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FEEDBACK::

Toitū Te Whenua – Land Information NZ Survey and Title Compliance Strategy

To: **Customer Delivery**
Registrar-General of Land; Surveyor-General; Head of Property Rights
Toitū Te Whenua – Land Information NZ

via: engagement@linz.govt.nz

This feedback is on behalf of the *Institute of Cadastral Surveying* (ICS).

The ICS is an organisation whose membership is actively engaged in cadastral surveying. This response represents the collective views of the ICS Executive Committee and is based on the experience and wisdom of our leadership team and wider membership who are located throughout urban and rural Aotearoa.

As noted in the strategy document, Licensed Cadastral Surveyors bear a great deal of responsibility for the maintenance and functioning of the cadastre, through spatially defining interests in land and submitting Cadastral Survey Datasets to record interests and integrate new and existing information into Landonline. As a consequence of this, LCSs also carry a considerable risk through our obligations under the Cadastral Survey Act 2002, which are to some extent mitigated by business rules and tools provided by LINZ through Landonline and compliance processes within LINZ at the time of survey approval. These risks must also be addressed by having good internal quality processes, maintenance of professional competence, and by the collective responsibility taken for good survey practice by surveyors and their professional bodies. This feedback seeks to view the compliance strategy through this lens.

This response is also submitted in the best interests of landowners and the public - our clients.

We thank you for the opportunity to provide feedback on this strategy document.

1. General

ICS is pleased to see a strategic view being applied to Survey and Title Compliance by Toitū Te Whenua – LINZ.

In our engagement with Toitū Te Whenua over the last few years we have constantly raised our concerns over the challenges presented by LINZ compliance processes – from the completely unacceptable backlogs and wait times in survey and title transaction processing to the inconsistency with which the Cadastral Survey Rules are sometimes applied in validation, leading to avoidable non-compliance, delays and unnecessary rework.

The strategy identifies and seeks to resolve a number of our long-held concerns, and in general appears to promise a new approach which will be highly beneficial for all stakeholders.

The comments below identify areas of concern (some minor), or where we have identified potential gaps in the strategy and/or wish to provide supporting contextual information.

The Toitū Te Whenua strategy statements are in **bold**. Our ICS comments are in blue.

2. Shifting our approach to compliance

We extend our collaborative and customer-centric approach to service design:

While ICS wholehearted agrees with this, there is no mention anywhere in the document of enabling/facilitating collaboration between surveying and conveyancing professionals.

Most survey transactions will be followed by a title transaction; the survey need to reflect the rights to be created in the title transaction and vice versa. With the increasing complexity of transactions, collaboration between the professions is essential to first-time compliance and the avoidance of post-approval remedial work. Toitū Te Whenua needs to provide the tools to better facilitate this collaboration, especially enabling solicitors to view and digitally extract relevant information (legal descriptions, title references and allocations, contents of schedules and memoranda) from an 'in-flight' (ie: not yet approved) survey for inclusion in their dealings without the need for manual input.

We design our business rules to support automation and the use of digital validation tools to speed up the approval and registration process:

While we strongly support this approach in principle, this cannot come at the expense of in-house subject matter experts who are able to make educated and well-informed decisions to relax or dispense with aspects of rules and regulations when they are found to be unduly onerous or unworkable.

Toitū Te Whenua have built a considerable capability in this area, and it adds great value to customers both within and outside the organisation. It would be unfortunate (and detrimental to the overall goal) if this capability were cut back in the expectation that automation can take its place.

We adjust our approach to risk based on the nature of the transaction, likelihood and consequence of error, and compliance history of the customer:

As with the previous comment, weighing the risks involved requires knowledgeable staff who are capable of and empowered to make sensible and pragmatic decisions, especially when presented with real-world problems that are actually low risk but which aren't easily fitted into a rigid compliance framework. For example, defining a limited title boundary in a way avoids leaving a small sliver of land that can't be incorporated into a title without making a claim of adverse possession.

Toitū Te Whenua is currently well served in this area and should strive to retain and enhance this capability. We note that whilst using the ‘compliance history of the customer’ will target surveyors with poor performance or QA processes, it could potentially create significant process friction for those surveyors whose work is routinely complex or raises ‘edge cases’.

In our view all surveys should pass through the same validation process, and this process should focus on items or transactions that represent a significant risk to the integrity of the cadastre.

The survey and legal profession’s views on what constitutes a significant risk should also be taken into account.

3. System Structure

The Cadastral Survey system uses geodetic spatial reference points to define specific boundaries of land so rights to and interests in that land can be attributed under the Cadastral Survey Act 2002 and associated regulations.

While perhaps not critical, this definition is not correct.

New Zealand has a monument and vector-based cadastre, and the definition of property boundaries is based upon physical and documentary evidence. Cadastral monuments are required by regulation to be linked back to the Geodetic system to ensure that boundaries can be accurately spatially represented in the Landonline GIS, but the Geodetic system does not generally have a direct influence on the definition of boundaries as it would in a coordinate-based cadastre.

We also observe that the list of ‘Main Actors’ in the Geodetic System omits surveyors in their role as geodetic survey providers. Often, these geodetic surveyors are also cadastral surveyors that utilise and benefit from the underlying geodetic control framework.

4. Compliance risks to system objectives

The legal requirements for certification and registration of land transfer instruments and surveys are also wide-ranging and often complex, and this complexity can create barriers to first-time compliance.

We regard this statement as acknowledgement that 100% first time compliance is not a realistic goal.

To the list of barriers to first-time compliance we would add:

- Lack of transparency in the validation process (ie: surveyors do not have access to the tools and checklists that are used to validate surveys).
- Insufficient real-time error checking on data entry (for example, having a mark placed on a boundary line not set to a boundary ‘type’ doesn’t get flagged in survey capture despite the evident simplicity of automating such a test – there are many similar examples).
- Ambiguity/uncertainty/availability of old records – many of the scanned records in Landonline are illegible or are scanned in black and white despite the colours being critical for interpretation. Some of the original records are illegible due to quality or condition. Other records (such as Record Maps and Deeds Books) have been lost or transferred to the control of other agencies, making access considerably more difficult.

In addition, some instruments and surveys require the exercise of professional judgement, as the regulations, rules, and standards cannot always provide bright-line rules to resolve all possible issues, and must instead rely on broader principles or standards, supplemented by guidance. As a consequence, differences may occur between practitioners which are objectively reasonable and that need to be resolved by Toitū Te Whenua LINZ staff. Our own staff are not immune to this issue,

which can lead to inconsistencies in the validation of complex instruments or surveys, or in the advice we provide to practitioners.

This links back to our comments in Section 2 above about the need to engage and retain within Toitū Te Whenua Subject Matter Experts with the expertise, authority, and objectivity to pragmatically resolve such issues.

To the list of Survey system risks identified in the document we would add:

- *Ground movement due to earthquakes or other natural phenomena leading to widespread uncertainty in boundary location and a potential erosion of trust in the cadastre.* We saw this play out in the aftermath of the 2010/11 Canterbury Earthquakes where LINZ was not able to provide adequate direction (and indeed often provided well-intentioned but incorrect advice) on resolving such movement (which could be achieved by simply upholding the primacy of the so-called ‘hierarchy of evidence’). This culminated in the need for a legislative change (the Canterbury Property Boundaries and Related Matters Act 2016) to deal with the missteps that had been made and to provide a clear path forward.

With regard to two of the risks identified, **“Intentional or unintentional disturbance of survey marks (including geodetic marks)”** and **“Intentional or unintentional disturbance of geodetic marks and associated infrastructure”** we observe that although there is capacity within law to prosecute persons who destroy or alter survey marks (s55(1) CSA 2002) there have been few/no successful cases made, suggesting that this risk is actually something of a moot point.

5. Our Approach to Compliance

Published information includes:

- **The public commitments we make regarding the timeframes for handling or processing applications, and how we will engage with parties.**
ICS is very pleased to see this item included. We hope to see something in the nature of a ‘service level agreement’ type commitment from Toitū Te Whenua to its customers, who are after all the primary source of operating revenue.

Monitoring activities include:

- **Sector monitoring and general information gathering and analysis to understand changes in the survey and title environment that may impact on regulatory outcomes and customer compliance.**
We would recommend that this includes obtaining/developing forecasts of transaction volume based on data gathered from customers so that resources can be adjusted and directed to cope without detrimental impacts on service.

Compliance interventions include any targeted activity intended to directly manage a risk to regulatory outcomes arising from non-compliance. In most cases, compliance interventions focus on a specific regulated party... Our preference is always to promote voluntary compliance in a productive and collaborative manner. In some instances that may include creating disincentives to non-compliance by making the risk of detection and penalisation greater than the benefits associated with non-compliance.

Our expectation is that this does not signal a potential for re-introduction of requisition fees, which ICS long argued against, and which were shown to have little beneficial effect on compliance.

6. Principles guiding our approach to compliance

Our compliance strategy is about making effective use of compliance tools and resources to manage the key risks to achieving regulatory outcomes.

- **We will focus our compliance efforts on the most significant risks and opportunities to achieving regulatory outcomes.**
While this seems reasonable, we wonder how the risks will be ranked or identified as more or less significant.
In the view of ICS, correct boundary definition and survey execution needs to be weighted significantly higher than compliance with the minutiae of the Cadastral Survey and Landonline Business Rules. For example, incorrect defining and marking of the boundary between two titles represents a greater risk to the system than having two marks with the same identifier, or linking to the incorrect node where two instances of the same mark have been recorded in the database.
- **We will measure the impact of our compliance activities on regulatory system outcomes and risks.**
Again, while this is obviously a desirable goal, and while the impact on outcomes can be measured by, *inter alia*, percentage of transactions that achieve first-time compliance, we do wonder how the impact on risk can be measured.

This principle plays an important role in the delivering the shift “We adjust our approach to risk based on the nature of the transaction, consequence of error, and compliance history of the customer”.

It is pleasing to see that the consequence of error is included in this arithmetic, which points to a lesser focus on trivial items of non-compliance.

The operational functions that support our compliance activities are often split between different units, squads, teams, or individuals within Toitū Te Whenua; to be effective, we need to drive, facilitate, and support on-going communication between these teams to ensure they are aligned with the compliance objectives. We also recognise that our compliance activities do not occur in a vacuum, but work in concert with the activities of other stakeholders, such as the professional and statutory bodies responsible for overseeing conveyancing professionals, lawyers, and surveyors.
ICS looks forward to building on our gradually strengthening relationship with Toitū Te Whenua. We would like to reiterate that one of the ways Toitū Te Whenua can improve first time compliance is to encourage and facilitate greater cooperation between lawyers and surveyors. We will attempt to do our part in this space as well.

- **We will coordinate compliance activities across functions, teams, and regulatory systems. We will provide customers with consistent and joined-up advice.**
This would be welcomed. ICS would especially like to see better cooperation particularly between OSG and the RGL on the handling of Limited Titles.

Strong, secure technology platforms

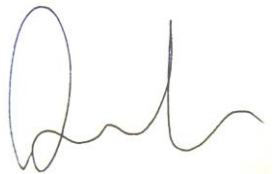
- **We will use information from our technology platforms and investments to improve first-time compliance, help identify drivers of compliance and non-compliance, and new or emerging risks to compliance.**
This approach appears to already be emerging in the design of New Landonline (ie: in the form of real-time prompts for missing or incorrect information). It would be great to see this approach expanded.

7. Concluding Remarks

The overall direction of the compliance strategy appears sound.

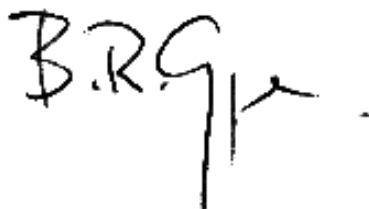
However, as always, the ‘proof of the pudding is in the eating’ and it is vital that the strategy is implemented in a timely fashion and with buy-in from across the organisation and the survey and legal (and conveyancing) professions.

ICS looks forward to working with Toitū Te Whenua LINZ on ways that we can help our members and the surveying profession as a whole to reach for a much higher standard of compliance.



Signed:

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