

#### 4. QUINNS ROAD – DEEDS LAND FOR ROAD AND SHIRLEY STREAM BRIDGES

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The purpose of this report is to (1) discuss and make recommendations on the acquisition by the Council of a strip of deeds land beside Shirley Stream adjoining Quinns Road and (2) provide a response to property owners wishing to build bridges across Shirley Stream.

##### QUINNS ROAD DEEDS LAND

Between Shirley Stream and the sealed legal road on Quinns Road there is a strip of land which is not legal road, has never been brought under the Land Transfer Act 1952 and remains subject to the deeds system in the Land Office. The last recorded dealing was a transfer to Mr George Buckley (as trustee of the Estate of George Duncan Lockhurt) in 1864. In 1865 a transfer from Mr Buckley to Mr H H Parris excluded an area of land described in the transfer as “an accommodation road reserved through ... Rural Sections 2164, 2168, 2392 and 1140, 50 links wide on the eastern side of a natural creek or watercourse”. This “accommodation road” ran along the eastern side of Shirley Stream for the whole length of Rural Sections 2168 and 2392.

This land is that which is shown on the attached plans and is also that over which Bellbrook Crescent property owners are seeking bridge access.

The term “an accommodation road” appears to have been a generic term for roads set aside for general public access. In the present case the road probably provided general public access along the stream and may have been used as a towing line for barges. A search of Land Information records confirms that the accommodation road was never dedicated. Accordingly the fee simple of the accommodation road remains vested in the original owner, Mr Buckley (as trustee of the Lockhurt estate) and has never been brought under the Land Transfer Act 1952.

In 1950 the Waimairi County Council formed Quinns Road over part of the accommodation road. Because public funds were expended on the formation of Quinns Road the Council was able to take part of the accommodation road as road under the Public Works Act. The balance of the old accommodation road still remains. The subject of this report is on how the Council can acquire the land and also enable legal bridge access to the owners mentioned in part 2 below.

The options have been investigated and discussed with the Council’s solicitors. An application to have the deeds land declared as road under Section 43 of the Transit New Zealand Act 1989 (“TNZA”) is considered to be the most appropriate, simplest and cost effective means to acquire the land.

Section 43(1)(d) TNZA is the equivalent of Section 110(d) of the Public Works Act 1928. There is no equivalent in the current 1981 Act. Section 43(1)(d) TNZA provides that where land has been used as road by the public and formed or improved out of public funds the Minister may, on application from the Council, authorise legalisation as road. The deeds land in question is not part of the sealed formation of Quinns Road but includes the road shoulder and edge of the streambank which are used by the public. In the solicitors’ opinion the definition of “road” is wide enough to include road reserve which has been maintained and improved out of public funds. Further the reservation of “the accommodation road” by the earlier owner lends weight to the intended use of the land. While the land has not strictly been used for the purpose of a “road” the solicitors consider the Council could apply to have the land dedicated as road pursuant to Section 43(d) TNZA.

##### SHIRLEY STREAM BRIDGES

The owners of residential properties at 8, 10, and 12 Bellbrook Crescent have requested permission to construct bridges across Shirley Stream. The permission would enable them to subdivide their properties into two lots, with the rear lot having access across the stream from Quinns Road.

In the past, bridges over waterways (except for navigable rivers) were authorised by the Christchurch Drainage Board subject to a building permit being granted by the local authority. This practice was continued by the new Christchurch City Council following local government reform in 1989. With the passing of the Resource Management Act, the Regional Council (now Environment Canterbury) became responsible (amongst other things) for authorising works on or over the beds of rivers and streams.

Environment Canterbury has an arrangement with the Council whereby requests for bridges over natural waterways are referred to them for their consideration of granting resource consents. (The Black Maps of 1856 are referred to for the identification of waterways that are natural).

In addition to obtaining a resource consent from Environment Canterbury, property owners will also require a building consent from the City Council as well as a resource consent for earthworks under the Council's waterway set-back rules. It would, of course, also be necessary to obtain the consent of any affected third party or landowner.

Shirley Stream is a natural waterway. Under the rather complicated circumstances described above, consent for bridges must first come from Environment Canterbury.

At this point it has to be acknowledged that the new Christchurch City Council gave all three Bellbrook Crescent property owners written approval for bridges. However, permission was stated as being valid for one year only and statutory responsibility has changed. It would seem appropriate under the circumstances for the Council to be as helpful as possible. The following approach is suggested.

The Council is an affected party because it maintains Christchurch's surface water system and Shirley Stream is within public land. It would therefore be expected that Environment Canterbury would seek Council comment on bridge consent applications.

In addition to the consents listed, an additional Council consent is required, by virtue of section 42 of the Christchurch District Drainage Act 1951, in respect of airspace over the watercourse.

The Council's management strategy for waterways and wetlands is concerned with values related to landscape, ecology, recreation, culture and heritage.

In the Bellbrook Crescent locality, Shirley Stream contributes to a pleasant urban landscape with its meandering course and continuous, relatively bridge-free, green corridor. Streamside planting undertaken by the Council has added considerably to the pleasant character of the area. In-stream life and avian ecology would also benefit. It is therefore considered reasonable for the Council to seek to minimise the number of new bridges.

The attached plan illustrates a compromise whereby Nos. 8 and 10 Bellbrook Crescent share a new bridge and No. 12 shares an existing bridge servicing No. 16. In the latter case the Council could assist with negotiation and contribute to the cost of necessary modifications to the bridge, provided it is available as a viewing platform for the enjoyment of local residents. (The streamside planting needs to be trimmed to provide a view of the stream). The Council's Investigations Commissioner, Don Hampton, has offered his services in this regard.

The above compromise is intended to deal with the immediate bridging applications from the property owners who have some expectation of renewed consent arising from their previous written approvals. It is not to be seen as a precedent for the grant of further bridging applications as of right. It is intended that the Parks and Waterways Unit will develop a policy in respect of bridges over waterways and public land.

## **CONCLUSION**

Legalisation of the deeds land as road, if accepted by the Minister, will formalise use of the land by the general public for what appears to have been originally intended by the accommodation road reservation. There is no obligation upon the Council to form the road. It will also allow the Council to better manage access by property owners over Shirley Stream and to provide legal frontage for such approved access. A policy to be developed for bridging over waterway and public land, in general, will enable future applications to be dealt with in a consistent manner. It is therefore recommended that the Council seek to have the deeds land legalised as road.

The above report was before the Shirley/Papanui Community Board at its meeting on 4 April 2001. The Board endorsed the approach proposed in the report for resolving this issue.

**Recommendation:** 1. That the Council apply to have the deeds land described in the following Schedule declared road under Section 43(1)(d) of the Transit New Zealand Act 1989:

## **Schedule**

All that piece of land containing 1014 square metres being Part RS 2164. Part RS 2168 and Part RS 2392 situated in Blocks VII and XI Christchurch Survey District of the Canterbury Land District and shown as Lots 1-3 on DP 83162.

2. That the Council's position with respect to bridges at 8, 10 and 12 Bellbrook Crescent be as outlined in the report and that the property owners be advised accordingly.
3. That Environment Canterbury be provided with a copy of this report and be requested to take account of the City Council's position when considering resource consent applications for bridges.
4. That the Council grant the above consent under clause 62(g) of the Water Related Services Bylaw 1992 and section 42 of the Christchurch District Drainage Act 1951.
5. That the Parks and Waterways Unit report to the Parks and Recreation Committee with a recommended policy for bridging over waterways and public land.
6. That officers continue to liaise with the residents of 8, 10, 12 and 16 Bellbrook Crescent to facilitate the construction of appropriate bridge structures serving two properties each.