



FLETCHER VAUTIER MOORE  
LAWYERS

File -> 1928020700

RECEIVED  
03 SEP 2009

T.D.C. MOTUEKA

The Chief Executive  
Tasman District Council  
Private Bag 4  
Richmond

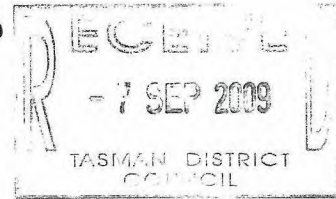
Office Motueka  
Author Terry Frater  
Telephone 03 528 7030  
Facsimile 03 528 9120  
Email tfrater@fvm.co.nz  
Matter No 2884561

*signed & returned*

3 September 2009

*7/9/09  
M.D. Frater*

Attention: Consents Coordinator



Dear Sir

**YOUR REFERENCE: 1928020700  
T T DUNN AND DRAINAGE EASEMENT**

We act for Mr Dunn who owns the property at 233 Motueka Valley Highway which is comprised in Certificate of Title NL25/147 (part-cancelled).

Mr Dunn has recently discovered that a drainage easement which he had initially arranged to have in place in or about 1977, has not, in fact, been registered with Land Information New Zealand. That situation had earlier come to his attention in 1993 at which time he understood that steps had been taken to have the Council issue a Certificate pursuant to Section 461 Local Government Act 1974.

He has produced to us a copy of a letter written to this firm dated 3 November 1993 in which the Council set out that its requirements for the issue of such a Certificate were:

- A. Sighting evidence of the original agreement to the drainage easement.
- B. Preparation of a form suitable and submitting the same for Council seal.

It would appear that the matter was never completed at that time and we now wish to remedy the situation.

Accordingly, we have prepared the form of Certificate which is now **herewith** and which we trust you will find to be in order for the purposes of signing by the Council. We note the Council requirement for being signed under seal but we understand that the Certificate can be signed by an authorised officer and we have prepared it in that form.

As far as sighting of evidence is concerned we also **enclose** a copy of the Nelson Land and Deeds Registry Office letter dated 21 March 1977 which refers to the grant of easement

**Nelson**  
Level 1, 126 Trafalgar Street,  
PO Box 90, Tel: (03) 548 1469,  
Fax: (03) 548 2994, DX WC 70009

**Richmond**  
2 Cambridge Street,  
PO Box 3029, Tel: (03) 543 8301,  
Fax: (03) 543 8302, DX WC 71017

**Motueka**  
12 Wallace Street,  
PO Box 23, Tel: (03) 528 7030,  
Fax: (03) 528 9120, DX WC 72002

between Mr Sangster and our client from we take it that the grant of easement was signed and that the only requirement was for an appropriate plan to be lodged.

The associated Client Authority and Instruction form is also **herewith** for signing by the Council.

We look forward to return of the signed documentation, for registration, in due course.

Yours faithfully  
**Fletcher Vautier Moore**

A handwritten signature in black ink, appearing to read 'Terry Frater', written over a horizontal line.

**Terry Frater**  
Registered Legal Executive  
Motueka Office

**CERTIFICATE ISSUED PURSUANT TO SECTION 461 LOCAL GOVERNMENT ACT 1974  
BY  
TASMAN DISTRICT COUNCIL  
IN RESPECT OF A PRIVATE DRAIN**

Background

1. Thomas Tweedie DUNN ("Dunn") is registered proprietor of all that land situated at Pangatotara containing 1416 m<sup>2</sup> more or less being part Rural Section 1 of 32 District of Motueka comprised in Certificate of Title NL 25/147 (part-cancelled) (Nelson Registry) ("the dominant tenement").
2. When Dunn took title to the dominant tenement by way of transfer registered under No: 155956 on 7 March 1974 he arranged for lodgment with the District Land Registrar of Nelson of a Grant of Easement from his then neighbour Mervyn Sidney Sangster ("Sangster") at that time the occupier of the land adjoining the dominant tenement being then Part 1 of 32 and being "then" part of the land comprised in Certificate of Title 3A/1079 (Nelson Registry) and subsequently as registered proprietor of such adjoining land then described as Lot 1 Deposited Plan 8747 being part of the land in Certificate of Title 4A/1205 (Nelson Registry) ("the original servient tenement") for the right to drain sewage ("the Easement") from the dominant tenement and in which area is situated the soak pit from the septic tank situated on the dominant tenement. (N.B. At the time of the grant Sangster was the unconditional purchaser of the property in an exchange of land with the then registered proprietors **Maurice Henry Alborough** and **Patrick Desmond Connery**).
3. The District Land Registrar requisitioned the said lodgment for a diagram of the Easement to include full dimensions (bearing as well as distance) and appellations for the servient and dominant tenements which was subsequently supplied by Cotton and Light, Surveyors of Motueka. A copy of the plan is attached. The Grant of Easement does not appear as subsequently having been registered on either the titles to the dominant tenement or the original servient tenement.
4. The original servient tenement has been subsequently sold, subdivided, and sold again and the title comprising the land upon which the Easement is situated now records Atamai Village Council (AVC) as registered proprietors, containing 9.2138 hectares more or less being Lot 6 Deposited Plan 311683, identifier No: 46122 (Nelson Registry) ("the servient tenement").
5. AVC has recently queried Dunn's right to drain sewage, and upon finding the Grant of Easement not registered Dunn has applied to Tasman District Council ("the Council") to issue a certificate pursuant to Section 461 Local Government Act 1974.

OPERATIVE PART

Council being satisfied a valid agreement to grant an Easement for the right to drain sewage over that part of the servient tenement set out on the diagram attached hereto was made between Sangster and Dunn for the benefit of the dominant tenement, HEREBY CERTIFIES that:

- (a) Part Rural Section 1 of 32 District of Motueka CT NL 25/147 (part-cancelled) is actually served by a private drain situated (now) on Lot 6 Deposited Plan 311683 CT 46122 (Nelson Registry).

- (b) The Registrar General of Land shall register against Certificate of Title 46122 (Nelson Registry) the free and uninterrupted use of the drain and the right to enter upon the land comprised therein to effect necessary relaying or repairs by the registered proprietors for the time being of the land comprised in CT NL 25/147 (part-cancelled).

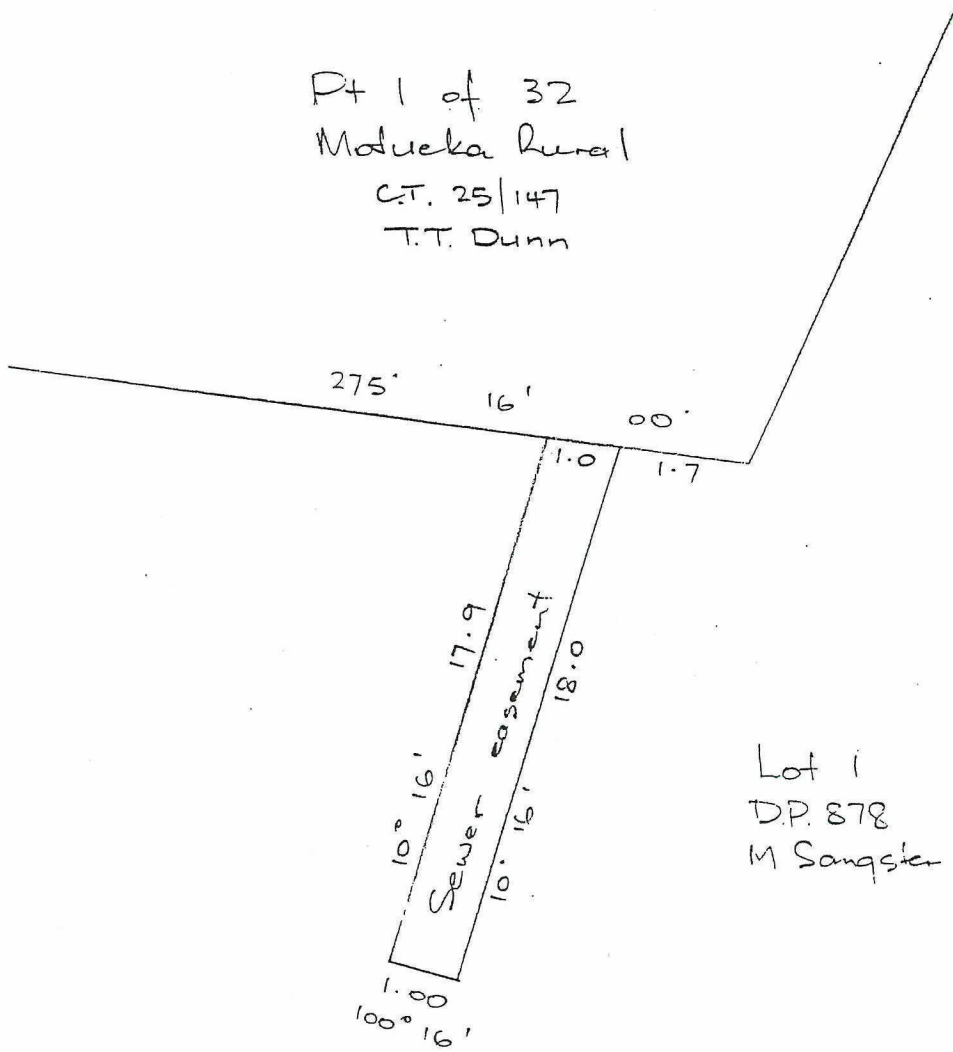
Signed at Richmond the *7<sup>th</sup>* day of *September* 2009

By **TASMAN DISTRICT COUNCIL**

Authorised Officer



Pt 1 of 32  
Molueka Rural  
C.T. 25/147  
T.T. Dunn



Lot 1  
D.P. 878  
M Sangster



DEPARTMENT OF JUSTICE

LAND AND DEEDS REGISTRY OFFICE

Private Bag **NELSON**

Telephone **82044**

21 March 1977.

Messrs. Lewis & Wheeler,  
Solicitors,  
P.O. Box 29,  
MOTUEKA.

Dear Sirs,

re: Grant of Easement - M. S. Sangster to T.T. Dunn  
Cs.T. 3A/1079 and 25/147

In reply to your letter of 11 March 1977, I regret to advise that your diagram is not acceptable in its present form.

Full dimensions (bearing as well as distance) are required on the line of the easement. Appellations should also be shown for servient and dominant tenements. It would be best if a surveyor prepared the diagram.

Yours faithfully,

(E. P. O'Connor)  
District Land Registrar



FLETCHER VAUTIER MOORE

LAWYERS

Client Authority and Instruction (A & I) to Fletcher Vautier Moore

Register by Edealing a Certificate issued pursuant to Section 461 Local Government Act 1974

MATTER NUMBER:	288456.1	LINZ DEALING NO:	_____
CLIENT COMPANY:	Tasman District Council		
LAWYER INSTRUCTED:	Fletcher Vautier Moore		
EASEMENT INSTRUMENT	Title Reference:	NL25/147 (part-cancelled)	
<b>*Note a paper form Certificate needs to be signed and attached to the A &amp; I Form.</b>	Instrument Type:	Certificate issued pursuant to Section 461 Local Government Act 1974	
	DP Number:	Lot 6 DP 311683 Certificate of Title 46122 (Nelson Registry)	

AUTHORITY AND INSTRUCTION FOR TASMAN DISTRICT COUNCIL:

The signatories to this form confirm that:

- (i) I am/we are properly and duly authorised by law to sign this Authority on behalf of **Tasman District Council**;
- (ii) this authority is binding on **Tasman District Council**;
- (iii) this form is for the transaction noted above;
- (iv) **Tasman District Council** is not subject to any statutory management order, the appointment of a receiver or liquidator, or similar;
- (v) has passed the necessary resolutions as required by its empowering constitution, rules or statute to authorise the transaction noted above;
- (vi) as required by s164A of the Land Transfer Act 1952 I/we **irrevocably authorise** and **instruct** Fletcher Vautier Moore on behalf of **Tasman District Council** to register the instruments detailed above as an electronic edealing;
- (vii) I/we understand that by signing this form **Tasman District Council** is **legally bound** by the electronic instruments certified and registered on its behalf pursuant to this authority and instruction as if such instruments had been signed by me/us on behalf of **Tasman District Council**.

Signed for and on behalf of **Tasman District Council** by:

*Mark David Morris*

Signature of Authorised Signatory

*7/9/09*

Date

**Authorised Signatory** Mark David Morris Full Name of Authorised Signatory

**WITNESS & CLIENT IDENTITY FOR AUTHORISED SIGNATORY**

**AUTHORISED SIGNATORY**

Tick the client photo identification used from the options below. Either attach a photocopy of the photo identification OR write the driver's licence number, passport number or relevant card number.

- Driver's Licence OR Driver's Licence Number: AU787439 expiry 18/4/2017
- Passport OR Passport Number: \_\_\_\_\_ expiry \_\_\_\_\_
- Other Photo ID, eg: Firearms Licence/Photo Credit Card
- OR Relevant Card Number \_\_\_\_\_ expiry \_\_\_\_\_

I hereby certify that:

- (i) I have witnessed Authorised Signatory Mark Morris (or his/her attorney) sign this form; and
- (ii) I have sighted the original form of identity ticked above; and
- (iii) The photo, name and signature match Authorised Signatory Mark Morris name and identification provided; and
- (iv) I confirm that the **photo and name** match the person who signed this form; and
- (v) I confirm that Authorised Signatory Mark Morris appears to be of **sound mind**.

**Signature of Witness**

**Full Name of Witness** (please write in block letters)

**Occupation of Witness** (please write in block letters)

**City of Residence of Witness** (please write in block letters)

Wayne  
Wayne Anthony Horner  
Plumber  
Richmond, Nelson

**FILE**

19280 20700

RECEIVED  
08 SEP 2009

T.D.C. MOTUEKA

Fletcher Vautier Moore  
PO Box 23  
Motueka 7143

GST Number: 51076806  
Invoice Date: 7/09/09  
Tax Invoice No: 57972  
Customer No: 07301  
Order No.

**Tax Invoice**

QTY.	DESCRIPTION	RATE	AMOUNT
	T T DUNN AND DRAINAGE EASEMENT		170.00 *

(\* Incl GST \$18.89)

**Balance Due**  
\$170.00

**Head Office RICHMOND**  
189 Queen Street  
Private Bag 4, Richmond 7050  
Ph (03) 543 8400  
Fax (03) 543 9524

**Service Centre MURCHISON**  
92 Fairfax St  
Murchison 7007  
Ph (03) 523 1013  
Fax (03) 523 1012

email - Info@tdc.govt.

19280 20700  
Jill 07301  
Please invoice FUM \$170 for Document Execution fee e post out.  
I have already taken copies for the property file. Mark M.

142  
120  
72  
07301  
\$170.00

1928020700

3 November 1993

Messrs Fletcher Vautier Moore  
Solicitors  
P O Box 23  
MOTUEKA

Dear Sirs

**T T DUNN & DRAINAGE EASEMENT**

We refer to your letter of 11 October 1993.

Council requirements for the issue of a Certificate under Section 461 of the Local Government Act 1974 are:

- (a) sighting evidence of the original agreement to the drainage easement i.e. Transfer Grant of Easement Lodgement.
- (b) preparation of a form suitable and submitting the same for Council seal.

Yours faithfully



Daryl Page  
CONSENTS CO-ORDINATOR

**Main Office**  
189 Queen Street  
Private Bag 4,  
Richmond 7031 N.Z.  
Fax (03) 544-7249  
Tel (03) 544-8176

**Murchison  
Service Centre**  
92 Fairfax Street  
Murchison  
Tel (03) 523-9004

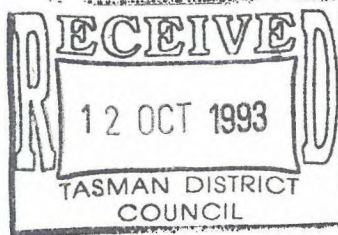
**Motueka  
Service Centre**  
220 High Street  
P.O. Box 123, Motueka  
Fax (03) 528-9751  
Tel (03) 528-7700

**Golden Bay  
Service Centre**  
78 Commercial Street  
P.O. Box 74, Takaka  
Fax (03) 525-9972  
Tel (03) 525-9516

FLETCHER VAUTIER MOORE  
BARRISTERS & SOLICITORS

11 October 1993

The Chief Executive  
Tasman District Council  
Private Bag 4  
RICHMOND



Dear Sir

RE: T T DUNN AND DRAINAGE EASEMENT

In about 1975-76 our abovenamed client obtained a specified departure to enable him to build a house on his land at Motueka Valley Road and such consent was subject to him obtaining a right to discharge his septic tank outfall on to his neighbour's land. The neighbour, Mr M Sangster, agreed to that and we attach a copy of a plan prepared by Messrs Cotton & Light at that time for the purposes of attaching to a Transfer Grant of Easement. While we have correspondence indicating that a Transfer Grant of Easement was lodged with the District Land Registrar at Nelson, it was apparently never registered and we cannot find an explanation for that.

In order to protect our client's interest in the drainage easement we would be grateful if you would advise us as to what your requirements would be for the issue of a Certificate under Section 461 of the Local Government Act 1974.

Yours faithfully  
FLETCHER VAUTIER MOORE  
PER:

W M L Wheeler  
MW:EB:B12 / ENCL

R17 93-189 Mytton Subcl  
Why cant they continue  
with NOT granting the  
easement?

Please refer to the writer when responding.

R.

Denis

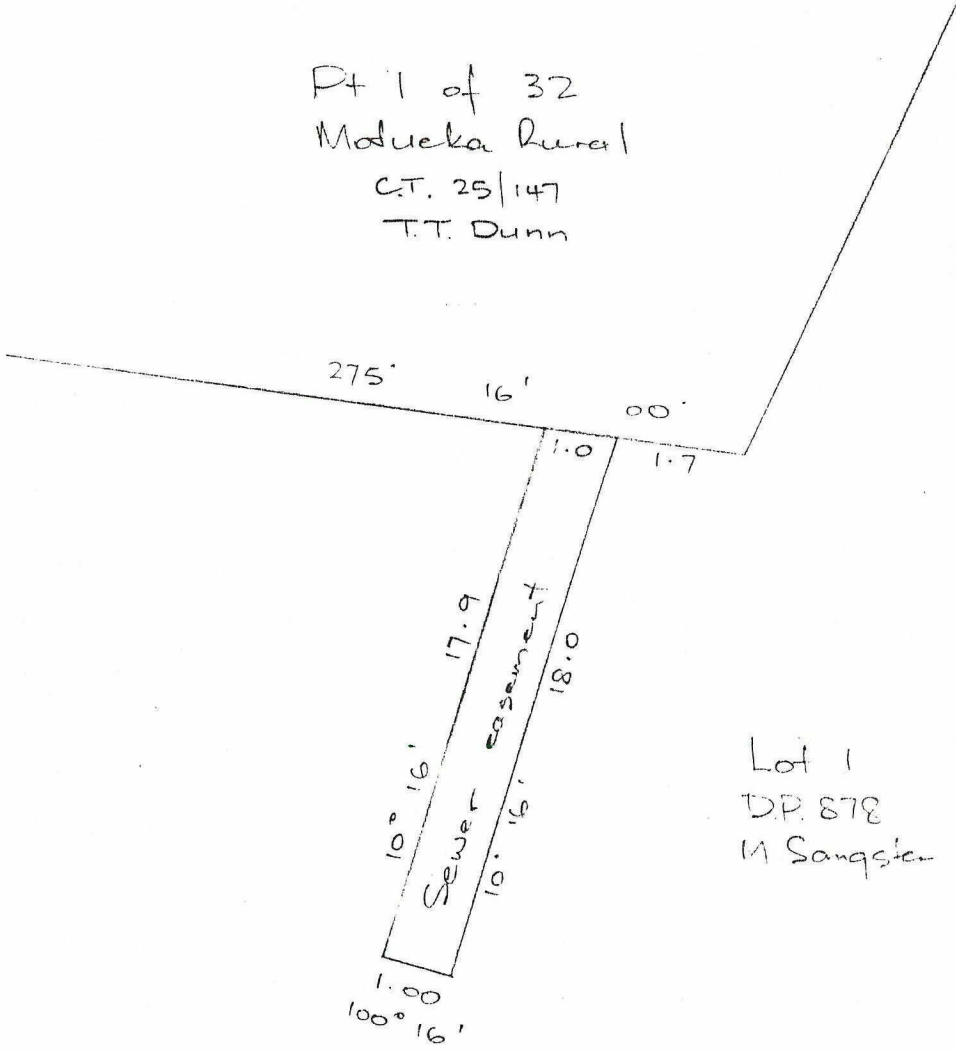
Copy of S461 LGA attached

Do we simply advise that they should prepare a form suitable and submit to Council for sealing??

Acceptable to me.

15 Greenwood Street, PO Box 23, Motueka, New Zealand. Tel 03 528 7030. Fax 03 528 9120. DX 15102  
29/10/93 -

Pt 1 of 32  
Matucka Rural  
C.T. 25/147  
T.T. Dunn



Lot 1  
D.P. 878  
M Sangster

**[460. Construction of private drains through adjoining premises]**—(1) Where, in the opinion of the council, the practical route of any new private drain is through one or more adjoining premises, and any owner or owners of any of the 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 exercise the powers provided, 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 work, including the payment of compensation for 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 in respect to the amount so recoverable as if it were an amount made by the council under section 463 of this Act.

(4) If agreement cannot be reached between the council and any claimant for any such 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]]**.

Cf. 1954, No. 76, s. 226; 1956, No. 64, s. 253

**[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 the 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 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 the free and uninterrupted use of the drain and the right to enter upon the land to effect necessary relaying or repairs, or to recover contribution **[[paragraph (e)]]** of this subsection the cost of any repairs to the drain, against the titles to the lands through which the drain passes.

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 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.

If any question arises as to the liability of any owner or occupier under any provision of subsection (1) of this section, the District Court **[[the District Court]]** shall have jurisdiction to hear and determine the question, and the decision of the Court shall be final.

Cf. 1954, No. 76, s. 227; 1956, No. 64, s. 254

In subs (1) the expression "paragraph (e)" was substituted for the expression "paragraph (c)" by s. 39 of the Local Government Amendment Act 1980.

**[462. Council may declare private drain to be public]**

(1) The council may, by resolution passed at a meeting