






## Situation / Background – 107 Clontarf Street, Seaforth 2092

In about 1956 Council reserved a strip of land in front of 4 houses on Clontarf Street for the purpose of road widening (marked by green lines in picture below). Since this time the land has not been used by Council and the 4 properties have treated it as their own. We purchased 107 Clontarf Street in 2014 and were not aware the land was reserved. In line with the 3 other properties we have used it as our own, maintaining the grass, erecting a basketball hoop and storing our bins.



	Original property boundary line pre 1950s
	Road area reserved by Council in 1950s
	Our garage
	Nature strip in front of all properties on Clontarf St, approx. 4m wide
	Neighbours either side of the road reserve with car port (103) and garage (113) up to original boundary line

In 2015, we were expecting our first child and started exploring the possibility of a home renovation. The government's Land & Property Information website showed our boundary to

be in line with other properties on the street as shown by the red line in the picture (see attachment 1). We had a pre-lodgement meeting with Council in 2016 and engaged specialists to compile the DA, along with a surveyor, draftsman, Geo Technical engineer, landscaper and sewerage engineer. All of whom relied upon the government website information.

Our property is underlain by Hawkesbury Sandstone, which can be seen bottom left in the photograph below. Due to the property terrain we were advised to build the garage as far forward as possible in order to minimise excavation and likely disturbance to our neighbours' property foundations.



Our DA was submitted in August 2016 with the survey plans clearly stating that property boundary checks had not been performed. Our neighbours at 105 made objections which were not considered valid and approval was granted in May 2017. This was advertised in the Manly Daily and no further objections were raised in the required 3 month period.

In July 2018 we appointed NBC as our PCA, our Construction Certificate was issued and work commenced. The necessary inspections (utilities, driveway, formwork, concrete pouring) were performed and the garage was completed, apart from cosmetic finishing, in November 2018. In December 2018 we received a letter from our neighbour at 105's solicitor demanding we demolish the garage immediately as it was built on Council land. This was the first formal notification we received regarding the problem.

Until this point Council and all other parties involved in the DA had relied on the government website which had not been updated since the 1950s. On becoming aware of this, Council checked the original land registry records and have now updated their website.

A class 4 summons was issued in February 2019, with both Council and us as respondents. In April 2019 Council submitted in the proceedings as the facts of the case cannot be disputed – we have built a structure on land that does not belong to us and Council acted outside of their jurisdiction by providing approval for us to do this. Due to the high costs involved if we were to lose the case we are also likely to submit. Council's solicitors have indicated to our solicitors that it would be willing to work with us to return the reserved land.

Since we started the home renovation we have had a second child and we are now in a position which is causing us severe financial and emotional distress. We have acted in good faith at all times and if the land ownership had been brought to our attention we would not have proceeded with the renovation.

By modifying our original DA to remove the garage we are ensuring that we can continue with the remainder of our renovation.

### **Summary Timeline to Date**

Feb 2016 – Pre Lodgement meeting application

May 2016 – Pre Lodgement meeting

Aug 2016 – DA lodged

May 2017 – DA approved

Sep 2017 – CC applied for

Jul 2018 – CC approved and NBC appointed as PCA

Jul to Sep 2018 – Various inspections and garage construction

Dec 2018 – Letter received from neighbours' solicitor

Feb 2019 – Class 4 Summons issued

April 2019 – Directions Hearing

May 2019 – Renovations to house ongoing