

Cadastral Problems 2010



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Abstract

A prime corporate objective of LPI is the provision of an accurate, prompt and cost effective service for the registration of plans and the subsequent creation of State guaranteed folios of the Torrens Title Register.

Cadastral Integrity's objective is to monitor the standard of survey practice to ensure the correct definition of title boundaries.

Examination Surveys are undertaken to resolve conflict in boundary definition, boundary disputes and problems with registered plans.

This paper highlights some of the day to day problems the Investigating Surveyors in Cadastral Integrity encounter on a frequent basis. The errors made usually, can be overcome by applying the main principles applicable to boundary definition.

Boundary Definition

In the relocation of title boundaries, it is often said that a surveyor employs a mixture of fact and law. Added to these are experience and commonsense.

There are certain basic principles associated with title boundary location which are constantly referred to and applied by surveyors. The courts have established precedents granting priorities of weight where any two or more of the following boundary features present conflicting evidence in the hearing of a dispute. These are in order of priority:

- (1) Natural features
- (2) Original crown markings of grant boundaries
- (3) Monuments
- (4) Original undisturbed markings of private surveys
- (5) Occupations, and
- (6) Measurements.

The ranking order is not rigidly applied and special circumstances may lead the court at times to give greater weight than normal to a feature of lower rank.

Every endeavour should be made to relocate the boundaries in the same positions as they are shown in the base plan from marks or monuments of that survey if possible.

Although a plan has been accepted by Land and Property Information, this has been done on the basis of the information shown, together with the usual office investigation. If a resurvey shows that some information in the plan was erroneous or that the investigation was incorrectly carried out then the base plan should not be followed where it is incorrect, merely because it is an accepted plan. However, sufficient verification should be made before deciding to discard any part of the base information.

Starting Point

In many surveys insufficient thought or care is exercised in the choice or adoption of a starting point. If at all possible the starting point should be marks placed or shown in the base plan and not those of some later accepted plan in the vicinity. Errors in boundary location are often caused through the adoption of marks of some recent survey or even marks of a peg out, when those marks are in no way related or connected to the base plan.

Rear Boundaries

Where lots facing parallel roads have a common rear boundary, and no supporting evidence is available to fix that boundary, the surveyor will have to refix both roads to verify the existence of any excess or shortage over the original dimensions. This enables the line of the rear boundaries to be re-established from end to end, avoiding the creation of "steps" in the rear line of adjacent lots.

Depths of lots can be affected by a change in the position of the road by either acceptance of a different definition upon resurvey or by alignment of the road after the original subdivision. Original depths should not be adopted from a road without verifying that the position of the road is the same as shown in the original plan.

Occupations

In the absence of satisfactory original markings, probably the best evidence of the true position of a boundary will be obtained by reference to occupations either on the subject boundary or nearby boundaries or both. The present day surveyor is faced with the problem of defining boundaries from occupations only. As a result the chances are that the surveyor is not defining the boundary in the exact position in which it was originally laid out, but is, in fact, locating a boundary in a position which is acceptable as an equitable definition of the original.

In these situations all occupations should be measured along the road frontage and as many as possible along the rear lot boundaries and comparisons made with the original dimensions of the lots before a decision can be made. If this method is used to refix the boundaries the age and nature of the occupations must always be added to the plan. Greater weight can usually be given to older occupations.

While long and undisturbed occupation provides strong evidence that the occupations are erected on the boundary as originally laid, it is not indisputable. Further supporting evidence should be sought.

Clause 34(2) of the Surveying & Spatial Information Regulation 2006 states that “in the absence of monuments defining the land, the surveyor must indicate on the survey plan whether there is sufficient land available to permit the adoption of the measurement referred to in subclause (1) without causing any encroachment on any road or any adjoining parcel of land.

Resolving Excess Or Shortage In Measurement Disclosed By Survey

If excesses and shortages in dimension are disclosed in a new survey every effort must be made to ensure that adjoining and other properties within the base subdivision have sufficient land to satisfy their entitlement. Careful consideration must be given to the intent of the original subdivision. For example, if parcels show equal frontage, every effort should be made to retain this relationship. However, the final decision on the boundary fixation will also be affected by:

- the position and age of occupations
- the relationship of monuments
- the standards of measurement applied over the years.

It requires substantial evidence to justify the inclusion of an excess in a title if doing so will re-locate the boundaries outside the existing occupations. However, it should be noted that the continued adoption of original title dimensions for each lot will have the unsatisfactory effect of moving the excess through the subdivision until it eventually becomes located in the last remaining lot.

Aligned streets

A common source of error in redefinition of title boundaries is that caused by ignoring the effect of the alignment of streets subsequent to the original plan of subdivision. Alignments nearly always seem to have altered the original positions of streets to some extent, although it is sometimes difficult to prove.

In re-determining the alignment of a street where reference marks and alignment marks are not available, a surveyor needs to analyse all occupations on both sides together with the occupied depth of the section, assessing the age of various occupations and their relativity. Careful examination needs to be made of all available plans to assist in determining the age of fencing and the reliability of any redefinition based thereon. Fences can be useful monuments but the reliability of any particular fence needs to be assessed against the relevant facts.

Where streets have been aligned long after a subdivision was made and occupied, the positions of the streets as fixed by alignment obviously cannot be accepted as starting points to determine internal boundaries unless there is evidence that the alignments are in fact in the positions in which the streets were laid out in the subdivision. Useful evidence on this point can frequently be obtained from the field books of the alignment survey. The alignment plans do not show detailed measurements between occupations on frontages, but these may be obtained by calculations from the field books. Also it is not usual to show on alignment plans marks found which enable the alignment to be related directly to the subdivision. If the position of a street is altered by alignment the loss or gain will usually be borne by or accrue to the owner of the land immediately affected. There are, however, so many variations that a general rule applicable to all cases is impossible. Each case must be dealt with in the light of available evidence and its own facts.

Old System Land

It is just as important to correctly define the boundaries of Old System land as it is to locate those of land held under Torrens title.

It is quite evident that this practice is not universally followed. Some surveyors appear to have the impression that fencing or other occupations, particularly if they are more than 12 years old, provide a satisfactory definition of Old System boundaries. This, of course, is quite incorrect. The same methods should be employed and the same care exercised in locating the boundaries of an Old System deed as would be employed in defining the boundaries of a certificate of title.

Where occupations, regardless of their age, are inconsistent with the deed boundaries that fact should be noted on any plan prepared and should be reported by the Surveyor with any information he may have been able to gather concerning the age of the occupations and the circumstances under which they were erected.

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