INTRODUCTION

I am a director of Know Edge Ltd an Edinburgh based, independent management consulting company that supports organisations to innovate and generate business benefits from their land information. I am recognised as a world expert in Land Information Management and have worked extensively with the United Nations, EU and World Bank on land policy / land reform programmes to strengthen security of tenure and support economic reforms in Eastern and Central Europe, Africa, Middle-East and the Far-East. I am currently supporting the Iraq government in the formulation and implementation of their National Land Policy. I am an advocate of good land governance (1) that delivers transparent, fair and accessible land registration and cadastral systems for all within a comprehensive National Land Policy framework.

LAND REGISTRATION BILL

I welcome the introduction of this bill that formalises many of the procedures incorporated into the Keeper’s Registration of Title Practice Book to remedy the deficiencies of the Land Registration (Scotland) Act 1979. However, I believe that the Land Registration etc. (Scotland) Bill 2011 does not go far enough to deliver transparency, accessibility and information to support good land governance for Scotland in the 21st century. My comments on the new bill focus on these crucial areas.

1. Open access to land registration and cadastral information

Transparency is a fundamental characteristic of good land governance that encourages engagement with citizens over land issues and is proven to reduce corruption. I believe that Registers of Scotland should be totally transparent and expose, free of charge, as much of their land registration and cadastral information to the public as possible.

Currently the Registers of Scotland’s on-line information services are designed as commercial services to the private sector. The poor quality of the on-line citizen information services and the associated service costs currently inhibit citizens accessing this fundamental information. In 2011 I requested information on the title of my property on-line from Registers of Scotland and it required a phonecall to establish what information I required – and I am an expert in this area! A free, citizen centric information service is required.

I would also recommend that the cadastral map and land registration data become an integral part of the wider ‘open data’ initiative being advocated by open government. The opening up of governmental data, free for re-use, is being justified on economic grounds (2) (3) (4) since access to these data will have major benefits for citizens, businesses, and society and for the governments themselves. Some of the benefits include:
• **New businesses can be built on the back of this data:** Data is an essential raw material and can be integrated into a wide range of new information products and services, which build on new possibilities to analyse and visualise data from different sources. Opportunities for re-use have multiplied in recent years as technological developments have spurred advances in data production as well as data analysis, processing and exploitation. Facilitating re-use of this raw data will create jobs and thus stimulate growth.

• **Greater Transparency:** Open data is a powerful instrument to increase transparency in public administration, improving the visibility of previously inaccessible information, informing citizens and business about policies, public spending and outcomes.

• **Evidence-based policy making and administrative efficiency:** the availability of robust public data will lead to better evidence-based policy making at all levels of government, resulting in better public services.

The Registers of Scotland currently digitise the cadastral parcel boundaries relative to the topographic features contained within the OS MasterMap digital mapping product sourced from Ordnance Survey GB. The current ‘derived data’ restrictions imposed by Ordnance Survey GB will stop open access to this cadastral data from happening. Land rights are a fundamental dataset required to support good land governance and this bill should make provision for the cadastral dataset to be free for reuse.

Base mapping does not have to be sourced from Ordnance Survey GB. In many countries, ortho-rectified satellite imagery is used to underpin cadastral parcel boundaries; this is appropriate for many rural areas of Scotland along with open data sources such as OpenStreetMap.

2. **Need for national land policy framework to guide land registration and cadastre**

Land Administration Systems provide the infrastructure for implementing land policies and land management strategies in support of sustainable development. This infrastructure includes the institutional arrangements, a legal framework, processes, standards, land information, management and dissemination systems, and technologies required to support allocation, land markets, valuation, control of uses, and development of interests in land. Land Administration Systems are dynamic and evolve to reflect the people-to-land relationships, to adopt new technologies and to manage a wider and richer set of land information. The Registers of Scotland provide the land tenure element of Scotland’s Land Administration System.
Figure 1: The land management paradigm (5)

Land management underpins the distribution and management of a key asset of any society namely its land. For western democracies, with their highly geared economies, land management is a key activity of both government and the private sector. Land management, and especially the central land administration component, aim to deliver efficient land markets and effective management of the use of land in support of economic, social, and environmental sustainability. The land management paradigm, as illustrated in Figure 1, allows everyone to understand the role of the land administration functions (land tenure, land value, land use, and land development) and how land administration institutions relate to the historical circumstances of a country and its policy decisions. The LAS is the fundamental infrastructure that underpins and integrates the land tenure, land value, land use and land development functions of land administration to support an efficient land market that fully demonstrates sustainable development.

Land Administration Systems are just a means of implementing land policies. However, Scotland does not have a National Land Policy to provide a holistic framework to guide the land tenure, land value, land use and land development functions of land administration. It is recommended that Scotland creates a National Land Policy to guide the future of institutions such as the Registers of Scotland. Had a Scottish National Land Policy been in place then it would certainly have influenced the content of this new bill and ensured greater openness and integration with other ‘land’ institutions.

3. Citizens role in completing the Land Register

The Land Register currently provides incomplete coverage of land rights across Scotland. Even with greater interventions to trigger registrations, the Land Register will remain incomplete for a long time. This is unacceptable for a fundamental dataset that is required to support the sustainable development of Scotland.
One potential solution to completing the gap in the Land Register is to involve citizens in directly capturing and recording their land rights through what is termed ‘crowdsourcing’ (6). Crowdsourcing uses the Internet and on-line tools to get work done by obtaining input and stimulating action from citizen volunteers. It is currently used to support scientific evidence gathering and record events in disaster management, as witnessed in the recent Haiti and Libya crises, for example. These applications are emerging because society is increasingly spatially enabled and consumer technology products, such as mobile phones, can be used to directly capture land rights information. By establishing a partnership between citizens and land professionals in the Registers of Scotland, citizens would be encouraged to involve themselves in directly capturing and maintaining information about their land rights. Facilities and procedures could be made within the Land Register to manage a provisional registration of property provided by citizens. These provisional registrations could then be upgraded to full registrations through quality assurance procedures. This approach would accelerate the completion of the Land Register and importantly engage citizens in land issues.

It is recommended that the bill makes accommodation for this provisional registration by citizens in the Land Register.

4. **Land register to include marine rights**

Although the bill makes some provision for the inclusion of marine rights through the use of non-Ordnance Survey GB base maps, the bill should be much more explicit about the management of marine rights within the Land Register. It is important that we have the holistic management of our land and marine assets.

5. **Prescription and a non domino titles (Section 42 - 44 of the Bill)**

Although the bill strengthens the rules around prescription and a non domino titles, I recommend that alternative arrangements should be put in place to deal with land that has no apparent owner. The Registers of Scotland should publically advertise for at least six months any claims, and associated supporting evidence, made for land that is apparently not owned. This approach supports the total transparency of information that should pervade this bill. After six months the Keeper should review the claim or claims and be able to admit an *a non domino* deed for registration. Any disputes associated with the claims should be settled by the Lands Tribunal.

Robin McLaren

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REFERENCES


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