

# Property Rights Regulatory System - Assessment Summary

## Context

- 1 Land Information New Zealand (LINZ) has regulatory stewardship responsibilities for four regulatory systems. A regulatory system is a set of formal and informal rules, norms and sanctions, given effect through the actions and practices of system participants, that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome.
- 2 In 2013 the State Sector Act was amended to make clear that departmental Chief Executives have regulatory stewardship responsibilities over the legislation<sup>1</sup> their agencies administer. This stewardship approach requires Chief Executives to look beyond their specific statutory responsibilities to also focus on the performance and resilience of their regulatory systems over time, including working more effectively with other government agencies and non-government entities who share system responsibilities.
- 3 In 2018, LINZ confirmed its regulatory stewardship strategy, which includes the objective to regularly assess the performance of its four regulatory systems. Regulatory system assessments ensure that those systems are performing well and can respond to emerging issues and trends so that they remain fit-for-purpose over time.
- 4 Assessments check how the system is performing given the current rules (including identifying where those rules are the cause of system underperformance). Assessments don't propose what the rules should be (i.e. they are not a policy review) or review the operational performance of an agency (like a Performance Improvement Framework review would).

## The Property Rights Regulatory System

### Introduction

- 5 Property rights generally and as they relate to land ownership underpin the economy and are critical for a nation's success. They make an important contribution to economic growth and prosperity by creating safeguards and incentives for investment. Property rights also support important social outcomes such as security of tenure for housing and access to public land and amenities for recreational and cultural purposes.
- 6 New Zealand's Property Rights Regulatory System provides for rights, restrictions and responsibilities to be exercised over land subject to the Land Transfer Act 2017. This

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<sup>1</sup> Wider interpreted to mean stewardship of regulatory systems.

includes privately-owned residential and commercial property, land held by local authorities and registered Māori freehold land.

- 7 The primary objective of the Property Rights Regulatory System is that New Zealanders have confidence and certainty about the rights, restrictions and responsibilities relating to ownership of land.

## The System

### Structure

- 8 The Property Rights Regulatory System consists of three sub-systems:
  - The Geodetic sub-system defines the reference points by which the features of land and sea are defined. This allows for the location and height of land and sea to be specified.
  - The Cadastral Survey sub-system uses geodetic spatial reference points to define specific boundaries of land so rights to and interests in that land can be attributed.
  - The Land Transfer sub-system provides for rights and interests in land to be exercised by registering indefeasible title to a defined parcel of land that is held under the Land Transfer Act 2017.
- 9 These systems build on each other. For example, titles are issued when a parcel of land has been surveyed, which is made possible by defining parcel boundaries with reference to the national geodetic positioning system.
- 10 A key feature of the Property Rights Regulatory System is the Torrens system of land registration and transfer. Under the Torrens system title to land is 'indefeasible', which means a right or title in property cannot be made void, defeated or cancelled by any past event, error or omission in the title. Subject to some exceptions, title is guaranteed under the provisions of the Land Transfer Act 2017 (LTA) and underwritten by a statutory compensation scheme in the case of fraud or registry error.
- 11 The land register and cadastre<sup>2</sup> are held and administered electronically via a technology platform called Landonline. Landonline is accessed directly by:
  - lawyers and conveyancers for the purpose of registering land transfers, mortgages and other conveyancing transactions (including leases, easements, land covenants and other interests).
  - surveyors to access survey information and lodge new cadastral data sets (CSDs) to define new parcels as subdivisions, and to redefine boundaries when required.

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<sup>2</sup> The cadastre is the official record of cadastral surveys that define the location of boundaries of land interests under various tenure systems, including freehold, leasehold, Māori and Crown land. It includes official survey plans, information about boundary marks, survey measurements, and other supporting information provided by surveyors.

- many others such as real estate agents, valuers, developers, banks and other lenders, law enforcement agencies, government organisations and other land professionals who require access to authoritative land information for business purposes.

## Functions

- 12 The Property Rights Regulatory System has some key functions. It allows for land-based property rights to be securely held, traded and taken as security for mortgage lending. New rights and interests in land may be granted and created through the processes prescribed in the Land Transfer Act and other statutes. The system also ensures that public records are maintained with authoritative and trusted information about the location and boundaries of land parcels and details of registered ownership and other rights and interests. These records ensure that landowner's rights and interests are known and understood. They enable those who wish to acquire or develop land to do so with confidence as to the legal validity of the title.
- 13 The system is also important for broader government administration. It plays a key role in supporting the objectives of other regulatory regimes, including the controls on land subdivision and development under the Resource Management Act 1991, compliance with land-related tax obligations, the rating valuation system, the acquisition of land under the Public Works Act 1981, and the forfeiture of property under the Criminal Proceeds (Recovery) Act 2009.

## Main connections

- 14 The property rights system's most important connections are with:
  - The **resource management system**, which is applied by local authorities, sets rules for how land can be used, thereby constraining the rights of individual property owners in specific ways (for example, what can be built on the land).
  - The **Crown land system** must be managed within the rules set by the resource management system, but as property owner the Crown may set other conditions on the use of its land in accordance with its priorities.
  - The **building/construction system** sets rules to ensure that homes and buildings are safe and healthy to live and work in, which in turn generates important information for potential buyers and tenants.
  - The **Māori land system** acknowledges that special protections not available within the general property system are appropriate in respect of much land that is owned by Māori individually or collectively.
  - The **housing and tenancy system** recognises the right of all New Zealanders to be able to live in a house that is healthy, affordable and meets their needs – whether

that be through privately owning or renting a house or through public provision and investment in housing.

## The assessment process

- 15 A panel consisting of Stuart Day, Director Regulatory Stewardship; Kate Gendall, Policy Analyst; and Zoe Mackay, Graduate Policy Analyst, conducted the assessment. To understand system performance the panel reviewed a range of background material and available data and interviewed key external system participants as well as LINZ staff.
- 16 External parties interviewed were from the cadastral survey industry, legal profession including conveyancing practitioners, Banking Association, Real Estate Authority (because Real Estate agents play a role in facilitating the sale and purchase of land and the contractual aspects that precede the registration of transfer), and Wellington and Christchurch Regional Councils. Interviewees were chosen from peak bodies and large and small firms across each industry, along with council consenting staff.
- 17 LINZ staff interviewed included the Registrar-General of Land (RGL), Surveyor-General (SG), Deputy Registrar-General of Land (RGL), Principal Cadastral Surveyor, Principal Solicitor, Deputy Chief Executive (DCE) Property System Infrastructure, DCE Strategy and Stewardship, DCE Property Rights, Group Managers Survey and Titles, Manager Customers and other operational staff.

## Summary of the assessment

### The Property Rights system is seen as robust and generally fit-for-purpose

- 18 Overall New Zealand's Property Rights system is recognised internationally as world leading. No other jurisdictions have a fully online, integrated digital survey and title system with the high level of automation we have achieved in New Zealand.
- 19 In recent years we have been ranked either first or second on the World Bank's "Registering Property" index (part of the annual Doing Business Report). This ranking reflects the strength of New Zealand's Property Rights regulatory system in the key areas of:
  - procedures, time and cost
  - infrastructure reliability
  - information transparency
  - geographic coverage
  - dispute resolution, and

- equal access to property rights.
- 20 The Property Rights Alliance<sup>3</sup> ranks New Zealand 3rd globally in their 2019 International Property Rights Index (IPRI)<sup>4</sup>. Relating to physical property rights, this index assesses performance in the categories:
- perception of property rights protection
  - registering property, and
  - ease of access to loans.
- 21 Domestically, the system is also viewed as robust and durable. Almost all external interviewees understood the benefits of the Torrens system, thought the principles underpinning the cadastral survey and geodetic systems were best practice, and that risks in the system are being managed well.
- 22 The Banking Association reported the banking industry is confident in being able to exercise their mortgage rights over titles, and the councils spoken to were confident they received authoritative information that enabled them to make resource and building consent decisions.
- 23 Landonline is also generally regarded as reliable by those who use it, including LINZ staff, although most users acknowledge that improvements could and should be made to the application and technology platform. That is, it is conceptually good but is aging and lacks modern functionality.
- 24 In general, the roles and responsibilities in the system are well understood and thought to be performed well, although the panel heard that outside the main centres some lawyers seemed unsure of processes and the role of cadastral surveyors relating to land development transactions they were not familiar with. The roles of the Surveyor-General (SG) and Registrar-General of Land (RGL) are seen by system participants as a strength of the system, particularly their importance as statutory officers with independent decision-making responsibilities.
- 25 The Land Transfer Act compensation scheme is viewed as working well and as an important part of the system.
- 26 Overall, LINZ is viewed as a fair and capable regulator that holds a degree of trust with regulated parties, stakeholders and the wider public. That is, LINZ has the social licence to administer the Property Rights Regulatory System.
- 27 The panel also heard that LINZ has strong relationships and a history of high levels of engagement and collaboration with the survey and legal professions, with several

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3 The Property Rights Alliance is an advocacy organization dedicated to the protection of innovation, intellectual property rights, and physical property rights around the world.

4 The IPRI scores the underlining institutions of a strong property rights regime: the legal and political environment, physical property rights, and intellectual property rights.

examples provided where LINZ has worked with the professions on system issues and to co-design professional guidance and education tools.

- 28 The other regulatory bodies who play a key role in the system performing well such as the New Zealand Law Society (NZLS), Survey and Spatial NZ (S&S NZ), the Real Estate Authority, and the Cadastral Surveyors Licensing Board, are also seen as credible with good reputations for sound decision-making and the right systems in place to manage key system risks. For example, the NZLS and S&S NZ support lawyers and surveyors to meet their professional obligations and standards through continuing professional education and professional guidance.

### **The system could be more efficient**

- 29 Many aspects of the system operate efficiently but some areas could be improved to remove unnecessary costs.

### **Compliance requirements for lawyers are seen as too costly and time consuming**

- 30 Currently, lawyers are required to ensure a range of forms are completed by their clients as part of the process to convey land. Those buying land must declare whether they are an overseas purchaser<sup>5</sup> or not (under the Overseas Investment Regime), and under Anti-Money Laundering (AML) legislation must identify that the funds being used for the purchase are from legitimate sources. Those selling property must complete a withholding tax declaration, and both sellers and buyers must provide their tax details and sign an authority for the lawyer to act.
- 31 Lawyers report that it is the requirements under the AML legislation on top of the Overseas Investment Office (OIO), Land Transfer Act 2017 (LTA) and Inland Revenue (IR) requirements that are most burdensome. There is an element of duplication as clients must often provide the same information to lawyers/conveyancers, banks, and real estate agents, which leads to frustration. The large amount of paperwork required in some cases is seen as disproportionate to the level of risk.
- 32 Although some of the legislation is administered by different government departments, this is not always apparent to clients who see the need to provide the same information to different government agencies as imposing unnecessary costs.

### **Requisitions continue to frustrate surveyors and lawyers**

- 33 A requisition is the process where LINZ requires errors in cadastral survey datasets (CSDs) or non-automated title dealings that are lodged with LINZ to be addressed. They represent additional costs in the system (mostly met by landowners) that in some cases could be avoided (noting that some requisitions remain appropriate as a mechanism to manage regulatory compliance risks).

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<sup>5</sup> If they are an overseas purchaser, they must apply to the Overseas Investment Office for consent to purchase.

- 34 In 2019, almost half of all cadastral survey datasets (CSDs) and approximately 20% of the non-automated title dealings lodged were requisitioned. Non-automated title dealings are approximately 13% of total title dealings.
- 35 Requisitions place a time and cost burden that is passed on to landowners and they also put additional pressure on LINZ resources.
- 36 In 2018, LINZ investigated the requisition issue and produced the report “Cadastral Survey Systems Analysis – Requisitions” which noted that they have been of long-standing ‘concern’ and recommended LINZ:
- “Commission an internal ‘systems review’ workshop to jointly review the requisitions analysis.”
  - “Discuss and agree on system level strategy, supporting tactics each business unit could take and clarify who they need to continue to engage with (including how/when).”
- 37 More work is needed to understand the root causes of the high level of CSD requisitions and therefore what actions could be taken to reduce them without compromising regulatory requirements, so the system continues to be effective.

### **Customers do not have clear and easy access to all the right information or to consistent advice**

- 38 LINZ customers (lawyers, surveyors etc) must comply with a range of primary and secondary legislation to lodge submissions and avoid requisition. The panel heard that the current information LINZ provides to assist compliance, via call centre, technical experts or LINZ's external website, is difficult to locate and that this causes frustration and increased workload for both customers and LINZ.
- 39 The panel also heard that there can be inconsistency in advice given by LINZ Property Rights Analysts (PRAs) to customers, resulting in frustrations and repeat requisition of the same information by different PRAs. This may be due to subjective interpretation of LINZ technical resources and guidelines, or the development of differing practices at different LINZ sites. Some customers also reported receiving inconsistent advice from LINZ operational and regulatory teams who appeared to provide answers independently of each other.

### **Internally, LINZ staff could be better connected**

- 40 The regulatory and service delivery functions in the Property Rights Regulatory System are separate in that each has different line accountabilities. The success of this model requires the relationships between LINZ's regulatory and operations staff to be clear and effective. Generally, they are, although they are heavily dependent on the quality of the relationships between key LINZ staff rather than more formal arrangements that could be implemented, such as regular system leadership forums.

- 41 Some external parties identified a need for more transparency and consistency of LINZ decisions in more complex cases. This may be a result of differing understanding and expectations between the regulatory and operations teams.
- 42 There is also an opportunity for greater connection between other system functions, for example, between regulatory, policy and operations teams. While there is generally close engagement and consultation between the regulatory and operational teams on changes to regulatory rules or processes, the panel heard about examples where this may not have occurred. Changes in system settings or processes have therefore been made independently of operations teams, resulting in settings that are difficult to operationalise and not well understood. Operations teams may then be asked questions by customers which they do not feel equipped to address.

### **More communication and collaboration across the system would be of benefit**

- 43 The roles and responsibilities associated with transferring property rights are generally clear, but there can be a lack of clarity and communication about the processes required to establish new property rights, particularly relating to land development. Land development often requires surveyors and lawyers to undertake separate but related roles before territorial authorities can make consent decisions prior to LINZ issuing a title. In general, larger survey and law firms were clear about their individual roles and responsibilities relating to land development but here was a lack of clarity in smaller law and survey firms, resulting in situations where they did not collaborate well, causing delays and sometimes extra costs for land owners.

## **Information on system performance can be further enhanced**

### **Performance information on the operational aspects of the system needs improvement**

- 44 LINZ has a range of information on aspects of system performance including:
- reports from survey and title audits;
  - operational performance information (including transactions volumes, requisitions, and error rates);
  - Landonline system performance reports;
  - website and call center data.
- 45 While this information provides some useful perspectives about the system, a business intelligence capability would provide system level performance information that would enable targeted improvement actions to be taken more promptly.

### **“State of systems” reports are useful but lack performance metrics**

- 46 In 2017 a ‘State of the Cadastre’ annual report was drafted as a trial project to record the state of the cadastral system. The report presents valuable data across the

Cadastral Survey system, but it lacks clarity on where further work is required and why. This makes appropriate resourcing decisions difficult and means LINZ risks investing in the wrong areas or not at all.

- 47 In October 2018 the first monthly 'Current State of the Titles System' report was prepared for the Group Manager of Titles and the office of the RGL by LINZ's Quality Assurance Team. The report provides monthly information on the dealings processed and audited, the rework items issued, and departmental dealings completed as a result of LINZ errors.
- 48 Like the 'State of the Cadastre' report, the 'Current State of the Titles System' report does not provide the full extent of business intelligence required to better inform investment in performance improvements for the operational aspects of the system.

### **Geodetic system performance reporting could be improved**

- 49 Increasingly the Geodetic system is used for a broader range of purposes than cadastral surveying, as a result of GPS and other local based technologies.
- 50 The 'State of the Cadastre' report provides some information on the survey control system, but there does not seem to be any formal reporting on the wider Geodetic system or how it is performing. This information is important in maintaining the Geodetic system, which is a statutory function of the SG and is critical to ensuring the cadastral survey system and the cadastre are robust.

### **An end-to-end view of the property development continuum could help**

- 51 There is currently no system-wide view of the property development process across local authorities and LINZ, so there is no way to assess workflow in the system or to identify where the pressure points are.
- 52 An end-to-end view of the system would give a forward view of workflow, allowing workforce planning and the prediction of work levels both within LINZ and for participants in the land development process. It would also allow the identification and mitigation of potential barriers or hold-ups in the development process.

## **Resourcing of the system is under pressure, both internally and externally**

### **The cadastral survey system may face difficulty recruiting and retaining experience over the medium term**

- 53 High demand for experienced licensed cadastral surveyors, but difficulty employing and retaining staff was reported. There is also a lack of experienced surveyors to promote to senior roles. There is a steady flow of survey graduates employed into survey firms, however many of these graduates over time move into related professions such as construction, engineering, planning, or project management.

- 54 While there are adequate licensed cadastral surveyors currently practicing, there is risk for the Property Rights Regulatory System that over time, numbers entering and staying in the survey profession will not match those leaving. If not addressed, this capability gap could lead to quality issues in the cadastral survey sub-system.
- 55 LINZ faces the same issues private firms do in attracting and retaining skilled cadastral survey staff particularly into the SGs regulatory team. Reasons for this may include a preference to recruit experienced surveyors rather than develop survey graduates; a shortage of surveyors with regulatory experience; a labour market where surveyors can command high salaries; and possibly a perception that the work offered by LINZ is not as interesting as in the private sector. This is also likely to be a symptom of the wider capability issue in the survey profession.
- 56 Without an active focus on addressing the need for the right survey capability, LINZ may in the medium-term face the risk that it does not have the right level of support for the SG's regulatory functions.

## Ongoing improvement in regulatory practice is needed

### The regulatory assurance regime could be improved

- 57 Information on compliance with the LTA and associated instruments are provided to the Registrar-General of Land through conveyancing/law firm audits, e-dealing compliance reviews, information on activities undertaken by LINZ operational staff, reporting from Landonline on title transaction compliance, internal audits of titles operations and information from the New Zealand Law Society.
- 58 Information on compliance with the CSA and associated instruments are provided to the Surveyor-General through cadastral survey firm audits, field Audits, internal audits of survey approvals and reporting from Landonline on survey requisitions. However, while these arrangements provide some valuable insights, the current audit regime does not provide a basis to be statistically confident about compliance levels with the Cadastral Survey Act.
- 59 While LINZ has a reasonable level of assurance about compliance with the LTA, it cannot be as confident the current approach provides the right level of assurance about compliance with the CSA. Further work is needed in this area to ensure regulatory assurance activities are well targeted and providing sufficient coverage.
- 60 As discussed earlier real estate agents play a significant role in facilitating the transfer of property through a sale and purchase agreement for property so have been included in this assessment. Although LINZ does not have responsibility for the parts of the system administered by the Real Estate Authority (REA), it is clear that the REA achieves regulatory assurance via an appropriate business intelligence regime based on complaints received and firm-based inspections.

## There is no evidence based, proportionate compliance strategy in place for the system

- 61 The 'Government Expectations for Good Regulatory Practice' require regulatory agencies to maintain a transparent compliance and enforcement strategy. This strategy must be evidence-informed, risk-based, responsive, and proportionate to the risks/harms being managed.
- 62 The REA reports its compliance approach identifies non-compliant behaviour on a continuum from minor to severe. Each category of behaviour has a proportionate response and sanction attached. For situations where the REA deems the non-compliant behaviour meets the prosecution test, it applies the Crown Prosecution Guidelines when making decisions to take prosecution action.
- 63 Where a lawyer does not meet their obligations under the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, clients can raise a complaint with the law firm. Where an internal complaints process does not resolve the issue, a complaint can be lodged with the New Zealand Law Society (NZLS) and there are a range of disciplinary actions that can be taken if the complaint is upheld.
- 64 LINZ has a compliance and enforcement strategy for the Land Transfer sub-system, but it is outdated and there is no strategy for the Survey sub-system.
- 65 Despite the lack of a comprehensive compliance strategy, there are a range of compliance and enforcement activities undertaken to:
- maintain the integrity of the cadastre;
  - ensure surveys adequately support the assignment of rights over defined land; and
  - to ensure property transactions are properly authorised and legally compliant to maintain a state-guaranteed title register.
- 66 It appears that the known risks in the Property Rights system are being adequately managed, but in the absence of a full risk analysis, LINZ cannot confirm it has a comprehensive view of the emerging compliance risks in the system.

## Regulatory requirements need to be clearer

### Surveyors find the Rules for Cadastral Survey 2010 difficult to work with

- 67 The Panel heard that the Rules for Cadastral Survey 2010 are complex, not well understood and generally difficult to work with. The rules are not written in plain language, and definitions are confusing and may differ from the accepted meanings of well-understood and established survey terms. This makes the rules difficult to comply with and causes increased burden and frustration as well as contributing to the high requisition rate.

## **The Canterbury boundaries approach should be applied in other situations**

- 68 A new approach was developed through legislation in response to the way land was affected by the 2010/2011 Canterbury earthquakes, providing certainty for boundary determinations by deeming that the boundaries moved with the earthquakes.
- 69 The new principle which recognises earthquake related land movement allows surveyors to update the recorded boundaries based on physical evidence rather than historic location. Legislation and guidance specific to Canterbury boundaries was produced and disseminated by LINZ, helping the survey industry be confident that appropriate procedures are clear and are being consistently applied.
- 70 However, the principles established for the Canterbury earthquakes cannot be applied to other earthquakes without legislative authority. There may be a need for this to be formalised through legislation for future events anywhere in New Zealand.

## **There is no formal process to resolve disagreements between surveyors**

- 71 As there is a certain amount of judgement and interpretation involved in surveying, it is possible for two surveyors to disagree on a boundary definition. There is currently no provision in legislation for an efficient dispute resolution process.
- 72 If a disagreement between surveyors is not able to be self-resolved it generally ends up in court, but because there is little case law, courts tend to seek an independent view of the boundary which requires it to be re-surveyed. This process can be protracted and costly.
- 73 Generally, regulatory systems have a dispute resolution process that provides the opportunity for professional disagreements to be resolved more quickly and with less cost before needing to engage in the formal, costly and sometimes protracted process of court proceedings.
- 74 The survey sub-system lacks any kind of dispute resolution process outside the judicial system.

## **There are opportunities for the system to change to meet future demands**

### **The current system is fit-for-purpose but needs to evolve for the future**

- 75 There are a range of emerging external factors (such as co-housing and disruptive technology) to which the Property Rights Regulatory system will need to adapt, so it continues to be fit-for-purpose over time.
- 76 Most surveyors generate their survey plans in 3D (and have done so for some time now) but because Landonline can only accept two-dimensional cadastral survey datasets (CSDs), are required to 'dumb down' their survey plans so they can be lodged.

Survey firms had to build systems to convert plans to 2D which creates a sense of frustration, can be a source of misunderstandings and errors.

- 77 From a broader system perspective, a 2D cadastre does not help with clarity of the property rights in buildings, which is problematic with larger multi-unit developments. In a 2D world three-dimensional spaces are surveyed in layers, which are unclear and difficult to interpret and result in extra resource requirements to clarify boundaries and rights.

## **Some property ownership models are problematic and new models may be required**

### **Cross-lease**

- 78 A cross-lease is where more than one person owns an undivided share in a piece of land and the homes that they build on the land are leased from the other landowners. Cross-leases were a popular form of 'subdivision' created by lawyers dating back to the 1960s through to the 1980s primarily to avoid the costs associated with meeting local government requirements for subdivisions.
- 79 Cross-leases do not generally cause issues when they are initially registered but are often subsequently problematic, causing cost and confusion for property owners who may not fully understand their rights or the nature of cross lease tenure.
- 80 Generally, an alteration in the footprint of the buildings or other restricted areas being "leased" require a whole new survey of the development and issue of new titles; they cannot be affected by a lease variation.
- 81 While the issues with cross-leases are generally known, the scale of the problem of disputes between cross-lease owners is not entirely clear. This is because cross-leases typically have compulsory arbitration clauses and so many issues are resolved out of court.
- 82 Cross-lease titles can be converted to fee simple, but this is a costly process for landowners.

### **Unit Titles**

- 83 Unit titles provide owners with property rights over a defined part of a building, such as an apartment, and mean they share common areas such as lifts, lobbies or driveways with other owners. Residential unit title properties are typically apartment blocks and townhouses. Commercial and industrial types include office blocks, industrial or retail complexes, and shopping malls.
- 84 Unit titles, once registered, can be cumbersome to change, even when attempting to fix minor errors or issues. There is often a lack of understanding for property owners around their roles and responsibilities, and who is responsible for common property along with the costs of doing so.

- 85 Unit titles work best for larger developments. The requirements for unit titles, particularly around bodies corporate, can be restrictive for smaller developments (ten units or fewer).
- 86 Also, Unit plans may not be being used even when they would be the best option. Unit titles are sometimes seen as restrictive and are not attractive to developers and future property owners. There is evidence that some developers are using alternatives to Unit Titles, such as incorporated societies, which can leave owners with less protection.

#### **New Models of Tenure**

- 87 With increasing demand for affordable housing becoming an issue that requires cross-government/local government solutions, LINZ has identified that it needs to play a role along with other agencies in this work. While existing ownership models remain suitable for most ownership needs/situations (notwithstanding the issues described above), different ownership constructs may also be required so a wider range of ownership arrangements can be accommodated. Examples are co-housing, housing co-operatives, community land trusts and self-help housing.
- 88 LINZ does not currently have a view about whether these and other ownership arrangements will become more relevant, and if they are, what the barriers to such arrangements working in New Zealand (if any) may be, and whether current regulatory rules support them.

#### **Local vertical datums can create confusion**

- 89 The Geodetic sub-system provides height information used by surveyors to establish land boundaries (also used to manage water resources, assess hazards, and carry out large scale engineering). Heights are measured above (or below) a reference surface called a datum. New Zealand Vertical Datum 2016 (NZVD2016) is New Zealand's official vertical datum. There are also a series of local mean sea level datums and New Zealand Geodetic Datum 2000 ellipsoidal heights.
- 90 Vertical information held by TAs is often defined in reference to the region's local vertical datum (LVD). Surveyors defining boundaries must then convert this information to reference the NZVD2016. This can lead to confusion and error, particularly when the LVD and the NZVD2016 heights are similar.
- 91 While LINZ has engaged with Territorial Authorities on the benefits of implementing NZVD2016, and a recent survey of TAs has confirmed that 9 already have, further work is needed with the remaining TAs, so the new vertical datum is implemented across NZ.

## Testing against the 4 key criteria

### Effectiveness

- 92 The objective of the Property Rights Regulatory System is that New Zealanders have confidence and certainty about the rights, restrictions and responsibilities relating to ownership of land.
- 93 Each of the Property Rights sub-systems is underpinned by legislation that is generally fit-for-purpose. The CSA allows for land to be accurately surveyed so that ownership rights can be attributed. Land can be registered and transferred under the LTA, which gives certainty title supported by a strong compensation regime.
- 94 The Property Rights system is recognised internationally as world leading, and domestically as providing certainty for creating and transferring property rights.

### Efficiency

- 95 Whilst the Property Rights system is operating well, there are areas where system efficiency could be improved.
- 96 Some system settings, including aspects of the property transfer requirements for lawyers and conveyancers, or the Rules for Cadastral Survey 2010, create a compliance burden for users that are seen to be more difficult, costly and time-consuming than they need to be.
- 97 Requisitions place a burden on users and LINZ staff. This burden is often compounded by the lack of easy access to information that supports compliance, and a lack of clarity from LINZ on what needs to be done to resolve the requisition.
- 98 LINZ could improve its regulatory system information to better identify and understand system issues and how they might be mitigated.

### Durability and resilience

- 99 LINZ's response to the Canterbury earthquakes demonstrates the ability of the system to be flexible in response to change.
- 100 There are two main pressure points where the system lacks durability and resilience. The first is retaining the right survey capability and knowledge in private firms and in LINZ's regulatory environment. Both present the risk that over time the survey sub-system will struggle to perform.
- 101 The second threat to system durability and resilience is the aging Landonline system. While the system is currently fit for purpose, it must be kept secure in the face of growing cyber security risks, and the time required to make changes to the system restrict its ability to respond to change. LINZ is currently working on a programme of work to rebuild Landonline that is planned to address these issues.

102 While the current system is generally reliable and durable, there are opportunities to make improvements in these areas in the future. Developments such as the three-dimensional cadastre and new property ownership models would increase flexibility and allow the system to respond to change and pressure.

## Fair and accountable

103 The Property Rights system is underpinned by the state guarantee of title. This is supported by the compensation system under the Land Transfer Act 2017, which is viewed as working well and an important part of the system.

104 In general, the roles of the SG and RGL are seen by system participants as a strength of the system, particularly their independent statutory decision-making function. Some external parties interviewed however, thought LINZ could be more transparent and consistent with its decisions, particularly in more complex situations.

105 The current regulatory assurance regime, while effective in some areas, does not represent a comprehensive and efficient approach covering all aspects of the system. The key gap in the current assurance regime is that it does not yet provide sufficient confidence about compliance levels with the CSA.

106 It appears that the known risks in the Property Rights system are being adequately managed, but LINZ could do more to ensure it has a more comprehensive view of the compliance risks in the system. Building on its existing risk-based assurance arrangements, LINZ should work towards the development of a more comprehensive evidence-based, proportionate compliance strategy,

107 There is no evidence that the Property Rights system has any negative distributional impacts on different landowners or tenure types; so is seen as fair. Implementing a comprehensive assurance regime and strong compliance strategy will improve system accountability.

## Actions that could improve system performance

### Context

108 The following outlines the key actions LINZ could take to strengthen the Property Rights Regulatory System, so it remains fit-for-purpose over the long term.

109 The recommendations have been prioritised into short (1 – 2 year) and medium term (3 – 5 year) actions. Short term priorities:

- address system risks or gaps in LINZ's regulatory practice
- are straightforward and within LINZ's control, or
- should be started now for a long-term effect on system health and performance.

- 110 Medium term priorities are actions that ensure the system can adjust to emerging trends and future government priorities.
- 111 It is the system owner's responsibility to respond to the identified priorities and the report in general, and report on progress. The panel recognise that there is already work in progress to improve system performance (for example, STEP), and so the system owner is best placed to identify what else needs to be done and provide the long-term assurance of system performance.

## **Short term priorities**

### **Implement actions to improve regulatory practice**

- 112 Under the 'Government Expectations for Good Regulatory Practice', agencies are required to exercise a range of good regulatory practices. The key areas of regulatory practice not fully in place for the Property Rights System that should be developed and implemented by LINZ are:
1. A transparent compliance strategy, that is evidence-informed, risk-based, responsive, and proportionate to the risks/harms being managed.
  2. A comprehensive assurance framework covering all aspects of the system that is based on good information.

### **Address the lack of business intelligence on system performance**

- 113 There is some data generated on aspects of what the system does, but there is very little business intelligence about system performance. This means decisions about what areas of the system should be improved are difficult to make, and not always based on good evidence. To generate the right business intelligence for the Property Rights Regulatory System, LINZ could consider:
3. Scoping and implementing a Business Intelligence function so system leaders and those working in the system can make better decisions based on strong evidence. This should include developing and tracking relevant system performance metrics over time.
  4. A light touch annual reporting process for the Geodetic System so the SG can get assurance that the geodetic system is performing well and the investment in the system remains appropriately allocated.

### **Address the range of issues creating inefficiencies in the system**

- 114 Whilst the system is seen both domestically and internationally as robust and generally sound, there are some actions LINZ could take to improve various areas of inefficiency. These actions are:
5. Review the type and quality of existing information currently available to customers on LINZ's external website, and where possible, simplify it and make it easier to locate and use.

6. Investigate whether other information LINZ has (including what is available and useful in the Operations Knowledge Portal) could and should be made available on LINZ's external website.
7. Investigate why LINZ sometimes provides inconsistent operational advice and take steps to adopt a more appropriate balance between providing consistent and tailored advice.
8. Investigate the drivers behind the requisition rates for both survey and titles lodgements and where it is possible to reduce them, implement a plan to do so.
9. Strengthen relationships between the RGL, SG, operational teams and policy function, and formalise these relationships where beneficial.

### **Clarify regulatory requirements**

115 While the regulatory requirements in the Property Rights System are generally clear, the 2010 Rules for Cadastral Survey (the Rules) are viewed as confusing and difficult to work with. The SG is aware of the issues with the Rules and has just finished consultation on a revised set of Rules. LINZ should:

10. Finalise and implement the new Rules for Cadastral Survey, including a process to periodically review them to ensure they are delivering what is expected.

### **Implement a dispute resolution process for cadastral surveyors**

116 Generally regulatory systems have some sort of dispute resolution or arbitration process to address professional and other types of disagreements. LINZ should:

11. Consider if there is a need for a dispute resolution process for the cadastral survey profession, and if so, work with the profession to agree how it should be designed and implemented.

## **Medium term priorities**

### **Evolving the system to meet future needs**

117 While the system is currently performing well there are some actions that could be taken so it continues to be fit-for-purpose over the medium term. Actions are:

12. Continue to focus on developing the ability to integrate 3D survey data into the cadastre through STEP.
13. Review key connections with other systems and test whether they are working effectively. Where they are not working well, implement a plan to remedy them.
14. Consider whether there is a case for developing new tenure options for smaller developments (three to ten titles) to reduce complexity and support a greater understanding of rights and responsibilities.
15. Assess whether new tenure constructs are needed to meet changing ownership needs.

16. Continue the work already started with Territorial Authorities to of converting local datums across New Zealand to NZVD16.
17. Consider whether better information on workflow across the property development continuum is useful (for example, to ensure land development processes across government are better connected) and if so, how it could be done.
18. Work with the Department of Internal Affairs and others to explore how requirements under the Anti-Money Laundering legislation might be streamlined or better integrated with property transfer and tax information requirements under the Overseas Investment Act, and Land Transfer Act.

### **Improving system resourcing**

- 118 Attracting and retaining the right skills into the system both internally and externally may over time be more challenging. LINZ could consider:
19. Implementing a plan/approach that addresses succession planning, recruitment, and retention for regulators and operations staff in LINZ.
  20. Working with industry bodies to plan for resourcing pressure in cadastral surveying. This may include investigating the merits of a tiered licensing model (similar to the real estate profession) for the cadastral surveying profession to increase scope for survey technicians, with clear oversight etc.

# Land Information New Zealand Response to Assessment

We welcome the assessment of the Property Rights regulatory system. This assessment is a constructive and useful addition to our on-going stewardship work. It provides some timely insights on where we should focus our efforts as we work to improve the performance of the Property Rights regulatory system to ensure it remains fit-for-purpose into the future.

We generally agree with the findings of the review, which align closely with our own observations on the strengths of the current system and areas where there is room for improvement. We are pleased that the assessment identified New Zealand's property system as fundamentally sound and in the view of some, as world leading.

A robust property system is important for social cohesion and fundamental to a strong and prosperous economy. We take our responsibility as stewards of the system very seriously. We also recognise that robust regulation and ensuring we continue to be trusted regulators is important for maintaining confidence in the system. The recommendations provided by the assessment will help to guide our efforts in that regard.

The assessment identified several short and medium-term priorities which this response addresses.

## **Short term priorities:**

### ***1. Implement actions to improve regulatory practice***

As an agency we have increased our regulatory stewardship capacity by establishing a dedicated function within our Strategy and Stewardship group. Our regulatory stewardship team leads the strong engagement LINZ has with the Government Regulatory Practice Initiative (G-REG).

A regulatory capability building programme is in place under which all staff connected with our regulatory work will over time be enrolled in the New Zealand Certificate in Regulatory Compliance (especially Levels 3 and 4). This is well underway and has been well received by the first few cohorts of participants. The aim is to have our staff complete this programme over the course of the next two years.

Our regulatory stewardship team is working on implementing a new Regulatory Assurance Framework to be rolled out across the regulatory teams over the next two years. The framework draws on regulatory best practice and has been tailored to the regulatory systems for which LINZ is responsible. It is designed to improve our regulatory monitoring and reporting arrangements and is the mechanism through which we will develop and refresh our compliance and enforcement strategies. We aim to have the first phase of this work completed in 2020/2021.

### ***2. Provide better information and insights on system performance***

Our existing monitoring and assurance arrangements provide important insights into the performance of the system and are helpful in identifying system risks or issues to be addressed through interventions such as targeted regulatory guidance and education. Our enforcement activity (including removal of Landonline system access in serious cases) is also informed in part through these channels.

However, we recognise that with further investment we could make better use of available system information and data to improve the sophistication and effectiveness of our monitoring arrangements. The lack of comprehensive business intelligence on the performance of the property system is a known issue that we are working to address. A project is already underway to implement a business intelligence function to support system leaders in making better decisions based on strong evidence. This will include developing and monitoring relevant system performance metrics over time, as well as scoping an annual reporting process for the Geodetic System. Subject to finalising our business plans and priorities for the coming year, this work will commence in 2020/2021.

### **3. Improving the efficiency of the system**

#### *Improving Regulatory Information and Guidance*

The regulatory teams across our survey and title functions have in recent years had a strong focus on developing our regulatory guidance and education. Regulatory information is routinely published and updated via the LINZ website and through industry publications. The regulators and operational teams have also developed strong relationships with key professional bodies and routinely collaborate on outreach and professional education through industry events, seminars and webinars. While these initiatives are well received, and our regulatory guidance is relied upon, due to the volume of published information and the way it is presented via the LINZ website it is not always easy for our customers to quickly find the information they require.

Rationalising and updating our regulatory guidance is a key focus for our regulators. We are engaged with this work and will review the regulatory information currently available to customers on the external website to ensure it is easy to find and understand. As part of this work, we will seek to identify where existing regulatory or process guidance needs further clarification to help improve the consistency of operational advice.

#### *Reducing the requisition rate*

We will also investigate the issues behind the high requisition rate for survey plans and formulate an action plan to reduce them. More work is needed to understand the root causes of the high level of CSD requisitions. Given the feedback from those interviewed, there may be value in exploring the extent to which the requisition rate could be reduced by accepting a level of non-material error where it is safe to do so. There may also be scope to simplify some of the rules and improve compliance by providing easier access to supporting regulatory guidance. The review of the Surveyor General's Rules which is currently underway provides a timely opportunity to consider these aspects.

We note that while the overall requisition rate for title lodgements is considerably lower (as it only applies to the 13% of transactions which are not fully automated) there is still scope to explore how the level of Title requisitions may be reduced.

#### *Improving connections across our regulatory and operational teams*

Our regulatory and operational teams are already working more closely together on key initiatives such as the review of the Surveyor General's rules and the Survey and Title Enhancement Programme (STEP) programme. As the STEP Business Transformation programme progresses, we will continue to work on improving the connections and integration across the regulatory teams and our operational and policy functions. We will continue to monitor and adjust these arrangements to ensure these teams are well positioned and organised to support the Property Rights system into the future.

#### **4. Clarify regulatory requirements**

As already noted, the current programme of work to review and improve the Rules for Cadastral Survey, and the ongoing work on new guidelines and standards for the title system will address this recommendation. As part of this work, relevant information on our external website and knowledge portal will be updated.

#### **5. Implement a dispute resolution process for cadastral surveyors**

We will investigate further the issues that arise where surveyors produce conflicting survey views and in partnership with survey industry bodies, explore whether additional mechanisms are needed to resolve cases where surveyors have reached different conclusions based on their professional judgement. We will prepare a recommendation based on our findings.

#### **Medium term priorities:**

#### **6. Evolving the system to meet future needs**

##### *Property System Strategy and modernising Landonline*

Work is already well underway on the Survey and Title Enhancement Programme (STEP). This is a key project to modernise and improve the enabling technology as part of a broader transformation programme for the survey and title sub-systems over the next four years. This will improve the delivery of our survey and title functions and, in time, support greater integration of processes and information across the Property System<sup>6</sup>.

LINZ recognises the importance of ensuring the system evolves to meet future needs and has already made this a specific area of focus in our outcome framework. Many of the recommendations raised by the assessment are or will be addressed through STEP and our work on the Property System Strategy. We will use the assessment recommendations to further inform the timing and outcomes of this work. The ability to integrate 3D survey data into the cadastre is a key part of STEP. As a part of the on-going programme planning we will explore the timing this work and where it best fits in the STEP implementation roadmap.

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<sup>6</sup> Property System is the combination of the Property Rights and Property Information Regulatory Systems.

### *A more integrated approach to compliance for property transactions*

We will review and test key connections across the system, including working with the Department of Internal Affairs on the merits of streamlining the requirements of lawyers (when they convey property) under the Anti-Money Laundering legislation as they relate to other regulatory requirements. As part of this, we will investigate whether a regulatory mapping exercise may be useful to clarify gaps and overlaps in the system and inform development of a regulatory charter (which would also further clarify regulatory requirements, roles and responsibilities). Testing and developing system connections will also assist us in considering whether better information on workflow across the property development continuum is useful and explore methods to acquire this. This will sit alongside the work we already have underway in conjunction with the Operational Policy Team to streamline compliance requirements for property transactions.

### *Implementing the new vertical datum*

We agree that driving the conversion of local datums to NZVD2016 is an important focus for LINZ, as well as considering what further support territorial authorities will need from LINZ to achieve this. LINZ has discussed with Territorial Authorities the benefits of moving to NDVD2016 (a recent survey of TAs has confirmed that 9 have already done so), and work is ongoing with the remaining TAs to ensure this extends across NZ.

### *Work on tenure constructs*

We will also assess tenure constructs for opportunities to meet changing ownership needs into the future, including whether there may be a need for new tenure models to accommodate different types of development. LINZ has already identified this as an area to explore in line with the priorities and focus areas signalled in our Outcome framework and Property System Strategy.

## **7. Improving system resourcing**

We will explore whether there is merit in partnering with relevant industry bodies to develop a shared understanding of resourcing pressure in cadastral surveying and possible strategies to address this.

We will continue to monitor system performance to ensure opportunities for improvements are identified and implemented, and report to LINZ's Executive Leadership Team on delivery and impact of the priorities outlined above. As part of our reporting, feedback from system participants will be sought on the effectiveness of these initiatives.

Robbie Muir and Kathy Mansell (System Owners)