

Conveyancing 2020

Land Information New Zealand
New Zealand Law Society
Auckland District Law Society Incorporated
New Zealand Bankers Association

Joint Working Group Report

The Future Conveyancing/Land Development Environment - Strategic Priorities and Initiatives

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Executive Summary

1. Land Information New Zealand (LINZ), the New Zealand Law Society (NZLS), Auckland District Law Society Incorporated (ADLS Inc) and the New Zealand Bankers Association (NZBA) formed a joint working group to reach a shared view of the state of the conveyancing/land development environment in 2020, how they contribute and what needs to be done to get there.

2. This paper recommends a shared view of the future conveyancing/land development environment, including strategic priorities and initiatives as the basis for moving into the future.

3. In forming the shared view and the key principles, strategic priorities and initiatives, the working group:

a. Conducted a study, including three working sessions, with the focus of - the future environment, the challenges in moving from today to the future and what can be done to overcome these challenges:

b. Considered:

- International trends
- New Zealand legislation and regulatory issues
- Context of the conveyancing/land development market
- Industry demands, participants and their roles
- Technology issues
- Submissions from legal and survey professionals, territorial authorities, organisations working in the conveyancing/land development market and people from the wider industry.

4. The recommended shared view of the future conveyancing/land development environment is based on the following guiding principles:

Guiding Principle	Operating Framework
Crown guarantee of title	LINZ will continue to regulate the land title system based on Torrens principles - registered landowners will hold state-guaranteed title and be entitled to fair compensation where an innocent owner has suffered loss due to the operation of the system.
Secure title system	The risk of unauthorised transactions will be managed by leveraging new technology, including government based online solutions for more robust client identity verification in the context of conveyancing transactions.
Future-proofing land rights	Working with the conveyancing and land development industry, LINZ will build on and refine the existing land title system and regulatory framework to support future needs and new and emerging property rights.
End-to-end e-conveyancing and land development	Leveraging existing arrangements for online registration, LINZ, the Law Society and the Banking industry will work together, and with others, to achieve a more fully integrated seamless e-conveyancing and land development environment.
Seamless land information	Though rights, obligations and restrictions affecting land may be administered or recorded across a range of agencies, all relevant information and data associated with a particular property should nevertheless be made easily available online, through a single channel or in aggregated form – current, complete and accurate.
First time compliance	LINZ, NZLS, ADLS Inc and the banking industry will work in partnership to ensure lawyers and conveyancers understand their obligations and have all the guidance necessary to achieve first time compliance with the requirements for registration.

5. The proposed initiatives that will enable LINZ, lawyers and conveyancers and the banking industry to operate within the framework of the future guiding principles are:

Crown Guarantee of Title

Proposed Initiatives	Lead	Indicative Timeframe
3.1.1 Investigate whether further minimum capability requirements and best practice standards should be in place for practitioners exercising "certify and sign" rights for electronic registration under the Land Transfer Act. (the approaches used to establish entry requirements and ongoing eligibility to practice for specialist professionals in other industries, e.g. accounting, will be considered).	LINZ/NZLS (with input from ADLS Inc, NZBA and others)	By 2014
3.1.2 Review the continuing legal education regime for practitioners providing services in conveyancing and land title registration and consider the case for mandatory CLE units as a requirement for ongoing practice.	NZLS (with input from ADLS Inc, LINZ, NZBA)	By 2016
3.1.3 Develop and complete the implementation programme for the new Land Transfer Act, including drafting regulations and standards and provision of appropriate guidelines, education and communications.	LINZ (with input from NZLS, ADLS Inc. and NZBA)	2012 - 2013
3.1.4 Assess future needs/ opportunities for maintaining and developing expertise and capability of LINZ personnel for land title registration functions and decision-making.	LINZ	2012 - 2013

Secure Title System

Proposed Initiatives	Lead	Indicative Timeframe
3.2.1 Improve mechanisms for gathering intelligence and information sharing on issues, trends and controls/mitigations in relation to land title fraud (locally and internationally).	LINZ (with input from NZLS, ADLS Inc and NZBA)	By 2012
3.2.2 Investigate the possible application of Government-authorized identity verification systems e.g. <i>igovt</i> , in the context of conveyancing and electronic registration.	LINZ (with input from NZLS, ADLS Inc and NZBA)	By 2014
3.2.3 Maintain a process for ongoing monitoring and review of IT security measures and technology platforms to ensure controls around authorised access are sufficiently robust.	LINZ	Ongoing
3.2.4 Review requirements for verification of identity for land transfer transactions (taking into account financial regulation and developments relating to anti-money laundering requirements and likely impacts on lawyers, banks and the future conveyancing process).	LINZ (with input from NZLS, ADLS Inc and NZBA)	By 2012

Future-Proofing Land Rights

Proposed Initiatives	Lead	Indicative Timeframe
3.3.1 Explore developments and trends around new and emerging forms of property rights, land ownership and development, and assess how the land titles system should be positioned to accommodate these changing needs.	LINZ (with input from NZLS, ADLS Inc. NZBA and other agencies)	By 2013
3.3.2 Assess whether there is a case for revisiting the issue of cross leases subdivisions, their possible abolition and mechanisms for simple conversion to ordinary fee simple title (taking into account the outcome of the Law Commission review on shared ownership of land).	ADLS Inc/ LINZ (with input from NZLS and NZBA)	By end of 2012

End-to-end e-conveyancing and land development

Proposed Initiatives	Lead	Indicative Timeframe
3.4.1 Engage with third party conveyancing software providers to investigate potential for interfaces with Landonline.	LINZ (with input NZLS, ADLS Inc and NZBA).	By 2015
3.4.2 Engage with Local Government to promote 100% usage of the TA e-certification facility and a consistent approach for e-dealing processes e.g. using the Authority and Instruction forms approved by LINZ and the NZLS).	LINZ (with input from local authorities, NZLS and ADLS Inc.)	By 2013
3.4.3 Consider opportunities for streamlining the provision of notice of sale information to Local Authorities/QV via Landonline.	LINZ (with input from local authorities, NZLS and ADLS Inc.)	By 2013

End-to-end e-conveyancing and land development

Proposed Initiatives	Lead	Indicative Timeframe
3.4.4 Engage with Local Government to develop a sector wide view of the conveyancing/land development process (including the feasibility of integrating appropriate TA processes via secure electronic interfaces with the Landonline system and/or conveyancing software packages).	LINZ (with input from local authorities, NZLS and ADLS Inc.)	By 2015

Seamless Land Information

Proposed Initiatives	Lead	Indicative Timeframe
3.5.1 Raise awareness among stakeholders of the benefits of an aggregated database of all the registered interests, administrative rights, obligations and restrictions that may be associated with a particular property.	All	Ongoing
3.5.2 In collaboration with central and local government agencies, investigate opportunities for developing a more integrated approach to the provision of access to registered interests, administrative rights, obligations and restrictions that may be associated with a particular property.	LINZ	By 2016
3.5.3 a) Continue work with the Maori Land Court to improve the currency, transparency and accessibility of Maori land information. b) Explore options for improving the currency and transparency of information on Crown land ownership and administration.	LINZ	Ongoing By 2014

First-Time Compliance

Proposed Initiatives	Lead	Indicative Timeframe
<p>3.6.1 Provision of guidance and targeted education programmes (in conjunction with CLE and tertiary education providers and regulators e.g. New Zealand Council of Legal Education; providers of the Professional Legal Studies Course; providers of the Diploma in Conveyancing and the NZLS Legal Executive Diploma). Key upcoming areas of focus include:</p> <ul style="list-style-type: none"> - NZLS e-dealing guideline update - New Land Transfer Act. 	LINZ/NZLS/ADLS Inc. (in collaboration with training providers as noted)	Ongoing
3.6.2 Pilot control self assessment regime for Law firms and conveyancers.	LINZ (with input from NZLS and ADLS Inc.)	By end of 2012
3.6.3 Improve mechanisms for sharing and communicating information relating to trends in non-compliance with e-dealing certification requirements and best practice findings arising from audits of systems and controls.	LINZ (with input from NZLS and ADLS Inc.)	By end of 2012
3.6.4 Explore feasibility of technology options for making compliance easier (e.g. Landonline business rule and usability enhancements, links with Maori Land Court database, Govt based ID verification services etc).	LINZ (with input from NZLS and ADLS Inc.)	By 2016

Background/Introduction

Land Information New Zealand (LINZ) is developing a long term (5 to 10 year) view of strategic priorities in the conveyancing/land development market. The Conveyancing 2020 project sits alongside the already completed Survey Strategic Context project where LINZ and the New Zealand Institute of Surveyors agreed on recommendations for moving the cadastral survey industry into the future.¹

The Conveyancing 2020 project is a key component of the “Shaping a View of Tomorrow’s Land Development” initiative identified in the LINZ Statement of Intent 2010 - 2013, under the “Build and maintain certainty of property rights” outcome.

Joint working group

The New Zealand Law Society (NZLS), Auckland District Law Society Incorporated (ADLS Inc) and the New Zealand Bankers Association (NZBA) formed a joint working group with LINZ to reach a shared view of the state of the conveyancing/land development environment in 2020, how they contribute and what needs to be done to get there.

The Working Group members are:

Matthew Herbert – New Zealand Bankers Association
Debra Dorrington – New Zealand Law Society
Duncan Terris – New Zealand Law Society
Bryce Town – Auckland District Law Society Inc
Joanna Pidgeon – Auckland District Law Society Inc
Lichelle Guyan – LINZ National Manager Survey and Titles Business Strategy
Robbie Muir – Registrar-General of Land
Mike Hart – Senior Advisor, Registrar-General of Land

¹ 25 November 2009: [Final Paper - The Future \(PDF 464KB\)](#)

Process

In consultation with their professional organisations, internal reference groups and other participants in the conveyancing/land development sector, the working group has:

- Proposed a view of the future conveyancing and land development environment.
- Identified the challenges in moving from 'today' to 'tomorrow'.
- Provided a report with recommendations on key principles, strategic priorities and a programme of joint and/or individual initiatives for moving into the future (consistent with those priorities and broader LINZ and government outcomes).

Part 1: Overview of the future conveyancing and land development environment

The influences considered by the working group as shaping tomorrow's industry are:

1 International Trends:

1.1 Automation and online title registration

The use of information technology and online service channels has been a dominant theme in conveyancing circles for several decades now. After a long and relatively stable history of paper-based systems, computerisation has completely transformed the way in which land registries operate. In New Zealand, as in many other jurisdictions, this can be seen as part of a broader trend within government towards e-delivery of products and services.

With the proliferation of the internet, over the last ten years or so the focus has shifted from the development of computer-based land registry information to online delivery of title registration functions. New Zealand has been at the forefront of these developments with the introduction of the Landonline edealing system.

1.2 International benchmarking

The importance of effective land administration and title registration as a foundation for economic growth is well understood. Accordingly, land administration reform is a major focus for many developing countries. The World Bank identifies property registration as one of the key benchmarks in its annual "Doing Business" survey. New Zealand has been consistently ranked in the top three countries internationally in this category for the last five years.²

New Zealand clearly has a robust legal framework for property rights and our Landonline survey and title system is, by world standards, very advanced. The challenge for the future is to build on this already very solid foundation, ensure the system continues to keep pace with developments and realise the potential wider benefits of the information held within these and other databases.

² World Bank Report – Doing Business, 2007- 2011

1.3 The land administration reform agenda

Internationally, land registries are increasingly seen as having a central role in the broader land administration agenda. Jurisdictional studies have noted that beyond the pure legal property interests registered within land title systems there is a wide range of administrative rights, obligations and restrictions that may impact on a landowner's use and enjoyment of their property³.

This broader range of information is typically administered across a range of central and local government agencies. Some datasets are more readily accessible than others, currency/authoritativeness may vary depending on the purpose for which the information was collected (and this may not always be transparent), such information cannot always be easily combined or cross-referenced to specific property titles, and service levels, fees and charges may differ significantly.

Accordingly, anyone (e.g. whether a landowner, prospective purchaser, developer, lawyer, property professional, government official, planner or policy maker) wishing to comprehensively research all relevant property information may face a complicated, time consuming and expensive task.

Some jurisdictions have already taken significant steps toward addressing these issues, by putting in place land administration systems and frameworks that make it easier to access and to aggregate land-related information⁴. As holders of a key dataset – the land titles register (and often the cadastre) - land registries are well placed to take a lead role in these developments.

Around the world, land administration reform initiatives are taking place against a backdrop of broader initiatives to free up access to government held information generally (through the Open Government agenda) and location-based information more specifically (through the implementation of geospatial strategies). In the New Zealand context, we have the examples of the recently launched NZGOAL Open Access

³See Bennett, R., Wallace, J. and Marwick, B. , (2010) Land Registry Futures, A vision for the role of tomorrow's land registries,

⁴ See, for example, WALIS – Western Australian Land Information System (www.walis.wa.gov.au)

and Licensing Framework⁵, the LINZ-led Geospatial Strategy and related recent Cabinet directives⁶.

2 New Zealand legislation and regulatory issues.

2.1 Property law reform over the last decade

Over the last decade New Zealand has seen a considerable amount of fundamental law reform and modernisation in the areas of property law, land title registration, and regulation of the legal profession and conveyancing.

The broader statutory framework for substantive property law has been rationalised and updated by the new Property Law Act 2007. A new regulatory regime for lawyers and conveyancers has been introduced under the Lawyers and Conveyancers Act 2006. This has also ushered in a more robust licensing regime for non-lawyer conveyancers to replace the obsolete Landbroker licensing arrangements. The legislative framework for Unit Titles has also been substantially overhauled with the enactment of the Unit Titles Act 2010. This has introduced more flexibility for the titling and administration of apartment complexes and mixed-use residential and commercial developments (through the advent of concepts such as 'layered-developments') and has enhanced related consumer protections.

Amendments were made in 2002 to support electronic registration and the recently completed review of the Land Transfer Act 1952⁷ (undertaken by the Law Commission in conjunction with LINZ) has provided the opportunity to reconsider our existing Torrens based legislative framework and make proposals for a modern land transfer statute to support our land registration system and the property market into the future. These proposals have been approved by Cabinet and a new Land Transfer Bill is to be introduced in 2012.

⁵ New Zealand Government Open Access and Licensing Framework (NZGOAL), State Services Commission, August 2010, ISBN 0-478-30395-7

⁶ New Zealand Geospatial Strategy 2007 and EGI Min (10) 30/14

⁷ <http://www.lawcom.govt.nz/project/review-land-transfer-act-1952/publication/report/2010/new-land-transfer-act>

Against this backdrop, it is probably safe to assume that we are unlikely to see any further fundamental reforms of the legislative frameworks for conveyancing and title registration over the next decade.

2.2 New and emerging property rights

There are however some new and emerging aspects of land administration and property rights regulation that may impact on the land registry functions and the role of LINZ and the conveyancing community. Examples include:

- **Emissions trading and carbon credits**

Climate change initiatives already introduced in New Zealand under the Climate Change Response (Emissions Trading) Amendment Act 2008 provide for the establishment of a register for emissions 'units' which can be sold or traded and for registering forest land status notices with LINZ for related purposes. Though separately administered, there are obvious links and parallels between these regimes and the titles system, and scope to consider how the existing title system may support or facilitate other new and emerging forms of property rights.

- **Water allocation and titling**

Increased pressure on existing water resources has led to policy debate on how best to manage and allocate these resources in a sustainable manner. One possible model involves the establishment of a tradable title for water. In Australian jurisdictions where such systems have been introduced land registries have sometimes played an important role in the design and administration of water title registers. In Queensland, for example, the government has established a Register of Water Allocations, which is administered by the Registrar of Land Titles.⁸ Again, there is scope to consider how the existing title system may support or facilitate such arrangements in New Zealand, and the role of conveyancers in these matters.

⁸ See www.nationalwatermarket.gov.au

3 Context of the conveyancing/land development market

3.1 Growing Complexity of the Market

The Working Group noted the growing complexity of the conveyancing/ land development market, with various participants (landowners, lawyers, conveyancers, cadastral surveyors, land developers, local authorities, planners and valuers) having diverse roles, responsibilities and perspectives.

3.2 Factors That Will Shape the Future

Factors that will shape the future environment will likely include:

- The property market and future land development being increasingly influenced by such factors as demographic changes; greater specialisation of market participants; economic and environmental sustainability; and changing government policy e.g. immigration policy, productivity goals, tax structures, controls on foreign ownership of land and planning for climate change.
- More complexity with lawyers and other land professionals having to discover and interpret an increasing range of land rights, obligations and restrictions when advising on land acquisition or development. This will likely be coupled with increasingly comprehensive disclosure obligations on vendors, developers and their legal advisors;⁹
- The increased complexity that comes from creative uses of the legal system to mitigate financial liabilities or constraints to investment and land development. The resulting complexity increases transaction costs and reduces transparency and consistency.
- The land information market will develop as society becomes increasingly spatially aware and reliant. Technology will allow us to take for granted *knowing where things are* and *what rights*

⁹ The developing trends around increased disclosure and consumer protection can be seen, for example, in the context of the new obligations recently introduced under the Unit Titles Act 2010, and the reforms introduced by the Real Estate Agents Act 2008.

apply. The conveyancing market, in tandem with the cadastral survey market, will provide the information to enable that.

- As development of land for residential or commercial purposes becomes more intensive in urban areas, and with the emergence of new forms of property rights, there is likely to be an increasing need for more effective ways of representing and visualising estates and interests in land in 3 dimensions. With advances in spatial data technologies, the possibilities in this area are rapidly expanding. Such considerations are already prompting strategic discussions on the future role of a 3D Cadastre for New Zealand and how this might underpin the land title system.
- While the collection of title and cadastral survey information will continue to be primarily (but not solely) focused on more immediate land ownership and development related purposes, it will become more available and increasingly used for the wider purposes of the broader land information market. The land related information that lawyers, conveyancers, banks, local authorities and other government agencies create and lodge with LINZ (and other agencies) will become increasingly important in this context.
- Land ownership also provides a transparent basis for collecting rates, as currently administered under the Local Government (Rating) Act 2002. Rating units are defined for valuation purposes by reference to legal title and liability for payment of rates is assigned to registered landowners. In this way, because of the certainty it provides, the land title register will continue to play an important role in supporting the rating valuation system.
- The widespread collapse of finance companies in the wake of the global economic crisis has led to significant regulatory reforms in the financial services market. Banks and other financial institutions are also working through the implications of new requirements under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (which comes fully into effect on 30 June 2013). These compliance regimes will have a bearing on aspects of the conveyancing process and mortgage transactions, including client identity verification and suspicious transaction reporting. In this context, the information held within the land transfer register will also be relied upon by regulators

and law enforcement agencies where evidence relating to land transactions is relevant to investigations and prosecutions.

4 Industry demands, participants and their roles

4.1 Information for decision making

In line with international trends, technology changes are generating demands for greater accuracy, speed of delivery, transparency and accessibility of land information. New Zealanders and overseas investors need to know exactly what they are buying, selling or trading, and what their rights and responsibilities are. They expect to be able to carry out transactions easily and at reasonable cost.

4.2 Title Information

The extent of information expected by purchasers and developers of land has increased significantly in recent years. Title information is becoming more complex, particularly as Territorial Authorities impose more detailed obligations on landowners and land developments seek to manage the on-going use of land. There is a heightened awareness of the need to investigate all issues surrounding land before purchase. There is an expectation that information on any topic can be found via the internet and consumer protection legislation in New Zealand encourages the delivery of information to purchasers. We can expect this trend to continue and the role of lawyers and conveyancers to encompass the need to comprehensively research and deliver all relevant property information.

Accordingly, lawyers and conveyancers need to know with certainty what type of land they are dealing with, the issues pertaining to its use and all rights obligations and restrictions affecting the land.

Difficulties in accessing relevant information or inconsistencies across datasets can significantly hamper the provision of an efficient, cost-effective conveyancing service.

A lack of certainty or transparency as to land ownership or status, say in the case of Crown land or Maori land, would be two obvious

examples.¹⁰ Accordingly, though rights, obligations and restrictions affecting land may be administered or recorded across a range of agencies, to fulfill their obligations to their clients, lawyers and other users of this information will expect easier access to all relevant data associated with a particular property, perhaps through a single channel or in aggregated form – current, accurate and complete.

4.3 Shared Ownership of Land

ADLS Inc has noted that the cross lease form of land subdivision has resulted in difficulties for cross-lease title owners e.g. construction of further improvements has resulted in title requisitions and redocumentation of title on sale; there is increased litigation relating to consents of other cross lease owners to construction of improvements.

Accordingly, conveyancing to meet the future needs of cross-lease title owners will require an examination of cross leases with a view to their possible replacement or facilitating a simple transition to another form of title.

4.4 Procedures for Client Identity Verification

Related procedures for client identity verification, already a key fraud prevention control for conveyancing, will become even more important for lawyers when the requirements of the new Anti-Money Laundering regime take effect.

4.5 Industry Participants

Participants in the wider conveyancing/land development market are made up of a diverse group of people and organisations e.g. lawyers and conveyancers; surveyors; Territorial Authorities; LINZ and other government agencies; banks and lending institutions; Property Council NZ; engineers; valuers; archaeological and historical experts and marketing advisors.

The end to end e-conveyancing and land development process involves lawyers, banks, surveyors, Territorial Authorities and LINZ working

¹⁰ NZLS Submissions; review of LTA 17 March 2009

together to ensure that client needs are met, the consent process is efficient and the conveyancing documentation meets the registration requirements for issue of new titles.

The Working Group has considered the roles of key participants in their shared area as follows:

4.6 Lawyer/Conveyancer role

Lawyers and conveyancers will continue to play a central role alongside surveyors and other experts in conveyancing and land development, providing advice on:

- Land titles and conveyancing, contractual matters, financing and tax issues;
- Technical and process issues e.g. consents and other authorisations necessary under the Resource Management Act, Building Act and Local Government Act;
- Resolution of any disputes and any appeals relating to the project consents;
- Implementation of the project consents and lodging documentation to deposit survey plans and obtain titles for the development.

4.7 Role of Lending institutions

Banks and other lending institutions provide the finance, mortgage security instruments and other financial solutions to fund residential and commercial property acquisition and land development.

Alongside existing Landonline arrangements for online registration, lenders and lawyers are increasingly interacting, exchanging conveyancing documentation and conducting settlements securely online. As noted above, related procedures for client identity verification will become even more important for the banking industry under the new Anti-Money Laundering regime.¹¹

Inevitably, there will be a continued focus on the potential of new technology to generate greater efficiencies in mortgage lending processes and further enhance security and risk management, possibly

¹¹ Anti-Money Laundering and Countering Financing of Terrorism Act 2009

via even more extensive integration with online conveyancing and registration systems.

4.8 The role of Land Information New Zealand

Regulatory role

Building on its current regulatory role for the land transfer system, LINZ will:

- Continue to define, manage and audit, as appropriate, optimal regulation for access to land title information and registration of conveyancing transactions;
- Refine the regulatory frameworks and processes so they are fit for purpose into the future, and minimise the compliance burden on parties involved in conveyancing and land development;
- Continue to engage with lawyers, conveyancers, banks and other key stakeholders on the development of standards and to facilitate compliance with registration requirements;
- Generally work with the conveyancing and banking industry to maintain the integrity of the land titles register.

Leadership role

LINZ's leadership role is already extending beyond the regulation of the land title system. Given that rights, obligations and restrictions affecting land may be administered and recorded across a range of agencies, and land development similarly requires interaction with multiple agencies, LINZ is well positioned to add value by leading and encouraging coordination and collaboration across government, to provide more 'joined-up' policy, procedures and services for conveyancing/land development and access to land information.

By working together in this way, LINZ and other agencies will better support government decision-making, improve service delivery and cost-effectiveness, and foster innovation. By way of example, LINZ is already actively contributing to shared initiatives across the Natural Resources Sector network, a group of government agencies responsible for management and policy around natural resources.

Information management role

LINZ will continue to generate, collect, record and provide information relating to property rights and transactions, and maintain the online registration system.

Advisory role

LINZ will continue to work closely with the law society and other professional bodies in providing guidance and education for conveyancing, land title registration and related compliance requirements.

4.9 Role of the New Zealand Law Society / ADLS Inc

- Regulation of the legal profession (NZLS);
- Representing the interests of members on conveyancing and property law and policy matters via the NZLS Property Law Section and ADLS Inc Property Law Committee;
- Advice, guidance and support for property lawyers;
- CLE requirements for conveyancing;
- Lawyers complaints services and disciplinary regime (NZLS);
- Stakeholder liaison with LINZ, the NZ Bankers Association, Territorial Authorities and other agencies.

4.10 Role of the NZ Bankers' Association

- Representing the interests of member banks on conveyancing and property law and policy matters;
- Stakeholder liaison with LINZ, other agencies, NZLS / ADLS Inc.

5 Technology issues

5.1 End-to-end conveyancing solutions

Though world-leading, the Landonline system only caters for the title registration aspects of the conveyancing process. Most law firms rely on 3rd party software packages for other workflow and file management aspects of the conveyancing process. Arrangements for mortgagee bank instructions, settlement and funds transfer also occur independently of Landonline.

Other jurisdictions with Torrens-based title registers are at various stages in the development of systems for electronic registration.¹² The National E-Conveyancing model proposed for Australia offers one example of a more integrated solution. This system would provide a single national e-conveyancing platform for settlement, funds transfer and title registration via a stand-alone corporate entity.

Future developments in New Zealand will likely focus on how the various aspects of the conveyancing process and funds transfer may be integrated and operate more seamlessly via secure electronic interfaces and with the Landonline system.

By way of example, the 'Propel-1c' system recently introduced by First Mortgage Services purports to offer one possible solution for a more integrated, internet based workspace to support the conveyancing interactions between banks and lawyers¹³.

5.2 Seamless land information

Tomorrow's information technology infrastructure will make it even easier to provide more integrated and 'seamless' access to all sources of property information. Future development and investment in Landonline and the title and cadastral survey datasets should include a specific focus on making this a reality.

Similarly, future enhancements to the technology that supports the transactional aspects of the land title system should, where appropriate, include sufficient flexibility to accommodate new and emerging forms of property rights.

¹² See NZLS Property Law Conference paper: E-Conveyancing In New Zealand – Progress to date, Compliance Improvements and Future Directions, Robbie Muir, 2008

¹³ NZ Lawyer, 8 February, 2011

5.3 Security – managing the risk of fraud

Trends locally and overseas indicate that identity fraud is becoming more prevalent and land is increasingly being targeted. Many jurisdictions have noted an increase in mortgage frauds in particular and this has been a common theme at international land registration conferences in recent years.

The costs can be significant. In a notable example reported by the Her Majesty's Land Registry in the UK, a title fraud involving a single property resulted in a compensation payout in excess of 8 million pounds.¹⁴

In combating identity fraud, it is essential that practitioners have effective controls in place for verifying the identity of landowners. Emerging technology and government based solutions ¹⁵ will likely provide a more robust online identity verification infrastructure that will in time give lawyers, banks and others more convenient and reliable mechanisms for confirming landowner identity in the context of conveyancing transactions.

¹⁴ Land Registry Annual Report and Accounts 2005/6 (England and Wales), p 29, para 1.13

¹⁵ eg such as the DIA igovt identity verification service

Part 2: Guiding Principles for the Future

In the context of the factors that will shape the future state of conveyancing/land development, this Part outlines the key guiding principles within which participants in the future environment will operate. The principles provide an enduring framework around which key priorities and a programme of initiatives for moving into the future can be implemented.

Guiding Principle	Operating Framework
Crown guarantee of title	LINZ will continue to regulate the land title system based on Torrens principles - registered landowners will hold state-guaranteed title and be entitled to fair compensation where an innocent owner has suffered loss due to the operation of the system.
Secure title system	The risk of unauthorised transactions will be managed by leveraging new technology, including government based online solutions for more robust client identity verification in the context of conveyancing transactions.
Future-proofing land rights	Working with the conveyancing and land development industry, LINZ will build on and refine the existing land title system and regulatory framework to support future needs and new and emerging property rights.
End-to-end e-conveyancing and land development	Leveraging existing arrangements for online registration, LINZ, the Law Society and the Banking industry will work together, and with others, to achieve a more fully integrated seamless e-conveyancing and land development environment.
Seamless land information	Though rights, obligations and restrictions affecting land may be administered or recorded across a range of agencies, all relevant information and data associated with a particular property should nevertheless be made easily available online, through a single channel or in aggregated form – current, complete and accurate.
First time compliance	LINZ, NZLS, ADLS Inc and the banking industry will work in partnership to ensure lawyers and conveyancers understand their obligations and have all the guidance necessary to achieve first time compliance with the requirements for registration.

Part 3: Key Priorities and Initiatives

This Part outlines:

- The challenges in moving from 'today' to 'tomorrow'; and
- The key priorities and contributing initiatives that will enable LINZ, lawyers and conveyancers and the banking industry to operate within the framework of the future guiding principles.

3.1 Crown Guarantee of Title

LINZ will continue to regulate the land title system based on Torrens principles - registered landowners will hold state-guaranteed title and be entitled to fair compensation where an innocent owner has suffered loss due to the operation of the system.

Key Challenges	Priorities
<p>Torrens Principles</p> <p>Tomorrow's land title system should be based on the core Torrens principles of "certainty, economy, simplicity and facility".</p>	<p>The Landonline integrated survey and titles register is a "World first" e-dealing system, providing transactional simplicity and efficiency for New Zealanders at least cost. Practitioners are able to streamline their office processes and provide a high quality conveyancing service to their customers. Registration can be completed immediately following settlement. These and other benefits from lodging transactions electronically should be built on and improved moving into the future.</p>

Key Challenges	Priorities
<p data-bbox="231 329 778 398">Regulatory framework for land transactions</p> <p data-bbox="231 443 778 734">Currently, certain aspects of the regulatory framework for land transfer transactions are out of date in relation to both form and substance. These matters were identified by the Law Commission in its recent review of the Land Transfer Act.</p>	<p data-bbox="810 329 1353 958">A new Land Transfer Act, based on recommendations from the Law Commission, is planned to come into effect in 2012. This will reflect that the system of land registration is now almost exclusively electronic. The core Torrens principles will be carried forward. Information and guidance about the interface between the LTA and other land-related statutes will be provided. This will benefit all participants in the conveyancing/land development market as well as the agencies that administer the legislation.</p>
<p data-bbox="231 1001 529 1034">Certainty of Title</p> <p data-bbox="231 1079 778 1258">The future system should provide certainty for landowners and minimise the potential for disputes and litigation in relation to matters of title.</p>	<p data-bbox="810 967 1359 1796">The proposed legislation will confirm the nature of a landowner's registered title and clarify the extent of any exceptions, the scope of the compensation regime and the Registrar's powers of correction. A limited judicial discretion to restore a registered land owner's title lost through fraud or other illegality by another party is proposed. The working group noted the vitally important role of the Courts (and Judges with a depth of experience in property law) under such a regime, as the case law that develops on the application of this discretion will necessarily become an important feature of the ongoing legal framework that underpins the land title system.</p>

Key Challenges	Priorities
<p data-bbox="233 331 692 367">Capability of Practitioners</p> <p data-bbox="233 407 782 891">The role of practitioners as trusted professionals in the operation of the land titles register is a key feature of the Torrens system in New Zealand. Accordingly, The legal education framework needs to ensure that practitioners are adequately prepared for their statutory obligations when certifying transactions for registration and have the resources to keep up to date with relevant legal requirements.</p> <p data-bbox="233 972 782 1527">Whilst the universities and other tertiary education providers provide conceptually-based legal education, the legal profession has primary responsibility for skills-based professional education and training. Continuing legal education (CLE) via externally provided study, on-the-job training, courses and seminars managed by CLE provider organisations and law firms is an integral part of maintaining practitioner skills in a changing legal environment.</p>	<p data-bbox="810 367 1337 775">In the area of post-admission education to the legal profession, organisations such as NZLS CLE Ltd will continue to have a key role e.g. providing specialist workshops for newly admitted lawyers entering conveyancing practice and seminars to upskill practitioners when new legislation/regulatory requirements are introduced.</p> <p data-bbox="810 1043 1359 1451">The New Zealand Council of Legal Education provides a valuable organisational link between the tertiary education providers and the legal profession. The Council defines and prescribes the course of study for the Professional Legal Studies Course and has a strategic role with the law society in developing and maintaining standards for new practitioners.</p>

Crown Guarantee of Title

Proposed Initiatives	Lead	Indicative Timeframe
3.1.1 Investigate whether further minimum capability requirements and best practice standards should be in place for practitioners exercising “certify and sign” rights for electronic registration under the Land Transfer Act. (the approaches used to establish entry requirements and ongoing eligibility to practice for specialist professionals in other industries, e.g. accounting, will be considered)	LINZ/NZLS (with input from ADLS Inc, NZBA and others)	By 2014
3.1.2 Review the continuing legal education regime for practitioners providing services in conveyancing and land title registration and consider the case for mandatory CLE units as a requirement for ongoing practice.	NZLS (with input from ADLS Inc, LINZ, NZBA)	By 2016
3.1.3 Develop and complete the implementation programme for the new Land Transfer Act, including drafting regulations and standards and provision of appropriate guidelines, education and communications.	LINZ (with input from NZLS, ADLS Inc. and NZBA)	2012 - 2013
3.1.4 Assess future needs/ opportunities for maintaining and developing expertise and capability of LINZ personnel for land title registration functions and decision-making.	LINZ	2012 - 2013

3.2 Secure Title System

The risk of unauthorised transactions will be managed by leveraging new technology, including government based online solutions for more robust client identity verification in the context of conveyancing transactions.

Key challenges	Strategic Priorities
<p>Electronic Workspace Security</p> <p>The security measures that ensure only authorised persons may access the land registration system and certify transactions will need to keep pace with technological changes e.g. encryption and digital certificates which allow the content of the transaction and the identity of the practitioner who certified it to be conclusively established.</p>	<p>The risk of unauthorised transactions will be mitigated by:</p> <ul style="list-style-type: none"> • On going review of security measures and identity verification infrastructure to keep pace with emerging technology, international best practice and government ID requirements. • Convenient and reliable mechanisms that will enable lawyers, banks and others to confirm landowner identity in the context of conveyancing transactions.
<p>Identity fraud</p> <p>Trends locally and overseas indicate that identity fraud is becoming more prevalent and land is increasingly being targeted. Many jurisdictions have noted an increase in mortgage frauds in particular and this has been a common theme at international land registration conferences in recent years.</p>	<p>LINZ working with lawyers, conveyancers, and financial institutions to ensure appropriate standards are followed when confirming client identity in property transactions.</p> <p>The proposed Land Transfer Act requirement for mortgagees to take reasonable steps to verify the identity of mortgagors will address the risk of mortgage fraud.</p>

Secure Title System

Proposed Initiatives	Lead	Indicative Timeframe
3.2.1 Improve mechanisms for gathering intelligence and information sharing on issues, trends and controls/mitigations in relation to land title fraud (locally and internationally).	LINZ (with input from NZLS,ADLS Inc and NZBA)	By 2012
3.2.2 Investigate the possible application of Government-authorized identity verification systems e.g. <i>igovt</i> , in the context of conveyancing and electronic registration.	LINZ (with input from NZLS,ADLS Inc and NZBA)	By 2014
3.2.3 Maintain a process for ongoing monitoring and review of IT security measures and technology platforms to ensure controls around authorised access are sufficiently robust.	LINZ	Ongoing
3.2.4 Review requirements for verification of identity for land transfer transactions (taking into account financial regulation and developments relating to anti-money laundering requirements and likely impacts on lawyers, banks and the future conveyancing process).	LINZ (with input from NZLS,ADLS Inc and NZBA)	By 2012

3.3 Future-Proofing Land Rights

Working with the conveyancing and land development industry, LINZ will build on and refine the existing land title system and regulatory framework to support future needs and new and emerging property rights.

Key challenges	Priorities
<p>Investigating and Supporting New Property Rights</p> <p>We need to be proactive in ascertaining how property rights might expand into new environments, and how the land titles system and regulation might need to adapt. This will include current and emerging property rights that LINZ may be in a position to support and administer.</p> <p>Maintaining a technology platform that will provide flexibility for delivering new types of land transactions and land information systems will be essential.</p>	<p>Engagement with landowners and the conveyancing/land development community to ensure the appropriate property rights are investigated and developed in line with where the conveyancing/land development market is heading.</p> <p>This will enable New Zealanders to be confident in their property rights and allow LINZ in consultation with stakeholders to provide systems and develop regulatory frameworks that are appropriate to the new environment.</p>
<p>Current property rights</p> <p>Current property rights should be reviewed to ensure they meet the future needs of landowners.</p>	<p>The working paper consultation identified a review of the cross lease form of land subdivision as a key priority. Facilitating a simple transition to another form of title will benefit the future needs of cross-lease title owners.</p>

Future-Proofing Land Rights

Proposed Initiatives	Lead	Indicative Timeframe
3.3.1 Explore developments and trends around new and emerging forms of property rights, land ownership and development, and assess how the land titles system should be positioned to accommodate these changing needs.	LINZ (with input from NZLS, ADLS Inc. NZBA and other agencies)	By 2013
3.3.2 Assess whether there is a case for revisiting the issue of cross leases subdivisions, their possible abolition and mechanisms for simple conversion to ordinary fee simple title (taking into account the outcome of the Law Commission review on shared ownership of land).	ADLS Inc/ LINZ (with input from NZLS and NZBA)	By end of 2012

3.4 End-to-end e-conveyancing and land development

Leveraging existing arrangements for online registration, LINZ, the Law Society and the Banking industry will work together, and with others, to achieve a more fully integrated seamless e-conveyancing and land development environment.

Key challenges	Priorities
<p data-bbox="233 754 711 788">Integrated e-conveyancing</p> <p data-bbox="233 831 775 1167">There will be a continued focus on the potential of new technology to generate greater efficiencies in conveyancing processes and further enhance security and risk management, possibly via even more extensive integration with online conveyancing and registration systems.</p> <p data-bbox="233 1209 783 1693">Most lawyers and conveyancers rely on 3rd party software packages for workflow and file management aspects of the conveyancing process that occur outside Landonline. New software packages for property transactions and loan settlement software that replaces the conventional method of communication by fax, telephone and email are being used by conveyancing practitioners.</p>	<p data-bbox="810 831 1331 1048">Incremental development to facilitate more integrated e-conveyancing systems which will enable greater efficiency for settlement, funds transfer and title registration processes.</p> <p data-bbox="810 1209 1331 1727">The working group discussed the National E-Conveyancing system proposed for Australia which will integrate settlement funds transfer into their conveyancing system. It was noted that key aspects of the New Zealand conveyancing system are different to Australia i.e. New Zealand practitioners are instructed to complete signing, settlement and registration on behalf of the lending institution and the borrower.</p>

<p>Local government processes</p> <p>There will be a continued focus on integrating local government processes into the e-conveyancing systems.</p> <p>Consultation on the draft <i>future view</i> provided instances of errors and timeliness issues in sale notice information provided to Local Authorities. Councils would support integration of sale notice data and then making it electronically available to Local Authorities, or their authorised Valuation Service Providers.</p>	<p>Where the Landonline TA-certification regime is used, the resource consent certification process is more efficient. Aspects of the subdivision resource consent process administered by local government that could be included in an integrated conveyancing system should be investigated.</p> <p>The working group noted some potential benefits from integration of sale notice data i.e. more accuracy and timeliness for Local Authorities; end users of sale notice data (e.g. Incorporated Societies managing land covenant schemes) can access more up to date property information.</p>
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End-to-end e-conveyancing and land development

Proposed Initiatives	Lead	Indicative Timeframe
3.4.1 Engage with third party conveyancing software providers to investigate potential for interfaces with Landonline.	LINZ (with input NZLS, ADLS Inc and NZBA).	By 2015
3.4.2 Engage with Local Government to promote 100% usage of the TA e-certification facility and a consistent approach for e-dealing processes e.g. using the Authority and Instruction forms approved by LINZ and the NZLS).	LINZ (with input from local authorities, NZLS and ADLS Inc.)	By 2013

End-to-end e-conveyancing and land development

Proposed Initiatives	Lead	Indicative Timeframe
3.4.3 Consider opportunities for streamlining the provision of notice of sale information to Local Authorities/QV via Landonline.	LINZ (with input from local authorities, NZLS and ADLS Inc.)	By 2013
3.4.4 Engage with Local Government to develop a sector wide view of the conveyancing/land development process (including the feasibility of integrating appropriate TA processes via secure electronic interfaces with the Landonline system and/or conveyancing software packages).	LINZ (with input from local authorities, NZLS and ADLS Inc.)	By 2015

3.5 Seamless Land Information

Though rights, obligations and restrictions affecting land may be administered or recorded across a range of agencies, all relevant information and data associated with a particular property should nevertheless be made easily available online, through a single channel or in aggregated form – current, complete and accurate.

Key challenges	Priorities
<p>Aggregated Information</p> <p>Beyond the pure legal property interests registered within land title systems there is a wide range of administrative rights, obligations and restrictions that may impact on a landowner’s use and enjoyment of their property. This broader range of information is typically administered across a range of central and local government agencies:</p> <ul style="list-style-type: none"> • some datasets are more readily accessible than others; currency/authoritativeness may vary depending on the purpose for which the information was collected (and this may not always be transparent); • such information cannot always be easily combined or cross-referenced to specific property titles; and • service levels may differ significantly. 	<p>There should be an agreed policy framework for accessing aggregated information.</p> <p>Information should be recorded and managed with consideration of a wider application – this may include agencies within the conveyancing/land development environment collecting data that supersedes their individual obligations or requirements.</p> <p>Information should comply with interoperability standards, so when integrating layers, an aligned view is established.</p> <p>Technology that uses or processes land information should meet the needs of tomorrow’s conveyancing/land development professionals.</p>

Key challenges	Priorities
<p>Accessing Information</p> <p>Participants in the market e.g. landowners, prospective purchasers, developers, lawyers, property professionals, government officials, planners or policy makers wishing to comprehensively research all relevant property information may face a complicated, time consuming and expensive task.</p> <p>Administrative, legal and technical barriers that prevent contributing agencies' from integrating their databases into an aggregated or single channel system may currently exist.</p>	<p>Investigate opportunities for providing integrated access to information datasets managed across a range of central and local government agencies. Examples are: LINZ - Landonline (land titles register; digital cadastre; record of Crown interests; Maori Freehold land). Customary Marine Title Register under Marine and Coastal Area (Takutai Moana) Act 2011. Ministry of Justice - Maori Land Court records; Ministry of Economic Development - Mining and Exploration Permits. Information and datasets managed by Territorial Authorities e.g. Land Information Memorandum; water allocation rights; natural hazards and contaminated sites.</p>
<p>Open Government Information</p> <p>Government agencies in New Zealand and overseas have made statements committing to open data and the release of information for re-use to generate creative, cultural and economic opportunities. Some common themes are:</p> <ul style="list-style-type: none"> • directories or portals of open government data released for openness and transparency purposes or for re-use; • licensing and open access frameworks supporting increased release of public sector material for re-use. 	<p>A coordinated national view of government data will better align central, regional and local government programmes and business initiatives.</p> <p>Government agencies in the natural resources sector are taking a leadership role by releasing data they collect to perform their core functions for re-use; examples are the Ministry for the Environment, Department of Conservation and LINZ.</p>

Seamless Land Information

Proposed Initiatives	Lead	Indicative Timeframe
3.5.1 Raise awareness among stakeholders of the benefits of an aggregated database of all the registered interests, administrative rights, obligations and restrictions that may be associated with a particular property.	All	Ongoing
3.5.2 In collaboration with central and local government agencies, investigate opportunities for developing a more integrated approach to the provision of access to registered interests, administrative rights, obligations and restrictions that may be associated with a particular property.	LINZ	By 2016
3.5.3 a) Continue work with the Maori Land Court to improve the currency, transparency and accessibility of Maori land information. b) Explore options for improving the currency and transparency of information on Crown land ownership and administration.	LINZ	Ongoing By 2014

3.6 First-Time Compliance

LINZ, NZLS, ADLS Inc and the banking industry will work in partnership to ensure lawyers and conveyancers understand their obligations and have all the guidance necessary to achieve first time compliance with the requirements for registration.

Key challenges	Priorities
<p>Registration Obligations</p> <p>Identifying and providing the necessary skills and knowledge for authorised users to transact in tomorrow’s land title registration system and providing ongoing guidance in the related regulatory requirements will be essential for first time compliance.</p>	<p>Delivery of targeted education and guidance including rules, standards and guidelines from the Registrar-General of Land, checklists and guidance for registration and e-dealing compliance information.</p> <p>These resources should make effective use of web-based technology and other communication channels and be current, complete and accurate.</p>
<p>Compliance with e-dealing audit requirements.</p> <p>LINZ, in consultation with lawyers and conveyancers, will continue to be responsible for a robust and efficient compliance regime.</p>	<p>Sharing and communicating information relating to RGL audit activities e.g. trends in non-compliance and best practice findings arising from audits.</p> <p>Reinforce and promote the need for law firms and conveyancers to have robust controls in place for e-dealing.</p>

First-Time Compliance

Proposed Initiatives	Lead	Indicative Timeframe
<p>3.6.1 Provision of guidance and targeted education programmes (in conjunction with CLE and tertiary education providers and regulators e.g. New Zealand Council of Legal Education; providers of the Professional Legal Studies Course; providers of the Diploma in Conveyancing and the NZLS Legal Executive Diploma). Key upcoming areas of focus include:</p> <ul style="list-style-type: none"> - NZLS e-dealing guideline update - New Land Transfer Act. 	LINZ/NZLS/ADLS Inc. (in collaboration with training providers as noted)	Ongoing
3.6.2 Pilot control self assessment regime for Law firms and conveyancers.	LINZ (with input from NZLS and ADLS Inc.)	By end of 2012
3.6.3 Improve mechanisms for sharing and communicating information relating to trends in non-compliance with e-dealing certification requirements and best practice findings arising from audits of systems and controls.	LINZ (with input from NZLS and ADLS Inc.)	By end of 2012
3.6.4 Explore feasibility of technology options for making compliance easier (e.g. Landonline business rule and usability enhancements, links with Maori Land Court database, Govt based ID verification services etc).	LINZ (with input from NZLS and ADLS Inc.)	By 2016

Part 4: Recommendations

The Conveyancing 2020 Joint Working Group recommends that participating organisations and stakeholders:

- Accept the agreed view of the future conveyancing/land development industry as the basis for moving forward.
- Commence planning the proposed initiatives that will enable LINZ, lawyers and conveyancers and the banking industry to operate within the framework of the future guiding principles.