risk of them getting it wrong. Getting the thing that they've certified correct, wrong. Um, and he outlined a couple of different ways of meeting the needs of the department in terms of the rules for the approval of the survey but also the territorial authority for the Resource Management Act certification and there are different ways that surveyors will manage those risks. Um, so for example the, um, the risk is essentially that the surveyor may obtain approval from LINZ for survey plan and then subsequently find that the council does not believe it – does not issue a certificate because there's some aspect of it they think doesn't comply with the resource consent. Conversely if a surveyor obtains the Resource Management Act certification first and then submits the plan to LINZ and LINZ says there's some aspect of it which doesn't comply with the rules then LINZ

will require the survey to be changed which may then invalidate the Resource Management Act certification. So and I think the – I guess what I would like to take from that, at a sort of at a high level in the surveyor's role is the surveyor's role they have regulatory sets of requirements that they've got to comply with. They've got to comply with the rules for cadastral survey and whatever is necessary by the chief executive to integrate the survey but they've also got to comply with the Resource Management Act regulatory requirements and so they have a responsibility to their client, um, to make sure that both of those, um, sets of requirements are met with the same dataset, within the same dataset, um, and within the same dataset in its broader definition than I think the Institute are inclined to describe it. There was – there was a bit of discussion just when we came back into this room about, um, data being added or removed after certification. Um, we've sort of – we've covered the issue with the bearings. The bearings weren't moved but – removed, but there was one particular, um, product if you like from that survey or type of plan which doesn't have them on. The other plan does have them on, um, so, but even – even in that aspect when that information was either included or not included it was – it wasn't invalidating the question of what had been provided by the surveyor. Um, it was a subset of what had been provided by the surveyor. The process which you also just discussed a little bit towards the end, um, of the surveyor taking responsibility for what they do and then LINZ relying on that, that is – that is a necessary part of the cadastral survey and title system. That information which comes from a variety of sources, from surveyors, from, um, conveyancers, from territorial authorities, all of that information must come from, ah, someone who is both competent to provide it and takes responsibility for its correctness and the efficiency of the New Zealand survey and land registration systems, and is one of the most efficient in the world, does depend on the department being able to rely on the sources of that information and the responsibilities that they take when they provide it.

Q. Thank you very much, that's also very helpful Dr Grant. Is should ask Mr Speirs if there is any new information. I don't want what he said to

be repeated, but if there is anything new arising out of what Dr Grant has said I think fairness requires me to give him an opportunity to comment. So thanks very much. Thank you Dr Grant.

THE COURT ADDRESSES MR SPEIRS:

Q. Mr Speirs, are there new matters that have been raised by Dr Grant that you would like to comment on. If so come forward and tell me.

A. I don't believe there are any new issues involved. I think he's highlighted some of the issues that do exist that we've already gone through.

COURT ADJOURNS: 1.26 PM