

Oral Submission on Proposed Open Watercourse Easement at 114 Dalziel Road, Halfway Bush, Dunedin (Glen Morgan and Dr Carol Atmore, 18th August, 2025)

I have chosen to submit orally, because there is a wider context to the proposed easement which needs to be understood, and I would ask you to bear with me while I explain this.

(Please note that the proposed plan change, with respect to open watercourses is not, as I understand it, considered by DCC to involve the establishment of easements, but the effect and specification is sufficiently similar to an easement that I would argue that they are, de facto, easements by another means. They are, therefore – for the purposes of this submission – hereinafter referred to as easements.)

Discussion of Points

There are two major points that I would like to discuss. (The Second discussion point (*1) will be dealt with later in this submission.) The first is whether an easement is necessary at all for the disposal of storm water into a natural, open watercourse on private property. There are already provisions within the Local Government Act and the Resource Management Act which give local bodies the powers sought by the DCC through the instrument of an easement or de facto easement. (Refer to appendix 1.)

On the surface, it would appear that DCC has used time and money on an exercise which is redundant, unless there are valid reasons that have not been made public. Aside from being an affected party, I raise this point in the general public interest.

While not specified in the sections of the Acts which I have referred to, it would seem reasonable to expect local bodies, themselves, to uphold the standards of care of open watercourses that they are required to enforce. In this respect, In the specific case of this particular open watercourse on our property, DCC has performed poorly.

Over many years, DCC has allowed significant quantities of eroded, roading material to fill this open watercourse to its detriment and to the detriment of DCC's own infrastructure. (For example, the flooding of Dalziel Road at Fraser's Gully and the considerable damage to the road and embankment that occurred in 2016.) [Please see Appendix 2]

We, as the occupiers of the land, have met and exceeded our responsibilities with respect to caring for the open watercourse in question by removing new and historic deposition of eroded roading material over the last decade. We have also, in consultation with DCC's roading division, removed a fence and done other work to make the on-going removal of the of eroded roading material a relatively easy operation for DCC contractors.

That this continues to be necessary is disappointing, and is largely because the grates and ditches along Brinsden Road (from where the eroded roading material comes) are not proactively maintained.

The maintenance appears to only be done in reaction to blockages and attendant flooding, with the result that Brinsden Road needs regular resurfacing with gravel, and damage to adjacent properties and roading infrastructure needs to be attended to.

Exposition of the root cause of this particular situation requires a, not an unrelated, digression into the concept of a “perverse incentive”. This is the idea that, often well intended, actions or procedures can incentivise practices which lead to unsatisfactory outcomes. The maintenance of the grates, ditches, gutters and culverts along Brinsden Road can be seen as a case study of a perverse incentive in action:

The grate that is intended to stop detritus entering and blocking the culvert under the entrance to the Mount Grand Water Processing Plant on Brinsden Road gets blocked by water born ditch lining stones, rubbish and plant material. Heavy rain occurs and cannot pass through the culvert.

The water floods across the road and carries the gravel surface roading material and, often, eroded substrate across into the opposite gutter where it is transported to the driveway culvert of our up-hill neighbour’s property. It blocks their culvert, and roading material is carried into their garden area.

Much of the material, and this not an insignificant amount of material, also flows on and enters the open watercourse on our property which is the subject of the proposed easement. Historically, this material has been deposited as far as two hundred meters into our property, forming a shingle fan and completely obliterating the natural open watercourse. (A situation we have attempted to address by sympathetic landscaping, planting and the previously mentioned improvement of maintenance access to our property.)

A look at this situation, from an organisational perspective, reveals the perverse incentive in action. The culvert under the entrance to the water processing plant is allowed to become blocked, the road floods and damages the road and properties, then the DCC’s contractors come and resurface the road and repair the damage.

Failure to do proactive maintenance, at a known problem point, creates regular work for the contractors. Proactive maintenance would save the DCC the cost of considerable on-going repair work, but proactive maintenance would deprive the contractors of predictable, on-going, paid work. Hence, there is a perverse incentive for the contractors not to be proactive with maintenance.

Alternatively, it may be that DCC does not require contractors to be proactive about maintenance or does not have a mechanism to initiate proactive maintenance. For example, routine inspection of known and potential problems areas.

If this reactive model of maintenance is widespread in the DCC's considerable area of infrastructure responsibilities, a shift to a more proactive model has the potential to provide considerable cost savings to the District and its ratepayers.

Such a shift might be brought about by penalty clauses in contracts and the adequate funding of the DCC's own inspection of potential and known problem areas. If such penalty clauses and inspections already exist, then experience at our property would suggest that they are inadequate and need to be "beefed up"!

Now, let me tie this back into the personal position of the submission I am making. It is simply this: [1] **if the DCC wants to have control of this open watercourse, then in fairness and equity, they should take responsibility for damage or degradation caused by DCC infrastructure or inadequate maintenance of infrastructure.**

Equally, [2] **if the DCC do not decide to take the step of adding yet another easement or de facto easement to this area of our property, DCC should still recognise that they too have a responsibility not to block or foul natural open watercourses.**

***1 The second discussion point**

Now to the second major point: this is that there are already easements covering the bulk of the area of the proposed new easement which make the purpose of the proposed easement or de facto easement redundant. (Please see Appendix 3.)

If the purpose of the proposed easement or de facto easement is to stop building near the nominal course of the open watercourse, this effect has already been achieved because the two existing easements (one for high voltage power transmission lines and the other for underground infrastructure) prohibit building in the area where the watercourse nominally exists.

Conclusion

If our experience is representative, DCC's approach to infrastructure development and maintenance is in need of a review. The formalising of natural open watercourses as stormwater drains is an environmentally questionable practice, particularly if this introduces rubbish and roading material into these watercourses.

Changes in land use, such as scrub clearance or housing development, increase surface run-off and where this run-off exceeds the capacity of drains and culverts designed for

earlier land use or settlement patterns, flooding occurs with the damage and associated costs that this implies.

Formalising the dumping of ever-increasing amounts of stormwater run-off into natural waterways looks more like problem avoidance than planning. Equally, reactive maintenance hardly qualifies as maintenance at all. The elected governance arm of DCC needs to talk to the operational arm of DCC, through the CEO, about this. A-business-as-usual approach to infrastructure maintenance and development is not a forward-looking approach and **planning, by definition, should be about the future.**

As a parting observation, watercourses are physical, geomorphological features. They exist in the real world. Neither maps nor satellite imagery (Google Earth) are a substitute for a physical inspection of areas subject to planning changes. Equally, notification of plan changes and an opportunity to submit objections is only paying lip service to the process of consultation.

A twenty minute, on the ground, guided tour of our property and its quite complex hydrology (that is, springs, one minor and one quite significant stream and significant DCC underground water carrying structures) would have helped both the planning and the consultation process. **If the opportunity for planners to get out of the office does not exist, then it needs to be created.**

Appendix 1. Sections of Relevant Acts of Parliament

Local Government Act 1974

511 Removal of obstructions from drainage channel or watercourse

(1)

Where in the opinion of the council the free flow of water in any drainage channel or in any watercourse that is not under the control of any other local authority—

(a)

is impeded by any obstruction, and that obstruction is likely to cause loss of life, injury, or damage to property in the district or to obstruct navigation; or

(b)

is likely to be impeded by any such obstruction,—

the council may, by notice in writing, require the occupier or, if there is no occupier, the owner of the land on the banks of the drainage channel or watercourse within the district to remove the obstruction from the drainage channel or watercourse and from the banks of the drainage channel or watercourse to a distance not exceeding 3 metres from the nearest margin of the drainage channel or watercourse.

Section 17 RMA

Duty to avoid, remedy, or mitigate adverse effects

(1)

Every person has a duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of the person, whether or not the activity is carried on in accordance with—

(a)

any of sections 10, 10A, 10B, and 20A; or

(b)

a national environmental standard, a rule, a resource consent, or a designation.

(2)

The duty referred to in subsection (1) is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty.

(3)

Notwithstanding subsection (2), an enforcement order or abatement notice may be made or served under Part 12 to—

(a)

require a person to cease, or prohibit a person from commencing, anything that, in the opinion of the Environment Court or an enforcement officer, is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment; or

(b)

require a person to do something that, in the opinion of the Environment Court or an enforcement officer, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by, or on behalf of, that person.

(4)

Subsection (3) is subject to section 319(2) (which specifies when an Environment Court shall not make an enforcement order).

Appendix 2. Images Relevant to Eroded Roading Material.















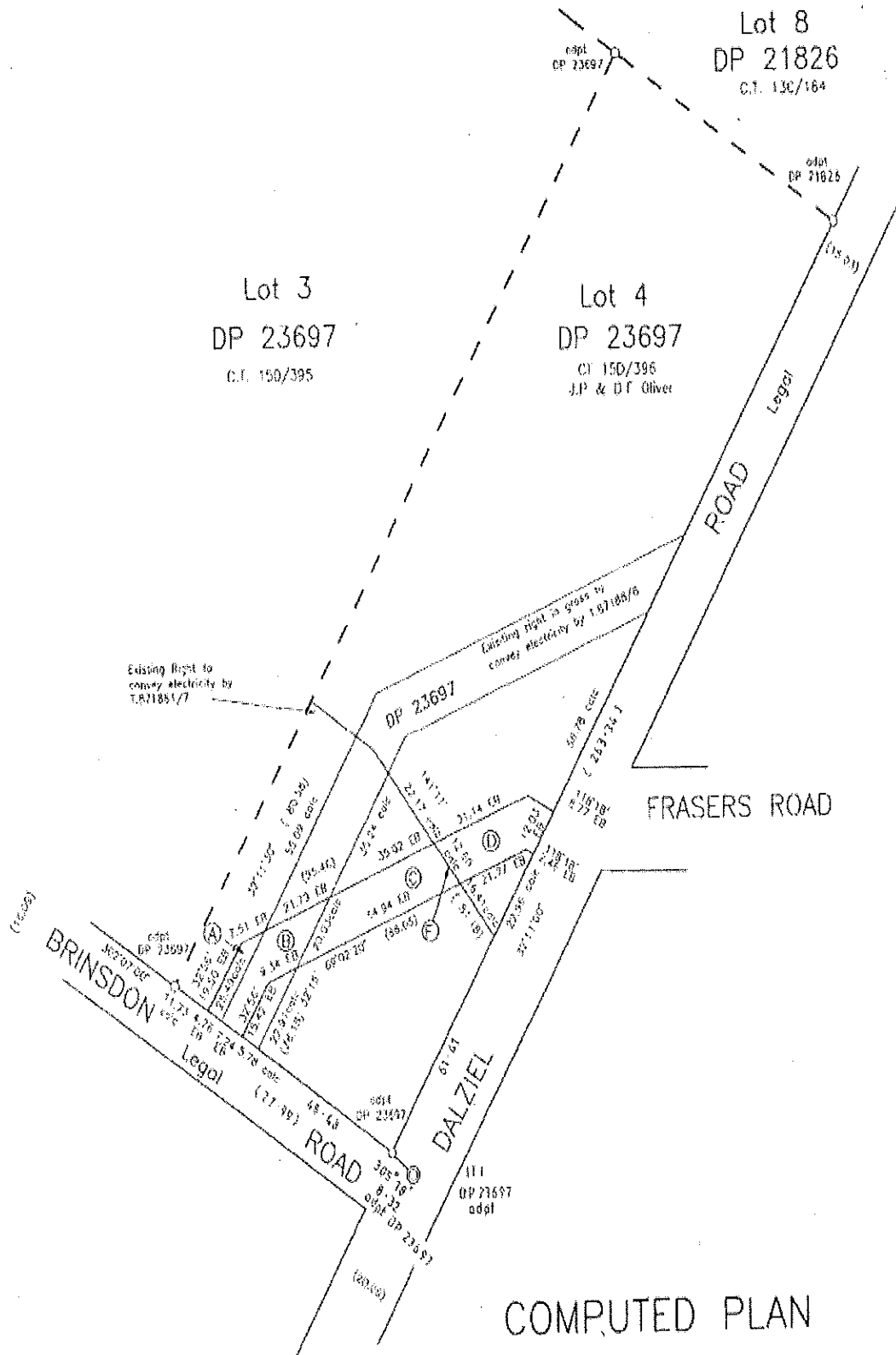








Appendix 3. images Relevant to Easements



RICT Otago
WAKARI

PLAN OF EASEMENT OVER LOT 4 DP23697

IEPA
300