

Boundary disputes — A clash of wills or a Shakespearean tragedy?



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Boundary repair issues as a means to
resolving an uncertain boundary area
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**Legislative and pro-
fessional options
available to resolve
boundary disputes**

Shakespeare on the Land

Boundary disputes between adjoining owners and the issue of boundary repair and resolution have been the subject of dissertations for doctorates in philosophy to social commentary by Shakespeare.

Lord Hoffmann in the House of Lords appeal court during summation in *Alan Wibberley Building Limited v. In-sley 1999* eloquently expressed the folly of litigation over boundary disputes when he said, “Feelings run high and disproportionate amounts of money are spent. Claims to small and valueless pieces of land are pressed with the zeal of Fortinbras’s army.”

Shakespeare in Hamlet included social comment regarding the willingness of sacrifice over a tract of land where Hamlet, on his way to exile in England, meets a captain in Fortinbras’ army. He learns that Fortinbras and his army are marching to Poland to regain “a little patch of ground/that hath no profit in it but the name”, Hamlet is fascinated by Fortinbras’ willingness to die over something so insignificant (Mabillard 2011).

This paper will examine the options available both legislatively and professionally as a means to resolve boundary disputes between adjacent land owners’ where agreement is desirable and where land title re-adjustment between adjoining owners is required to maintain the cadastre.

Cadastral surveying defines the boundary of a land parcel through survey, adjudication, monumentation and subsequent description of the boundary.

Technology may change, but the process of boundary adjudication, monumentation and the description of boundaries by metes have not fundamentally changed since the 1st century.

Sextus Julius Frontinus was a distinguished Roman aristocrat, governor, military officer and author of the late 1st century AD and is best known as an author of technical treatises, most notably on the aqueducts of Rome.

Extracts from a treatise on land surveying ascribed to Frontinus are documented by Campbell (2000), in *The Writings of the Roman Land Surveyors: Introduction, Text, Translation and Commentary*; London.

As cited by Elliott (2004), Campbell documented aspects of land tenure and demarcation by the Roman land surveyors (corpus agrimensorum) and wrote the most important categories of land dispute as outlined by Frontinus are as follows:

Various disputes relating to the location and validity of boundary markers, transgression of boundary lines or paths, or the exact location and extent of imprecisely surveyed or defined areas:

- **controversia de positione terminorum:** a dispute about the position of boundary markers
- **controversia de rigore:** a dispute about a straight line between two or more boundary markers
- **controversia de fine:** a dispute about the path of a boundary other than a rigor
- **controversia de loco:** a dispute about site, i.e., one in which the disagreement over the

line of any boundary extends well beyond the line as surveyed, or when a pre-existing boundary cannot be reliably established on the ground

- **controversia de modo:** a dispute about area, i.e., a dispute based on a claim to a certain area of land, arising when the terms of title or ownership do not stipulate the precise boundaries of the plot in question

Disputes concerning the control or ownership of land or areas:

- **controversia de proprietate:** a dispute about ownership, and therefore dealing more with the validity of title than with the location, extent or boundaries of property
- **controversia de possessione:** a dispute about possession, similar to the controversia de proprietate but involving the acquisition of property by means other than title
- **controversia de iure territorii:** a dispute about the territorial jurisdiction associated with a given community
- **controversia de subsecivis:** a dispute about subseciva, i.e., land left over and not allocated to individuals or communities within the survey area associated with a colonial or viritane distribution. Such land, unless other arrangements were made remained public land of the Roman state. Therefore, encroachment on, or exploitation of it was illegal.
- **controversia de locis publicis:** a dispute about public places, i.e., public lands of the Roman state or of colonies or municipia
- **controversia de itineribus:** a dispute about rights of way

Time may advance but the resilience to resolution generally by a landowner in a boundary dispute remains the same.

Boundary and Title Repair Mechanisms

Park and Williamson (2003) stated that governments with land title registration schemes require a mechanism wherein small adjustments to boundaries should be permitted.

Furthermore, Park and Williamson (2001) considered boundary repair as resolving the extent of ownership of the parcel as opposed to ownership of the parcel.

There is a distinction between boundary and title repair mechanisms, it is considered that a title repair mechanism results from either a court order/survey that leads to the issue of a land title or amendment to a land title whereas adjudication changes to the boundaries of land by boundary reinstatement are a boundary repair mechanism.

McClelland (2001) identified a number of characteristics for solutions to resolving uncertain boundary areas, that is deemed to apply to all boundary disputes, as follows:

- Inclusive – available to all affected landholders;
- Due process – well established criteria and process for application for an uncertain boundary determination;
- Costs – method to equitably apportion costs and deliver a cost effective outcome;
- Equitable – for all affected owners;
- Structural improvements – relaxation of local government ordinances in relation to existing structures;
- Certainty – of title for all registered owners and their successors;

- Extent – a simple common boundary or a wider problem affecting multiple lots;
- Timely – correction of affected titles;
- Possessory – for disputes involving encroachments, consideration must be given to possessory rights in determining the new boundary positions;
- Public consultation – affected landholders must be provided with the opportunity to comment, and a process should exist for reviewing those comments;
- Right to appeal – available to a person objecting to the proposed outcomes; and
- Compensation – payable and/or considered.

Where boundaries are in dispute, it is generally because of the conflict between the position or perceived position of the legal boundary and the physical boundary. The legal boundary is the invisible line that divides land from one landowner and another landowner and the physical boundary is a feature that separates the land occupied by adjoining neighbours such as a fence, wall or hedge.

Around the globe, there are many options available both legislatively and professionally to resolve boundary issues where land title adjustment between adjoining owners is required to maintain the cadastre. Such a list could include:

- Part-parcel adverse possession (or prescriptive easement) application;
- Statutory encroachment legislation;
- Adjoining owner agreement;
- Confused / problem / uncertain boundary legislation;
- Regulatory authority application for determination of a boundary;
- Resolution by a civil court and litigation (no specific legislation);
- Implement a legal coordinated cadastre;

- Physical re-location of improvements;
- Survey adjudication by common law principles based upon possessory title;
- Re-survey by agreement;
- Land consolidation through the French system of *remembrement*; and
- Consider the use of either fixed or general boundaries.

Boundary Issue Resolution Mechanisms

Part-parcel adverse possession (or prescriptive easement) application

The law has in part sought to balance competing land interests through the doctrine of adverse possession where long-standing occupation of another's land may give rise to a successful claim land title for the land in question by adverse possession or gain the right to use part of the property for a particular purpose (prescriptive easement).

Part-parcel adverse possession can be used as a boundary/title repair mechanism, primarily for boundary issues involving a strip of land between abutting lots where a physical boundary such as a fence is involved. Statutory provisions using part-parcel adverse possession legislation allow successful applications to the Registrar of the Titles Office or equivalent to amend the original certificate of title or issue a new certificate of title.

Part-parcel adverse possession applications generally involve two scenarios:

- a discrete part of the parcel, for example, a fenced paddock or a severed part of a land parcel by e.g. road reserve; and secondly
- when the disputed boundary is offset from the legal boundary by an encroaching

structural improvement, e.g. a strip of land and long-standing encroachment.

Part-parcel adverse possession is not an ideal solution for multiple lots involving a block shift of the boundaries. Resolving multiple lots by a series of part-parcel adverse possession court action's is a significant impediment to a timely resolution of the boundaries.

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For a single disputed boundary line, part-parcel adverse possession based upon long standing occupation is a simple solution where the occupation may disagree with a mathematical solution of a boundary. Separation of the legal and the physical boundary to an allowable limit would discourage application for land which may not justify the cost of litigation.

For example, 0.3 metre could constitute an allowable discrepancy between occupation and title dimension or where the discrepancy affects say 10% or greater of the area for a standard size residential lot may represent a 'striking difference in admeasurement'.

Queensland does not allow part-parcel adverse possession application, which was affirmed in *Sherrard & Ors v Registrar of Titles & Anor [2003] QSC 352*.

Creation of a prescriptive easement can be a diluted resolution to a boundary issue. For example: consider a driveway used by a neighbour for many years without challenge by the owner may be considered to have established a legal right for access by prescriptive easement.

Consequently rather than allow part-parcel application by adverse possession, a prescriptive easement allowing access is created over the disputed land.

Statutory encroachment legislation

Statutory encroachment legislation allows provision for an encroachment whereby if it is proved that the encroachment is not intentional and did not arise from gross negligence, then the Court may vest an estate in any part of the adjoining land and the payment of compensation by the encroaching owner.

Statutory encroachment legislation requires a determination by a court. Either land owner can apply to the court for relief with respect of the encroachment and action is taken under the encroachment provisions to vest an interest or title in the land covering the encroachment, once the true boundary is determined.

In general, practical application of statutory encroachment legislation usually involves a physical boundary. An encroachment can be defined as a structure and also as a wall, fence, hedge, ditch, garden bed or other manner of marking a boundary between land parcels.

A limitation period is not required for an application for relief by statutory encroach-

ment. However, some jurisdictions (including Queensland) expressly do not permit relief for fencing etc. including both recent and older fenced occupation.

Statutory encroachment legislation applies in Queensland through the Property Law Act 1974 and represents a mechanism to solve boundary/title repair issues whereby the affected owner may be entitled to compensation and the possessory owner may gain title or an interest in the affected land.

Statutory encroachment legislation can resolve disputes involving inadvertent physical occupation that is generally less than a statute of limitation period. It should only be available for the relief of significant physical structures, thus allowing an alternative solution to deal with less significant structural improvements, such as fencing.

Statutory encroachment legislation combined with either part-parcel adverse possession and/or regulatory authority legislation covers many of the scenarios that arise in a boundary dispute. In Nova Scotia, Canada for example, applies both statutory encroachment legislation and part-parcel adverse possession through the Land Registration Act 2001.

If the state is to provide a mechanism to deal with a wider problem area of uncertain boundaries it can apply confused/problem/uncertain boundary legislation which will be discussed later.

Adjoining owner agreements

Adjoining owners may enter into an agreement over the affected land and create an encroachment agreement. For example, the Land Titles Act 2000, Alberta, Canada, allows neighbours to execute an encroachment agreement between the registered owners of adjoining

parcels of land to permit the encroachment of improvements on one of the adjoining parcels of land, creating a security of interest similar to that of an exclusive easement.

In England and Wales, where a legal boundary is required, the owners of adjoining lands can agree to the boundary and engage a suitably qualified surveyor to draw up a plan to reflect the change pursuant to the Land Transfer Act 1875 and Land Registration Rules 1925.

Confused/problem/uncertain boundary legislation

Statutory provisions may exist for the approval and determination of boundaries by a regulatory body with the necessary expertise. If a significant and identified boundary problem area exists (usually affecting multiple boundary lines and lots), then an area may be deemed a confused/problem/uncertain boundary area.

Generally, an area is not an uncertain boundary area unless boundary issues affect a significant number of lots. For example, South Australia introduced confused boundary provisions in 1993 with changes to the Survey Act 1992 and the Real Property Act 1886: 'for when the occupation of land within the area does not accord to a substantial extent with the boundaries of land as shown in records or plans held in the Lands Titles Registration Office' (Survey Act 1992).

The role of the regulatory body or the surveyor responsible in resolving the uncertain boundaries is to determine the lot boundaries in a manner that is equitable given due consideration to relevant evidence, type of occupation, the length of occupation, history and common law principles.

A survey plan is prepared for registration of the affected boundaries and altering the bounda-

ries to the extent necessary to give effect to the plan (Real Property Act 1886). After an appropriate objection period and if no appeal is lodged, the Registrar-General may deposit the plan in the Lands Titles Registration Office (Survey Act 1992).

The Registrar-General pursuant to s255 of the Real Property Act 1886, may deposit a plan in the Lands Titles Registration Office and can do so without the consent of a person who appears in the Register to have or claims to have an estate or interest in land affected by the plan.

The Registrar-General may amend the original certificate of title or issue a new certificate of title. The costs of the Registrar-General's deliberations are borne by the state. The lot(s) must be contained within a declared confused boundary area. The application of confused boundary legislation may best resolve issues involving multiple lots

Regulatory authority application for determination of a boundary

An alternative mechanism utilising a regulatory body is achievable through legislation empowering an arbitrator from a regulatory body. Statutory provisions allow application to a Registrar of the Titles Office or equivalent arbitrator, for determination of an uncertain boundary.

For example, New South Wales, within the Real Property Act 1900 allows the Registrar-General to make a determination regarding the position of a boundary where there is doubt as to the position of the boundary.

An applicant can be the owner of land on either side of the boundary or conditionally if a purchaser under a contract for sale of land. The application must be accompanied by in-

formation and documents in support of the application as the Registrar-General requires. In practice, the registrar requires documentary evidence of a dispute between two registered land surveyors.

The Registrar-General is required to consult with a registered land surveyor and if a survey or other investigation is required to determine the position of the boundary, then the Registrar-General may require an applicant to pay the reasonable costs of any such survey or investigation.

If, the Registrar-General considers there are doubts as to the position of another boundary of either the subject land or other land, the Registrar-General may determine the position of that other boundary in consultation with the Surveyor-General. In New South Wales, the Land Titles Office averages approximately fifteen determinations per year.

Provinces in Canada generally allow for regulatory authority application for determination of a boundary. For example, British Columbia allows for the re-survey of a boundary within the Land Act 1996 where the Surveyor General receives an application from the owner of the land affected by the boundary. Upon re-survey, the person acquiring land and/or improvements must pay an amount of compensation to the person owning the improvements and land.

The owners or holders of dispositions contained in the plan of re-survey must jointly pay the cost of the resurvey in proportion to each person's area as compared to the total area of land contained in the plan of survey.

Furthermore, in Ontario an application to the Director of Titles pursuant to the Boundaries Act 1990, R.S.O can determine a boundary

between lots. It is deemed that the arbitrator has the expertise to adjudicate on the reinstatement of boundaries pursuant to the Boundaries Act 1990 which imparts independent authority upon the Director to resolve the dispute.

The Director can dispose of an objection in such a manner as considered to be just and equitable when considering the relevant evidence. The determination of boundaries places significant decision-making authority upon the Director in resolving boundary disputes and an appeal can be made regarding the decision.

Allowing an arbitrator to adjudicate a boundary dispute provides an expeditious and cost-effective mechanism to resolving boundary disputes for the parties involved, where the applicant bears the cost of resolution of the application. Resolution by a regulatory authority application for determination of a boundary is suited to resolving a disputed boundary line between neighbours and is an alternative to part-parcel adverse possession.

Resolution by a civil court and litigation (no specific legislation)

If a jurisdiction does not have a legislative mechanism to deal with boundary disputes then the disputes are left to be dealt through the courts as as a civil court action e.g. the Australian Capital Territory. A lack of legislative mechanisms places significant pressure on the cadastral survey system to reduce or minimise disputes, professional liability insurance and the judicial system.

Implement a legal coordinated cadastre

In 2004, Singapore implemented the first legal coordinated cadastre after removing adverse possession through the Land Title Act 1993 as

a means of acquiring possessory title to land, and do not allow statutory encroachment of privately owned land (Park and Williamson 2003).

The relatively small size and number of land parcels in Singapore enabled successful implementation of a legal coordinated cadastre. An important component of implementation was that the area of an individual parcel remained unaltered and without risk of adjustment due to implementation of legal coordinates with the aim of avoiding potential conflict (Andreasson 2006).

The conversion of survey records to legalised coordinates for all measured boundary points to define legal property boundaries and land titles, pursuant to the Boundaries and Survey Maps Act and Land Surveyors Act, upon acceptance becomes conclusive evidence of boundaries in the courts (Tang and Cheng 2002).

The coordinated cadastre whilst representing conclusive evidence of a boundary, is not definite and indefeasible and should faults or errors be established they may be corrected if discrepancies are observed between the coordinates and reliable boundary marks on the ground (Andreasson 2006). Every Singaporean property created or altered after the implementation of the legal coordinated cadastre has an unambiguous specification of the physical extent (Andreasson 2006).

Physical re-location of improvements

Physically shift all structural improvements so as to be contained within the legal boundaries to the satisfaction of local government setback requirements and development controls. Park and Williamson (2003) stated the best argument favouring occupational boundaries over

legal boundaries is the immense practical difficulties presented by such an exercise in areas where encroachments are common e.g. steeper areas of inner city Brisbane suburbs (McClelland 1999).

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Survey adjudication by common law principles based upon possessory title

Failing the application of legislative provisions as a solution, the onus is placed upon the cadastral surveyor to survey and adjudicate on boundary determination. Cooley (1882) rationalised the role and authority of the surveyor as

'surveyors are not and cannot be judicial officers, but in a great many cases they act in a quasi-judicial capacity'.

Common law principles in the determination of boundaries for reinstatement generally rank the evidence to re-establish a boundary from most compelling to least compelling as:

1. Natural feature boundary monuments or lines marked on the ground;
2. Original or artificial monuments or adjacent boundaries (and lines marked);
3. Fences or possession that can reasonably be related back to the time of the original survey; and
4. Measurements (as shown on plan or stated as a metes description).

Where there is an absence of survey monumentation and faced with an uncertain boundary adjudication, the cadastral surveyor considers two options for adjudication: accept the original survey dimensions (or proportioned appropriately) for the determination of boundaries or accept existing occupation as evidence of boundaries.

Accepting occupation as best evidence of the boundary may require significant time, investigation and cost, especially if there is difficulty in establishing evidence of the relationship of original monument to the occupation through historical survey of the lot.

If the burden of proof was that expected by a court of law, a cadastral surveyor as quasi-judicial officer would be required to undertake such a level of investigation that would include interviewing contractors, past owners, long term residents etc.

For the cadastral surveyor to accept existing occupation (especially in a contentious area) as evidence, where there is an absence of original corner marks or original survey marks within close proximity, requires considerable investigation into the history of the occupation and the relationship to the original survey marks (Simmons 2010).

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In *Attorney-General v. Nicholas [1927] G.L.R* the judgment stated '...the original survey marks are gone, a long occupation, acquiesced in throughout the period by the surrounding owners, is evidence of a convincing nature that the land so occupied is that which the grant conveys, in the absence, of course, of striking differences in admeasurement, or some countervailing circumstance...' (as cited by Land Services 2009).

Unfortunately, in boundary disputes acquiescence often exists only as far as the owners are ignorant of the occupational discrepancies to original title dimensions (Simmons 2010).

Elliott (2004) provides a selection of chosen examples of highlighting the role of the surveyor in dealing with boundary disputes within the Roman empire:

Date(s): AD 62-68

A fragmentary boundary marker recovered from the area of Corinium (mod. Karin in Croatia) attests to the negotiated settlement of a boundary dispute between Carinium and another community, possibly Ansum. The short text provides very little detail, it would seem that the Corinienses and the Ansienses had been able to work out their boundary differences, but wanted the assistance of a surveyor to accurately establish and mark the boundaries. The governor's role seems to have been limited to providing the surveyor and giving legal sanction to the establishment of the boundary. His order to this effect provided an authoritative endorsement of the validity of the boundary, and this is probably the reason it is cited in the inscribed text.

"Boundary drawn between the An[sienses?] and the Corinienses, according to the agreement of both parties, measurements having been made, by order of Aulus Ducenius Geminus, propraetorian imperial legate."

Similarly, three famous boundary markers from Pompeii mark a boundary outside the city walls that played a role in the judicial activities of the tribune.

The texts clearly indicate that his role was to remove squatters from the public lands of Pompeii, necessitating legal hearings and the demarcation of boundaries.

"By the authority of the emperor Caesar Vespasian Augustus, public places repossessed from private parties. T. Suedius Clemens, tribune, the cases having been heard and measurements having been made (causis cognititis et mensuris

factis), restored them to the Res Publica of the Pompeiani."

A fragmentary inscription from the area of Messene preserves a *determinatio* made in AD 78. This Greek document, prepared by a surveyor who was a freedman of the emperor Vespasian, related to a restoration of boundaries.

Although it is unclear under whose authority the surveyor reinstated the boundaries, Elliott (2004) presumed it was related to the long history of a dispute between Sparta and Messene.

Elliott (2004) makes particular note of the role of the surveyor, stating this is the only *determinatio* we have that is issued by the surveyor and not by the presiding official in the case and that the surveyor may have been appointed (by the governor or the emperor) as the iudex or may have been chosen by the parties in question as an arbiter ex compromisso without engaging the legal/administrative apparatus.

... about (?) feet ... the peak ... in (descent?) ... "Boundary marker of Lakedaimon ... 700 feet from? ... but the inscription(?) appears to be a bend(?) ... they come down to ... south, "Boundary marker of Lakedaimon, toward Messene." ... inscribed with O and in the middle P appears to be the boundary marker. From there ... the twenty-seventh (boundary marker) was placed, bearing an inscription toward the east ... (... to the temple of Zeus?) Hypsistos and the Hysion, about 80 800 feet. To the twenty-(eighth) boundary marker ... they come down to the boundary marker (bearing the inscription) "Boundary marker of Messene, toward Lakedaimon." From (this ...) ... about 1000 feet, on these were engraved .. From there, in descent ... (... "Boundary marker) of Messene, toward Lakedaimon." From this to ... (... to) the rock engraved O and P in the middle, and on ... (... about 1,600 feet to the rock which is in the middle of a (stream? ... the length?) could-

not be measured as far as ... (of the *Lakedaim*) *onioi* and of the *Messenioi* through this (area? ... on the rock) was cut O and P in the middle. The ... (... *Lake*)*daimon* in/on SYNROIAl which also a wooded valley ... engraved in the living rock of the cliff face ... the torrent and the precipitous (ground?) as far as ... to the spring which is called *Phalinga* ... thence about 1,250 feet along the ... of *Messene* and *Lakedaimon* ... which is in the pass, which toward(?) ... *Lakedaimon*. From this rock above ... "of *Lakedaimon*," toward the west "of *Messene*." From (this ... on which is inscribed?) "Boundary marker of *Lakedaimon* toward *Messene*." ... (... on which is engraved O) and P in the middle. From this along ... is inscribed "Boundary marker of *Lakedaimon*, of *Messene* ... (... the ascent?) is, to the summit(?). From this about 700 feet to the rock ... to the hollow(?) about 520 feet. From there toward the summit about 1,000 feet. From there ... is engraved. From there along the ridgeline about 800 feet. From there, in descent, about ?? feet ... to the hollow about 300 feet. From there, just as nature inclines, to the summit about ??? feet. (Thence, in descent) to the rock – about 200 feet – on which is engraved "Boundary marker of *Messene*, toward *Lakedaimon*." From this, over/above the cliff, about 90 feet, to the rock engraved O and P in the middle and A and M. From this along the cliff to the sanctuary, named for *Artemis Limnatis*, which is above the torrent called *Choireion*, which is the boundary for *Messene* and *Lakedaimon* toward the *Eleutherolakones*. *Titos Flaouios Monomitos*, freedman of *Vespasian Augustus*, land surveyor, restoring the boundaries inscribed above, wrote them out when *Dekmos Iounios Preiskos* (and) *L. Kaieionios Komodos* were consuls, (? days) before the *Kalends* of January in *Patras*

The process of boundary adjudication, monumentation and the description of boundaries by metes and the role of the cadastral surveyor have not fundamentally changed with the passage of time.

Re-survey by agreement

The doctrines of agreement and acquiescence over disputed property generally requires three elements to establish a successful claim: there must be uncertainty as to the legal boundary, there must be agreement between the adjoining owners, and there must be acceptance and acquiescence in of that line over a period of time.

The process of boundary adjudication, monumentation and the description of boundaries by metes and the role of the cadastral surveyor have not fundamentally changed with the passage of time

Assuming that the adjoining owners agree to a boundary as opposed to selecting a boundary alignment and it does not involve fraudulent activity, a legislative mechanism is required to allow boundary agreement's between neighbours.

A boundary line settled through agreement and acquiescence is usually based upon occupation and consequent mathematical determination and survey of the boundaries.

Re-survey by agreement (if agreement is possible) by all land owners is a relatively simple

efficient mechanism, where such mechanisms exist.

For example, in California pursuant to the Subdivision Map Act (1929) adjoining landowners can apply for a lot-line adjustment resulting in a shift of a boundary and issuance of a new land title's.

Land consolidation through the French system of *remembrement*

Remembrement is a French term describing a process of land consolidation, usually in rural areas, where existing land titles are surrendered, re-issued and re-configured based on certain criteria (typically land value).

For example, in Saskatchewan, Canada pursuant to the Planning and Development Act 2007, a municipality (local authority) may facilitate the physical development of land by redistributing the ownership of land by a re-plotting (consolidation) scheme.

A re-plotting scheme must include a plan showing the original lots within the scheme, the proposed re-configuration of the new lots including the area of each original lot and proposed new lot, the compensation payable to the registered owners and the proposed apportionment of the estimated cost of preparing the replotting scheme.

Compensation is determined and payable for severance, disturbance, injurious affection using the 'before and after' land value method, based upon the value of the former parcel of land and the created parcel of land as at the date of approval of the plan of subdivision.

Consider the use of either fixed or general boundaries

England and Wales, which has both legal and general boundaries where the majority of land

titles merely establish the general boundary which allows land to be registered and dealt with whilst not requiring the need for extensive enquiry into the exact line that represents a legal boundary and which may give rise to a dispute.

The general boundary is based on an Ordnance Survey map which shows permanent physical features generally at a small scale thus creating difficulty in defining the legal boundary as the land title may not precisely describe the boundaries of a lot and sometimes it is impossible to identify the position of the legal boundary from the register of title and title plan.

The "general boundaries' rule" in the Land Transfer Act 1875, Rule 278 of the Land Registration Rules 1925, states :

Except in cases in which it is noted in the Property Register that the boundaries have been fixed, the filed plan or General Map shall be deemed to indicate the general boundaries only. In such cases the exact line of the boundary will be left undetermined – as, for instance, whether it includes a hedge or wall and ditch, or runs along the centre of a wall or fence...

For example, if a physical feature separates two lots, say a fence, the line on the Ordnance Survey map will indicate the middle of the fence.

However, the effect of the general boundaries rule is that the boundary may not necessarily be the middle of the fence.

Consequently, the legal boundary may only be established or required in the event of a dispute.

Determination of the legal boundary can be by either other evidence or by agreement.

Conclusions Regarding Boundary/Title Repair Issues

Court hearings regarding boundary disputes, can extend over many years e.g. six separate court hearings involving neighbours commencing with *Shadbolt v Wise [2002] QSC 348* and culminating in *Shadbolt v. Maroochy Shire Council [2006] QPEC 113*, and resolution in 2008.

a mixture of options is required as a 'one size fits all' approach does not cater for a wide range of scenarios

Unfortunately boundary dispute issues are not simple, each dispute may possess unique characteristics that differentiates that particular dispute from another dispute requiring solutions that may be fulfilled by a niche mechanism best suited to a particular circumstance.

The dispute may be compounded as being part of a wider problem area involving multiple lots and the costs associated with identifying the extent of the problem and undertaking boundary/title repair action may be beyond the means of the affected land owners.

If the state chooses to legislate or provide a mechanism to resolve part-parcel boundary issues, a mixture of options is required as a 'one size fits all' approach does not cater for a wide range of scenarios.

If the state chooses not to legislate or provide a means to resolve common boundary disputes,

responsibility is then placed upon the cadastral surveyor to adjudicate the issue by common law principles.

Such responsibility may require increased investigation into occupation and possessory titles, increasing the cost for a cadastral survey and raising the issue of private cost versus public benefit. All methods of boundary repair determination should require a plan of re-survey and correction of title to maintain an accurate cadastre and land title registration scheme.

In terms of a Queensland model and legislation, the resolution of boundary/title repair issues would require consideration of regulatory authority application legislation, part-parcel adverse possession application and confused boundary legislation (Simmons 2010).

McClelland in 2001, considered it necessary to provide a legislative support mechanism to determine uncertain boundaries and the legislation should incorporate a combination of the processes as discussed, both then and now.

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