

## Case Study: Garden Road - DP 509214

### The boundary conflict

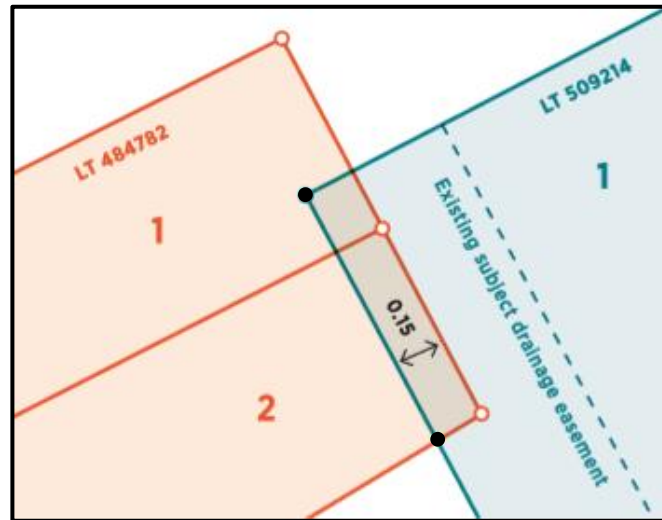
DP 484782, an **approved interim survey**, subdivided Lot 1 DP 25885 on Queens Avenue in 2015, before the introduction of the Canterbury Property Boundaries and Related Matters Act 2016 (CPB Act). The subdivision was carried out to convert a 2-flat cross lease development into two fee simple lots after the flats were demolished due to earthquake damage.

The area was materially affected by earthquake movement; however, a mathematical fit was obtained between old, pre-earthquake marks on three surrounding streets, so the existing boundaries were defined on DP 484782 to maintain original pre-earthquake dimensions. This definition also maintained known relationships with occupation reasonably well. No old boundary marks were found on the boundaries of the land under survey.



In March 2017, after the CPB Act had come into force, the survey for a subdivision of Lot 1 DP 11154 and Lot 2 DP 28364 on Garden Road located two old, reliable, pre-earthquake boundary pegs on the southwestern boundary of Lot 1 DP 11154. This was a common boundary with the land subdivided by DP 484782. The old pegs were found 0.15m inside Lots 1 and 2 DP 484782.

These old pegs confirmed where the Canterbury earthquakes moved the southwestern boundary of Lot 1 DP 11154 to. Therefore, there was a **boundary conflict** in terms of section 9(2) CPB Act, between the northeastern boundaries of Lots 1 and 2 DP 484782, defined on an approved interim survey, and the post-earthquake position of the southwestern boundary of Lot 1 DP 11154. This boundary conflict was a **title conflict**, because titles had issued for Lots 1 and 2 DP 484782 that overlapped the title for Lot 1 DP 11154.



The boundary conflict also affected an existing easement along the southwestern boundary of Lot 1 DP 11154 because it was partly within the overlapping portions of Lots 1 and 2 DP 484782. This easement provides for stormwater to drain across Lot 1 DP 11154 from four benefitting properties to the north.

### Options for resolution

The Garden Road surveyor contacted LINZ for advice on how to deal with the boundary conflict and was advised that the subdivision of Lot 1 DP 11154 could not proceed unless the boundary conflict was resolved. The following three options were identified to facilitate a resolution:

**Option 1:** The owner of Lots 1 and 2 DP 484782 agrees to resurvey those lots in accordance with the 'boundaries moved' principle of the CPB Act and obtains new titles to remove any title conflicts; or

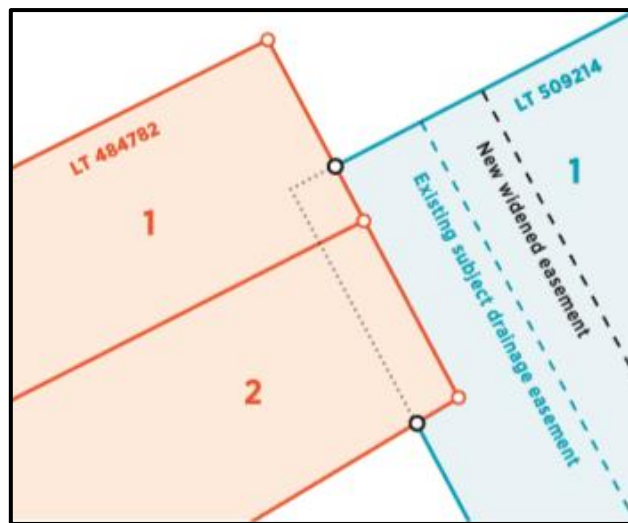
**Option 2:** The owner of Lot 1 DP 11154 relinquishes title to the land in conflict and excludes this land from the new lots created by the subdivision of Lot 1 DP 11154.

**Option 3:** Both owners agreeing to an alternative boundary adjustment involving a subdivision of all three existing lots.

### The resolution

Option 2 was adopted as the most practical solution and the 2m<sup>2</sup> conflict area was excluded from the new lots created on DP 509214.

This had the effect of narrowing the existing easement for part of its length through Lot 1 DP 11154. The stormwater pipe was located and found to still be entirely within the portion of Lot 1 DP 11154 not overlapped by DP 484782. However, additional easements were created over the new Lots 1 and 2 DP 509214 to effectively widen the existing easement. The approval of the four benefitting owners was obtained by the subdividing owner's lawyer, to relinquish their rights over the parts of the existing easement in Lots 1 and 2 DP 484782 and the creation of the additional easements.



Once the method of resolving the boundary conflict was decided, LINZ provided advice to the surveyor and lawyer acting on behalf of the subdividing owner to assist with preparation of the LT Subdivision CSD and associated legal dealings.

Survey dispensation was granted for DP 509214 pursuant to s47(5) Cadastral Survey Act 2002, as follows:

1. *In applying rule 5.1(a)(i) (accounting for all the land), the portion of Lot 1 DP 11154 being relinquished by the landowner (ie the portion contained within Lots 1 and 2 DP 484782) must not be included in a new primary parcel, residue or balance parcel.*
2. *This variation to rule 5.1 is with the proviso:*
  - *In complying with rule 9.6, the Diagram of Survey must include a diagram that shows, by a combination of non-boundary and boundary vectors and points, the individual portions of Lot 1 DP 11154 now contained within Lots 1 and 2 DP 484782. This will require a new boundary point to be defined by survey at the intersection of the boundary between Lots 1 & 2 DP 484782 and the disappearing boundary of Lot 1 DP 11154.<sup>1</sup> This point need not be marked as rule 7.1 does not apply. Rules 8.1(d) and (e) are to apply in regard to these vectors and points.*

<sup>1</sup> The requirement under rule 6.10 for boundary intersections to be defined by survey was exempt on a later survey in similar circumstances.

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- *The Diagram of Survey must also show annotations clearly related to the relevant land 'portion of Lot 1 DP 11154 within Lot 1 DP 484782' for Lot 1 DP 484782 and similarly 'portion of Lot 1 DP 11154 within Lot 2 DP 484782' for Lot 2 DP 484782.*
  - *The survey report, in complying with rule 8.2(a)(ix) must contain information about the overlap/boundary conflict between DP 484782 and DP 11154 and refer to discussions with LINZ.*
  - *The Diagram of Parcels must not show any information relating to the overlap/boundary conflict or the change in easement shape from that on DP 11154.*

DP 509214 and the associated legal dealings were submitted to LINZ in late November 2017. LINZ approved the plan as to survey, deposited the plan and issued new titles for the Garden Road subdivision in early December 2017.

## Compensation

Land owners can claim compensation under section 9(3) CPB Act and sections 58 and 59 of the Land Transfer Act 2017 for losses associated with resolving a title conflict, including loss of land and survey and legal costs. LINZ cannot disclose details of specific compensation claims.

## Other points to note

The boundary conflict between Lot 1 DP 11154 and Lots 1 and 2 DP 484782 was resolved by DP 509214, but there may be boundary conflicts between Lots 1 and 2 DP 484782 and other adjoining properties that remain to be quantified and resolved.