

University of Southern Queensland
Faculty of Engineering and Surveying

**RELEVANCE OF IDENTIFICATION SURVEYS IN N.S.W.
CONVEYANCING**

A dissertation submitted by
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Abstract:

Identification surveys are conducted in NSW by nearly all Surveyors and represent nearly 10% of the surveying market. Identification surveys in relation to conveyancing, are principally used to identify the land and any improvements thereon to be purchased together with drawing attention to issues which the Surveyor feels may be relevant to the conveyance. This dissertation identified the current methods employed in NSW together with practices from other jurisdictions which may be applied to NSW. The main source of information was drawn from questionnaires distributed to Surveyors and conveyancers in NSW, Victoria, Queensland and New Zealand, together with input from industry representative bodies and insurers.

The thesis found considerable differences in conveyancing practices in relation to identification surveys between NSW and other jurisdictions. Most other regions do not employ the use of identification surveys in conveyancing but rely on the owner to relate the paper title to the land intended to be purchased. There was also found to be little evidence of litigation relating to identification surveys together with a general lack of implementation of risk management strategies by Surveyors along the eastern seaboard. Owners title insurance offers considerable benefits to the purchaser prior to and post conveyance in both title and off-title issues, but should be considered by NSW Surveyors as an alternative to their identification survey rather than complimentary.

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I further certify that the work is original and has not been previously submitted for assessment in any other course or institution, except where specifically stated.

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Date

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Chapter 1

Introduction

Identification surveys are conducted by Surveyors to determine the relationship of structures and other improvements to the boundaries of the land. They also include information relating to notifications on the title such as easements and other encumbrances together with additional information which the Surveyor may believe is prudent to bring to the clients attention.

These surveys are generally used in relation to conveyancing though they may have other uses such as may be the requirements in relation to building extensions or improvements. This dissertation has examined the role of the identification survey in relation to the conveyance of residential Torrens Title land.

Identification surveys have been used in NSW for at least a century and the format and information included has remained largely unchanged in that time. The primary legislative change has been the replacement of the Local Government Act 1919 with the Environmental Planning and Assessment Act 1979 which now defines the way in which

building setbacks may be determined by Local Government Authorities. Other factors which may influence identification surveys include the role of Risk Management in defining the way a business operates, guidelines specified by the various surveying representative bodies and the introduction of title insurance to the Australian market since 1996.

1.1 Objectives

As listed in the project specification the project has eight key objectives;

- Identify current practices of NSW Surveyors in relation to the preparation of identification surveys;
- Identify the level of litigation in relation to NSW identification surveys;
- Sample Surveyors to determine the extent and type of issues reported in identification surveys in relation to both encroachments, non-compliance with codes and titling errors together with indicative costs of reports. I have also obtained samples from NSW surveys which have been used to examine the type and extent to which risk management practices which have been implemented;
- Sample Conveyancers in relation to the benefits of identification surveys and situations where these surveys lead to changes to contracts or cancellation of a sale together with the typical costs of a conveyance.
- Identify existing practices in Queensland and Victoria for conveyancing surveys.

- Identify existing practices in New Zealand for conveyancing surveys together with the maintenance of vendors/purchasers obligations and rights.
- Report on the application of these methods to NSW conveyancing.
- Liaise with title insurance actuaries over possibilities of insuring against problems typically found in identification surveys.

1.2 Literary Survey and Citation:

Relevant existing information has been drawn from a wide variety of sources including Legislation and Regulations which are typically available on State Government web sites, professional bodies including Surveying and Solicitors/Conveyancers representative bodies and related organisations such as the Association of Consulting Surveyors Insurance Society Ltd (A.C.S.I.S.) which is the leading insurer of Surveyors in Australia for Professional Indemnity.

1.2.1 Current Practice:

There is no legislation in NSW, Queensland or Victoria relating specifically to the preparation of identification surveys. However, these surveys as a consequence of redefining boundaries must be prepared by Registered Surveyors in accordance with state Survey Practice Legislation. Consequently it is a matter for the Surveyor to best determine the style and content of his or her report. Guidelines for the preparation of identification surveys in New South Wales (ISNSW 2002) amongst other things refer to the standard items which should be addressed, recommended formats to which Surveyors should prepare reports and the way in which Surveyors should make it clear that the survey report is limited to a specific function. The information provided therein offers guidance on identification surveys for various types of reports such as industrial land, old system and Torrens title. This guide was the benchmark for comparison of

samples of existing surveys sourced through the survey questionnaire. Surveyors in NSW may no longer refer to the properties compliance with the Local Government Act 1919 but rather refer to Local Environment Plans (LEP) and Development Control Plans (DCP) as developed by local government bodies.

In Queensland the survey for conveyancing is commonly referred to as a Location Certificate. This certificate as discussed by the Consulting Surveyors Queensland (CSQ 1984) has a recommended format substantially different to that of the ISNSW. Whilst they are both aimed at ensuring the client is identifying the correct property, the CSQ format does not go on to comment on specific compliance with various state or local ordinances. This seems to imply that the certificate is primarily to identify the property intending to be purchased is in fact the same as the land contained in the title. Beyond that the prospective buyer would be required to progress to a re-survey at additional expense to obtain extra information.

In Victorian Mr O'Brien of Culliver & Sim Pty Ltd (P. O'Brien 2004, pers. comm., 3 May 2004) suggests that identification surveys are typically not conducted in Victoria and that the purchaser will more likely determine the position of the residence from a cross street or some other monument themselves rather than involve a Surveyor. In Victoria amendment to title dimensions and area may be done under sections 99-103 of the Transfer of Land Act 1958. This allows for discrepancies in title dimensions to be amended relatively simply and does not necessitate the need for a subdivision.

1.2.2 Risk Management:

Risk Management has been the catch phrase of the past ten years or so in most industries however there is little industry specific information for Surveyors. Risk Management and Loss Prevention in surveying does not only relate to occupational health and safety but also to professional liability and duty of care to clients. As Surveyors come to terms with trading in a more litigious society they increasingly need

to develop strategies to minimise professional indemnity claims and to embrace industry best practice so as to minimise their liability (AC SIS, September 2003). Case studies in the surveying industry (AC SIS and Monash University 2001, Practical Case Studies, pp. 31-40.) show that Surveyors need to make it clear what the purpose of the survey they have conducted is. Further they should also be aware their duty of care may extend beyond their immediate client to a third party, particularly in relation to identification reports where a mortgagee is involved (AC SIS December 2003 Ch 6 p.2).

1.2.3 Title Insurance:

Title insurance is a new insurance market to Australia and is a form of insurance which may allow the mortgagee and/or the purchaser to insure against title not being as it is shown on the certificate of title (O'Connor 2003, p.2) and also to insure against the risk of an encroachment (O'Connor 2003, p.12). The introduction of this service into the insurance market may have significant implications to the surveying profession as the insurer may no longer require the mortgagee to purchase an identification survey (Zucker in O'Connor 2003). Whilst the system of land title is different to that in Australia (US Conveyancing is based on registration of deed, which is similar to Old System title in NSW) the implications may be similar to that anticipated in the USA (Hermansen 2003) whereby there was expected to be a reduction in demand for identification surveys as the insurance market adapts to local regulations.

1.3 Dissertation Overview

Chapter two identifies the legislation which Surveyors are required to comply with and consider when preparing identification surveys. This also outlines the guidelines which recommend formats for these surveys, together with historical information relating to

practices since the introduction of the Local Government Act. This concludes with a section outlining existing practices based on surveys provided by two long standing firms in the NSW surveying profession.

The research methodology is discussed in Chapter 3 which reviews the surveying and conveyancing questionnaires distributed to NSW, Queensland, Victoria and New Zealand. This also identifies other key sources of information.

The results of the questionnaires are discussed in chapters 4 and 5. This includes a detailed analysis of the results on a jurisdictional basis both for Surveyors and conveyancers. As will be seen the results show significant differences across Australian jurisdictions due mainly to legislative considerations and the interpretation of due diligence in conveyancing.

Title insurance is a new development in the Australian insurance market and is focused entirely on the conveyancing related insurance industry. Chapter 6 examines the role owners title insurance has played in other markets together with its likely impacts on the NSW surveying industry including cost comparison and insurance cover.

Risk management is evolving as a key tool in limiting Surveyors liability and reducing insurance premiums. Chapter 7 examines the sample identification surveys provided by Surveyors. This includes recommended practices, the benefits of risk management and the changes in practices over recent history.

Chapter 8 provides a summary of the key findings of the thesis together with a review of the individual aims as listed in section 1.1. It also includes recommendations for additional study relative to this thesis.

Chapter 2

New South Wales Identification Surveys

2.1 Legislation and Guidelines

Identification surveys are conducted in NSW typically for the purpose of identifying the whole of the land and associated improvements intended to be purchased and sold. This survey is conducted most commonly for the conveyance of the land, refinancing of an existing mortgage or to obtain a building approval certificate from local government. In relation to a conveyance, these surveys are generally conducted at the request of the solicitor or conveyancer acting for the purchaser in accordance with sound practice and to ensure the disclosure of all facts to the purchaser.

The guidelines in ISNSW (2002) for the preparation of identification surveys describes their purpose as :

“ . . to relate the legal description of the land with improvements erected thereon, and in the context of surrounding features which could help a

third party to identify the subject property”.

More recently users of these reports are becoming more dependent on them to provide additional information rather than just a description of the parcel of land. Surveyors are typically now required to show other improvements such as swimming pools, cubby houses, sheds and any other structure which may be deemed to have required council approval prior to construction. Also, many properties as well as having easements and restrictions relating to natural features, have restrictions noted on the title in relation to man made structures. These may relate to matters such as the type of material of which a structure is constructed as well as relating to floor levels, ridge heights and fencing materials and heights. Surveyors are increasingly being expected to comment on these and other land related matters as well as the historical role of an identification survey.

Other than the Surveying Act 2002 as amended and its preceding Acts which require cadastral surveys to be conducted by a Surveyor registered under this Act, together with other general surveying legislation there is no legislation specifically relating to the survey and preparation of an identification survey. The legislation which Surveyors typically need to consider is that to which the information shown on the report will be related by the client.

2.1.1 Historical Legislation

One of the primary purposes of an identification survey is to relate any improvements on the land to the boundaries. Whilst identification surveys have been conducted for many decades it is only since 1919 and the enactment of the Local Government Act 1919 (LGA1919) which has found Surveyors required to comment on building setback in relation to particular legislation. The LGA 1919 (now repealed) and in particular Ordinance 70, clause 11.6 required buildings (sub clause 2) and overhangs (sub clause 4) be setback by the specified dimensions from the boundaries.

This legislation remained in force until 1993 when the Local Government Act 1993 and the Local Government (Approvals) Regulation 1993 came into effect. The setback of buildings was again covered under this regulation in clause 57 parts 2 and 4 which made allowance for similar setbacks required under the LGA 1919.

2.1.2 Current Legislation

The most significant change to the building approvals procedure came into effect in 1994 with the implementation of the Environmental Planning and Assessment Regulation, 1994. Under this regulation, which relates to the Environmental Planning and Assessment Act 1979, local governments implement Development Control Plans (DCP) relating to all or part of their local government area. As a consequence local governments have DCP's which will incorporate objectives for the location of buildings

and overhangs in relation to boundaries and setback requirements. Where a local government does not have a DCP relating to setbacks then the conditions of the Local Government (Approvals) Regulation 1993 have been preserved under section 43 of the Environmental Planning and Assessment (Savings and Transitional) Regulation 1998.

Development Control Plans are, as the name suggests designed to control the way in which development proceeds. They are developed in accordance with the local governments Local Environment Plans which forms a broad outline of the way in which council proposes to preserve and promote the environment.

Looking at Gosford City Council as an example, located on the Central Coast approximately one hour north of Sydney, this Council has over 150 DCP's currently in force (see web site www.gosford.nsw.gov.au) . These range in application from the entire Local Government Area (LGA) to specific streets or even a particular business or allotment. DCP 080 AUSTRALIAN REPTILE PARK SITE for example, relates to land previously used for the operation of the Australian Reptile Park (since relocated) and sets out the guidelines for the redevelopment of this land containing about 5 hectares. In this LGA the principal DCP controlling residential building setbacks is DCP 121 DWELLING SITE OCCUPANCY AND SETBACKS. (DCP 121). Clause 7.4.2 defines setbacks of a Class 1 building as 900 mm for one and two storey buildings and 1500 mm for more than two storey buildings. Clause 7.4.4 sets out the requirements for the setback of overhanging structures such as eaves and gutters as being 675 mm for one and two storey buildings and 1125 mm for buildings containing more than two storeys.

This is similar to those requirements set out under ordinance 70 of the repealed LGA 1919.

However, looking at DCP 155 SINGLE DWELLING AND ANCILLARY STRUCTURES which also sets out guidelines for building setbacks, contradictions to the requirements in DCP 121 are found. Clause 9.5.3 of DCP 155 states that, in relation to eaves, facias et.al. “must be not less than 450 mm from the boundary line”. Further, clause 9.5.1 also lists circumstances where it may be possible to vary the minimum requirement of a 900 mm setback for single dwelling walls from boundaries.

This is but one example of contradictions within one councils DCP's. Surveyors who were once in the practice of commenting as to whether a building complied with the LGA 1919 may now consider modifying their reporting methods so that they are stating the offset dimensions relative to the boundary and not commenting on their compliance with a particular DCP. If a Surveyor were to be in a situation in the Gosford LGA where an eave was 500 mm from a boundary, whilst it would be technically correct to state that the eave did not comply with Clause 7.4.4. of DCP 121 this may well lead to the presumption to the inexperienced that this would not be acceptable to council, however it may be that Council will accept the structure in accordance with Clause 9.5.3. of DCP 155 being not less than 450 mm from the boundary.

Surveyors must also be aware that the legislation or guidelines in force at the time of construction are those that apply to the structure. Older structures, particularly those

predating the LGA 1919 (of which there are still many to be found either in part or whole) may not be required to meet the current guidelines. Again the Surveyor would be required to date the structure which they are reporting on to be confident in stating it did not comply with the relevant code. To complicate the situation, the renovation of structures may well result in an external wall being retained which may not comply with current practices but with the restoration of the remainder of the building resulting in it being difficult to determine the age of the structure by appearance.

2.1.3 Guidelines

The principal reference publication for the preparation of identification surveys in New South Wales is prepared by the Institution of Surveyors New South Wales Inc. entitled “Institution Guidelines On The Preparation Of Identification Surveys” (May 2002) and was prepared by their Surveying and Legislative Practice Subcommittee.

This guideline offers considerable recommendations on the formatting and presentation of reports and sketches whilst recognising the need for Surveyors to make their own judgements in all situations. It is not the intention of this dissertation to review this publication but rather it will be referred to as the benchmark for assessing the results obtained from the research into existing practices.

The guide, as well as assessing the way in which Surveyors may wish to address such issues as covenants, easements, limited titles and encroachments also considers the issue

of copyright and qualifying statements which will be considered more closely in Chapter 7. The guide also has several examples of sketches and reports prepared for various circumstances which are an invaluable resource for practising cadastral Surveyors.

Another publication of significant use is West (1974) which, whilst being prepared under the influence of legislation of which some has since been repealed, sets out broad guidelines for the preparation of sketches and reports at that time. Much of the principals of the survey and report remain the same as those recommended in the aforementioned ISNSW guide. West however, has very little to say in relation to issues of risk management and in particular copyright and qualifying statements. Perhaps this is a reflection on the litigious nature of society more recently, but the ISNSW 2002 guide offers considerable advice on these matters.

Whilst there are few other significant publications directly relating to the preparation of identification surveys attention is drawn to other text relating to general survey practice such as Hallman (2000) which is an ideal reference text offering analysis of survey practice in relation to case law in Australia and the application of these rulings to survey practice. Attention is drawn to paragraphs [8.95] to [8.102] inclusive of Hallman which offer considerable explanation as to the purpose of building certificates and the Building Code of Australia as discussed in section 2.1.2. At the time of writing the ISNSW advised the 2004 release of this publication has just become available.

2.2 Historical Practices

In order to assess and better understand the role of identification surveys it is beneficial to examine the practices of Surveyors in the past. Identification surveys have been conducted for many years and by assessing and recognising the changes between now and then may give us some clue as to future trends for these reports.

Two of the longest continually practising firms in New South Wales are Bannister and Hunter Pty Limited and Frank M Mason & Co. Pty Limited. They have made reports available dating back every decade or so to about 1925. Prior to about 1965 and the advent of photo copiers the original reports are not available but pencil tracings of sketches and carbon copies of reports remain intact and are suitable for assessment. Examples of some of these reports are included in appendices B (F M Mason & Co.) and C (Bannister and Hunter). Frank M Mason & Co. is a predominantly city practice based in Milsons Point near the Sydney Harbour Bridge and has always been based in and around the Sydney CBD. Consequently the examples found here are typically city suburban surveys in nature. Bannister and Hunter has been based in Gosford since its inception in 1925. Gosford at this time was a rural community and typically built on the backbone of returned servicemen, agriculture and primary industry. Consequently the examples provided are of a semi-urban residential nature.

2.2.1 The introduction of the Local Government Act

The oldest reports available are appendix B1 from 1925 and appendix C1 from 1930. These reports are in a similar format and the layout begins with a description of the subject land, then a description of any improvements on the land together with comments in relation to fencing. The summary includes a reference to any encroachments and attention is drawn to any notations on the title such as easements etc.. Neither Surveyor has made mention of the LGA 1919 and it may be that it was not until some years later that solicitors and councils required the Surveyor to make specific mention of the properties compliance with the relevant clauses of this Act. In appendix B1 the diagram only showed two offsets to the boundaries being in the N.E corner of 3'6" and 5". No other walls were commented upon. The other notations and references to the eaves and gutter were added during a later survey of the same property.

Neither Surveyor makes mention of the limitation of the survey. Further, in relation to encroachments neither Surveyor qualifies this statement to be limited to visible encroachments so that it would preclude the Surveyor from knowledge of underground encroachments. Probably not a major issue in 1925.

2.2.2 The Mid Twentieth Century

By 1940 Surveyors were making reference to the LGA 1919 as can be seen in appendices B2 and C2. The style of these reports is becoming more similar than earlier

examples and indeed much of the wording in the early part of each paragraph is identical. With the introduction of the Surveyors Act, 1929 Surveyors are now identifying themselves as registered within the report. As in previous examples these reports show references to the boundaries from fencing and buildings, a general description of improvements on the land and a description of encroachments or lack thereof. The last paragraph of the diagram C2 by Bannister and Hunter comments on the availability of title dimensions. This may be redundant given that the dimensions are shown and that it would be reasonably expected that a Surveyor would make specific mention if title dimensions were not available.

2.2.3 Late 20th Century

Few changes have occurred over the last 30 years or so as can be seen by the identification survey examples in appendices B3, C3 and C4. Attention is drawn however to appendix C3 of 1970 which comments on the buildings non compliance with the Ordinance 71, clause 48 of the LGA 1919. No mention has been made of the age of the building and therefore its requirement to comply with the LGA 1919. By not qualifying the statement that it does not comply with this ordinance would therefore imply that at the time of construction it was required to do so. Note also the change in reference to the relevant clause in the LGA from the 1970 survey to the 1980 example (appendix C3) due to amendments to the LGA 1919.

In appendix C4 we see the first example in the last paragraph, of a Surveyor (Mr Surveyor Walker) qualifying the broad statement typically made in relation to encroachments. This statement has been amended to state ‘. . visible encroachments . .’ recognising that the Surveyor is only capable of expressing an opinion on what can be seen. The presence of a natural boundary has made no difference to the reporting style shown herein. The complexity of the situation of having a brick wall constructed on a natural boundary and how this would impede the natural accretion and erosion may be beyond the consideration of the typical identification survey.

2.3 Current Practices

Whilst the questionnaire and its results discussed in chapters three and four will more clearly define current practices, the examples shown in appendices B4 and C5 give an account of these two firms current practices.

The identification surveys in both instances are becoming more detailed in their presentation. Both reports now contain sketches on separate sheets at a larger scale. These sketches also show more information with internal fencing and retaining walls, offsets on all main building corners, together with the area and hard stand areas in the case of sketch in appendix B4.

The more detailed description of wall to boundary dimensions is probably a reflection of the changes to legislation and the development of localised environmental planning instruments such as the DCP's discussed earlier.

On the southern side of the building in diagram C5 the dimensions are shown to the side boundary as 2.6m. This type of information may be considered redundant as by the scale of the plan it can be seen to be well clear of the boundary. Marler (2004a) of ACSIS Ltd described a situation similar to this where a Surveyor had shown such a dimension which was not relevant to Council for the purposes of an application for a s149D certificate. The Surveyor had stated the dimension as 3.5 metres when it was in fact 2.5m. He was successfully sued because the purchaser had relied on this dimension when determining if he could get his boat into the backyard. There was no need for the dimension to be there in the first place.

The sketch in appendix C5 also shows a qualifying statement at the top. This is perhaps an indication of the need to limit the use of these surveys and that others should not be using them to redefine boundaries or setout new structures. Jack DeLange Consulting (1991) pp64-66 discusses some of the issues relating to the misuse of these surveys and provides an appropriate explanatory note similar to that shown in appendix C5.

The overall structure and aims of the identification survey has changed little over the past eighty years. The principle changes appear to be in the form of accountability. The Surveyor is now passing the responsibility to others to form an opinion as to a properties

compliance with Council requirements and other interests in the land. In these later examples the Surveyor appears to be commencing to educate the client of the limitations of the survey. The questionnaire introduced in chapter three will attempt to determine more broadly the actions Surveyors are taking in regard to this and other matters.

Chapter 3

Research Methodology

3.1 Research Methodology

The principal source of information for current practices in the preparation of identification surveys is Surveyors and as the primary user of these surveys, solicitors and conveyancers. For simplicity I will refer to those dealing with conducting conveyancing as conveyancers, trusting this does not offend members of the legal profession.

One of the underlying principals of a questionnaire is to get a sample which reflects the industry as a whole. To do this the Telstra Yellow Pages was considered the most convenient source to search for Surveyors and conveyancers on a state wide basis. The Yellow Pages® is produced by Sensis Pty Ltd for the Telstra Corporation. Using their online search function (www.yellowpages.com.au) allows the user to search the industry type, in this case 'Surveyor' or 'Conveyancer' and by region. The result is that each

region in the state returns a number of listings found for the profession. This number is then proportioned by the total number found in the state and a proportional number of questionnaires are distributed to that region on a random basis.

For example New South Wales is classified into twenty regions. The total number of conveyancers found in NSW was 1472. For the Kempsey region, 73 conveyancing listings were found. Consequently $73/1472 = 0.05$. Given that there were to be 100 questionnaires sent to Conveyancers then 5 questionnaires would be sent to the Kempsey region from a random selection of this listing. A minimum of two questionnaires were sent to each region in the hope that at least one would respond.

This principle was applied to each state and New Zealand for both Surveyors and conveyancers. In New Zealand the equivalent search engine (www.yellowpages.co.nz) was adopted.

A total of 500 questionnaires were distributed for the research as shown in Table 3.1

Table 3.1 Questionnaire Distribution

	NSW	QLD	VIC	NZ	Total
Surveyors	100	50	50	50	250
Conveyancers	100	50	50	50	250
Total	200	100	100	100	500

Where a multiple listing of a firm or person was found then that person/firm was only chosen once within that region. Similarly the organisations advertisement played some part in the selection process. Where a solicitor made particular mention of conveyancing as part of their business, then they were chosen over one that did not. This was done to improve the likelihood of returns and their completeness.

3.2 Survey Questionnaire

3.2.1 Australian Survey Questionnaires

The survey questionnaires as shown in appendix D (diagrams 1,2 and 3) are split into four main categories together with a brief cover letter to introduce myself and the thesis. These categories are a reflection of the main areas of research in this thesis.

Questions one to four are to determine information relating to the cost of these surveys and the number typically conducted. The questions were identical across all states. By relating this to the region from which Surveyors originate we can determine a comparison between city and country surveys. The primary aim therefore is to gain some financial and volumetric data on identification surveys.

Questions five to thirteen relate to the information shown within the survey and the frequency of complications encountered and are explained in more detail below. Their

primary purpose therefore is to gain statistical data on reporting practices and complications encountered.

Question five's purpose is to determine the extent of survey investigation Surveyors are conducting. Surveyors in NSW are required to define the rear street in any plan of survey lodged with the Land Titles office. The results to this question would indicate the thoroughness and importance the Surveyor places on the fixation relating to identification surveys.

The aim of question six is to determine whether Surveyors continue to consider it their responsibility to state the building complies with the relevant setback requirements given the variation in regulations between councils.

Question seven aims to identify reporting practices in relation to setbacks, particularly on an interstate basis. The question was modified for Victoria and Queensland to include photographs and sketches as preliminary enquiries revealed their reporting practices differ considerably to that of NSW.

Question eight determines the proportion of surveys conducted in urban/rural situations. It may be that less surveys are conducted in rural areas even though the vendors and purchasers bear the same responsibilities as their urban counterparts.

Questions 9-13 determine the level of encroachments, errors and complications found in surveys. The last 20 surveys was chosen as it was considered to be a number of surveys which most Surveyors would be able to recall without having to search their records.

Questions 14-16 are related to risk management and litigation. The main objective of question fourteen is to determine whether Surveyors are considering reports as clients property or more as relative to the parcel of land. Questions fifteen and sixteen relate to litigation. Identification surveys are a small part of the litigation market according to Mr I Marler of ACSIS Ltd (2004, pers. comm., 23 July).

The final part of the questionnaire is a request for a copy of a recent and older survey report and sketch. These are to be used to examine existing and past practices both in relation to the reporting methods and the application of current recognised risk management strategies.

3.2.2 New Zealand Survey Questionnaire

The New Zealand questionnaires (appendices D4 and E2) were distributed after many of the Australian questionnaires had been returned. Also enquiries had been made to Mr Ian Walker of Ascension Surveys based in Auckland as to the role of these surveys in New Zealand. Due to the opinions gathered and that these surveys are rarely done in New Zealand the questions were adjusted to investigate a few specific issues as well as gain some statistical information.

Looking to the New Zealand survey questionnaire (appendix D4) questions one to four are adopted from the Australian questionnaires and were included to determine statistical data relating to the number and cost of these surveys.

Question five is the same as question seven from the QLD and VIC questionnaires and again is to determine the format of presentation of these surveys.

Question six is aimed at understanding how purchasers are sure they are purchasing the right parcel of land without having a Surveyor confirm it. At the time of posting it was becoming apparent from other questionnaires that in Victoria solicitors request the purchaser sign a statement saying they have measured the block and have confirmed the title matches the address of the property to be purchased.

Question seven also relates to information garnered from Victoria which revealed that even under Torrens title owners can claim adverse possession when a fence has been out of alignment with the boundary for some considerable time. The purpose of this question is to determine if this system applies in New Zealand.

Question eight was aimed at determining the frequency of boundary disputes.

Question nine is to determine if there is a trend for the frequency of these surveys, particularly given the introduction of title insurance to New Zealand some years earlier.

Finally Surveyors were again asked to include copies of these surveys for comparison and analysis.

3.3 Conveyance Questionnaire

3.3.1 Australian Conveyance Questionnaires

The Australian distributed conveyance questionnaires (as shown in appendix E1) are divided into 3 main categories. These include frequency and cost data (Q1-5), complications identified in surveys (Q6-11) and client requirements (Q 12-13). These questionnaires were identical for each state, save some small variations on the cover page. Consequently only the NSW survey has been included in the appendix.

Questions one to five are principally concerned with statistical information based on costs and volume of conveyances conducted by the sample group.

Questions six to eight are included to better understand the likelihood of complications in the conveyance due to problems identified in the survey plan. This may indicate the frequency with which the cost of surveys are justified.

Question nine is included to determine if lending institutions are requiring surveys to be done. It would be expected this would be a similar number across all states given that most lending institutions are national.

The purpose of question ten is to examine what proportion of surveys are being reused. Whilst this will not tell us whether copyright had been breached, it will go some way to indicating what proportion of conveyances are relying on old information.

Question eleven will determine what are the issues which are so critical as to result in a conveyance being stopped. This will be compared with title insurance policies to determine whether purchasers would be able to insure against these complications.

Question twelve is determining who is principally responsible for the commissioning of these surveys. Anecdotally it is likely that Conveyancers will be the primary party as they are the most experienced and have a duty of care to their client.

Question thirteen's purpose is to determine what information is important to conveyancers. The ten items included here are predominantly drawn from the ISNSW 'Guidelines for the Preparation of Identification Surveys' with a few additional items included which may be unique to specific states. This will assist Surveyors in understanding their clients needs and what information is superfluous.

Finally, conveyancers were given the opportunity to offer any additional information which may assist in better understanding conveyancing and their needs.

3.3.2 New Zealand Conveyance Questionnaire

The New Zealand questionnaire (Appendix E2) was amended to address different issues due to the apparent lack of use of identification surveys in their system of conveyancing. New Zealand has had title insurance in place since September 2002 (O'Connor, 2003, p2) and part of the research in New Zealand was to determine the extent of its penetration into this market.

Questions one to six are principally concerned with statistical information based on costs and volume of conveyances conducted by the sample group as per the Australian questionnaire.

Question seven is to determine what proportion of lending institutions require surveys. This can be compared to Australian states. I would not expect much difference here as many of the large institutions are similar such as ANZ, NAB and CBA.

Questions eight to eleven are aimed at statistical information on title insurance and how it has penetrated the NZ market.

Given the apparent lack of surveys done in New Zealand, question 12 is aimed at understanding how purchasers can guarantee the paper title matches the property intended to be purchased.

Question 13, again is aimed at identifying who is principally responsible for commissioning these surveys. A request has also been made for a Land Information Memorandum. These are a document issued by the local authority describing the land classification, any issues or uses council may require for the land. Examination of these will determine whether they replace or compliment the identification survey.

3.4 Other Information

State based survey representative bodies have provided some information relating to their recommendations for survey practice in regard to identification surveys.

Canada is a country which over the last few years has seen the introduction of title insurance. Similar organisations have been contacted in Canada to attempt to identify the impact this has had on the surveying industry.

Title insurers in Australia have been contacted to provide information on their products and market penetration. The role of their insurance and their opinions of the relevance of the identification survey have also been sought.

Chapter 4

Research Results - NSW

4.1 Questionnaires

As shown in Table 4.1, the questionnaires were returned at a rate of 1 in 4. This was somewhat disappointing given half of the questionnaires went to practising professionals in this area of study. However, there were slightly more returns from Surveyors than conveyancers.

A considerable amount of additional information was provided across the board. Several conveyancers provided details of their methods, including client engagement forms, their primary need for identification surveys and comments on various parts of legislation relevant to these surveys and conveyancing. Surveyors included information relating to their methods of practice in their region, relevant legislation and contacts who may be able to provide additional perspectives, particularly in relation to insurance practices.

As was expected given that the addresses were taken from the phone book and may have changed, or business circumstances have changed, several questionnaires were 'Return to Sender'. These have not been included in the total returns shown in Table 4.1. Other forms which may have been returned without being completed, or been misunderstood have also been excluded. For example, a Surveyor returned the questionnaire with a letter thanking me for my application for a position of employment with his firm. He had no positions vacant.

Table 4.1 Questionnaire Returns

	NSW	QLD	VIC	NZ	Total
Surveyors	31	16	10	11	68/250
Percentage	31%	32%	20%	22%	27.2%
Conveyancers	25	12	11	9	57/250
Percentage	25%	24%	22%	18%	22.8%
Total	56/200	28/100	21/100	20/100	125/500

4.2 Survey Questionnaire

The survey questionnaire was answered in most instances completely and fairly frankly. That is, Surveyors attempted to answer all the questions and did not exclude any questions from their responses. With a total of 31 questionnaires returned in NSW, 77% of these came from regional areas. Given that 63 % of the questionnaires went to regional areas this reflects a stronger participation rate than Sydney and environs.

4.2.1 Cost / Volume Analysis

The cost analysis showed that urban identification surveys are identical in price (\$490) in both city and regional areas. This was unusual given there is a perception in the industry that city practices typically charge more for most surveys. This cost is exclusive of disbursements which are typically an additional fee. These may include obtaining a copy of the title and subject deposited plan together with additional surrounding plans suitable for redefinition of the boundaries and would generally be in the order of \$30-\$80 based on my personal experience. Many regional survey firms, particularly those which have been established for some years will have on file many of the plans for their region and consequently disbursements would be considerably lower than in larger centres where more Surveyors are practising.

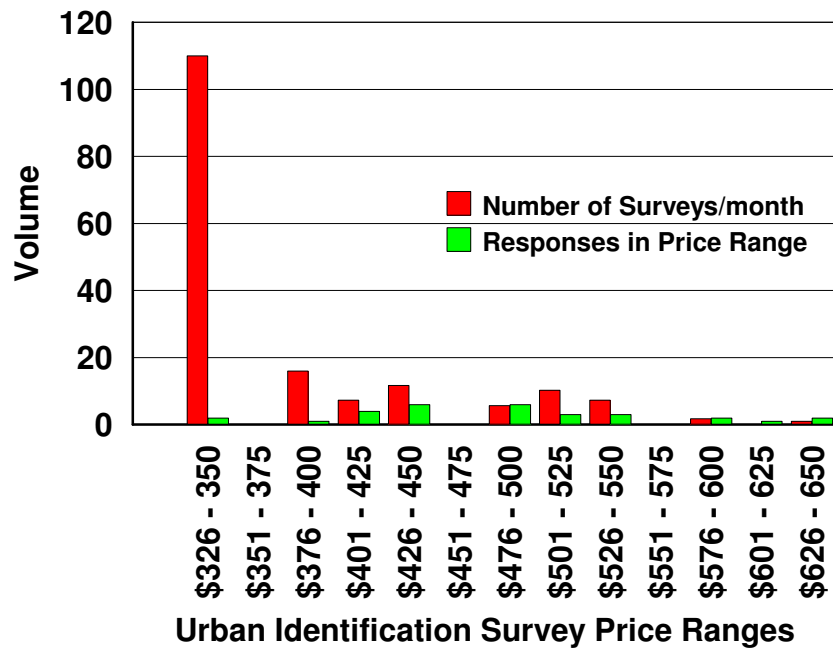


Figure 4.1 NSW Identification surveys Price/Volume comparison \$326-\$650

The range in fees was similar in rural areas to the city. Of the 21 regional responses the lowest fee quoted was \$330 in the Illawarra with the highest being \$650 in the Sutherland shire. The city responses showed a lower end fee of \$350 ranging up to \$650. Generally speaking the higher the fee the lower the number of these surveys conducted per month. Refer to Figure 4.1 and 4.2 for a comparison of fee range versus volume of surveys conducted for urban surveys. The results reflect the reduction in volume against rising price. Figure 4.2 excludes results from the \$326-\$650 range where one of the Surveyors in this range showed 200 as the average number of surveys conducted per month. This figure, whilst no doubt accurate, distorts the scale of the graph perhaps due to the relatively small sample size.

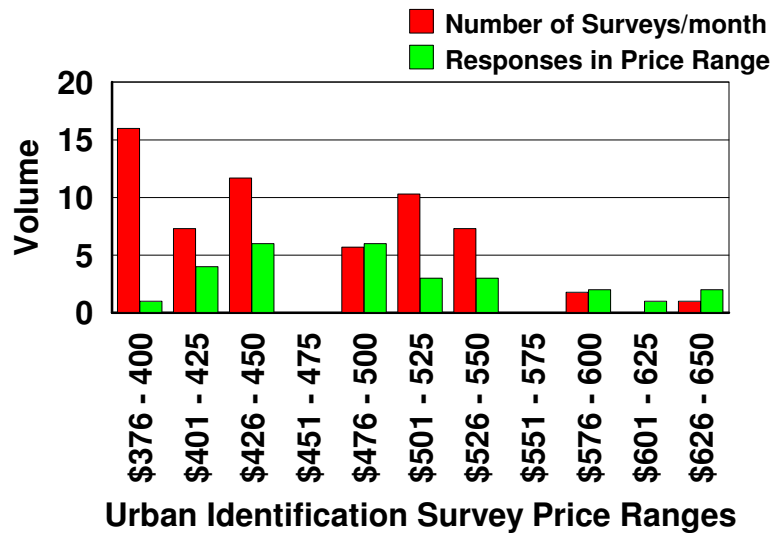


Figure 4.2 NSW Identification surveys Price/Volume comparison \$376-\$650

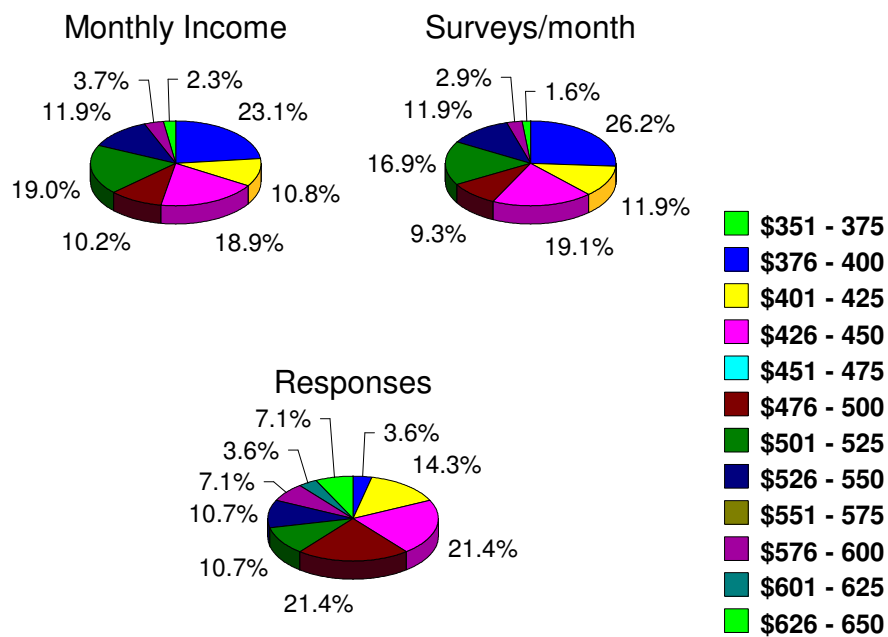


Figure 4.3 NSW Identification surveys Price/Volume comparison \$351-\$650

Rural surveys, as might be expected attracted a higher fee from city Surveyors. It would be a fair assumption that this is due to the additional time spent travelling to the subject site. Only 2 of the city Surveyors offered a price for rural surveys indicating a low participation rate in this type of survey. Regional Surveyors are charging an average of \$639 whilst city Surveyors are charging \$800 with a combined average of \$658.

In regional areas the prices quoted varied from \$350 up to \$1000. The response which showed this lower price made comment that the survey only related to the major improvements on the land. Obviously there would be some scope for Surveyors to determine exactly what the client may require and the fee would be relative to this. Where a client is buying several hundred acres or more it would be an imposing fee to define all the boundaries and fencing locations when the purchaser may only want to know that the dwelling(s) and improvements have been built with council consent. Similarly, with many new developments being one hectare rural lots it would be more appropriate to determine fencing positions more precisely given the relatively smaller size and higher value of these types of allotments.

The average number of surveys conducted per month equated to a combined result of 14.4 as can be seen in Appendix F1. Whilst the city result was considerably higher, this again was distorted by the Surveyor conducting 200 surveys per month. If we exclude this then the average for city Surveyors is 6.6/month with a combined average of 8.0/month. This is more consistent with the rural result and reflects a consistent demand for these surveys across the state.

Question 4 responses show that identification surveys represent 9.2% of trade for the average survey practice. The range for this question was from 0% to 50% with city Surveyors only being slightly more reliant on these surveys for income at 11.3% versus 8.6% in regional areas.

By combining these results with an average price of \$490 and 8.0 surveys conducted per month the average survey practice in NSW is drawing income of \$3920/month or \$47000 annually. Given that this represents 9.2% of the total income then the average monthly and annual income of a survey practice may be about \$42600 and \$511000 respectively.

4.2.2 Presentation and Land Compliance

Turning to questions 5 to 13 of the survey questionnaire, we again find some interesting responses which may be considerably different to industry perceptions.

One of the main roles of the identification survey is to determine whether the title dimensions are generally available. In the case of a subdivision or plan of redefinition it is a requirement to ensure adjoining parcels have title dimensions available and this also includes properties to the rear. The response to question 5 indicates that the majority of Surveyors are not checking that the title depth is available. Of the total result, only 22.6% indicated they would check through to the rear street. Further, none of the city

Surveyors indicated a positive response so that in fact the only Surveyors doing this are in regional areas and then less than a third of them.

Question 6 related to whether Surveyors are stating that the building complies with the relevant local government setback requirements. The results varied only slightly between city and regional Surveyors and on the average showed a 45% affirmative response to this. Comparison of the survey reports returned with the questionnaires showed a similar result. In the comparison of changing Report Practices as shown at the end of Appendix F1, the inclusion of statements relating to compliance showed a reduction from 100% to 41%. The complexity and broadness of DCP's and LEP's is such that Surveyors would be required to do a considerable amount of research to be sure a residence was or was not complying with the relevant DCP's.

Question 7 also showed Surveyors are consistently reporting on the wall to boundary dimensions with a 100% affirmative response when asked if they showed this on the sketch. Referring to the reporting practices from the sketches provided, this reinforces this with a 100% response here. If anything, the need to show this has strengthened due to the complexity of council regulations and this is reflected by the increase between the old and new reports from 90% to 100% affirmative response.

Question 8 showed that 95% of identification surveys are in urban areas. As might be expected in city areas this was 100% urban whilst being slightly lower at 93% in regional areas where rural surveys would be more likely.

Questions 9 to 13 related to land and titling issues. Given that the sample size was 31 responses and the questions were based on the last 20 surveys then these results are a reflection of about 620 surveys.

Minor irregularities typically relate to fencing variations from the boundary and in this regard the responses showed more than 80% of properties had minor irregularities. There was little variation between the city and regional areas.

Major irregularities may include fencing substantially out of position, encroachments on adjoining land, overhead wiring overhanging adjoining properties. The responses here indicated an average of 13.2% having major irregularities. This was only slightly higher in city respondents at 14.3% compared to regional respondents at 12.9%. This is a significant quantity being 1 in 7.5 properties surveyed.

Looking at restrictions on properties such as covenants and restrictions as to user which may impose virtually any form of condition on the parcel, we find that 11.5% of the sample identified non-compliance with all or part of these. Again there was very little difference between city and regional Surveyors. Many Surveyors went on to say in the questionnaire that they do not report on compliance with covenants and restrictions. Some suggested this was an additional item to the typical identification survey and would only comment if instructed specifically, presumably requiring additional fee for this effort, whilst several other Surveyors indicated they would make comment on the

facts relating to the covenant/restriction but not whether it would comply. That is if the building was to be constructed of fibrous cement rather than brick they would say, for example . .

“ . . in relation to item 5 of the restriction as to user contained in G1234567
the property is constructed of fibrous cement. . .”

By doing this it is a matter for others to determine if the property complies. This avoids the Surveyor offering a legal opinion which may or may not be fully informed.

Titling errors are those which result in the incorrect information being shown or left off the certificate of title. This may include issues such as reciprocal easements for support over a party wall, easements being shown on a plan but never registered or notifications relating to an 88b instrument left off the title. These may also relate to the incorrect description of the land, such as a part lot or list of parcels under one certificate of title. The results indicated 2.8% of the sample had titling errors and was consistent across city and regional surveying. Many of these matters would not be obvious even to a Solicitor and only become apparent with investigations on site. Consequently it would be essential for a Surveyor to have access to the certificate of title and other relevant information to fully investigate all issues relating to the land.

Question 13 relates to the investigation of title dimensions being available and was discussed briefly in question 5. The response to this was 3% of properties did not have

title dimensions available. Many Surveyors made mention of old system land in relation to this question. Significant variation may occur in old system land to the title dimensions owing to the passing of time and survey standards at the time of creation of the parcel. The city survey result was only 2.1%. This may be lower than the average because land in the city is increasingly being redeveloped and so it is more likely the land will have been resurveyed recently.

4.2.3 Risk Management and Litigation

The last three questions related to assessment of changing practices in managing risk relating to these surveys. In other areas of surveying such as construction setout litigation is becoming more regular (Marler 2004). Section 4.2.4. also addresses this issue by examining changing reporting techniques.

Question 14 is assessing the issue of client confidentiality and limiting the Surveyors liability. The general principal under copyright law is that the client may pass/sell the original survey on to another person but does not have the right to make copies of it (ISNSW 2002 appendix B). Similarly it would be inferred that the Surveyor could not release information about a survey conducted for a client without that clients express permission (ISNSW 2002 p.5).

The responses to this question indicate a portion of the surveying profession will pass on this information inappropriately. 6.5% of the total respondents said they would make a

copy of a survey available to persons other than the original client with some qualification. None of the city Surveyors were prepared to do this however.

In relation to the implied liability in providing this information (question 14b) 4 responses were received. Of these only 2 said they would require the original clients permission, whilst 1 of these and another would require an additional fee (presumably only administrative). One respondent said a certified unamended copy is provided. Several Surveyors commented they would inform the person that they would need to commission an updated identification survey at the normal or reduced fee (depending on the age of the survey etc..).

The issue of litigation was addressed in questions 15 and 16 in relation to the number of claims realised over the last ten years. Of all the replies none had a case proceed to court and only 2 cases were reported having been settled out of court. Of these details were provided of only one and in regard to this the Surveyor described it as:

“ . . failure to report on an encroachment by a low retaining wall upon adjoining land. I have since adopted a more stringent approach to checking for problems that may arise.”

By considering the average number of surveys done per month over the last ten years from 31 respondents this equates to only 2 claims in 29760 identification surveys or a claim rate of less than 0.007%. Even considering the reluctance of defendants to discuss

claims against them, this is still an extremely low claim rate. There may be two apparent reasons for this. Firstly that Surveyors are preparing a product which is of a high standard and satisfies the clients requirements. Secondly, that the value of claiming any loss or damages against the Surveyor by legal means is outweighed by the costs associated with legal representation. It is likely that the low claim rate is due to a combination of these factors.

4.2.4 Reporting Practices

The final part of the survey was to review past and current reporting practices. In relation to this 17 respondents provided an example copy of a current report. Of these, 10 provided copies of older reports generally being 10 to 20 years older. The primary purpose was to examine the changing attitude to qualifying statements and risk management.

The primary areas of interest are as shown at the bottom of Appendix F1 “Reporting practices”. The results generally indicated an increased awareness and use of qualifying or limiting statements.

As was reflected upon in question 6 only about 45% of Surveyors are now reporting on a buildings compliance with a DCP down from 100%. In relation to the other risk management issues shown there has been an across the board increase in the qualification of surveys in relation to copyright and reproduction of the report together

with the limitation of the survey to its particular application, whether that be for a conveyance, application for a section 149D certificate of the EP&A Act 1979 or occupation certificate. Further, as recommended by the Institution guidelines (ISNSW 2002) Surveyors are stating that there are no visible encroachments. This removes the liability for the Surveyor being expected to investigate the location of underground encroachments be they services, footings or some other feature.

The reports also shown an improvement in the general drafting and quality of presentation. Many sketches appeared to be prepared using CAD packages which as a photocopy are generally more legible. Most of the qualifying statements were in the body of the text such as the introduction or summary of which two examples are:

“The survey, completed on 12 February 2004 has been prepared for identification purposes and is provided for private use in the matter of your purchase from”

(2nd paragraph from central west report)

“This report is for survey identification purposes and, as such, should be used only for the purpose for which it was prepared. Owners or purchasers should be aware that if utilising or building near or to the boundary, the author of the report or consulting Surveyor of choice should be contacted in case boundary location on this or adjoining lots carries higher than normal risk. [*The Surveyor*] accept no

responsibility for failure to use this report within the limitations intended.”

(closing paragraph of a southern highlands report)

Another report provided from the Central Coast in a footnote referred the reader to a list of notes on the rear of the sketch. These were 14 detailed notes filling the entire page and appeared to be standard notes for any type of survey prepared on this form. Particular attention was drawn to 4 of these notes which relate more directly to identification surveys which are reproduced here as an example:

- “1) Should the definition of the subject boundaries be affected by subsequent registered surveys then [*The Survey Firm*] will not be responsible.
- 2) This sketch is of an identification/re-mark survey only and as such is not registered by the Registrar of Titles and is not to be used to accurately fix boundaries.
- 7) Where fence offsets are shown in relation to boundaries (e.g. Fce 0.2) these should be regarded as approximate distances only and should not be used for any other purpose. Fence offsets are diagrammatic only.
- 9) Concrete footings of buildings, retaining walls, fencing walls or other structures above or below ground level on or adjacent to the subject property are not reported upon unless specifically requested in writing by the client or his agent. No

responsibility will be taken by [*The Survey Firm*] for omissions in this regard.”

This was one of the most comprehensive example of limiting statements. Several of the new surveys had no limiting statements at all. Whilst there is no precedent proven in court in relation to the limiting of liability by the use of these statements, they are a general recommendation in the ISNSW (2002) guide and also in the Disclaimer Manual for Surveyors prepared by Delange (1991).

4.3 Conveyance Questionnaire

The conveyance questionnaires were returned at 25% with 15 being from regional NSW and 10 from Sydney and environs. 42% of the questionnaires were distributed to Sydney conveyancers so with 40% of those returned being from Sydney then the sample group represents NSW conveyancers proportionately. The questionnaires were generally answered completely with several conveyancers including additional information and comments in relation to their experience and practice. Please refer to Appendix E1 for a copy of the questionnaire and Appendix F2 for a summary of the responses.

4.3.1 Cost / Volume Analysis

The average number of conveyances was found to be 32/month. The average for Sydney based practices was considerably higher than regional areas at 41/month versus

26/month respectively. With a strong housing market in Sydney and growth of 50000 people per annum, the volume is a reflection of this.

Sydney conveyancers also showed a higher average fee at \$993/conveyance compared to \$888/conveyance for their regional colleagues. The sample average being \$936/conveyance. The spread of these results was considerably wider in Sydney with the lower and upper fees quoted being \$725 and \$1450 respectively. The regional results ranged from \$700 up to \$1100. Refer to table 4.5 for a comparison of fees versus income.

These figures (Table 4.5) are quite different to surveying since those with the largest market share are charging a price considerably above the average being in the \$1051-\$1150 range and are also coming up with the largest monthly income. Indeed, the table shows that whilst those conveyancers charging over \$1050 represent only 27.2% of all conveyancers, they conduct nearly 62% of all conveyances and therefore earn 68% of total revenue from conveyancing.

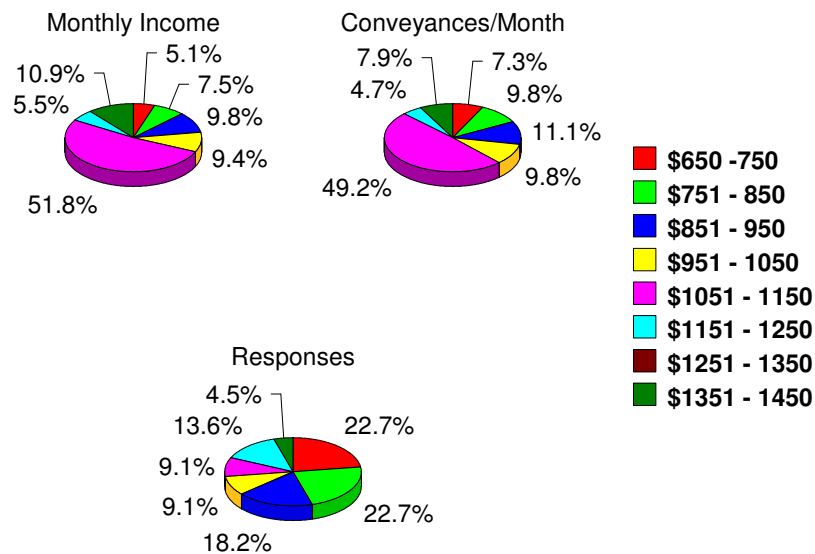


Figure 4.4 NSW Conveyancers Price/Volume comparison

Conveyancing represented roughly one half of the average conveyancing business but more than two thirds for Sydney conveyancers. Again the strength of the real estate market would contribute to this. Another factor affecting this is that with a smaller market, regional practices are more likely to be Solicitors who will consider conveyancing as part of their business, whereas in Sydney a portion of the market will be serviced by conveyancers who rely virtually entirely on conveyancing for their trade.

By combining these results from questions 1 to 4 we can determine the average value of conveyancing to a business. At 32 conveyances/month and \$936 each this equates to \$29952/month or about \$360,000 per annum. Given that this represents 48.4% of the

total income then the average monthly and annual income of a conveyancing practice may be about \$62000 and \$742000 respectively.

4.3.2 Survey Application and Land Compliance

Questions 5 to 11 investigated the use of surveys for conveyancing and the level of complications identified in these. Given the questionnaire refers to the last 20 conveyances and there were 25 respondents then the sample size is approximately 500 conveyances.

Question 5 showed that surveys, whether they are old or newly commissioned identification surveys are only used in 44% of cases. The Sydney rate is considerably lower at 34% whilst regional areas use surveys for 51% of conveyances.

Question 6 relates directly to question 9 of the survey questionnaire and the total result here showed that 57% of the surveys identified minor irregularities which would not delay the settlement. This is more than 20% lower than the response to question 9 of the survey questionnaire and one conclusion from this may be that matters Surveyors consider to be minor problems are considered irrelevant to conveyancers.

Question 7 identified the number of minor matters which would delay the settlement. The result overall was 1.3% with the Sydney result being 2% and the regional average being 0.7%, which is not a large variation. What this shows is that very few minor

matters actually cause complications. Indeed, one comment in a questionnaire inferred that purchasers showed some concern when advised of minor problems but typically decided to proceed without delay.

Question 8 looked at major irregularities which would result in not purchasing the property. The results here showed that this was very rare indeed. No regional conveyances would be cancelled and 1.6% of the Sydney conveyances resulted in this. So despite the results from the survey questionnaire showing more than 13% of surveys have major irregularities, 11.5% not complying with a covenant/restriction, 2.8% having titling errors and 3% not having title dimensions, less than 1% of all conveyances are actually cancelled. This may reflect a difference in opinion in the perceived significance of errors between Surveyors and conveyancers

Question 9 determined that 11.6% of lending institutions require surveys to be prepared prior to approval of a mortgage. This is not to say that only that proportion of lenders require surveys, but rather 11.6% of mortgages require a survey prior to approval so that many institutions will require a survey for one mortgage but not another. A conveyancer commented that when working in the Hills district of Sydney which has a large first home buyer market mortgages were typically for the majority of the purchase price and so lending institutions were more likely to require a survey. Similarly, now working in the North Shore this conveyancer found surveys were less likely since typically owners had more equity in their home. Because owners had more equity, institutions were more likely to be able to recover any debts through the value of the property. Several

conveyancers indicated that it was common practice for mortgagees to take out title insurance.

An area of risk management in relation to these types of surveys is protecting copyright of the Surveyor and client. Question 10 determined that 42.7% of surveys were newly commissioned for the conveyance. This means that more than 57% of surveys used for a conveyance are not original and may be out of date, being used for a purpose for which it was not intended, or potentially in breach of copyright if having been originally prepared for a different matter or client. Further, given that only 44% of conveyances use a survey and of these only 42.7% were newly commissioned then it follows that 18.8% ($44\% \times 42.7\%$) of conveyances are using a survey that is newly commissioned.

Question 11 identified the issues which conveyancers felt were most likely to cause a purchase to be stopped. This also assists in identifying those matters which conveyancers would therefore consider most important and therefore treat with the highest priority. There were 11 issues identified as significant and are listed in table 4.6 together with their frequency of listing.

Table 4.2 Question 11 Responses

Response	Frequency
Building over Boundary	20
Major Non-compliance with Covenant/Restriction	11
Non-compliance with Council Setbacks	5
Building over Easement/Right of Way	5
Illegal Structures	3
Access problems	2
Variations in boundary dimensions/area	2
Primary application required	2
Fences way off boundary	2
Unregistered Easements	1

As might be expected building encroachments/non-compliance and failing to meet requirements of restrictions/covenants were high on the list as these types of non-compliance can lead to an order to demolish all or part of a building which would be costly and potentially lead to significant devaluation of property price. In relation to covenants the comment was generally made that it would need to be a major non-compliance before it would lead to a sale stopping. The issue of illegal structures is not something which Surveyors would typically comment on, however a prudent Surveyor would attempt to determine if outbuildings such as garages and storage

buildings are being occupied. This is an issue which would be considered when applying to council for a s149D certificate.

Variations in boundary dimensions and primary applications are closely related and would be more common with old system land. Depending on the significance of the difference in dimensions to title, the purchaser may decide the land value is too far diminished or require a renegotiation of the price. Purchasers who are looking to redevelop land typically find the land size is a significant issue as many higher density land uses are dependant on the available land size.

Unregistered easements are often not immediately apparent. These may typically relate to drainage or sewer lines which may not be visible other than as pits or service covers. There may also be more obvious matters such as rights of way or overland flow paths.

4.3.3 Market and Presentation

Question 12 determined those parties who are most likely to be responsible for commissioning of an identification survey. This assists Surveyors to identify their market place and to focus on issues which are most relevant to these parties. This question also assisted in identifying what proportion of surveys are required by lending institutions given that they can now insure many aspects of land ownership through title insurance. The results showed more than two thirds of surveys are commissioned at the conveyancers request. Less than 25% of surveys are required by the lending institutions

indicating that conveyancers are the market group perpetuating the use of identification surveys. The results also show that the general public (ie: The Client) do not typically initiate the survey. Clearly conveyancers are convincing the client to commission a survey for due diligence but the lack of involvement from the public represents an opportunity to educate the public of the benefits of Surveyors and these types of reports.

Question 13 investigated the priority of the various aspects shown in an identification survey. The principal benefit of this is to compare the role surveys play in other states. By comparing interstate results we will determine the primary purpose of these surveys and how they would apply to the NSW industry.

The results were consistent with the items of importance listed in table 4.6 and accord with the general principal of the identification survey to identify the land and any improvements and encumbrances thereon (Refer to Appendix F2 for additional details). Photographs and minor fencing irregularities were the lowest ranking items and several conveyancers noted they receive photographs of the property from a building report.

The next two lowest items were the displaying of wall and gutter setbacks and commenting on building compliance with the relevant DCP. From this we may infer that these items are not a high priority to conveyancers but rather are necessary for the Local Government to ensure the building complies. The results were generally consistent between regional and city practices with the notable exception of *'Identify covenants and restrictions and comment on the properties compliance'*. This item

ranked eighth in regional NSW and fourth in the City which may be more of a reflection of the commonality of covenants and restrictions in city surveys versus regional surveys. Comparison of interstate results will be done in Chapter 5 where some fundamental differences will be examined particularly in relation to part 'b' of question 13.

Part 'b' of question 13 showed that virtually all the items are essential to Conveyancers with the exception of a photograph. Minor fencing irregularities rate highly enough (70%) to warrant continued inclusion in reports. All the other items, at greater than 90% would be considered essential.

Chapter 5

Research Results - Provincial

5.1 Queensland

The equivalent to a NSW identification survey in Queensland is the 'Location Certificate'. This survey, as recommended by the Consulting Surveyors Queensland (CSQ 1984) (now A.S.I.B.A.) has similar goals to that of its NSW counterpart being the identification of the land intended to be purchased and a description of any improvements thereon. However the location certificate is limited to a visual inspection of the property and no survey is undertaken to redefine the boundaries.

Fundamentally, this survey offers assurance that the property intended to be purchased is that which is identified in the title so confirming the link between paper title and actual land. Several items which are undertaken as a requirement in the NSW identification survey are considered additional items to the location certificate. These include:

- Definition of boundaries and comment as to title dimensions,

- Marking of unfenced or undeveloped land,
- Compliance with Local Government boundary setback requirements,
- Relationship of walls to boundaries,
- Sketch of the improvements on the land.

5.1.1 Survey Questionnaire

The questions to Surveyors were modified slightly in Queensland to recognise location certificates as the type of survey being examined. Discussions with members of the surveying profession indicated identification surveys as known in NSW are quite rare and the other common form of survey being a repeg survey is not generally associated with conveyancing. As can be seen from table 4.1, the questionnaire was returned at a rate of 32% with a total of 16 forms received.

5.1.1.1 Cost / Volume Analysis

The Queensland results were assessed as a total sample group, however there were a total of 9 city returns and 7 regional returns. Refer to Appendix F1 for a detailed table of the questionnaire results. The typical cost of the reports for urban and rural surveys was found to be \$490 and \$617 respectively. However, the variation in fees charged for an urban survey was from \$225 to \$800/survey and from \$350 to \$1000/survey for rural surveys.

The average number of surveys conducted per month was one with this representing less than 1% of a survey business. The number of surveys conducted per month ranged from 0.3 to 4 / month. Given the low volume of these surveys done it was considered unwarranted to calculate the cost volume ratio. The main point to note here is that these surveys are very infrequent in Queensland.

5.1.1.2 Presentation and Land Compliance

Given that the location certificate does not require boundary investigation, the response to question 5 was very low with only 13% checking boundary dimensions. Question 6 and 7 also reflect a reluctance to comment on the relationship of boundaries to structures. Whilst 60% of respondents indicated they would show wall to boundary dimensions, of the sample certificates provided only 33% actually showed dimensions.

Question 9 showed a fairly low proportion of surveys identifying minor irregularities. Given the most common item in this category would be fencing slightly out of position then the low return would again be a reflection of the approximation of the boundary position and therefore an inability to recognise minor variations.

A typical recommendation in a location certificate is to whether an identification survey should be conducted after the Surveyors investigations for the location certificate. In response to this question, 23% of the surveys recommended having an identification

survey conducted. Given this high proportion, it suggests that the location certificate is not disclosing enough information for the clients satisfaction in the first instance.

Questions 11 to 14, investigating non-compliance and problems disclosed show a very small proportion of surveys identifying problems. Again this may be to do with the thoroughness of the boundary investigation. Without a precise determination of boundaries it would not be possible to relate structures to boundaries or easements. Further, the nature of the location certificate does not require investigation as to the compliance in relation to encumbrances, but rather to merely identify them as such. Consequently, it is unlikely location certificates would identify all the potential complications there may be.

5.1.1.3 Risk Management and Litigation

In relation to providing reports to persons other than the original client, 2 of the 15 respondents indicated they would do so, representing 13%. Both of these were city based practices and did not indicate any need to revisit the site. One of these Surveyors said reference would be made to the date of the original survey and that changes may have occurred. Neither indicated they would require the original clients permission and seems to overlook the fundamental rights to the clients privilege. Of the total responses, no Surveyors indicated any litigation had occurred in relation to location certificates in the last 10 years.

5.1.1.4 Reporting Practices

There were a total of 7 reports returned from Queensland Surveyors and of these only one was an older survey being from 1979. Consequently there was insufficient information to determine any significant changes in reporting practices. The remaining six reports, however were assessed for risk management practices as shown at the bottom of Appendix F1. The first two items relate to boundary definition and consequently are not applicable to location certificates, however the third result relating to limitation of use shows Surveyors are making it clear as to the purpose and limitations of the survey. Two of the surveys also referred to the reproduction of material whilst not actually specifying copyright. Whilst there is no obligation to comment on underground structures, as in NSW it would be appropriate to inform the client that underground structures have not been investigated so as to limit the Surveyors liability. Several Surveyors did however say there were ‘ . . no visible encroachments by or upon the subject property . . ’ which goes some way to clarifying this.

Generally Surveyors indicated they found location certificates a waste of time and preferred not to do them or to encourage clients to have a more thorough survey such as a repeg.

5.1.2 Conveyance Questionnaire

12 responses were received from conveyancers in Queensland and generally the questionnaires were incomplete. This was mainly due to the lack of location certificates actually used for conveyancing. Typically comments indicated that surveys were almost never done and in the rare event they were, generally the client was responsible for commissioning of the survey.

5.1.2.1 Cost / Volume Analysis

The results were a combination of 8 regional and 4 city responses. Generally this section was completed thoroughly. The results showed that the average number of conveyances per month was 42 for an average fee of \$559. Individually the range for the number of conveyances was from 4 to 100 and the fee from \$370 up to \$700. Conveyancing therefore represents about \$23500 per month to the average firm and with conveyancing representing 39% of the business, the average firm might expect to turn over about \$60000 per month or \$725000 per year.

5.1.2.2 Survey Application and Land Compliance

The use of surveys in a typical conveyance is very rare and are typically only used in 1% of conveyances. Of the eleven respondents to this question (5), only two indicated they

used surveys at all. In relation to the land compliance questions (6 to 11) only 2 respondents answered these questions and so it is an insufficient sample size to draw any conclusions.

5.1.2.3 Market and Presentation

The market place in Queensland is quite different to that of NSW. A much larger portion of the market is taken by the conveyancers client requesting surveys at 42%. Several conveyancers indicated they require clients to sign a form indicating they have checked the land and agree it is that which is noted on the title, thereby transferring the responsibility to the client and meeting the due diligence obligations of the Conveyancer. A notable reduction in the statistics is the lending institutions which appear to have no requirement for surveys. This is unusual given that most lending institutions are nationally based and in terms of disclosures in a typical survey would be carrying similar risks. Conveyancers still represent the majority of the market at 57%.

The ranking of information shown on the survey report is similar to that of NSW and in particular regional NSW. Given this, the higher rate of use of surveys in NSW may be due to factors other than the desire to confirm the land is that which is intended to be purchased based on the paper title. If this were the driving force then one would expect a consistent uptake rate across Australia. Many of the issues which were considered essential in NSW are not so in Queensland. In particular wall and gutter setbacks, LGA compliance and minor fencing irregularities are not considered essential.

5.1.3 Summary

The Queensland equivalent of the identification survey, the location certificate is rarely used in conveyancing. Further, these surveys are principally focused on confirming the land intended to be purchased is correctly related to the paper title being conveyed and make no other claims in relation to other matters such as compliance with building ordinances.

Conveyancers require the client to take responsibility for any issues which would otherwise be disclosed in a survey, and given this is the accepted practice in Queensland, it would appear to meet the due diligence obligations of the conveyancer.

Therefore the fundamental difference between the two systems would be the accepted practice in NSW to require a s149 certificate from the LGA. Given this, the location certificate would be unsuitable in NSW under current accepted practices. Particularly given their cost is identical to that of the NSW identification survey which discloses more information in relation to title dimensions and the relationship of structures to boundaries.

5.2 Victoria

The Victorian surveying market is more closely aligned with the Queensland system than that of NSW. The two main types of surveys relating to conveyancing would be the Land Title Survey and the Boundary Re-establishment survey (ACS(Vic) 2004).

A unique aspect of land law to Victoria is the application of Adverse Possession. The Victorian system allows for the claim of adverse possession on both old system and Torrens title land based on the occupation of land. This has various qualifying factors such as the occupation being for generally greater than 15 years, together with right of appeal by affected parties. Consequently, where fencing has been in place for some time, new owners would be assuming that the land occupied by fencing is that land to which they are entitled. This goes some way to eliminating the need for an identification survey.

5.2.1 Survey Questionnaire

The Victorian survey questionnaire was modified from the NSW version to recognise the Title Survey as the Victorian equivalent. Unfortunately this led to the perception that the questionnaire was related to the title re-establishment survey. This type of survey actually redefines the boundaries, pegs the boundaries and requires notification to the Surveyor General of the survey being conducted and the lodging of a plan showing the results of this survey. Consequently much of the statistical data relates more closely

to this type of survey and is not appropriate for comparison with the NSW questionnaire. A total of 10 responses were received from Victorian Surveyors with these being equally distributed between regional and city based Surveyors.

5.2.1.1 Cost / Volume Analysis

Due to the responses reflecting the cost and volume of re-establishment surveys it is inappropriate to use this information for a comparison with NSW data. However the ACS (Vic) 2004 fees guide recommends an identification survey in a recent residential subdivision be charged at \$435 plus disbursements and GST.

Only one response confirmed the answers to be in relation to Land Title (Identification) Surveys. This Surveyor charged \$500 for an urban survey and averaged only 1 per month. Further, the example reports provided were very similar to the format of the Queensland location certificate, did not include a sketch of the land and confirmed that the fencing was generally correct. Building relationship to the boundary was not noted.

5.2.1.2 Presentation and Land Compliance

Due to the irrelevance of the results few conclusions can be drawn from questions 5 to 13. However, question 8 shows that the majority of this work is again done on urban allotments and that, like in NSW 88% of properties have minor irregularities in the fencing. In relation to questions 6 and 7 building setbacks were not noted. One

Surveyor who provided a copy of a report with a sketch did not show any improvements on the land other than those in close proximity to the boundary. Consequently from these results it would appear there is no requirement to show improvements on the land other than to state they are there in the associated report, similar to the Queensland location certificate.

5.2.1.3 Risk Management and Litigation

Question 14 showed that Victorian Surveyors will not disclose information done for other clients. Comments made noted that the survey would need to be brought up to date and the Surveyor would accept 100% responsibility for the new survey.

In relation to litigation, 1 respondent indicated that he had 5 cases in relation to adverse possession. It is unclear whether this means he has been sued or whether he has been responsible for instigating claims under section 60 of the Transfer of Land Act 1958 for adverse possession. All other respondents indicated no claims.

5.2.1.4 Reporting Practices

As can be seen from Appendix F1, in particular the reporting practices table, 9 example reports were provided. 7 of these were from 1 Surveyor and consequently the information does not provide a broad cross section of Victorian practices. However the examples do show there are few statements made relating to limiting or qualifying the

reports. Only 1 example limited the survey by stating it did not redefine the boundaries.

One of the more notable statements made was under a Surveyors certification that:

“I hereby certify that I have inspected the property described hereon and based on a comparison of measurements of occupation with title dimensions, I am satisfied that for all practical purposes related to the sale or purchase, the property accords with the land described in the certificate of title.”

This is a far reaching statement and may be interpreted in many ways depending on the readers training and general knowledge. For example, if I were a property developer and my intention was to develop the land, could I not assume from this that the fencing is exactly correct and title dimensions are available. It makes no account for claims by adjoining owners and implies that the Surveyor has redefined the title boundaries. None of the surveys expressed views on copyright, nor did they make comment as to reproduction of the report or accepting liability only to the original client. Generally the reports were fairly ambiguous as to what they could be relied upon for and only gave a very brief description of the property with few comments relating to other land related matters such as building approval, setbacks, land use or the circumstances surrounding easements or covenants.

5.2.2 Conveyance Questionnaire

11 responses were received from Victorian conveyancers and whilst it was apparent attempts were made to complete the forms fully, the lack of surveys commissioned by conveyancers resulted in several questions having little relevant data. 5 respondents were from Melbourne and environs whilst the remainder were from regional Victoria

Based on the comments noted it is the accepted practice in Victoria for conveyancers to require their client to sign a statement saying they have checked the dimensions and location of the land occupied and that they are satisfied this conforms with the title details. This meets the obligations for the conveyancer for the purpose of due diligence and if any significant problems arise then the client would commission a Surveyor to clarify this, which very rarely happens.

5.2.2.1 Cost / Volume Analysis

From the respondents, an average of 30.2 conveyances are performed per month with an average fee of \$427 per conveyance. This represents about \$13000 per month to the average practice. Further given this represents 54.5% (question 4) of turnover then the average conveyancing practice might expect to turnover \$23500 per month or about \$284000 per annum. The actual fees charged ranged from \$170 to \$600 per conveyance with between 15 and 80 conveyances conducted per month.

5.2.2.2 Survey Application and Land Compliance

Given the proportion of conveyances requiring a survey was only 0.4%, the issue of land compliance was not able to be effectively assessed. The only significant results to come from this is that all surveys conducted are new in relation to conveyancing and that no lending institutions require surveys to be undertaken. This is consistent with the Queensland results and again, despite these financial institutions being national, appear to have varying requirements for the endorsement of a mortgage.

5.2.2.3 Market and Presentation

As in the two previously assessed regions, conveyancers (87%) are the most likely parties to commission a survey. Given that they rarely do this, then the likelihood of the client (10%) or the lending institution (2%) commissioning a survey is virtually non-existent.

The items which are important to conveyancers, as reflected in question 13 vary slightly from NSW. The two significant items which have moved down the list are 'noting discrepancies in survey dimensions' and 'identifying minor fencing irregularities in relation to boundaries'. This would be due to the differing laws relating to adverse possession (section 60 of the TLA 1958) which would reduce the significance of any variations as discussed earlier as the purchaser would essentially be buying what is

currently fenced. Additionally, as can be seen from the results in Appendix F2, boundary setbacks and LGA compliance are not essential at all to conveyancers

5.2.3 Summary

Conclusions from the Victorian research are similar to Queensland. Conveyancers are placing the onus on the purchaser to confirm the land they intend to buy matches the paper title to be conveyed. Surveyors play virtually no role in the conveyancing process and unlike NSW, lending institutions do not require them to do so. This also seems to reinforce the conclusion that the practice of obtaining a s149D certificate for LGA approval of any improvements is the main motivation for identification surveys in NSW. Consequently there are no practices which may be adopted from the Victorian Land Title Survey which would enhance the NSW identification survey.

5.3 New Zealand

The results from New Zealand were generally answered as completely as possible. However, due to the lack of these surveys being undertaken the scope of the questionnaire was reduced significantly and not all aspects of the Australian questionnaire were assessed.

5.3.1 Survey Questionnaire

There were a total of 11 responses from New Zealand Surveyors. All of these indicated that this type of survey is virtually never done in NZ. The questionnaires were answered completely as possible however because the surveys are so rare, questions 4 and 5 were completed in only half the questionnaires.

5.3.1.1 Cost / Volume Analysis

The cost analysis showed the average cost for an urban survey would be \$660 with only about 1.4 done per month. Further these represent less than 4% of total turnover on average. In relation to presentation, Surveyors generally provide a sketch but do not provide photographs and will comment on the building setbacks.

5.3.1.2 Alternative methods and Adverse Possession

Question 6 related to the client determining they were in fact buying the correct land. In response to this responses ranged from *'Assumed to be OK'* or *'Take the word of the land agent'* to using the GIS or having pegs placed. None of these responses get to the essence of the issue of determining the paper title being conveyed does in fact relate to the land intended to be purchased.

The issue of adverse possession was included in question 7 to compare this with the Victorian system discussed previously. The views expressed were mixed but generally the principal of adverse possession relating to old system land prevailed in that adverse possession did not apply to Torrens title land and that these claims were generally pretty rare. This means that the reasoning in Victoria of not having identification surveys done due to possessory title do not apply in New Zealand.

There were an average of 4 surveys per month relating to boundary disputes, however in hindsight this question has no research benefit and should not have been included. There has been no increase in the number of identification surveys conducted in the last three years.

5.3.2 Conveyance Questionnaire

There were 9 conveyancing questionnaires returned from New Zealand with 6 being from city based practices and the remainder from regional New Zealand. Typically, the questionnaires were answered completely with the exception of questions 8 and 11 which related to title insurance and was generally not completed.

5.3.2.1 Cost / Volume Analysis

The average conveyancing figures in New Zealand was found to be \$739 per conveyance with 30.4 conducted per month. With this representing 38.1% of the business turnover

then the average conveyancer might expect to turn over about \$NZ22500 per month or about \$NZ270000 annually.

5.3.2.2 Survey Application and Alternatives

Surveyors are generally not included in the conveyancing process with only 9% of conveyances requiring a survey. Of these results the majority were less than 5%, however 2 conveyancers, both based in Wellington indicated a requirement for 25% and 50% of conveyances to have a survey. This may have distorted the figures to some extent, however additional research would be required to confirm this.

Interestingly again, no lending institutions require the conveyancer or purchaser to commission a survey. This is consistent with the results from Victoria and Queensland and indicates New South Wales practice is the exception rather than the rule.

The question was put to conveyancers how their clients would confirm the title to be transferred includes the land and/or improvements intended to be purchased. Generally the responses were that they would either rely on a Land Information Memorandum (LIM), have pegs placed if there was any doubt, or would rely on the government guarantee to title under the land transfer act. Other than having the land pegged, the alternatives do not actually ensure that the title being transferred relates to the land to be purchased. An LIM report provides details relating to land use, flood and land subsidence, land zoning but does not actually incorporate any inspection of the land to

confirm the location, dimensions and improvements on the land. Whilst government guarantee is reassuring and offers some recourse this system does not guarantee title dimensions and again provides no direct link between the paper title and the land intended to be purchased. It may be that the title held in hand is for the vacant block next door rather than the 5 bedroom, 2 bathroom house which was intended to be purchased.

5.3.2.3 Title Insurance

Questions 8 to 11 related to title insurance for owners which has been available in New Zealand since September 2002 (O'Connor 2003 p.2). Most conveyancers did not complete these questions and indicated they were not aware of title insurance or believed it had been unsuccessful and was no longer available. Consequently no significant conclusions were able to be drawn from these results other than that owners title insurance has no significant presence in the New Zealand conveyancing market.

5.3.2.4 Market

As in all the states of Australia, conveyancers (58%) are the most likely persons responsible for the commissioning of a survey. However, the conveyancers client is the next most likely party to commission a survey at 42% suggesting that conveyancers are placing the onus on the client to take responsibility for this aspect of the land transfer.

5.3.3 Summary

Whilst owners title insurance has been available in New Zealand for nearly 2 years it has made little inroads to the conveyancing market place. Other methods of checking the land such as the LIM still do not prove the link as a Surveyor would between the paper title and the land to be purchased.

As in Victoria and Queensland, Surveyors play little role in the conveyancing process in New Zealand. Further there is no recognised format for this information such as the location certificate (Qld) or title survey (Vic) if it is required. Consequently there are no alternative practices which could be considered beneficial to NSW Surveyors.

Chapter 6

Title Insurance

Title Insurance is a relatively new service to the insurance market in Australia. There are at least two insurers currently offering title insurance in Australia being First American Title Insurance Company of Australia (First Title) Pty Ltd and Stewart Title Ltd.

Much of the research here has been based on information provided by First Title and Stewart Title so would be biased toward the concept of title insurance, however there are several papers analysing the role of title insurance which have also been consulted. Due to the short history of title insurance there are few other sources available.

Title insurance's principal purpose is best described by Arruñada(2002) as that it '*indemnifies real estate right holders for losses caused by pre-existing title defects that are unknown when the policy is issued.*'. In Australia due to the existence of state guaranteed title, this insurance offers additional cover for other items which would not be covered by the state guarantee and are typically referred to as 'off-title' cover.

6.1 History of Title Insurance

Title insurance dates back in the United States of America to the late 19th Century (Arruñada 2002 p.3). It was originally offered to afford protection against errors in the recording of ownership to land in the deeds (old) system of the USA.

With the expansion of the mortgage market, particularly after the second world war, and the need for a more efficient title guarantee system title insurance developed as a means to cover mortgagees and creditors (Arruñada 2002 p2-3). It is only recently that title insurance has been offered in other countries being mainly focused on regions in close geographic proximity to the USA such as Canada, Puerto Rico and the Pacific Islands. Canada has had title insurance available since 1956 (Arruñada 2002 p.14) but much of the recent expansion has been due to the demand of international investment for security in countries where they have traditionally not operated and would appear to have been the initial thrust for the expansion of title insurance internationally.

Traditional title insurance, based on a deeds registry system of title succeeded in the USA because it is not an indefeasible title. Insurers in the USA conduct numerous searches of deed registry, together with other land related searches and have individual data bases (Title Plants) of land ownership to assist in risk management. Matters which are identified during these searches are typically excluded from the policy as a known fault. Unlike Australia and most Torrens System land registries the USA does not have a government guarantee to title and so the policy offers security on such a substantial

investment to one or both of the lender and owner. Whilst the NSW results herein showed only about 2.8% of identification surveys are identifying titling errors, evidence in the USA suggests this is closer to 25% (Arruñada 2002 p.8). So the USA model is based on preventative measures to disclose defects or title faults and so reduce the insurers risk. This is in contrast to the principles behind title insurance in Australia which seek to eliminate the need for searches as discussed in section 6.2.

There are two main types of policies being lender's policies and owner's policies (O'Connor 2003 p.2). The policies essentially cover the same items except that the lenders policy would most likely only come into effect after the owner had defaulted on the loan and a problem then subsequently was identified. This is not to be confused with mortgage insurance which in the event the owner defaulted on the mortgage would entitle the lender to claim against the insurer for losses on the mortgage.

In Canada, which was one of the first countries where title insurers tried to expand their operations, several organisations offer title insurance. Title insurance had been available since 1956 however it was largely disregarded until 1991 when several insurance companies started marketing their product. One of the aspects used to market the policy was that it would eliminate the need for a survey as the purchase of title insurance would cover those risks typically disclosed in the survey thereby reducing the search fee from several hundred dollars for a survey to a few hundred for the insurance policy (O'Connor 2003 p.7). It is believed that the involvement of title insurance has increased from 15% to 50% in the last three years in Canada (First Title 2004b p. 23).

Title insurance is believed to be taken out in 85% of residential sales in the USA (Arruñada 2002 p.5) and the parent company of First Title, First American has over 30,000 employees and \$6.2 billion of revenue in 2003 (First Title 2004). Many of the large USA title insurance companies are now expanding internationally to countries such as the UK, Europe, The Bahamas, Korea and more recently New Zealand and Australia.

6.2 Australian Title Insurance

Australian title insurance, due to our relatively efficient titling system and guaranteed indefeasible title is focused on casualty insurance rather than preventative assurance. Because of the low probability of their being significant titling errors under a Torrens land tenure system, the insurer is not required to carry as much risk or expend as much effort in identifying risks as they would in the USA deeds system which results in a significant reduction in the cost of title insurance. It also provides the insured with an alternate source of recovery of loss if a problem eventuated.

Risk insurance, therefore is calculated principally on off-title risk. Off-title risks are those which would not be covered by the state compensation fund and may include items such as these offered by First Title in their New Zealand Home Ownership Protection Policy (First Title 2004b pp 25-28);

-No legal right of access to and from the land,

- Ineffective use of land due to contravention of zoning laws,
 - Removal of structures because they were constructed without building approval,
 - Any adverse circumstance which would otherwise have been disclosed in an identification survey,
 - A covenant or other title encumbrance has not been complied with.
- (refer to the policy for a more thorough explanation of their coverage)

The same principle of disclosure applies however that, if one knows of these defects prior to purchase then they would be excluded from cover. The Association of Ontario Land Surveyors (AOLS) recommend title insurance be considered complimentary to current searches in a typical conveyance (AOLS 2004 p.2) however the disclosure of the items in a survey would therefore exclude them from the policy and diminish the need for title insurance. Therefore it would be appropriate to choose one or the other. This is confirmed by the policy of Stewart Title who request a survey not be undertaken when a title insurance policy is requested (Cutajar, P 2004 pers. comm., 24 August). This policy not only extends to survey related matters but to ‘ . . . *any searches or enquiries in relation to either a purchase or a refinance transaction.*’ (Zucker, R 2001). Conveyancers are therefore encouraged to consider Title Insurance as an alternative to the identification survey. Surveyors should therefore consider Title Insurance as competition.

Post purchase cover is a new extension to title insurance originated in the USA in 1997 by First American, the parent company of First Title (O’Connor 2003 p.4). Post

purchase cover is again a form of casualty insurance as it is not possible to identify these risks. In the New Zealand policy of First Title examples of this include parties failing to rectify a property after having rights of temporary access together with, and most importantly to the surveying industry, cover for structures other than boundary walls or fences encroaching from your neighbours land (First Title 2004b p.27). This is a considerable benefit to the owner and would be difficult for Surveyors to discount when comparing the merits of an identification survey versus title insurance.

Whilst it is not the intention of this dissertation to examine the merits or otherwise of title insurance, the strategies used to penetrate the conveyancing market and their success will have an impact on Surveyors. The reduction in search costs is a considerable incentive, however another strategy being implemented is the insurers agreement to forego its subrogated rights to sue the conveyancer in the event of a claim (O'Connor 2003 pp.7-8). By doing so this effectively acts as professional indemnity cover for the conveyancer. Obviously it would not be the intention of title insurers to replace P.I., however it would meet their due diligence responsibility by shifting this responsibility to the insurer. This comes in the form of a written waiver and has the added benefit of reducing the workload of the conveyancer.

In NSW conveyancing, the purpose of a section 149D certificate (EP&A Act 1979) is to receive a guarantee that the building(s) within the land are approved by council or, if not approved council will not require the building(s) to be '*repaired, demolished, altered, added to or rebuilt*' (GCC 2004b) for a period of 7 years. The owner is still subject to

the obligations of the EP&A Act 1979 in relation to obtaining development consent for any future works. It is a requirement that an up-to-date identification survey be provided with the application for a s149D certificate. This certificate does not need to be new and may be many years old provided it reflects the improvements currently on the land in question. There are two clauses in the First Title New Zealand Home Ownership Protection Policy (First Title 2004b pp.25-26) which appear to cover this occurrence.

Clause 1.5(l):

'You are prevented from using the Land as your home or that use is adversely affected or impaired because it contravenes:

- (i) a Zoning Law; or
- (ii) any, grant, exception, or reservation registered or otherwise recorded on the title to the Land.

Clause 1.5(n):

You are forced to remove or remediate all or any part of structures on the Land (other than boundary walls and fences) because they were constructed or modified without development or building approvals required by Law. There is a limit to our liability under this clause. This is referred to in clause 5.2.

Through these inclusions it would appear that issues relating to building approval and the s149D certificate would be covered by the owners insurance policy.

The cost of title insurance is considerably less than the combined costs of legal and other prudent searches. O'Connor (2003 p.6) suggests that it is likely an owners policy will be about \$200 and the lenders policy about \$100. First Titles policy for home owners costs

\$172 + Taxes (GST and stamp duty) (First Title 2004) and claims to eliminate the need for 11 property inquiries. The Stewart Title Residential Purchasers Policy costs \$346.50 for property purchase up to the value of \$500,000 (Stewart 2004). Through the elimination of searches they also claim a reduction in settlement time from weeks to days. Under current NSW practices typical fees for a prudent search may include but not be limited to;

Identification survey	\$490 (Urban residential, see Appendix F1)
s149 certificate (EP&A Act)	\$210 (Recently fixed rate for all LGA's)
Council Notices Certificate	~\$120
Statutory enquiries relating to land	<u>~\$140</u>
Total	~\$960

(Several other searches may be required subject to the lands location such as State rail, Dept of Education etc.)

Depending on the value of the policy this represents a saving to the purchaser in NSW of at least \$600. As O'Connor (2003 p.6) noted, it is yet to be seen whether these low insurance fees are sustainable. The argument of cost reduction would not be as readily applied to other states. The costs of an identification survey and s149 certificate are not applicable to these states and so the overall costs are comparative. Their situation would be similar to New Zealand where the focus has been on additional cover for matters which would otherwise have not been disclosed. The New Zealand results from the questionnaire show that title insurance has had little impact in the conveyancing market

in relation to owners title insurance. Consequently it is more likely the benefits of owners title insurance would be appreciated in NSW than Victoria and Queensland.

6.3 SUMMARY

Title insurance offers considerable benefits to the purchaser in NSW. These include a simpler way of reclaiming loss due to title defects by shifting the burden to the insurer, thereby avoiding drawn out litigation through the state assurance fund, coverage for off-title matters both pre and post purchase, together with the reduction in pre purchase inspections and therefore considerable cost savings. A considerable downside is that it does not attempt to resolve problems prior to purchase, as is the purpose of an identification survey, but rather to deal with them in a casualty manner when they arise. Therefore the purchaser is not fully informed at the time of purchase, however given that purchasers are not acting on information provided, as reflected in the conveyance questionnaire results, purchasers are currently acting in a casualty manner .

The approach to matters arising is one of resolution, whereby the role of the insurer would be to settle the matter in the least costly way with the minimum of litigation. So that, for example if there was an encroachment over an easement the simplest remedy may be to have the easement realigned thereby eliminating the need for demolition and compensation to the owner for diminished value.

With the global expansion of this sector of the insurance market and the apparent commitment to establishing a market in Australia through the presence of at least two insurers it is likely that title insurance is here to stay. With the continual increase in land value and purchase costs there is always a market for cost savings. Given the benefits outlined above and the casualty nature of title insurance in a Torrens land tenure system, NSW Surveyors should consider owners title insurance as an alternative rather than complimentary to identification surveys.

Chapter 7

Risk Management

7.1 Introduction

Risk is described by Leonte (2004 p.1) in this context as;

The chance of an adverse consequence happening due to a hazard impacting on

- a planned activity, or
- your business objectives.

There are various aspects of risk management that relate to the typical surveying practice from Occupational Health and Safety, Financial Management to Fire and Security. However the main aspects relating to the identification surveys discussed herein are Liability and Insurance. Liability is described in part by The Australian Concise Oxford Dictionary (1994 p.649) as '... a person or thing that is troublesome as an unwelcome responsibility; a handicap ...'. The key word here is responsibility. By accepting the task

of a client we accept responsibility for the survey and associated information provided to the client (and possibly others).

Most Surveyors attempt to pass this liability on to others by paying a premium to an insurance company typically as Professional Indemnity. In return for a premium the insurer accepts responsibility for the Surveyors actions provided they are conducted to professional standards and within the law. Various conditions exist to exclude claims where the Surveyors actions are illegal or otherwise negligent. Consequently insurers require their clients to minimise the likelihood of a claim thereby reducing insurers costs and the Surveyors premiums.

In relation to identification surveys there are several ways to reduce the Surveyors liability and may include as described by ACSIS (2003);

- '1. Dating the sketch and report;
2. Describe the purpose for which the survey was prepared;
3. Who the survey was done for and who may rely on it;
4. Clear description of the land being surveyed;
5. Any disclaimers or explanatory notes the Surveyor feels may be necessary.'

Item 1 is fairly self explanatory as a survey report is only ever relevant to the actual time of the survey. Circumstances may change at any time so the date is critical to determining the Surveyors liability.

Item 2 relates to exactly why the survey was done and how it should be applied. Where a partial survey has been undertaken or specific items have been excluded from the clients requirements this should be noted. Also, it may be appropriate to say the survey is only to be used for the purposes of applying for a s149D certificate (EP&A Act) and so should not be used to redetermine boundary positions.

Item 3 reflects your liability to third parties. By stating the client and/or other parties who may rely on the survey you may be limiting your liability to them. Obviously it would be reasonable to expect your client to pass the information on to a mortgagee for the purpose of securing a loan, however statements should be included to exclude future owners from relying on the information.

Item 4 should be a mandatory item so that not only is the survey identifying a street address but also the lot or lots which constitute the address.

Item 5 is at the Surveyors discretion and relies on experience and judgement. Other matters which may appear to affect the property such as objects protruding beyond high water marks or adjoining/underground structures may need to be brought to the clients attention.

The ACSIS Ltd organisation represents about 50% of all surveying firms in Australia and receive about 120-150 notifications annually (Marler. I. 2004 pers. comm. 23 July).

Less than 5% of these would relate to identification surveys. Of these only 25% would progress to actual claims, consequently there would only be about 4 claims per year Australia wide relating to identification surveys. This is not a significant number, however with identification surveys being a very common survey in NSW (9.2% of market, Appendix F1), the implementation of risk management practices in identification surveys would be a reflection of the practices of the broader industry across all forms of surveying.

The implementation of risk management serves to protect the Surveyor from matters out of their control and from lay persons misinterpreting or misusing information provided.

7.2 Historical Practices

Risk management has evolved over the last 30 years or so with the introduction of total quality management and quality assurance. Risk management is probably best known in relation to Occupational Health and Safety but can be incorporated into most aspects of business.

Some of the older surveys in Appendix B and C show that in relation to items 2 and 3 shown on p. 79 generally neither was specified in the report. Using appendix C3 as an example we would assume that the recipient of the survey is the client, although this is often not the case in relation to conveyancing, yet makes no qualification as to who can use the survey. Further, whilst the land being surveyed has been clearly identified in the

first paragraph, the purpose of the survey has not other than to say we have surveyed the land. Does this then imply the marks have been placed at the corners, or that the boundary can be re-established from the occupations shown? Obviously the legal environment of the day determined the importance placed on risk management which would appear to have been significantly less than what it is today. This should not be a reflection of the standard of the survey work but rather the increasingly litigious nature of our community.

The questionnaire results suggest that many of today's recommended practices were not relevant in previous years. In the NSW survey samples provided for historical surveys only 30% limited the use of the survey to identification surveys. These surveys were typically from about 1980 to 1990. Further, the exclusion of underground services from the scope of the survey was only commented on in 20% of surveys.

As discussed earlier, there is no requirement for a new survey when applying for a s149D certificate (EP&A Act) to the local council but rather that it reflect the current improvements on the land. Consequently, where older properties may be now being on sold, many of the surveys will be reused if there have been no changes. This may be of concern to insurers given that these older surveys do not reflect current risk management practices.

7.3 Current Practices

The Institution Guidelines on the Preparation of Identification Reports (NSWIS 2002) recognises that by the very nature of land surveying, identification surveys will never fit into a standard format, however they do recommend statements to be included to qualify the Surveyors identification survey.

The guide deals in some length with the issue of limiting the Surveyors liability to the client(s). Whilst there are various formats to do this (which can be viewed fully in the guide) the essence is to identify the client(s) in the report and to relate the survey to its intended purpose be that an identification survey or a survey report to assist in the application for a s149D certificate. In relation to this the result showed there was an improvement relative to the historical surveys from 30% to 60% in NSW (Appendix F1). However at 60% this still means that 40% of Surveyors are placing no limitations on their reports, leaving them open to additional liability and higher risk. In Queensland there were insufficient historical surveys to note trends however the result of the current surveys showed a considerably better result at 83%. The results from Victoria reflected the practices of only 2 Surveyors and so are not appropriate for analysis in relation to state-wide risk management implementation.

The exclusion of underground structures is also a recommendation of the Guide. This has come about not only due to Surveyors inability to identify underground services but also the changing nature of building. With structures regularly being built up to the

boundaries and the advent of underground water storage facilities, it is not possible for the Surveyor to confirm that underground structures, such as footings, are wholly contained within the subject property or indeed that adjoining properties are not encroaching. The survey results here showed that again we see an improvement compared to historical practices. Unfortunately, at 47% this is by no means industry wide and reflects a lack of implementation of risk management practices.

Copyright is another aspect of survey reporting which historically has gained little consideration from Surveyors. Copyright protects original artistic works and this may include plans and drawings (NSWIS 2002 Appendix B). Copyright is a means by which Surveyors may limit their liability to the original client by denying reproduction except for the intended purpose without the express permission of the Surveyor. There are several examples of this in the Guide.

The application of this within the surveying industry has been shown to be somewhat limited from the results of this research. Two areas relating to copyright were investigated. Firstly, 'statement relating to reproduction which might include comments such as;

' . . and should not be copied or reproduced without the
written permission of the Surveyor.'

In this regard only 1 of the 17 NSW current surveys received actually made any such comment. None of the historical reports made comments of this nature.

Secondly, the inclusion of a copyright symbol '©' or 'copyright'. The results here were only 2 of the 17 surveys included such remarks. 1 of which was the same report as that which made the statement relating to reproduction firstly referred to. The results were consistent across all states and reflect the non-implementation of risk management practices or an understanding of the ability of these statements to limit the Surveyors liability to third parties.

7.4 Summary

Risk is any hazard which may adversely impact your business and Surveyors try to limit their exposure to this by paying a premium to transfer the risk to an insurer, typically through Professional Indemnity. Risk Management is a way of assisting in minimising exposure to negligence claims (AC SIS 2004B).

Risk management principles are not widely adopted in relation to identification surveys in any of the regions investigated in Australia and may be a reflection of risk minimisation strategies in the NSW surveying industry generally. This is potentially leaving Surveyors exposed to additional liability both from their client and third parties.

Chapter 8

Conclusions

Identification surveys are unique to NSW on the eastern seaboard of Australia. Their main demand is driven by the conveyancing practice of obtaining a s149D certificate (EP&A Act) through the LGA which requires a survey to accompany the application.

Surveyors, in conducting this, one of the most common types of surveys in NSW, is consistently identifying land related issues which should be brought to the prospective purchasers attention. These include a high realisation of non-compliance's with setbacks, covenants and restrictions on the use of land together with a small proportion, but no less significant, recognition of titling errors and land shortages.

In contrast to this conveyancers and/or their clients, in having this information available are not acting on it. There is a very low level of requests for vendors to rectify problems prior to settlement and an even lower proportion of purchases who will cancel a purchase due to significant problems reported by the Surveyor.

In surrounding jurisdictions there is no significant demand for these types of surveys. Victoria and Queensland, whilst having a similar, but less inquisitive form of survey available to the consumer find it is rarely requested being less than 1% of the Surveyors overall workload. In New Zealand there is no equivalent form of survey available. The other significant inconsistency between NSW and these jurisdictions is that mortgagees outside NSW do not require an identification survey whilst within NSW more than 20% do. This is despite the fact that most of these lenders are national or international organisations.

This all leads to the conclusion that the driving market behind these surveys is the common practice of obtaining a s149D certificate under the EP&A Act 1979. This is the way conveyancers have operated for many years and the identification survey and s149D certificate are entrenched in the conveyancing process. Due diligence plays a part in ensuring the continuity of this process, however the introduction to the Australian consumer of Title Insurance sees an alternative which still ensures the conveyancer meets their due diligence obligations.

Title insurance offers significant benefits over identification surveys including off title and post purchase cover. It also simplifies the process for the conveyancer by insuring much of the information which would be gathered in the searches. This passes the due diligence liability to the insurer which waives their subrogate right to sue the conveyancer. Currently the price of title insurance is about 50% cheaper than the identification survey and s149D certificate which represents a reduction in search fees of

about \$300-\$400 on the average residential conveyance. This represents a significant saving to the purchaser in NSW and is an effective marketing advantage to the insurance actuary over the Surveyor.

The results also showed there is a low level of litigation associated with identification surveys. Whilst the exact reason for this was not investigated, it is clearly a positive reflection on the general practice of Surveyors across NSW. However, risk management practices have been shown to be generally lacking both in NSW and surrounding jurisdictions. Further, given that risk management is considered to be a whole of business approach, the results here may reflect a general lack of implementation of risk management strategies across all aspects of the average surveying practice. This would be of concern to insurance actuaries offering professional indemnity cover to the surveying industry.

The identification survey in its current form is meeting the needs of the consumer. Several changes may need to be considered for the future. These include assessing methods to limit liability to the client and those relying directly on information contained in the survey, such as the lender and limiting the amount of statements relating to compliance unless specifically required. This may include not commenting on compliance with setbacks and only provide facts relating to covenants and restrictions rather than opinion. By doing this it avoids the Surveyor offering a legal opinion which may or may not be well informed.

The Surveying industry should make the consumer more aware of the merits of obtaining an identification survey beyond the requirements of the s149D certificate. By being proactive at the time of purchase the consumer may avoid problems later by having to solve them on a casualty basis as with title insurance. Further, they must refocus the identification survey with a view to incorporating risk management practices consistent with the litigious nature in Australia and particularly NSW. The identification survey represents nearly 10% of the surveying industry and this equates to tens of millions of dollars annually and several hundred jobs which face new risks in a more competitive market.

8.1 Achievement of Objectives

With some small exceptions the main objectives of the thesis have been achieved. Existing practices in NSW have been identified through the questionnaires and principally through the survey reports provided from Surveyors across the state. These results showed a consistent pattern of presentation which meets the objectives of the clientele being conveyancers and lending institutions. The majority of the demand for identification surveys is driven through the practise of obtaining a s149D certificate under the EP&A Act through the relevant LGA. Standard items in a report include identification of improvements on the land, confirmation or otherwise of title dimensions, description and comment on easements and other encumbrances and

setbacks from the boundaries of the land. Additional items may include floor and roof levels and investigation of covenants.

Litigation relating to identification surveys has been found to be quite rare. The results showed a claim rate of only 1 in about 30000 reports across NSW. This is generally consistent with ACSIS notifications being only a couple of claims per year. There was no evidence of these claims found to be progressing to the court system.

Surveyors were questioned as to the types and frequency of complications identified in identification surveys. The results showed reasonably consistent results across regional and city NSW. More than 80% of properties were found to have minor irregularities such as fencing slightly off the boundary alignment with 13.2% of surveys identifying major irregularities and 11.5% finding properties do not meet the requirements of a covenant or restriction. Further, about 3% of properties were found to have titling errors and/or title dimensions which may not be available. Costs were found to typically be \$490 and \$658 respectively for urban and rural surveys. With 95% of identification surveys being of urban properties, the average surveying practice might expect income of about \$4000 per month from this type of survey. The pricing also showed a proportional decrease in income with an increase in price. Identification surveys consistently found errors or complications that may adversely effect the marketability and/or value of property which should be drawn to the owners/purchasers attention.

Conveyancers results showed a difference in the interpretation of what is a significant problem. Only 1.3% of conveyances required amendments due to issues identified in the survey and 0.7% of conveyances would be stopped. The results showed the complications identified in survey reports typically did not have as much significance to conveyancers and their clients as they did to Surveyors. The surveys also showed less than half the surveys being used are newly commissioned.

The survey results from Queensland and Victoria showed a considerably different practice to that of NSW. These types of surveys are rarely done being typically less than 1% of the Surveyors workload consistent with the conveyancers results of less than 1% of conveyances requiring a survey. Both states have recognised formats for these being the Location Certificate in Queensland and the Land Title Survey in Victoria. Neither report compel the Surveyor to accurately redefine the boundaries of the land, rather being principally focused with confirming the paper title relates directly to the land intended to be purchased. With the costs of this being similar to that of the NSW equivalent, it may be concluded that the NSW identification survey offers considerably more value for money to the consumer. There are no significant benefits that NSW Surveyors could draw from their interstate equivalents.

Inquiries into comparative New Zealand conveyancing surveys revealed they have no recognised format or demand for this type of survey. Further, despite the introduction of title insurance in New Zealand in 2002 there would appear to be little knowledge of its availability or evidence of use by the consumer. This may be due to it being considered

an additional expense rather than an alternative to a survey. Overall there were no benefits to be drawn from this information to the NSW Surveyor. Given the similar volumes of surveys done in NZ to Victoria and Queensland, it may reflect the unlikelihood of conveyancers and their clients taking on owners title insurance at an additional expense.

The sample reports together with the questionnaire results indicated a general lack of implementation of risk management strategies in relation to liability. The results from the sample reports showed only a marginal increase in recognised liability limiting methods such as enforcing copyright, identifying the use and purpose of the survey, or specifically identifying and limiting the survey to a specific client or conveyance. The questionnaire results also showed 45% of Surveyors commenting on the compliance with LGA DCP's which may be considered superfluous information and that a minority of Surveyors are providing a copy of historical reports to persons other than the original client. Given that the implementation of risk management would likely be across all aspects of a practice, these results may reflect a lack of implementation in other areas of surveying and show a need to improve the awareness of benefits of limiting liability.

Liaison with title insurers, Stewart Title and First Title, showed there are considerable benefits to the purchaser and conveyancer who may be seeking to reduce costs, by the purchase of an owners title insurance policy. These policies are a once off purchase of a few hundred dollars and remain as long as the policy owner owns the property. Benefits include a simpler method of recovering losses through title errors than the state

assurance fund, together with significant off-title and post purchase cover. Given these policies typically claim to cover all those matters which would otherwise be disclosed in an up-to-date identification survey then owners title insurance should be considered an alternative to obtaining a survey. Conveyancers also gain considerable benefits including the insurer waiving their right to sue the conveyancer (with some exceptions) and the reduction in workload through insurance replacing many of the currently prudent searches. Title insurance does not disclose matters prior to purchase but seeks to rectify them as they are identified. The Canadian experience has shown that title insurance may have a significant impact on the conveyancing process and that this would likely not be in the Surveyors interests. The inclusion of questions relating to title insurance to Australian conveyancers would have been a benefit to drawing conclusions.

8.2 Further Work

Further investigation of the impact of Title Insurance on NSW identification surveys should be undertaken. This may best be achieved through examination of the impact of title insurance on the Canadian surveying industry which has a similar titling structure to that of Australia. Further, the detailed legal analysis of the owners title insurance policies would assist in a clearer understanding of how effectively they represent the consumer. Again this may require international research for the principle of precedent and how these policies have been validated by courts.

Risk Management should be examined on an industry wide basis to determine the extent to which Surveyors are implementing practices across their businesses. This may not just relate to liability and insurance but to other aspects of practice such as Occupational Health and Safety, Quality and Financial Management. This should also relate to the policies and future practices of actuaries who may wish to associate the cost of insurance with risk management practices of the industry and individual firms.

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Conveyancing Act 1919 NSW

Local Government Act 1919 NSW

Local Government Act 1993 NSW

Real Property Act 1900 NSW

Surveyors Act 1929 NSW

Surveyors Act 1978 Victoria

Surveyors Act 1977 Queensland

Transfer of Land Act 1958 Victoria

Appendix A

Project Specification

University of Southern Queensland
Faculty of Engineering and Surveying

**ENG4111/4112 RESEARCH PROJECT
PROJECT SPECIFICATION**

Student: Anthony James Oliver Student No: Q9620355X
Topic: RELEVANCE OF IDENTIFICATION SURVEYS IN NSW CONVEYANCING
Supervisor: Mr. Glenn Campbell.
Enrolment: ENG 4111 - S1, 2004, X
ENG 4112 - S2, 2004, X
Project Aim: This project aims to examine the role of identification surveys in relation to NSW conveyancing by examining the existing costs and liabilities for purchasers, past levels of litigation and to research alternative methods which will continue to protect all the interest groups whilst reducing costs.
Programme: Issue A, March 15, 2004

1. Identify existing practices in NSW for the preparation of identification surveys.
2. Identify the level of litigation in NSW in relation to errors in identification surveys.
3. Sample Surveyors determining extent and type of issues reported in identification surveys in relation to both encroachments, non-compliance with codes and titling errors together with indicative costs of reports. Attempt to obtain sample of standard format report to examine risk management practices
4. Sample solicitors in relation to the benefits of identification surveys and situations where these surveys lead to changes to contracts or cancellation of a sale together with the typical costs of a conveyance.
5. Identify existing practices in Queensland and Victoria for conveyancing surveys.
6. Identify existing practices in New Zealand for conveyancing surveys together with the maintenance of vendors/purchasers obligations and rights.
7. Report on the application of these methods to NSW conveyancing
8. Investigate the methods of risk management implemented by surveyor's from the sample data.

As time permits:

8. Liaise with actuaries over possibilities of insuring against problems typically found in identification surveys.

AGREED:

Oliver (Student) Glenn Campbell (Supervisors)

Date: 26/3/2004 1/4/04 1/1

Appendix B

Identification surveys provided by Frank M Mason and Co. Pty Limited for assessment

Diagram B1: Frank M Mason identification survey of July 1925 Ref: Unknown

Diagram B2: Frank M Mason identification survey of March 1962 Ref: 13334

Diagram B3: Frank M Mason identification survey of February 1980 Ref: 24237

Diagram B4: Frank M Mason identification survey of April 2000 Ref: 29381

Note: The images contained within this appendices have been edited to remove information which may identify the client, owner or property address. The images have also been enhanced to remove anomalies due to scanning.

Reproduced with the permission of Frank M Mason & Co. Pty Limited. These reports and sketches are protected by copyright and may not be reproduced or copied in any way without the express written permission of Frank M Mason & Co. Pty Ltd.

FRANK M. MASON,
LAND & ENGINEERING SURVEYOR.

LICENSED UNDER REAL PROPERTY ACT
LICENSED UNDER MINING ACT
MEMBER INSTITUTE OF SURVEYORS, N.S.W.

PHONE: B 2791

BRANCH OFFICE AT:
GOOTAMUNDRA
WAGGA WAGGA

THE METROPOLITAN BUILDING,
56 HUNTER STREET,
SYDNEY,

20th July 1925

CERTIFICATE

Land in the Municipality of Balmain having 33 feet frontage to Mort Street, Balmain, being Lot 19 of Section A of Block 23 of the Waterview Estate and being part of the land comprised in Certificate of Title Volume 3750 Folio 173.

---000---

In accordance with your instructions I have surveyed the above property which is further shown on the sketch hereunder and edged red.

On the land and wholly within its boundaries there is erected a weatherboard cottage, known as "Ouchy," having brick foundations, an iron roof and containing 3 rooms and kitchen.

The land is fenced on all sides. The fence AB stands without the land 4 inches at A.

With the exception of this there are no encroachments on this land and none by this property on the adjoining lands and street.

There are no rights of way or easements affecting this property.

Frank M. Mason
Surveyor

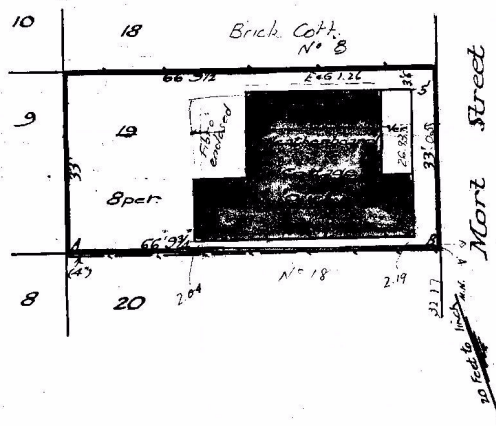


Diagram B1

13334

16th March, 1962

REPORT.

Land in the Shire of Warringah having 161 feet 2 $\frac{3}{4}$ inches frontage to a lane, 30 feet 5 $\frac{1}{2}$ inches wide, running off Waratah Street, at Brookvale, being Lot of a subdivision as shown on a plan annexed to Dealing No. and being the whole of the land comprised in Certificate of Title Volume Folio .

-----oOo-----

In accordance with your instructions we have surveyed the above property which is further shown on sketch hereunder and edged red.

On the land and wholly within its boundaries there are erected a weatherboard cottage, roofed with iron and containing about four rooms, kitchen and bathroom; and a detached, iron shed.

There is also erected upon the land and partly within its boundaries a weatherboard shed, roofed with iron.

The premises are known as No. .

The provisions of the Local Government Act, 1919, in regard to the position of the walls of the cottage and the overhangs thereof, relative to the boundaries of the land, have been complied with.

The land is partly enclosed by fencing as shown on sketch hereunder. The fence AB, vide sketch, stands within the subject land 1 foot at B. Fencing and a shed along the boundary CDEF stand upon a lane 9 feet 7 inches at C, 9 feet 10 inches at D, 10 feet at E and 9 feet 7 inches at F and between D and E roofing of the shed overhangs this lane up to 4 inches.

Between G and H guttering of a weatherboard shed erected upon the adjoining land overhangs the subject land from 3 inches at G to 5 inches at H.

With the exception of the above there are no encroachments on this land and none by this property on the adjoining lands and lane.

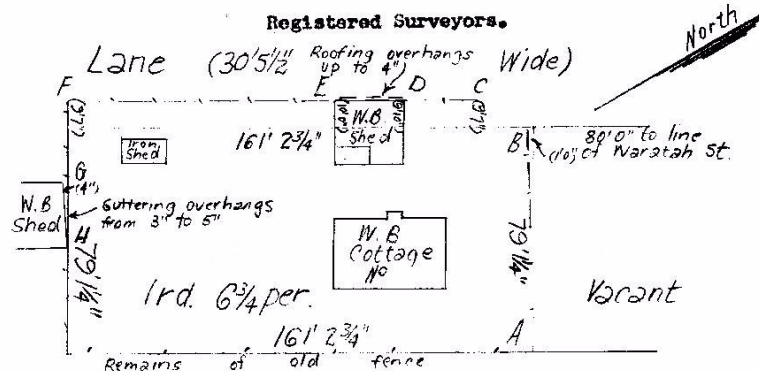


Diagram B2

22nd February 1980

---0000---

FRANK M. MASON & CO.

per : *Agnes*

Registered Surveyor

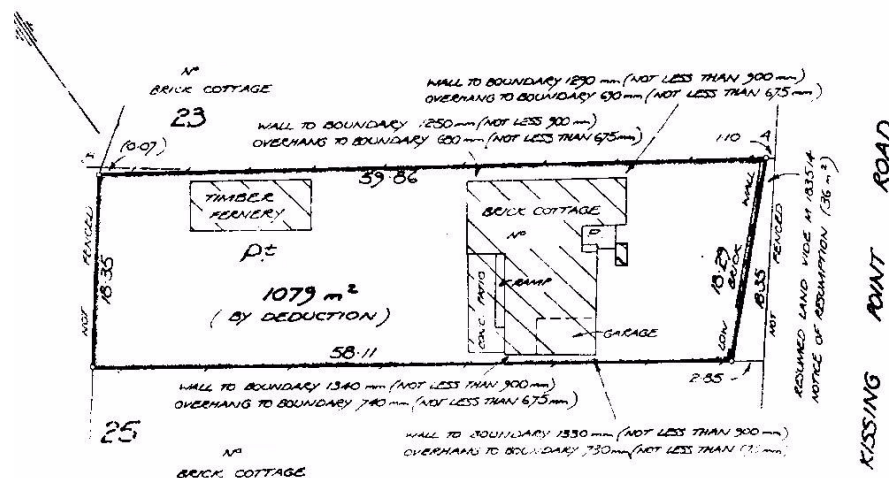


Diagram B3

FRANK M. MASON & CO. PTY. LIMITED

DIRECTORS
 ANDREW PHILIP MASON
 Registered Surveyor & Solicitor
 B. Surv (NSW) Dip Law (SAB)
 KENNETH JAMES HOLDER
 Registered Surveyor
 Members of the
 Institution of Surveyors, Australia
 CONSULTANT
 BRYAN MAXWELL MASON

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 Please address all correspondence to:
 P.O. Box 56, MILSONS POINT 1565
 DX 3511, MILSONS POINT
 Email: fmason@bigpond.com

Our Reference: 29381:AM

6 April 2000

REPORT

Land in the Local Government Area of Willoughby, Parish of Willoughby and County of Cumberland, having a frontage of 15.24 metres to Raeburn Avenue, Castlecrag, being in Deposited Plan and being the whole of the land comprised in Certificate of Title Folio Identifier

—oOo—

In accordance with your instructions, we have surveyed the above property which is further shown on the accompanying plan and edged red.

On the land and wholly within its boundaries, there is erected a two-storey brick residence roofed with tiles and containing, as far as can be seen, about seven rooms, kitchen, bathrooms and laundry, with a garage below and a concrete balcony, steps and a timber pergola attached at the rear, and a porch at the front.

The premises are known as No. Raeburn Avenue, Castlecrag.

The position of the walls of the building erected upon the land and the overhangs attached to such walls, relative to the boundaries of the land, are shown on the accompanying plan.

The property was partly enclosed by fencing at the date of survey. Between the points A and B on the accompanying plan, a paling fence stands without the land from about 0.22 metres at A to about 0.2 metres towards B. Between the points B to C a paling fence stands without the land up to about 0.1 metres at B, and is on the boundary towards C, vide plan.

The land is held subject to a Covenant contained in Transfer , and in this respect we report as follows:

- 2/. One main building is currently erected upon the subject land, such main building being not less than twenty feet (6.095 metres) from the alignment of Raeburn Avenue, such main building fronts Raeburn Avenue and is constructed of brick with a tile roof.

With the exception of minor fencing irregularities noted above, there are no visible encroachments on this land and none by this property upon the adjoining lands and streets.

FRANK M MASON & CO PTY LIMITED

Per:

Registered Surveyor

Diagram B4 (Sheet 1)

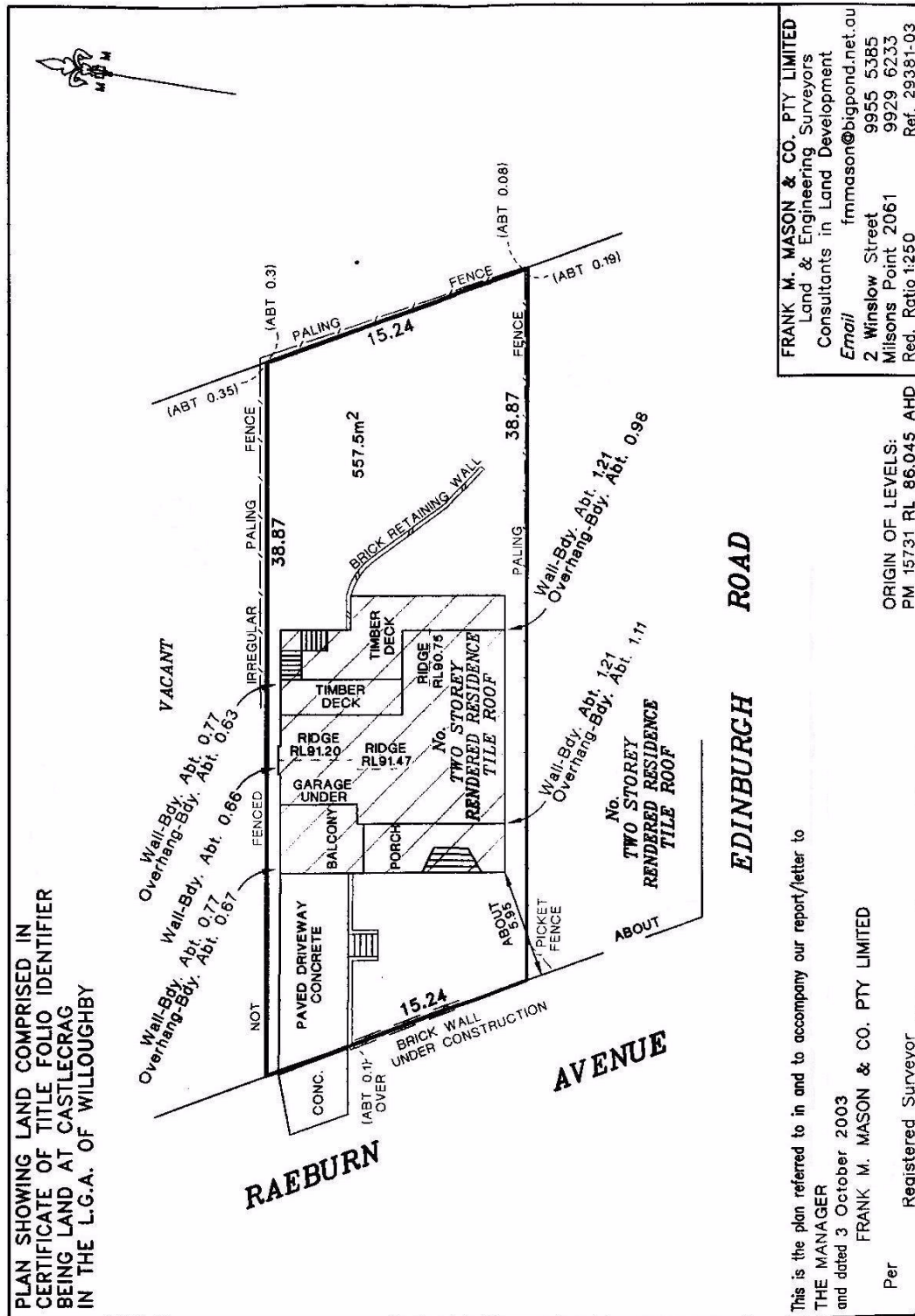


Diagram B4 (Sheet 2)

Appendix C

Identification surveys provided by Bannister and Hunter Pty Limited for assessment

Diagram C1: Bannister and Hunter identification survey of 1930 Ref: 505

Diagram C2: Bannister and Hunter identification survey of 1950 Ref: 5343

Diagram C3: Bannister and Hunter identification survey of 1970 Ref: 28001

Diagram C4: Bannister and Hunter identification survey of 1990 Ref: 50203

Diagram C5: Bannister and Hunter identification survey of 2000 Ref: 54309

Note: The images contained within this appendices have been edited to remove information which may identify the client, owner or property address. The images have also been enhanced to remove anomalies due to scanning.

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24th February 1934

Harwood to O'Brien.

Messrs Williams, Rogers, and Co.,
Solicitors,
7-99 Castlereagh Street,

SYDNEY.

Dear Sir,

Acting in accordance with your instructions, I have surveyed Lot 19 Section 2 Deposited Plan 5089, being the whole of the land comprised in Certificate of Title Volume 2192 Folio 195.

That on the land, which has a frontage to Patonga Street, Sydney, stands a weatherboard cottage on brick foundation known as "The Vale" (? name indistinct).

The fence along Patonga Street is from 8" to 1' inside the boundary. The remaining fences are substantially correct.

Subject to the above there are no encroachments either by or on the property and full particulars are available.

Yours faithfully,

Licensed Surveyor.

23rd February, 1950.

AR.EB.

P. H.
[Redacted]
Nelson Street,
UMINA.

Dear Sir,

Acting in accordance with your instructions we have surveyed lot [Redacted] on Deposited Plan No. [Redacted], being the land comprised in Certificate of Title Vol. [Redacted] Fol. [Redacted] situated in Nelson Street, Umina, in the Shire of Gosford.

On the land and wholly within the boundaries stands a fibre cottage on brick foundations, with an iron roof, and known as "Dorriho".

The provisions of Ordinance 71 Clause 48 of the Local Government Act 1919 have been complied with.

The fencing on the boundaries is irregular but stands generally on its correct alignment.

There are no encroachments or apparent easements affecting the land and full dimensions are available as per the Deposited Plan.

Yours faithfully,

BANNISTER & HUNTER

Per:

Surveyors registered under
the Surveyors Act, 1929.

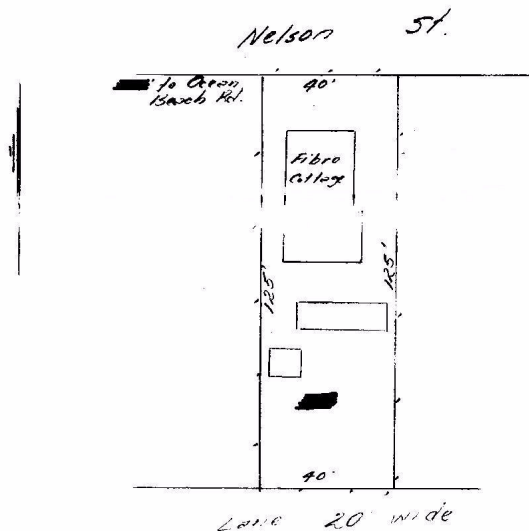


Diagram C2

13th February, 1970.

FROM ESTATE

GJH:SLN

Messrs. & ,
Solicitors,
P.O. Box
MARRICKVILLE. N.S.W. 2204.

Dear Sirs,

Acting in accordance with your instructions we have surveyed Lot of Section in Deposited Plan being the land comprised in Certificate of Title Volume Folio situated with frontage to Nimbin Street at The Entrance in the Shire of Wyong.

On the land and wholly within the boundaries stand a fibro cottage on brick foundations and with a galvanised iron roof, together with fibro sheds.

The property is known as "Clinton", and numbered

The provisions of Ordinance 71 Clause 48 of the Local Government Act, 1919, have not been complied with in that the southern wall of the cottage stands less than 3'0" from the boundary line.

Guttering attached to the southern wall of the cottage overhangs the adjoining property up to 4" as indicated.

The property is enclosed by fencing and a low concrete wall which stand on and off the boundary lines as indicated.

Subject to the above there are no encroachments or apparent easements affecting the property and full dimensions are available as per the Deposited Plan.

Yours faithfully,
BANNISTER & HUNTER

PER:

Surveyors Registered Under
the Surveyors Act, 1929.

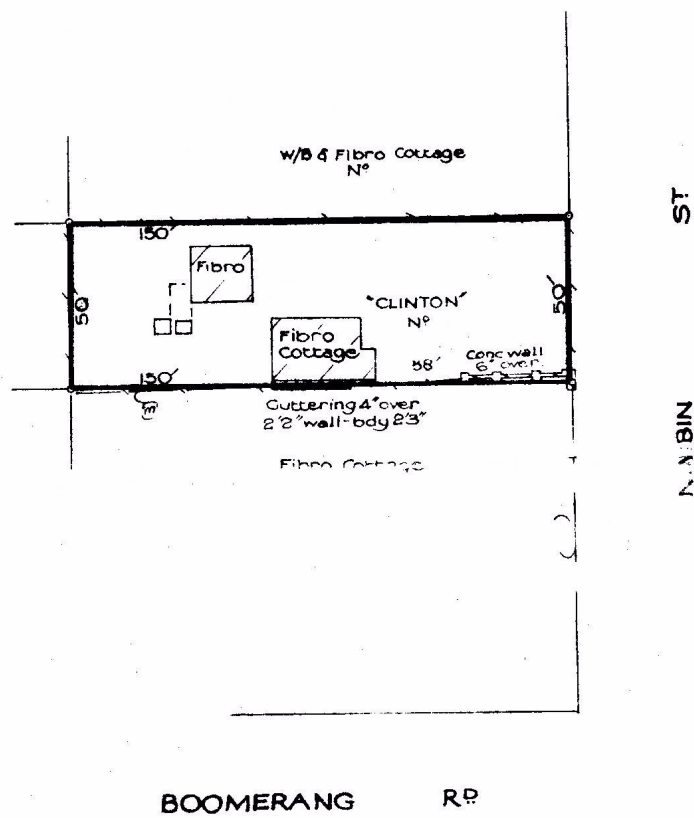


Diagram C3 (sheet 2)



BANNISTER & HUNTER

REGISTERED SURVEYORS

75 MANN STREET
GOSFORD, N.S.W. 2250
Phone: (043) 24 2566
DX 7212 GOSFORD

J. A. H. FLAKELAR, M.I.S., AUST.
L. A. WALKER, M.I.S., AUST.
C. L. EGGELING, M.I.S., AUST.

CONSULTANTS:
A. S. J. HUNTER
G. J. HUNTER

SURVEYOR'S REPORT

OUR REF.	LAW:AS:50203
YOUR REF.	

2nd May, 1990

Mr.

ERINA HEIGHTS NSW 2260

Dear Sir,

Acting in accordance with your instructions we have surveyed Lot on Deposited Plan being the land in Folio Identifier , property situated with frontage to Street and Avenue at Point Clare in the City of Gosford.

On the land and wholly within the boundaries stands a fibro cottage on brick foundations and having a tiled roof, together with a detached fibro garage.

The numbers of nearby cottages indicate the subject property will be known as No. Kurrawa Street, Point Clare.

The provisions of Ordinance 70 Clause 11.6 of the Local Government Act, 1919 have been complied with.

The property is partially enclosed by fencing which stands on and off the boundary lines as indicated on the attached sketch.

A fibro outbuilding pertaining to the subject property stands partially on Munong Avenue as indicated.

A jetty extends from the subject property into Brisbane Water as indicated on the sketch.

Subject to the aforementioned there are no visible encroachments by or upon the subject land and there is no evidence apparent on site to indicate that any easements affect the property.

Yours faithfully,
BANNISTER & HUNTER

Per:

SURVEYORS REGISTERED UNDER
THE SURVEYORS ACT, 1929

Diagram C4 (sheet 1)



BANNISTER & HUNTER PTY LTD

REGISTERED SURVEYORS

75 MANN STREET
GOSFORD NSW 2250
Phone: (02) 4324 2566
Fax: (02) 4323 2495
DX 7212 GOSFORD

SURVEYOR'S REPORT

Our Ref: PWB:HB:54309
Your Ref: TJS.CD.19293

J.A.H. FLAKELAR M.I.S., AUST
C.L. EGGELENG M.I.S., AUST
P.W. BARCLAY M.I.S., AUST

3 March 2000

Lawyers
DX
MONA VALE

Dear Sirs,

RE: & FROM

Acting in accordance with your instructions we have surveyed Lot on Deposited Plan being the land in Folio Identifier, property situated with frontage to Donegal Road at Berkeley Vale in the Shire of Wyong.

On the land and wholly within the boundaries stands a fibro and hardiplank dwelling with tiled roof on brick foundations together with an attached brick garage.

The property is numbered and is known as " ".

The subject dwelling has a 1(a) classification pursuant to Part A3 of the Building Code of Australia.

Wyong Shire Council has not adopted a development control plan with respect to setbacks of dwellings in relation to side boundaries. However the dwelling would have complied with the minimum clearance provisions of Clause 57(2) and Clause 57(4)(a) of the Local Government (Approvals) Regulations 1993.

An inground pool is also erected as indicated on the sketch.

The property is wholly enclosed by fencing and retaining walls which stand on and off the boundary lines as indicated on the attached sketch.

The property is affected by a Covenant contained within Instrument. In our opinion the terms of that Covenant have been complied with.

Subject to fencing irregularities there are no visible encroachments by or upon the subject land and there is no evidence apparent on site to indicate that any easements affect the property.

Yours faithfully
BANNISTER & HUNTER PTY LTD

Surveyor Registered Under
the Surveyors Act, 1929

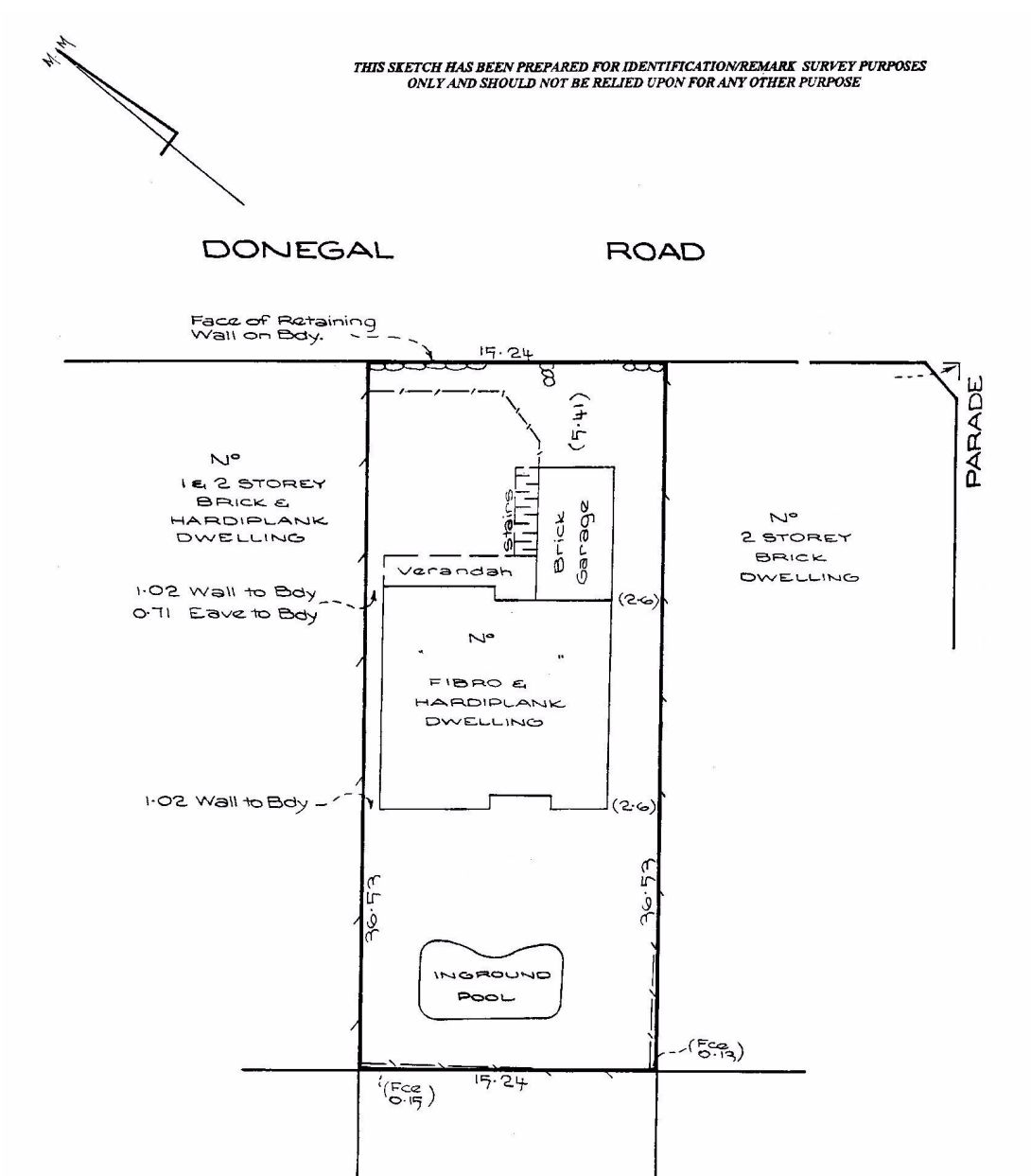


Diagram C5 (sheet 2)

Appendix D

Survey Questionnaires

Questionnaires as sent to Surveyors in Australia and New Zealand

Diagram D1: New South Wales Survey Questionnaire 15th April 2004 (4 sheets)

Diagram D2: Queensland Survey Questionnaire 15th April 2004 (4 sheets)

Sheet one excluded as this is identical to sheet 1 of diagram D1

Diagram D3: Victorian Survey Questionnaire 15th April 2004 (4 sheets)

Sheet one excluded as this is identical to sheet 1 of diagram D1

Diagram D4: New Zealand Survey Questionnaire 27th May 2004 (3 sheets)

Anthony Oliver
243 Geoffrey Rd
Chittaway Point NSW 2261
Thursday, 15 April 2004

To: The Principal Surveyor,

Dear Sir/Madam,

I am a surveying student currently undertaking my final year studies for the Bachelor of Surveying by correspondence at the University of Southern Queensland (Toowoomba). Part of my final year studies is the completion of a research project. Consequently I am seeking your support by completing a short questionnaire in relation to conveyancing (identification) reports.

My project is investigating the role identification surveys play in the conveyancing process, looking at the purpose of the survey for the various interest groups, together with associated risk management issues. I will be assessing methods currently in practice in NSW, Victoria, Queensland and New Zealand.

The purpose of the questionnaire is to gain some statistical data on current practices, types of claims or conflicts which may have arisen through survey reporting errors or misuse of the survey information, together with determining the average cost and volume of surveys undertaken by the surveying profession. Please note this is for analysis of trends in the industry and consequently I am not after case specific information. Please add comments or additional information you feel may assist.

Information provided is to assist in the preparation of my dissertation which will be placed on file in the University library.

Thank you for your support and assistance in my ultimate goal of achieving registration as a Surveyor.

Please place the completed questionnaire in the return envelope provided together with any other information as appropriate.

Should you have any enquiries please contact myself or my project supervisor Mr. Glenn Campbell at the University on 07 4631 2909.

Yours Sincerely,

Anthony Oliver

Ph: 0400099138
E-mail: insight@dragon.net.au
Diagram D1 (sheet 1)

NSW Survey Questionnaire:

Answers should relate to identification surveys prepared for the conveyance of a typical residential property in your region.

1. In which region of the state are you located?
2. Average number of identification surveys conducted per month by your firm?
3. Average cost of an identification survey (Ex' GST) Urban?.....Rural?
4. As a percentage what proportion do identification surveys represent of your business? . . .
5. For urban surveys, do you confirm title dimensions are available for properties adjoining to the rear? (ie: check through to the rear street)
6. Do you state whether in your opinion the building complies with the relevant building code(s)?
7. Do you typically show wall to boundary dimensions on the sketch?
8. Of the last 20 identification surveys conducted what proportion of the surveys are urban/rural (i.e.: 18/2...6/14)?
9. Of the last 20 surveys conducted, how many showed minor irregularities (such as fencing slightly off boundary) ?.....
10. Of the last 20 surveys conducted how many reported on major irregularities (such as encroachments on adjoining land, fencing substantially incorrect, non-compliance with local DCP 's or LEP's, etc..)?.....
11. Of the last 20 surveys conducted how many reported on non-compliance with all or part of a relevant covenant or restriction?
12. Of the last 20 surveys conducted, how many identified titling errors (i.e.: cross easements not shown on title, easements not noted, incorrect title description, etc..) ?.....
.....
13. Of the last 20 surveys conducted, how many identified title dimensions which are not available?

Please note any other issues which you comment on regularly and their frequency?

Diagram D1 (sheet 2)

14. (a) Where a conveyance occurs on a property for which you have previously prepared a survey report for an earlier sale, do you provide a copy of this report to persons other than the original client?

(b) If so, what qualifying statements do you provide in relation to your liability?

15. (a) How many disputes regarding identification reports prepared by you have you had in the last 10 years which were settled out of court? (There is very little information available in the insurance industry regarding out of court settlements and your candour here is appreciated.. Please avoid information which may identify the parties involved as I am only after statistical data and the areas of reports where disputes have arisen)

.....

(b) If you have had a claim please note a broad outline of the dispute(s) including circumstances of the claim, whether it was successful and practices adopted to reduce risk of future claims?

16. (a) How many disputes regarding identification reports prepared by you have you had in the last 10 years which proceeded to court?

.....

(b) If you have had a claim please note a broad outline of the dispute(s) including circumstances of the claim, whether it was successful and practices adopted to reduce risk of future claims?

Diagram D1 (sheet 3)

Please attach a copy of a recent typical survey report (sketch and report) together with an older report (about 20-30 years old). This would assist in identifying current and past reporting practices together with liability and disclaimer statements to look at changes in methods over the years. Please remove any detail which may identify your firm, client or the property address.

Comments please:

Diagram D1 (sheet 4)

QLD Survey Questionnaire:

Answers should relate to location certificates prepared for the conveyance of a typical residential property in your region.

1. In which region of the state are you located?
2. Average number of conveyancing certificates conducted per month by your firm?
3. Average cost of a conveyancing certificate (Ex' GST) Urban?.....Rural?
4. As a percentage what proportion do location certificates represent of your business?..
5. For urban surveys, do you confirm title dimensions are available for properties adjoining to the rear? (i.e.: check through to the rear street)
6. Do you state whether in your opinion the building complies with the relevant local government setback requirements?
7. (a) Do you typically provide a sketch and /or photograph with the report?

Sketch? Y / N
Photograph? Y / N

(b) If you do provide a sketch do you typically show wall to boundary dimensions on the sketch?
8. Of the last 20 location certificates conducted what proportion of the surveys are urban/rural (i.e.: 18/2...6/14)?
9. Of the last 20 location certificates conducted, how many reported on minor irregularities (such as fencing slightly off boundary) ?.....
10. Of the last 20 location certificates conducted how many reported on major irregularities (such as encroachments on adjoining land, fencing substantially incorrect, non-compliance with local council setbacks, etc..)?.....
11. Of the last 20 location certificates conducted how many reported on non-compliance with all or part of a relevant covenant or restriction?
12. Of the last 20 location certificates conducted, how many identified titling errors (i.e.: cross easements not shown on title, easements not noted, incorrect title description, etc..) ?.....

Diagram D2 (sheet 2)

13. Of the last 20 location certificates conducted, how many identified title dimensions which are not available?

Please note any other issues which you comment on regularly and their frequency?

14. (a) Where a conveyance occurs on a property for which you have previously prepared a survey report for an earlier sale, do you provide a copy of this report to persons other than the original client?

(b) If so, what qualifying statements do you provide in relation to your liability?

15. (a) How many disputes regarding conveyancing certificates prepared by you have you had in the last 10 years which were settled out of court? (There is very little information available in the insurance industry regarding out of court settlements and your candour here is appreciated.. Please avoid information which may identify the parties involved as I am only after statistical data and the areas of reports where disputes have arisen)
.....

(b) If you have had a claim please note a broad outline of the dispute(s) including circumstances of the claim, whether it was successful and practices adopted to reduce risk of future claims?

16. (a) How many disputes regarding conveyancing certificates prepared by you have you had in the last 10 years which proceeded to court?
.....

(b) If you have had a claim please note a broad outline of the dispute(s) including circumstances of the claim, whether it was successful and practices adopted to reduce risk of future claims?

Please attach a copy of a recent location certificate (sketch and/or report) together with an older report (about 20-30 years old). This would assist in identifying current and past reporting practices together with liability and disclaimer statements to look at changes in methods over the years. Please remove any detail which may identify your firm, client or the property address.

Please add any comments you may have regarding the Surveyors role in the Queensland conveyancing process. This may include legal liability and responsibility of Surveyors together with other relevant parts of the location certificate which I may have overlooked.

Thank you for your assistance.

Diagram D2 (sheet 4)

VIC Survey Questionnaire:

Answers should relate to title surveys prepared for the conveyance of a typical residential property in your region.

1. In which region of the state are you located?
2. Average number of title surveys conducted per month by your firm?
3. Average cost of an title survey (Ex' GST) Urban?.....Rural?
4. As a percentage what proportion do title surveys represent of your business?..
5. For urban surveys, do you confirm title dimensions are available for properties adjoining to the rear? (i.e.: check through to the rear street)
6. Do you state whether in your opinion the building complies with the relevant local government setback requirements?
7. (a) Do you typically provide a sketch and /or photograph with the report?

Sketch? Y / N
Photograph? Y / N
- (b) If you do provide a sketch do you typically show wall to boundary dimensions on the sketch?
8. Of the last 20 title surveys conducted what proportion of the surveys are urban/rural (i.e.: 18/2...6/14)?
9. Of the last 20 title surveys conducted, how many reported on minor irregularities (such as fencing slightly off boundary) ?.....
10. Of the last 20 title surveys conducted how many reported on major irregularities (such as encroachments on adjoining land, fencing substantially incorrect, non-compliance with local council setbacks, etc.)?.....
11. Of the last 20 title surveys conducted how many reported on non-compliance with all or part of a relevant covenant or restriction?
12. Of the last 20 title surveys conducted, how many identified titling errors (i.e.: cross easements not shown on title, easements not noted, incorrect title description, etc..) ?.....
13. Of the last 20 title surveys conducted, how many identified title dimensions which are not available?**Diagram D3 (sheet 2).**.....

Please note any other issues which you comment on in these reports and their frequency?

14. (a) Where a conveyance occurs on a property for which you have previously prepared a survey report for an earlier sale, do you provide a copy of this report to persons other than the original client?

(b) If so, what qualifying statements do you provide in relation to your liability?

15. (a) How many disputes regarding title surveys prepared by you have you had in the last 10 years which were settled out of court? (There is very little information available in the insurance industry regarding out of court settlements and your candour here is appreciated.. Please avoid information which may identify the parties involved as I am only after statistical data and the areas of reports where disputes have arisen)

.....

(b) If you have had a claim please note a broad outline of the dispute(s) including circumstances of the claim, whether it was successful and practices adopted to reduce risk of future claims?

16. (a) How many disputes regarding title surveys prepared by you have you had in the last 10 years which proceeded to court?

.....

(b) If you have had a claim please note a broad outline of the dispute(s) including circumstances of the claim, whether it was successful and practices adopted to reduce risk of future claims?

Diagram D3 (sheet 3)

Please attach a copy of a recent title survey (sketch and/or report) together with an older report (about 20-30 years old if available). This would assist in identifying current and past reporting practices together with liability and disclaimer statements to look at changes in methods over the years. Please remove any detail which may identify your firm, client or the property address.

Please add any comments you may have regarding the Surveyors role in the Victorian conveyancing process. This may include legal liability and responsibility of Surveyors together with other relevant parts of the title survey which I may have overlooked.

Thank you for your assistance.

Diagram D3 (sheet 4)

Anthony Oliver
243 Geoffrey Rd
Chittaway Point NSW 2261
Thursday, 27 May 2004

To: The Principal Surveyor,

Dear Sir/Madam,

I am a surveying student currently undertaking my final year studies for the Bachelor of Surveying by correspondence at the University of Southern Queensland (Toowoomba). Part of my final year studies is the completion of a research project. Consequently I am seeking your support by completing a short questionnaire in relation to identification surveys.

My project is investigating the role identification surveys play in the conveyancing process, looking at the purpose of the survey for the various interest groups, together with associated risk management issues. I will be assessing methods currently in practice in NSW, Victoria, Queensland and New Zealand.

My background is in New South Wales surveying consequently I am not familiar with the New Zealand conveyancing procedure. Any information you may be able to provide would be of great assistance. In NSW identification reports are typically requested by mortgagees and solicitors for most conveyances. They report on the availability of title dimensions, improvements on the subject land, easements and title notifications, fencing positions and descriptions together with stating whether the building complies with local government setback regulations. I understand these surveys are not very common in New Zealand, however this may vary across the country. I believe the land tenure systems are similar in terms of Torrens/old system title and state guarantees, however, local government structures differ and this is where many of the survey reporting differences may come into effect.

The purpose of the questionnaire is to gain some statistical data on current practices, types of claims or conflicts which may have arisen through survey reporting errors or misuse of the survey information, together with determining the average cost and volume of surveys undertaken by the surveying profession. Please note this is for analysis of trends in the industry and consequently I am not after case specific information.

Information provided is to assist in the preparation of my dissertation which will be placed on file in the University library. Please place the completed questionnaire in the return envelope provided together with any other information as appropriate.

Should you have any enquiries please contact myself or my project supervisor Mr. Glenn Campbell at the University on 0011 61 7 4631 2909. Thank you for your support and assistance in my ultimate goal of achieving registration as a Surveyor.

Yours Sincerely,

Anthony Oliver

Ph: 0011 61 2 4388 1764
E-mail: insight@dragon.net.au

Diagram D4 (sheet 1)

NZ Survey Questionnaire:

Answers should relate to identification surveys (or the NZ equivalent) prepared for the conveyance of a typical residential property in your region.

1. In which region of New Zealand are you located?

2. Average number of identification surveys conducted per month by your firm?

3. Average cost of an identification survey (Ex' GST) Urban?.....Rural?

4. As a percentage what proportion do identification surveys represent of your business?...

5. (a) Do you typically provide a sketch and /or photograph with the report?

Sketch? Y / N

Photograph? Y / N

(b) If you do provide a sketch do you typically show wall to boundary dimensions on the sketch?

6. If identification surveys are not generally done in your region, in your opinion how do purchasers confirm the title to be transferred includes the whole of the site and improvements intended to be purchased?

7. Where fencing may not be constructed on the title boundary position, is it possible for the land or adjoining owner to claim possessory title to this land after a period of time? For example, if the rear fence was 1 metre outside the rear boundary, would it be possible for the land owner to claim this 1 metre wide strip of land as they may have occupied it for some considerable time? This system currently operates in Victoria and applies to Torrens title and old system land.

8. In the last 12 months, in your estimate how many surveys would you have conducted which were commissioned as a result of a dispute/disagreement over the position of a common boundary between neighbours?

Diagram D4 (sheet 2)

9. Considering the number of identification surveys you conduct per month, how much would this have increased or decreased by in the last three years? (for example: 10% increase, 20% decrease)

.....

Please attach a copy of a recent identification survey or the New Zealand equivalent (sketch and/or report) together with an older report (about 20-30 years old if available). This would assist in identifying current and past reporting practices together with liability and disclaimer statements to look at changes in methods over the years. Please remove any detail which may identify your firm, client or the property address.

Please add any comments you may have regarding the Surveyors role in the New Zealand conveyancing process. This may help to enlighten me on the differences between our systems.

Thank you for your assistance.

Diagram D4 (sheet 3)

Appendix E

Conveyancing Questionnaires

Questionnaires as sent to Solicitors and Conveyancers in Australia and New Zealand

Diagram E1: New South Wales Conveyancing Questionnaire

22nd April 2004 (4 sheets)

Diagram E2: New Zealand Conveyancing Questionnaire

27th May 2004 (3 sheets)

Anthony Oliver
243 Geoffrey Rd
Chittaway Point NSW 2261
Thursday, 15 April 2004

To: The Principal Solicitor,

Dear Sir/Madam,

I am a surveying student currently undertaking my final year studies for the Bachelor of Surveying by correspondence at the University of Southern Queensland (Toowoomba). Part of my final year studies is the completion of a research project. Consequently I am seeking your support by completing a short questionnaire in relation to survey reports for conveyancing.

My project is investigating the role identification surveys play in the conveyancing process, looking at the purpose of the survey for the various interest groups, together with associated risk management issues. I will be assessing methods currently in practice in NSW, Victoria, Queensland and New Zealand.

The purpose of the questionnaire is to gain some statistical data on current practices, types of claims or conflicts which may have arisen through survey reporting errors or misuse of the survey information, together with determining the average cost and volume of conveyances conducted. Please note this is for analysis of trends in the industry and consequently I am not after case specific information. Please add comments or additional information you feel may assist.

Information provided is to assist in the preparation of my dissertation which will be placed on file in the University library. Please place the completed questionnaire in the return envelope provided together with any other information as appropriate.

Should you have any enquiries please contact myself or my project supervisor Mr. Glenn Campbell at the University on 07 4631 2909. Thank you for your support and assistance in my ultimate goal of achieving registration as a Surveyor.

Yours Sincerely,

Anthony Oliver

Ph: 0400099138
E-mail: insight@dragon.net.au

Diagram E1 (sheet 1)

NSW Conveyancing Questionnaire:

Answers should relate to identification surveys prepared for the conveyance of a typical residential property in your region.

1. In which region of the state are you located?
2. Average number of property conveyances conducted per month by your firm?
3. Average legal fees of a conveyance excluding disbursements, GST and searches?
4. As a percentage what proportion does conveyancing represent of your business?
5. For what proportion of conveyances as a percentage do you require a survey (whether they are an old existing report or newly commissioned)?
6. Of the last 20 conveyances conducted what proportion of the surveys identified minor irregularities which required no rectification and did not delay the settlement (such as fencing slightly off boundary, etc.)?
7. Of the last 20 conveyances conducted what proportion of the surveys identified minor irregularities which would result in your postponing settlement until the problems are rectified or required amendment to the terms of the contract of sale ?
8. Of the last 20 conveyances conducted, how many surveys identified major irregularities which resulted in you recommending not to proceed with the purchase (such as buildings encroaching, non-compliance with covenants, etc.) ?
9. By your estimate, what proportion of lending institutions as a percentage insist on a survey to approve a mortgage?
10. Of the last 20 surveys you have used for a conveyance, what proportion of these were newly commissioned for the use in relation to this title transfer (i.e.: not an old report from a previous title transfer) ?
11. In relation to information provided on a survey report list the 3 most likely reasons you have encountered which would lead you to recommend a client not proceed with a purchase? (such as building over a boundary, non-compliance with the terms of a covenant, etc.)

a:

b:

c:

Diagram E1 (sheet 2)

12. Identify proportionately those parties who are most likely to be responsible for the commissioning of a survey for a conveyance;

- ___ % Your client at your request.
- ___ % Your client without your request.
- ___ % The lending institution.
- ___ % Other (Please specify)

Total 100%

13. List in order of priority from 1 to 10 the importance of the following items being addressed in a survey report (1 being the most important):

- ___ Confirm the Title to be transferred includes the whole of the site and improvements intended to be purchased.
- ___ Identify title dimensions and note discrepancies if survey dimension differs.
- ___ Identify easements, rights of way, etc., commenting on their use and condition.
- ___ Identify improvements on the subject land.
- ___ Report on the building compliance with LGA wall and gutter setbacks.
- ___ Show wall and gutter to boundary dimensions on the survey sketch.
- ___ Show minor fencing irregularities in relation to the boundary.
- ___ Show major fencing irregularities in relation to the boundary.
- ___ Identify covenants and restrictions and comment on the properties compliance.
- ___ Provide photograph of the property to confirm the property is that which is intended to be purchased

Please note any other issues which you would expect or like to see shown on a survey report.

Diagram E1 (sheet 3)

Comments please:

Thank you for your assistance.

Diagram E1 (sheet 4)

Anthony Oliver
243 Geoffrey Rd
Chittaway Point NSW 2261
Thursday, 27 May 2004

To: The Principal,

Dear Sir/Madam,

I am a surveying student currently undertaking my final year studies for the Bachelor of Surveying by correspondence at the University of Southern Queensland (Toowoomba). Part of my final year studies is the completion of a research project. Consequently I am seeking your support by completing a short questionnaire in relation to survey reports for conveyancing.

My project is investigating the role identification surveys play in the conveyancing process, looking at the purpose of the survey for the various interest groups, together with associated risk management issues. Identification surveys in NSW include a sketch and report identifying the land to be purchased, any improvements on the land together with identification of encumbrances and encroachments by or upon the subject property. I will be assessing methods currently in practice in NSW, Victoria, Queensland and New Zealand.

The purpose of the questionnaire is to gain some statistical data on current practices, types of claims or conflicts which may have arisen through survey reporting errors or misuse of the survey information, together with determining the average cost and volume of conveyances conducted. I will also be investigating the impact of title insurance on the surveying industry. Please note this is for analysis of trends in the industry and consequently I am not after case specific information. Please add comments or additional information you feel may assist.

Information provided is to assist in the preparation of my dissertation which will be placed on file in the University library. Please place the completed questionnaire in the return envelope provided together with any other information as appropriate.

Should you have any enquiries please contact myself or my project supervisor Mr. Glenn Campbell at the University on 0011 61 7 4631 2909. Thank you for your support and assistance in my ultimate goal of achieving registration as a Surveyor.

Yours Sincerely,

Anthony Oliver

Ph: 0011 61 2 4388 1764
E-mail: insight@dragon.net.au

Diagram E2 (sheet 1)

NZ Conveyancing Questionnaire:

Answers should relate to identification surveys prepared for the conveyance of a typical residential property in your region.

1. In which region of the New Zealand are you located?
2. Average number of property conveyances conducted per month by your firm?
3. Average legal fees of a conveyance excluding disbursements, GST and searches?
4. Average cost of inspections for a typical conveyance?
5. As a percentage what proportion does conveyancing represent of your business?
6. For what proportion of conveyances as a percentage do you require a survey (whether they are an old existing report or newly commissioned)?
7. By your estimate, what proportion of lending institutions as a percentage insist on an identification survey to approve a mortgage?
8. Do you inform or recommend to purchasers the new concept of title insurance (Home Ownership Protection Policy)?
Inform? Y - N - N/A (Please circle 1)
Recommend? Y - N - N/A (Please circle 1)
9. Does title insurance offer cover for building encroachments, buildings constructed without approval or other adverse circumstances which an identification survey would otherwise disclose?
Comments:
10. What proportion (as a percentage) of purchasers you represent now obtain a title insurance policy?
11. In your opinion, does title insurance replace the need for an identification survey?
- Comments:
12. If identification surveys are not generally done in your region, in your opinion how do purchasers confirm the title to be transferred includes the whole of the site and improvements intended to be purchased?

Diagram E2 (sheet 2)

13. Identify proportionately those parties who are most likely to be responsible for the commissioning of a survey for a conveyance;

- ___ % Your client at your request.
- ___ % Your client without your request.
- ___ % The lending institution.
- ___ % Other (Please specify)

Total 100%

Please attach a copy of a recent Land Information Memorandum. This would assist in identifying the amount of information disclosed to the purchaser from this source as opposed to the NSW system of obtaining a survey. Please remove any detail which may identify your firm, client or the property address.

Please add any comments or opinions you may have regarding the Surveyors role in the New Zealand conveyancing process. This may help to enlighten me on the differences between our systems. Any documentation you may be able to provide in relation to guidelines or recommended practices would be of assistance, such as documentation prepared by the Institution of Conveyancers or equivalent.

Comments Please

Thank you for your support

Diagram E2 (sheet 3)

Appendix F

Questionnaire Results

Diagram F1: Survey Questionnaire results

Diagram F2: Conveyance Questionnaire results

RELEVANCE OF IDENTIFICATION SURVEYS IN N.S.W. CONVEYANCING										
Courses ENG4111 and 4112 Research Project										
Survey Questionnaire Results										
	SURVEYORS NSW				SURVEYORS Victoria		SURVEYORS Queensland		SURVEYORS New Zealand	
	Combined Result	Regional Results	City Results		Combined Result		Combined Result		Combined Result	
Responses	31	24	7		10		16		11	
Average Cost										
Urban	\$490	\$490	\$490		\$934		\$490		\$660	
Rural	\$658	\$639	\$800		\$1,564		\$617		\$1,133	
Average No per month	8.0	8.4	6.6		8.5		1.0		1.4	
Q4: As a percentage, what proportion do ident' surveys represent of your business?	9.2%	8.6%	11.3%		27.1%		0.9%		3.9%	
Q5: For urban surveys, do you confirm title dimensions are available for properties adjoining to the rear? (Percentage of Affirmative Responses)	22.6%	29.2%	0.0%		20.0%		13.3%			
Q6: Do you state whether in your opinion the building complies with the relevant local government setback requirements? (Percentage of Affirmative Responses)	45.2%	45.8%	42.9%		10.0%		21.4%			
Q7: Do you typically show wall to boundary dimensions on the sketch? (Percentage of Affirmative Responses)	100%	100%	100%		60%		60%		80%	
Q8: Of the last 20 ident' surveys conducted what proportion of the surveys are urban/rural? (Show percentage which are urban, balance will be rural)	95%	93%	100%		92%		91%			
Q9: Of the last 20 ident' surveys conducted, how many reported on minor irregularities? (Percentage)	81.2%	81.5%	80.0%		88.3%		30.7%			
Q10: Of the last 20 location certificates conducted, how many recommended having a repeg or identification survey?							23.0%			
Q10: Of the last 20 ident' surveys conducted how many reported on major irregularities? (Q11 QLD)	13.2%	12.9%	14.3%		6.7%		6.3%			
Q11: Of the last 20 ident' surveys conducted how many reported on non-compliance with all or part of a relevant covenant or restriction? (Q12 QLD)	11.5%	11.9%	10.0%		2.0%		0.7%			
Q12: Of the last 20 ident' surveys conducted how many identified titling errors? (Q13 QLD)	2.8%	2.8%	2.9%		1.0%		0.0%			
Q13: Of the last 20 ident surveys conducted, how many identified title dimensions which are not available? (Q14 QLD)	3.0%	3.3%	2.1%		2.5%		0.7%			
Q14a: Where a conveyance occurs on a property for which you have previously prepared a report for an earlier sale, do you provide a copy of this report to persons other than the original client? (Q15a QLD)	6.5%	8.3%	0.0%		0.0%		13.3%			
Q15a: How many disputes regarding conveyancing certificates prepared by you have you had in the last 10 years which were settled out of court? (Total from all responses) (Q16a QLD)	2	2	0		5		0			
Q16a: How many disputes regarding conveyancing certificates prepared by you have you had in the last 10 years which proceeded to court? (Total from all responses) (Q17a QLD)	0	0	0		0		0			
Reporting practices										
	Historical	Current			Historical	Current	Historical	Current		
Number of reports provided	10	17			3	6	1	6		
Wall to boundary shown	90%	100%			33%	0%	100%	33%		
Statement relating to compliance	100%	41%			0%	0%	0%	0%		
Statement of limitation of survey to this particular use	30%	59%			0%	0%	0%	83%		
Statement relating to reproduction	0%	6%			0%	0%	0%	33%		
Copyright comment or symbol	0%	12%			0%	0%	0%	0%		
Comment to exclude underground structures	20%	47%			0%	17%	0%	0%		

Diagram F1

RELEVANCE OF IDENTIFICATION SURVEYS IN N.S.W. CONVEYANCING											
Courses ENG4111 and 4112 Research Project											
Conveyance Questionnaire Results											
	SOLICITORS NSW						SOLICITORS Victoria		SOLICITORS Queensland		SOLICITORS New Zealand
	Combined Result		Regional Results		City Results		Combined Result		Combined Result		Combined Result
Responses	25		15		10		11		12		9
Q2: Average number of property conveyances conducted per month?	32		26		41		30.2		42.2		30.4
Q3: Average legal fees of a conveyance excluding disbursements, GST and searches?	A\$936		A\$888		A\$993		A\$427		A\$559		A\$739
Q4: As a percentage, what proportion does conveyancing represent of your business?	48.4%		35.1%		67.0%		54.5%		39.0%		38.1%
Q5: For what proportion of conveyances as a percentage do you require a survey?	44%		51%		34%		0%		1%		9%
Q6: Of the last 20 conveyances conducted what proportion of the surveys identified minor irregularities which required no rectification and did not delay the settlement?	57%		53%		63%		4%		51%		
Q7: Of the last 20 conveyances conducted what proportion of the surveys identified minor irregularities which would result in your postponing settlement until the problems are rectified or required amendment to the terms of the contract of sale?	1.3%		0.7%		2.0%		2.0%		0.5%		
Q8: Of the last 20 conveyances conducted how many surveys identified major irregularities which resulted in you recommending not to proceed with the purchase?	0.7%		0.0%		1.6%		0.0%		0.5%		
Q9: By your estimate, what proportion of lending institutions as a percentage insist on a survey to approve a mortgage?	11.6%		13.2%		8.2%		0.0%		0.0%		0.0%
Q10: Of the last 20 surveys you have used for a conveyance, what proportion of these were newly commissioned for use in relation to this title transfer?	42.7%		32.9%		56.5%		100.0%		92.5%		
Q11: In relation to information provided on a survey report what were the three most common reasons which would lead to recommending a client not proceed with a purchase? (a)											
Q 11: (b)											
Q 11: (c)											
Q 12: Identify proportionately those parties who are most likely to be responsible for the commissioning of a survey for a conveyance?											
Your client at your request: (%)	67.6%		67.4%		67.9%		87.4%		57.0%		57.7%
Your client without your request: (%)	10.7%		11.0%		10.3%		10.1%		42.0%		42.2%
The lending institution: (%)	21.5%		21.6%		21.3%		2.5%		0.2%		0.0%
Other: (%)	0.2%		0.0%		0.5%		0.0%		0.8%		0.2%
Q13: List the order of priority: (THE LOWER THE NUMBER THE 'MORE IMPORTANT IT IS)		Ranking		Ranking		Ranking		Ranking		Ranking	
Confirm Title includes whole of the site and improvements:	2.09	1	2.54	1	1.44	1	1.67	1	2.00	2	
Identify title dimensions and note discrepancies if survey dimensions differ:	4.33	4	3.58	2	5.33	5	1.71	2	1.86	1	
Identify easements, rights of way etc	3.59	2	3.62	3	3.56	2	2.86	3	2.71	3	
Identify improvements on the subject land:	4.32	3	4.77	4	3.67	3	6.67	7	5.00	4	
Report on the building compliance with LGA wall and gutter setbacks:	5.73	8	5.46	7	6.11	7	7.33	8	6.86	7	
Show wall and gutter to boundary dimensions on the survey sketch:	5.64	7	5.31	6	6.11	8	7.43	9	6.43	6	
Show minor fencing irregularities in relation to the boundary:	8.62	9	8.67	9	8.56	9	6.29	5	8.00	9	
Show major fencing irregularities in relation to the boundary:	5.36	5	5.23	5	5.56	6	3.86	4	5.43	5	
Identify covenants and restrictions and comment on the properties compliance:	5.50	6	5.85	8	5.00	4	6.29	6	7.57	8	
Provide photograph of the property to confirm the property is that which is intended to be purchased:	9.62	10	9.58	10	9.67	10	9.67	10	9.14	10	
Q13b: Is the item essential:											
Confirm Title includes whole of the site and improvements:	96%		93%		100%		86%		100%		
Identify title dimensions and note discrepancies if survey dimensions differ:	91%		86%		100%		100%		75%		
Identify easements, rights of way etc	100%		100%		100%		86%		75%		
Identify improvements on the subject land:	100%		100%		100%		43%		25%		
Report on the building compliance with LGA wall and gutter setbacks:	100%		100%		100%		0%		0%		
Show wall and gutter to boundary dimensions on the survey sketch:	96%		100%		89%		0%		25%		
Show minor fencing irregularities in relation to the boundary:	70%		79%		56%		57%		25%		
Show major fencing irregularities in relation to the boundary:	100%		100%		100%		100%		100%		
Identify covenants and restrictions and comment on the properties compliance:	96%		93%		100%		43%		50%		
Provide photograph of the property to confirm the property is that which is intended to be purchased:	43%		57%		22%		14%		0%		

Diagram F2