



THE HONG KONG INSTITUTE OF SURVEYORS

13 May 2004

BY FAX & MAIL
#2869 6794

Clerk to Bills Committee
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Attn: Ms Sarah Yuen

Dear Ms Yuen

Land Titles Bill

Further to the last submission of our comments on the Land Titles Bill (LTB) on 22 April 2003 and 20 May 2003, we found that the Administration had done virtually nothing in respect of our view on the land boundary aspect whereas our suggestions are essential for the Bill to achieve its objective. The inadequacy of Administration's response can be reflected from various discussion papers on the Bill and there is no mention on how to resolve the determination of boundaries for Block Government lease in the summary of the proposed amendments in the papers provided by the Administration from April 2003 to early April 2004 (Position as at 14 April 2004) (LC Paper No. CB(1)1544/03-04(01)). We therefore feel obliged to invite your attention to this in examining the Bill. Below are our summarized comments on the land boundary aspect for your consideration please.

(I) The Administration's Misconception

(a) The Need of Land Boundary Survey

(Ref. LC paper No CB(1)1143/02-03(01), paragraph 28
LC paper No CB(1)2305/02-03/09, paragraph 5.2)

In the first Paper, the Government Administration considered that "*land boundaries should not be a problem for urban land.*" In the second Paper, it stated that "*in Hong Kong, most properties are units in multi-storey buildings, etc*" and implied the same no-problem conclusion.

With this opinion, we find it hard to agree because the need for clarifying the extent of the land boundaries is still apparent for many cases which involve land lot transaction or development. The size of problem does deserve attention. Various organizations have urged the Administration to handle with care the land lots where boundaries are not clearly defined, particularly in the New Territories (NT). To refer to restrictively the urban land lots and the multi-storey properties are side tracking the issue. The Administration must address the Demarcation District (DD) Lots (about 210,000 number) of which the graphical boundaries could be brought up to present standard in the twelve years daylight conversion.



(b) The Adequacy of the Director of Lands' Service

(Ref. Leg Co Brief HPLB(B)76/85/08(02) pt55, paragraph 3 last part, and paragraph 15(f) and LC Paper No CB(1)2305/02-03/09 paragraph 5.2 third part)

The first Paper stated that "the Bill shall provide an avenue for lot owners to apply to the Director of Lands to have their lot boundaries determined and registered in the Land Registry.the Director of Lands shall not make a determination of the lot boundary if the boundary plan changes the boundaries....of a land boundary plan in the land title record or any Government lease or on the ground." The second Paper mentioned "the functions of the Director of Lands under the Bill do not include survey for boundary plans. Therefore, the question of the Director of Lands authorizing a person to carry out a survey for boundary plans should not arise."

If this part is read against the full context of the Bill, the service of the Director actually does not cover the DD lots. This limited provision is definitely not adequate. The declaration of not proceeding with any boundary determination when the boundary plan changes the existing boundary record is most unreasonable. To rectify erroneous plans are precisely the area where the Director's service is most needed. We also question how the Director of Lands could evade boundary determination as part of his function under Clause 92(5) whereas this part of the Bill is clearly titled as "Determination of Boundaries".

(c) The Warrant for Correcting the Old Boundary Plans

(Ref. LC paper No CB(1)1517/02-03(07) paragraph 26
LC paper No OB(1)1143/02-03(01) paragraph 28
LC paper No CB(1)2305/02-03/09, paragraph 5.2 first part)

In the first Paper, the Bar Association suggested that "it may not be just to the neighbouring owners for an owner to secure registration of a lot boundary plan behind the back of his neighbour." In the second Paper, the Administration considered "it is practically difficult to ascertain the accuracy of land survey in the NT which has been done years before and yet the land boundaries should not be a problem for urban land." The third paper stated that "... most properties do already have clear plans, copies of which are attached to registered deeds....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 plans in the Block Government leases have been made a century ago for purpose of collection of rent and they do not contain any information about the dimension or area ...these plans cannot be used as the basis for determination of land boundary under the Bill."

Here, the Bar Association raised quite rightly a concern about boundary survey in a piecemeal approach, but this should not necessarily be construed as an objection to boundary survey. A possible way, and indeed the very way that our Institute has been advocating, to allay this concern is to conduct a systematic survey to enhance all boundaries based on the DD sheets. There was no lack of suggestions from our Institute to Government



in this respect. Unfortunately, the Administration seemed to be contented to express its unsolicited opinion about the plans in the Block Government leases and implied no survey solution to the boundary problem. The fact remained that these plans though presented only in a graphical form did convey information of dimension, area and others. To brand this plan as totally not usable as the basis for boundary definition is too evasive a statement. The boundary problem is not that insurmountable after all.

(d) The Burden of Guaranteeing Boundaries

(Ref. LC paper No CB(1) 1143/02-03(01) paragraph 29)

This Paper mentioned that "...the Administration does not propose to provide any form of guarantee for land boundaries under the Land Title Registration System."

We appreciate that the Administration is not ready to provide any form of guarantee for land boundaries under the Bill. Neither is our Institute suggesting the same to the Government. However, the Bill appeared to be utterly negative in this respect and unnecessarily dispelled all survey plans as indicative only. We note that not all the registered boundary plans are up to present date standard but that is not an excuse for omitting the issue. The Bill should instead address the DD boundaries and introduce an alternative to bring these old land survey records up to standard.

(II) Responsibility that Government Must Bear

(a) The Pre-requisite for Providing Good Titles

(Ref. LC paper No CB(1)1517/02-03(07) paragraph 28 of Appendix I and LC paper No CB(1)1517/02-03(08))

In these Papers, the Bar suggested that "....if ...certain part of the land is ...occupied by neighbour, ... the titlecannot be said to be a good title". The Heung Yee Kuk (HYK) suggested that "there is a need for the Government to establish a database of the land boundary plan..."

We agree with the Bar's opinion on the standard of good title. To provide a good title, the implication should therefore be an inclusion of a land boundary plan for registration but not a shying away from the boundary problem. We have also the same opinion as HYK that a comprehensive land record system should be established for land boundary survey under a good title registration system.

Since the enactment of the Land Survey Ordinance (LSO) (Cap.473) in 1996, many subdivisions of DD Lots were surveyed by Authorized Land Surveyor (ALS). Usually, the ALSs have to re-establish and determine the DD Lots before it could be subdivided. In doing so, many DD Lot boundaries have been updated to an accuracy and standard as required by the Code of Practice of the LSO (Cap. 473). As a matter of fact, these DD boundary plans determined by ALS have been accepted by the Government as a proper land boundary record. By virtue of LSO, all land boundaries could be determined by ALS subject to the acceptance of Director of Lands. We could not see, therefore, any difficulties in the determination of DD lots



either in a sporadic or a systematic approach as long as the boundary is to be determined by ALS, agreed by the land owner (including the consent of adjoining owners, if any) and accepted by the Government. As the Administration adopts the daylight conversion through a period of 12 years, an option could be allowed for the DD lot owners to determine their lot boundaries if a proper mechanism is included in the proposed Bill.

(b) The Equal Treatment to Similar Items of the Bill

(Ref. LC paper No CB(1)2305/02-03(09) paragraph 5.2 last part)

In this Paper, the Administration said that "... the Government is not in a position to verify the plan, these plans will be treated as only indicating the approximate situation and boundaries of land only."

Without repeating what we said in paragraph 1(d) above, we would like to point out that in the same part of the Bill, the nature of easement is covered. If this "nature" is verified, why the same verification service is not extended to the "positioning" of the easement. We fail to see the logic of the Bill if different facets of the same item are not treated the same.

(III) Conclusion

For easy reference, our general view may be summarized as follows:-

- (a) The Bill should cover the boundary aspect and not just the ownership aspect as it now reads.
- (b) The boundary survey should cover all types of lots including the DD lots.
- (c) The Administration must ensure that "a good title" is truly good in every aspect including the boundary description.
- (d) In respect of land boundary matters, the Administration should seek advice of expert surveyors and not to draft the Bill based on unsolicited opinions.

To achieve the stated objective, we feel strongly that the Bill must be improved. Being a Professional Institute with about 200 qualified professional land surveyor members, we would be most pleased to elaborate on any item of our suggestions to the Committee and to provide further information needed.

Yours sincerely

Tony Tse
President

c.c. The Hon P C LAU
Land Registrar, Mr Kim Salkeld