



Sutherland Shire Environment Centre

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Mr Peter Blair
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Legal and Dispute Resolution
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Via email to: peter.blair@nswlrs.com.au

Cc: ldr@nswlrs.com.au

26 July 2018

Dear Mr Blair

Dealings AK951535 & DP1234382.

Your reference: AK951535:PB:LEG11

I refer to your email of 24 July with the letter from Mr Gavin Bartier, Director, Legal and Dispute Resolution of the same date attached. Mark Da Silva has referred this correspondence to me. We note Mr Bartier's advice.

Plan of Redefinition

With regard to Mr Bartier's advice that, in his opinion, the lodged plan is a plan of redefinition of the residue of the land in Volume 3065 Folio 63 (**title 3065-63**), we note that the Registrar General's [Guidelines for Plans of redefinition](#) state:

In all cases the plan must be one of survey and should be accompanied by a report indicating the surveyors reasons for defining the boundaries in the manner shown in the plan.

Could you please advise as to whether a report indicating the surveyors reasons for defining the boundaries in the manner shown in the plan has been lodged with the plan of survey? Could you please also advise as to whether this report has been provided to Sutherland Shire Council and/or to adjoining land owners?

The guidelines also state:

As a general rule, where the consent of the adjoining owner of a redefined boundary is not furnished with the plan, NSW LRS sends notice of the redefinition plan to that owner. If no objection is made and the plan is otherwise in order, the plan will be registered

We note that the plan lodged proposes to create new boundaries which are marked "A" to "B" (across Liverpool Street) and "C" to "D" (across Bournemouth Street). Could you please advise as to whether the consent of all the adjoining land owners of the redefined boundaries within the plan have been furnished with the plan or whether NSW LRS has sent notices to those land owners?

With regard to the proposed boundary "A" to "B" across Liverpool Street, we note that this boundary adjoins the following parcels of land:

- To the North, part of Liverpool Street as defined in DP 1782, which Sutherland Shire Council have advised us is land which remains residue in land title 3065-63,
- To the East, Lot 11 of DP 609743,
- To the West, Lot 1 of DP 553362.

With regard to the proposed boundary "C" to "D" across Bournemouth Street, we note that this boundary adjoins the following parcels of land:

- To the North, part of Bournemouth Street as defined in DP 1782, which Sutherland Shire Council have advised us is land which remains residue in land title 3065-63,
- To the East, Lot 134 of DP 226578,
- To the West, Lot 6 of Section H, DP 17812 (part of the Royal National Park).

We note that the Registrar General's Guidelines for [Boundary consents and approvals](#) advises "Where a surveyed boundary abuts land controlled by a prescribed authority it may be necessary to obtain the authority's consent." In this regard we note that the proposed boundary "C" to "D" across Bournemouth Street adjoins the Royal National Park which is land controlled by the National Parks and Wildlife Service under the *National Parks and Wildlife Act 1974*.

We also note that Sutherland Shire Council, as the prescribed Roads Authority under the *Roads Act 1993*, has not provided consent to the plan and that Council's letter dated 18 April 2017 explicitly states "Council neither consents nor objects to the transmission application as Council has no interest in the land". We restate our earlier contention that Council is not in a position to give legal consent to the boundaries as the legally binding standing decision of Council is that the Bournemouth Street and Sussex Street road reserves included within the proposed lot 1 are to be dedicated public roads.

Sutherland Shire Council have provided us with a report they prepared for the National Parks and Wildlife Service (attached) which finds:

“There is no record that any of the original route of Liverpool Street as defined in DP1782 has been declared as public road. Therefore it remains as residue land in a cancelled title” (p12).

“There is no record that any of the original route of Bournemouth Street as defined in DP1782 has been declared as public road. Therefore it remains as residue land in a cancelled title” (p13).

Council’s report concludes that all of Bournemouth Street, Liverpool Street, Sussex Street and part of Grosvenor Street as shown in DP 1782 remains residue land within a private land title. We note the notification on title 3065-63 that the title is subject to all rights of way over the roads shown in DP1782. We are advised that it is established law that all owners of land within DP1782 have a legal interest in and right of way over the roads as all the lots created in that plan are connected to the road grid set out and reserved on that plan, including the road reserves within the proposed plan described as a plan of redefinition.

We would be grateful for your assistance in advising which of the consents outlined above have been provided as we intend to request this information, (the surveyor’s reports, adjoining land owner notifications and consents and prescribed authority consents) should they exist, under the provisions of the *Government Information (Public Access) Act 2009*.

If it is the case that the Registrar General has not obtained the written consent of relevant prescribed authorities and adjoining land owners, including land owners adjoining the proposed new boundaries, we question how the Registrar General can be satisfied that the proposed plan will not adversely affect the legal interests of those private land owners or the public interest.

Subdivision

As you are aware, Mr Bartier’s opinion differs from the legal opinion we obtained from Mr Chris Rumore, Solicitor, Collin Biggers and Paisley (which Mr Rumore also provides in his letter to Ms Ticehurst, NSW LPI, dated 15 September 2017) that the proposed plan is a plan of subdivision.

It is our understanding that Mr Rumore has relied on the advice provided to us by Sutherland Shire Council that appears to contradict the advice that Council provided to the Registrar General in their letter dated 18 April 2018.

In addition to the information contained in Council’s report (see above), Ms Janelle Amy, Principal Environmental Lawyer, Sutherland Shire Council wrote to us on 20 November 2017 advising:

“The plan which Council has considered chooses to transfer only part of the residue of the paper roads to the Executor and the balance of the paper roads is maintained with the estate of Edith Wolstenholme.”

Furthermore, we note that the Surveyor has explicitly described the plan on the plan administration sheet as “PLAN OF PART OF RESIDUE LANDS IN CERTIFICATE OF TITLE VOL. 3065 FOL. 63”.

We therefore maintain our contention, based on these facts and the legal opinion provided by our solicitor, that the plan is seeking to effect a subdivision of land currently within title 3065-63.

Complaint

With regard to the complaint referred to in our previous letter of 20 July, I can confirm that our matters of concern extend beyond the behaviour of Sutherland Shire Council, as is outlined in our letter to the Registrar General dated 20 July 2018. Our contention remains that the information provided to the Registrar General by Sutherland Shire Council in their letter dated 18 April 2017 is factually incorrect and misleading in regard to all the points of information it provides. To the extent that the Registrar General relies upon the advice in that letter in relation to these dealings, it is our contention that the dealings could be considered to have been predicated on an act of fraud. I can confirm that the Environment Centre is finalising and authorising lodgement of our complaint.

Yours faithfully,

Dr Tassia Kolesnikow

Chair, Sutherland Shire Environment Centre

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Enclosed:

“Roads created in the Yarmouth Estate (DP1782) which adjoin lands acquired for the Royal National Park”, Sutherland Shire Council.