

OUR REFERENCE: RHW:CW:190054

YOUR REFERENCE:

19 December 2019

Pavilion Residences No.3 Pty Ltd
PO Box 1640
NORTH SYDNEY NSW 2059

Dear Sir/Madam

Property: 21 Whistler Street, Manly

I refer to my advice to you of 3 December 2019, wherein I was asked to research the ownership and prepare legal advice accordingly. I had the appropriate searches carried out and prepared this advice, which has been provided to you.

I also understand that a consultant for Council has stated that Thomas Rowe was the owner of the said property based on a rate assessment notice. The rate assessment notice shows who paid the rate notice, and is not an indicator of who owed the property. This is not the correct way to determine legal ownership and it is incorrect to state that Rowe was the owner based solely on a rate assessment notice with no address.

The document that solely determined who owned the land is the indenture registered with land Titles, being registered No 433 Book 150, not the document being presented by the consultant.

The indenture states:

That the property was conveyed to Sydney Green on 21 May 1875, until he sold the property in December 1883.

The same indenture also granted Charlotte Rowe a right of residency during her life, granting her sole and separate use of the premises, not unlike a tenant. I understand that she passed away in 1877.

Upon her demise, Sydney Green or his heirs or executors would then take possession of the property in accordance with the indenture. Accordingly, Sydney Green owned Lots 8 and 9 from 21 May 1875 until he sold these in December 1883.

With:

**David Marinic
& Associates**

**Lesley Dingley
Solicitors & Lawyers**

Lawyers

Robert H Warren
Principal

Peter D Kennett
Special Counsel

Clare Wainwright
Associate

Lesley Dingley

Edwin Nelson

Alexandra Willcock

Nicole Davis

Office address:

Level 2, Suites 24-25,
22-26 Fisher Road,
Dee Why 2099

PO Box 1156, Dee Why
NSW 2099

DX 9101 Dee Why

Tel: (02) 9982 1655
Fax: (02) 9982 1066
E: email@ocklaw.com.au
ABN: 126 126 153 53

We advise that this office will be closed from 12.00 pm on Friday, 20th December 2019
and will re-open at 9.00 am on Tuesday, 7th January 2020
We take this opportunity to wish you a Merry Christmas and a Happy New Year.

Website: www.ock.com.au

Liability limited by a scheme approved under Professional Standards Legislation and by our Terms of Appointment. Employed legal practitioners and directors of Legaleez Pty Limited ABN 12 612 615 353 an incorporated legal practice trading as O'Brien Connors & Kennett are members of that scheme

Reg no. 444 book 162, as mentioned in page 7 item 2, has nothing to do with lots 8 and 9, and relates instead to Lots 10 & 11, comprising a completely different property, and therefore does not have any bearing on 21 Whistler Street Manly, being the property that Sydney Green owned where Charlotte Rowe had a right of residency. The reference on page 7 item 2 relates to a transfer for lots 10 and 11 that Thomas and Charlotte Rowe bought from Arthur Croft.

Yours faithfully

O'BRIEN CONNORS & KENNETT

per:

A handwritten signature in dark ink, appearing to read 'C. Wright', is written over a light blue horizontal line.

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YOUR REFERENCE:

30 January 2020

Pavilion Residences No.3 Pty Ltd
PO Box 1640
NORTH SYDNEY NSW 2059

Dear Sir/Madam

**Re: Proposed Heritage Listing Property: 21
Whistler Street, Manly**

We refer to the report prepared by Dr Terry Kass dated January 2020, 'An Investigation of Evidence Regarding the Association of Thomas Rowe with 21 Whistler Street, Manly'.

Having reviewed the report, and the conclusions made on page 11 of this report, we have identified a number of issues and incorrect conclusions.

1. *Thomas Rowe purchased allotments 8 and 9 of section C of the Brighton Estate using his own money*

The Land Registry Services records set out that the property was conveyed on 21 May 1875 jointly to John Dawson, Eliza Zuccani and John Charles Lovell as to the first part, Thomas Rowe as to the second part, Charlotte Jane Rowe of the third part and Sydney Moore Green as to the forth part.

An indenture was entered into this same day, duly executed by all of the abovementioned proprietors, whereby they then conveyed the property to Sydney Moore Green in its entirety. This same indenture also granted a right of residency to Charlotte Jane Rowe, granting her 'sole and separate use' of the subject property during her life. There is no evidence that Thomas Rowe used his own money.

The conclusions drawn in the abovementioned report refer to the property being vested in Thomas Rowe upon Charlotte Jane Rows death as her next of kin. As Charlotte Rowe only had a right of tenancy during her life, the property has been inappropriately dealt with, as the right of tenancy ended upon her death and Sydney Moore Green or his heirs were the owners, not Thomas Rowe, and Thomas Rowe had no legal right to the property, Lots 8 and 9, upon Charlotte Rowe's death.

This conclusion by Dr Kass is incorrect.

2. *Thomas Rowe voluntarily vested the property in the hands of a trustee for the benefit of his wife Charlotte Jane Rowe.*

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5. At the death of his wife Charlotte on 19 March 1877, the property was vested in Thomas Rowe as the next of kin.

The report states that upon Charlotte Rowe's death on 19 March 1877 the property was vested to Thomas Rowe, despite there being no records to show a grant of probate, which is required to legally vest any interest in property. The statutory declaration signed by Thomas Rowe on 1 July 1886 is therefore likely to have been signed as a result of the property being vested without Mr Rowe having the legal authority to do so. This would likely have been to enable the Land Titles office to cover themselves in the event of a claim against the property and the way the estate was incorrectly dealt with. The property was not vested to Thomas Rowe upon Charlotte Rowe's death.

These conclusions by Dr Kass are incorrect.

3. Thomas Rowe obtained a loan from the Equitable Permanent Benefit Building Land and Savings Institution for £700 for lots eight and nine only. He made the loan himself and spent it on the property and also paid all other expenses.

4. The size of the loan (£700) plus a further loan of £250 on the security of those two lots alone is a strong indicator that buildings were being constructed on the site.

The mortgage was in the name of Charlotte Rowe and Thomas Rowe, not Thomas Rowe on his own.

The report relies upon evidence of mortgages being taken out over the property to suggest that Thomas Rowe designed and constructed a building on the subject property. This view is highly speculative, and not in accordance with any documentation recorded by the Land Titles office or Council's records. A search of Council's records indicate that no Development or Building Applications or plans were ever received or approved for the subject lot during the time of Thomas Rowes purported ownership, nor is there any evidence to suggest that Thomas Rowe designed or developed the property. The reliance on Mortgages to try and assert historical significance is not adequate legal evidence. In addition, mortgage 502 Book 157 also makes multiple references to houses, premises, hereditaments, buildings, messuages, rents and the requirement to insure the premises. It can therefore be concluded that there was already a house on the subject lot prior to Mr Rowes brief occupation. The funds could have been used for his purchase of Lots 10 and 11, the finishing of their home in Elizabeth Bay, Caprera, repaying other loans he had or any of his development or business projects he was involved with in Sydney.

I note that for a mortgage to be taken over the property it would have required the consent and execution by Sydney Moore Green, and if no such consent was granted, this finance was not obtained legally. The mortgage does not have Sydney Green's signature on it.

The statutory declaration has not been legally acknowledged or signed by Sydney Green that would be required to validate Thomas Rowe's unsubstantiated claims in it.

I also note that Thomas Rowe was the Surveyor for the Equitable Permanent Benefit Building, Land and Savings Institution from 1875 to 1882 as stated in Sands directories for those periods.

These conclusion by Dr Kass are incorrect.

6. The further charge or additional loan of £250 for the same allotments on 18 April 1879 was made in Thomas Rowe's name.

Ownership of property is determined by the conveyance of that property, as reflected in the records held by the Land Registry Services. A conveyance therefore proves ownership, while a mortgage does not. This is because a mortgage can have other parties to it, who are not the registered proprietors of the land, yet are still party to the mortgage. The document that solely determines who owned the land is the indenture registered with Land Title, being registered No 433 Book 150, which confirms the conveyance of the property.

I note that for a mortgage to be taken over the property it would have required the consent and execution by Sydney Moore Green, and if no such consent was granted, this finance was not obtained legally.

This does not prove ownership.

7. When the property was sold on 21 December 1883, it was sold by Thomas Rowe in his own name. Sydney Moore Green was a party to the transaction in order to extinguish any residual equity he had in the property as trustee of Charlotte Jane Rowe. This was a common practice in nineteenth and twentieth century conveyances to ensure that there was a clear title for the purchaser.

8. Thomas Rowe received the entire £2,250 when the property was sold. The considerable increase in the value of the land indicates substantial building had occurred on the site.

Lots 8 and 9 were sold by Sydney Green on 21 December 1883 in his name, not as trustee for Charlotte Rowe. There is no documentation or evidence that Green was a Trustee for Charlotte. Lots 10 and 11 were sold by Thomas Rowe on 21 December 1883. The allocation of funds in December 1883 from the settlement for Lots 8 and 9 that Sydney Green owned could be for any multiple number of financial arrangements that Rowe and Green had. We note that Green became a partner in Rowe's firm in February 1884, two months after the settlement and that Rowe's architectural company's name was changed from Thomas Rowe to Rowe and Green, thus giving Green equal billing. Sydney Green's share of the settlement could have been payment for his share of the company.

This conclusion by Dr Kass is incorrect.

9. On 1 July 1886, Thomas Rowe swore a Statutory Declaration that clarified his ownership of the property. He confirmed he was the owner and that he had lived on the property.

It would appear that Thomas Rowe was under financial and legal pressure when he had to sign this statutory declaration as he had received funds that were not his to receive as there was no will or probate issued that gave him the legal right to convey and settle mortgages on Lots 10 and 11 in the settlement on 21 December 1883. In addition, there is no supporting documentation attached to the Statutory Declaration, which would be required to confirm the evidence contained therein.

The attached report of Edward Rayad 'The Architectural Practice of Spain and Cosh' dated December 1986 clearly identifies that Mr Rowe was in financial hardship and experienced

legal troubles at various times in his life and that Thomas Rowe had carried out his affairs in an unethical manner on many occasions, ending in his professional disgrace as a result of the "Sydney Hospital Affair" and therefore mortgages over the property could have been taken out for any such reason.

The report of Dr Kass, in particular the statutory declaration relied upon, also indicates that Mr Rowe lived at the property for a brief period prior to Charlotte Rows death and then, shortly after her death, he left. The statutory declaration makes no reference to him having built or designed the property, which would have strengthened his evidence, had he included this. It is a telling omission. The Statutory Declaration, which states:

"I lived in the cottage that stands on the property until shortly after the death of the said Charlotte Jane Rowe"

Living at a property for approximately one year is not adequate grounds for the property to have a purported heritage interest, taking into consideration that Mr Rowe is known to have architecturally designed a significant portion of the Sydney CBD. If Council were to form such a view, then it would be likely that the entire Northern Beaches area should be heritage listed for similar reasons. This is neither practicable nor reasonable and does not accord with the evidence put forward, the 149 Certificate issued by Council, and written advice from Council issued to the applicant.

I am therefore of the view that the report prepared by Dr Kass is not in accordance with the legal evidence and records available, and little to no weight should be placed on this report in determining whether the land is of heritage significance.

Yours faithfully

O'BRIEN CONNORS & KENNETT

per:



ATTACHMENT 1

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Yours faithfully
O'BRIEN CONNORS & KENNETT
per:



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ATTACHMENT 2a

SALE ADVERTISEMENT
HARDIE AND GORMAN AUCTIONEERS

5 DECEMBER 1883

COTTAGE, GROUNDS AND 4 VALUABLE BUILDING SITES

MANLY

TO BE SOLD AT THE ROOMS 133 Pitt St
WEDNESDAY 5th DEC. 1883

HARDIE AND GORMAN
AUCTIONEERS



WHISTLER ST.

RACLAN ST.



EAST PROMENADE

IVANHOE PARK

MADE BY HARDIE & GORMAN. 1883.

ATTACHMENT 2b

SHEET 29 OF THE 1890 MS&WBS DRAWING

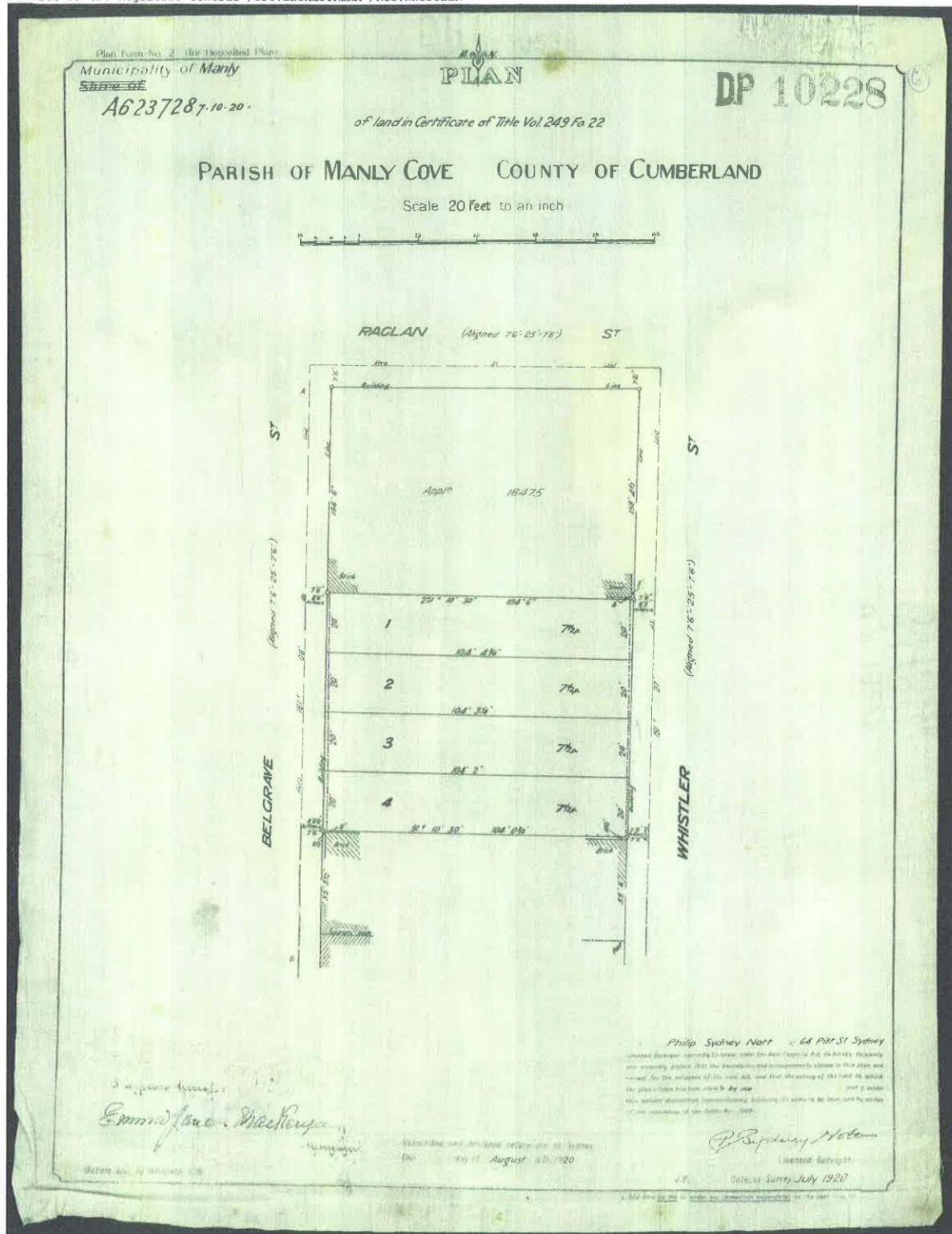
1890

ATTACHMENT 3

DP 10228 is the subdivisional plan prepared
by Surveyor Nott

July 1920

Req:R305112 /Doc:DP 0010228 P /Rev:19-Feb-2019 /NSW LRS /Prt:25-Nov-2019 16:05 /Seq:1 of 2
 © Office of the Registrar-General /Src:LEGALSTREAM /Ref:WHISTLER



ATTACHMENT 4

1950 Surveyed Plan F.P.368451

1950

F57519

Don't Even Know What You're Doing

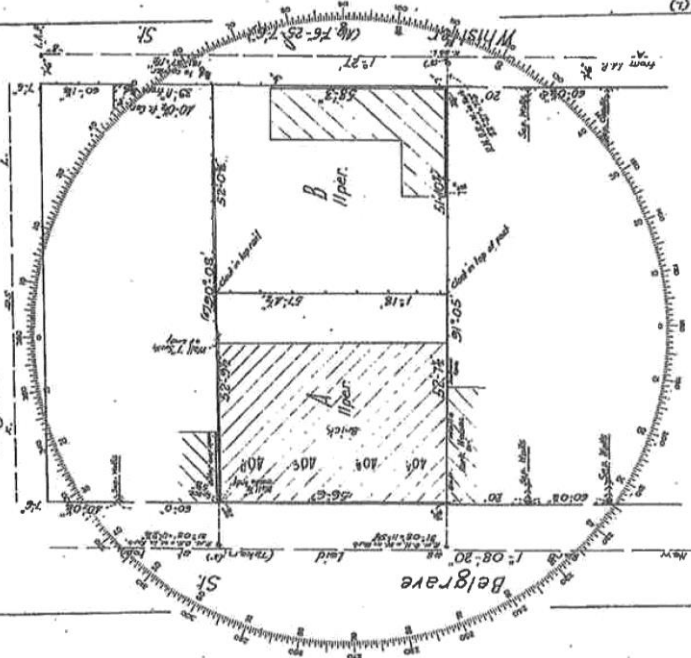
Municipality of Manly
 Street of Manly
 P. 36845
 PLAN

of subdivision of the land in Cert. of Title Vol. 5051-Folio

County of

F57519

019 Raglan



Approved by Council and passed by Council
This document is
FOIA b 7 - D-7-200
SEA EVIDENCE OF COUNCIL'S
APPROVAL RE-APPROVAL

01-01-10
 Jackson of Plains
 (Signature) *Tracey B. Jackson*
 However, additional under the provisions of the

(b) as (1) applies and states:

- During his first period

12/18/11 22/9/50/22

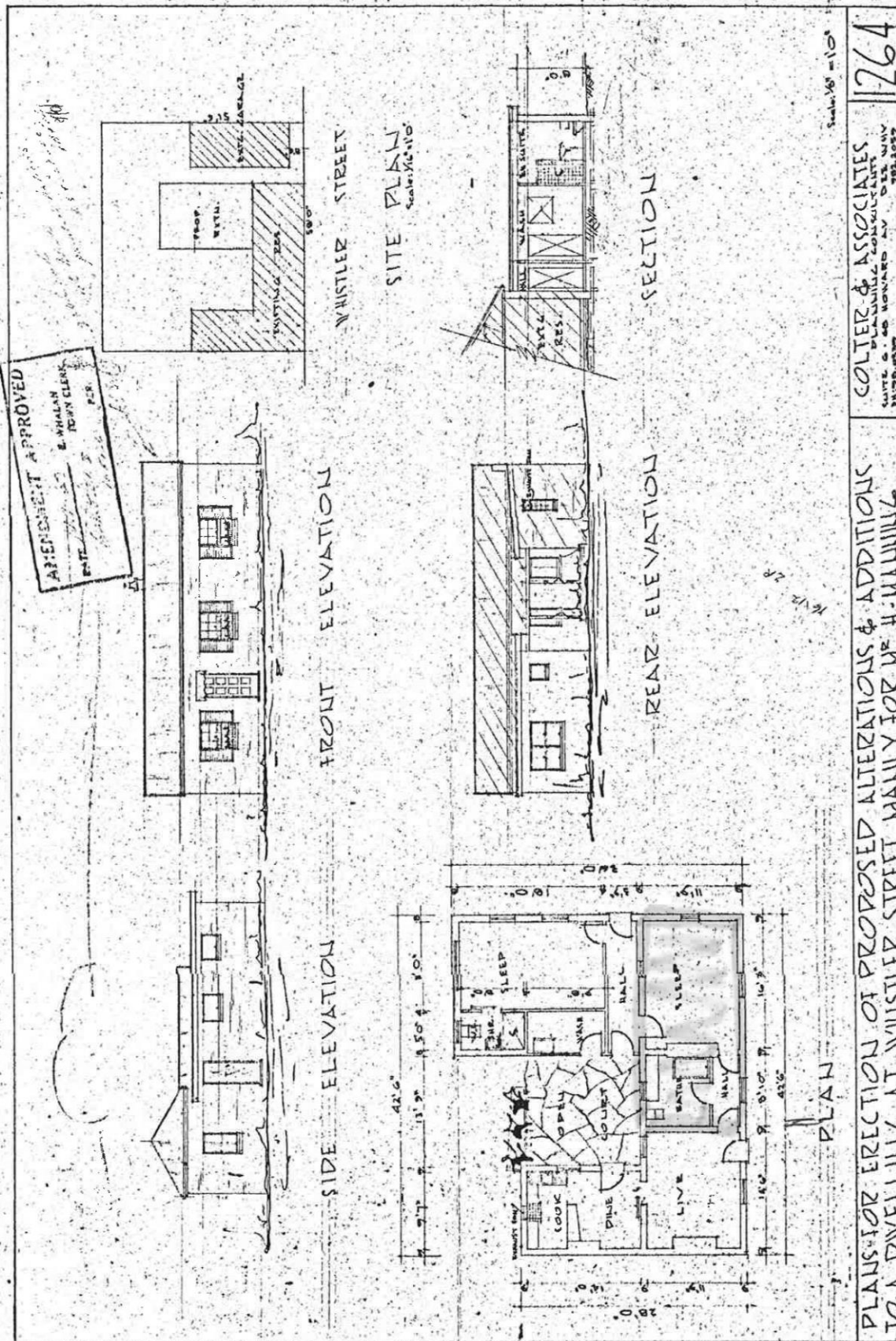
1. Bruce Richard Davies, Registrar General for New South Wales, certifies that this negative is a photograph made as a permanent record of a document in my custody this 3rd day of October, 1978

CONVERSION TABLE ADDED BY THE DEPARTMENT OF LANDS		CONVERSION TABLE ADDED BY THE DEPARTMENT OF LANDS	
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99	99 1/2	99	99 1/2
100	100 1/2	100	100 1/2

ATTACHMENT 5

1967 BA Drawings for proposed alterations
and additions.

1967



ATTACHMENT 6

Norton Survey Partners

6 DECEMBER 2019

NORTON SURVEY PARTNERS

SURVEYORS & LAND TITLE CONSULTANTS



Our Ref: 53011
6th December, 2019

Urban Partners
Suite 202, 349 Pacific Highway
NORTH SYDNEY NSW 2060

Attn: Ted Byrne

Re: 21 Whistler Street, Manly – Lot B D.P.368451

As discussed, we have carried out further title searches at Land Registry Services (LRS) in regard to the above property. In the course of those searches we have obtained a copy of D.P.10228. This is a subdivision plan prepared in July 1920 by Surveyor Nott.

From our investigations we can advise that the northern boundary of the land in DP10228, specifically Lot 1 therein, is contiguous with the southern boundary of the land in D.P.368451, i.e. it is a common boundary line.

D.P.10228 shows the position of various occupations (fences and buildings) close to the perimeter boundaries of the land and, where those occupations are buildings, it also includes a description of the main material of construction. Showing such information was an important survey requirement of the Registrar General at that time and this has carried through to the present day.

To demonstrate this point, I have included below an extract from Clause 63 (1) of the current Surveying and Spatial Information Regulation 2017:

(1) A survey plan must:

- (e) show the description and location (including the age, nature, construction material and relationship to the boundary) of any substantial structure (including any fence):
 - (i) that is within 1 metre of the boundary of the land surveyed, or
 - (ii) that is otherwise relevant to the boundary definition,

At the north east corner of Lot 1, D.P.10228 shows a building described as "stone" adjacent to the north boundary and situated within the south east corner of what is now Lot B D.P.368451. We note the south east corner of Lot B is currently occupied by a brick building. This indicates that the brick building was erected some time after July 1920, the date of preparation of D.P.10266.

Further to the above we note that DP10288 shows the stone building as standing 4 inches (100mm) clear of the north boundary of Lot 1 and 3 inches (75mm) inside the Whistler St boundary. D.P.368451 (dated July 1950) displays a building (of unidentified material) upon Lot B and shows this building 3½ inches (90mm) clear of the north boundary of Lot 1 and 7 inches (180mm) inside the Whistler St boundary.

While the difference between the plans in setbacks to the north boundary is inconsequential, the difference in setbacks to Whistler St is substantial in a survey context, being 4 inches (105mm). This places the building shown in D.P.368451 in a different position to that shown in D.P.10288 which indicates they are not the same building.

We attach copies of D.P.10288 & D.P.368451 for reference.

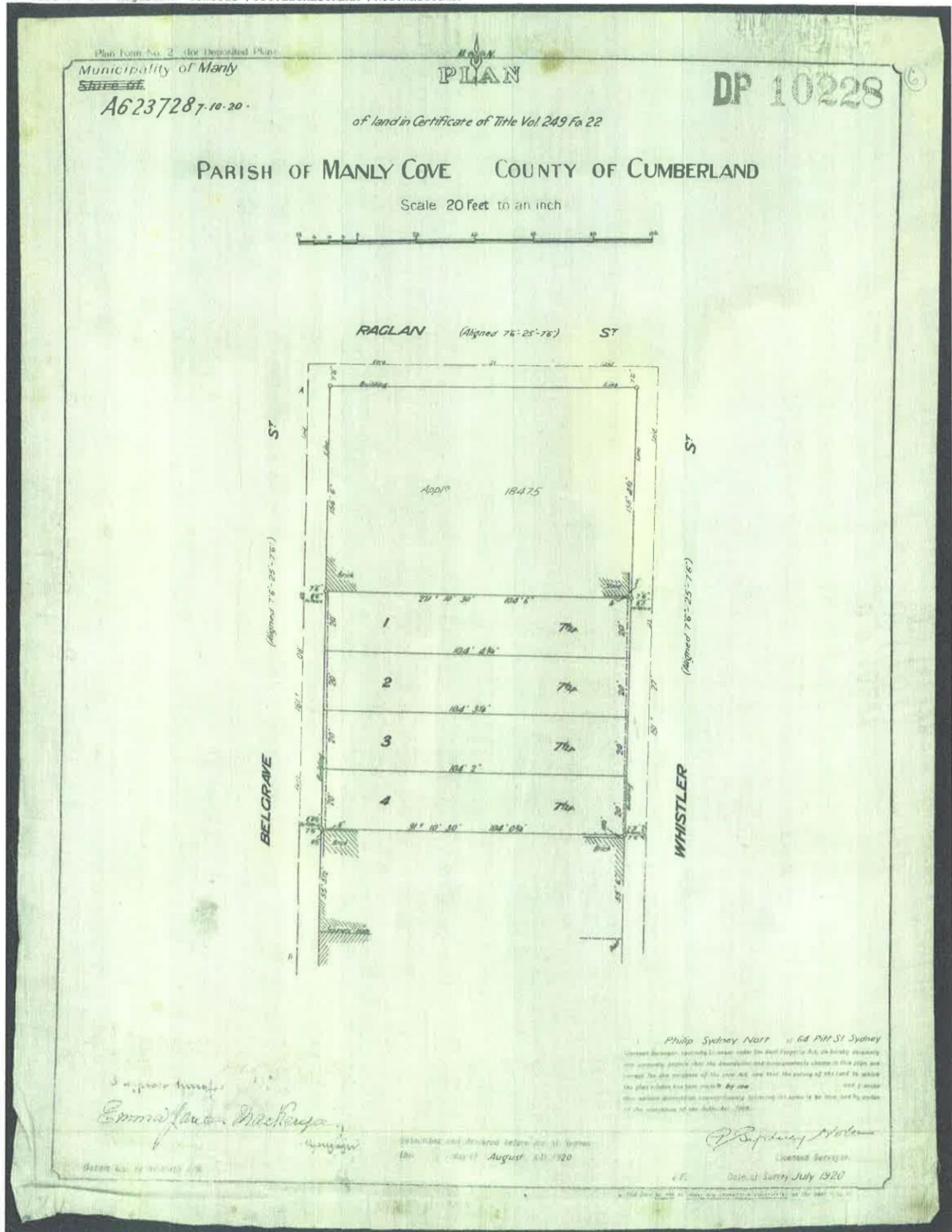
1950 survey shows
not same building

NORTON SURVEY PARTNERS PTY LTD

Per: 
Chris Norton
Registered Surveyor

NORTON SURVEY PARTNERS PTY LTD ABN 22 618 980 475
1/670 Darling Street Rozelle NSW 2039
PO Box 289 Rozelle NSW 2039

Ph: (02) 9555 2744
office@nspartners.com.au



ATTACHMENT 7

TSS Survey of the Site

13 January 2020



TSS TOTAL SURVEYING SOLUTIONS
Sydney, Central Coast & Melbourne
Suite 8, 448 Pacific Highway, Lane Cove North NSW 2066
Email tss@totalsurveying.com.au
Ph 1300 877 000

Our Reference: 200004-1
Date of Survey: 13/1/2020

Urban Partners
Attn: Ted Byrne

Survey Report
21 Whistler Street, Manly
Lot B DP 368451

Dear Ted,

In accordance with your instructions, we have surveyed for setting out purposes Lot B in Deposited Plan 368451.

The subject property is identified as No.21 Whistler Street, Manly in the Local Government Area (LGA) of Northern Beaches and has a frontage of 17.755 metres to Whistler Street as shown on the attached sketch.

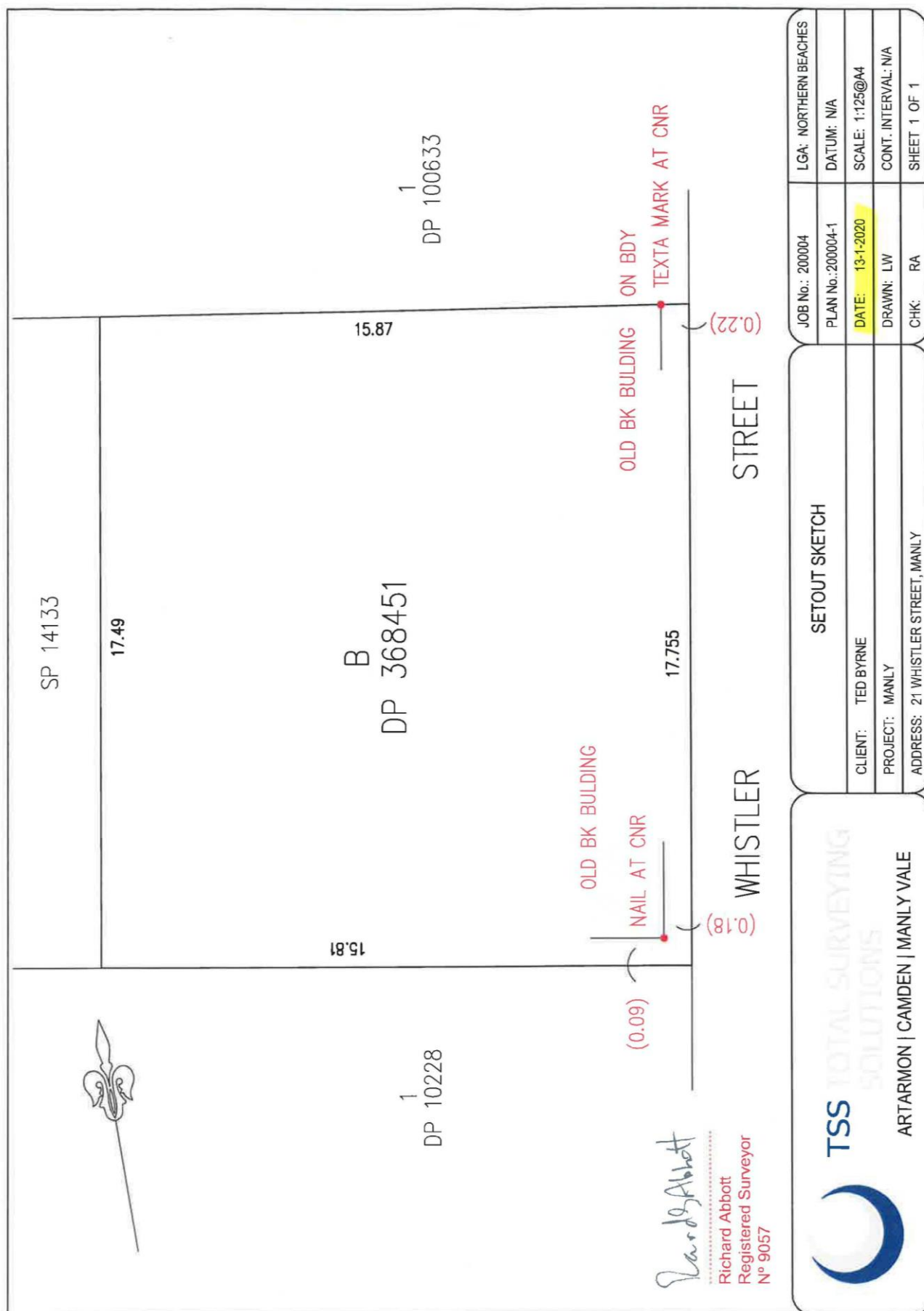
Upon the land stands an old rendered building. The southeast corner of the building is 0.18m clear from Whistler Street boundary. My surveyed building offset is consistent with the number (7'') shown on Deposited Plan 368451 dated 4th July 1950.

Any improvements to be erected on or near the boundaries will require further survey. If any construction is to be carried out on or near the boundaries, survey marks should be placed to define the boundaries.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'Richard Abbott', is written above the printed name.

Richard Abbott
Registered Land Surveyor
Surveyor ID: 9057



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ATTACHMENT 8

O'Brien Connors & Kennett Lawyers

3 December 2019

OUR REFERENCE: RHW:CW:190054

YOUR REFERENCE:



3 December 2019

Pavilion Residences No.3 Pty Ltd
PO Box 1640
NORTH SYDNEY NSW 2059

Dear Sir/Madam

Historical records and searches
Property: 21 Whistler Street, Manly

We have reviewed the indenture, together with the historical index search with respect to the abovementioned property.

The two documents should be read in conjunction with one another, whereby the historical index search shows that the property was conveyed on 21 May 1875 jointly to John Dawson, Eliza Zuccani and John Charles Lovell as to the first part, Thomas Rowe as to the second part, Charlotte Jane Rowe of the third part and Sydney Moore Green as to the forth part.

The indenture was entered into this same day, duly executed by all of the abovementioned proprietors, whereby they then conveyed the property to Sydney Moore Green in its entirety, for the sum of £173.13, which was paid to the vendors on 21 May 1875.

The terms of the indenture also granted a right of residency to Charlotte Jane Rowe, granting her 'sole and separate use' of the subject property during her life. The deed establishes that upon her passing, the purchaser, Sydney Moore Green, or his heirs or executors would then take possession of the premises.

I enclose copy of the indenture together with the historical search records, confirming the abovementioned details.

Should you have any queries, please do not hesitate to phone me.

Yours faithfully

O'BRIEN CONNORS & KENNETT

per:

A handwritten signature in black ink, appearing to be "P. Kennett".

We advise that this office will be closed from 12.00 pm on Friday, 20th December 2019 and will re-open at 9.00 am on Tuesday, 7th January 2020
We take this opportunity to wish you a Merry Christmas and a Happy New Year.

Website: www.ock.com.au

Liability limited by a scheme approved under Professional Standards Legislation and by our Terms of Appointment. Employed legal practitioners and directors of Legalease Pty Limited ABN 12 612 615 353 an incorporated legal practice trading as O'Brien Connors & Kennett are members of that scheme

With:

David Marinić
& Associates

Lesley Dingley
Solicitors & Lawyers

Lawyers

Robert H Warren
Principal

Peter D Kennett
Special Counsel

Clare Wainwright
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Lesley Dingley

Edwin Nelson

Alexandra Willcock

Nicole Davis

Office address:

Level 2, Suites 24-25,
22-26 Fisher Road,
Dee Why 2099

PO Box 1166, Dee Why
NSW 2099

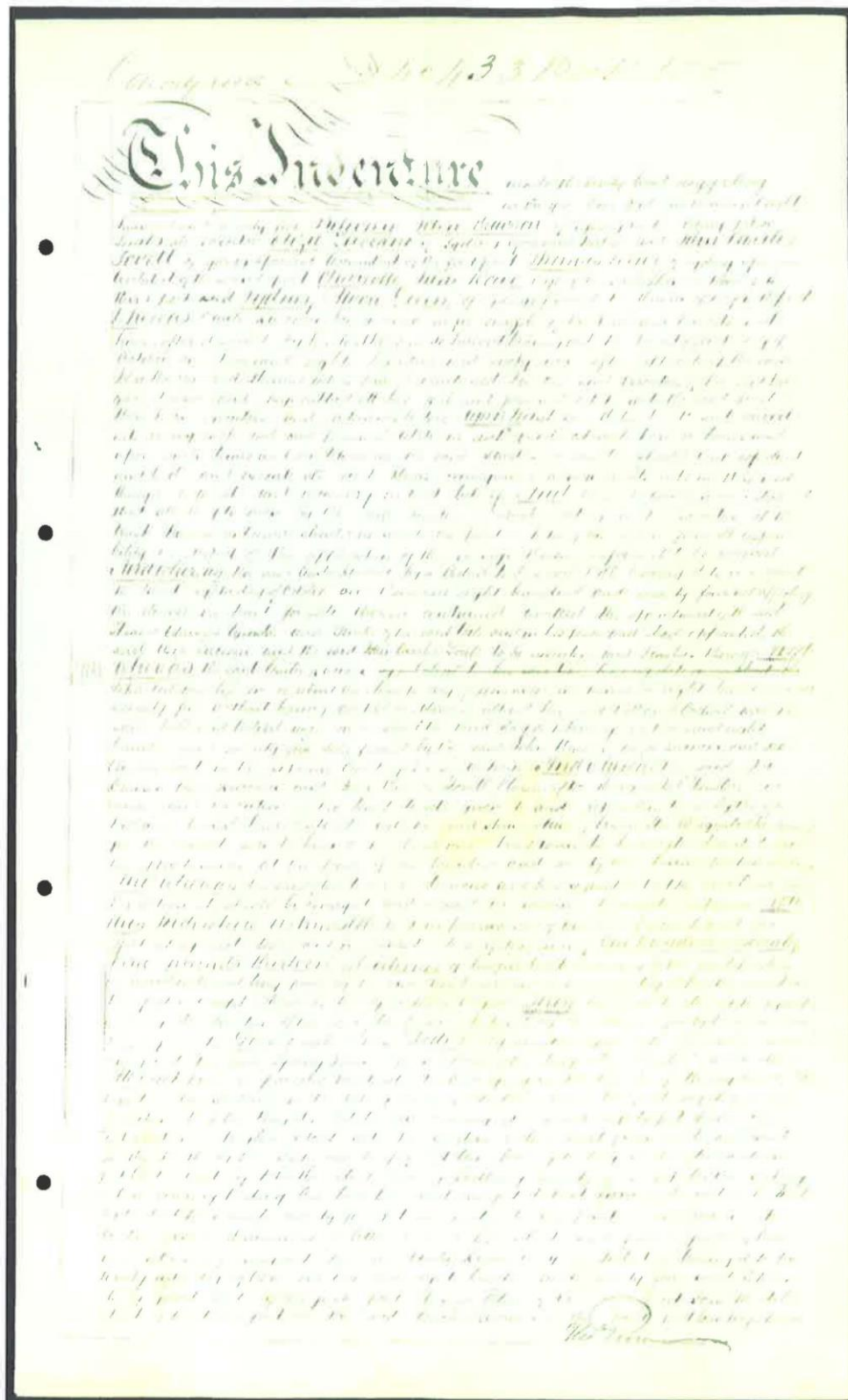
DX 9101 Dee Why

Tel: (02) 9982 1655

Fax: (02) 9982 1066

E: email@ocklaw.com.au

ABN: 126 126 163 53



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ATTACHMENT 9

O'Brien Connors & Kennett Lawyers

19 December 2019



OUR REFERENCE: RHW:CW:190054

YOUR REFERENCE:

19 December 2019

Pavilion Residences No.3 Pty Ltd
PO Box 1640
NORTH SYDNEY NSW 2059

Dear Sir/Madam

Property: 21 Whistler Street, Manly

I refer to my advice to you of 3 December 2019, wherein I was asked to research the ownership and prepare legal advice accordingly. I had the appropriate searches carried out and prepared this advice, which has been provided to you.

I also understand that a consultant for Council has stated that Thomas Rowe was the owner of the said property based on a rate assessment notice. The rate assessment notice shows who paid the rate notice, and is not an indicator of who owed the property. This is not the correct way to determine legal ownership and it is incorrect to state that Rowe was the owner based solely on a rate assessment notice with no address.

The document that solely determined who owned the land is the indenture registered with land Titles, being registered No 433 Book 150, not the document being presented by the consultant.

The indenture states:

That the property was conveyed to Sydney Green on 21 May 1875, until he sold the property in December 1883.

The same indenture also granted Charlotte Rowe a right of residency during her life, granting her sole and separate use of the premises, not unlike a tenant. I understand that she passed away in 1877.

Upon her demise, Sydney Green or his heirs or executors would then take possession of the property in accordance with the indenture. Accordingly, Sydney Green owned Lots 8 and 9 from 21 May 1875 until he sold these in December 1883.

We advise that this office will be closed from 12.00 pm on Friday, 20th December 2019 and will re-open at 9.00 am on Tuesday, 7th January 2020
We take this opportunity to wish you a Merry Christmas and a Happy New Year.

Website: www.ock.com.au

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With:

David Marinic
& Associates

Lesley Dingley
Solicitors & Lawyers

Lawyers

Robert H Warren
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Peter D Kennett
Special Counsel

Clare Wainwright
Associate

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Fax: (02) 9982 1066
E: email@ocklaw.com.au
ABN: 126 126 153 53

Reg no. 444 book 162, as mentioned in page 7 item 2, has nothing to do with lots 8 and 9, and relates instead to Lots 10 & 11, comprising a completely different property, and therefore does not have any bearing on 21 Whistler Street Manly, being the property that Sydney Green owned where Charlotte Rowe had a right of residency. The reference on page 7 item 2 relates to a transfer for lots 10 and 11 that Thomas and Charlotte Rowe bought from Arthur Croft.

Yours faithfully

O'BRIEN CONNORS & KENNETT

per:



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ATTACHMENT 10

O'Brien Connors & Kennett Lawyers

17 January 2020

OUR REFERENCE: RHW:CW:190054

YOUR REFERENCE:



17 January 2020

Pavilion Residences No.3 Pty Ltd
PO Box 1640
NORTH SYDNEY NSW 2059

Dear Sir/Madam

Re: Your Sale
Property: 21 Whistler Street, Manly

We refer to your request for further particulars with respect to ownership and mortgages in regards to registered No 433 Book 150, held with the Land Registry Services.

Ownership of property is determined by the conveyance of that property, as reflected in the records held by the Land Registry Services.

A conveyance therefore proves ownership, while a mortgage does not. This is because a mortgage can have other parties to it, who are not the registered proprietors of the land, yet are still party to the mortgage.

The document that solely determines who owned the land is the indenture registered with Land Title, being registered No 433 Book 150, which confirms the conveyance of the property.

Yours faithfully
O'BRIEN CONNORS & KENNETT
per:

A handwritten signature in black ink, appearing to be "C. Marshall".

With:

David Marinic
& Associates

Lesley Dingley
Solicitors & Lawyers

Lawyers

Robert H Warren
Principal

Peter D Kennett
Special Counsel

Clare Wainwright
Associate

Lesley Dingley

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ABN: 126 126 153 53

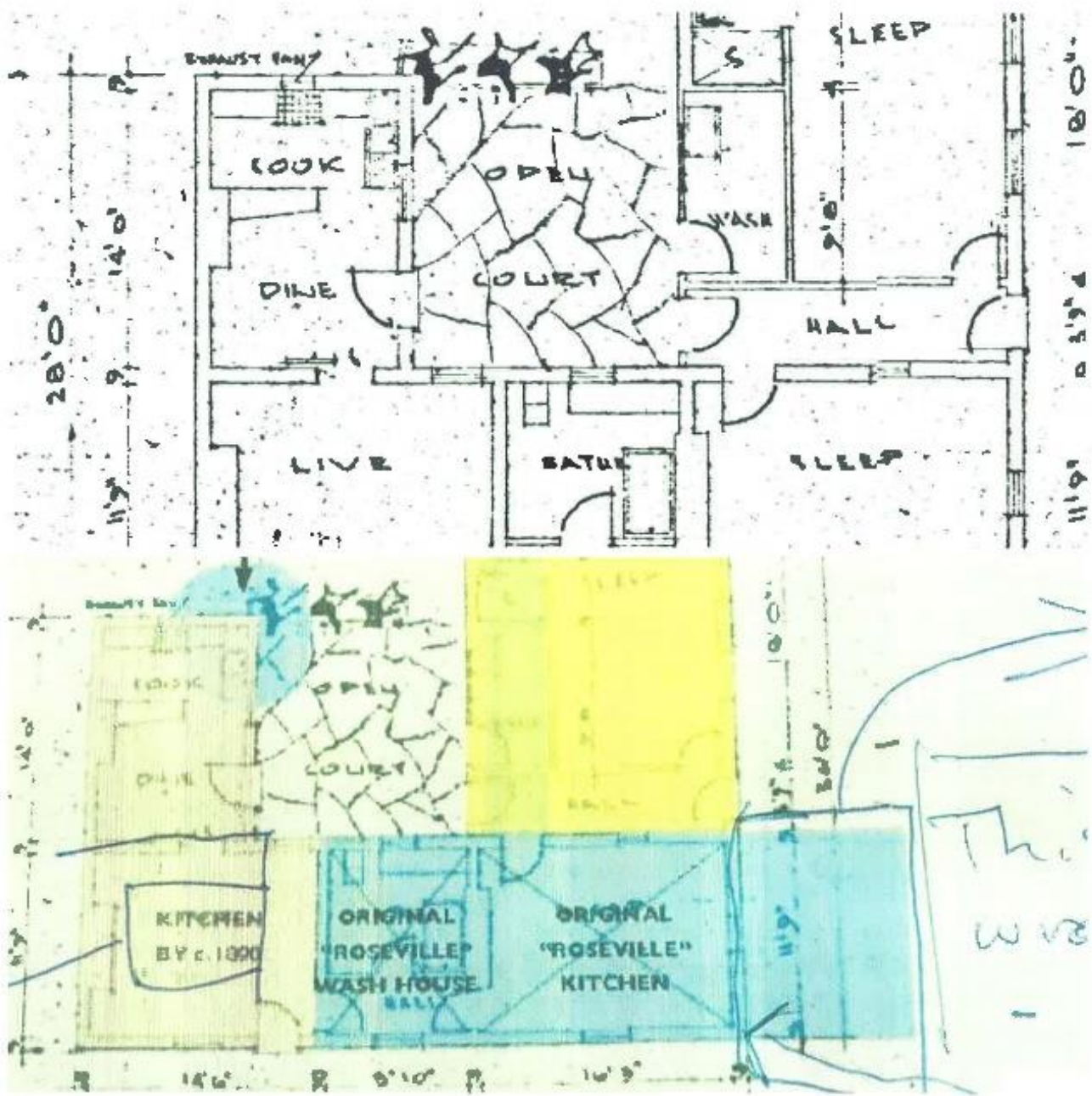
Website: www.ock.com.au

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ATTACHMENT 11

R&H Report 1, 1 July 2019
Detail from Figure 4.3

1 July 2019



Caption: "Figure 4.3 No 21 Whistler Street as depicted in the 1967 plans for alterations and additions to the building. Blue = structures constructed by Thomas Rowe as a part of "Roseville" as shown on the 1883 auction notice...Red = structures added by c. 1890 as shown on the MWS&DB Manly Detail Sheet 29 and in the Kerry & Co photograph...Yellow = additions proposed in 1967."

ATTACHMENT 12

Weir Phillips Peer Review
21 Whistler Street, Manly

22 July 2019



22 July 2019

Attention: Greg Coppin

Wolski Coppin Architecture
Level 1 507 Military Road
Mosman NSW 2088

Re: 21 Whistler Street, Manly

Dear Greg

I have looked at the documentation sent to me regarding the above address and note the following:

1. With regard to Council's pre-lodgement advice of 26 July 2018:
Based on the above, I have no objections to this proposal from heritage perspective subject to the submission of a Heritage Impact Statement with a development application.
Council also states that the subject site is not a heritage item.

I concur with both of these statements.

2. The Statement of Heritage Impact, of Heritage 21 dated September 2018 is thorough and comprehensive. The assessment of significance of the site is appropriate. It determines that the site meets none of the criteria for heritage listing.

I concur with the findings of this SoHI.

3. I note Council's further correspondence of February 2019 where the heritage officer makes no further comment.
4. I disagree with the Executive Summary of Item 12.1 of the Agenda of the Ordinary Council Meeting for 23 July 2019 and with the Report of Robertson & Hindmarsh in that:
 - a) The historical significance is limited due to the amount of change and the lost context of the main house. The link with a particular historic phase is now tenuous.
 - b) The significance of Rowe as a Mayor and as founder of the Institute of architects would have been more sensibly vested in the now-demolished front section of the site.
 - c) The site shows little or no evidence of technical innovation.
 - d) The rarity of an outbuilding type in the town centre is understandable due too the nature of a town centre. It is probable that there are other examples located in the Municipality sufficient for their rarity in the town centre to be overcome.

I disagree with the findings of Robertson & Hindmarsh.

5. The applicant has been diligent in ensuring the site was not of heritage significance. The SoHI of Heritage 21 is thorough and reaches a responsible conclusion. The reasons for listing by Robertson

& Hindmarsh are tenuous and insufficient to warrant listing the site. They vindicate the Heritage Officer's earlier conclusion that the site is not of sufficient heritage value to warrant listing.

Please call me if you have any further questions.

Yours faithfully



James Phillips, B.Sc.(Arch.), B.Arch., M.Herit.Cons.(Hons)

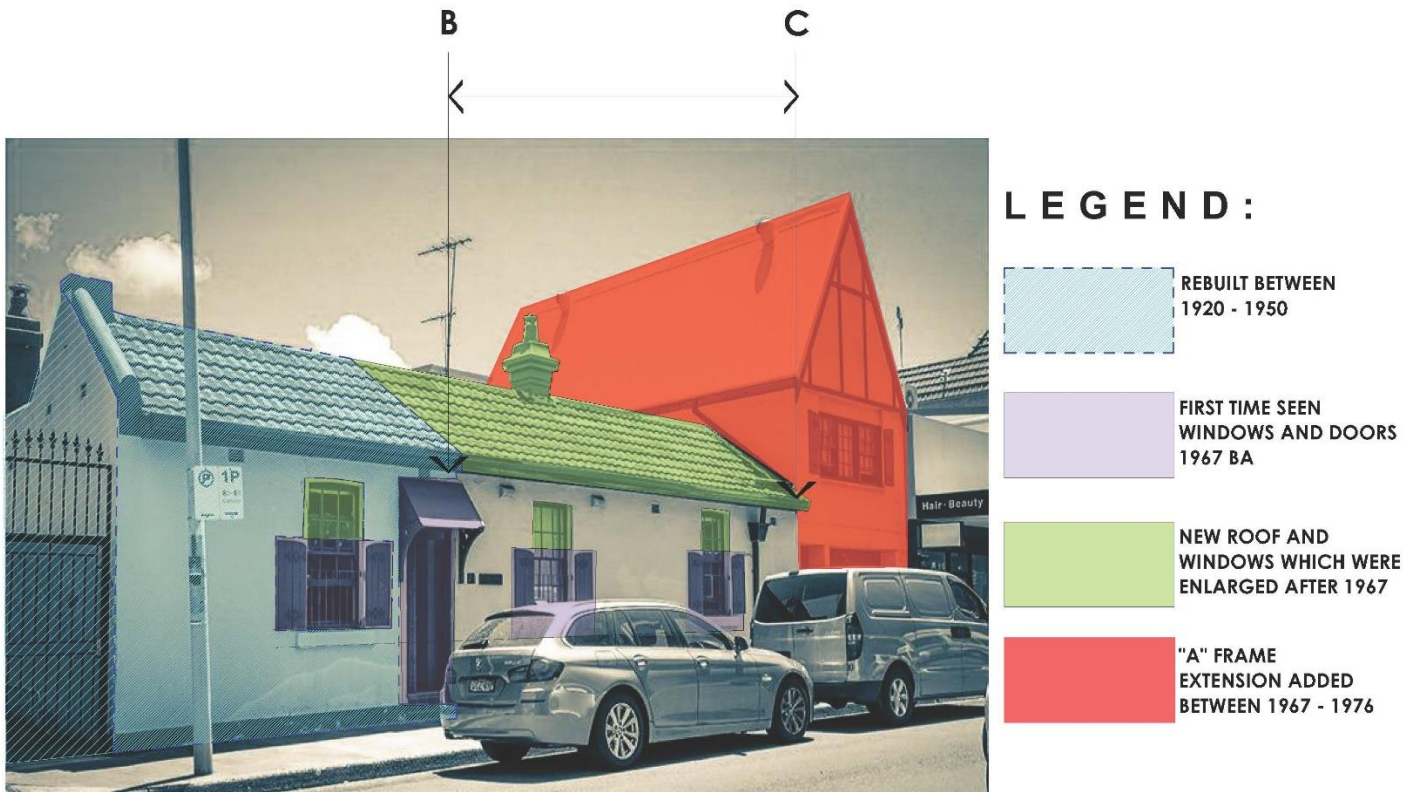
Director

Astragal Heritage Pty Ltd trading as
Weir Phillips Heritage and Planning
ABN 40 600 197 859

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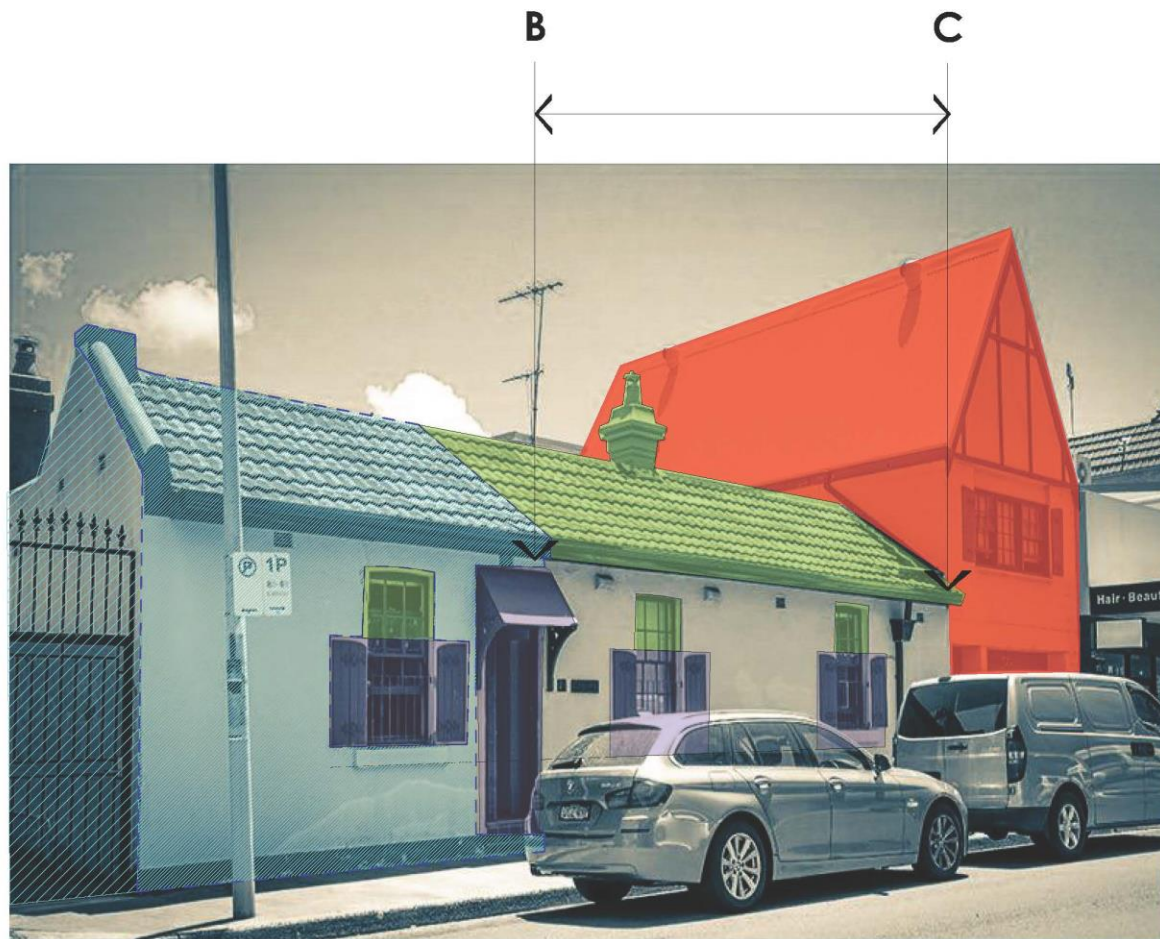
ATTACHMENT 13A

Current building showing
alterations, additions &
demolition
Wolski Coppin



CURRENT BUILDING SHOWING ALTERATIONS, ADDITIONS & DEMOLITION

[illegible]



LEGEND:

- REBUILT BETWEEN 1920 - 1950
- FIRST TIME SEEN WINDOWS AND DOORS 1967 BA
- NEW ROOF AND WINDOWS WHICH WERE ENLARGED AFTER 1967
- "A" FRAME EXTENSION ADDED BETWEEN 1967 - 1976

CURRENT BUILDING SHOWING ALTERATIONS, ADDITIONS & DEMOLITION

NOTES:	REVISIONS:	PROJECT TITLE:	CLIENT:	ARCHITECT:	DRAWING TITLE:	DRAWING No:	PROJECT No:	REVISION:	NORTH POINT:	
FIGURED DIMENSIONS ARE TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS. THE CONTRACTOR IS TO CHECK AND VERIFY FIGURED DIMENSIONS PRIOR TO ANY COMMENCEMENT OF WORK ON SITE. THIS DRAWING IS COPYRIGHT AND SHALL REMAIN THE PROPERTY OF WOLSKI COPPIN ARCHITECTURE	DATE	REV	Urban Partners	WOLSKI . COPPIN ARCHITECTURE SUITE 3, LEVEL 1, 507 HARBURY ROAD MOSMAN NSW 2088 P: 01932 8477 E: Y@WOLSKICOPPIN.COM.AU DAVID WOLSKI NSW ABN NO. 5297	Current Building showing alterations, additions & demolition	image 02	21806	SCALE: 1:1 @ A3	DATE: 5/02/2020	
		21 WHISTLER ST MANLY								
BIM Server: BMSVR-BIM BIM Server: 20/21806 21 Whistler Street Manly with Heritage 5 11 19										
PLOT DATE: 5/02/2020										

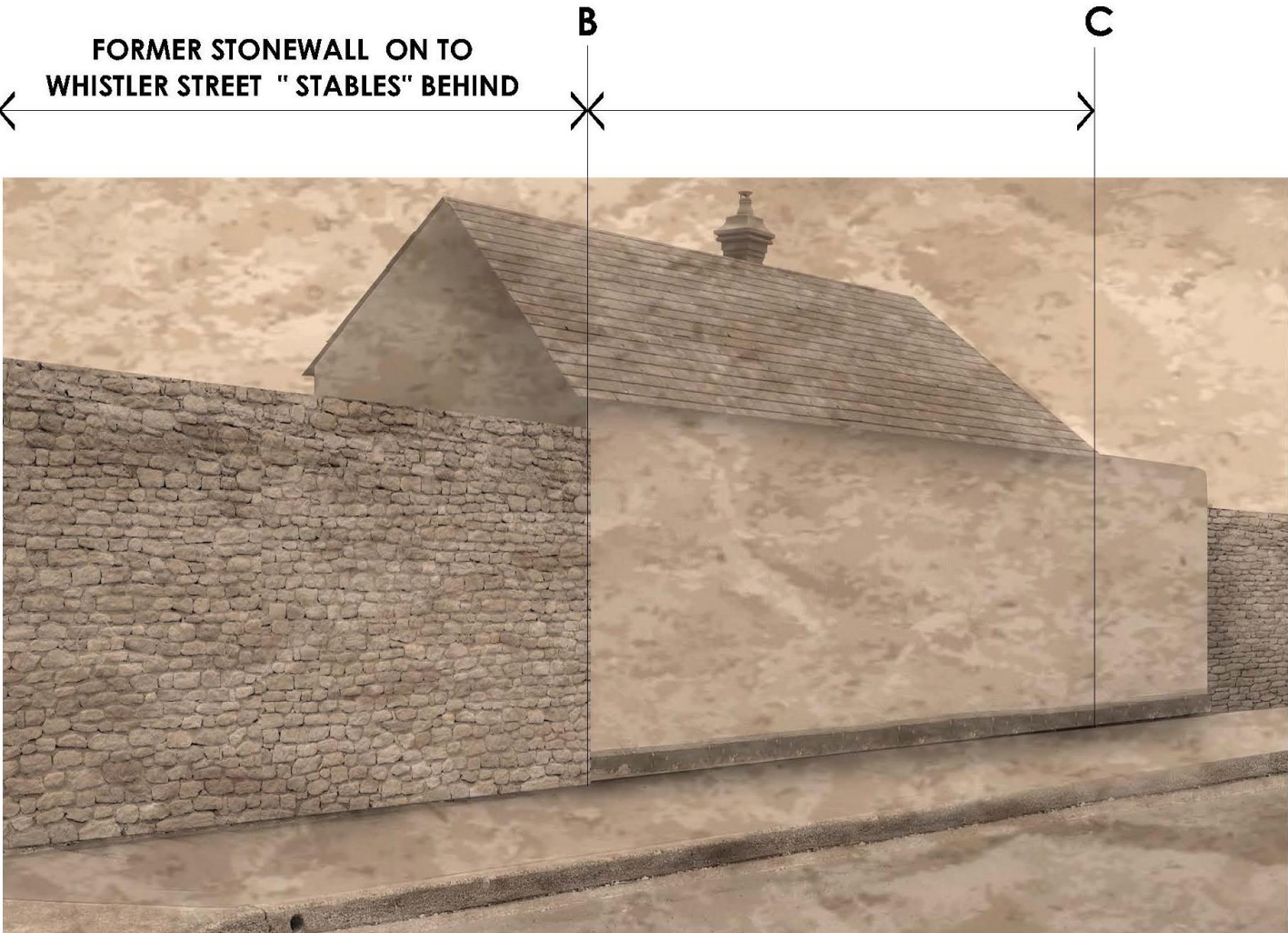
BIM Server: BIA3K-V01 - BIM Server: 20/21806 21 Whistler Street Manly with Heritage 5 11 19

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ATTACHMENT 13B

Perspective of Outbuilding
as originally built
Wolski Coppin

NOTES:	REVISED:	PROJECT TITLE:	CLIENT:	ARCHITECT:	DRAWING TITLE:	DRAWING No:	PROJECT No:	REVISION:	NORTH POINT:														
<p>NOTES: IMPROVEMENTS ARE TO BE MADE IN ACCORDANCE TO THE PLAN (REVISIONS)</p> <p>THE CONTRACTOR IS TO CONSULT WITH THE ARCHITECT REGARDING ANY CHANGES TO THE PLAN (REVISIONS)</p> <p>THE DRAWING IS A PRELIMINARY DESIGN. THE ARCHITECT WILL BE RESPONSIBLE FOR ANY CHANGES TO THE PLAN (REVISIONS)</p>	<table border="1"> <thead> <tr> <th>DATE</th> <th>REV</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>	DATE	REV	DESCRIPTION													21 WHISTLER ST. MANLY	Urban Partners	<p>WOLSKI . COPPIN ARCHITECTURE</p> <p>10/10/2021 10/10/2021 10/10/2021</p> <p>10/10/2021 10/10/2021 10/10/2021</p>	<p>image 01</p> <p>Outbuilding as originally built</p>	<p>21806</p> <p>SCALE: 1:200 @ A3</p> <p>DATE: 5/02/2020</p>	<p>21806</p> <p>5/02/2020</p>	<p>21806</p> <p>5/02/2020</p>
DATE	REV	DESCRIPTION																					



PERSPECTIVE OF OUTBUILDING AS ORIGINALLY BUILT

FIGURED DIMENSIONS ARE TO BE TAKEN IN PREFERENCE TO SCALED DIMENSIONS.

THE CONTRACTOR IS TO CHECK AND VERIFY FIGURED DIMENSIONS PRIOR TO ANY COMMENCEMENT OF WORK ON SITE.

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DATE	REV	DESCRIPTION

21 WHISTLER ST MANLY

**Urban
Partners**

WOLSKI . COPPIN
ARCHITECTURE
SUITE 3, LEVEL 1, 307 MUTARY ROAD NOOSMA NEW 2088
T: 9532 8477 E: info@wolskicoppin.com.au
DAVID WOLSKI NEW ARE NO. 5297

Outbuilding as originally built

image
01

| 2 1 8 0 6

SCALE:
1:2.00 @ A3

5 |

DATE:	5/02/2020
-------	-----------

PLOT DATE: 5/02/2020

2 February 2020

ANALYSIS OF HISTORICAL INFORMATION RELATING TO 21 WHISTLER STREET, MANLY

1.0 OVERVIEW

Throughout this analysis it must be acknowledged that 'Roseville', the homestead about which much conjecture has arisen, was demolished between c.1937 and 1943 as demonstrated in aerial images in Section 3 of this Report. The building on the subject site today bears no resemblance to the original service outbuilding associated with 'Roseville'. The only drawings of the Whistler Street elevation of the subject building, produced to date, are the 1967 BA drawings (Attachment 5).

This Report intends to dismiss the basis of a proposed heritage listing for 21 Whistler Street, Manly ('the Site'), that Thomas Rowe owned, designed and built 'Roseville', by providing an objective analysis and primary evidence of:

- the ownership of the Site in Title Deeds Information;
- the footprint and of the various buildings on the Site, in Surveys; and
- the transformation and evolution of the Site.

This analysis will also reject the claim by Robertson and Hindmarsh Pty Ltd that Heritage 21 does not accept that Thomas Rowe resided at 'Roseville'. This claim is inaccurate. Heritage 21 accepts that Thomas Rowe did stay at 'Roseville' from time to time during his Mayoralty of the Manly Municipal Council. Reference to that appears numerous times in Heritage 21's Submission to Council on 9 December 2019, as well as in this analysis, although Robertson and Hindmarsh denied this in its report of 12 December 2019. In addition to that it seems Rowe only stayed at 'Roseville' from time to time up until shortly after his first wife's death in March 1877, as confirmed in recent legal advice from O'Brien Connors & Kennett Lawyers (Attachment 1, p 4).

In addition to the abovementioned primary information concerning ownership and the footprint of the building, it is noted that comprehensive research by Heritage 21 of Council Records, Local Studies Manly Library, National Library of Australia Trove records, the State Library and State Archives, amongst many other sources recorded in Section 9, has not uncovered any evidence that the Site was designed or built by Thomas Rowe. Neither has our research led us to a logical conclusion that this was the case. Robertson & Hindmarsh has not produced any primary evidence to the contrary by way of drawings, records or any publication which definitively demonstrates that Rowe designed 'Roseville'. The attribution of the design of 'Roseville' to Rowe is not mentioned in the many papers and articles written about Rowe's architecture, including the Honours Thesis by M Berry, *A History of Col. Thomas Rowe* and the Australian Institute of Architects NSW biographical information on Thomas Rowe. The only depiction of the Whistler Street elevation for the Site is contained in the 1967 BA Drawings for Alterations and Additions, which were produced as a result of a GIPA request to Council by the Applicant.

This analysis will compile evidence that intends to expose the erroneous assumptions contained in the various reports and responses compiled by Robertson & Hindmarsh for Council during 2019, prepared in support of the proposed heritage listing of the Site. It is noted that Robertson & Hindmarsh has never visited the Site, other than viewing the exterior along Whistler Street, and has relied on images provided by Full Circle Heritage.

Section 3 contains a thorough graphic chronology of the various buildings on the Site which informs the transformation of the Site and the phases of its use, from a service wing adjoining a homestead; to a mews; to a retail space (hairdresser); and since c. 1960s, for residential use. It is noted the current proposal for the Site, which would contain a ground floor retail space with 8 apartments above, is in keeping with the subject

buildings' mid to late 20th Century use as a retail space and as a residential space today, which is symptomatic of the transformation and evolution of the Site.

In refuting many of the claims made by Robertson & Hindmarsh ('R&H'), this Report will focus in Sections 4 – 7 on four key areas:

1. The Ownership and Occupation of the Site;
2. The Design and Building of the Site;
3. The Footprint of the Service Wing; and
4. The Robertson & Hindmarsh Assessment of Heritage Significance.

BACKGROUND

In 2007 - 2008, Clive Lucas, Stapleton & Partners Pty Ltd completed a review of potential heritage items in the (then) Manly Council area in which 21 Whistler Street, Manly ('the Site') was considered for listing as an item of Environmental Heritage.¹ This review of '*Manly's Sustainable Heritage*' was extensive and items were thoroughly considered for heritage listing. As part of the assessment of the Site, Clive Lucas conducted:

*'...an assessment of its physical fabric...'*²

Not only was 21 Whistler Street, Manly NOT LISTED as a result of the study³, the surrounding area in which it is located was deemed not to fulfil the criteria for a proposed Conservation Area and the Site was not considered to be of interest for a future listing. The explanation for "21 Whistler St, Manly 'The Mews'" not being proposed for listing, following the fabric assessment, included the following statement:

'The roof form, some joinery and wall rendering appear to be intact. It has had major additions and appears to be in fair condition. It has lost its domestic context.'

Prior to the acquisition of the Site, the registered Owner sought and received from the Northern Beaches Council a Section 149 Certificate for the Site which stated under the heading 'Environmental Heritage' that:

'There is no item of Environmental Heritage situated on the land.'

Based on the S149 Certificate as well as the Clive Lucas, Stapleton assessment not to list the Site, the current Owner exchanged contracts on the Site, after which time a Pre-DA Meeting (as recommended by Council) was arranged to develop a DA that was mutually acceptable to both Council and the Owner. The Council minutes of the Pre-DA Meeting state in respect of the Site:

'No environmental heritage'.

With what appeared to be certainty regarding the heritage status of the Site, some considerable time was spent in discussions between the Owner's Town Planner and Council in fine tuning the DA for the Site, which included a panel in the lobby area (depicted at the end of Section 3) to commemorate the fact that the Mayor of Manly, Thomas Rowe, had stayed at the Site from time to time during his time as Mayor and Alderman on the Manly Municipal Council.

¹ Clive Lucas, Stapleton and Partners Pty Ltd, *Manly's Sustainable Heritage*, Issued 12 Feb 2008.

² Robertson and Hindmarsh, 'Further Investigation & Comparative Review 21 Whistler Street, Manly', 1 July 2019, p 21.

³ Clive Lucas, *Manly's Sustainable Heritage*, p 916.

It is important to note that it has never been disputed that Rowe stayed at 'Roseville', from time to time, during his tenure as Mayor of Manly. Occupation of a property in Manly and payment of the rates assessed on it would have been a prerequisite to his eligibility to stand as an Alderman or Mayor. Since our Submission to Council 9 December 2019, Heritage 21 is in receipt legal advice (Attachment 1) which confirms Rowe declared in his words that in respect of the 'Roseville' site he:

'...lived in the cottage that stands on the property until shortly after the death of the said Charlotte Jane Rowe'.

We note that Charlotte Rowe died on 19 March 1877.

In September 2018, Heritage 21 prepared a Statement of Heritage Impact ('SOHI') to accompany the DA for the Site lodged by Urban Partners. As the Site was not heritage listed nor situated in a Heritage Conservation Area, the SOHI was prepared as a desktop study of the Site based on secondary sources. The SOHI incorrectly stated that Thomas Rowe was the owner of the 'Roseville' site because it misconstrued two advertisements; one for the sale/letting of (presumably) 'Roseville' in 1879; and the other for the sale of furniture and effects at 'Roseville' in 1880.⁴ Following the SOHI, Heritage 21 undertook further investigation of primary sources in 2019, including Title Deeds and Surveys, and discovered that the Site was never owned by Thomas Rowe, although he owned a neighbouring site for a time. Heritage 21 informed the Northern Beaches Council of this error concerning ownership during 2019 and Heritage 21 specifically covered the point in detail in its Submission to Council on 9 December 2019. The Title Deeds information was based on legal advice contained in the letter from O'Brien Connors & Kennett Lawyers dated 3 December 2019 (Attachment 8). Despite the evidence in Title Deeds concerning the fact that Rowe never owned the Site, produced in detail by Heritage 21 on 9 December, this primary information was refuted by Robertson & Hindmarsh in its Report to Council on 12 December 2019, which was specifically a reply to Heritage 21's 9 December 2019 Submission. As a result, R&H's Report of 12 December 2019 was submitted to the LPP on 16 December 2019 and it (the R&H Report of 12 December 2019) rebutted the new information by H21 on 9 December 2019. This resulted in the LPP erroneously allowing the Council motion to proceed to the Gateway Determination. Council voted on the motion on 17 December 2019. Ultimately it was defeated by a Rescission Motion supported by five Councillors. Council then called for an Extraordinary Meeting on 23 December 2019 but a quorum was not achieved and the matter has been deferred until 25 February 2020.

During the course of 2019, at the behest of Robertson & Hindmarsh Pty Ltd, the Site went from being dismissed in 2008 by Clive Lucas, Stapleton as having no heritage potential whatsoever, to being assessed as a place of heritage significance by Robertson & Hindmarsh. The Robertson & Hindmarsh Assessment of Heritage Significance (in its Report of 1 July 2019) was based largely on the false hypothesis that Thomas Rowe owned, designed and built the cottage 'Roseville' and its outbuildings. This hypothesis was perpetuated by Robertson & Hindmarsh without providing any Title Deeds information to support it and was based on rates notices, *Sands Directory* entries and tender notices, none of which actually mention 'Roseville' or the Site, and which did not, in our opinion, reliably prove that the Site was owned, designed and built by Rowe.

In addition to that, no drawings identifying Rowe as the designer or builder of 'Roseville' have ever been produced. In its Report of 1 August 2019, Robertson & Hindmarsh acknowledges this point and states:

'Whilst no drawings by Rowe for the house have been uncovered the documentary evidence strongly indicates that Thomas Rowe designed the house and the outbuildings for his family.'⁵

However, the published tender notice relied on contains no street address linking the tender to 'Roseville' so cannot be deemed to be primary or secondary evidence of Rowe's connection to the design and building of 'Roseville'. Also, Rowe is known to have built various houses in Manly and the tender notice could be for any of those houses. This is discussed in Section 5 of this Report.

⁴ Heritage 21, SOHI September 2018, p 11.

⁵ R&H 1 August 2019, p 4.

Regarding the ownership of 'Roseville', an illustration of the determination by Robertson & Hindmarsh to ignore Heritage 21's research is seen in the R&H Report of 12 December 2019 where R&H mentions numerous times that Rowe owned 'Roseville' despite Heritage 21 providing primary evidence to Council by way of legal advice about Title Deeds information on 9 December 2019. Thus, paradoxically, instead of Robertson & Hindmarsh for Council actually providing primary evidence that Rowe owned 'Roseville', the burden of proof has fallen onto the registered Owner, rather than Council, to prove that Thomas Rowe did not own the Site.

Finally, it is noted that the 1967 BA drawings for Alterations and Additions to the Site are the earliest, indeed the only, known depiction of the east elevation backing onto the Whistler Street boundary. The earliest available plan of c. 1883, discussed in Section 3, confirms that the east elevation of the service wing for 'Roseville' was a blank wall. By examining the footprint and use of the Site over time in Section 3, this Analysis will conclude that the 1967 drawings record the first window and door openings on the Whistler Street elevation.

The transformation of the Site observed in the various iterations of the Whistler Street building, demonstrates the evolution of its use: initially as a service wing; by the turn of the 20th Century as a mews; as a retail area including a hairdresser; and from c. 1967 onwards as a residence.

2.0 STRUCTURE

This Analysis is presented in two documents.

Document 1

Section 3: describes the transformation of the Site from the c. late 19th Century to date, by tracking the changing footprint of the various buildings along the Whistler St frontage of the Site as well as the evolution of the use of the Site. Graphic evidence of the Site, arranged in chronological order, is used to look at the changes to the Site coverage.

Sections 4 – 7: comment on the various assessments made and conclusions drawn by Robertson & Hindmarsh Pty Ltd and submitted to the Northern Beaches Council in the following reports:

- *Further Investigation & Comparative Review 21 Whistler St, Manly*, 1 July 2019, (Item 12.1 – 23 July 2019) – ‘**R&H Report 1, 1 July 2019**’;
- *Response to Intended Interim Heritage Order by Heritage 21, dated 23 July 2019 and Letter dated 22 July 2019 prepared by Weir Phillips Heritage*, 1 August 2019 – ‘**R&H Report 2, 1 August 2019**’;
- *21 Whistler Street, Manly Robertson & Hindmarsh Pty Ltd comments on Letter from Heritage 21, dated 28 August 2019*, 30 August 2019 – ‘**R&H Report 3, 30 August 2019**’;
- *21 Whistler Street, Manly Robertson & Hindmarsh Pty Ltd comments on Additional documents received December 2019*, 12 December 2019 – ‘**R&H Report 4, 12 December 2019**’

Sections 4 – 7: focus on the four main areas of discussion between Heritage 21 and Robertson & Hindmarsh Pty Ltd, namely:

- The ownership and occupation of ‘Roseville’;
- The design and building of ‘Roseville’;
- The footprint of the building on the Whistler Street boundary; and
- The Robertson & Hindmarsh Assessment of Heritage Significance in R&H Report 1, 1 July 2019.

The conclusions of this Analysis is contained in Section 8 of this Report and sources consulted are recorded in Section 9 of this Report.

Document 2 - Attachments

The numbered Attachments referred to in this Analysis are contained in a separate document in numerical order.

AUTHORS

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Paul is a registered architect and has led his team for the past 25 years as an expert specialist in Heritage Consultancy and Architectural Conservation. Paul advises clients in all matters related to heritage; design; advice; and reports. Paul’s experience in the field of historic and cultural heritage allows him to specialise in contemporary modifications to heritage buildings of all types including; residential, commercial, industrial, retail, rural, ecclesiastical, institutional etc.

Nicola Ross - Master of Heritage Conservation (Honours), USYD; Dip Arts, USYD; Bachelor of Laws, University of Auckland.

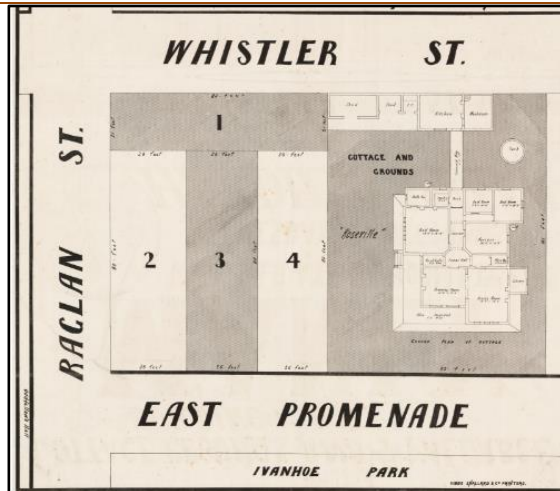
Following a career as a Barrister and Solicitor, Nicola qualified as a Heritage Conservationist and has been working as a Heritage Consultant for 15 years.

3.0 TRANSFORMATION OF THE SITE

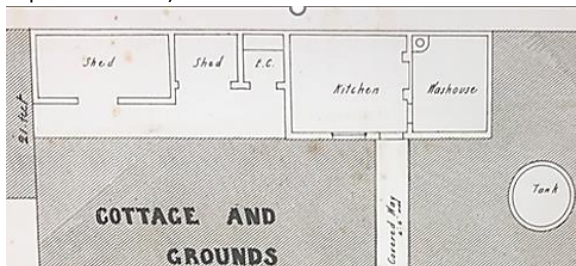
By tracking the changing footprint of the various buildings along the Whistler St boundary of the Site and recording the evolution of the use of the Site, this Section describes the transformation of the Site from the late 19th Century to date, using graphic evidence arranged in chronological order and registered surveyor's advice.

There is, in our opinion, only one possible remnant interior wall in the subject building from the late 19th Century phase, depicted later in this Section.

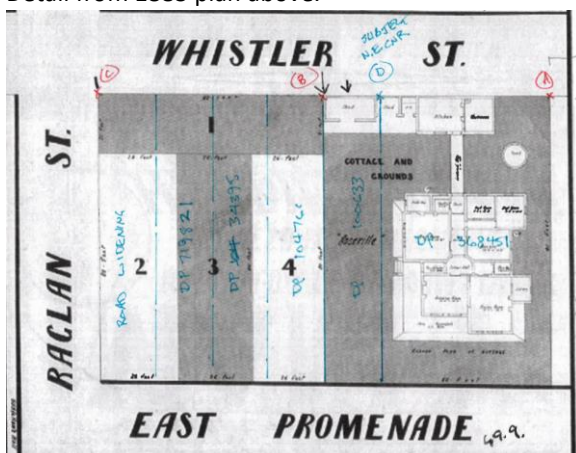
Attachment 2a



This detail is from 5 December 1883 subdivision sales poster which depicts a plan of 'Roseville' homestead and the alignment of the services wing outbuilding along Whistler Street. (Source: Figure 10, *SOHI Proposed development at 21 Whistler Street, Manly*, Heritage 21, September 2018)



Detail from 1883 plan above.



The northern boundary of the Site is indicated by 'D'. (Source: Norton Survey Partners)

c. 1883

'Roseville' was built with a separate service wing, containing (north to south) sheds, earth closet, kitchen and wash house facilities, on the Whistler Street boundary in c. 1870s – seen in the detail from the Plan, left.

This appears to be the only plan of the property with internal layout prior to 1967 and it demonstrates that the building contained a blank wall with no window or door openings along the Whistler Street elevation, in contrast to the existing building. The blank wall that used to back onto Whistler Street does not exist today.

Footprint

While the service wing outbuilding at that time encompasses the central and northern portion of the Whistler Street alignment, the building does not cover the southern extent of the Whistler Street alignment, nor return along the southern boundary.

Thus, the northern portion of the Site was occupied by the c. 1883 service wing. This northern portion of the outbuilding was demolished up to what appears to be the northern wall of the kitchen, by the time of the 1890 MS&WBS Drawing (below left).

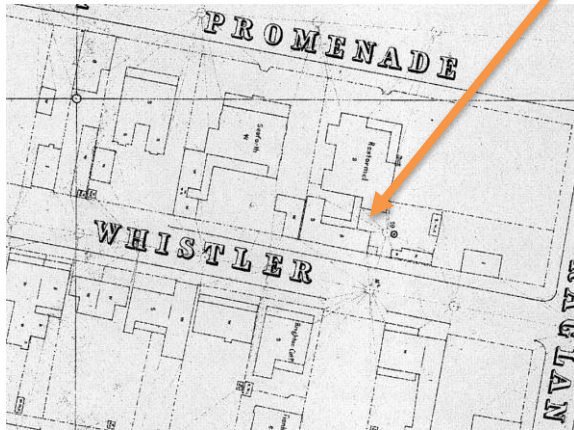
The c. 1970s two level concrete block garage building with gable facing onto Whistler Street occupies part of the original northern portion.

The drawing left, overlaid onto the 1883 drawing, indicates at 'D' the northern boundary of the Site today. The area occupied by the original sheds and earth closet are now occupied by the c. 1970s garage building.

Use

The c. 1883 building, the service wing, was not used for residential purposes as there was no bedroom in it. The building provided the storage, earth closet, kitchen and wash house services described for 'Roseville'.

Attachment 2b



Detail from Sheet 29 of the 1890 Metropolitan Sewage and Water Board Survey Drawing. (Source: Courtesy of Manly Library Local Studies)

1890 MS&WBS DrawingFootprint

Sheet 29 of the 1890 Metropolitan Sewage and Water Board Survey Drawing depicts what appears to be either a new structure or a greatly modified building on the Whistler Street alignment. The northern portion of the building has been demolished (to approximately the northern elevation of the original kitchen) so that the northern elevation of the outbuilding appears to be in line with the northern wall of the c. 1883 kitchen.

This drawing is not a measured drawing by a registered surveyor. However, the building seems to have a return along the southern boundary. This area may have been the stables or a coach house, as advertised in 1901.

MANLY. — RESTORMEL, containing drawing, dining (folding doors), library, breakfast and 5 bedrooms, dressing-room, servant's bedroom, kitchen, laundry, bathroom, coachhouse, stable, buggy-house, lawn, yard, fowlhouse, gas and water, rent £30 year and taxes. Apply Mr. Stevenson, agent, Manly, or F. Allard, 70 Pitt-st. et.

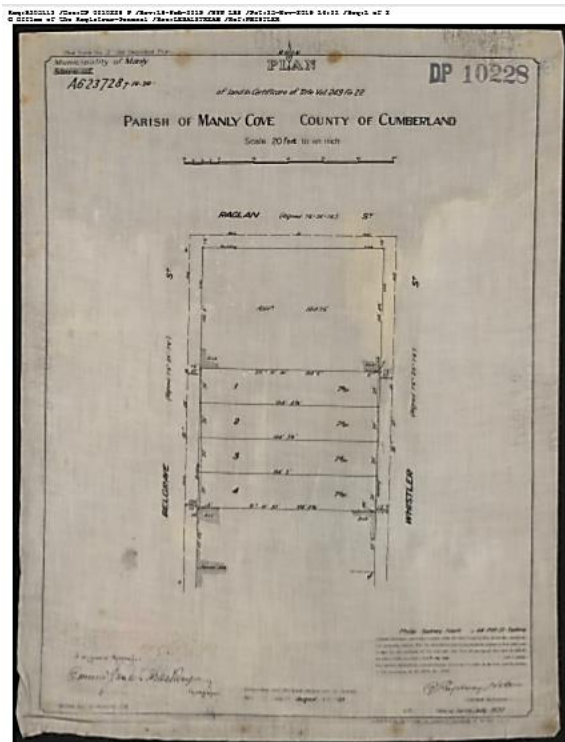
27 April 1901. (Source: NLA Trove website)

1901Use

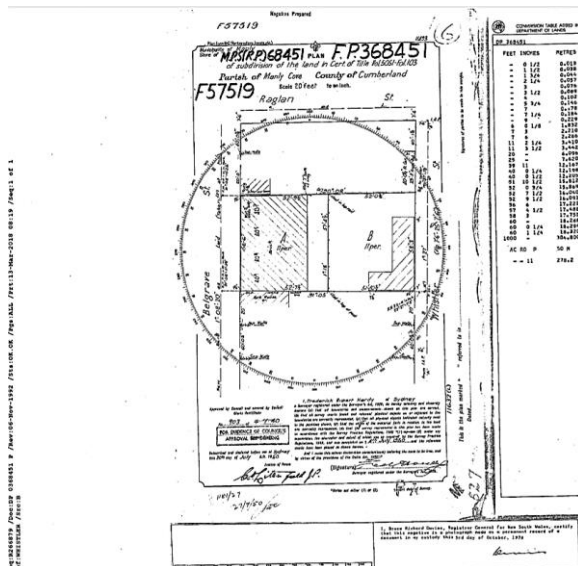
This advertisement appeared in *The Sydney Morning Herald* on 27 April 1901 and describes the Site, known by then as 'Restormel', as having in addition to the amenities in the five bedroom house, a coach house, stables, buggy house, fowl house, lawn and yard etc.

At the turn of the 20th century, this indicates the use of the outbuilding as a mews, containing a row of structures housing a coach house, stables, buggy house, fowl house areas centred around a yard.

Attachment 3



DP 10228 is the subdivisional plan prepared by Surveyor Nott in July 1920.



1950 surveyed Plan F.P.368451. The area shaded, on the righthand side, is the existing building on the Whistler Street boundary. (Source: Norton Survey Partners)

July 1920

DP 10228 is the subdivisional plan prepared by Surveyor Nott in July 1920.

This Survey surveys a stone building on the south east corner of the parcel of land which is a composite of Lots 8,9,10 & 11 and noted as being 'Stone'.

The stone building is seen to be situated along both the Whistler Street boundary and it returns along the southern boundary of the Site. This is the existing southern boundary today. (The existing Site building is built entirely of brick).

This 1920 Survey is explained more fully by the Norton Survey Partners analysis (6 December 2019, Attachment 6) below where it says:

'D.P. 10228 shows the position of various occupations (fences and buildings) close to the perimeter boundaries of the land and, where those occupations are buildings, it also includes a description of the main material of construction. Showing such information was an important survey requirement of the Registrar General at that time and this has carried through to the present day.'

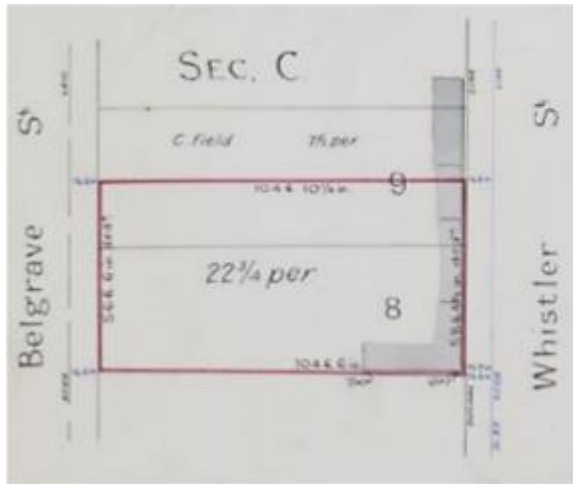
and:

'At the north east corner of Lot 1, D.P. 10228 shows a building described as "stone" adjacent to the north boundary and situated within the south east corner of what is now Lot B DP. 368451. We note the south east corner of Lot B is currently occupied by a brick building. This indicates the brick building was erected some time after July 1920, the date of the preparation of the D.P. 10266.'

Norton Survey Partners also reviewed the 1950 Survey of the Site (Attachment X below) and concluded the 1920 building was not the building surveyed in 1950. Norton Survey Partners stated that the brick building surveyed in 1950 is 90mm clear of the south boundary of the Site and 180mm inside the Whistler Street boundary, whereas the corresponding measurements for the 1920 stone building were 100m and 75mm. The measurements on the 1950 Survey are identical to the Survey of the building on the Site today (see Attachment 7).

To summarise, the 2019 Norton Survey analysis (Attachment 6) confirms that:

- the reference to stone, means that stone was the main building material of the building on this part of the Site in 1920; and
- as the 1920 building of stone was not the building of brick surveyed in 1950, the building surveyed in 1950 is not the same building as the 1920 building and therefore is built after July 1920.



Detail from 1921 Plan, cancelled CT 3189/182. The area shaded depicts the 1921 footprint of the outbuilding backing onto Whistler Street.
(Source: Full Circle Heritage, *21 Whistler Street, Manly*, p 8)

1921

This Plan is from cancelled CT 3189/182 and depicts the composite title for Lot 8 and part of Lot 9. This Survey pre-dates the mid 20th Century subdivision of the land into two titles, for the shops on Belgrave Street and the subject Site respectively. The 1937 and 1943 aerials (below left) indicate that 'Restormel' ('Roseville') remained on the Site until at least 1937 but was demolished by 1943.

Footprint

The outbuilding is depicted as having been rebuilt in the northern portion, as it was in c.1883 but not in 1890 (above). The southern portion of the outbuilding returns along the southern boundary.

In comparison to the 1950 Survey (below) the 1921 plan depicts the south portion of the building, along the southern boundary, as a deeper (wider) structure than the portion of the building along the Whistler Street boundary; whereas in the 1950 survey, the Whistler Street portion is the deeper (wider) portion.

The buildings in 1921 appear as a row of different structures, as the building alignment is not straight along the western side. This would concur with the use of the building as a 'mews' containing a row of stables etc set around a yard, as described in the above 1901 advertisement. The wall at the back of the building along Whistler Street would have been a solid wall.

Use

The structures depicted in this plan indicate that the building along the Whistler Street alignment was probably a mews with a series of structures. This would explain the fact that the western alignment of the building is not in a straight line. The mews containing a coach house, stables, fowl house and buggy house, mentioned in the above 1901 advertisement for the leasing of 'Restormel' ('Roseville'), seem to have remained on the Site at this time.

c. 1933

Use

The 1932 – 1933 *Sands Directory* records that the Site was occupied by Miss L Keegan Ladies Hairdresser.

At 17 Whistler Street there was a boot repairer and at 17a, a produce agent.

The Site had a commercial/retail use.



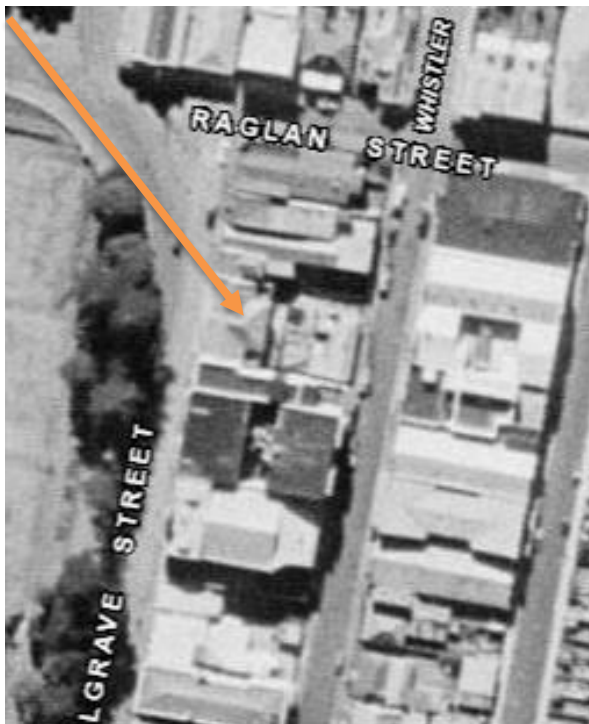
Detail from Aadastra Airways Ltd, Sydney aerial view of Manly, May 1937. (Source: Courtesy of Local Studies, Manly Library)

1937

Footprint

The footprint has changed again and the northern portion of the outbuilding for 'Restormel' ('Roseville') has been demolished.

'Restormel' ('Roseville') exists as does a building on the Whistler Street alignment.



Detail from 1943 aerial view of Manly. (Source: SIX Maps)

1943

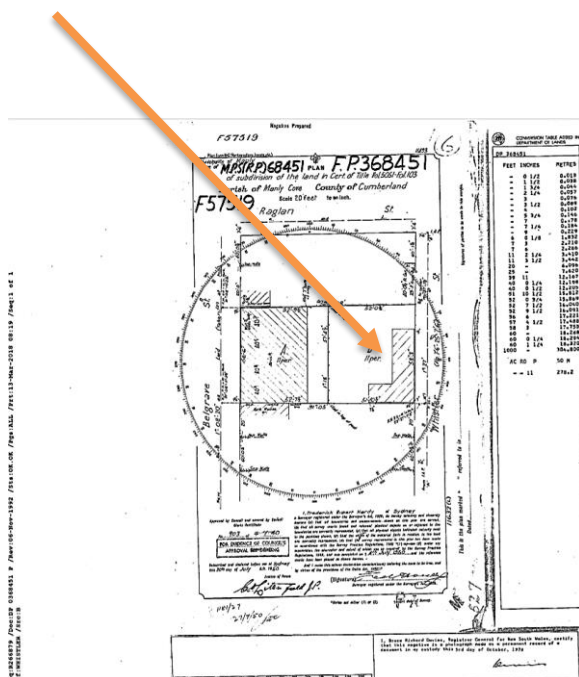
Footprint

The footprint of the larger 'Restormel' ('Roseville') site has changed. 'Restormel' ('Roseville') has been demolished and the shops on Belgrave Streets have been built and are in view.

There is a building on the Whistler Street alignment.

It cannot be established from the 1937 and 1943 aerials whether or not the outbuilding in 1943 is the same as the outbuilding in 1937. There do appear to be some differences in each of the outbuildings, seen in the northern portions as well as in the southern portions of the respective outbuildings.

Attachment 4



1950 surveyed Plan F.P.368451. The area shaded, on the righthand side, is the existing building on the Whistler Street boundary. (Source: Norton Survey Partners)

1950

Footprint

The 20 July 1950 Deposited Plan FP368451, is a Survey prepared for the Site by Surveyor Hardy which depicts a vacant area along the northern portion of the Site, from Whistler Street to Belgrave Street, where the existing c. 1970s double level garage sits.

The building on the Whistler Street boundary returns along the southern boundary of the Site.

This is the subdivision plan for the 'Roseville' site, lots 8 & 9 (according to Full Circle Heritage Report for the Site, p9).

Norton Survey Partners state (Attachment 6 below) that:

'Further to the above we note that DP 10288 shows the stone building as standing 4 inches (100mm) clear of the north boundary of Lot 1 and 3 inches (75mm) inside the Whistler St boundary. D.P.368451 (dated July 1950) displays a building (of unidentified material) upon Lot B and shows this building 3 ½ inches (90mm) clear of the north boundary of Lot 1 and 7 inches (180mm) inside the Whistler St boundary.

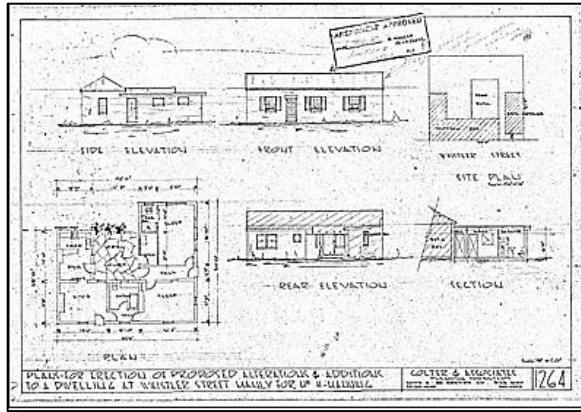
While the difference between the plans in setbacks to the north boundary is inconsequential, the difference in setbacks to Whistler St is substantial in a survey context being 4 inches (105m). This places the building shown in D.P. 368451 in a different position to that shown in D.P.10288 which indicates they are not the same building.'

Norton Survey Partners reviewed the 1950 Survey of the Site and concluded the 1920 building was not the building surveyed in 1950. Norton Survey Partners stated that the brick building surveyed in 1950 is 90mm clear of the south boundary of the Site and 180mm inside the Whistler Street boundary, whereas the corresponding measurements for the 1920 stone building were 100m and 75mm. The measurements on the 1950 Survey are identical to those for the building on the Site today.

Thus the 2019 Norton Survey analysis (Attachment 6 below) confirms that as the 1920 building of stone is not the building of brick surveyed in 1950, the building surveyed in 1950 post-dates July 1920.

The TSS Survey (Attachment 7 below) dated 13 January 2020 confirms that the building today on the boundary facing Whistler Street in the south is identical to the building in this 1950 survey as it confirms the boundary facing Whistler Street in the south is identical to the boundary in this 1950 Survey. This indicates that the subject building dates from 1920 or after and has nothing to do with the 'Roseville' complex.

Attachment 5



1967 BA Drawings for proposed alterations and additions. (Source: Northern Beaches Council Records)

1967

The 1967 BA drawings and the 1976 record of a BA for the Site are the first and only records of any building applications or development applications for the Site held in the Northern Beaches Council Records, Local Studies Manly Library or State Archives. Council has confirmed that there is no other BA or DA documentation or anything else at all for the Site. Equally, there are no such records for the demolition of 'Restormel' ('Roseville') or the shops on Belgrave Street, situated on the original 'Roseville' site.

These 1967 BA drawings contain not only the earliest but also the only known depiction of the east elevation (marked 'Front Elevation'), showing windows and a door, of the building on the Whistler Street boundary. The drawings record the '*Proposed Alterations and Additions*' to the subject Site. The 'Site Plan' depicts the proposed addition of a rear wing. All of the walls are dimensioned on the Plan which indicates the alteration of almost all of the internal walls of the existing building, which is cross hatched on the Site Plan. Thus the 1967 BA drawings record a major modification of the interior layout as well as additions.

The drawings also depict windows have been added to the Whistler Street elevation. The top of the windows on the Whistler Street frontage is in alignment with the top of their corresponding shutters. This is in contrast to the windows today seen in the image below of the building today.

Footprint

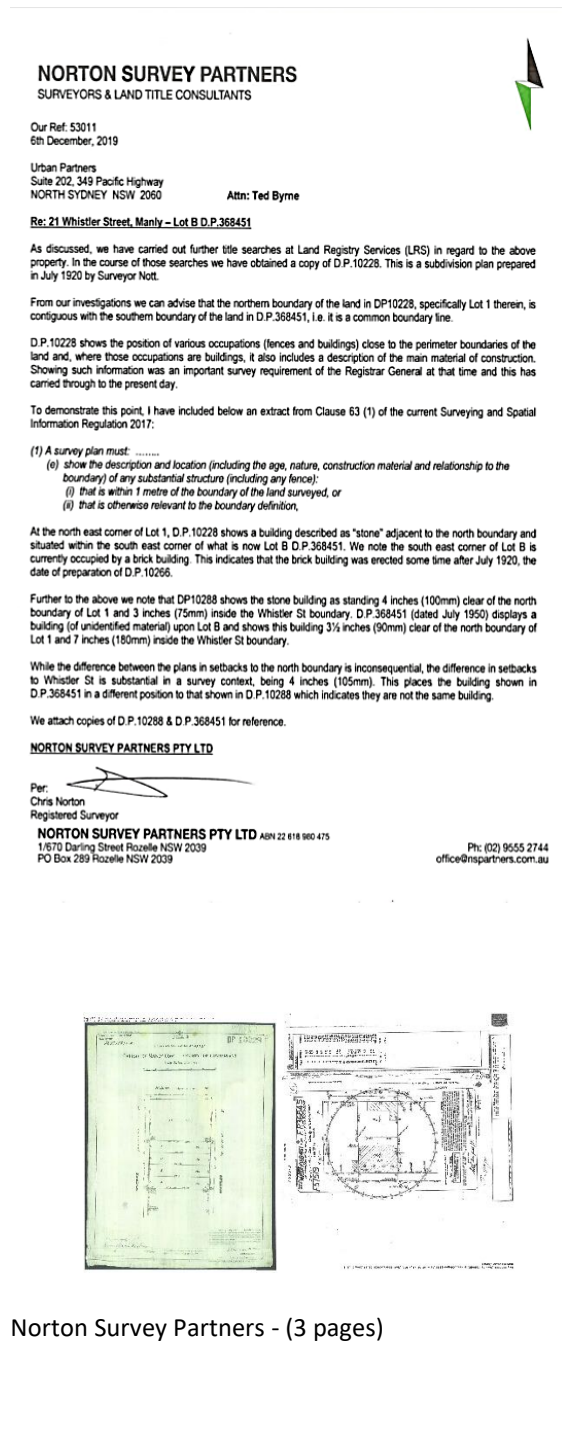
As is demonstrated below, this building post-dates 1920. The footprint of the existing building (cross hatched) is the same building as that depicted in the 1950 Survey (Attachment 4). This is explained in the Norton Survey Partners survey, 6 December 2019 and TSS survey 13 January 2020 below (Attachments 6 and 7)

On the Site Plan these 1967 Drawings depict a garage which is set back from Whistler Street and is not in the position of the existing two level garage building, in the northern portion of the Site.

Use

The 1967 drawings depict a residence. This is the first confirmed use of the site as a residence and the only plan showing windows, shutters and a door on the Whistler Street elevation.

Attachment 6



Norton Survey Partners - (3 pages)

6 December 2019

Survey Report

Norton Survey Partners investigation analysed the subdivisional plan prepared by Surveyor Nott in July 1920 as well as the 1950 Survey prepared by Surveyor Hardy for FP36845.

Norton Survey Partners confirm that the 1920 Survey clearly depicts a stone building on the south east corner facing Whistler Street, noted as being 'Stone' rather than brick as it is today.

Norton Survey Partners says:

D.P.10228 shows the position of various occupations (fences and buildings) close to the perimeter boundaries of the land and, where those occupations are buildings, it also includes a description of the main material of construction. Showing such information was an important survey requirement of the Registrar General at that time and this has carried through to the present day.

and later:

At the north east corner of Lot 1, D.P.10228 shows a building described as "stone" adjacent to the north boundary and situated within the south east corner of what is now Lot B D.P.368451. We note the south east corner of Lot B is currently occupied by a brick building. This indicates that the brick building was erected some time after July 1920, the date of preparation of D.P.10228.

The above extracts confirm that:

- the reference to stone, means that stone was the main building material of the building on the south east corner facing Whistler Street in 1920; and
- as the existing building is of brick, it post-dates July 1920.

In addition to that, coupled with the variations to measurements, Norton Survey Partners goes on to explain:

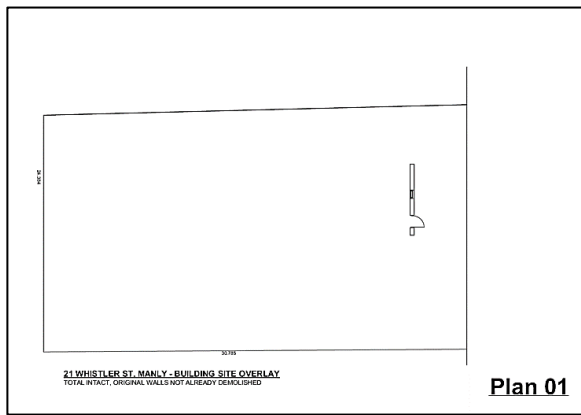
Further to the above we note that DP10228 shows the stone building as standing 4 inches (100mm) clear of the north boundary of Lot 1 and 3 inches (75mm) inside the Whistler St boundary. D.P.368451 (dated July 1950) displays a building (of unidentified material) upon Lot B and shows this building 3½ inches (90mm) clear of the north boundary of Lot 1 and 7 inches (180mm) inside the Whistler St boundary.

While the difference between the plans in setbacks to the north boundary is inconsequential, the difference in setbacks to Whistler St is substantial in a survey context, being 4 inches (105mm). This places the building shown in D.P.368451 in a different position to that shown in D.P.10228 which indicates they are not the same building.

In other words, Norton Survey Partners is saying that due to the discrepancy of measurements:

'...This places the building in D.P. 368451 (sic F.P. 368451) in a different position to that shown in D.P. 10228 (sic 10228) which indicates they are not the same building.' and concludes:

- the building on the 1950 Survey is not the same building as that on the 1920 Survey.



Drawing based on the 1967 BA Drawings (Attachment 5) depicting the only possible intact fabric from the early site. (Source: Heritage 21 Letter to Council 28 August 2019, Figure 13)

2020

This drawing is based on the 1967 BA Drawings (Attachment 5) depicting the only possible intact fabric from the early site, comprising part of the western wall of the early Kitchen area (c.1883 above/Attachment 2a).



2020

The current DA proposal for the Site includes a panel in the lobby area to commemorate Thomas Rowe as the first Mayor of Manly.

Left: Proposed concept drawing, as per current DA. (Source: Wolski and Coppin Architecture)



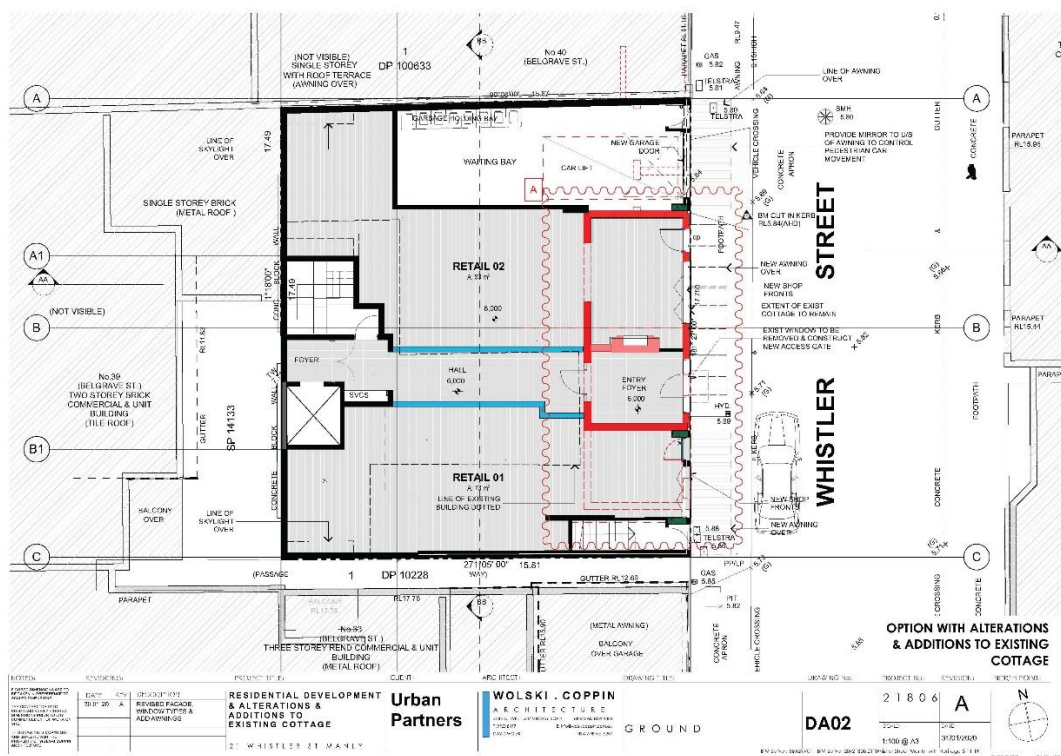
2020

The current DA proposal for the Site includes a panel in the lobby area to commemorate Thomas Rowe as the first Mayor of Manly.

Left: Proposed concept drawing, as per current DA. (Source: Wolski and Coppin Architecture)



Left: Proposed alternative concept drawing for current DA incorporating possible remnant spaces.
(Source: Wolski and Coppin Architecture)



Proposed alternative ground floor plan for current DA incorporating possible remnant spaces (outlined red).
(Source: Wolski and Coppin Architecture)

4.0 OWNERSHIP AND OCCUPATION OF 'ROSEVILLE'

In this Section Heritage 21 provides evidence that Thomas Rowe did not own the Site and we review and comment on some of the unsubstantiated information regarding ownership contained in various Robertson & Hindmarsh Reports, in particular the R&H Report 4, 12 December 2019. Heritage 21 also assesses in this Section, the manner in which Thomas Rowe occupied the 'Roseville' site. Heritage 21 has concluded this on the basis of legal advice on Land Titles from O'Brien Connors & Kennett Lawyers. (Attachments 1, 8, 9 and 10)

In relation to Rowe's occupation of 'Roseville', it is relevant to note that Rowe was elected an Alderman for the Bourke Ward of the Sydney City Council in 1872, returned without opposition in 1874 and served on Sydney City Council until 1876.⁶ Losing his Sydney City Council position in November 1876, Rowe put himself in a position to be elected the first Mayor of Manly Municipal Council by February 1877, serving as Mayor from February 1877 to February 1879 and as an Alderman until 1880. To become Mayor in Manly would have required forward planning on Rowe's part; he would have probably had to have 'occupied' premises in Manly, paid the rates and probably have to have demonstrated he owned property in Manly at least 12 months prior to his election. It is noted that in this era it was not unusual for tenants to pay the rates on the premises they leased.

In 1871, Rowe took a 99 year lease on land in Elizabeth Bay upon which he designed and built his family home 'Caprera' (later called 'Ashton'), a large Harbourside villa.⁷ When 'Caprera' was complete, Rowe sold 'Tresco', another Harbourside mansion in Elizabeth Bay designed and built by him, to move with his family to 'Caprera' in 1875.⁸ The 99 year lease on 'Caprera' seems to have remained in Rowe's name until it was assigned by the Estate of Thomas Rowe by Deed of Assignment to Goswin Hermann Boner in August 1907.⁹ Interestingly, Rowe is recorded as still living at 'Tresco' in the 1876 *Sands Directory*.

By c. 1876, one year before Rowe's election to Manly Municipal Council, Rowe had moved with his family to live in the commodious family house 'Caprera' on the Elizabeth Bay Estate and purchased the vacant land on the site next door to 'Roseville', as discussed in more detail below in this Section. We also know from rates notices that he owned land in Fairlight Street, Manly and that he also acquired land in the western part of Ivanhoe Park soon after the subdivision of the Brighton Estate.¹⁰ At the same time, Rowe was also a Captain in the NSW Engineer's Corp, a prestigious position, requiring him to attend regular (often bi monthly) parades, special drills, committee meetings, dinners and rifle club activities at Hyde Park and other venues on the south side of the Harbour.¹¹

With 'Caprera' in Elizabeth Bay and a busy, successful architectural practice in the city on top of his many obligations including to the NSW Engineer's Corp and as a Superintendent of the Wesleyan Church in Surrey Hills, it seems that Rowe would not have been able to permanently reside in Manly during his stint on Council there. Between 1875 and 1877, 94 separate tenders in Rowe's name appeared in *The Sydney Morning Herald*.¹² All of this would have exacerbated his inability to be in two places at the same time. It is hardly surprising that he did not acquire, design or build 'Roseville', all of which is confirmed by O'Brien Connors & Kennett Lawyers (Attachment 1).

Thus, it stands to reason that Rowe would have only stayed at 'Roseville' from time to time to fulfil his many commitments. This incidental use would have been the way he occupied and used 'Roseville', as a base in Manly. In his Statutory Declaration on 1 July 1886, Rowe states: '*I lived in the cottage that stands on the property until shortly after the death of the said Charlotte Jane Rowe*'.¹³ all of which is confirmed by O'Brien Connors & Kennett Lawyers (Attachment 1).¹⁴ It has always been accepted by Heritage 21 that Rowe stayed at 'Roseville' during his Mayoralty at Manly Municipal Council. This has not been in dispute although in its Report on 12 December 2019, Robertson & Hindmarsh states several times that H 21 does not accept that Rowe occupied 'Roseville'.

⁶ Trove, *The Sydney Morning Herald*, Monday 16 January 1899, Rowe's Obituary.

⁷ Lease Book 140 No 342, 15 June 1871

⁸ www.environment.nsw.gov.au/heritageapp, House "Ashton" Including Interior and Grounds, NSW Heritage Data Base no 2420693, pp 1-2.

⁹ Lease Book 837 No 831, 28 August 1907.

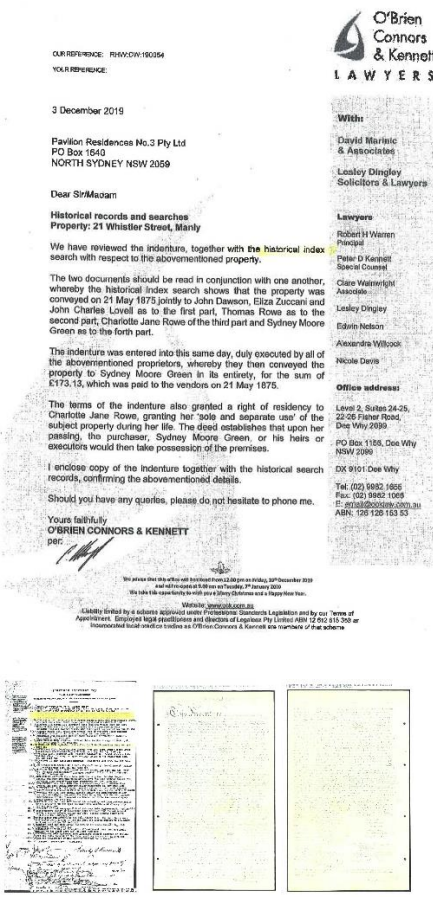
¹⁰ <https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5062282>.

¹¹ National Library of Australia, Trove, trove.nla.gov.au.

¹² M. Berry, *A History of Col. Thomas Rowe, F.R.I.B.A Architect*, UNSW Honours Thesis 288G/19, 1969.

¹³ Attachment 1, p 4.

¹⁴ R&H put Rowe's occupancy at just September 1876 to 'at least mid 1879' in R&H Report 4, 12 December 2019, p1.

4.0 OWNERSHIP AND OCCUPATION OF 'ROSEVILLE'	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
<p>R&H Report 4, 12 December 2019 Extract from Executive Summary p.1</p> <p>The supplementary information provided by the applicant to the Northern Beaches IPP on 9 December has been examined by Dr Scott Robertson (Conservation Architect) and Dr Noni Boyd (Architectural Historian and Heritage Specialist).</p> <p>The two new issues raised in the submission are:</p> <ul style="list-style-type: none"> That the house was not designed by Thomas Rowe or the land owned by Thomas Rowe. That the southern portion of the building on the site dates from after 1920. <p>The first contention is not supported by Council's own records, in particular the 1877-78 Manly Council Rate Assessment Books which list Thomas Rowe as both owner and occupier. By 1879 Thomas Rowe's Manly residence had become a local landmark, as other buildings were described in the Sydney Morning Herald as being near it and he is noted as being resident from September 1876 until at least mid 1879.</p> <p>The Council's Building Application Register would have confirmed the Applicant's second assertion was not correct. Dr Robertson has examined the building and in his expert opinion the structure dates from the nineteenth century rather than the interwar years as claimed by the Applicant's consultants.</p>	<p>This extract from the Executive Summary, which mentions that:</p> <p><i>'The first contention (ownership) is not supported by Council's own records...'</i></p> <p>The entire Robertson & Hindmarsh ('R&H') Report of 12 December 2019 is misleading because R&H does not accept the Title Deeds information from O'Brien Connors & Kennett Lawyers confirming that Thomas Rowe did not own 'Roseville'. This Title Deeds information, legally explained, was provided by H21 on 9 December 2019 in its Submission to Council, prior to R&H's Report on 12 December 2019.</p> <p>More information concerning the ownership and occupation of 'Roseville' in Rowe's Manly era is contained in Attachment 1 and explained below.</p>
<p>Attachment 8</p> 	<p>This primary information based on Title Deeds, provided by O'Brien Connors & Kennett Lawyers on 3 December 2019 establishes that Thomas Rowe DID NOT own 21 Whistler St, Manly and it was purchased and conveyed to Sydney Moore Green in its entirety on 21 May 1875.</p>

4.0

OWNERSHIP AND OCCUPATION OF 'ROSEVILLE'

ROBERTSON & HINDMARSH STATEMENT
& Related Images & Information

HERITAGE 21 RESPONSE

Attachment 9

OUR REFERENCE: RHMV-CIV-190064
YOUR REFERENCE:



19 December 2019

Pavilion Residences No 3 Pty Ltd
PO Box 1640
NORTH SYDNEY NSW 2059

Dear Sir/Madam

Property: 21 Whistler Street, Manly

I refer to my advice to you of 3 December 2019, wherein I was asked to research the ownership and prepare legal advice accordingly. I had the appropriate searches carried out and prepared this advice, which has been provided to you.

I also understand that a consultant for Council has stated that Thomas Rowe was the owner of the said property based on a rate assessment notice. The rate assessment notice shows who paid the rate notice, and is not an indicator of who owned the property. This is not the correct way to determine legal ownership and it is incorrect to state that Rowe was the owner based solely on a rate assessment notice with no address.

The document that solely determined who owned the land is the indenture registered with land Titles, being registered No 433 Book 150, not the document being presented by the consultant.

The indenture states:

That the property was conveyed to Sydney Green on 21 May 1875, until he sold the property in December 1883.

The same indenture also granted Charlotte Rowe a right of residency during her life, granting her sole and separate use of the premises, not unlike a tenant. I understand that she passed away in 1877.

Upon her demise, Sydney Green or his heirs or executors would then take possession of the property in accordance with the indenture. Accordingly, Sydney Green owned Lots 8 and 9 from 21 May 1875 until he sold these in December 1883.

We advise that this office will be closed from 12.00pm on Friday, 20th December 2019 and will re-open at 9.00am on Tuesday, 23rd January 2020.
We take this opportunity to wish you a Merry Christmas and a Happy New Year.

Website: www.ock.com.au

Liability limited by a scheme approved under Professional Standards Legislation and by our Terms of Appointment. Employed legal practitioners and directors of O'Brien Connors & Kennett Pty Limited ABN 12 012 015 355 an incorporated legal practice trading as O'Brien Connors & Kennett are members of that scheme.

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Reg no. 444 book 162, as mentioned in page 7 item 2, has nothing to do with lots 8 and 9, and relates instead to Lots 10 & 11, comprising a completely different property, and therefore does not have any bearing on 21 Whistler Street Manly, being the property that Sydney Green owned where Charlotte Rowe had a right of residency. The reference on page 7 item 2 relates to a transfer for lots 10 and 11 that Thomas and Charlotte Rowe bought from Arthur Croft.

Yours faithfully
O'BRIEN CONNORS & KENNETT
per:

With:

David Marinic
& Associates

Lesley Dingley
Solicitors & Lawyers

Lawyers

Robert H Warren
Principal

Peter D Kennett
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A further letter from O'Brien Connors & Kennett Lawyers dated 19 December 2019 explains the ownership of 21 Whistler Street during the relevant period in more detail. This letter from O'Brien Connors & Kennett Lawyers dated 19 December 2019 clarifies and confirms:

- 21 Whistler Street Manly was known as lots 8 and 9 and these lots were conveyed to Sydney Green on 21 May 1875. Green remained the owner until December 1883, well after Rowe had vacated Manly;
- The relevant indenture granted Charlotte Rowe a right of residency during her lifetime;
- The historical index and reference to Reg 444 book 162 relates to the Lots 10 & 11 (a completely different property abutting Lots 8 and 9) which were transferred to Thomas Rowe by Arthur Croft in 1876;
- A rates assessment notice shows who paid the rates and does not indicate who owns a property and is not the correct way to determine legal ownership; and
- It is **incorrect** to claim that Rowe owned 21 Whistler St, based solely on a rates assessment record with no address.


It is noted that in this era it was not unusual for tenants to pay the rates on the premises they leased.

In relation to this primary source (Title Deeds) confirming that Thomas Rowe did not own 21 Whistler Street, Manly, it is noted that Rowe's wife Charlotte died in March 1877, within one month of Thomas Rowe taking up his position as the first Mayor of Manly in February 1877.

A Statutory Declaration signed by Thomas Rowe on 1 July 1886 in relation to 'Roseville' included a statement by Rowe that:

'I lived in the cottage that stands on the property until shortly after the death of the said Charlotte Jane Rowe'.

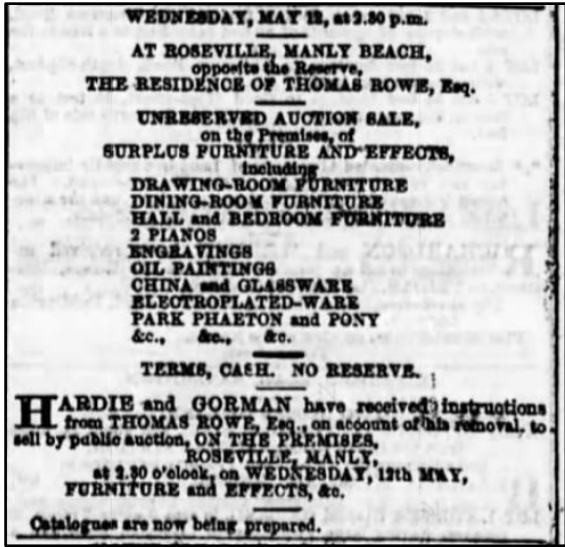
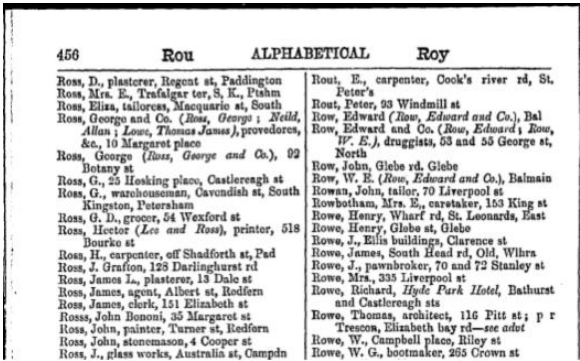
This is explained in the legal advice contained in Attachment 1 (discussed next). It appears Rowe probably only lived at 'Roseville' from time to time during his first year as Mayor in 1877.

4.0 OWNERSHIP AND OCCUPATION OF 'ROSEVILLE'	HERITAGE 21 RESPONSE
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	
<p>Attachment 1</p> 	<p>This letter from O'Brien Connors & Kennett Lawyers provides legal advice which unequivocally confirms:</p> <ul style="list-style-type: none"> it can be concluded from the relevant Title Deeds searches that there was already a house on Lots 8 and 9 prior to Rowe's occupation; Rowe only stayed at the cottage on the Site briefly up until shortly after Charlotte Rowe's death (which H 21 notes was just one month after Rowe became Mayor in February 1877); that Rowe did not own Lots 8 & 9/the Site either before or after the death of his wife Charlotte Rowe; the conveyance of property is proof of ownership, but a mortgage is not; the mortgage to Equitable Permanent Benefit Building Land and Savings Institution registered against the Lots 8 and 9, noting Rowe and his wife as borrowers, is not proof of ownership of the Site, rather that the finance was not obtained legally; Thomas Rowe was the Surveyor for the Equitable Permanent Benefit Building Land and Savings Institution 1875 – 1882; the statutory declaration that Rowe signed was in connection with the above mortgage and thus with funds he should not have received; and There is no documentation or evidence that Green was a Trustee for Charlotte Rowe. <p>The Statutory Declaration signed by Thomas Rowe on 1 July 1886 included a statement by Rowe that:</p> <p><i>'I lived in the cottage that stands on the property until shortly after the death of the said Charlotte Jane Rowe'.</i> (see page 4 Attachment 1)</p>
<p>R&H Report 4, 12 December 2019 p1</p> <p>In the Executive Summary (above), after mentioning the two new points for discussion of:</p> <ul style="list-style-type: none"> ownership; and the building dating from post 1920 <p>the Executive Summary states:</p> <p><i>'The first contention (ownership) is not supported by Council's own records, in particular the 1877-78 Manly Council Rates Assessment Books which list Thomas Rowe as both owner and occupier.'</i></p>	<p><u>Rates Records</u></p> <p>We strongly disagree with this statement, which is inaccurate and misleading especially as it appears up front in the Executive Summary, ignores the primary Title Deeds information to the contrary confirmed by O'Brien Connors & Kennett Lawyers (Attachment 8) and provided on 9 December 2019 by H21 and, further, it implies that the relevant rates entry categorically refers to 'Roseville', which is not the case.</p> <p>The entry in the relevant rates record does not contain the street number or the address of the property concerned.</p>

4.0 OWNERSHIP AND OCCUPATION OF 'ROSEVILLE'	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
<p>R&H Report 4, 12 December 2019 p1 continued</p> <p><i>'The first contention (ownership) is not supported by Council's own records, in particular the 1877-78 Manly Council Rates Assessment Books which list Thomas Rowe as both owner and occupier.'</i></p>	<p>Rates records are not proof of ownership (see O'Brien Connors & Kennett Lawyers advice Attachment 9) and primary evidence of ownership was provided by H21 to R&H on 9 December 2019, by way of Title Deeds records from O'Brien Connors & Kennett Lawyers.</p> <p>The rates record referred to by R&H is secondary to the Title Deeds in establishing ownership.</p> <p>According to Rowe's Obituary in <i>The Sydney Morning Herald</i>, Monday 16 January 1899, he was elected an Alderman for the Bourke Ward of the Sydney City Council in 1872, returned in 1874 and served on Council until 1876. After losing his Sydney City Council position in November 1876, in February of the following year Rowe became the first Mayor of Manly.</p> <p>We have viewed the 1877 – 1878 rates records for the Manly Municipal Council which comprises a list of entries with: Street name (no number); Occupier; Owner; Type of Property; Annual value over 75 pounds; and Acreage over 9 acres. On the record, which coincides with the first year of Rowe's Mayoralty, Rowe's name appears three times; Entries 54 and 55 are for vacant land in Fairlight Street – Rowe, T; and Entry 77 is for a house in Promenade East (the former name for Belgrave Street) – Rowe, Thomas.</p> <p>It is possible that the house mentioned in Entry 77 relates to the property Rowe owned in the western section of what is now Ivanhoe Park that addresses East Promenade, which property he sold in in February 1884 for 1300 pounds.</p> <p>For Thomas Rowe to have entered public office in the Manly Municipal Council in 1877, he would probably have had to have occupied and paid rates on a property in Manly at least 12 months before entering the Manly Municipal Council. The widespread practice of the day was for tenants to pay the rates. As there was a lifetime right of residency for his wife at 'Roseville' (which would have then had a Promenade East address) in May 1875, the occupation box was presumably ticked. By buying land in Fairlight Street and purchasing a property in the western part of Ivanhoe Park, he thus 'owned' land in Manly.</p>

4.0 OWNERSHIP AND OCCUPATION OF 'ROSEVILLE'	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
<p>R&H Report 4, 12 December 2019 p 1 & p 10</p> <p>In addition to the statements on p 1 Executive Summary paragraph 3, states:</p> <p><i>'The first contention (ownership) is not supported by Council's own records, in particular the 1877-78 Manly Council Rate Assessment Books which list Thomas Rowe as both owner and occupier.'</i></p> <p>the R&H Report 4, 12 December 2019 Report also records on p 10:</p> <p><i>'The Manly Council Rate assessment books for 1877-78 illustrated in the following section list Thomas Rowe as the owner and occupier</i></p>	<p>Many other erroneous statements about rates as proof of ownership appear throughout the 12 December Report, some of which are highlighted here.</p> <p>R&H would appreciate that Rates records are a not proof of ownership. By 12 December 2019, R&H had the Title Deeds information provided by O'Brien Connors & Kennett Lawyers proving that Rowe did not own the Site all of which is a primary source of information.</p> <p>Whether deliberately or erroneously, R&H has somehow misconstrued the information provided to Council on 9 December 2019. Later, O'Brien Connors & Kennett Lawyers letter of 19 December 2019 (above) states:</p> <p><i>'The rate assessment notice shows who paid the rate assessment notice, and is not an indicator of who owned the property. This is not the correct way to determine legal ownership and it is incorrect to state that Rowe was the owner based solely on a rate assessment notice with no address.'</i></p>
<p>R&H Report 4, 12 December 2019 p 17</p> <p>R&H provides a captioned explanation of Entry 77 in the Rates Records which states:</p> <p><i>'...This entry provides proof of the ownership and occupation of the northernmost house on Promenade East (ie "Roseville") by Thomas Rowe...'</i></p>	<p>It is false to claim that payment of rates is proof of ownership. It was not unusual for tenants to pay the rent.</p> <p>As mentioned, based on legal advice, rates records are not proof of ownership whereas Title Deeds information is. Entry 77 of the 1877-1878 rates record refers to 'Promenade East' although it does not give a street number. As confirmed at the bottom of page 1 of the O'Brien Connors & Kennett Lawyers letter on 19 December 2019 (Attachment 9), Sydney Green owned Lots 8 and 9 (which contained 21 Whistler Street) from 21 May 1875 until December 1883. The same letter confirms that lots 10 and 11, abutting the north boundary of lots 8 & 9, is a completely different property and was acquired by Thomas Rowe from Arthur Croft as recorded in Reg no 444 book 162 which Heritage 21 notes was a conveyance in September 1876.</p> <p>All of this has been confirmed in Attachment 1, the letter from O'Brien Connors & Kennett Lawyers dated 30 January 2020.</p>

4.0 OWNERSHIP AND OCCUPATION OF 'ROSEVILLE'	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
<p>R&H Report 4, 12 December 2019 p 1 Executive Summary continued:</p> <p><i>'The Additional advice provided by the Applicant is not supported by the documentary evidence and largely relies on selected information taken from secondary sources, including blogs, and has ignored or dismissed the available primary historic source material such as Rates Assessment Books and Building Application Registers.'</i></p>	<p>We are astonished at this statement on 12 December 2019 in the light of the lawyers' confirmation of Title Deeds information confirming Thomas Rowe did not own 21 Whistler Street, Manly on 9 December 2019.</p> <p>On the contrary it is Robertson & Hindmarsh who have relied on <i>'...selected information taken from secondary sources...'</i> to claim that Rowe owned 'Roseville'. Rowe's ownership of 'Roseville' is incorrect and misleading and has underpinned the entire recent proposal to heritage list the Site.</p> <p>Once again R & H has referred to rates records in this statement. We reiterate that R&H is incorrect to conclude that a rates record determines ownership. The Lawyers letter of 19 December 2019 (Attachment 9) states that a rates assessment notice may show who paid the rates but is not an indicator of who owns a property and nor is it the correct way to determine legal ownership.</p> <p>The Lawyers letter of 3 December 2019 (Attachment 8) confirms Title Deeds information that Rowe never owned the Site.</p> <p>All of the above legal information concerning ownership and occupation of 'Roseville' has been confirmed and expanded on by O'Brien Connors & Kennett Lawyers on 30 January 2020 in Attachment 1. This legal advice is summarised above.</p>
<p>R&H Report 4, 12 December 2019 p 4</p> <p><i>'The claim that the land was not owned by Rowe and that he did not design the house is an opinion held by Heritage 21 that is not supported by primary historical records, including Council's own records. The research records, such as the Manly Local Studies Collection, on-line via TROVE, or the Sands Directories (scanned by Sydney City Council), has not been undertaken and what has been utilised has not been tabulated in a systematic year by year basis. Such records refute the claim that Rowe did not own or occupy the property.'</i></p>	<p>It is not H21's opinion that Rowe did not own or design 'Roseville' but legal advice based on Land Titles searches by O'Brien Connors & Kennett Lawyers.</p> <p>To claim that it is the opinion of Heritage 21 that the Site was not owned or designed by Rowe in the light of unequivocal Title Deeds evidence to the contrary reflects an approach by R&H to refute information presented in difference to the R&H position.</p> <p>R&H for Council has not produced any evidence as to when 'Roseville' was built and its attribution to Rowe (see Section 5). No plan or drawings have ever been produced to link 'Roseville' to Rowe or to confirm the date of its construction.</p> <p>It is not agreed that 'Roseville' was <i>'land'</i> when sold to Sydney Green in 1875 and no evidence to support this contention has been provided by R&H for Council. As mentioned in our Submission to Council</p>

4.0 OWNERSHIP AND OCCUPATION OF 'ROSEVILLE'	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
	<p>on 9 December 2019, it appears there was already a cottage on the 'Roseville' site when Charlotte Rowe's life tenancy was arranged and before Rowe became Mayor. This has been confirmed by legal advice from O'Brien Connors & Kennett Lawyers on 30 January 2020 (Attachment 1) where they conclude on page 2 that:</p> <p>'...there was already a house on the subject lot prior to Mr Rows brief occupation'.</p>
<p>R&H Report 1, 1 July 2019 p 5</p> <p>Under History at 'Entry May 1880' R&H states:</p> <p><i>'Sale of the premises and surplus furniture of "Roseville" Manly by Thomas Rowe'</i></p>  <p>Advert for the sale of furniture on the premises of "Roseville". (Source: <i>The Sydney Morning Herald</i>. Saturday, May 8, 1880)</p>	<p>The entry in the timeline is misleading.</p> <p>The advertisement which R&H is referring to (left) actually states that the sale is on the premises (of 'Roseville') of furniture; whereas by misquoting the advertisement and stating that the sale is of the premises and surplus furniture, R&H incorrectly implies that Rowe owned 'Roseville'.</p>
 <p><i>Sands Directory 1876</i></p>	<p><i>Sands Directory</i> records are not proof of ownership, but it is noted that the 1876 <i>Sands Directory</i> at page 456 lists the private residence of Rowe at 'Tresco' a Harbourside Mansion in Elizabeth Bay. As Rowe was an Alderman at Sydney City Council in 1876, it makes sense. Rowe moved his family to 'Çaprera', another Harbourside Mansion in Elizabeth Bay, which he also designed and built in c. 1876.</p>

4.0

OWNERSHIP AND OCCUPATION OF 'ROSEVILLE'

ROBERTSON & HINDMARSH STATEMENT
& Related Images & Information

R&H Report 4, 12 December 2019, p 5

HERITAGE 21 RESPONSE

The inclusion of this diagram with land marked 'ROWE' at the bottom of the diagram read with the R&H caption on p 5 of the Report is misleading for a number of reasons. The caption says:

'Why list his name if he were not the owner/occupier of the land?'

Ownership and the Caption

In other words, R&H have taken it upon themselves to infer, within the caption, that Rowe's name being written on the land at the corner of Raglan and Whistler Street proves he owned 'Roseville'. The land marked 'ROWE' is in fact lots 10 & 11 which were owned by Rowe and NOT 'Roseville', which comprised lots 8 & 9.

In our opinion this caption is misleading and misrepresents the facts.

The land marked 'ROWE' at the bottom of the diagram is written on Lots 10 and 11 and not on the subject Site, which was lots 8 and 9. As Heritage 21 has demonstrated, lots 10 and 11 were owned by Rowe whereas lots 8 and 9 was owned by Sydney Green from 1875.

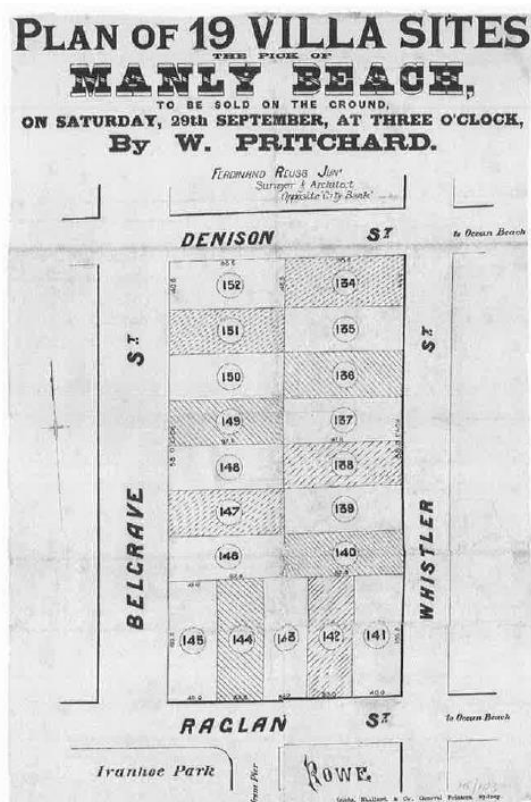
Occupation and the Caption

In our opinion the caption implies that Heritage 21 does not accept either ownership or occupation of the Site by Rowe, which is inaccurate. Throughout our Submission on 9 December are references to Rowe staying at or occupying the Site from time to time during his period as Mayor of Manly.

Clearly Rowe had many professional commitments as outlined in the introduction to this Section. In addition he had a heavy architectural workload.

Rowe was managing his many commitments as a busy and successful architect on top of his role as Captain of the NSW Engineer's Corp and Supervisor of the Wesleyan Church in Surrey Hills, amongst others.

Between 1875 and 1877, 94 separate tenders in Rowe's name appeared in *The Sydney Morning Herald*. There were two churches that were not mentioned in *The Sydney Morning Herald* tender notices: the Methodist Church, Nowra; and the Methodist Church Paddington, both of which were built in 1877.



ROWE listed on the plan of a neighbouring subdivision. Why list his name if he were not the owner/occupier of the land? (Source: Mitchell Library Subdivision plans CD46410151)

(Source: R&H Report 4, 12 December 2019, p 5)

4.0 OWNERSHIP AND OCCUPATION OF 'ROSEVILLE'	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
	<p>From 1878 to 1880, Rowe's firm designed and supervised the build of: the Presbyterian Church, Glebe; Lithgow School; City Mission Chapel; the Congregational Church, Burwood; the Unitarian Church, Sydney; a residence and shop for John Spencer; AJ Reiley and Co, 404 George Street; the Temperance Hotel York Street; Ashfield Methodist Church; and the Wesleyan Church, Peakhurst. Rowe also won the tender to design and manage the Sydney Hospital plus various houses in Orange, Bathurst and Sydney during this period.</p> <p>Rowe's design and supervision of the Sydney Hospital was known as 'The Sydney Hospital Affair' which led to a controversy whereby Rowe was fired from the Hospital and led his professional disgrace. (Berry, <i>Thomas Rowe</i>, p 134)</p>
<p>R&H Report 4, 12 December 2019 pp 7 - 8 Pages 7 - 8:</p> <p>'2. Primary Research Supporting the Assertion that Thomas Rowe did not Own or Design 'Roseville', at 21 Whistler Street. Manly</p> <p><i>The letter by O'Brien, Connors & Kennett refers to only one part of the Schedule attached to Real Property Application 18475. There is also a number of mortgages taken out and repaid in 1875 and 1876. Despite the text of the Indenture quoted and paraphrased in the letter the site was conveyed by Arthur Croft back to Thomas Rowe on 13 September 1876 (Reg. no. 444 Book 162). On 21 December 1883 another conveyance was registered: Thomas Rowe first part, Sydney Moore Green second part and Francis Wagstaff third part (reg no. 122 Book 281) whereby Rowe and his business partner, Green, conveyed the land to Wagstaff. This confirms that Rowe was the owner from September 1876 until he and Green sold it in 1883.</i></p> <p><i>What the conveyances, mortgages and indenture indicate is a complicate web of business and financial relationships.</i></p> <p><i>The Indenture does not prove that Rowe did not own the land but rather that he and his long term employee and later partner, Green, entered into financial agreements with others to purchase the land and protect Rowe's wife, Charlotte. The schedule to the Real Property Application confirms that Rowe did own the land from 1876 until 1883.</i></p>	<p>This information provided by R&H fails to differentiate between the Title Deeds information relating to Lots 10 & 11 (which lots abutted the northern boundary of the subject Site) and Lots 8 & 9 which contained the subject Site. The R&H reference '<i>...back to Thomas Rowe...</i>' (left highlighted) is a conspicuous misrepresentation of the facts.</p> <p>As set out in the letter from O'Brien Connors & Kennett Lawyers dated 19 December 2019, the historical index and reference to Reg 444 book 162 relates to Lots 10 & 11 (a completely different property to the 'Roseville' site). Lots 10 & 11 were transferred to Thomas Rowe by Arthur Croft in 1876, just prior to Rowe's election as Mayor.</p> <p>The information provided in the recent the letter from O'Brien Connors & Kennett Lawyers dated 30 January 2020 (Attachment 1), puts these statements by R&H into perspective and do not alter the fact that Rowe did not own 'Roseville'.</p> <p>The letter confirms:</p> <ul style="list-style-type: none"> it can be concluded from the relevant Title Deeds searches that there was already a house on Lots 8 and 9 prior to Rowe's occupation; Rowe only stayed at the cottage on the Site briefly up until shortly after Charlotte Rowe's death (which H 21 notes was just one month after Rowe became Mayor in February 1877);

4.0 OWNERSHIP AND OCCUPATION OF 'ROSEVILLE'	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
<p><i>"Premises" are mentioned in the letter by O'Brien Connors & Kennett. The Indenture appears to describe the dimensions of the property at length but is too indistinct to read with any accuracy to determine if "premises" is mentioned in the context of a pre-existing building or an intended building.'</i></p>	<ul style="list-style-type: none"> • that Rowe did not own Lots 8 & 9/the Site either before or after the death of his wife Charlotte Rowe; • the conveyance of property is proof of ownership, but a mortgage is not; • the mortgage to Equitable Permanent Benefit Building Land and Savings Institution registered against the Lots 8 and 9, noting Rowe and his wife as borrowers, is not proof of ownership of the Site, rather that the finance was not obtained legally; • Thomas Rowe was the Surveyor for the Equitable Permanent Benefit Building Land and Savings Institution 1875 – 1882; • the statutory declaration that Rowe signed was in connection with the above mortgage and thus with funds he should not have received; and • There is no documentation or evidence that Green was a Trustee for Charlotte Rowe.
<p>R&H Report 3, 30 August 2019 p 7</p> <p><i>'The conclusion reached by Heritage 21 is not correct. Sydney Moore Green was one of the Trustees of the Equitable Permanent Benefit Building Land and Savings Institution that lent the Rowes money. The inclusion of the Trustees on the title did not indicate ownership but they had a financial interest in the property and, in the event of default by the borrowers, the Trustees would assume ownership of the property. This is still current-day practice where the lending institution is noted on the title.'</i></p>	<p>The <i>Sands Directory</i> Records from 1876 to 1882 record that Green was NOT a trustee of Equitable Permanent.</p> <p>The same <i>Sands Directory</i> Records demonstrate that Thomas Rowe was the Surveyor for Equitable Permanent.</p> <p>Accordingly, this statement is not accurate and is dispelled by O'Brien Connors & Kennett Lawyers in Attachment 1.</p>
<p>R&H Report 2, 1 August 2019 p 4</p> <p><i>'Thomas & Charlotte Rowe took out a mortgage with Equitable Benefit Building Land & Savings Institution [sic] on 7 March 1876 (Primary Application 18475, 19/211913). Mortgages are a usual & accepted indication that building works were to be undertaken on the mortgaged land. The Equitable Permanent Benefit Building Land and Savings Institution, established in 1875, was a building society set up to loan money for purchasing and erecting dwellings to subscribers.'</i></p> <p>See legal advice from O'Brien Connors & Kennett Lawyers, Attachments 1 and 10</p>	<p>This statement by R&H is speculative and unsubstantiated in its reference to a mortgage implying a house was to be built. It does not add anything to the discussion of the ownership and design of 'Roseville' yet it is tendered by R&H as though it somehow proves they owned and built 'Roseville'.</p> <p>A mortgage is not proof of ownership. This is confirmed by O'Brien Connors & Kennett Lawyers in Attachments 1 and 10.</p> <p>The Lawyer's letter of 17 January 2020 states that in respect of 21 Whistler Street:</p>

4.0 OWNERSHIP AND OCCUPATION OF 'ROSEVILLE'	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
	<p><i>'Ownership of property is determined by the conveyance of that property, as reflected in the records held by the Land Registry Services.</i></p> <p><i>A conveyance therefore proves ownership, while a mortgage does not....</i></p> <p><i>...The document that solely determines who owned the land is the indenture registered with the Land Title, being registered No 433 Book 150, which confirms the conveyance of the property.'</i></p> <p>The legal advice contained in the Lawyer's letter of 30 January 2020 (Attachment 1) clearly states that:</p> <ul style="list-style-type: none"> the mortgage to Equitable Permanent Benefit Building Land and Savings Institution registered against the Lots 8 and 9, noting Rowe and his wife as borrowers, is not proof of ownership of the Site, rather that the finance was not obtained legally as it required Sydney Green's signature which was not on it and there was no probate granted to Thomas Rowe for Charlotte Rowe's Estate; Thomas Rowe was the Surveyor for the Equitable Permanent Benefit Building Land and Savings Institution 1875 – 1882; and the statutory declaration that Rowe signed was in connection with the above mortgage and thus with funds he should not have received.
<p>R&H Report 4, 12 December 2019, p 13</p> <p><i>'The allotment purchased by Thomas & Charlotte Rowe on 21 May 1875 comprised Lots 8,9,10 & 11 of the Brighton Estate.'</i></p>	<p>Clearly R&H has not completed a thorough search of Title Deeds information. Their conclusions are incorrect and misleading. The letters from O'Brien Connors & Kennett Lawyers (Attachments 1 and 9) confirm this statement is false and sets out that Lots 8 & 9 were transferred to Sydney Green in 1875 while Lots 10 & 11 were transferred to Thomas Rowe by Arthur Croft in 1876, just prior to Rowe's election as the Mayor of Manly.</p>

5.0 DESIGN AND BUILD

No documentation, plans, drawings or otherwise, linking Rowe to the design or building of 'Roseville', have been produced. The earliest and so far the only depiction of the subject building along the Whistler Street boundary is contained in the 1967 BA drawings for the Site (Attachment 5).

Searches of the Records of the Northern Beaches Council Records have produced just two records for the site: the 1967 BA Drawings (Attachment 5) and a 1976 record of a BA which contains no drawings. Searches of NSW State Archives has produced no records relating to the subject Site.

O'Brien Connors & Kennett Lawyers advice in Attachment 1 is that:

- it can be assumed from the relevant Title Deeds searches that there was already a house on Lots 8 and 9 prior to Rowe's occupation;
- Rowe only stayed at the cottage on the Site briefly up until shortly after Charlotte Rowe's death (which H 21 notes was just one month after Rowe became Mayor in February 1877);
- that Rowe did not own Lots 8 & 9/the Site either before or after the death of his wife Charlotte Rowe;
- the conveyance of property is proof of ownership, but a mortgage is not;
- the mortgage to Equitable Permanent Benefit Building Land and Savings Institution registered against the **Lots 8 and 9**, noting Rowe and his wife as borrowers, is not proof of ownership of the Site, rather that the finance was not obtained legally;
- Thomas Rowe was the Surveyor for the Equitable Permanent Benefit Building Land and Savings Institution 1875 – 1882;
- the statutory declaration that Rowe signed was in connection with the above mortgage and thus with funds he should not have received; and
- There is no documentation or evidence that Green was a Trustee for Charlotte Rowe.

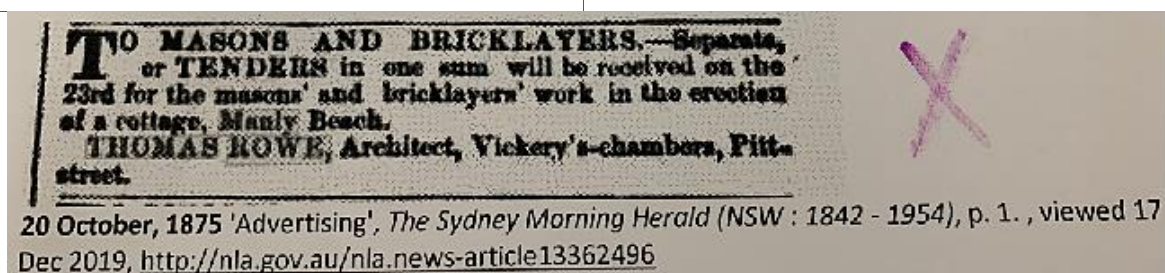
The above legal advice dispels the hypothesis that Thomas Rowe designed and built 'Roseville' as there was a house on the 'Roseville' Site when he moved there. This would also dispel the theory that he had any involvement in the design of the sanitation arrangements at 'Roseville', contrary to R7H's dubious assertion.

Sands Directory records are not proof of ownership, but it is noted that the 1876 *Sands Directory* at page 456 lists the private residence of Rowe at 'Tresco' a Harbourside Mansion in Elizabeth Bay which he owned designed and built. Rowe moved his family to 'Çaprera', another Harbourside Mansion in Elizabeth Bay, which he also designed and built in c. 1876.

We note that Sydney Green was a respected architect in his own right and became an equal partner with Rowe in 1884 with the architectural practice being called 'Rowe and Green'. There is no evidence that Sydney Green was an employed of Rowe.

5.0 DESIGN AND BUILD	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
<p>R&H Report 4, 12 December 2019</p> <p>Extract from Executive Summary p 1</p> <p><i>‘.That the house was not designed by Thomas Rowe or the land owned by Thomas Rowe....</i></p> <p><i>The first contention is not supported by Councils own records in particular the 1877-78 Manly Council Rate Assessment Books which list Thomas Rowe as both owner and occupier.’</i></p> <p>R&H Report 2, 1 August 2019, p 4</p> <p><i>‘Whilst no drawings by Rowe for the house have been uncovered the documentary evidence strongly indicates that Thomas Rowe designed the house and the outbuildings for his family. The residence was designed before the formation of Brighton (later Manly) Council and the requirement for Building Applications, so published tender notices are in the absence of the records of the practice or surviving family papers, the primary method of establishing who designed a building for the purposes of heritage listing.’</i></p>	<p>R&H has produced no graphic evidence such as plans, drawings or anything at all linking Rowe to the design or building of ‘Roseville’.</p> <p>The discussion dispelling the rates records as proof of ownership (and design) is contained in Section 4 of this Report.</p> <p>R&H has not produced primary or relevant secondary evidence that demonstrates that Rowe designed the original ‘Roseville’ house and service outbuildings along the Whistler Street boundary.</p> <p>Searches of the Records of the Northern Beaches Council Records have produced just two records for the site: the 1967 BA Drawings (Attachment 5) and a 1976 record of a BA which contains no drawings. Searches of NSW State Archives has produced no records of the Site.</p>
<p>R&H Report 4, 12 December 2019 p 4</p> <p><i>‘Dr Boyd prepared the detailed biography on Thomas Rowe for the AIA NSW Chapter during 2016 which included a number of references to “Roseville” as being one of his works. This biography has not been cited by Heritage 21 and does not appear to have been consulted.’</i></p>	<p><u>Australian Institute of Architects NSW, <i>Biographical Information Lieutenant-Colonel Thomas Rowe FRIBA, FIANSW, VD, 2007 – 2016.</i></u></p> <p>Notwithstanding the R&H claim, the above AIA biography on Thomas Rowe has been read by H21. This statement is both inaccurate and entirely misleading. R&H’s statement is blatantly misrepresentative.</p> <p>Heritage 21 does not agree that the above AIA research attributes the design of ‘Roseville’ to Rowe. In contrast to the R&H claim that Roseville was one of Rowe’s “works”, the AIA research paper does not confirm that Rowe designed Roseville. On page 4 of the AIA paper it says Rowe:</p> <p><i>“...also tendered for the erection of a cottage at Manly Beach in October 1875, which was presumably to be his new home.”.</i></p> <p>Heritage 21 contends this is mere speculation and the relevant tender advertisement, which appears in <i>The Sydney Morning Herald</i> on 20 October 1875,</p>

5.0 DESIGN AND BUILD	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
	<p>(below) does not confirm it relates to 'Roseville' or link Rowe to 'Roseville'. Rowe designed a number of houses in Manly.</p> <p>On page 21 of the AIA research, under the heading '1875' the below tender notice is quoted beside a reference to: '...a cottage at Manly'. The word 'Roseville' is also written in square brackets after the words: '...a cottage at Manly', which brackets Heritage 21 takes as a symbol that the link to 'Roseville' is conjecture.</p> <p>It is interesting to note that R&H in its research (Report 1, 1 July 2019, p 13) puts a question mark '?' beside 'Roseville' under '1875' when quoting the below tender advertisement.</p> <p>Finally, it is noted that the AIA research was not written by Dr Boyd but by Anne Higham in 2007 – 2011 and then updated by Dr Boyd in 2014 – 2016.</p>



R&H Report 2, 1 August 2019 p 4	
<p><i>'Whilst no drawings by Rowe for the house have been uncovered the documentary evidence strongly indicates that Thomas Rowe designed the house and the outbuilding for his family. The residence was designed before the formation of Brighton (later Manly) Council and the requirement for Building Applications. so published tender notices are, in the absence of the records of the practice or surviving family papers, the primary method of establishing who designed a building for the purposes of heritage listing. As this has been a standard practice since the start of heritage listing post- WWII, it is unclear on what basis Heritage 21 claims that the architect/designer has not been determined.</i></p> <p><i>Evidence:</i> <i>Thomas & Charlotte Rowe purchased the site, comprising Lots 8, 9, 10 & 11 of the Brighton Estate, on 21 May 1875 (Primary Application 18475, 19/2/1913) (see Figures A-D).</i></p> <p><i>Thomas Rowe tenders for the erection of a cottage at Manly on 19 October 1875 -masons & bricklayers work (SMH). There is one other tender</i></p>	<p>No drawings or plans of 'Roseville' have ever been produced to link its design to Rowe.</p> <p>The first paragraph is misleading and does not '...strongly indicate...' that Rowe designed Roseville. By stating: '...so published tender notices are, in the absence of the records of the practice or surviving family papers, the primary method of establishing who designed a building for the purposes of a heritage listing.' is misleading because there are so many sources of the important works completed by Rowe in Sydney and none mentions 'Roseville' being one of his designs/works.</p> <p>As mentioned above there are no tender notices that mention 'Roseville' in them.</p> <p>As discussed at length in Section 4, the second paragraph incorrectly cites the Rowses as owning all of lots 8 – 11.</p>

5.0 DESIGN AND BUILD	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
<p><i>for a villa in the Manly area in 1875, by John Joseph Davey at Manly Beach. This building has not been identified.'</i></p>	<p>In the third paragraph R&H distinguish between Thomas Rowe's tender and that of John Joseph Davey at Manly beach, adding in respect of Davey that the building has not been identified. The implication of this paragraph is misleading in that Rowe's tender (see above newspaper clipping) is somehow distinguished from Davey's by adding the words: <i>'This building has not been identified'</i> and yet the tender by Rowe's architectural practise does not identify the building either. Neither mentions an address.</p>
<p>R&H Report 4, 12 December 2019, p 13</p> <p>Manly Council rate books, the private address Rowe gave in letters dated late 1876 and his tender notices provide a degree of certainty to his having designed the building that corresponds to accepted attributions for design by architectural historians.</p>	<p>This is statement is pure speculation. None of the sources mentioned can be reliably used to attribute the design of 'Roseville' to Rowe. The AIA research discussed above did not conclude that Rowe had designed 'Roseville'.</p> <p>It is not disputed that Rowe stayed at 'Roseville' from time to time in the lead up to and while Mayor of Manly so he is likely to have used 'Roseville' as his address; however this is not proof of design or ownership and as rate books are not proof of ownership (see above) and no tender notice is specifically linked to Roseville (see above) it does not in our view: <i>'...provide a degree of certainty to his having designed the building that corresponds to accepted attributions for design by architectural historians.'</i> Neither R&H nor the AIA has produced any drawings or records for 'Roseville'. In our view it is inaccurate to state that these documents should be used to attribute the design of 'Roseville' to Rowe.</p>

6.0 FOOTPRINT AND USE OF BUILDING

From the phases of the development of the Site, discussed and depicted in Section 3, Heritage 21 concludes that various outbuilding structures along the Whistler Street boundary have been demolished and rebuilt. The evolution of the Site, depicted in the below chronology of images, also demonstrates that the footprint of the various structures has not been static. The graphic images contained in Section 3 of this Report on the transformation of the Site, demonstrate that the northern portion of the outbuilding was in situ in c. 1883, demolished by 1890, rebuilt by 1921 and demolished again by the mid 20th Century.

The Survey information, discussed in detail in Section 3, confirms that the existing building post dates 1920 and is the same building/footprint as that of the building measured on the 1950 Survey.

Norton Survey Partners investigation (Attachment 6) analysed the subdivisional plan prepared by Surveyor Nott in July 1920 as well as the 1950 Survey prepared by Surveyor Hardy for FP36845.

Norton Survey Partners confirm that the 1920 Survey clearly depicts a stone building on the south east corner facing Whistler Street, noted as being 'Stone' rather than brick as it is today.

Norton Survey Partners says:

'D.P. 10228 shows the position of various occupations (fences and buildings) close to the perimeter boundaries of the land and, where those occupations are buildings, it also includes a description of the main material of construction. Showing such information was an important survey requirement of the Registrar General at that time and this has carried through to the present day.'

And later:

'At the north east corner of Lot 1, D.P. 10228 shows a building described as "stone" adjacent to the north boundary and situated within the south east corner of what is now Lot B DP. 368451. We note the south east corner of Lot B is currently occupied by a brick building. This indicates the brick building was erected some time after July 1920, the date of the preparation of the D.P. 10266.'

The above extracts confirm that:

- the reference to stone, means that stone was the main building material of the building on the south east corner facing Whistler Street in 1920; and
- as the existing building is of brick, it post-dates July 1920.

In addition to that, coupled with the variations to measurements, Norton Survey Partners goes on to explain:

'Further to the above we note that DP 10288 shows the stone building as standing 4 inches (100mm) clear of the north boundary of Lot 1 and 3 inches (75mm) inside the Whistler St boundary. D.P.368451 (dated July 1950) displays a building (of unidentified material) upon Lot B and shows this building 3 ½ inches (90mm) clear of the north boundary of Lot 1 and 7 inches (180mm) inside the Whistler St boundary.'

'While the difference between the plans in setbacks to the north boundary is inconsequential, the difference in setbacks to Whistler St is substantial in a survey context being 4 inches (105m). This places the building shown in D.P. 368451 in a different position to that shown in D.P.10288 which indicates they are not the same building.'

In other words, Norton Survey Partners is saying that due to the discrepancy of measurements:

'...This places the building in D.P. 368451 (sic F.P. 368451) in a different position to that shown in D.P. 10288 (sic 10228) which indicates they are not the same building.' and concludes:

- the building on the 1950 Survey is not the same building as that on the 1920 Survey.

The 13 January 2020 TSS Survey demonstrates that the position of the existing south east corner facing Whistler Street is the identical position of the building in the 1950 Survey and depicts the building on the Site as being 90mm clear of the south boundary of the Site and 180mm inside the Whistler Street boundary. These measurements concur with those in the Norton Survey Partners report (Attachment 6).

From this we can conclude:

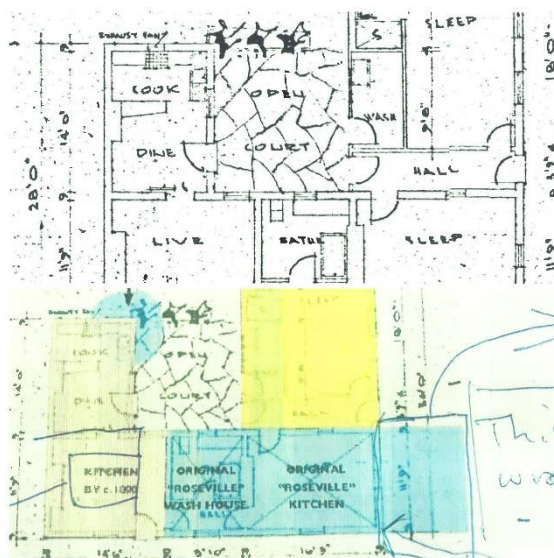
- the building on the 1950 Survey is not the same building as that on the 1920 Survey;
- the existing building today is the 1950 Building (there were modifications to it in 1967 and 1976); and
- that nothing of the subject building existing today in anyway relates to the outbuilding of 'Roseville' and none of it relates to Thomas Rowe either.

6.0 FOOTPRINT OF BUILDING ON THE WHISTLER STREET BOUNDARY	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
<p>R&H Report 4, 12 December 2019 Executive Summary p 1.</p> <p>The Executive Summary states that one of the two new issues raised in the H21 submission of 9 December 2019 is:</p> <p><i>'That the southern portion of the building on the site dates from after 1920...'</i></p> <p>Two paragraphs later it goes on to state, in respect of the above quote that:</p> <p><i>'The Council's Building Application Register would have confirmed the Applicant's second assertion was not correct.'</i></p>	<p>Heritage 21 has exhausted all avenues to find all information available from Council and elsewhere concerning the transformation of the Site, as described in Section 3. Council has produced just two records of BAs or DAs for the Site which are the 1967 BA Drawings (Attachment 5) and a written record of works in 1976 which relates to using the Site as two apartments. NSW State Archives does not have records of the Site.</p> <p>These statements are inaccurate as verified by the analysis and survey by Norton Survey Partners (Attachment 6) which analysed the subdivisional plan prepared by Surveyor Nott in July 1920 as well as the 1950 Survey prepared by Surveyor Hardy for FP36845.</p> <p>Norton Survey Partners confirm that the 1920 Survey clearly depicts a stone building on the south east corner facing Whistler Street, noted as being 'Stone' rather than brick as it is today.</p> <p>Norton Survey Partners says:</p> <p><i>'D.P. 10228 shows the position of various occupations (fences and buildings) close to the perimeter boundaries of the land and, where those occupations are buildings, it also includes a description of the main material of construction. Showing such information was an important survey requirement of the Registrar General at that time and this has carried through to the present day.'</i></p> <p>And later:</p> <p><i>'At the north east corner of Lot 1, D.P. 10228 shows a building described as "stone" adjacent to the north boundary and situated within the south east corner of what is now Lot B DP. 368451. We note the south east corner of Lot B is currently occupied by a brick building. This indicates the brick building was erected some time after July 1920, the date of the preparation of the D.P. 10266.'</i></p> <p>The above extracts confirm that:</p> <ul style="list-style-type: none"> the reference to stone, means that stone was the main building material of the building on the south east corner facing Whistler Street in 1920; and as the existing building is of brick, it post-dates July 1920.

6.0 FOOTPRINT OF BUILDING ON THE WHISTLER STREET BOUNDARY	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
	<p>In addition to that, coupled with the variations to measurements, Norton Survey Partners goes on to explain:</p> <p><i>'Further to the above we note that DP 10288 shows the stone building as standing 4 inches (100mm) clear of the north boundary of Lot 1 and 3 inches (75mm) inside the Whistler St boundary. D.P.368451 (dated July 1950) displays a building (of unidentified material) upon Lot B and shows this building 3 ½ inches (90mm) clear of the north boundary of Lot 1 and 7 inches (180mm) inside the Whistler St boundary.</i></p> <p><i>While the difference between the plans in setbacks to the north boundary is inconsequential, the difference in setbacks to Whistler St is substantial in a survey context being 4 inches (105m). This places the building shown in D.P. 368451 in a different position to that shown in D.P.10288 which indicates they are not the same building.'</i></p> <p>In other words, Norton Survey Partners is saying that due to the discrepancy of measurements:</p> <p><i>'...This places the building in D.P. 368451 (sic F.P. 368451) in a different position to that shown in D.P. 10288 (sic 10228) which indicates they are not the same building.'</i> and concludes:</p> <ul style="list-style-type: none"> the building on the 1950 Survey is not the same building as that on the 1920 Survey.
<p>R&H Report 4, 12 December 2019 Executive Summary p 1.</p> <p><i>'The Council's Building Application Register would have confirmed the Applicant's second assertion was not correct. Dr Robertson has examined the building and in his expert opinion the structure dates from the nineteenth century rather than the interwar years as claimed by the Applicant's consultants.'</i></p>	<p>The 13 January 2020 TSS Survey (Attachment 7) demonstrates that the position of the existing south east corner facing Whistler Street is the identical position of the building in the 1950 Survey and depicts the building on the Site as being 90mm clear of the south boundary of the Site and 180mm inside the Whistler Street boundary. These measurements concur with those in the Norton Survey Partners report (Attachment 6).</p> <p>From this we can conclude:</p> <ul style="list-style-type: none"> the building on the 1950 Survey is not the same building as that on the 1920 Survey; and the existing building today is the 1950 Building.

6.0 FOOTPRINT OF BUILDING ON THE WHISTLER STREET BOUNDARY**ROBERTSON & HINDMARSH STATEMENT
& Related Images & Information****R&H Report 1, 1 July 2019**

Page 8 Figure 4.3 Drawing **with colour overlay and room name captions added by R&H**

Attachment 11

The caption to the drawing written by R&H reads: "Figure 4.3 No 21 Whistler Street as depicted in the 1967 plans for alterations and additions to the building. Blue = structures constructed by Thomas Rowe as a part of "Roseville" as shown on the 1883 auction notice...Red = structures added by c. 1890 as shown on the MWS&DB Manly Detail Sheet 29 and in the Kerry & Co photograph...Yellow = additions proposed in 1967."

HERITAGE 21 RESPONSE

This drawing, Figure 4.3 in the R&H Report, is contained in the History section and presented as though it is 'historical' information which is misleading.

The drawing, is the 'PLAN' in the 1967 BA Plans for Alterations and Additions for the Site (Attachment 5), and has been overlaid in colour by R&H. R&H have also added black, typed labels which have been deceitfully superimposed by R&H, allocating names to rooms despite having no evidence to support the labels.

The only records discovered to date of a layout for the various buildings that have been built and demolished along Whistler Street are on the 1883 Subdivision Poster (Attachment 2a) and the 1967 Plans for Alterations and Additions (Attachment5).

R&H have used the 1967 Plan and added 'KITCHEN BY c. 1890' in the 'red' section (**which appears as light green, on the left hand side**, on Attachment 11) without any evidence and presented this as fact, as though there is evidence that the 'KITCHEN' was there in 1890. There is no evidence it was ever a kitchen and it is not a kitchen today. As evidenced in the transformation of the site in Section 3, the outbuilding was most likely a part of a mews complex, as mentioned in the 1901 advertisement and so likely to have been a coach house or stables as mentioned in the 1901 advertisement.

In our opinion the unsubstantiated labelling and the colour coding to the drawing renders it highly dubious and misleading because:

- Not only has it been established by Surveys that the existing building post-dates 1920, the only record of rooms within the various buildings along Whistler Street in the late 19th Century is contained in the 1883 Subdivision Poster (Attachment 2a); and
- As verified by Norton Survey Partners (Attachment 6), the drawing does not show what registered surveys verify, namely that this southern portion of the subject building certainly post-dates 1920; the plan incorrectly shades the area red, falsely implying the southern portion is part of 'structures added by 1890'.

On the plan, R&H have added a blue area, deemed to be 'structures constructed by Thomas Rowe as

6.0 FOOTPRINT OF BUILDING ON THE WHISTLER STREET BOUNDARY	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
	<p><i>part of Roseville...'</i> . On the drawing, coloured blue, is the area in the northern part of the site where the existing c. 1970s double level concrete block work structure is located. This has been coloured blue such that R&H is stating it is '<i>...structures constructed by Thomas Rowe as part of Roseville as shown on the 1883 auction notice...'</i>'. This is manifestly inaccurate and misleading.</p> <p>There no proof (lack of drawings, tenders etc discussed above) or reasonable inference that Rowe designed the now demolished 'Roseville' or its service outbuilding.</p> <p>It is clear too from the 1937 and 1943 aerials that the northern portion of the service wing was demolished for at least a second time since c. 1890.</p>
<p>R&H Report 4, 12 December 2019 pp 5 - 6</p> <p>"The claim that the southern section of the current building on the site dates from after 1920 is...incorrect ...No supporting archival material such as a Building Application or tender notice for a new structure has been provided to support this claim."</p>	<p>This statement totally disregards Norton Survey Partners evidence (Attachment 6) confirming the southern portion of the building/ building post-dates 1920. The Survey was tendered to Council (and R&H) by H21 on 9 December 2019 but is ignored by R&H in its response on 12 December 2019.</p> <p>R&H have produced nothing to contradict '<i>the claim</i>'.</p>
<p>R&H Report 4, 12 December 2019, p 9</p> <p><i>"The building is stylistically obviously a 19th century, Victorian period building.</i></p> <p><i>The 19th century photograph included in the original Heritage 21 report...the Full Circle Report...and our initial report...confirms that the existing building was present in the 19th century."</i></p>	<p>This is totally misleading and illogically concluded as the image referred to is dated 1884 to 1917, so not necessarily taken in the '<i>19th century</i>'. Regardless of what is depicted it could be a 20th Century image and only depicts what was there at the time.</p> <p>This statement is typical of sweeping statements made by R&H. Throughout this Report, R&H shows a blatant disregard for the Survey information provided by H 21 and arrogantly postulates that the building is a 19th Century building (by using words such as "<i>obviously a 19th century Victorian period building</i>") without attempting to justify that with references to actual architectural features emanating from the 19th Century.</p>

6.0 FOOTPRINT OF BUILDING ON THE WHISTLER STREET BOUNDARY	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
<p>R&H Report 2, 1 August 2019, p 9</p> <p><i>'The service building was an integral part of "Roseville" which was later enlarged by the subsequent owner of "Restormel"...It is inconceivable that the owner of "Restormel" demolished the ...outbuildings after only a few years of its existence as materials were expensive and buildings and their materials were used and reused...'</i></p>	<p>H21 has NOT ever made the statement that the owner of 'Restormel' demolished the outbuilding and it is a misleading accusation.</p>
<p>R&H Report 3, 30 August 2019, p 13</p> <p><i>"Heritage 21's Plan...indicates a number of "new" windows and doors. It is highly probable that these openings date from the c.1890 addition to the south end of the outbuilding when a new Kitchen was constructed and the old original kitchen was decommissioned..."</i></p>	<p>The only plan prior to 1967 (Attachment 5) is the 1883 plan (Attachment 2a) which shows that the building backed onto, and that there no window or door openings along, Whistler Street.</p> <p>The only drawings or images which show window and door openings onto whistler Street are the 1967 BA Drawings.</p> <p>The windows have been modified since c. 1967 and they are now taller than their fitted shutters.</p> <p>The Surveys show that the building post dates 1920.</p> <p>Thus graphic evidence and survey information above in Section 3 and Attachment 6 dispels R&H's date of 1890 for the southern portion of the building.</p>

7.0 REVIEW OF ROBERTSON & HINDMARSH HERITAGE SIGNIFICANCE

Heritage 21 commented on the errors and presumptions of the Robertson and Hindmarsh Assessment of Heritage Significance for the Site (dated 1 July 2019 in R&H Report 1, 11 July 2019) in its Submission to Council on 9 December 2019.

Heritage 21 is advised that the author of the R&H Assessment has not visited the interior of the building at the Site. The Assessment of Significance by R&H appears to rely on photographic evidence provided by Full Circle Heritage.

Primary evidence has been provided by Heritage 21, based on legal advice from O'Brien Connors & Kennett Lawyers (contained in Attachment 1) that:

- it can be concluded from the relevant Title Deeds searches that there was already a house on Lots 8 and 9 prior to Rowe's occupation;
- Rowe only stayed at the cottage on the Site briefly up until shortly after Charlotte Rowe's death (which H 21 notes was just one month after Rowe became Mayor in February 1877);
- that Rowe did not own Lots 8 & 9/the Site either before or after the death of his wife Charlotte Rowe;
- the conveyance of property is proof of ownership, but a mortgage is not;
- the mortgage to Equitable Permanent Benefit Building Land and Savings Institution registered against the **Lots 8 and 9**, noting Rowe and his wife as borrowers, is not proof of ownership of the Site, rather it is indicative that the finance was not obtained legally;
- Thomas Rowe was the Surveyor for the Equitable Permanent Benefit Building Land and Savings Institution 1875 – 1882;
- the statutory declaration that Rowe signed was in connection with the above mortgage and thus with funds he should not have received; and
- There is no documentation or evidence that Sydney Green was a Trustee for Charlotte Rowe.

The above legal advice dispels the basis of the Robertson and Hindmarsh Assessment which is based on the incorrect hypothesis that Thomas Rowe owned, designed and built 'Roseville'.

Further, the R&H Assessment postulated that the Site is a working example of Rowe's work in the area of health and sanitation and that claim seemed to be based on the 1883 drawing (Section 3) which depicts an earth closet to the north of the kitchen in the original 'Roseville' outbuilding. Section 3 of this Report, in describing the transformation of the Site, demonstrates the various demolitions and rebuilds of portions of the outbuilding and dispels any doubt that the area which housed the early earth closet exists today. The early earth closet seems to have been demolished by c. 1890 (see Section 3 1890 MS&WBS Drawing) when the northern portion of the original outbuilding was demolished. Earth closets pre 1900 were very commonplace all over Metropolitan Sydney and there is no evidence that the subject earth closet was in any way rare or special.

Heritage 21 recognises that it is possible that the early volumes/spaces of the original kitchen and wash house exist. Notwithstanding, Heritage 21 has identified that the spaces have been highly modified (see 1967 BA Drawings in Section 3). What exists today bears little or no resemblance of what might be deemed worthy of heritage listing. This conclusion was reached by Clive Lucas, Stapleton in 2008 when it conducted an assessment of the physical fabric. The Clive Lucas, Stapleton heritage assessment of the Site was supported by Weir Phillips Heritage on 22 July 2019.

7.0 ROBERTSON & HINDMARSH ASSESSMENT OF HERITAGE SIGNIFICANCE	
ROBERTSON & HINDMARSH STATEMENT & Related Images & Information	HERITAGE 21 RESPONSE
<p>R&H Report 4, 12 December 2019</p> <p>Executive Summary p 2 paragraph 1 states:</p> <p><i>'No additional supporting information has been provided by the applicant that justifies the alteration of Robertson & Hindmarsh's initial assessment and advice to the Northern Beaches Council that 21 Whistler Street (the former outbuilding of "Roseville", later known as 'Restormel') is of a level of significance that meets the threshold for Local heritage listing....'.</i></p>	<p>To state that: <i>'No additional supporting information has been provided by the applicant...'</i> is false because on 9 December 2019 Heritage 21 provided Title Deeds information, verifying the Site was not owned by Rowe, as well as Survey information, confirming the building along the Whistler St boundary post- dates 1920.</p> <p>In other words, the dispelling by Heritage 21 of the basis of R&H's Assessment of Significance ie that Rowe owned and designed 'Roseville', by the provision of Title Deeds information, as well as the provision of Survey information confirming the building along the Whistler St boundary post- dates 1920, is totally ignored by R&H in its Report on 12 December 2019.</p>
<p>R&H Report 2, 1 August 2019, p 9</p> <p><i>'As stated in the Robertson & Hindmarsh report the remnant portion of the outbuilding that exists today does contain a remnant of the original "Roseville" outbuildings.'</i></p>	<p>Ironically, R&H have reached the same conclusion as Heritage 21 in recognising that only a very small remnant of the original building remains today suggesting that the heritage listing of such a small component is unworthy and unnecessary.</p>

8.0 CONCLUSION

There have been extensive inaccuracies and misrepresentations perpetuated by Robertson & Hindmarsh in their various submissions to council regarding the provenance and evolution of the subject site. This has caused both NBC and the LPP to erroneously conclude that there is sufficient basis upon which to heritage list the subject site. Heritage 21 has provided evidence which strongly indicates that there is insufficient basis upon which to list the site. In particular, our evidence shows that;

- Thomas Rowe did not own the subject site;
- Thomas Rowe did not design the house on the site known as 'Roseville';
- Thomas Rowe did not build the house or outbuildings (service wing) upon the site;
- The house was already standing prior to Thomas Rowe and his family having any interest in the property;
- The main house (Roseville) was substantially demolished between 1937 and 1943 according to the aerial photographs;
- There are no plans or Title Deeds which link Thomas Rowe to the Site at 21 Whistler Street, Manly;
- It is acknowledged that Thomas Rowe and his family did reside at the Site but only as tenants for a very short period (approximately 1 year at the most);
- The use of the Site has changed many times from residential to commercial and back to residential since the construction of 'Roseville';
- It is certain that the footprint of the building that stands today does not match that of the footprint of the original outbuildings (service wing) of 'Roseville';
- The existing building that stands on the Site today was substantially constructed after 1920;
- The current building standing today possibly only includes a very small amount of original fabric (the western kitchen wall) of the original 'Roseville' service wing (see H21 drawing in Section 3 of this Report);
- Roseville did contain an earth closet but earth closets at the time were not rare. Prior to 1900 most houses in metropolitan Sydney would have had an earth closet.

In regard to the above evidence, it becomes difficult to understand the basis for a heritage listing when there is so little evidence linking Thomas Rowe to the Site and so little remaining fabric left of the remnant service wing building of the Site. Under the various criteria upon which Robertson & Hindmarsh recommended a heritage listing to council and the LPP, it becomes clear, in light of the evidence above, that all of the determinations of significance under Criteria A, B, C and F are now spurious and highly dubious. It is also clear that there are numerous factual inaccuracies in the Robertson & Hindmarsh reports - some of which are deceitfully misleading (refer to the foregoing information in this Report).

As is stated above, at the time when the Applicant lodged a DA for the development of the Site, the property was not heritage listed nor in a heritage conservation area and this is evidenced by the S149 Certificate upon which the Applicant relied when lodging his DA. It was only after the application for a DA was lodged by the Applicant that council (through the LPP) voted to impose an IHO on the Site. The IHO relied upon highly dubious information advanced by Robertson & Hindmarsh as a result of which a flawed process has been set in motion. Yet, even before the LPP voted on the motion to place an IHO on the property (17 December 2019), most of the evidence put forward by Robertson & Hindmarsh in their report dated 1 July 2019, was refuted by Heritage 21 in its submission dated 9 December 2019. In their response to Heritage 21's contrary evidence of 9 December 2019, Robertson & Hindmarsh, in their Report of 12 December 2019, disregarded Heritage 21's evidence. Yet it is Heritage 21's evidence which crucially and substantially refutes and invalidates the basis for a heritage listing.

Ironically, Robertson & Hindmarsh inadvertently reach the same conclusion as Heritage 21 insofar as the quantum of remnant fabric of 'Roseville' is concerned. We quote from p 9 R&H Report 2, 1 August 2019 report in which it states:

'As stated in the Robertson & Hindmarsh report the remnant portion of the outbuilding that exists today does contain a remnant of the original "Roseville" outbuildings.'

One would construe from this statement that Robertson & Hindmarsh shares our view that on balance there is very little of the original 'Roseville' establishment that physically remains today and it is upon this basis that Heritage 21 concludes that a heritage listing of the property would be both inappropriate and unnecessary.

This Report contains additional and new evidence (mainly legal advice) to further negate the findings of Robertson & Hindmarsh and it is only hoped that any party or individual charged with making an assessment of all of the information and evidence put forward to date, both by Robertson & Hindmarsh and Heritage 21, in regard to the veracity of the provenance and evolution of the subject site, is fairly and impartially assessed. If not, the interests of the Applicant would be seriously compromised.

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