

Subject: Information requested by Hearing Panel
Sent: 10/05/2024, 1:01:00 pm
From: The Balanced Dog<kathleen@balanceddog.co.nz>
To: IHP Info
Attachments: [Easement information for Tulloch Place Papanui.pdf](#)

Good afternoon,

When I appeared before the Hearing Panel on 15 April, they requested additional information about the easement along my property. I have scanned the information I have available on this in my personal record and it is attached.

I would appreciate a copy of this email and its attachment being forwarded to members of the hearing panel. I have submitted that private drains should be deemed to be a Qualifying Matter notably because re-development of properties will undoubtedly change the nature and characteristic of water drainage. The instigator of the developments should be required to consult and gain approval from us on the changes proposed to the property with assurances that downstream and upstream flows have been appropriately designed.

As noted in the hearing, the information on private drains does exist on site plans and is included in the Land Information Memorandum and title search. The onus should be on the proposed developer to seek our approval for changes to drainage so that we do not incur costs for repairs and legal action in civil matters later on. Since infill developments tend to cover the entire property with buildings, there is a very real risk that private drainage will be damaged and owners on the easement will have absolutely no say: David vs Goliath. Damage may only be discovered well after the developer has departed.

Please acknowledge receipt.

Kind regards,
Kathleen Crisley

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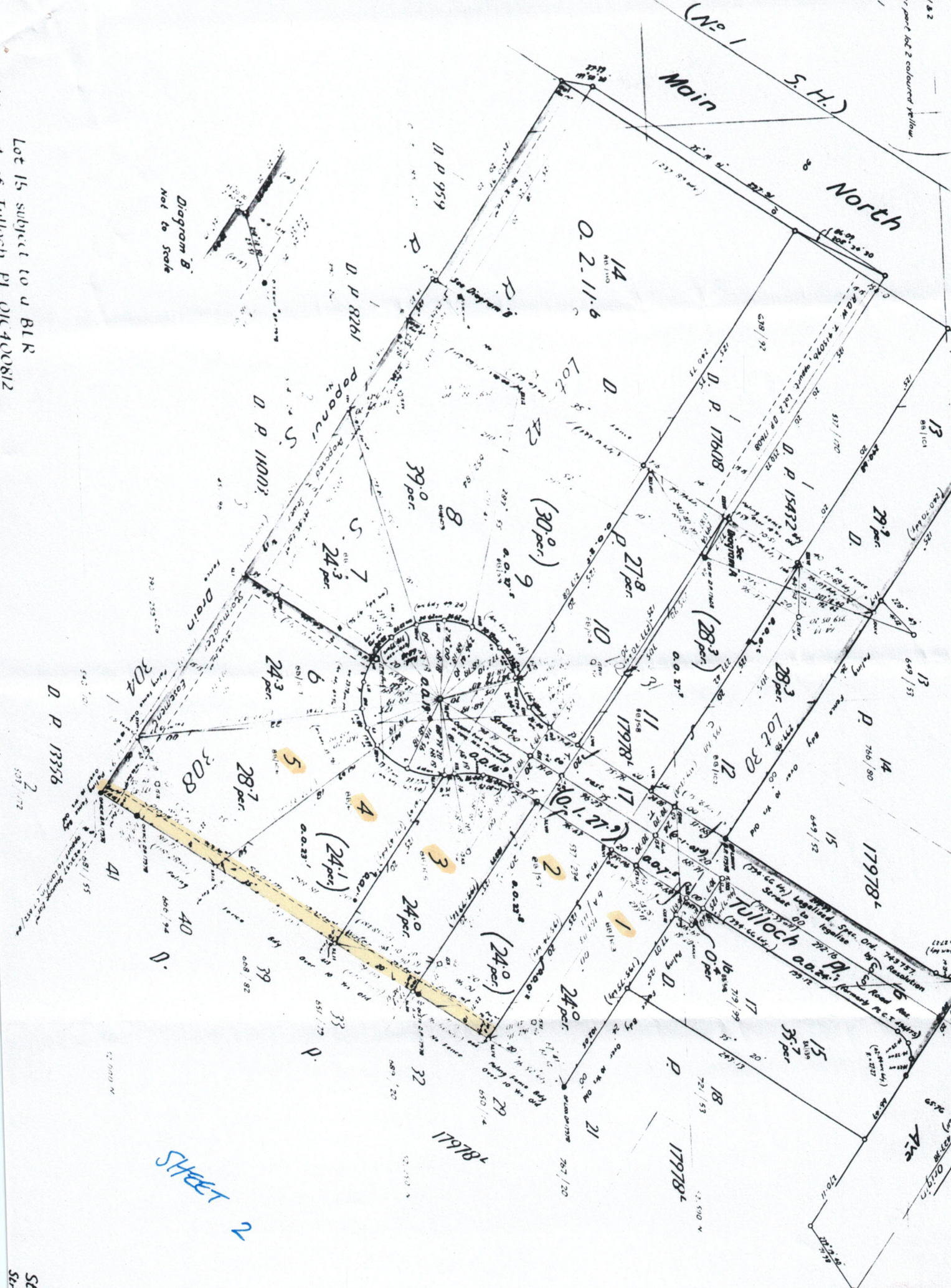
Kathleen Crisley, CCFT, CSMT, CTMT, SCMT
Principal Therapist, Fear-Free certified professional

15/182
over part of 2 coloured yellow.

(No 1 S.H.)
Main North

Lot 15 subject to a BLR
43' from 4 of Tulloch PI OIC400812

Diagram B
Not to Scale



SHEET 2

The Clerk
has placed
this plan
before the
Commissioners
for their
approval
19th 1878

Schedule
Reside
Kiosk
Street to
Street by Re

Subdivisions: Section 283 (whereby as a condition of approval of a scheme plan of a subdivision the owner could be required to construct drains) was repealed by s 362 Resource Management Act 1991 (1991 No 69). Section 294(9) was repealed by s 12(2)(a) Local Government Amendment Act 1981 (1981 No 13). Neither of these sections was re-enacted by the Resource Management Act provisions for subdivision.

Connection of property to public drains: While a territorial authority may require a landowner to connect a private drain to a public drain, there is no statutory authority which allows a ratepayer to compel a territorial authority to connect his or her property to a public drain. See *Huntly Borough v South Auckland Education Board* [1963] NZLR 282 (CA); *Stubbs v Taumarunui Borough* [1975] 1 NZLR 125, 132.

Other powers: Section 673 allows a territorial authority to agree with the owner of any premises to execute any drainage works on those premises.

Carrying out of drainage work: See the Plumbers, Gasfitters, and Drainlayers Act 1976 and Drainage and Plumbing Regulations 1978 (Chapter 35). Pursuant to reg 87, a permit from the responsible territorial authority is required for any drainage work or sanitary plumbing which is not exempted.

[460. Construction of private drains through adjoining premises—(1) Where, in the opinion of the council, the only practical route of any new private drain is through one or more adjoining premises, and any owner or owners of any of those premises will not consent to its construction, the council may, pursuant to a resolution in that behalf, of which notice shall be given to the owner or owners withholding his or their consent as aforesaid, enter upon his or their premises and execute, provide, and do all or any of the works, materials, and things which the council considers necessary, in order that the drain shall be laid in an efficient manner.

(2) Before passing a resolution under subsection (1) of this section, the council shall give to every owner refusing his consent as aforesaid an opportunity to be heard before a committee of the council.

(3) The cost incurred by the council in carrying out the said work, including the payment of compensation of injurious affection to any premises through which the drain is laid, shall be payable by the council in the first instance, and may be recovered by it from the owner of the land to be served by the private drain; and section 465 of this Act shall apply with respect to the amount so recoverable as if it were an advance made by the council under section 463 of this Act.

(4) If agreement cannot be reached between the council and any claimant for any injurious affection, the matter shall be determined as if the work were a public work and the claim were a claim for injurious affection in respect thereof under [[the Public Works Act 1981]].

Injurious affection claims: Compensation for injurious affection is available pursuant to s 63 Public Works Act 1981 (Chapter 12).

[461. Further provisions with respect to private drains—(1) Where any private drain constructed with the consent of the owners of all the lands affected or constructed by the council pursuant to section 460 of this Act passes through or serves separately owned premises, there shall be attached to each and all of the lands served by that private drain the following rights, namely:

- (a) A right to the free and uninterrupted use of that private drain; and
- (b) A right for the occupiers or any of them to enter upon all lands served by that drain, or through which it passes, for the purpose of relaying or effecting necessary repairs to the drain; and
- (c) A right to contribution from the owners or occupiers of other lands so served by that drain towards the cost of executing, providing, and doing all or any of the things required in respect of the drain by this Part of this Act or any bylaw; and
- (d) A right to contribution from the owners or occupiers of those other lands towards the cost of all necessary relaying of or repairs to the drain; and
- (e) A right to the recovery from the owners or occupiers of those other lands through which that drain passes but which are not served by the drain of the cost of any repairs to the drain necessitated by any wilful or negligent act of those owners or occupiers,—

and those rights, upon a certificate being furnished by the [[principal administrative officer]] that any of the lands is actually served by that drain, together with such plans (if any) as the District Land Registrar requires, shall be registered by the District Land Registrar against the titles to all the other lands so served by the drain, and also, in the case of the right to free and uninterrupted use of the drain and the right to enter upon land to effect necessary relaying or repairs, or to recover under [[paragraph (e)]] of this subsection the cost of any repairs to the drain, against the titles to the lands through which the drain passes.

(2) The District Land Registrar, on the receipt by him of a certificate signed by the [[principal administrative officer]] that any of the said lands is actually served

by that private drain, shall enter on the register and upon the outstanding duplicate certificate of title for that land, which certificate of title shall be produced to him for that purpose—

- (a) Particulars of the certificate given by the [[principal administrative officer]]; and
 - (b) A memorandum that there are attached to the land the rights specified in subsection (1) of this section.
- (3) If any question arises as to the liability of any owner or occupier under any provision of subsection (1) of this section, a [[District Court]] shall have jurisdiction to hear and determine the question, and the decision of the Court shall be final.

Subs (1) amended by s 39 Local Government Amendment Act 1980 (1980 No 82).
Subs (3) amended by s 18(2) District Courts Amendment Act 1979 (1979 No 125).

Effect: The section affects not only the lands served by a private drain, but also the lands through which the drain passes (see subs (1)(b) and (c)). The effect of the section is to create legal easements appurtenant to, or over, the separately owned premises that private drains pass through or serve. See E C Adams, "Registration of Drainage Certificates pursuant to the Municipal Corporations Act" [1962] NZLJ 395.

Registration of certificate: The rights specified in subs (1) arise quite independently of the registration of the principal administrative officer's certificate and bind successive owners even if not registered: *Archer v Robinson* (1964) 11 MCD 209; *Seed v Langham* 18/12/92, Ellis J, HC Wellington CP699/91. While registration is evidence of those rights, it is not necessary to constitute them.

[462. Council may declare private drain to be public drain—(1) The council may, by resolution passed at a meeting of which at least 14 days' public notice has been given, declare any specified private drain in the district to be a public drain.

(2) For the purposes of this section, every drain constructed for State housing purposes under the Housing Act 1955 and serving 2 or more properties, or carrying water from any road channel or sump over or under any land to a watercourse or public drain, shall be deemed to be a private drain.

(3) Where a certificate under section 461 of this Act in relation to any private drain has been entered on the register pursuant to that section or the corresponding provisions of any former enactment and the drain has been declared to be a public drain pursuant to subsection (1) of this section,—

- (a) The [[principal administrative officer]] shall send to the District Land Registrar an authenticated copy of the resolution under that subsection; and
- (b) The District Land Registrar shall enter on the register and on the outstanding certificates of title to the lands served by that drain (which shall be produced to him for the purpose) a memorandum that the drain has become a public drain.

Actual control: Note that, pursuant to s 441(2), any private sewerage or stormwater drain that has been under the actual and conscious control of a territorial authority for at least 20 years, is deemed to be a public drain. See *Petone Borough v Daubney* [1954] NZLR 305, 327-328 (CA).

State housing (subs (2)): This subsection was necessary because a drainage scheme in a State housing area may affect only land owned by the Crown.

Money Payable by Owners and Occupiers

[463. Advances by council to owners in respect of cost of drainage connections—(1) The council may make advances to the owner of any premises for the purpose of enabling him to do all things necessary (including the provision of all fittings for the proper disposal of waste waters and sewage) to connect the premises with the drainage system of the district or to effect repairs to any such connection in compliance, in either case, with the due requirements of the council under this Part of this Act or under any other Act or any bylaw relating to drainage.

(2) Instead of making an advance as aforesaid to any owner, the council may, by agreement with him, itself do such things as aforesaid, and all money expended by the council pursuant to that agreement, together with a sum not exceeding 10 percent of the amount so expended by the council to cover the cost of supervision by the officers or agents of the council, shall be deemed to be an advance for the purposes of this section.

(3) The council and the owner may agree that the amount of any advance shall be repayable in one amount at a fixed time with interest at a rate per annum as fixed by the council, pursuant to section 221 of this Act, or by instalments extending over a number of years with interest not exceeding a rate so fixed. That agreement may contain any incidental provisions and may provide for the earlier payment of instalments, or any of them, on terms to be mentioned in the agreement:



REGISTER

COMPOSITE LEASEHOLD & 1/2 SHARE
CERTIFICATE OF TITLE UNDER LAND TRANSFER ACT

References
Prior C/T. 8B/57
Lease No. 778832
Transfer No. -
N/C. Order No. 778834

This Certificate dated the 16th day of October one thousand nine hundred and sixty nine
under the seal of the District Land Registrar of the Land Registration District of Canterbury

WITNESSETH that WINIFRED KELLER of Christchurch Widow

as to an undivided one-half share
is seised of an estate in fee-simple (subject to such reservations, restrictions, encumbrances, liens, and interests as are notified by
memorial underwritten or endorsed hereon) in the land hereinafter described, delineated with bold black lines on the plan hereon,
be the several admeasurements a little more or less, that is to say: All that parcel of land containing 24 perches
or thereabouts situated in the City of Christchurch being Lot 2 on Deposited
Plan 26345 part Rural Section 308

AND THIS CERTIFICATE FURTHER WITNESSETH THAT the above proprietor

is seised of an estate of leasehold created by Lease 778832 for a term
of 999 years from 30/9/1969 in the Flat and Garage delineated on
the diagram hereon and shown on Deposited Plan 27294 as Flat 2 & Garage 2



A. Phons
Assistant Land Registrar

Interests affecting fee simple:

Subject to:

- (i) Building Line Restriction imposed by Notice 743756
- (ii) Drainage Easement over part appurtenant to Lot 1 D.P. 26345 (8B/101) specified in Easement Certificate 745638.
- (iii) Lease 778832 of Flat 2 and Garage 2 D.P. 27294 Term 999 years from 30/9/1969 (Composite herein)
- (iv) Lease 778833 of Flat 1 and Garage 1 D.P. 27294 Term 999 years from 30/9/1969 (Composite 9B/103)

(ii) Rights to Drain Water over part Lots 5 (8B/106) 4 (8B/60) and 3 (8B/105) D.P. 26345 specified in Easement Certificate 745638.

The easements reserved by Transfer 415096 and specified in Easement Certificate 745638 are subject to Section 351 E (a) of the Municipal Corporations Act 1954

A. Phons
A.L.R.
Transfer 865695/1 to Minnie Hussey of Christchurch, Widow - 20.3.1990 at 11.02am

Appurtenant hereto are:

- (i) Right of Way over part Lot 1 D.P. 17608 (C.T. 638/92) coloured yellow on D.P. 27608 reserved by Transfer 415096

R. Band
for A.L.R.
Transmission A61692/1 to Derek Reginald Hussey of Southbridge, Farmer and Ian Stewart Cameron of Christchurch, Solicitor as Executors - 20.7.1993 at 11.47am

R. Band
for A.L.R.