



Your Ref: LRC/TOP/47

15 March 2013

By Email & Post

The Secretary  
The Adverse Possession Sub-committee  
The Law Reform Commission  
20<sup>th</sup> Floor, Harcourt House  
39 Gloucester Road  
Wanchai, Hong Kong

(Attn: Mr Stephen Kai-yi Wong)

Dear Mr Wong

**The Hong Kong Institute of Surveyors  
Comments to the Consultation Paper on Adverse Possession**

I refer to your letter of 10 December 2012. Thank you very much for seeking our views on the Consultation Paper on Adverse Possession published by the Law Reform Commission. On behalf of the Hong Kong Institute of Surveyors ("HKIS"), I would like to present our comments as follows for your consideration.

**Justifications for adverse possession**

2. The Institute recognises that adverse possession has long been in practice historically and is legally sound in terms of the Common Law and the Basic Law in Hong Kong. HKIS has no objection to retain the law on adverse possession as it helps to protect against stale claims; avoid land becoming undeveloped and neglected; and prevent hardship in cases of mistake especially when a squatter has incurred expenditure to improve the land under mistake as to boundary.

3. However in the Hong Kong context, we have reservation on the rationale of justifying adverse possession to "facilitate conveyancing in unregistered land"<sup>1</sup>, since there is virtually no unregistered land in existence in Hong Kong. "Unregistered Land" in England is land that has not been registered with HM Land Registry. For unregistered land of England, proof of title is based upon historical title deeds. It is in the interests of the land owner to register their land, largely due to provisions within the Land Registration Act 2002 of England, affording the land owner greater protection against adverse possession.

<sup>1</sup> Refer para 2.13 – 2.19 of the Consultation paper.  
香港上環干諾道中111號永安中心12樓1205室



## **Surveying and land boundaries**

4. Regarding the issues related to surveying and land boundaries mentioned in Chapter 4 of the Consultation Paper, we consider that the problem of incorrect construction of the boundary descriptions of the lease and thus the difficulties of ascertaining the location of old land boundaries do exist in Hong Kong as a whole. However, the land grant under the Block Crown Lease and the subsequent old land grants in the New Territories did impose additional constraints to the re-establishment of the boundaries of those land parcels. The problems are not caused by the “inaccurate” small scale grant plan of scale of 1:3960 / 1:1980 nor the lack of high precision land survey in the old days.

5. Disputes arise when disagreements on the boundaries on ground between parties occur when they fail to recover the necessary lease documents, misread the documents, failure to understand the intention of grant with reference to parcel clause and the plan of the lease. There are legal principles laid down by the court to answer questions arising from these disagreements.<sup>2</sup>

6. HKIS strongly urge the Administration to enact legislation for determination of land boundaries which will enable identification of the extent of land parcels with certainty. Knowing the exact boundaries of property is of utmost importance for protecting the rights and interests of property owners. Certainty of land boundaries is essential for the Government to carry out its duties to administer the leased and unleased land, to control land use, and to formulate policy for planning and land development. Good land governance needs the support of an effective land boundary system. The legislation for implementation of determination of land boundaries is necessary for bringing certainty to the location of land parcels.

## **Comments on the Recommendations of the Consultation Paper**

### Recommendation 1: Existing provisions on adverse possession should be retained

7. HKIS agrees that the existing provisions on adverse possession can be retained but whether it can offer practical solutions towards boundary problems as mentioned in Chapter 4 of the Consultation Paper is questionable, not to mention that it might invite more litigation. We consider that the key to solving land boundary problems is to provide legal backing for determination of land boundaries. HKIS opines that it is of vital importance for

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<sup>2</sup> One may refer to the Her Majesty Land Registry of England and Wales Practice Guide 40 – Land Registry plans – Supplement 3 – Boundaries (<http://www.landregistry.gov.uk/professional/guides/practice-guide-40s3>), which gives an overview on the principles related to land boundaries.



the Administration to take the lead to implement a legal framework for the Determination of Boundaries through Land Survey Ordinance.

Recommendation 2: The law of adverse possession should be recast under the prospective registered land system

8. HKIS supports that the law of adverse possession should be recast under the prospective registered land system. We would urge for an early implementation of the land title registration system.

Recommendation 3: Adverse possession alone should not extinguish the title to a registered estate. The rights of the registered owner should be protected

9. HKIS supports the implementation of the 10 year adverse possession plus 2 years' notice requirement would prevent the squatters stealthily taking away the title owner's land without alerting the title owner of such intention. HKIS is also of the view that the notice should be accompanied with an accurate plan of sufficient information to alert parties involved about the extent of the land being occupied.

10. The Paper recommends the requirement that the squatter should register an application for adverse possession before he could acquire absolute title to the land. HKIS agrees that this would help to protect the rights of the property owner in a sense that he would be notified of the squatter's intention to claim adverse possession and thus would have a chance to object to such application. We generally welcome this approach. HKIS envisages that this deficiency in the existing adverse possession operation would be overcome.

11. As to whether the case of 60 years' adverse possession against the Government land should be abolished, HKIS considers that this issue warrants further consideration as it would create adverse impact to land development. A claim of adverse possession on a piece of Government land may delay the process of development especially in times of scarce land resources in contrast to the high demand for development land. For example, should there be a proposed development involving two pieces of land owned by the same developer and a piece of Government land that is located in between them where the Government land is subject to a claim of adverse possession, the said two pieces of land cannot be developed together until and unless the adverse possession claim is heard in the trial and appellate courts.

Recommendation 6: Government should be urged to step up efforts to address the boundary problem in the New Territories

12. HKIS fully supports this recommendation and demand that Government should step up its efforts to address the boundary problem in the



New Territories. We consider that resurvey of the boundaries would resolve most, if not all, of the problems mentioned. Providing a legal framework for determination and ascertaining land boundaries are essential for protecting the rights and interests of property owners as well as to ensure the effectiveness of land management in Hong Kong.

13. We hope the above comments would serve to assist the Subcommittee in making its final recommendations. Should you have any queries or require further information, please contact Ms Margaret Yung of the HKIS Secretariat at 2526 3679.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Lai', written over a vertical line that extends down to the typed name below.

Sr Stephen Lai  
President  
The Hong Kong Institute of Surveyors

cc The Hon Tony Tse, Legislative Councillor (By fax only - 2880 5128)