

FILE

20 May 1998

Please Quote: ~~6598050~~

Your Ref: JF5021

Phipps Hawley
Surveyors
PO Box 190
ROTORUA

FILE
Doc No: 88654
copy to: P21846
P21847

Attention: Peter Hawley

Dear Sir

RESOURCE MANAGEMENT ACT 1991
NON-NOTIFIED APPLICATION FOR SUBDIVISION CONSENT
WALKER AND BURGESS

I wish to advise that the following decision has been made under authority delegated to staff in respect of the above application.

That pursuant to Sections 34(4), 104, 105, 108 and 220 of the Resource Management Act 1991, the Rotorua District Council grants conditional consent to the application by Walker & Burgess to subdivide at 5 & 7 Beryl Place, legally described as Lots 121 and 122 DPS 20544.

This consent is subject to the following conditions:

- i) That provision shall be made in the lease agreement for access to and maintenance of the private sewer drain serving house 1 in accordance with the Engineering Code of Practice.*
- ii) That the existing sanitary sewer main crossing the eastern side of the proposed Lot 1 shall be protected by an easement in favour of the Rotorua District Council in accordance with the District Plan.*
- iii) That the storm water easement protecting the storm water main crossing the proposed Lot 1 shall be widened (to be 1.5m either side of the main) across the proposed Lot 2 in favour of the Rotorua District Council, in accordance with the District Plan.*

The reasons for this decision are that:

- 1. The site is zoned Residential B in the Proposed District Plan and the proposal is a controlled activity.*
- 2. The proposal is in accordance with the provisions and requirements of the District Plans for a subdivision in a Residential B zone.*

3. *The environmental effects of this are considered to be minor in that all three all lots and lease areas are occupied by a dwelling and there are no major changes to the existing situation except for a minor boundary adjustment. This is to correct a situation caused by a misplaced fence, whereby proposed Lot 2 will be transferring a 42m² triangle of land to proposed Lot 1.*

Advice Note:

The applicants are advised that:

1. *Although this application has been treated as one, separate survey plans will be required showing the cross lease subdivision and the boundary adjustment.*
2. *Under section 357 of the Resource Management Act 1991, you have a right of objection to Council in respect of the above decision. Any such objection shall be made by notice in writing to the Council within 15 working days of receiving this decision.*
3. *The above consent lapses on the expiry of 2 years after the date of commencement of the consent, unless the consent is given effect to.*

Yours faithfully

Donna Hills

Donna Hills
Planner



Approvals

G. R. Vohmer

C. P. Burgess A. H. J. Burgess
Registered OwnersTotal Area 1756 m²Comprised in CT 120/004 and
CT 120/003

1. Peter Joughin Hawley

Registered Surveyor and holder of an annual practicing certificate (or who may act as a registered surveyor pursuant to section 25 of the Survey Act 1986) hereby certify that this plan has been made from surveys executed by me or under my directions, that both plan and survey are correct and have been made in accordance with the Survey Regulations 1972 or any regulations made in substitution thereof.

Dated at Rotorua this day
of 19..... Signature

Field Book p. Traverse Book p.

Reference Plans CT 120/004, CT 120/003

Examined Correct

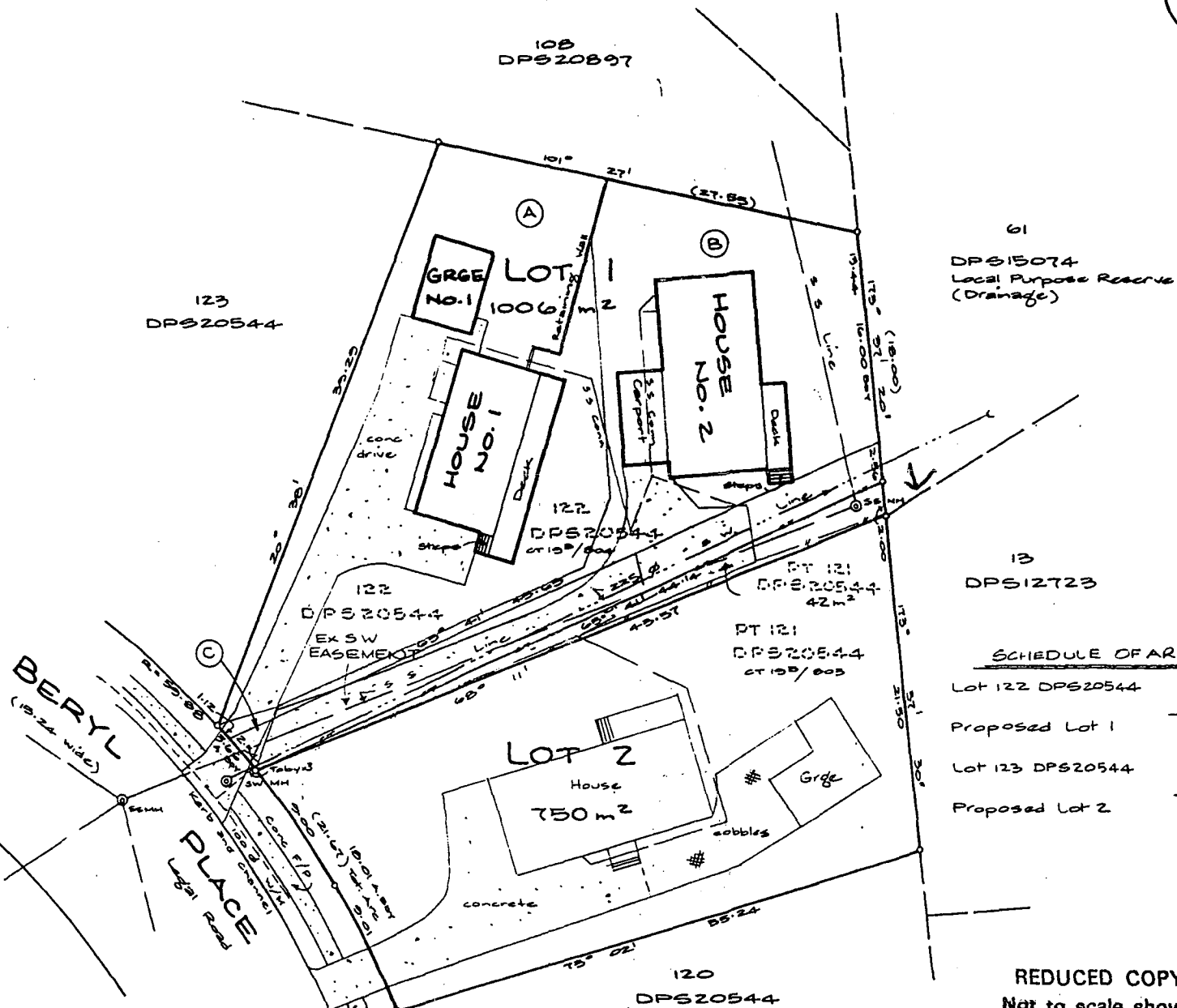
Approved as to Survey

...../...../..... Chief Surveyor

Deposited this day of 19.....

District Land Registrar

5021.2 M



SCHEDULE OF AREAS

Lot 122 DPS20544	964 m ²
	+ 42 m ²
Proposed Lot 1	1006 m ²
Lot 123 DPS20544	792 m ²
	- 42 m ²
Proposed Lot 2	750 m ²

REDUCED COPY
Not to scale shown

LAND DISTRICT SOUTH AUCKLAND

SURVEY BLK. & DIST. IV HOROHORO

NZMS 261 SH 1 RECORD MAP No 44-89

PROPOSED ADJUSTMENT TO BOUNDARY

BETWEEN LOTS 121 AND 122 DPS20544

AND CROSSEASE OF HOUSES

TERRITORIAL AUTHORITY ROTORUA DISTRICT

Surveyed by PHIPPS HAWLEY LTD JP 5021

Scale 1:200 Date MAR 1998

Planners note: Fence is not on boundary.

J. Hawley M.N.Z.I.S., R.S., F.I.J.

ate:

J. Andrews B.Surv., M.N.Z.I.S.

18 February 1998

Our Ref: JF5021

Harcourts
P O Box 1897
ROTORUA

Attention: Mr Richard Evans

**GRANT WALKER. CROSS LEASE OF HOUSES ON LOT 122 DPS20544.
7 BERYL PLACE.**

We have now fixed the position of the houses and other topographical features and services relative to the property boundaries, and we forward copy of part of the plan intended for submission with the application for consent by Council, and later the legal cross lease plan. ~~You will note~~ there is something of a problem on the south east boundary. It would appear that when the boundary was fenced and the driveway construction the correct boundary peg was used at the road end of the boundary, but the peg between Lot 13 DPS12723 and Lot 61 DPS15074 adjoining, was used at the other end of the line. As a result the Walker property is occupying a triangle of land owned by the adjoining Lot 121 DPS20544.

We are not sure what the District Council's attitude to the adverse occupation will be. They may consider that their consent should be subject to the driveway formation at least being bought within the Walker property, as the neighbour could insist on relocation of the fence to the proper boundary at any time. A less disruptive solution would be the purchase of the triangle of land from Lot 121 DPS20544 if the owner agrees to sell. Done as a separate exercise, our costs for such a boundary adjustment would be round \$3000 incl Council and LINZ fees, but carried out as part of the present cross lease subdivision, would add probably only \$500. There would be some additional legal fees but again these should not be significantly extra if completed as part of the cross lease exercise.

We have shown possible use area lines on the plan, area A being for house 1, B for house 2, and the triangular area C joint use. These lines can of course be easily altered at this stage if required.

We have included a copy of this letter and plan as you will no doubt wish to send one on to Grant Walker with your recommendations.

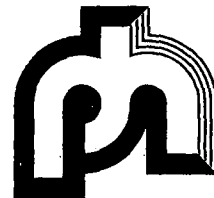
We will not proceed further until we hear from you.

Kind regards.
Yours faithfully
Phipps Hawley Ltd
PJ Hawley

Phipps Hawley
LIMITED

REGISTERED SURVEYORS

20 Haupapa Street
PO Box 190, Rotorua
Phone 07 347 6995
Fax 07 347 6994



12/3/98
[Signature]

Adjoining a neighbours
driveway over property

A subdivision may be
[Signature]

MAILED
Burgess
5 Beryl
348 1565

Graham Griffin 348 9188
025-771-678

Land and Engineering Surveyors • Land Development Consultants • Resource Managers
Town Planning

3rd March 1998\

TO: Grant Walker
C.P & A.H Burgess
Trevor Sando - Davys Burton 347-9500
Peter Hawley - Phipps Hawley - 347-6994

FROM: Richard Evans

RE: Subdivision No 7 Beryl Place
Incorrect Boundary Fence Alignment

implies fence built
before the house
which was not the case

I have now spoken with Mr and Mrs Burgess at No 5 who built the fence, Graham Griffen who built the house at No 7 and Anthony Timmer, the contractor.

The Burgess' built the fence in good faith, with Grant's consent and contribution on a line they were assured, by a Surveyor, was the correct one. The Surveyor was the one who determined the line of the new concrete driveway and the Burgess' were not happy that the line was correct even then.

no, I said the builder gave us the assurance based on the surveyors studies.
Unfortunately neither Anthony Timmer or Graham Griffen are aware of any "Surveyor" but agreed that a line was determined from what was "clearly the correct peg" at the rear.

With the advantage of hindsight everyone should have used the services of a registered surveyor.

The Burgess' have placed the fenced incorrectly. There is little to be served by moving the fence, indeed neither party wish for this to happen. They acted upon what they believed to be the correct advice.

The equitable solution is to agree to a boundary adjustment. This could be carried out simply by Phipps Hawley for \$500.00 as part of the subdivision of No 7 Beryl Place.

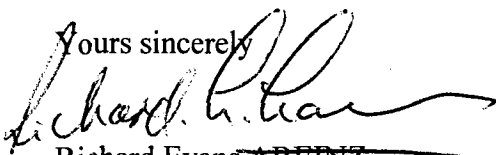
I am hard pushed to see why Grant should pay because he wasn't responsible for the fence. Anthony Timmer of Devon Cottages, is no longer in business and Graham Griffen was only the building contractor employed by Devon Cottages.

Either the "surveyor" who selected the line should be involved or Mr and Mrs Burgess either pay themselves or sue the "surveyor".

In any event, until this is resolved, my client Grant Walker, is being seriously disadvantaged and we now need a remedy.

This letter is intended as an update/advisory. Please let me know what you suggest we do next?

Yours sincerely



Richard Evans AREINZ
DIRECTOR

Rotorua Office: Cnr Amohau & Ranolf Streets. Telephone 07-348 6136. Facsimile 07-348 6132.

Branch Office: 204 Main Road, Ngongotaha. Telephone 07-357 5966. Facsimile 07-357 5964

P.O. Box 1897, Rotorua, N.Z. DX JP 30058. E-mail: harcroto@wave.co.nz

6th March 1998

Mr & Mrs Burgess
5 Beryl Place
ROTORUA

Dear Mr and Mrs Burgess

RE: Your boundary with no. 7 Beryl

It now appears that Devon Homes (Anthony Timmer) provided the builder with a site plan and measurements, boundaries etc. It is clear that the plan was flawed and everyone was working, albeit with good intention, from the wrong base. Devon Homes no longer exist as a legal entity and Anthony Timmer is in no position to do anything about it.

Grant Walker has agreed that he will pay for the boundary adjustment, but without any acknowledgement of liability on his part or compensation.

Could you please confirm your acceptance of this suggestion to me?

Yours sincerely



Richard Evans A.R.E.I.N.Z.
DIRECTOR
Geyser City Real Estate Ltd MREINZ

03.03.98

To: Richard Evans
Grant Walker
Trevor Sando - Davys Burton
Peter Hawley - Phipps Hawley

I am writing in response to Mr Richard Evans letter of 03.03.98, regarding the subdivision of 7 Beryl Place, Rotorua. My husband and I occupy the property at 5 Beryl Place.

As indicated in Mr Evans letter, at the time Graham Griffen built house No. 2 at 7 Beryl Place, my husband and I disputed the line Mr Griffen identified as the boundary. A wooden peg set into the ground between the properties had been shown to us as a marker of the boundary line, by the previous owners of our house. The new line set by Mr Griffen crossed onto 'our' property. Mr Griffen advised us that the peg in fact identified sewerage lines, and that the boundary line as indicated by surveyors, was as he had set it. My husband has a recollection of a bearded surveyor taking readings, and although we can not identify him, either Graham Griffen or Anthony Timmer should have this documentation as house No. 2 is approximately two years old.

I take exception to Mr Evans comment that "The Burgess' have placed the fence incorrectly". The fence was erected some time after the house and driveway at 7 Beryl Place were completed. As the fence is built against the driveway, I am at a loss to see the validity of Mr Evans statement. We suggest the driveway is placed incorrectly, and as the plan of the boundary suggests, the driveway encroaches on a significant portion of land over the boundary.

As an option Mr Evans suggests that my husband and I be responsible for the costs of a boundary adjustment. I strongly feel that these costs should be borne by the agents who acted for Mr Walker.

As the fence appears to be entirely on our property, I fail to see that we are under any obligation to move it. I do not see this as a realistic solution, as I am sure Mr Walker would not be prepared to incur the costs of moving the driveway.

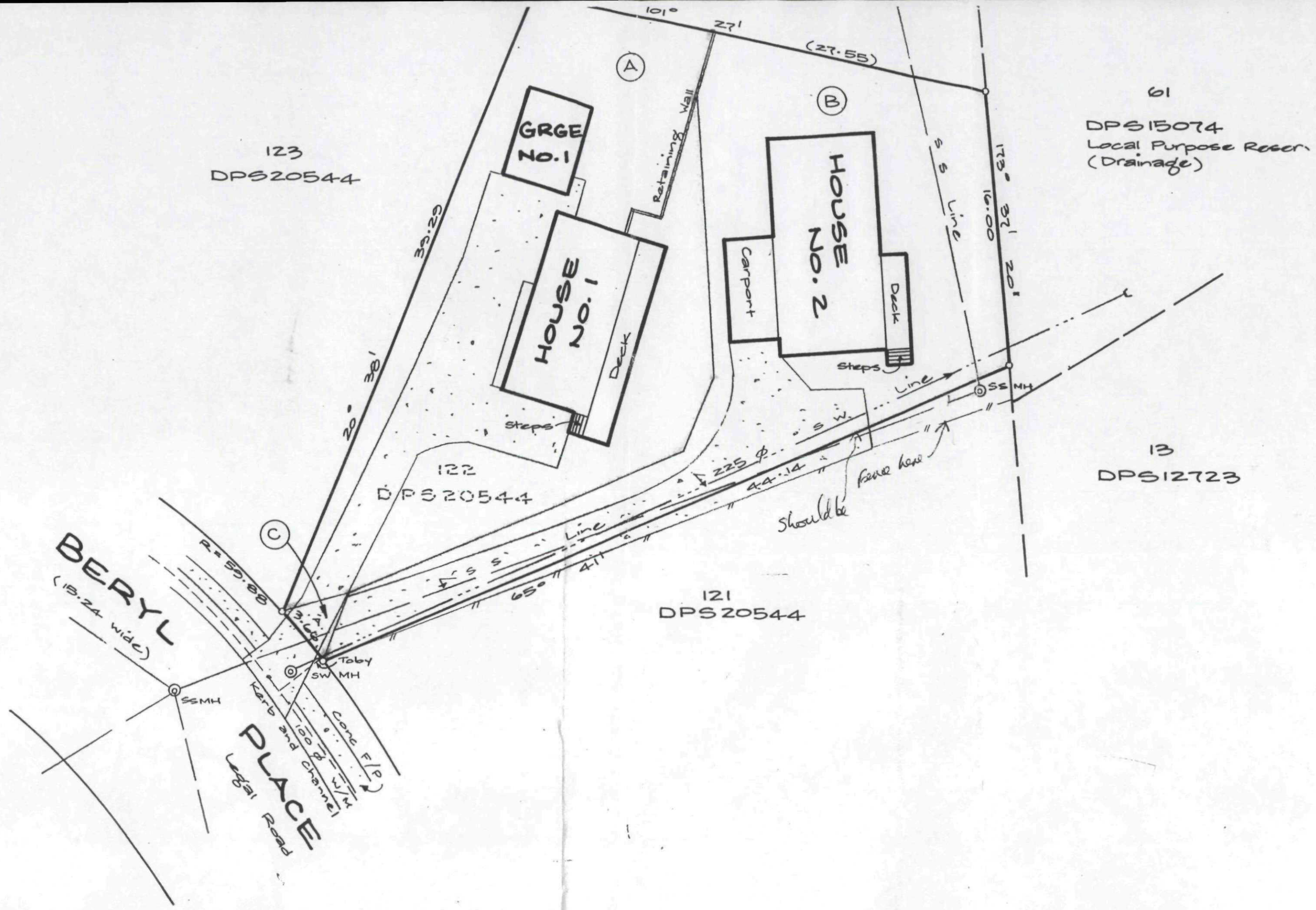
I suggest that Mr Hawleys suggestion of Mr Walker purchasing the triangle of land over the boundary as the most sensible and equitable solution, should he wish to pursue applying for cross lease consent.

Yours sincerely

ABurgess

Anita Burgess

(Lx 121)



123
DP 20544

122
DP 20544

121
DP 20544

61
DP 15074
Local Purpose Reservoir
(Drainage)

13
DP 12723

BERYL PLACE
(18.24 wide)

Legal Road

should be fence here