

PROGRESS TO DATE

A series of meetings of the Task Force took place during 2009 which provided all participating professional bodies with an opportunity to present their perspectives on issues relating to boundary mapping in Ireland.

A colloquium on "Property Boundary Reform" was held in November 2009 which widened the debate among a selected list of invitees which confirmed the need to address these issues.

A survey of professionals involved in the property sector has been carried out, to attempt to quantify the scale of the issues involved and to capture feedback on the range of issues causing concern. The results of this survey will be published on the website when available

NEXT STEPS

A number of CPD seminars and Focus Groups are being planned to be held by the participating professional bodies during March to May 2011 which will

- Present the results of the survey
- Collect detail on case studies for the issues identified
- Discuss preliminary ideas to resolve the issues identified with practical and viable solutions

A final report outlining the recommendations of the Inter-Professional Task Force will be prepared for ratification by each of the participating professional bodies before publication later in 2011.

CONTACT

Should you wish to contact or make a contribution to the task force, please see details below.

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Task Force on Property Boundaries

OBJECTIVE AND VISION

The Property Registration Authority(PRA) state the following in the FAQ's, on their website, -

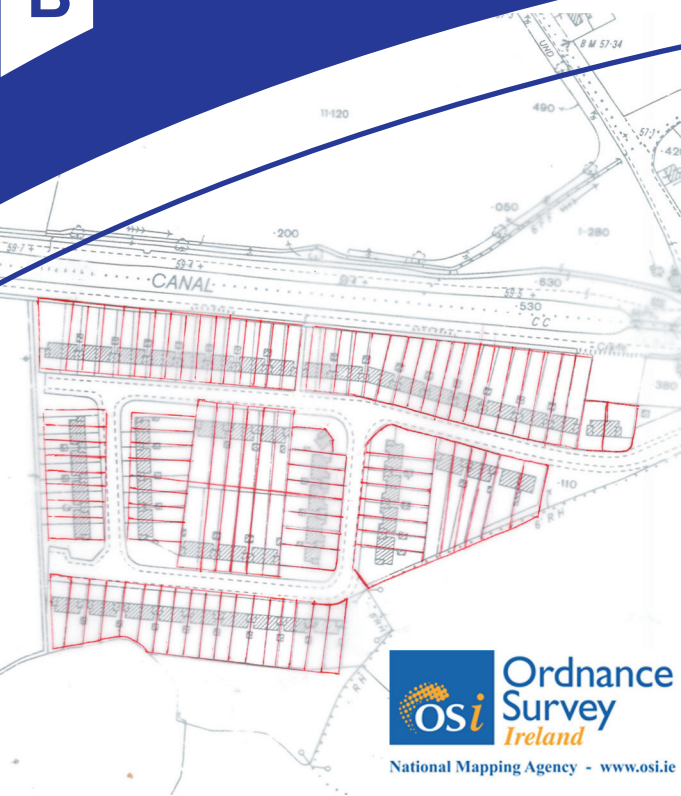
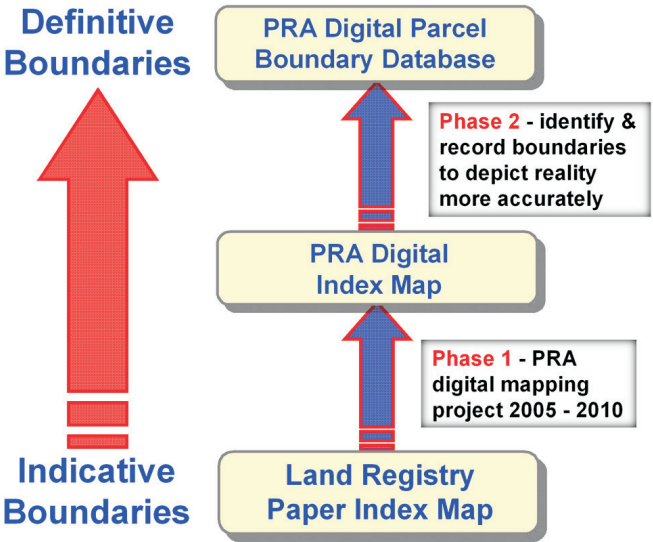
"I have a dispute with my neighbour over where the boundary lies. Can you tell me who is right?"

No. The Land Registry map is an index map and identifies property, not boundaries. Therefore, we are not in a position to advise.

The PRA have recently completed the transfer of all Land Registry paper maps onto a digital mapping system. This is welcomed and is a significant step forward to modernise Ireland's registration and mapping system. This development has focused attention on how boundaries are identified and recorded in this jurisdiction.

With the advancement in recent years in surveying and mapping technology which provides the ability to survey accurately to the size of a coin, the process of boundary identification and recording can be modernised so as to provide a more accurate depiction of the reality on the ground.

Systems for registering boundaries definitively are widely used throughout the world and within the European Union, and Ireland is relatively late in adopting modern surveying and mapping technologies and processes now widely available elsewhere.



INTRODUCTION

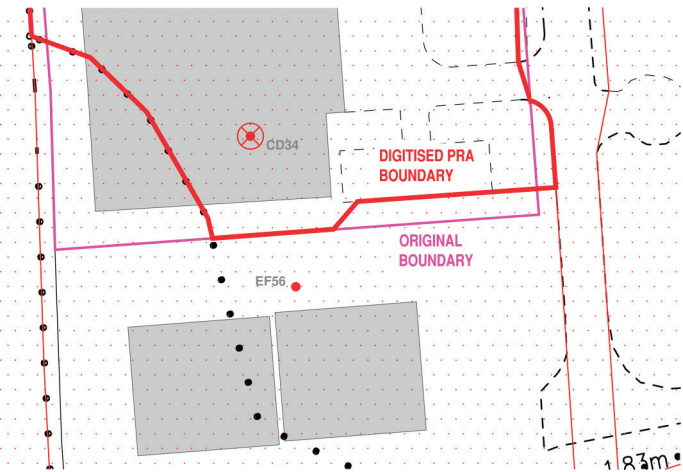
In July 2008 the Law Society published its eVision which recommends radical change in current conveyancing practice in Ireland in preparation for eConveyancing. These proposals include:

- A recommendation to move from 'caveat emptor' to 'seller disclosure' for property transactions;
- A recommendation that the title register be definitive, conclusive and all encompassing so that it comprehensively records all rights and restrictions.

In August 2008 the Irish Institution of Surveyors (IIS) published a Green Paper 'Proposing Reform of Boundary Surveys in Ireland' which makes similar recommendations in preparation for e-Conveyancing with regards to boundary identification and definition.

A Task Force was formed consisting of a number of professional bodies involved in the property sector to examine the current mechanisms involved in boundary identification and recording and to make proposals for changes where appropriate.

We welcome contributions and comments on the issues raised here.



The Task Force is proposing to evaluate issues in relation to boundary identification and recording, as raised by each of the professional bodies and any other interested parties, towards developing best practice approaches which are comprehensive and sustainable for the future. The examination will encompass the technologies, modern processes and legal frameworks used internationally. It is hoped that the results of this examination will promote ease of conveyancing and the development of eConveyancing (electronic conveyancing) in accordance with the eVision.

The benefits of a more modernised, definitive system of identifying and recording boundaries can include a reduction in conveyancing time and costs, the provision of enhanced security for landowners and mortgage institutions, the reduction of costly litigation due to disputes and improved transparency of land transactions for the benefit of all sectors in the economy.

Task Force

	The Bar Council James Dwyer SC George Brady SC		Irish Planning Institute Brendan Allen Sarah Moran
	Engineers Ireland Gerry Healy Colman Horgan Gordon White		The Law Society of Ireland Gabriel Brennan Patrick Sweetman
	Irish Institution of Surveyors Paul Corrigan Brendan Sweeny Paddy Prendergast Mike Flynn		The Royal Institute of Architects of Ireland James Pike Paul Kelly

In relation to the sale of lands, the contract map is vital. To comply with the Statute of Frauds (S51 Land & Conveyancing Law Reform Act, 2009), the property must be "readily identifiable": if it is completely uncertain, then the contract is void. A degree of uncertainty may lead to the loss of the right to Specific Performance - leaving the remedy in damages only. Errors in contract maps can lead to abatement of the purchase price. The abatement is determined normally by arbitration, and there is a consequent delay, but the vendor cannot compel the purchaser to complete until the issue is resolved. Unless the purchaser is in possession, the vendor is not entitled to interest and the loss to the vendor can be substantial.

Section 85 of the Registration of Title Act, 1964 states "... except as provided by this Act, the description of the land in the Register or on such maps shall not be conclusive as to boundaries or extent of the land". Justice Laffoy accepted the statement that "the provisions restricting the conclusiveness of the Register as to the extent of the land described in it, is the legislator's mode of providing for those small discrepancies in areas and dimensions that are usually covered by the conveyancing formula of "or thereabouts" in a Conveyance of unregistered land." She also accepted that "... (this) is only intended to cover minor errors in calculation". Finally, errors in maps of building estates can cause major problems and delays for registration.

Linear projects, such as motorways, roads, railway lines and flood defence works etc. usually entail the acquisition of land from large numbers of properties. The scale and complexity of boundary issues and mapping presented to Engineers on such projects can be significant and is exacerbated where discrepancies between folios and topographical surveys is observed. Where missing or incorrect boundary information exists and where alterations to linear features (roads, rivers etc) have occurred and have not been correctly reflected on the folio map, this can lead to costly and elongated CPO compensation agreements resulting in significant time and monetary cost to the taxpayer.

It is in this context that Engineers Ireland support the current proposals to improve the current system, particularly the OSI Rectification Procedure wherein discrepancies on the ground can be corrected in real time, the PRA Resolution Guidelines which will provide defined Best Practice for areas of uncertainty and finally the move towards Conclusive Boundaries.



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Planning legislation requires applicants to indicate sufficient legal interests in the lands when making a planning application. Ordnance Survey maps submitted with planning applications, which show ownership boundaries, are taken as being accurate in the above context. In order to advise Applicants of the limitations of a planning permission, Section 34 (13) of the Planning and Development Act 2000 (as amended) states that "A person shall not be entitled solely by reason of a permission under this section to carry out any development."

As the main purpose of planning is to regulate land use, the specific ownership of lands is less relevant. However, if disputes over land ownership subsequently arise following a grant of permission, this can result in the implementation of planning permissions being frustrated and can ultimately result in non development of sites which may be important from a planning perspective, for example in terms of urban regeneration of an area. It is in this context that the Irish Planning Institute supports the proposals to improve the current system



The current conveyancing system and precedents take account of non-conclusive boundaries. The standard Law Society Contract for Sale states that the vendor is obliged to furnish such information as is in his possession relative to the identity and extent of the property but shall not be required to define exact boundaries. However if there is a difficulty in determining the boundaries it is likely to lead to a delay while the issue is resolved, a renegotiation of the purchase price or the sale falling through. The purchaser's solicitor will be wary of advising the purchaser to proceed where there is a mapping or boundary problem on the basis that the purchaser may have difficulty mortgaging or selling on if the problem is not resolved. Where boundary information is required, such as a map marked for subdivision or a declaration of identity, there is a heavy reliance on other professionals such as architects, engineers and surveyors.



A conclusive opinion on boundaries is sought from the architect often with the implication that this may be based on Land Registry data which is inconclusive. Either the LR data must be made conclusive or the Cert of ID must be clearly identified as inconclusive (where based solely of LR data). The latter would render the Cert of ID useless and have consequences for the conveyance of title.

Even with the benefit of a measured survey, and reference to Legal, OSI and LR data it is often difficult to achieve any level of confidence about site boundaries. Relying on any of the myriad of often conflicting mapping data can have significant consequences for both architect and client particularly where, of necessity and based on available information, boundaries which have to be assumed turn out to be in doubt.

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Ireland's non-conclusive boundary system promotes mediocrity in boundary mapping because the Land Registry index map fails to record boundaries accurately. The Irish Institution of Surveyors (IIS) recommends the adoption of best practice and the use of modern surveying technologies to produce accurate boundary surveys for land registration. The IIS will establish a register for Licensed Boundary Surveyors (LBS) in 2012 to ensure boundary surveys are carried out using prescribed procedures and standards. The IIS encourages landowners to register their boundaries as conclusive, in the interests of enhancing the mapping information recorded in Land Registry to improve security for their properties. The IIS recommends that the Property Registration Authority (PRA) should record an accuracy attribute for boundaries such that conclusive boundaries can be easily distinguished in www.landdirect.ie.

The IIS advocates a new government policy to promote the determination of boundaries and their registration as conclusive to facilitate a continual enhancement of the PRA mapping database. The government should incentivise this new policy by providing a State guarantee for boundaries properly defined, surveyed and registered as conclusive. This measure will significantly improve the quality of property parcels to facilitate eConveyancing, ensure a high level of compliance with the EU INSPIRE Directive, and significantly enhance one of the fundamental elements of the Irish Spatial Data Infrastructure (ISDI).

