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**Sent:** 18/11/2019 11:47:39 PM

**Subject:** Mod2019-0477 (DA2017-1294)

**Attachments:** Mod2019-0477 Freshwater Link 20191117.doc; Drainage Easement 9-15 Lawrence 1974.pdf; Drainage Easement 9-15 Lawrence St.pdf; Drainage Easement Id 441897.pdf;

Please see attached.

77 Brighton Street  
CURL CURL NSW 2096  
Phone: 9938 3459  
Email: aesharp@bigpond.net.au

To Northern Beaches Council  
Email: [council@northernbeaches.nsw.gov.au](mailto:council@northernbeaches.nsw.gov.au)

Attention: Daniel Milliken

18<sup>th</sup> November 2019

Mod2019/0477 – DA2017/1294  
9-15 Lawrence Street FRESHWATER

Re Pedestrian Link

This is a request to Council to reinstate and formalise a right of way / easement for pedestrian access between the north eastern corner of the Council car park and the hall of the St Peter's Uniting Church in Marmora Street, Freshwater.

The St Peter's Uniting Church hall is well used for community functions, but there is a deficit of parking spaces in Marmora Street. In earlier years local residents had the land owner's permission to access the rear door of the church hall via an informal path across the rear of the private lot. This allowed convenient access from the Council community car park.

The reinstating and formalising of this link would have a public benefit, but has not been pursued by Council as an option.

The following statement was included in my submission (15<sup>th</sup> March 2018) to the development proposal DA2017/1294 on land adjoining the car park:

Dual use of stormwater easement as a pedestrian link between Council car park and Uniting Church Hall should be pursued in conjunction with redevelopment of this site, which separates the church hall from the community car park. For many years a previous land owner gave permission for people using the church hall to traverse the rear of the subject site. Given the scarcity of parking places in Marmora Street, particularly with new development, pedestrian access between the public car park and church hall is particularly important. The redevelopment of the site is a singular opportunity to re-establish and formalise this link, which would provide a strong public benefit. A Voluntary Planning Agreement might assist this outcome.

The above issue was not mentioned in the Council report re DA2017/1294 or the proposed reclassification of the Council car park from community land to operational.

Council has one-off opportunity to secure a greater public benefit in conjunction with a proposal to allow vehicular access to the subject site from Oliver Street.

Right of Footway / Carriageway: Right of Footway / Carriageway above the drainage easement is consistent with its use for drainage purposes.

Local Government Act 1993 – SECT 51

## 51 Use of land held for drainage purposes

Land that is held by council for drainage purposes may be used for any other purpose that is not inconsistent with its use for drainage purposes, subject to the *Environmental Planning and Assessment Act 1979* and any environmental planning instrument applying to the land.

### Design Criteria for Pedestrian Paths

Width requirements for footpaths

For wheelchairs to pass: Allow for two wheelchairs to pass (1.8m comfortable, 1.5m minimum)

Ref: Austroads 2009 (Page 31)

### Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification

Requirements:

- The minimum width of any drainage easement must be 3.0 metres.
- Council has uninhibited legal right of access through the overlying structure.
- Council has Right of Carriageway over the full length and width of the access

The 3.0 metres minimum width of the drainage easement is 1.2 metres wider than the 1.8 metres minimum width required for pedestrian access.

#### *Minimum Easement Width Requirements*

“The width of any drainage easement is controlled by the minimum practical width necessary for standard machinery to carry out reconstruction of the public drainage system to current standards and Work Health and Safety requirements. For this reason, the minimum width of any drainage easement must be 3.0 metres.

For pipes/channels having a width greater than 1.0 metre, the drainage easement must have a minimum width equal to the external width of the pipe/channel plus 2.0 metres, rounded to the next 0.1 metre.”

“If bends occur in the Council drainage system then the minimum easement width shall be increased”.

#### *Right of Access by Council*

“Provision is to be made to ensure that Council has uninhibited legal right of access through the overlying structure to the Council drainage system.

To ensure that Council has uninhibited access through the overlying structure, for emergency purposes, gates or doors cannot be installed along the path of access, between the public road and the Council drainage system.”

“To ensure that Council has legal right of access through the overlying structure, a Right of Carriageway is required to be granted to Council over the full length and width of the access, between the public road and the public drainage system.”

### Community facilities

The easement would allow pedestrian access to a facility used for community purposes. Freshwater Village has a shortage of community land suitable for community use.

In previous years Council funds derived from Section 94 development contributions, and intended for Freshwater, were diverted instead to the Brookvale Occasional Care Centre, as limited land was available in Village for this purpose.

Community benefits:

- To provide a pedestrian link between the Council car park and church hall, which is used for community purposes.
- To provide convenient access to parking and contribute to the provision of community facilities in Freshwater Village.

Conditions:

Conditions could be imposed to address resident concerns, such as security or noise.

An existing open fence on the northern boundary provides visual surveillance.

Negotiation

There may be several ways to achieve a 1.8 metre wide pedestrian link, including:

- A Right of Foot-way above the Council drainage easement
- A lease for pedestrian use of the easement
- Acquisition of a corridor for use as a pedestrian link

Negotiation with the property owner(s) is required. However, if the owner does not agree to provide a pedestrian easement, the Church has no authority to compulsorily acquire the land. Further investigation would be required to ascertain what can be done to improve access to parking.

A trial use of the easement is an option, to ascertain and resolve any conflicts.

Compulsory Acquisition

Local Government Act (LGA)

“If a council wants to compulsorily acquire land that will be transferred to some other person or body, it must satisfy the Minister for Local Government that transferring the land will meet a community or public need (a ‘local government purpose’) rather than an individual or private need. The acquisition must be for the wider public, not just one individual or a limited group of individuals.”

Ref: New Guidelines for the Compulsory Acquisition of Land by Councils

Circular No. 06-49, Date 8 August 2006, Doc ID. A59139

Warringah DCP 2011

The subject site is located within the precinct identified as "Special Area G5" Freshwater Village in the Warringah Development Control Plan 2011. A through-site pedestrian link to improve connectivity is consistent with ‘Active travel links’ Objectives 1-3 and Requirements 1-2.

G5 Freshwater Study Area

17. Active travel links

Objectives and Requirements

O1. To improve pedestrian accessibility, safety and amenity through the maintenance or creation of functional, accessible, attractive links.

O2. The proposed development improves connectivity and contributes to an active and vibrant Freshwater Village.

O3. To provide for permeability between buildings, community facilities and public transport.

R1. Where appropriate, sites adjoining lanes or parking areas are to maintain existing or incorporate new through-site links for residents, customers, workers and visitors travelling on foot or by bicycle.

R2. Provide legible laneways, arcades and pedestrian / cyclist ways where appropriate.

#### Walking Plan - Northern Beaches

The inclusion of a pedestrian link corresponds with actions in the Northern Beaches Walking Plan.

#### *Integrate Active Travel in New Developments*

“Planning for pedestrians should be an integral part of all new developments.” (Page 19)

#### *Provide a High-Level Pedestrian Priority in the Network to Pedestrian-Focused Areas*

“In activity centres, a finer grain network of pedestrian routes will result in a shorter and quicker walking trips for all users. Laneways, arcades, public open space and Shared Zones are some options that increase ‘permeability’.” (Page 35)

#### *Design for Pedestrian First*

“Considering pedestrians first (or pedestrian priority) in new developments and centre place-making will encourage walking by better connectivity, convenience and comfort and safety.” (Page 38)

Ref: The Northern Beaches Walking Plan (April, 2019)

#### Warringah LEP 2011

Pursuant to the Warringah LEP 2011 the site is zoned for B2 Local Centre development.

The objectives of the B2 zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area;*
- *To encourage employment opportunities in accessible locations;*
- *To provide an environment for pedestrians that is safe, comfortable and interesting;*
- *To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment;*
- *To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.*

The shop top housing development contains residential units on the first and second floors. Communal open space for residents is provided on the first floor. The objectives of the B2 Local Centre zone require that the dominant use of the ground floor is reserved for retail or other uses associated with the Local Centre.

The 6m setback at the rear of the site, which includes the drainage easement, is zoned B2 Local Centre. The pedestrian link would be compatible with objectives of the B2 zone relating to community uses, a pedestrian environment and the amenity of adjoining land uses.

### Stratum Subdivision

The interface with the Oliver Street community car park is the private car parking area within the stratum subdivision of the subject site. There is no interface with, and there does not appear to be a direct connection between, the Council car park and retail / shared use associated with the Local Centre. Access to the retail car parking area is via the residential car parking area. Will the ground floor stratum need to be modified, or a right of way provided, to allow shared access?

In the stratum subdivision: At the ground level, the residential car parking component is 1570 m<sup>2</sup> compared with the retail car parking component of 1005 m<sup>2</sup>. The residential portion is 565 m<sup>2</sup> (more than 50%) greater than the retail portion on the ground floor. In addition, the whole of the first and second floors are allocated to residential use.

The residential component is exclusive on the first and second floor, and dominates the ground floor as well. The dominant use for residential car parking on the ground floor displaces potential business and other uses associated with the Local Centre. In terms of land use, this outcome compromises the objectives of the Local Centre B2 zone.

The Stratum Subdivision affects Freshwater Village and its future use by surrounding residents. The shrinking of available land for business / shared use within the Village has a direct impact on the services that can be provided.

Note: The Stratum Subdivision notification included immediate neighbours only. Other local residents, who made submissions previously, were not notified.

### Proposed Modification to allow Vehicular Access from Oliver Street

#### Shortfall in Car Spaces

The proposed provision of 45 car parking spaces is less than the required 50 car parking spaces under WDCP 2011. This includes an additional shortfall of 4 spaces for retail compared with the previously approved shortfall of 1 space for retail and 5 spaces for residential. Any overflow car parking is likely to take up spaces in the community car park.

#### Concessions / Benefits

The proposed modification and Council proposal to reclassify the Oliver Street car park to allow vehicular access to the adjoining property at 9-15 Lawrence Street will directly benefit the land owner and future residents.

The concessions / benefits that will accrue to the developer include:

1. Additional floor space for retail use and associated financial benefits relating to income and land value.
2. The likely use of the adjoining community car park for overflow car parking to make up for the shortfall in car parking spaces.
3. A driveway through land that has been reserved for public use. This has potential constraints associated with the future use of the community car park.

The proposed concessions associated with this development will have financial benefits for private development. However, they will also have an impact / imposition on public land. As compensation, it would be reasonable for Council to consider a greater public benefit in return.

#### Ad hoc change of land use to residential

On the adjoining lot to the East, land formerly included within Freshwater (Harbord) Village in WLEP2000 has been rezoned for residential purposes in WLEP2011 because residential use has been permitted on the ground floor at the rear of the property. This loss of land within the Freshwater Village precinct, and the associated ad hoc rezoning to residential use, is a consequence of a development that was not consistent with WLEP2000 land use requirement for Freshwater Village “that the ground floor will be predominantly used for business purposes”.

#### Registered Easements for Drainage

NB The reference to ‘BITUMEN SURFACE’ and ‘BITUMEN FOOTPATH’ above the drainage easement. The bitumen footpath was used to access the church hall.

DP580780

Strata Plan S P 1172 Registered: 21-1-1976

Acquisition of Lot 1 for Council car parking purposes.

Easement to Drain Water is 1.83m wide within Lot 2

Diagram (inset) in survey plan shows Easement to Drain Water in S P 1172 and Lot A DP 356986.

Plan Detail for No. 9-15 Lawrence Street Harbord (Freshwater)

Plan shows easement to drain water and overlying bitumen surface and footpath.

#### ATTACHMENTS

1. Survey Plan of S P 1172 with Easement to Drain Water
2. Plan Detail of Easement to Drain Water within 9-15 Lawrence Street, Freshwater.

#### Warringah LEP 1985 Zoning Map

The 1985 Zoning Map identifies an easement between the Telecommunications (Telstra) site and Marmora Street. (See attached Map.) The E-W easement is shown as a separate parcel of land. It has a corridor width of 6ft and adjoins the southern boundary of the two intervening lots, including the Church land, which is 66 ft wide (N-S) and 120 ft long (E-W).

Number above easement: 441897

F.P. 441897 Site of Proposed Drainage Easement through Por. 381 and Lot 8 in D.P. 10321  
Vol – Fol; Volume 4693 Folio 12

No. G747454 *Transfer and Grant dated 6<sup>th</sup> February 1957 to The Commonwealth of Australia of an easement for drainage (as more fully set out in the said instrument). Appurtenant to the land comprised in Certificate of Title Volume 6886 Folio 97 affecting that part of the land within described shown by blue colour on the plan hereon.*

Entered 9<sup>th</sup> December 1957

T. Wells, Registrar – General

(Ref: Archival record of Transfer and Grant to Commonwealth of Australia of an easement for drainage.)

#### ATTACHMENTS

1. Survey Map showing Site of Proposed Easement for Drainage
2. Warringah LEP 1985 Zoning Map showing corridor of land (Id: 441897) for easement.

“Beaches falling short on halls”

The Manly Daily article (Wed November 13, 2019) notes that there is a “shortfall” in community centre space in public halls on the northern beaches. A report to Council has identified a lack of large, integrated multipurpose community facilities in key locations. “As part of a draft policy now on public exhibition until Sunday, December 1, the council said it wanted to make sure the halls were accessible with good connections to public transport”.

Similarly, a pedestrian link to the church hall, which is used for community purposes, would achieve better access and a convenient connection to the Council car park.

Development Application

Mod2019/0477 – DA2017/1294 for 9-15 Lawrence Street Freshwater

Modification to allow vehicular access via Oliver Street

The formalising of the pedestrian link via the drainage easement has been a long standing issue, which has been communicated to Council previously, but opportunities to reinstate the link have not been followed up. The new development at 9-15 Lawrence Street and the proposed modification provides an achievable and one-off opportunity to reinstate the former pedestrian link.

Council support is requested to pursue this singular opportunity to reinstate and formalise a pedestrian link between the Council car park and the hall of the St Peter’s Uniting Church in Marmora Street, Freshwater.

Yours sincerely

Ann Sharp

P.S. See attached re Proposed Reclassification of Freshwater Community Car Park.



## FRESHWATER COMMUNITY CAR PARK

Mod2019/0477 – DA2017/1294 for 9-15 Lawrence Street Freshwater

The following comments re the Reclassification of the Council car park may also be relevant to the proposed modification to allow vehicular access to 9-15 Lawrence Street via Oliver Street

Re RECLASSIFICATION from COMMUNITY LAND to OPERATIONAL

### BENEFIT

Reclassification would allow vehicular access to private property via the Council car park. This would reduce vehicular conflict and enhance pedestrian safety and amenity in Lawrence Street.

The reclassification would still allow access via the Council car park entrance in Lawrence Street, but would avoid the need for an additional vehicular entry via Lawrence Street.

I acknowledge the positive benefits for reclassification. However, there are also potential negative impacts to be considered. Some of these concerns may be addressed via conditions.

### PEDESTRIAN SAFETY

The increased frequency of vehicles traversing the Council car park entrance in Oliver Street is a concern, as it separates the preschool annexe from the playground.

Pedestrians also cross the Oliver Street car park entrance to access the Village.

The reclassification of the car park to operational would allow the public car park to be used as a driveway to private dwellings.

The driveway access through the Council car park would impact on the entire length of the car park.

The use of the Council car park for heavy vehicle access and deliveries to adjoining properties has drawbacks for other users.

### PARKING

The shortfall in on-site parking spaces increases the likelihood of resident and visitor parking taking up car spaces allocated for community use.

The priority use of the Council car park should be for residents using the community and retail facilities in Freshwater Village.

The Council car park is adjacent to community facilities that do not have their own dedicated parking space.

The availability of public car spaces near to community facilities is important for convenience and safety.

### COMMUNITY LAND

Currently there is a shortfall of community land in Freshwater Village.

Reclassification to operational land would allow Council to sell the land without consultation with

PLAN AMENDED IN R.G.O. AT SURVEYORS REQUEST KT. 9-1-76

I hereby certify that —

(a) the requirements of the Local Government Act, 1919 insofar as the requirements for the registration of plans, and

(b) the requirements of section 348 of the Metropolitan Water, Sewerage and Drainage Act, 1924, as amended (Hunter District Water, Sewerage, and Drainage Act, 1936, as amended).

have been complied with by the applicant in relation to the proposed "new road", subdivision or "consolidated lot" set out hereto:

Subdivision No. .... 78,562  
Dated 25<sup>th</sup> NOVEMBER 1934

\*This part of certificate to be deleted when the application is for consecrated lot or the opening of a new road or where the land to be subdivided is wholly outside the area of operations of the Metropolitan Water Sewerage and Drainage Board and the Hunter District Water Board.  
 11 Delete if inapplicable.

Signatures, seals and statements of intention to dedicate public roads or to create public reserves, drainage reserves, easements or restrictions as to user.

LOT, IS BEING ACQUIRED FOR CAR PARKING PURPOSES

LOUIE IS BEING ACQUIRED FOR OWN FARM  
THE COMMON SEAL OF THE PROSPEROUS-STARF PLANT NO 1772  
WAS HEREON AFFIXED BY AUTHORITY OF THE COURT IN THE

Rehears.

SECRET

45

1

[illegible]

LAWRENCE STREET

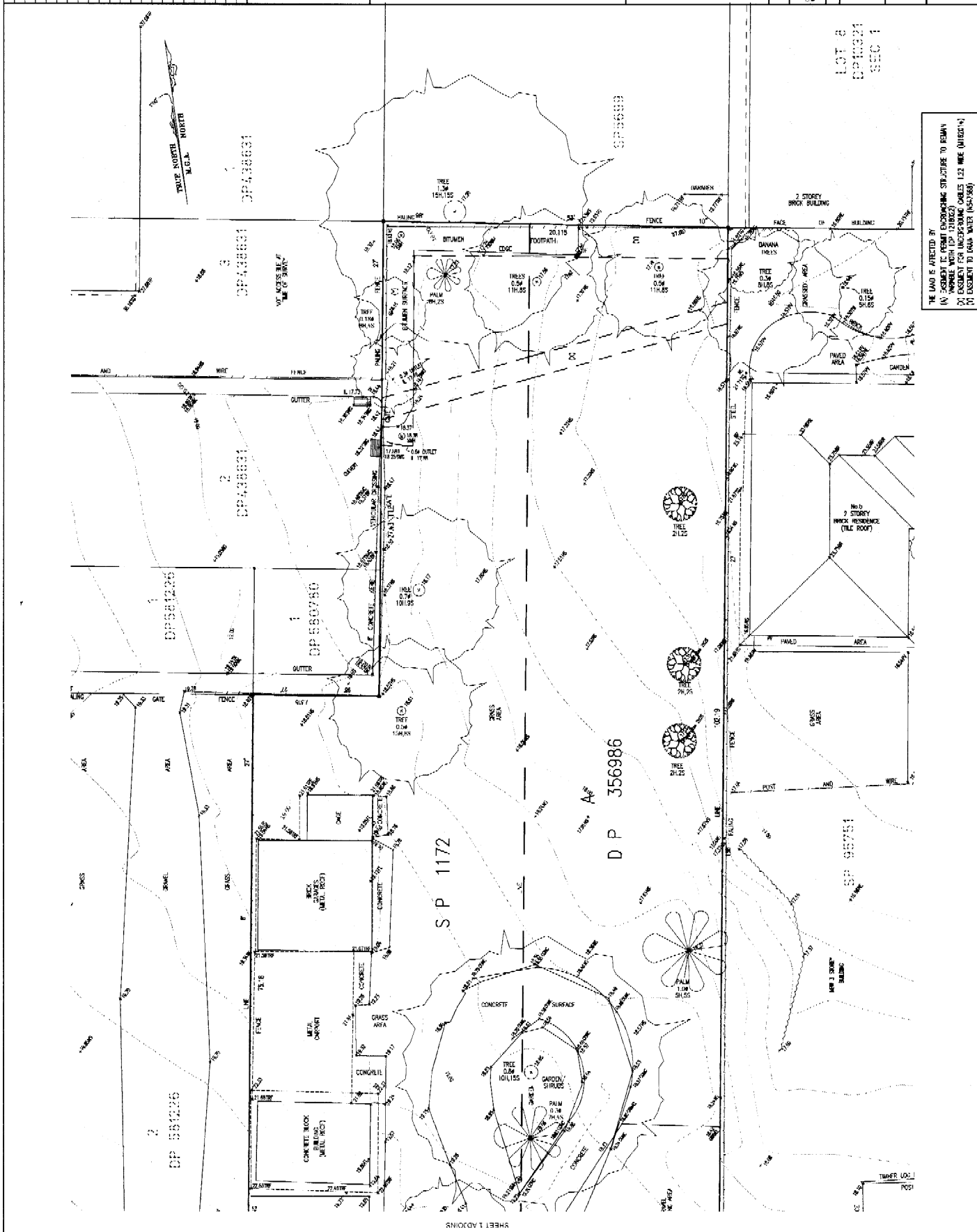
**DIAGRAM**

RED. RATIO 1:200

**Plan Drawing only to appear in this space**

SURVEYOR'S REFERENCE

**I. Jack Hayward Watson, Registrar General for New South Wales, certify**

[illegible]

PLAN

of Site of Proposed Easement for Drainage through Por. 381 & Lot 8 in D.P. 10321

PARISH OF MANLY COVE COUNTY OF CUMBERLAND

Scale 60 feet to an inch

This is the plan referred to in transfer dated 10 June 1957

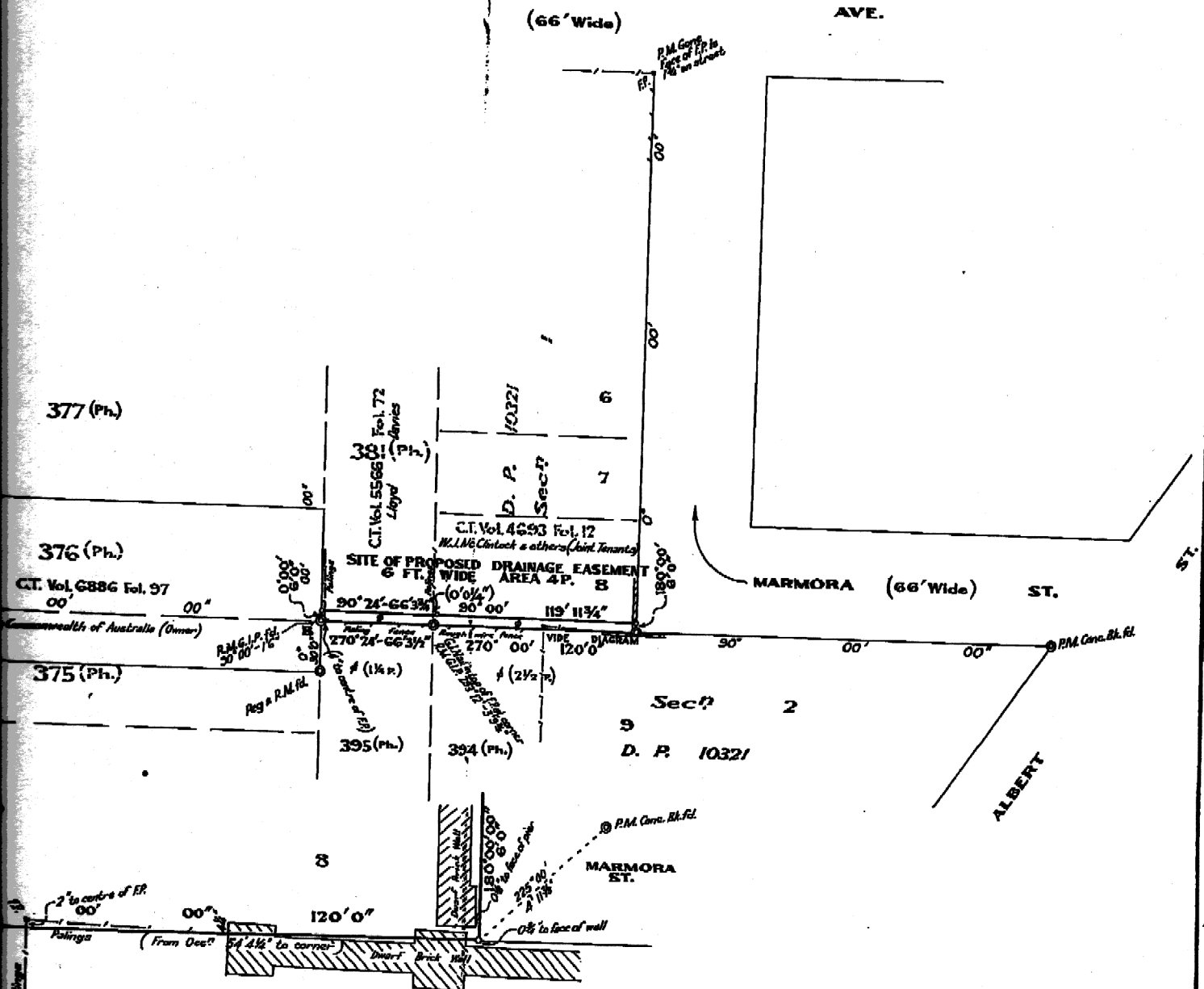


Diagram  
Not to scale

I, George Frederick Moor of the Dept. of The Interior, Sydney, a surveyor registered under the Surveyors Act, 1929-1946, hereby certify that the survey represented in this plan is accurate and has been made by me under my immediate supervision in accordance with the Survey Practice Regulations, 1933, and was completed on 11th April, 1956.

(Signature) *George F. Moor*  
Surveyor registered under the Surveyors Act, 1929-1946.

46695 L

DEPT OF THE INTERIOR  
NEG. No. 10232 N.E.W.

Lloyd Alan 1.2

