



# THE HONG KONG INSTITUTE OF SURVEYORS

17 June 2005

Mrs Rita Lau, JP

Permanent Secretary for Housing, Planning and Lands (Planning & Lands)

Housing, Planning and Lands Bureau

18/F, Murray Building

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## FACSIMILE TRANSMITTAL MEMO

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Dear Mrs Lau,

### Provisions under Land Registration Ordinance for Determination of Lot Boundaries

Section 94 of the enacted Land Titles Ordinance (LTO) has made provision for the owner of registered land under that ordinance to apply to the Director of Lands (D of L) for a determination of the lot boundaries. In the deliberations of the Bills Committee on Land Titles Bill in June 2004, it was considered that Section 94 would be beneficial to the public and should come into operation upon the commencement of LTO. Since Section 94 will only apply to land that is registered under LTO, the Government has indicated that it intends to introduce a similar provision under a suitable ordinance that will apply to land not yet registered under LTO. Our Institute welcomes this proactive stance of the Government. We now write to follow up on this issue and the progress that has been made, if any, by the Government introducing such similar legislative provision for those owners of land not yet registered under LTO, i.e. land still registered under Land Registration Ordinance (LRO).

#### Determination of lot boundaries under LRO

As it stands now, the large majority of owners of land under LRO, until daylight conversion to title registration at the 12<sup>th</sup> anniversary of the appointed date, will not have the opportunity to apply to D of L for a determination of the lot boundaries on their own accord. To not seemingly create different treatments to owners of land under different land registration systems, we urge that provision should be introduced under LRO that will provide for the owner of land registered under that ordinance to apply to the D of L for a determination of the lot boundaries. The introduction of such provision will also pave the way for a smooth transition in the implementation of Section 94 of LTO.



Upon daylight conversion to title registration, owners of all the lots will be in a position to apply to the D of L for a determination of lot boundaries under Section 94. Imagine the confusion or havoc that will be created on the Government and the land surveying profession even if only a small percentage of the lot owners are applying at that time. It could be a cause of complain and embarrassing to the Government if the application by the owner of land for a determination of lot boundaries is not handled and processed in a timely manner.

By introducing as soon as possible such similar provision under LRO, the bottleneck situation at the 12<sup>th</sup> anniversary of the appointed date can be avoided. Both the Government and the land surveying profession will not be hard pressed at any one time, as the demand from owners of land for determination of lot boundaries will essentially be spread out over the 12-year period. It will allow time for the efficient handling and processing of the boundary applications. Over time, the system of plan submission, checking and registration can be fine-tuned and adjusted to the demand and prevailing market conditions. A wealth of land boundary plans with lot boundaries determined by the D of L will be gradually registered in the Land Registry, in the lead-up to daylight conversion to title registration.

#### The registration of land boundary plans in Land Registry

In the past, many land boundary surveys were carried out with reference to old co-ordinate systems, using comparably inferior survey measuring equipment. Many of them purporting to show the lot boundaries were not prepared by professional land surveyors or the Government. Irrespective of the completeness and accuracy of their content information, as with other types of documents, they have been registered in the Land Registry and, as you know, this has been one of the inherent weaknesses of deeds registration which the Government has set out to replace with title registration. The lack of or conflicting information on the poorly prepared or outdated plans registered in the Land Registry would have made it very difficult and confusing for the present owners of land to determine the lot boundaries on ground now. They are, in our view, a source of uncertainties in respect of the physical extent of title, putting a cloud on the overall quality of title to land which will affect land transaction and value in an adverse manner.

We therefore consider it to be beneficial to the public that LRO should be suitably amended such that upon the determination of lot boundaries by the D of L, the registration of the relevant land boundary plan has the effect of replacing or superseding any boundary plan(s) previously registered for the land concerned. Otherwise, any members of the public searching title to land will be greatly confused by the existence of the many different plans and their validity, and the determination by the D of L will have been rendered fruitless. As we



enter the era of title registration with its underlying mirror and curtain principles, any members of the public searching title to land should have access to and be apprised of the current and accurate information and all the material facts respecting title to land. The title register shall mirror all such title information and facts including any determination of lot boundaries by the D of L and that upon any such determination, the registration of the relevant land boundary plan in the Land Registry shall have the curtain effect of superseding all previously registered plans.

#### Comments on Section 94 of LTO

There is concern that the carrying out of land boundary survey of lot that had been previously surveyed and shown on plan(s) registered in the Land Registry will have the effect of re-aligning or changing the lot boundaries. We would like to address this concern and share with you our view on the matter.

As aforesaid, land boundary survey in the past had been carried out with reference to old co-ordinate systems, using comparably inferior survey measuring equipment. In conducting land boundary survey now for the determination of lot boundaries, the latest survey equipment and measuring techniques will be employed in carrying out the work. The resultant lot dimensions as re-established will be expressed in bearings and distances, with boundary co-ordinates related to the current Hong Kong 1980 Grid System, enabling the unambiguous definition of the lot boundaries on ground. Using current equipment and adhering to present survey standards and specifications, there could be some minor changes in the resultant bearings and distances from those shown on previous surveys if previously done, which are inevitable but which are normally within the survey measurement tolerances. In the rural areas, it may very well be the first time that the lot boundaries have been expressed in bearings and distances, with grid co-ordinates, and which enable the unambiguous definition of the existing lot boundaries on ground now.

If there are large discrepancies from previous surveys as a result of present day survey, then relevant land administration actions such as land exchange may be triggered, in which case, it is beyond the ambit of Section 94. If there are only minor deviations from previous boundary data as a result of present day survey, and these minor deviations are within survey measurement tolerances as explained above, but to prevent in such circumstances a determination of lot boundaries by the D of L on application by the owner of land will be defeating, in our view, the purpose of Section 94 and counter-productive to the intention of enhancing certainty in the determination of lot boundaries.



We would like to emphasize that land boundary survey of existing lot only re-establish, it does not re-align or change, the existing lot boundaries. In many boundary re-establishments, the resulting changes to the dimensions shown on previously registered plans are usually just a few centimetres and are within the survey measurement tolerances. In carrying out land boundary survey to precisely describe the lot boundaries, the land surveying profession and indeed, the D of L, should be given certain latitude in allowing for, including describing on land boundary plan, such minor deviations which do not make any material changes to the lot boundaries on ground. A precise land parcel description will work to protect investment on land, and facilitate land transaction and development by members of the public.

In summary, our Institute would like to propose amendments to LRO that will provide for a determination of lot boundaries by the D of L, and that upon such determination, the registration of the relevant land boundary plan will have the effect of superseding any previously registered plans in the Land Registry. In commenting on Section 94 of LTO, it is our view that minor deviations from previous boundary dimensions as a result of present day survey should be tolerated, and that it should not prevent a determination of lot boundaries by the D of L. Our above proposals in amending LRO respecting lot boundaries and land boundary plan should apply mutatis mutandis to LTO and vice versa.

For your consideration please, and we would welcome the opportunity of meeting with you to further discuss any of the above.

Yours sincerely,

T T Cheung  
President (2004-2005)

cc Director of Lands, Mr Patrick Lau  
Land Registrar, Mr Kim Saikeld  
The Hon Patrick Lau,  
Chairman, Land Surveying Division, Mr Dominic Siu