

The Skeletons in Shrimpton's Creek

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ABSTRACT

Shrimpton's Creek flows through the major drainage catchment in the Local Government Area of City of Ryde. The question of ownership of the bed of Shrimpton's Creek was raised, discussed and resolved in a previous paper at APAS2019 ("Status of a stream: Who owns the creek?"). This involved collecting every title and every Deposited Plan for the entire five-kilometre length of Shrimpton's Creek. In addition to discovering the ownership issues within the various sections of Shrimpton's Creek, many anomalies and side stories were uncovered: the skeletons in Shrimpton's Creek, which suggested further elaboration and in-depth discussion. Problems began to surface after the creation of natural boundaries in the Old System subdivisions, and the Primary Applications which followed them. Some surveys adopted, as the natural boundary, either bank or centreline of Shrimpton's Creek. Other surveys adopted a right line boundary beside the creek, and some surveys retained the whole of the bed of the creek within one land parcel or created drainage easements. This paper delves into some of the interesting and fascinating cadastral questions raised from pawing through all of the land titles and Deposited Plans. It describes in detail some of the anomalies and strange happenings uncovered during the research into the determination of ownership of the bed along the course of Shrimpton's Creek.

KEYWORDS: *Middle thread, Primary Application, natural boundary, drainage easement.*

1 INTRODUCTION

The many issues related to riparian boundaries in regards to the integrity of the cadastre have been previously discussed, e.g. most recently in Songberg (2016, 2019), de Belin (2019) and Thompson (2019). This paper expands on these discussions, using each time a particular case as an example.

Shrimpton's Creek is approximately 5 km long and flows through the largest stormwater catchment area within the Local Government Area of the City of Ryde. Issues uncovered by de Belin (2019) have produced an abundant array of anomalies and strange happenings when it comes to such straightforward processes as the definition of land subject to a Primary Application, the creation of natural boundaries for land parcels and the creation of drainage easements for the benefit of City of Ryde. These anomalies and strange happenings are the skeletons in Shrimpton's Creek (Figure 1).

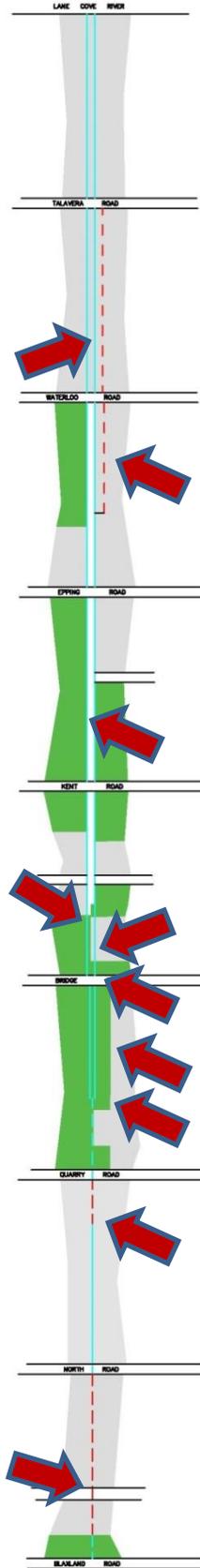


Figure 1: Schematic diagram of Shrimpton's Creek, showing ownership by City of Ryde (green) and the whereabouts of the skeletons.



Figure 4: Detail of DP 1016711 (1999), showing “Easement for Drainage 2.44 wide”.

How did this easement suddenly become 2.44 m wide? No new easement was created! Recent Strata Plan 91335 (2016) shows “*Right of Drainage*” and “*Easement for Drainage*”, both 2.44 m wide (Figure 5), and the Certificate of Title also cites to the two original transfers mentioned previously.

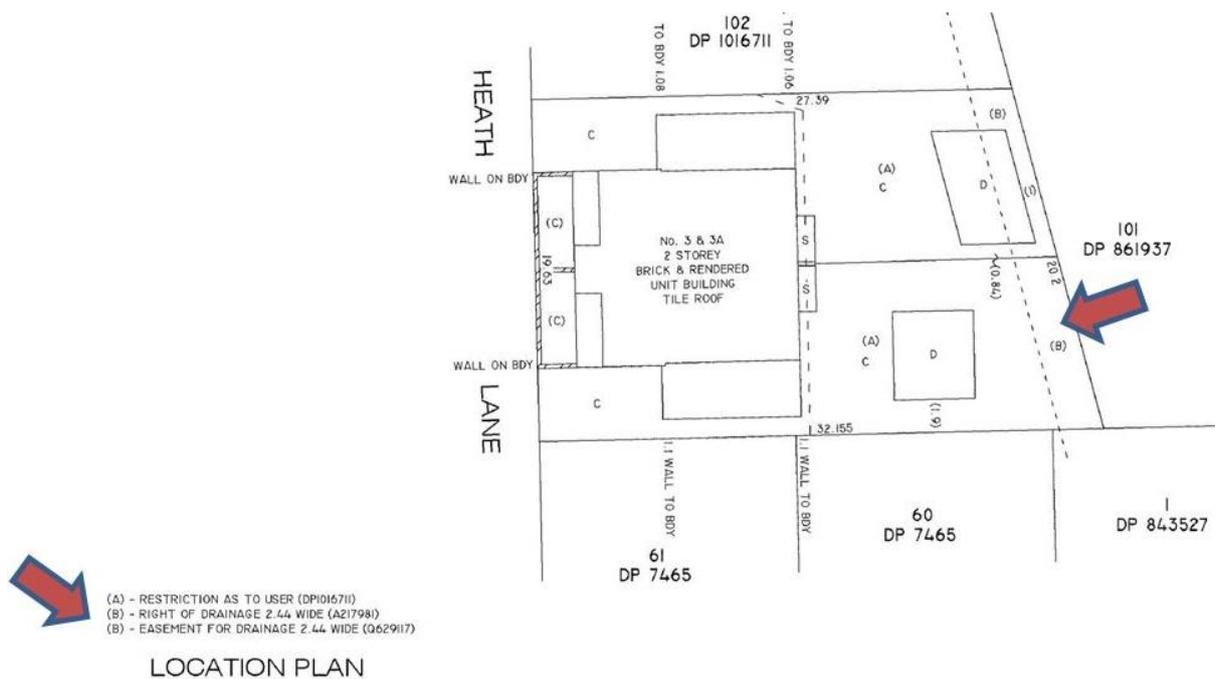


Figure 5: Detail from SP 91335, showing “Right of Drainage” and “Easement for Drainage”, both 2.44 m wide.

2.2 Why not Variable Width in the First Place?

DP 389640 (1954) and DP 27088 (1956) created adjoining lots with a natural boundary between, being the centreline of a “*small watercourse*”. Dimensions in these two DPs, surveyed by two different firms, indicate that the creek has no width. DP 393494 (1955) and DP 27088 (1956) show dimensions “*to creek*” but mean to the centreline of creek (Figure 6).

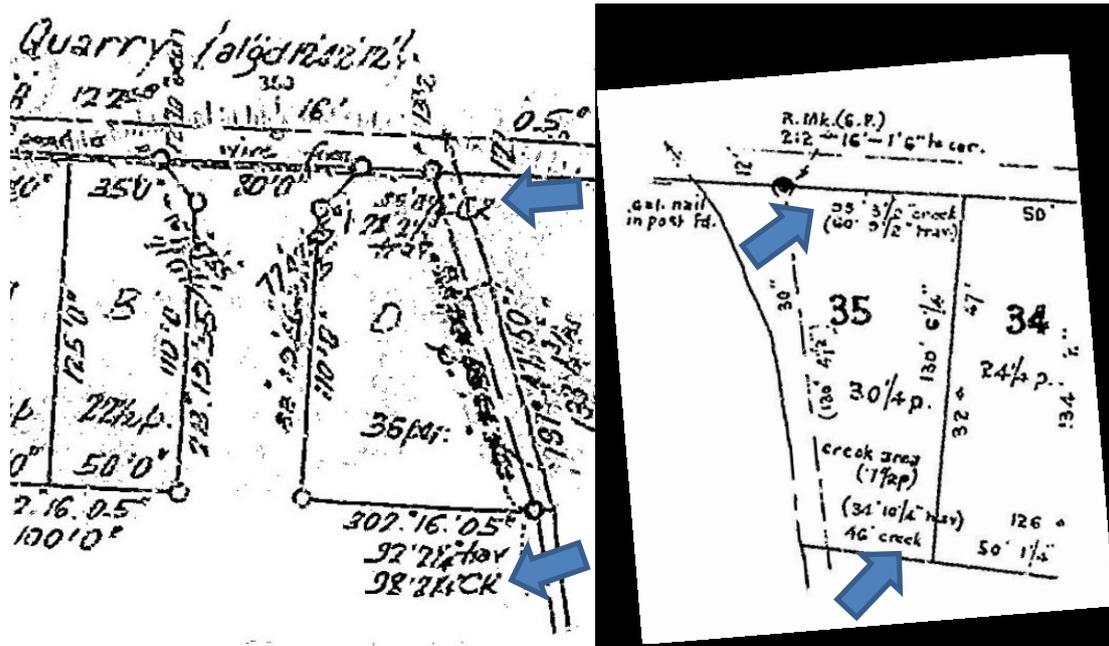


Figure 6: Detail of DP 393494 (1955) and DP 27088 (1956), showing boundaries, Lot D and Lot 35, “to creek”.

DP 701738 (1982), a 2-lot subdivision of Lot D and Lot 35, created a single right line boundary, generally following along a fence occupation, between the new Lots 1 and 2, which effectively eliminated the previous natural boundary (Figure 7).

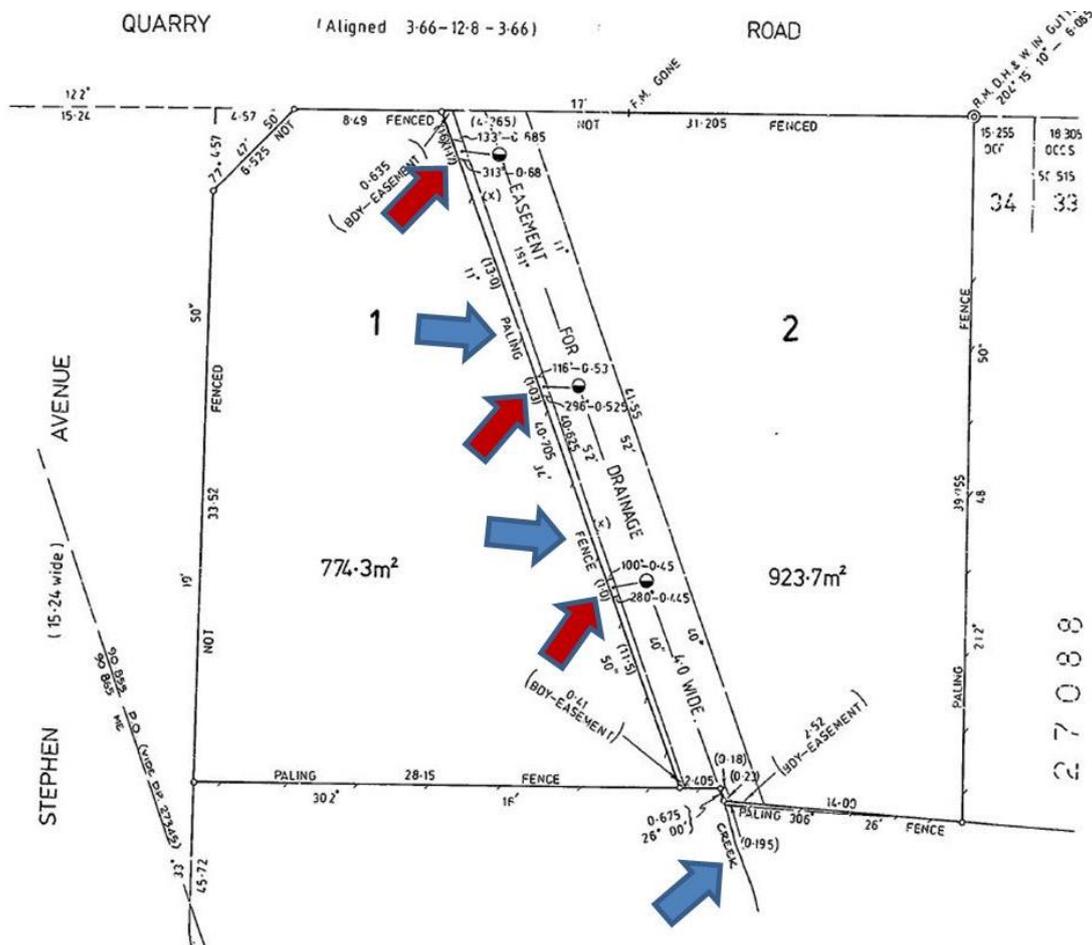


Figure 7: Detail of DP 701738 (1982), showing right line boundary between Lots 1 and 2.

This DP 701738 (1982) created an “*Easement for Drainage 4.0 wide*”, for the benefit of City of Ryde, over a large concrete stormwater drainage culvert, which was constructed roughly along the centreline of the original small watercourse. The western edge of this Easement for Drainage fell short of the new lot boundary by between 0.41 m and 0.635 m.

DP 701738 (1982) also created three “*Easement for Drainage 1.0 wide*” for the benefit of Lot 1. It seems strange that the Easement for Drainage on Lot 2 was not created as variable width right up to the new boundary in the first place, which would have eliminated the need for the other three easements.

2.3 What about the 5 Feet?

A residential subdivision, DP 29029 (1958), created four lots, each having a rear natural boundary, being the bank of Shrimpton’s Creek, with Lot 22 showing a side boundary dimension of 115 feet (Figure 8). An adjoining subdivision, DP 30420 (1959), created lots having a rear right line boundary with Lot 18, which abuts Lot 22, showing a side dimension of 120 feet (Figure 9). How is the 5-foot difference in side boundary length accounted for? One survey states “*bank of creek is boundary*”, the other is 5 feet longer and shows a right line boundary and no creek. What happened to the creek bank in the intervening 12 months?

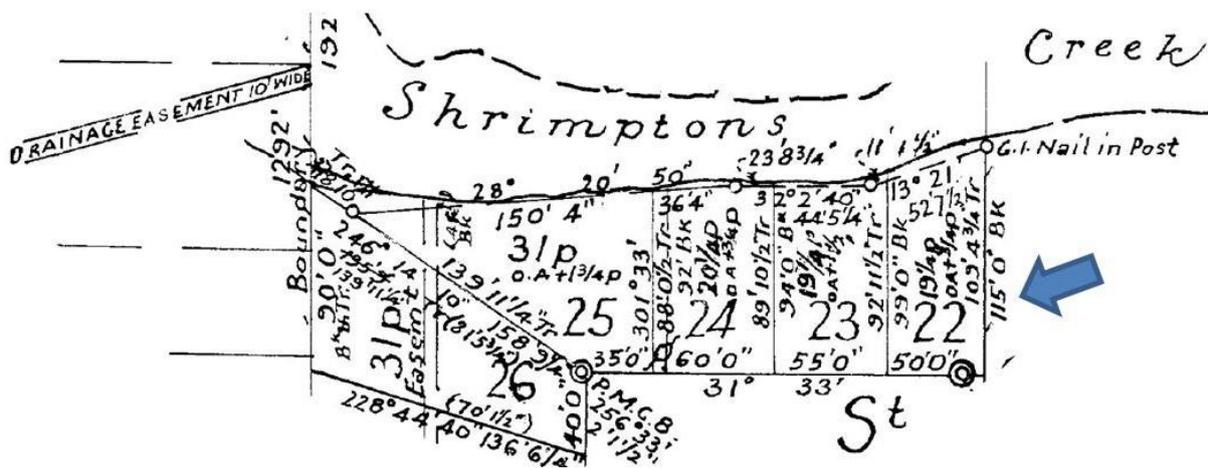


Figure 8: Detail of DP 29029 (1958), showing 115 feet and natural boundary at rear.

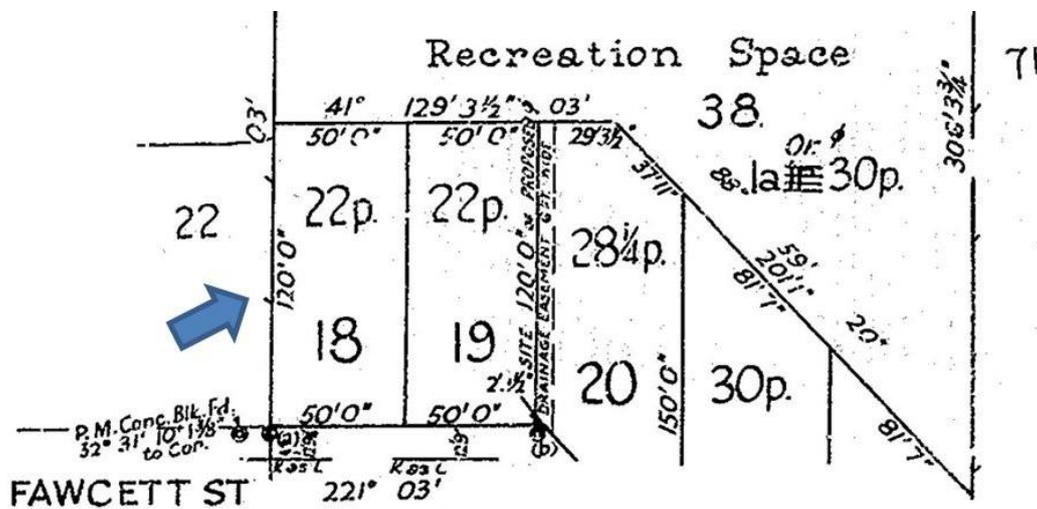


Figure 9: Detail of DP 30420 (1959), showing 120 feet and right line boundary at rear.

2.4 Why is City of Ryde not on Title?

This question is currently being pursued by City of Ryde as the Department of Housing is recorded as the registered proprietor of 6 acres (2.4 ha) within Santa Rosa Park, being Lot 71 in DP 36579 (1956) which contains the whole of the bed of the creek. Lot 71 was supposedly vested to Council in June 1962 (Figure 10), but title was never issued to City of Ryde. In the meantime, Council has invested huge funds in the ongoing development of this park. What process is required to make this happen? Firstly, a request is made to the Department of Housing (or its modern-day equivalent) to release the Certificate of Title held in its possession, together with a statutory declaration stating the fact of their vesting to Council in 1962. City of Ryde then writes a request to NSW Land Registry Services (LRS), asking for the Certificate of Title to be updated and show City of Ryde as the registered proprietor.

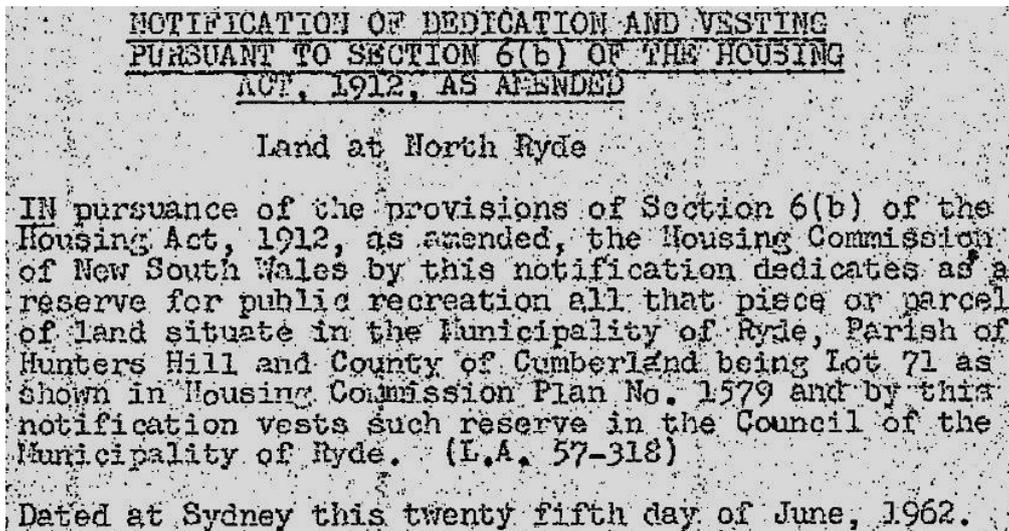


Figure 10: Detail from Notification on Certificate of Title Volume 8145 Folio 116.

2.5 Why was the Creek Bed Excluded from two IVAs?

Part IVA action, under the Real Property Act, was initiated (circa 1972) on titles in DP 39133 (1957) to convert Old System titled land to Torrens Title. Lots 1, 4, 4A and 5 to 10 (inclusive) in DP 39133 were 9 such lots, each with a natural boundary and title extending to the *centreline* of Shrimpton's Creek. Part IVA action was completed over time (Figure 11).

LAND

LOT 6 IN DEPOSITED PLAN 39133
AT NORTH RYDE
LOCAL GOVERNMENT AREA RYDE
PARISH OF HUNTERS HILL COUNTY OF CUMBERLAND
TITLE DIAGRAM DP39133

FIRST SCHEDULE

TIMOTHY DAVID PICKARD
SHAELYN JACKSON
AS JOINT TENANTS (T AK833165)

SECOND SCHEDULE (2 NOTIFICATIONS)

1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2 AK833166 MORTGAGE TO WESTPAC BANKING CORPORATION

Figure 11: Extract from the current Full Certificate of Title for Lot 6 in DP 39133.

The exceptions are two titles that have a notation “*excluding the bed*” and “*excepting the bed*” of the creek (Figure 12). Perhaps an oversight on the part of the team at LRS?

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NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH
-----
FOLIO: 8/39133
-----
SEARCH DATE      TIME      EDITION NO      DATE
-----
16/11/2018      10:22 AM      12              15/11/2018

NO CERTIFICATE OF TITLE HAS ISSUED FOR THE CURRENT EDITION OF THIS FOLIO.
CONTROL OF THE RIGHT TO DEAL IS HELD BY HSBC BANK AUSTRALIA LIMITED.

LAND
----
LOT 8 IN DEPOSITED PLAN 39133
LOCAL GOVERNMENT AREA RYDE
PARISH OF HUNTERS HILL COUNTY OF CUMBERLAND
TITLE DIAGRAM DP39133

FIRST SCHEDULE
-----
RYAN BATTCHOO RATILAL
JESSIE MEI YEN LOW
AS TENANTS IN COMMON IN EQUAL SHARES (T AK67107)

SECOND SCHEDULE (3 NOTIFICATIONS)
-----
1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2 LAND EXCLUDES THE BED OF THE CREEK SHOWN ON THE TITLE DIAGRAM
3 AN861088 MORTGAGE TO HSBC BANK AUSTRALIA LIMITED

NOTATIONS
-----
UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***
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NEW SOUTH WALES LAND REGISTRY SERVICES - TITLE SEARCH
-----
FOLIO: 1/39133
-----
SEARCH DATE      TIME      EDITION NO      DATE
-----
25/9/2018        7:30 AM      4              27/6/2003

LAND
----
LOT 1 IN DEPOSITED PLAN 39133
LOCAL GOVERNMENT AREA RYDE
PARISH OF HUNTERS HILL COUNTY OF CUMBERLAND
TITLE DIAGRAM DP39133

FIRST SCHEDULE
-----
THE COUNCIL OF THE CITY OF RYDE (T 9736484)

SECOND SCHEDULE (2 NOTIFICATIONS)
-----
1 RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
2 EXCEPTING THE BED OF SHRIMPSTONS CREEK

NOTATIONS
-----
NOTE: THE CERTIFICATE OF TITLE FOR THIS FOLIO OF THE REGISTER DOES
NOT INCLUDE SECURITY FEATURES INCLUDED ON COMPUTERISED
CERTIFICATES OF TITLE ISSUED FROM 4TH JANUARY, 2004. IT IS
RECOMMENDED THAT STRINGENT PROCESSES ARE ADOPTED IN VERIFYING THE
IDENTITY OF THE PERSON(S) CLAIMING A RIGHT TO DEAL WITH THE LAND
COMPRISED IN THIS FOLIO.

UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***
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Figure 12: The current Certificates of Title for Lot 1 and Lot 8 in DP 39133.

It should be noted that these two Torrens Titles refer respectively to Lot 1 and Lot 8 of DP

39133 (1957), which, at the time of subdivision, was Old System land and title extended to the centreline of the creek. Obviously, for each of these lots, half the width of the bed remains in Old System Title and still forms part of the lot, as nominated in the current Certificates of Title. Does that strip of Old System Title belong to the current owners of Lot 1 and Lot 8? Should that strip be included on the Torrens Certificate of Title?

2.6 How can Real Property Applications Overlap?

This is a cautionary tale of creek bed shift, occurring as it did over the years between 1908, 1943, 1957, 1971 and 2018. The land in DP 65830 (1908) (Figure 13) was the subject of Real Property Application 15830 which created Certificate of Title Volume 2059 Folio 121 in 1910, with the description “to the centre of Shrimpton’s Creek thence by the centre of that creek”.

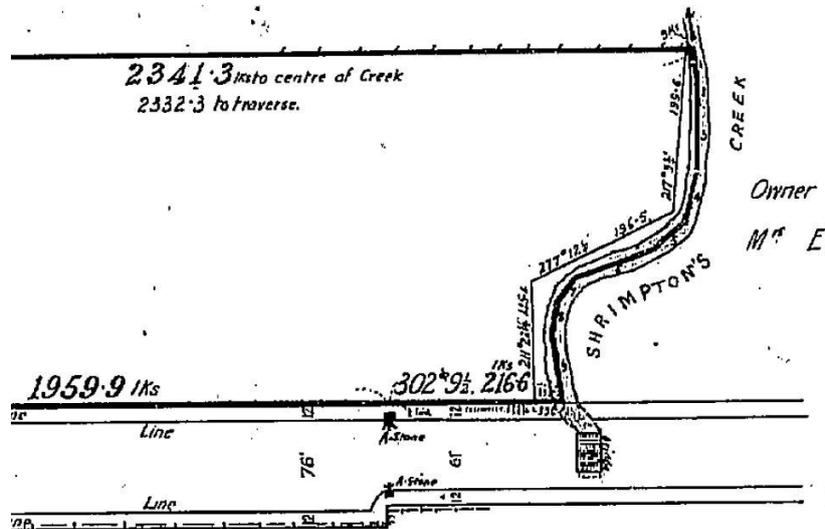


Figure 13: Detail of DP 65830 (1908), showing boundary is centreline of creek.

On the opposite side of the creek, DP 150926 (1926) (Figure 14) was the whole of land in conveyance Registered No. 990 Book 1147 (1919), which contained the description “to Shrimpton (sic) Creek thence on the North West by the said Shrimpton Creek”.

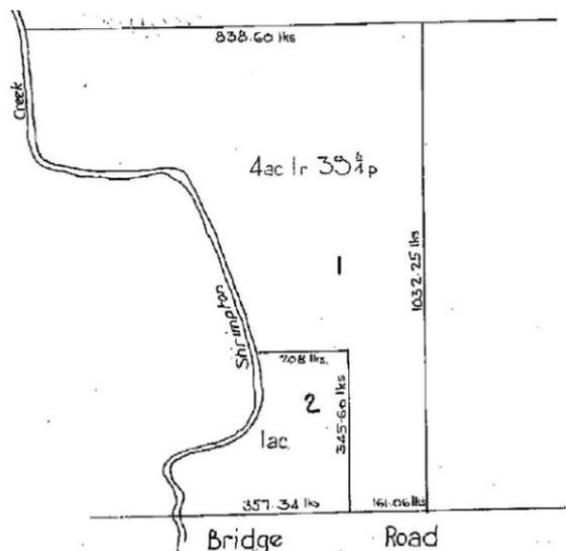


Figure 14: Detail of DP 150926 (1926), showing Old System parcels of land.

The 1943 aerial image (Figure 15) shows the flow path of Shrimpton's Creek.

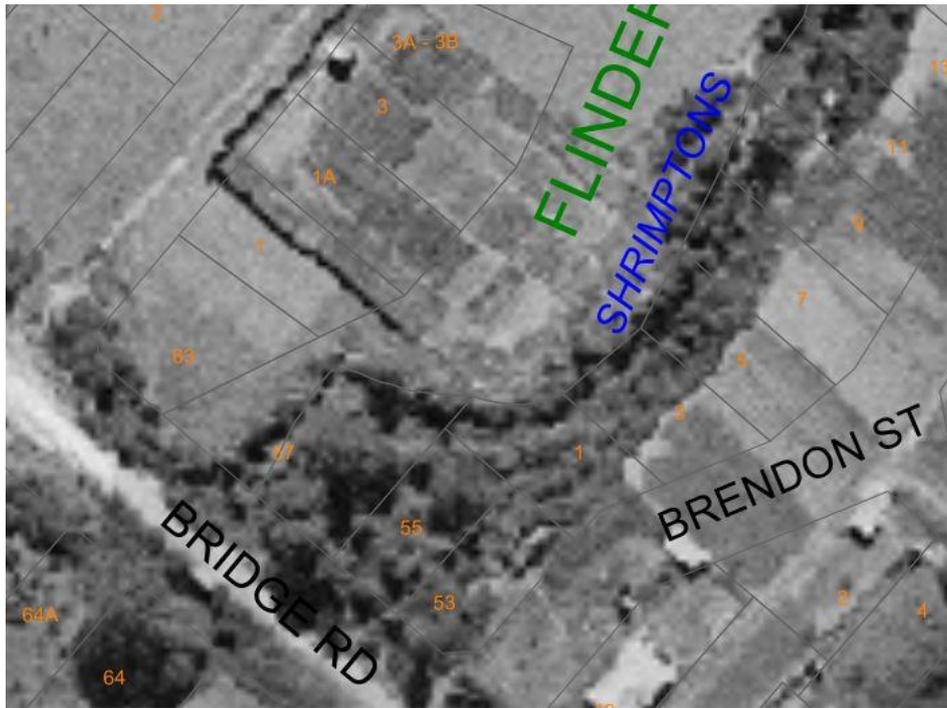


Figure 15: Detail from 1943 aerial image, showing the flow path of Shrimpton's Creek.

DP 39133 (1957) created lots with natural boundary clearly being centre of creek (Figure 16), while DP 552490 (1971) was another later plan that also defined the centreline (Figure 17).

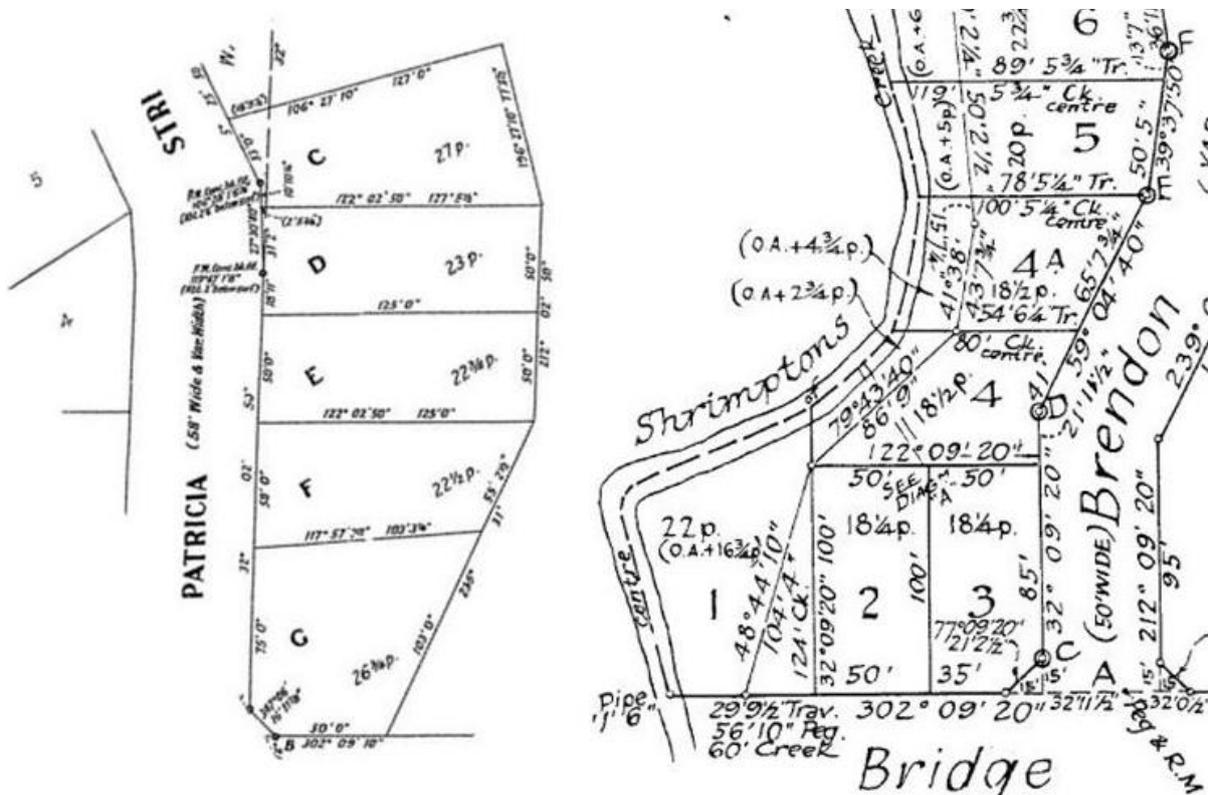


Figure 16: Detail from DP 39133 (1957), on the right, shows boundaries to centreline of creek, while detail from DP 36767 (1959), on the left, shows no reference to the creek.

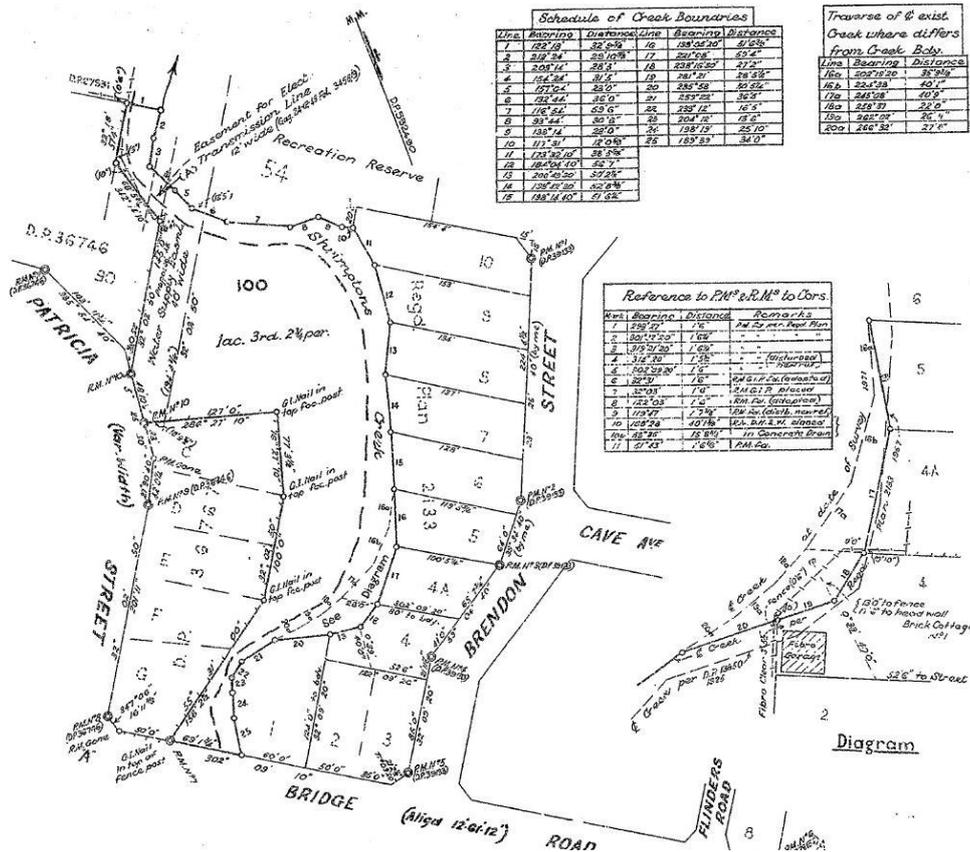


Figure 17: DP 552490 (1971), showing definition of centreline of creek.

DP 552490 (1971) is a plan of consolidation for the Department of Housing, comprising remnant land along the creek, left over from its residential subdivisions, and shows a history of the position of the creek centreline (Figure 18). The current position, as shown in Figure 18, appears to be shaping back towards earlier times.

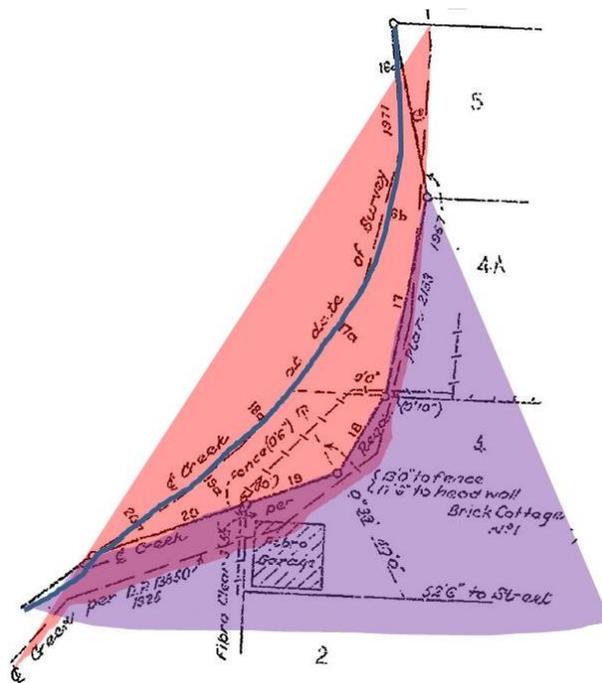


Figure 18: Diagram from DP 552490 (1971), showing centrelines and overlap.

A modern aerial image from 2010 (Figure 19) shows the relevant section of Shrimpton's Creek. For those wondering why the latest up-to-date image was not used to show the course of the modern creek, Figure 20 illustrates the result of 8 years of reforestation.



Figure 19: Detail of the creek from a 2010 aerial image.



Figure 20: Detail from an aerial image in 2018, showing the result of 8 years of reforestation.

2.7 How is Title Affected by Creek Deviation?

In the case of natural boundaries, if the bed (and therefore the bank) movement is incrementally imperceptible, the boundary moves with the bank. However, in this example, the movement is certainly greater and faster than gradual. DP 29229 (1956) is a subdivision that shows the left bank as title boundary (Figure 21). Notice the dramatic direction change in the creek at Lot 8. Notice also the 6-foot wide drainage easement along the southern boundary of Lot 8, which runs 100 feet to the creek bank.

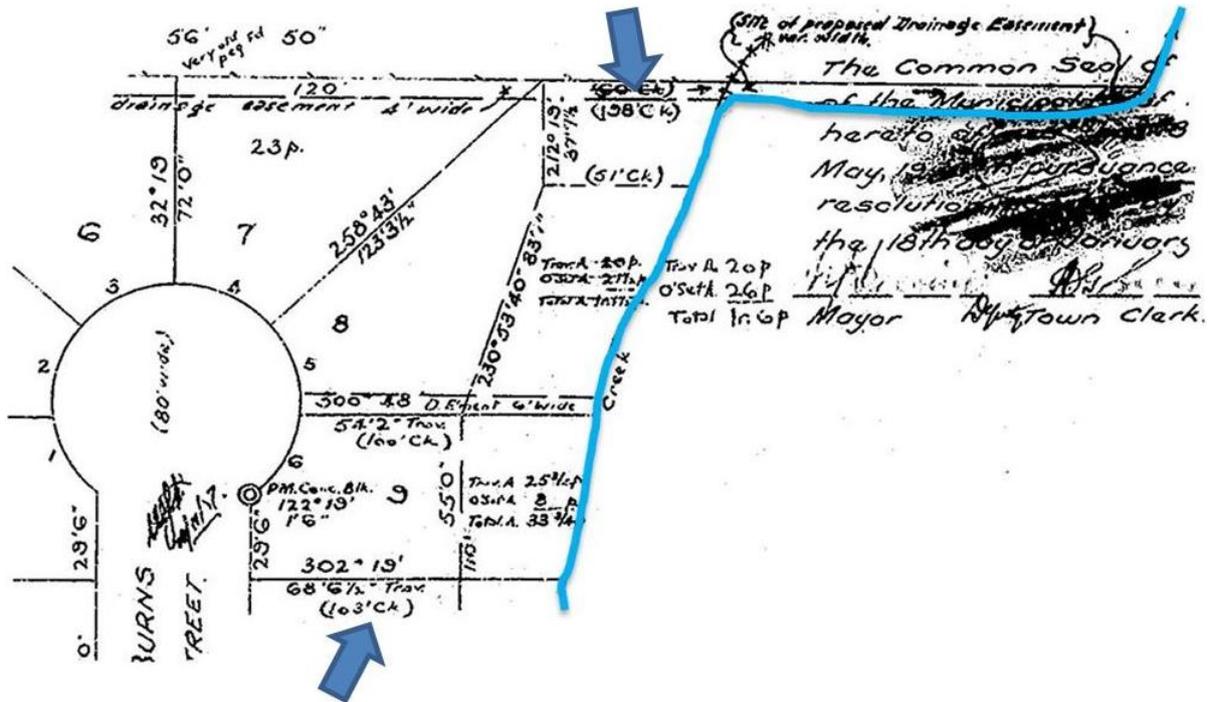


Figure 21: Detail from DP 29229 (1956), showing left bank as title boundary.

DP 26924 (1956) is a subdivision directly opposite, which shows the right bank as title boundary (Figure 22).



Figure 22: Detail from DP 26924 (1956), showing right bank as title boundary.

When DP 709174 (1984) created a subdivision involving Lot 8 and Lot 41 on either side of Shrimpton's Creek, the centreline of the creek was adopted as a natural boundary (Figure 23).

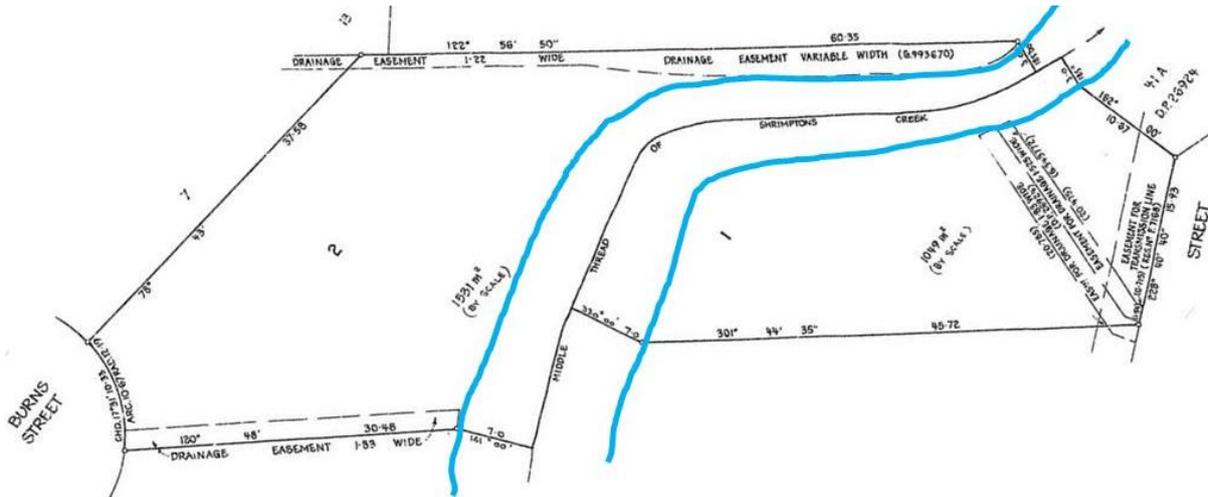


Figure 23: Detail from DP 709174 (1984), showing creek centreline as subdivision boundary.

A line was extended from the side boundary, at the end of the drainage easement in Lot 2 (formerly Lot 8 in DP 26924), running at right angles to the creek centreline. In similar fashion, lines extended from each of the other side boundaries in a direction at right angles to the creek centreline.

The two lots in DP 709174 (1984) were re-subdivided by DP 778388 (1985), which maintained the middle thread as boundary and created three new lots, two of which encompassed the bed of the creek (Figure 24): Lot 1 and Lot 3.

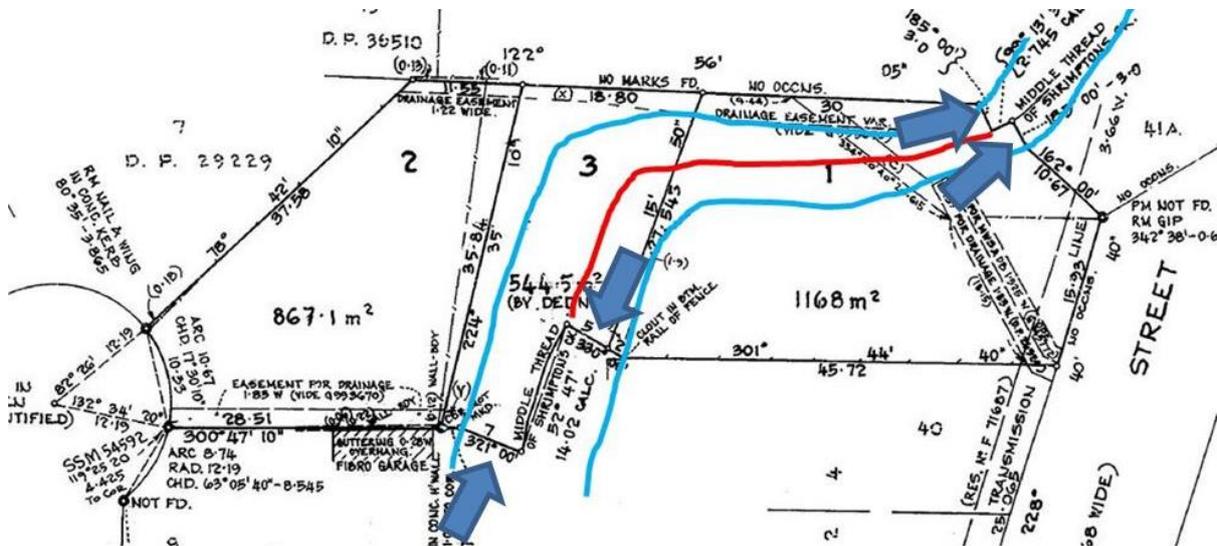


Figure 24: Detail from DP 778388 (1985) with overlay of creek centreline as it was in 1984.

The creek bed has since been shifted over 40 m and re-directed completely away from Lot 1 (Figure 25). City of Ryde owns Lot 3, which now contains the whole of the bed of Shrimpton's Creek. Notice Lot 1 now shows no evidence, nor the whereabouts, of a previous creek bed (Figure 26). This is all very well, but what is the effect of a 40 m shift on riparian boundaries downstream? Luckily, there is only one lot affected, Lot 41A in DP 26924, which is owned by City of Ryde and forms part of Tindarra Reserve. Other residential subdivisions downstream have right line rear boundaries and do not have a natural boundary being Shrimpton's Creek.

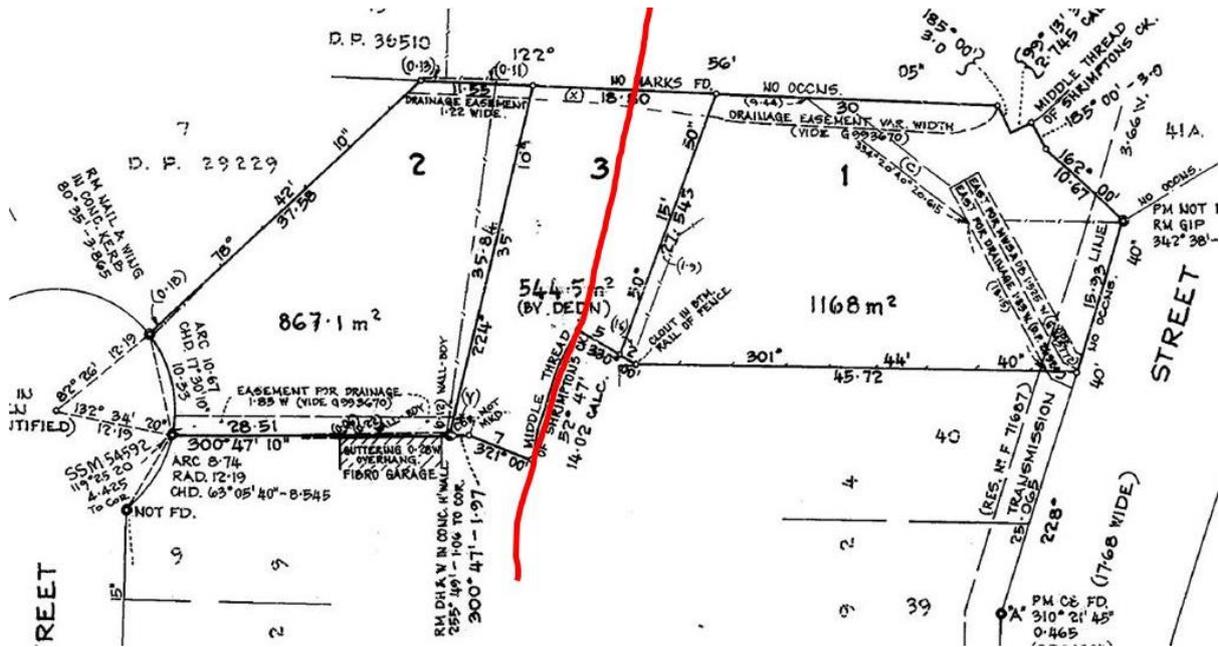


Figure 25: Detail from DP 778388 (1978) with overlay of creek centreline as it is today.



Figure 26: Detail from aerial image (2018) with overlay of creek centreline.

2.8 How did the Macquarie Shopping Centre Acquire the Bed?

The Crown Grants in 1887 for Portions 549, 550, 551 and 552 together with Portions 555, 556, 557 and 558 (Figure 27) each carried both a margin plan and a written metes and bounds description. The bed of Shrimpton’s Creek, which separated these portions, was not included in the Crown Grants. The Crown Grants clearly indicate “right bank” and “left bank”. However, the status eventually changed when one owner acquired the land on either side of Shrimpton’s Creek.

Because the Crown Grants occurred prior to 1918, there was a presumption that title *ad medium filum aquae* may apply. Although no direct evidence can be found, it seems that

ownership of the bed was acquired by this method (Figures 28-30).

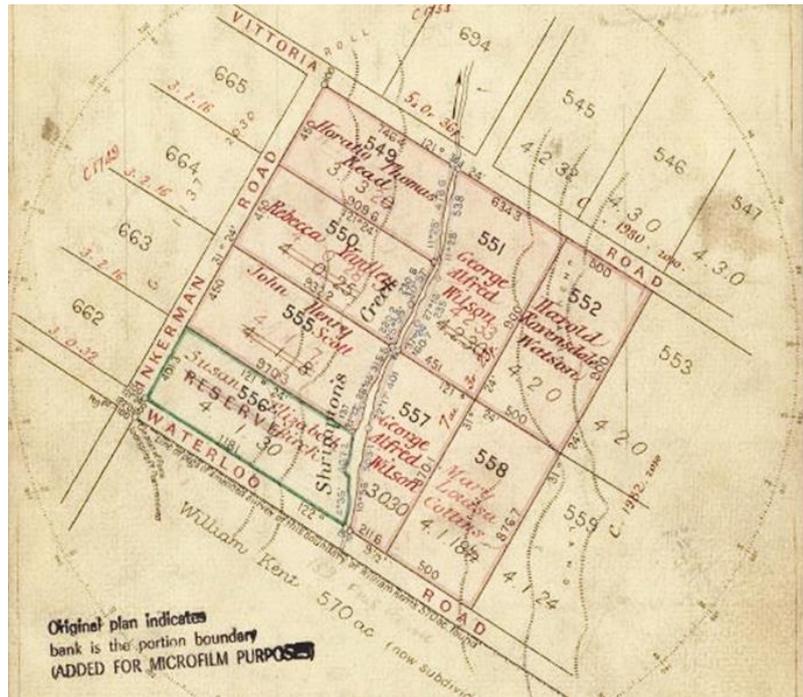


Figure 27: Crown Plan 1983.2030 (1887), showing original granted portions.

Portions 551 and 557 on the Eastern side of Shrimpton's Creek were subdivided by DP 559303 (1972) into two lots (Figure 28), with the natural boundary being the right bank of the creek. An "Easement for Drainage 40 ft wide" (12.19 m) was created, which was parallel to and abutted the right bank of the creek. DP 565709 (1973) consolidated some of the land on either side of Shrimpton's Creek (Figure 29): Lot 1 from DP 559303 (1972) with Portions 549, 550, 555 and 556. The original natural boundaries of Portion 549 and part of Portion 551 were abolished, and the bed became part of the land within the consolidation.

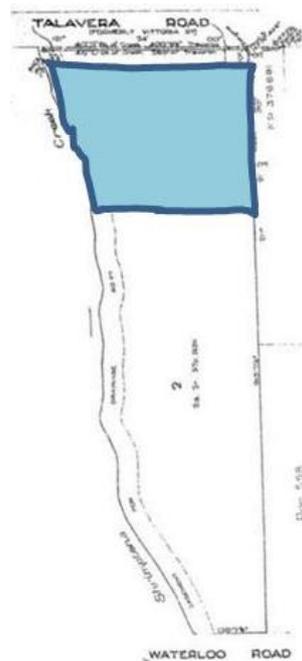


Figure 28: DP 559303 (1972) subdivided Portions 551 and 557 into two lots (Lot 1 highlighted).

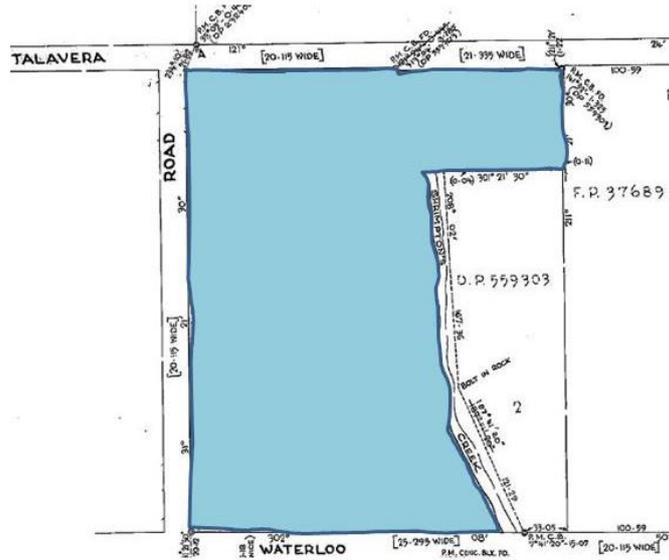


Figure 29: DP 565709 (1973) consolidated land on either side of Shrimpton's Creek.

DP 571381 (1974) subdivided Lot 2 and created one new lot as a narrow strip of land along the right bank of Shrimpton's Creek (Figure 30), with one side being defined by the natural boundary of the creek and the other side being defined by right lines. This new lot partially covered the easement for drainage 12.19 m wide.

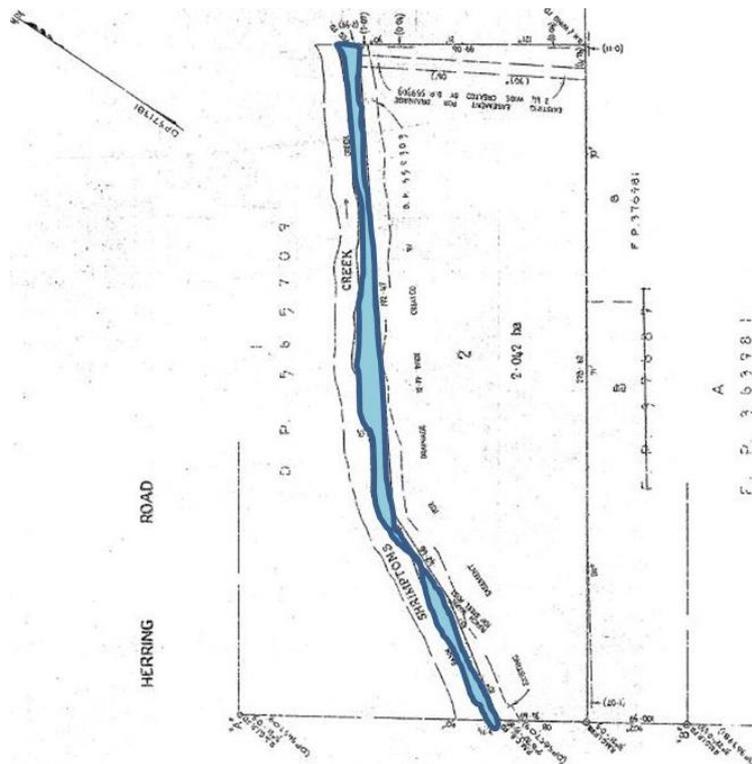


Figure 30: Lot 1 in DP 571381 (1974) is a narrow strip of land abutting the right bank of Shrimpton's Creek.

At this point, all of the land was consolidated into one parcel and all reference to a *bank as natural boundary* ceased (Figure 31). DP 614852 (1979) completed the last piece of the consolidation puzzle (Figure 32) and a fresh, right line "Easement to Drain Water" was created over the approximate site and route of the "Easement for Drainage", which had been created adjacent to the original creek bank.

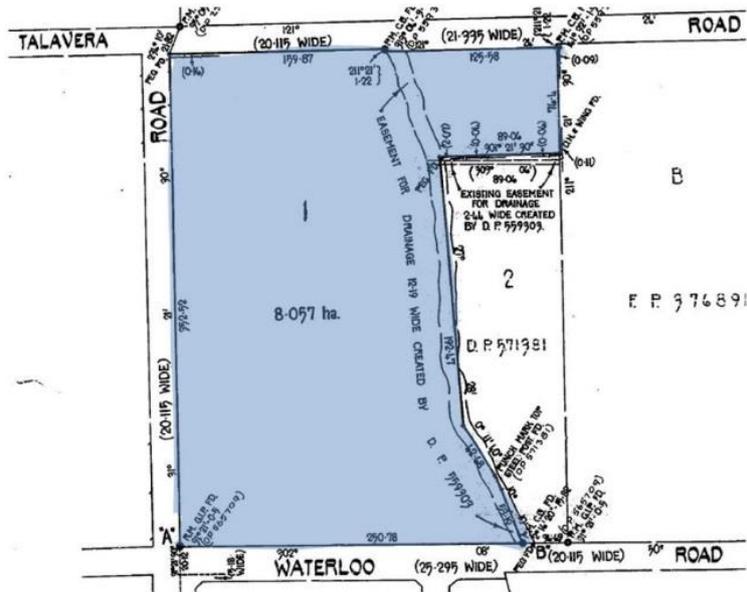


Figure 31: Detail from DP 576355 (1975).

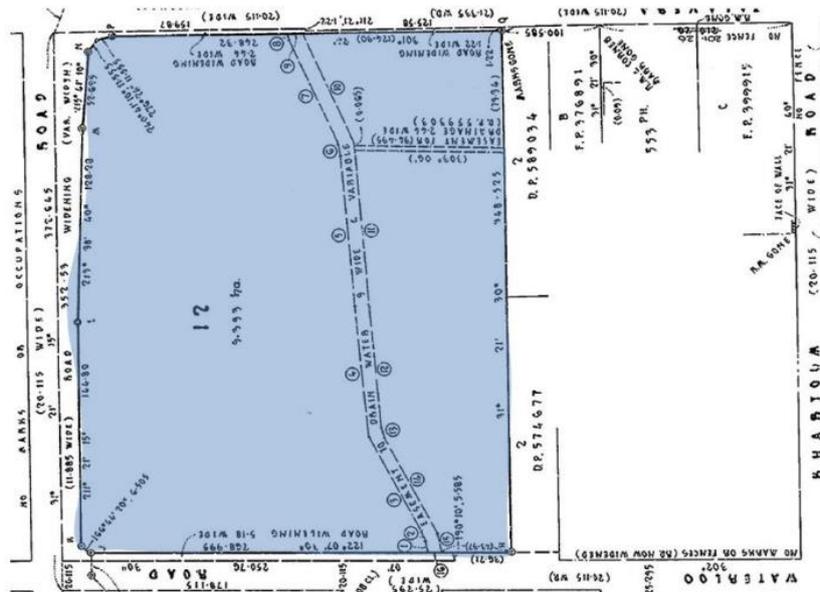


Figure 32: Detail from DP 614852 (1979).

The large Macquarie Centre shopping mall was constructed upon the whole of this parcel of land. As a consequence, Shrimpton’s Creek disappeared completely as an open channel, now flowing underground within a “*Drainage Easement, 9 wide and variable*”, in which City of Ryde has the benefit. The bed of Shrimpton’s Creek, which had originally been excluded from the Crown Grants, is now fully contained in the consolidated parcel.

2.9 What Land is Included in a Real Property Application?

If the Old System subdivision boundary went to the middle thread of Shrimpton’s Creek, then why did the Real Property Application (RPA) stop at the bank? Who knows? The authorising authority was the Registrar General. In one case, a Primary Application was made to the centre of the creek, but the applicant was ordered to limit that claim to the creek bank. In another case, the Real Property Application was made for the new Torrens Title to extend

only to the bank of the creek. In this case, RPA 31194 (1929) and RPA 35657 (1944) converted two parcels of land up to the bank. The adjoining strip of land, comprising half the bed of Shrimpton's Creek, remained in Old System Title with the applicant of the RPA being the land owner. As part of a recent redevelopment of this site, a redefinition plan DP 1247443 (2018) was created, which claimed ownership of the two remnant parcels up to the centreline of the creek (Figure 33), with a new RPA raised for the Old System land of the bed.

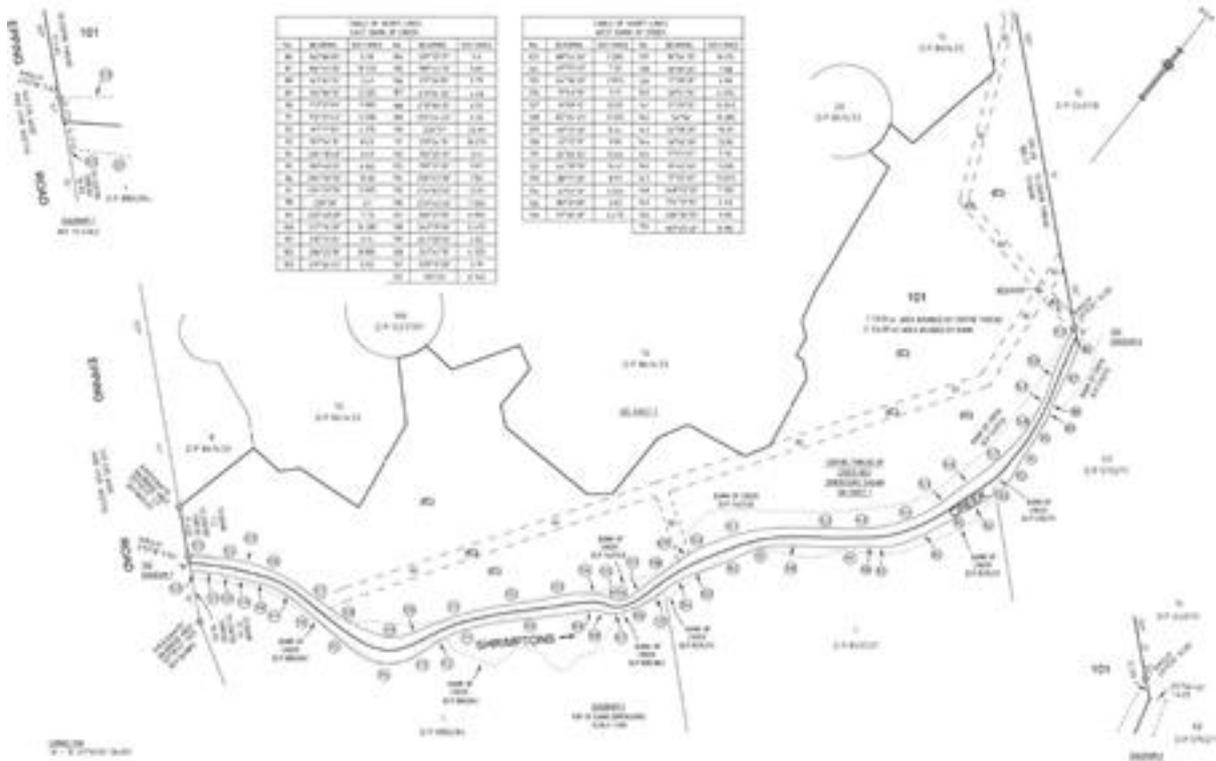


Figure 33: Redefinition plan DP 1247443 (2018).

2.10 Who Owns the Fallen Tree?

In the aftermath of a storm event in 2019 (Figure 34), a tree that was undermined by flooding water fell across the rear of a property, which abutted Shrimpton's Creek, and caused significant damage to two fences.



Figure 34: Shrimpton's Creek in full flow.

The property owner approached City of Ryde requesting that the Council rectify the damage. The first question to be resolved was who owns the land where the tree was once rooted. At this location, City of Ryde owns to the middle thread of the creek. The tree was *sited* on the opposite half of the creek to Council, which happens to be Lot 8 where the Part IVA conversion excluded the bed (see section 2.5). The tree was originally rooted in the Old System part of Lot 8 and not in the Torrens Titled part of Lot 8. In either case, City of Ryde was not the owner of the bed. Council offered a small payment to assist the land owners with restoration of the damaged fences.

3 CONCLUDING REMARKS

There is always a story behind a story. Many times, that secondary story is more captivating, but gets lost beneath the main story. The questions researched and answered in this paper were all raised from the detailed investigation into the ownership of the bed of Shrimpton's Creek. Further stories are bound to appear in the future, when the information on ownership is put into use as new works and developments occur along the length of Shrimpton's Creek.

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