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Case Study: “The Seaforth Case”

THIS article outlines a series of events that unfolded in the Northern Beaches of Sydney, beginning in 2016, that has become known as “The Seaforth Case”.

The Seaforth Case is ultimately a case involving an unregistered surveyor undertaking a land survey that sparked a series of events resulting in significant financial damage to a member of the public.

The case also gives insight into how other professions, including local councils, deal with issues arising from incorrect boundaries shown on survey plans.

The chain of events

The original partial detail survey that was used for the design and Development Application for a concrete block garage was undertaken in mid-2016.

The unregistered surveyor who undertook this survey failed to identify a road widening that was registered in the mid-1950s. For this reason, the title boundary of the subject land was shown on the detail survey incorporating six metres of council-owned public road.

Interestingly, at the time of the original survey, the Digital Cadastral Data Base (DCDB) also did not identify the existing road widening. The New South Wales Government’s interactive SIX Maps shows topography, features such as road names, local government areas, suburbs and property boundaries from the DCDB.

In December 2016, a Development Application was lodged with Northern Beaches Council for a proposed garage to be constructed at the front of the subject land. The local

Council also failed to identify the road widening due to their heavy reliance on the SIX Maps viewer.

Development consent for the garage was given in May 2017.

Construction of the garage commenced in September 2018, at which time the neighbours to the immediate south of the development contacted Northern Beaches Council with concerns that the garage was being constructed on Council-owned public road.

The neighbours were aware of the road widening, as they had an identification survey undertaken when they purchased their property some years earlier. At that stage, Rygate were engaged to undertake an Identification Survey of the partially constructed garage.

The Rygate survey identified the garage as being constructed wholly on council owned public road (as shown in the diagram below).

The construction of the garage continued, as the applicant was advised by Northern Beaches Council that the Development Consent is valid until it’s declared invalid by a relevant court and that the works as undertaken are consistent with the development consent and the construction certificate.

Legal proceedings commenced between the applicant, “The Waldings”, and the neighbours to the south. “The Lus”, which eventually resulted in a court case in the Land & Environment Court in 2021: “Lu vs Walding [2021] NSWLEC 21”.

The court case

This article will comment on certain parts of the case relating to survey matters. However, I

would like to point out that I have no legal training except for that associated with being a professional land surveyor.

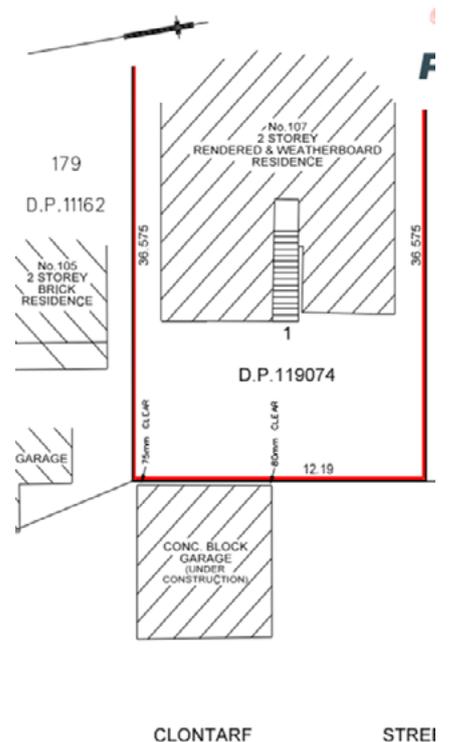
All 113 pages of the court case are available online if any readers would like to read it in its entirety.

The case put forth by the Lus’ legal team endeavored to prove that improper landowner’s consent was obtained for the development and that the Lus should be compensated accordingly or that the garage should be demolished.

Northern Beaches Council attended court in an observing capacity.

Some things that were of interest in the judge’s findings are that the words “SIX Maps” appear 30 times but the words “Registered Surveyor” only appear once.

This one mention is in relation to the report provided by Rygate, not to do with the unregistered surveyor who undertook the original survey.



The most relevant item to me in the judge's findings is item 253 (shown below), where the judge rejects the original survey as being suitable for annexure to a DA and makes some interesting comments on Council's reliance on SIX Maps boundaries.

Item 253

No Boundary survey or site plan was prepared for the Waldings' DA – despite the requirements in Sch 1 Pt 1 cl 2(1)(a) and (2) of the EPA Regulation – with the result that their front boundary was not identified correctly at the time their DA was submitted. All the plans lodged in support of the Waldings' DA show their front boundary in the wrong location. The perils of relying on Six Maps to identify legal property boundaries, as the Waldings and the Council's assessing officers did, are well and truly highlighted by these events. While the respondents submitted that Six Maps is published by the NSW Government for use by the public to identify boundaries of land on aerial photographs, that is clearly not correct for all purposes.

The results of the court case were as follows:

- The Judge determined that demolition of the garage was not warranted.
- The Judge found that the construction of the garage was a breach of the EP&A Act, as proper landowner's consent was not obtained.
- The Waldings were ordered to pay costs in relation to compensating the Lus, as well as court costs.

The outcomes

As previously mentioned, Northern Beaches Council attended court in an observing capacity, so they did not suffer financially from the case. However, it appears the Seaforth Case has served as a catalyst for change at Northern Beaches Council.



In December 2019, just before the court case, Northern Beaches Council CEO Ray Brownlee released a press release stating: "In other changes, A Boundary Identification Survey will need to be submitted to ensure accurate assessment and identification of property boundaries. It's very important when assessing a development application that we have absolute clarity on property boundaries. Boundary Identification Surveys provided by Registered Surveyors enable this."

This marked a big change in Northern Beaches Council, as the original detail survey accepted for the Seaforth Case in 2016 was not only prepared by an unregistered surveyor but also did not have a company name or contact details on the plan.

The real loss in the Seaforth Case belongs to the Waldings. After paying court costs, paying compensation to the Lus and going through the road closure process to formalise the encroachment, the Waldings were out of pocket over \$900,000.

The unregistered surveyor was reported to the NSW Board of Surveying & Spatial Information (BOSSI) and received a warning letter. This was due to the original survey being discovered well outside the six-month period required for prosecution.

The unregistered surveyor did not hold professional indemnity insurance. A claim against the unregistered surveyor would need to be via a civil claim.

The future

There are many lessons that can be taken from the Seaforth Case, not only for surveyors but also for other professionals too. For other professions, the key lesson is the over-reliance on DCDB boundaries and understanding a registered surveyor's role in defining title boundaries.

The Seaforth Case also raises the issue of ethics. As the initial survey contains no company or contact information, it appears that it was undertaken without supervision or insurance.

The Institution has now added a Survey Ethics component to the candidate workshops, and we are looking at how we can get that message across to students at university and TAFE.

The Seaforth Case highlights the need for BOSSI to have more power to prosecute unregistered surveyors. In this case, the unregistered surveyor received nothing more than a warning letter. ISNSW has formed a Surveying Legislation Working Group. Former MP Melanie Gibbons is on board to help ISNSW with this.

Ultimately, it is up to us as surveyors to educate the next generation of surveyors and other professionals to prevent another Seaforth Case from happening in the future.

Mick Brown
ISNSW Director and Director at Rygate